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On the Presidential Succession

ARTHUR M. SCHLESINGER, JR.

On the eve of the bicentennial of independence, the American experiment in self-government was confronted by a startling development: the President and Vice President who would lead the celebrations on July 4, 1976, would be persons who had come to office and power, not through election, like all their predecessors, but through appointment. Even more disturbing was the thought that the source of this President's appointment was a former President whose first Vice President had resigned in disgrace as a confessed felon and who himself had resigned in the face of virtual certainty that he would otherwise have been impeached and removed because of high crimes and misdemeanors against the United States.

Nothing like this had ever happened, or could ever have happened, in the earlier history of the republic. The right of the people to choose their own leaders had been assumed by definition as a fundamental point of self-government. A major premise of American politics had always been—at least up to 1967—that the President was an elected, not an appointed, official. The Constitution (Article II, Section 1) expressly provided that the President and Vice President were to “be elected.” The Founding Fathers believed that no one who had not been elected to the Presidency should serve as President any longer than necessary to organize a new

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presidential election. The Framers would unquestionably have been astounded and appalled to find as President and Vice President 200 years after the Declaration of Independence two men, neither of whom had ever faced a national election and each of whom owed his office to his direct predecessor.

It was the Twenty-fifth Amendment—ratified in 1967 without, it must be said, any clear view of the consequences¹—that discarded the wisdom of the Founding Fathers and threatened to introduce so extraordinary an innovation into the American system. Under that amendment President Nixon, after the resignation of Vice President Agnew in 1973, named Gerald Ford as his Vice President. When Nixon himself went under, Ford, now President, was obliged by the same amendment to name a Vice President of his personal choice. “For the first time in the history of this great Nation,” John Pastore of Rhode Island cried with pardonable senatorial grandiloquence, “the President and Vice President will both be appointed—not elected by the people and not responsive to any mandate from the citizens. The Nation will no longer be democratically governed.”²

I

Nixon’s Secretary of State, a former professor of political science, had observed in March 1974, “There have been, very rarely, fully legitimate governments in any European country since World War I.”³ This was perhaps an imprudent remark from the representative of a government whose legitimacy lay at that very moment (and for many moments thereafter) under the most serious question. But what would Dr. Kissinger make of the legitimacy of an allegedly democratic government headed by two men receiving their office and power through appointment rather than through election?

No doubt such a government, though on the face incompatible with Article II of the Constitution, had become technically constitutional through the Twenty-fifth Amendment. But it could not be said that those who drafted that ill-considered amendment desired this particular result. The constitutionality of the appointive Presidency was thus inadvertent, not premeditated. And for anyone concerned with democracy in a philosophical sense the prospect raised the sternest difficulties. Not only was the conception of the Presidency as an elected office breached; but the assignment to a President of the personal power to appoint a

¹ Certainly not on the part of this writer.

² *Congressional Record*, November 15, 1973, S 20429.

³ *New York Times*, March 12, 1974.

Vice President in case of a vacancy added a quasi-dynastic aspect to the process of presidential succession.⁴

In 1945 President Truman, noting that it lay within his authority to appoint the person (then the Secretary of State) who would be his successor in the event of his own disability or death, said with customary directness, "I do not believe that in a democracy this power should rest with the Chief Executive."⁵ The Twenty-fifth Amendment cavalierly tossed away Truman's old-fashioned scruple and thereby contributed its mite to the aggrandizement of the Presidency. And, if Truman had supposed that the principle applied to himself, an elected Vice President, how much more powerfully must it apply to a Chief Executive who was an appointed Vice President and whose name had never been submitted to a national electorate. A system that permitted an appointed President to appoint his own successor was a system that removed the most vital political choices farther and farther from the people. One doubted whether such a régime could be called, in the phrase with which Professor Kissinger flunked a half-century of government in Europe, "fully legitimate."

The fix into which the Twenty-fifth Amendment placed American democracy was emphasized by a striking contrast with events in France soon after the Secretary of State delivered his excommunication of Europe. General de Gaulle had designed a very powerful Presidency for himself; but even that towering leader had not claimed for Presidents of France the authority the Twenty-fifth Amendment bestowed, in special cases, on Presidents of the United States: that is, the power to nominate his own successor. Instead Article 7 of the Constitution of the Fifth Republic said that in case of a vacancy in the Presidency a new presidential election must be held within thirty-five days. In the meantime, the functions of the President (save for the powers of calling a national referendum and of dissolving the National Assembly) are to be exercised by the president of the senate. On April 2, 1974, President Pompidou died. On May 5 the French had their election, followed by a runoff on May 19 and the inauguration of the new President on May 27. In less than two months, in short, France had a new President, freely chosen by the people and equipped by them with a fresh mandate. Which government is the more legitimate—the elected government of France after the death of Pompidou, or the appointed government of the United States after the resigna-

⁴ The objection that Presidents name their Vice Presidents anyway at the nominating convention is dealt with in the discussion of the Twenty-fifth Amendment below, section X.

⁵ H. S. Truman, *Public Papers . . . 1945* (Washington, 1961), p. 129.

tion of Nixon? Which political system is, in this respect at least, the more democratic?

The signal difference between the French and American systems in dealing with a vacancy in the Presidency is obvious: *the French have no Vice President*. The results surely favor the French on essential tests of legitimacy and democracy. The contrast therefore calls on Americans to reconsider the utility of the Vice Presidency in their own system.

II

History had shown the American Vice Presidency to be a job of spectacular and, I believe, incurable frustration. Gerald Ford, like his predecessors, entered into the office with soothing presidential assurances that he, unlike his predecessors, would be given tasks of substance and responsibility. One could be absolutely certain that these shining prospects would disappear whenever he reached out to grasp them. Nixon, even in his feeble condition of 1974, was no more disposed to share power with Ford than he had shared power with Agnew. When James J. Kilpatrick asked Nixon whether he had told his Vice President of 1971 about the plan for the diplomatic opening to China, Nixon, replying in what Kilpatrick described as an "incredulous" tone, said, "Agnew? Agnew? Oh, of course not."⁶ Yet a year later he kept on as his running mate and successor the Vice President he excluded from his councils. Still President Nixon's tone could hardly have been more incredulous than Eisenhower's when interrogated in 1960 about Vice President Nixon's role in the eight years of the Eisenhower Presidency. To the question "What major decisions of your Administration has the Vice President participated in?" Eisenhower responded, "If you give me a week, I might think of one."⁷

Nor was Nixon merely doing unto others what others had done unto him. He was behaving the way all Presidents have behaved—as they appear to have no inclination and perhaps little choice but to behave—toward their Vice Presidents. It is a doomed office. No President and Vice President have fully trusted each other since Jackson and Van Buren.⁸

⁶ *Washington Star-News*, May 16, 1974. Jeb Stuart Magruder of the Nixon White House writes of Agnew in 1970: "He'd been frozen out by Nixon, for almost two years." J. S. Magruder, *An American Life* (New York, 1974), p. 128.

⁷ *New York Times*, August 25, 1960.

⁸ It should perhaps be added that Polk had amiable personal relations with George M. Dallas, McKinley with Garret Hobart, and Truman with Alben Barkley, but none of

Antagonism is inherent in the relationship. "The only business of the vice-president," wrote the sardonic Thomas R. Marshall, who served for eight years under Wilson, "is to ring the White House bell every morning and ask what is the state of health of the president."⁹ The only serious thing the Vice President has to do is to wait around for the president to die. This is hardly the basis for cordial and enduring friendships. "The Vice President," said Lyndon Johnson, who experienced both ends of the relationship, "is like a raven, hovering around the head of the President, reminding him of his mortality."¹⁰ Presidents inevitably resent the death's head at the feast; Vice Presidents equally resent the monarch who stuffs himself at the banquet table while they scramble for leavings. Elbridge Gerry worried in the Constitutional Convention about the "close intimacy" that he thought "must subsist between the President & vice-president." Gouverneur Morris responded acidly, "The vice president then will be the first heir apparent that ever loved his father."¹¹

The single contemporary point of the Vice Presidency is to provide for the succession in case of the death, disability, resignation, or removal of the President. Of course there have been repeated attempts to give it other points. They have all failed. They are all bound to fail. The Constitution does say that the Vice President "shall be President of the Senate, but shall have no Vote, unless they be equally divided." When there was objection to this in the Constitutional Convention, Roger Sherman observed that, if the Vice President did not preside over the Senate, "he would be without employment."¹² Sherman's observation was prophetic, except that the Vice President's constitutional employment soon became a farce. Agnew as Vice President, for example, never went near the Senate if he could help it. Early Vice Presidents of a philosophical bent filled their days by meditating attacks on the power of the national government. Jefferson wrote the Kentucky Resolution as Vice President, Calhoun the South Carolina Exposition. Their successors have lacked a taste for political philosophy. Richard M. Johnson ran a tavern as Vice President. Thomas R. Marshall and Alben Barkley made jokes. But most Vice Presidents, especially in modern times, have lacked a taste for humor too.

these Vice Presidents played any significant role in the policy decisions of their respective administrations.

⁹ T. R. Marshall, *Recollections* (Indianapolis, 1925), p. 368.

¹⁰ As told by President Johnson in retirement to Professor Doris Kearns, with whose kind permission I am repeating this exceedingly apt aphorism.

¹¹ C. C. Tansill, ed., *Documents Illustrative of the Formation of the Union of the American States* (Washington, 1927), p. 682.

¹² *Ibid.*

III

Why have Presidents not given the Vice President serious work? For a long time they supposed themselves constitutionally forbidden to do so. Washington did on occasion ask his Vice President to attend cabinet meetings; but Jefferson as Vice President was quick to erect a wall of separation. "I consider my office," he wrote, "as constitutionally confined to legislative functions, and that I could not take any part whatever in executive consultations, even were it proposed."¹³ Most Presidents and Vice Presidents have accepted the Jeffersonian doctrine. Thus Truman wrote in 1955 that the Vice President "is not an officer of the executive branch" and Eisenhower as late as 1963 that the Vice President "is not legally a part of the Executive branch and is not subject to direction by the President."¹⁴

The practice of vice presidential participation in cabinet meetings is a recent development. In 1896 Theodore Roosevelt thought it would be desirable "to increase the power of the Vice-President. . . . It would be very well if he were given a seat in the Cabinet."¹⁵ But when he became President himself after an exasperating interlude as Vice President, he did not give his own Vice President, Charles W. Fairbanks, a seat in the cabinet or anywhere else. Vice President Marshall presided at cabinet meetings when Wilson was at Versailles. But, since he regarded himself as a "member of the legislative branch," he questioned the propriety of doing so and carefully explained to the cabinet that he was acting "in obedience to a request" and "in an unofficial and informal way."¹⁶ Harding was the first President to make his Vice President, Calvin Coolidge, a regular at cabinet meetings. Coolidge expected his own Vice President to follow this example; but Charles G. Dawes rejected any such entanglement with the executive as a "wrong principle" and in due course supported farm legislation from his office on Capitol Hill that his President opposed and eventually vetoed.¹⁷ Franklin D. Roosevelt, who from the time of his own vice presidential candidacy in 1920 had cherished the hope of making something of the office,¹⁸ reinstated vice-

¹³ J. D. Feerick, *From Failing Hands: The Story of Presidential Succession* (New York, 1965), p. 70.

¹⁴ H. S. Truman, *Year of Decisions* (New York, 1955), p. 197; D. D. Eisenhower, *Waging Peace* (New York, 1963), p. 6.

¹⁵ Theodore Roosevelt, "The Three Vice-Presidential Candidates and What They Represent," *Review of Reviews*, September 1896. TR also thought that the Vice President should be given a vote on ordinary occasions in the Senate and "perchance on occasions a voice in the debates."

¹⁶ I. G. Williams, *The Rise of the Vice Presidency* (Washington, 1956), pp. 109–110.

¹⁷ *Ibid.*, pp. 134, 138.

¹⁸ Franklin D. Roosevelt, "Can the Vice President Be Useful?" *Saturday Evening*

presidential attendance at cabinet meetings, and it became routine thereafter. Truman got Congress in 1949 to make the Vice President a member of the National Security Council by statute. But Vice Presidents continued to operate out of an office at the Hill. It was not till Kennedy that a Vice President was given space in the Executive Office Building.

Nor, despite ritualistic pledges at the start of each new term, have Presidents ever delegated real power to Vice Presidents. FDR did make Henry Wallace head of the Board of Economic Warfare—the only big job handed a Vice President in the history of the American Presidency—but this merely proved the embarrassment bound to arise when an agency chief who happened to be Vice President got into fights with powerful members of the President's cabinet. Nixon as Vice President appointed himself the political hit man of the Eisenhower administration and subsequently as President assigned the same delicate responsibility to Agnew, thereby making him, as Eugene McCarthy wittily said, "Nixon's Nixon." When Ford succeeded Agnew, Nixon began by trying to insert him into the same slot. This is hardly a promising development. If there is anything certain to cast the Vice Presidency into permanent disrepute, it is the theory that the Vice President is the appointed outlet for an administration's partisan rancor.

For the rest the Vice Presidency is make-work. Presidents spend time that could be put to far better use trying to figure out ways of keeping their Vice Presidents busy. "They seek to put him," as Tom Marshall said, "where he can do no harm."¹⁹ So Vice Presidents serve meaninglessly as chairmen of interdepartmental committees like the Aeronautics and Space Council or the Committee on Equal Employment Opportunity. The suggestion is sometimes made that the Vice President could take over the ceremonial side of the President's job. But Presidents perform few ceremonial functions they do not want to perform; and Vice Presidents would be acceptable substitutes only on the most footling occasions. Nor would a purely ceremonial role satisfy any but the most vacuous Vice President. Getting Vice Presidents out of sight through foreign travel is a solution much favored by recent Presidents. This is all make-believe too. Despite the pieties, the Vice Presidency remains "the fifth

Post, October 16, 1920. FDR claimed to regard the Vice Presidency as a major example of "industrial waste" in Washington. He did not think that attendance at cabinet meetings would make much difference but argued that the Vice President should be used to overcome the gap between Congress and the executive branch and to help bring about government reorganization. He acknowledged that a constitutional amendment would be required to give the Vice President serious executive authority but thought that even without an amendment there were things a Vice President could do.

¹⁹ Marshall, *Recollections*, p. 16.

wheel in our government" (Albert J. Beveridge), "the spare tire on the automobile of government" (John Garner).²⁰ As Gertrude Stein said of Oakland, California, there is no there there.

But what of the suggestion, advocated by Roosevelts when they aspired to be Vice Presidents (and forgotten once they became Presidents), that the power of the Vice Presidency might be increased? Carl Kaysen, director of the Institute for Advanced Studies, has made the ingenious proposal, for example, that the Constitution be amended to make the Vice President an officer of the executive branch. Then let the presidential candidate promise the nominating convention that he will appoint his Vice President to one of the four great cabinet offices, State, Treasury, Defense or Justice, and specify which. This would provide a there there. But it would also create problems if the Vice President turned out to fail at the job or to disagree with the policy and could not, like other incompetents or dissidents, be easily dismissed.

Moreover this would have to be an informal, and hence unstable, arrangement; for any formal allocation of power to the Vice President would run up against the clause in the Constitution vesting the undivided "executive power" in the President. And the resistance to any sharing of authority is visceral as well as constitutional. When William O. Douglas, who had been chairman of the Securities and Exchange Commission, suggested to Franklin Roosevelt that he have the heads of the independent agencies report to his Vice President, Henry Wallace, FDR replied, "Would you like to see Henry instead of me? What would Henry know about all those matters?"²¹ No President in the nature of things, is going to yield power to a Vice President.

For this reason, Benjamin V. Cohen, that wise veteran of the New Deal, recommends a different approach. He would frankly recognize that there is, and can be, no there there and have presidential and vice-presidential candidates separately voted upon in the general election. This would have meant in 1968, for example, that Nixon would have been elected President and Muskie Vice President. The fact that Muskie could not have taken part in a Nixon administration would have made no difference, since the Vice President has nothing to do anyway; and Muskie would have been an infinitely more attractive heir apparent. But this proposal raises the possibility of a shift in party control of the White House without the intervention of a new election.²²

²⁰ A. J. Beveridge, "The Fifth Wheel in Our Government," *Century*, December 1909; Garner quoted in J. MacG. Burns, "A New Look at the Vice Presidency," *New York Times Magazine*, October 9, 1955.

²¹ W. O. Douglas, *Go East, Young Man* (New York, 1974), pp. 310-311.

²² So too would Endicott Peabody's otherwise attractive proposal that the Twenty-fifth Amendment be revised to require the choice of a new Vice President, in case of a

Neither of these ideas goes to the heart of the matter. Nor certainly do the reform proposals generated by the Agnew and Eagleton fiascoes. In 1973 the Democrats appointed a Vice Presidential Selection Committee under the chairmanship of Hubert Humphrey, whose own vice presidential wounds had hardly healed. Its recommendation was that the parties slow up the process of nominating the second man by making the convention longer and even, if necessary, holding the choice over to a later meeting of the party's National Committee.²³ This procedure, it need hardly be said, would not have saved the Republicans from twice anointing Agnew, which did not prevent a corresponding committee of the Republican National Committee from contemplating the same change. Senator Robert Griffin of Michigan, the Republican whip, in what he called, presumably as a recommendation, "a small step in the direction of the parliamentary system," would do away altogether with party participation in the nomination and have the new President submit his choice to Congress in the manner in which Mr. Nixon chose Mr. Ford under the Twenty-fifth Amendment.²⁴ This would be another formula for Agnews.

Fiddling with the way vice presidential nominees are chosen is beside the point. The real question is why have a Vice President at all? "His importance," as Woodrow Wilson said, "consists in the fact that he may cease to be Vice-President."²⁵ The only conceivable argument for keeping the office is that it provides an automatic solution to the problem of succession. No doubt it does. But does it provide the *best* solution?

IV

There is first the mystical argument that the Vice President is the proper successor when a President vanishes in mid-course because, as Truman said and many have repeated, "There is no officer in our system of government, besides the President and Vice President, who has been elected by all the voters of the country."²⁶ Truman's proposition, advanced nine weeks after Roosevelt's death, was natural enough to a man concerned with legitimating his own recent succession to the Presidency. But insofar as it implied that the voters in some sense intended him or any other Vice President (since 1796) for the Presidency, it was a myth. No one

vacancy, through special election rather than through appointment. See "On the Threshold of the White House," *Atlantic Monthly*, July 1974.

²³ *Congressional Record*, December 21, 1973, S23756-S23758.

²⁴ *Ibid.*, October 23, 1973, S19448-S19450.

²⁵ Woodrow Wilson, *Congressional Government* (Boston, 1901), p. 240.

²⁶ Truman, *Public Papers . . . 1945*, p. 129.

votes for a Vice President *per se*. He is a part of a package deal, "a sort of appendage to the Presidency" (Truman's own phrase); not an independent choice.²⁷

To this hazy theory of an electorally sanctified connection between the Vice Presidency and the succession there is added the conventional wisdom of political science departments (and of Vice Presidents) that the Vice Presidency is the best school for the Presidency. It is above all, we are told, a "learning office" where men educate themselves for the great responsibility that may one day be theirs. Even if the Vice President has nothing to do, he can—we are assured—watch what others are doing and prepare himself to take over if calamity strikes. Thus Richard M. Nixon: "The Vice Presidency . . . is the only office which provides complete on-the-job training for the duties of the Presidency."²⁸

This implies, one fears, an unduly romantic view of Presidents. Nixon himself made this perfectly clear as soon as he had a Vice President or two at his mercy. Presidents, whatever they may say, do not pick their running mates because they want to raise them up to be their successors. All Presidents see themselves, if not as immortal, at least as good for a couple of terms. They pick a running mate not because he is the second citizen of the republic and splendidly qualified to replace them in the White House but because of occult and very often mistaken calculations about the contribution he will make to their own victory at the polls. "Whether they should or not," Congressman James G. O'Hara of Michigan has realistically observed, "they will not, in the final analysis, choose their Vice-Presidential candidate to succeed them. They will choose them to help them succeed."²⁹

These calculations, I say, are very often mistaken. It is an exceedingly rare case when the vice presidential candidate makes a difference. Very likely Johnson made a difference in 1960. But much more typical was the outcome in 1948. Earl Warren was the most popular governor California had had in a generation, but Truman carried California against the Dewey-Warren ticket. As for the idea, much discussed by the sages of the press, of a "balanced ticket," this is a fraud on the public. It pretends that the Vice President's views will somehow "balance" the views of the President when all our history testifies that they have no impact at all on the President. Should the President die, however, then the difference in views could have a cataclysmic effect. Theodore Roosevelt, recalling what

²⁷ Truman, *Year of Decisions*, p. 53.

²⁸ In his testimony in 1964 before the Senate Judiciary Committee, reprinted in Senate Judiciary Committee, *Selected Materials on the Twenty-fifth Amendment*, Senate Document 93-42, 93 Cong., 1 Sess. (1973), 95.

²⁹ James G. O'Hara, testimony before the Vice Presidential Selection Commission of the Democratic National Committee, November 7, 1973 (mimeo.), p. 10.

had happened when Tyler succeeded Harrison and what might have happened had Grover Cleveland died and Vice President Adlai Stevenson taken over, observed, "It is an unhealthy thing to have the Vice-President and the President represented by principles so far apart that the succession of one to the place of the other means a change as radical as any possible party overturn."³⁰

Presidents not only do not choose Vice Presidents to become successors, but, after they make the White House themselves, they do as little as possible to prepare them to become successors. A Vice President can learn only as much as a President is willing to have him learn—which, given presidential resentment of vice presidential existence, is not ordinarily very much. Truman, recalling how little he had been told as Vice President, tried harder than most Presidents to clue in his second man. His conclusion about on-the-job training is not encouraging. "No Vice-President," he wrote three years after he left the White House, "is ever properly prepared to take over the presidency because of the nature of our presidential, or executive, office." In the nature of things, "it is very difficult for a President to take the Vice-President completely into his confidence." The President "by necessity" builds his own staff and makes his own decisions, "and the Vice-President remains an outsider."³¹

Moreover, seeing things as an ill-informed, impotent, and often sullen outsider, the Vice President will very likely "learn" the wrong things. Lyndon Johnson thought Kennedy too cautious at the time of the Cuban missile crisis and in Vietnam. What Johnson "learned" as Vice President led him on to policies of overkill in the Dominican Republic and Indochina. In any case, where does a successor's responsibility lie? "A Vice-President might make a poor President," said Tom Marshall, who had to reflect on this question in Wilson's season of disability, "but he would make a much poorer one if he attempted to subordinate his own mind and views to carry out the ideas of a dead man."³²

A learning office? With Presidents less generous than Truman—and that in this context is most Presidents, however generous they may be in other relationships—the Vice Presidency is much less a making than a maiming experience. The way most Presidents treat their Vice Presidents, far from preparing them for the succession, is more likely to erode their capacity to succeed. McKinley, wrote Theodore Roosevelt as Vice President, "does not intend that I shall have any influence of any kind, sort or description in the administration from the top to the bottom. This he has made evident again and again. . . . I have really much less influ-

³⁰ Roosevelt, "The Three Vice-Presidential Candidates," p. 292.

³¹ Truman, *Year of Decisions*, p. 54.

³² Williams, *Rise*, p. 110.

ence with the President now that I am Vice-President than I had even when I was governor."³³ Fortunately, for T. R., he only had to endure six months of frustration. When he acquired a Vice President of his own, he could not have been more destructive of poor Charley Fairbanks. He used to regale Washington with Finley Peter Dunne's crack after the President remarked he was going down in a submarine: "You really shouldn't do it—unless you take Fairbanks with you."³⁴ Tom Marshall, who at least extracted a good deal of shrewd humor out of his predicament, concluded that the Vice President "is like a man in a cataleptic state: he cannot speak; he cannot move; he suffers no pain; and yet he is perfectly conscious of everything that is going on about him."³⁵ Lyndon Johnson, when Vice President, once remarked to Franklin D. Roosevelt, Jr., "Your daddy never let his Vice Presidents put their heads above water."³⁶

In recent years, as men of larger aspirations and capacities have responded to the actuarial attractions of the office, the damage to Vice Presidents has increased. The more gifted and ambitious the Vice President, the more acute his frustration—and the less his President is inclined to do to alleviate it. Everyone knows the humiliation that Eisenhower repeatedly visited on Nixon. Malcolm Moos, the political scientist, after watching that relationship as an Eisenhower special assistant, concluded that the office was "a kind of coffin."³⁷ Only a man who has the overpowering ego of a Lyndon Johnson and is treated by his President, as Johnson was, with relative consideration can survive the Vice Presidency; and even Johnson was a subdued and shrunken man by 1963. "It's like being naked in the middle of a blizzard with no one to even offer you a match to keep you warm—that's the vice presidency," said Hubert Humphrey in 1969, eight months after he had been released from confinement. "You are trapped, vulnerable and alone, and it does not matter who happens to be President."³⁸ Few Vice Presidents can survive the systematic demoralization inflicted by the office without serious injury to themselves. Bill Moyers, who was with Lyndon Johnson both as Vice President and President, later remarked that the Vice Presidency "is a man eater. It destroys individuals. This country was very lucky that Harry Truman was the vice president for only a year [actually for less than three months]. When he became President, he still had so much left.

³³ Theodore Roosevelt, *Letters*, ed. E. E. Morison, vol. III (Cambridge, 1951), p. 57.

³⁴ Williams, *Rise*, p. 89.

³⁵ Alben Barkley, *That Reminds Me* (New York, 1954), p. 221.

³⁶ As told by FDR, Jr., to me; Arthur Schlesinger, Jr., *A Thousand Days* (Boston, 1965), p. 704.

³⁷ *Minneapolis Tribune*, June 2, 1974.

³⁸ *Time*, November 14, 1969.

If we had gotten Truman three years later, he would have been much different."³⁹

V

The Vice Presidency does a poor job of preparing politicians to become Presidents. But it has recently begun to do an excellent job of preparing politicians to become presidential candidates. For the Vice Presidency is the only place except the Presidency itself that insures its occupant automatic and comprehensive national exposure. Moreover, a new sense of the frailty of Presidents—FDR's death in office, the attempted assassination of Truman, Eisenhower's sicknesses, the successful assassination of Kennedy, the movement to impeach Nixon—has focused unprecedented public attention on the Vice Presidency. As a result, the Vice Presidency has returned to somewhat the status it enjoyed in the early republic as the stepping-stone to the Presidency. In the 160 years before 1948 only five Vice Presidents had ever won election to the Presidency on their own. Of the five Presidents elected since, three were former Vice Presidents. Every man who has served as Vice President since 1953 has become a candidate for President, except for Agnew, who was well on his way to becoming a candidate until the law caught up with him, and for Ford, whom the office transformed from a little-known congressman into a national favorite in a few weeks and who, even before he became President, seemed destined to be a presidential candidate in 1976.

The irony is that this process has nothing to do with the presidential qualifications a Vice President might have and everything to do with the publicity in which the office bathes him. Whether or not a Vice President is any good, the office instantly makes him a front-runner in the polls. At the same time the office makes it impossible to find out whether or not he is any good. "The Vice President," Donald Graham has written, "is the one American politician who is not held responsible for what he says."⁴⁰ If he makes a hawk or a zealot or a fool of himself, it is always supposed that he is doing so at the behest of his President. No doubt he is, which is one reason why, at the very time the office enhances his political availability, it depletes and despoils his substantive value. So while the Vice Presidency is coming to be the main avenue to the Presidency, it is, alas, an avenue that typically specializes in the delivery of damaged goods.

There is no escape, it seems to me, from the conclusion that the Vice

³⁹ Jimmy Breslin, "Police Riot," *New York Magazine*, September 16, 1968.

⁴⁰ Donald Graham, "The Vice Presidency: From Cigar Store Indian to Crown Prince," *Washington Monthly*, April 1974.

Presidency is not only a pointless but even a dangerous office. A politician is nominated for Vice President for reasons unconnected with his presidential qualities and elected to the Vice Presidency as part of a tie-in sale. Once carried to the Vice Presidency not on his own but as second rider on the presidential horse, where is he? If he is a first-rate man, his nerve and confidence will be shaken, his talents wasted and soured, even as his publicity urges him on toward the ultimate office for which, the longer he serves in the second place, the less ready he may be. If he is not a first-rate man, he should not be in a position to inherit or claim the Presidency. Why not therefore abolish this mischievous office and work out a more sensible mode of succession?

VI

Such a revision of the Constitution would not be an affront to the Founding Fathers. They had no great commitment to the Vice Presidency. Though they had had considerable experience with lieutenant or deputy governors in the colonies and though most of the thirteen states had provided for such officers in their own constitutions, the Constitutional Convention did not resort to the Vice Presidency in order to solve the problem of succession. Instead the August 6 draft from the all-important Committee of Detail proposed that, in case of a vacancy in the Presidency, "the President of the Senate shall exercise those powers and duties, until another President of the United States be chosen."⁴¹ This, it might be noted, was the formula adopted a century and three-quarters later by General de Gaulle for the French Constitution and employed so expeditiously in France in the spring of 1974.

There was some objection to the President of the Senate as acting President of the nation. Gouverneur Morris thought that the Chief Justice should be "provisional successor." Madison suggested that "the Executive powers during a vacancy" be administered by a Council of State.⁴² Wherever the line of devolution went, however, all agreed that it was to prevail only until the voters could choose, *de novo*, a new President by special election.

Then a fortnight before the Convention adjourned, a new drafting committee went off for a weekend and came back with the Vice Presidency. The committee did *not* devise the Vice Presidency primarily as a means of dealing with the succession. The delegates already had a solution to that problem. Indeed, as Charles Warren later wrote, they paid surprisingly little attention in considering the Vice Presidency "to the chief

⁴¹ Tansill, ed., *Documents*, p. 479. Emphasis added.

⁴² *Ibid.*, p. 621.

part which the Vice-President has, in fact, played in history, that is, to his succession in case of the death of the President."⁴³ The Vice Presidency came to the fore for entirely distinct reasons. Hugh Williamson of North Carolina, a member of the new drafting committee, frankly told the Convention that "such an office as vice-President was not wanted. He was introduced *only* for the sake of a valuable mode of election which required two to be chosen at the same time."⁴⁴

The Vice Presidency entered the Constitution, in short, not to provide a successor to the President—this could easily have been arranged otherwise—but to ensure the election of a *national* President. For the United States had as yet little conviction of national identity. Loyalty ran to the states rather than to the country as a whole. If presidential electors voted for one man, local feeling would lead them to vote for the candidate from their own state. The new draft now recommended that they be required to vote for two persons, "of whom one at least shall not be an inhabitant of the same State with themselves."⁴⁵ By means of the double vote, localism could be overcome, and a President with broad appeal beyond his own state would emerge. "The second best man in this case," as Madison observed, "would probably be first, in fact"⁴⁶—i.e., the favorite second choice would be the person commanding national confidence.

In addition, the double vote was also intended to defeat cabal and corruption in the selection process. Because each elector must vote for two persons without indicating a preference, "the precise operation of his vote," James Wilson observed, "is not known to himself at the time when he gives it." Conspiracy would therefore be "under the necessity of acting blindfold at the election" and would be "defeated by the joint and unforeseen effect of the whole."⁴⁷ Hamilton concluded in *Federalist* #68 that through the double vote the Constitution had made it a "moral certainty" that the Presidency would be filled "by characters preeminent for ability and virtue." Popularity and intrigue might enable a man to carry his own state; "but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union."

Under the double vote, the person winning most votes became President, the runner-up Vice President. It was not logically essential to the

⁴³ Charles Warren, *The Making of the Constitution* (Boston, 1928), p. 635.

⁴⁴ Tansill, ed., *Documents*, p. 682. Emphasis added.

⁴⁵ *Ibid.*, p. 679.

⁴⁶ *Ibid.*, p. 454.

⁴⁷ James Wilson, *Works*, ed. R. G. McCloskey, vol. I (Cambridge, Mass., 1957), p. 439.

operations of the system that the runner-up be anything at all; and no doubt considerations of the succession played a larger part here than were reflected in the discussions at the Convention and in subsequent debates at the state ratifying conventions. For both President and Vice President would have been voted on for the Presidency, and both presumably would be well qualified for the office. The primary point of the Vice Presidency, however, was not as a mode of succession but as an organic part, in Williamson's phrase, of the "valuable mode of election."

VII

Even then the new office was not received with great enthusiasm. Elbridge Gerry told the Convention that he was "ag.st having any vice President."⁴⁸ Gerry was the only member of the Convention ever to become Vice President. George Clinton, not a delegate, denounced the office from outside as dangerous and unnecessary. Clinton later served as Vice President under two Presidents. James Monroe told the Virginia ratifying convention that he saw no need for the office.⁴⁹ The *Federalist* tried to ignore the issue, devoting two quick paragraphs to it in the entire series of eighty-five papers. Noting that the Vice Presidency had been "objected to as superfluous, if not mischievous," Hamilton defended it in perfunctory fashion because the Vice President's casting vote could prevent deadlocks in the Senate and because the Vice President himself could be on occasion a "constitutional substitute" for the President. Privately he complained to James Wilson, "Every body is aware of that defect in the constitution which renders it possible that the man intended for Vice President may in fact turn up President."⁵⁰ The First Congress even wrangled over the question of whether the Vice President should be paid a salary. Some members thought he should only receive *per diem* for those days when he actually presided over the Senate. Finally they voted him \$5000 a year.

The double vote did produce two remarkable figures, Adams and Jefferson, as the first two Vice Presidents. But as an occupation for a grown man the Vice Presidency proved a disaster. "I am Vice-President," Adams told the Senate. "In this I am nothing, but I may be everything"—a concise statement of the paradox of the office. To his wife Adams complained that the Vice Presidency was "the most insignificant office that ever the invention of man contrived or his imagination conceived. . . . I

⁴⁸ Tansill, ed., *Documents*, p. 682.

⁴⁹ Feerick, *From Failing Hands*, pp. 52, 54.

⁵⁰ Alexander Hamilton, *Papers*, ed. H. C. Syrett, vol. V (New York, 1962), p. 248.

can do neither good nor evil." Jefferson called it "the only office in the world about which I am unable to decide whether I had rather have it or not have it."⁵¹ In the meantime, the rise of the party system, a development unanticipated in 1787, was placing the "valuable mode of election" under severe strain. In 1796, the Federalists gave their second ballots to Thomas Pinckney, who was manifestly not the second citizen of the country. Adams himself, the top Federalist candidate, would have preferred, if he had been defeated, to lose to Jefferson rather than to his fellow-Federalist.⁵² In 1800 the Republicans gave the same number of electoral votes to Jefferson, their presidential choice, as they gave to Aaron Burr, a man of undoubted talents who, however, was trusted by no one in the long course of American history, except for his daughter Theodosia and Gore Vidal. Burr was nearly chosen President, though the voters never intended him for the Presidency. The fear of comparable slipups in 1804 led to the adoption of the Twelfth Amendment requiring the electoral college to vote separately for President and Vice President.

With the abolition of the "valuable mode of election," the Vice Presidency lost the function for which it had originally been designed. Separate voting ended any prospect that the Vice President would be the second man in the country. The office would no longer attract men of the highest quality. It would become, as was immediately noted, a bargaining counter in the presidential contest—"a bait to catch state gudgeons," in Gouverneur Morris' scornful phrase.⁵³ Samuel White, a senator from Delaware, summed up with admirable prescience the consequences of the Twelfth Amendment: "Character, talents, virtue, and merit will not be sought after, in the candidate. The question will not be asked, is he capable? is he honest? But can he by his name, by his connexions, by his wealth, by his local situation, by his influence, or his intrigues, best promote the election of a President?" Roger Griswold of Connecticut said that the Vice Presidency would thereafter be "worse than useless." A number of political leaders, Republicans and Federalists—John Randolph of Roanoke; former Speaker of the House, now Senator Jonathan Dayton; Griswold; Samuel W. Dana—drew the logical conclusion. The Vice Presidency was an organic part of a particular mode of election. That mode of election was now about to be terminated. Should not the Vice Presidency therefore be terminated too? "The reasons of erecting the office," Dayton correctly said, "are frustrated by the amendment. . . . It will be preferable, therefore, to abolish the office." Unfortunately for

⁵¹ Feerick, *From Failing Hands*, pp. 66–67, 63.

⁵² Lucius Wilmerding, Jr., *The Electoral College* (Beacon paperback, 1964), pp. 33–34.

⁵³ Michael Harwood, *In the Shadow of Presidents* (Philadelphia, 1966), p. 27.

the republic the effort failed by 19–12 in the Senate and 85–27 in the House.⁵⁴

But the dismal predictions were correct. The Twelfth Amendment sent the Vice Presidency into prompt decline. The first two Vice Presidents had moved on directly to the Presidency. After the amendment the Vice Presidency became a resting-place for mediocrities. Who can remember Burr's successors—George Clinton, Elbridge Gerry, Daniel D. Tompkins? For a generation the Secretary of State became the stepping-stone to the Presidency; thereafter, until very modern times, Presidents were elected from anywhere except the Vice Presidency. In the 170 years since the Twelfth Amendment only one Vice President—Martin Van Buren—has advanced directly to the Presidency by election. More than half our Vice Presidents in the nineteenth century were actually *older* than their Presidents. William R. King, when nominated as Vice President with Franklin Pierce, was known to have an incurable disease and died six weeks after inauguration. Clinton, Gerry, Henry Wilson, Thomas A. Hendricks, and Garret A. Hobart also died in office. Apart from their families, few cared or even noticed. The Vice Presidency was nothing. "It is not a stepping stone to anything except oblivion," said Theodore Roosevelt when Boss Platt conned him into accepting the vice presidential nomination in 1900. "I fear my bolt is shot." Asked if he planned to attend McKinley's second inaugural, Platt replied with relish, "I am going to Washington to see Theodore take the veil."⁵⁵ Four years later the Democrats nominated Henry G. Davis, then 81 years old, for the Vice Presidency (the ticket lost). For thirty-eight years—almost a quarter of the time that has passed since the ratification of the Twelfth Amendment—the republic was without any Vice President at all. No catastrophe resulted.

VIII

Theodore Roosevelt concluded that the Vice Presidency was "an utterly anomalous office (one which I think ought to be abolished)."⁵⁶ He was indisputably right. But what would take its place? How else to deal with the succession? Here it would not seem unreasonable to go back for a moment to the Constitutional Convention. The Founding Fathers were not a pack of fools. While they did not suppose that their descendants would be governed forever by what made sense for an agricultural

⁵⁴ Feerick, *From Failing Hands*, p. 73.

⁵⁵ Williams, *Rise*, p. 81.

⁵⁶ Roosevelt, *Letters*, vol. III, p. 60.

society of four million souls, they had insights into the principles of self-government that later generations did not conspicuously improve.

Their first thought, as we have seen, had been to give the President a provisional successor—most probably the President *pro tem* of the Senate—and then, as soon as possible, elect a new President. When the Convention, for other reasons, moved on to the idea of a Vice Presidency, the delegates resolved to empower Congress to designate the next in succession in case of a double vacancy. The early proposal was that the officer thus designated by Congress should “act” as President “until the time of electing a President shall arrive.” Madison at once pointed out that “this, as worded, would prevent a supply of the vacancy by an intermediate election of the President” and offered language, immediately accepted by his colleagues, stipulating that the designated officer “shall then act as President . . . until the Disability be removed, or a President shall be elected.”⁵⁷ The constitutional scholar Lucius Wilmerding, Jr., accurately stated the principle of the Founding Fathers in a letter to Walter Lippmann in 1946: “A man who had not been voted on for the Presidency ought not to hold the office for longer than it takes to choose a new President.”⁵⁸

Before the adoption of the Twelfth Amendment, Vice Presidents had been voted on for the Presidency. Indeed, as the young republic began to develop and assume a national consciousness, people quickly forgot that the original reason for the double vote was to overcome localism and increasingly supposed that its point was, in the words of Elias Boudinot of New Jersey, “to obtain the second best character to fill the place of the first, in case it should be vacated by any unforeseen accident.”⁵⁹ If the Vice President were thus so well qualified to act as President, the instant problem of succession seemed under control.

So, when the Second Congress passed the Presidential Succession Act of 1792, the act assumed without specification that, if anything happened to the President, the Vice President would take over. If both the Presidency and the Vice Presidency were vacated, Madison’s idea of an “intermediate election” was to prevail. The President *pro tempore* of the Senate (or, if there were none, the Speaker of the House) would “act as President . . . until a President be elected,” and a special election would be called for the next November to choose a new President unless the double vacancy occurred in the last months of the presidential term.⁶⁰

⁵⁷ Tansill, ed., *Documents*, p. 680. Emphasis added.

⁵⁸ Walter Lippmann, “A Letter about Vice Presidents,” *Washington Post*, December 7, 1946.

⁵⁹ Wilmerding, *Electoral College*, p. 30.

⁶⁰ The text of the 1792 Act can be conveniently found in Edward Stanwood, *A History of the Presidency* (Boston, 1901), pp. 36–38.

“It is unlikely,” E. S. Corwin, that mordant annotator of the Constitution, has written, “that Congress ever passed a more ill-considered law.”⁶¹ This is harsh language. Corwin did not live long enough to see the Twenty-fifth Amendment. Still, the Act of 1792 unquestionably had its defects. Corwin was particularly upset because he regarded the intrusion of the legislative branch into the line of succession as a violation of the separation of powers. (Madison had made this point against the bill in Congress, but Madison was aggrieved because, had Hamilton not intrigued to shift the succession to Congress, Jefferson as Secretary of State would have been next in line. If Jefferson had been President *pro tem* of the Senate and Hamilton Secretary of State, would Madison have cared so much about the separation of powers?) In any case, the Madison-Corwin doubt had not impressed the Committee of Detail in the Constitutional Convention; and it may be considered to have been laid to rest by the long life of the Act of 1792 and by the reenactment of the principle of congressional succession in 1947.

There still remained, though, the more substantial objection that the qualifications for President *pro tem* and for Speaker are less stringent than for the White House. The congressional officers, for example, need not be natural-born citizens; the Speaker may be under 35 (as Henry Clay demonstrated in 1811); and, peculiarly, neither is required to be a member of the body over which he presides, which makes them less than perfect exemplifications of the elective principle. Still, in practice, the congressional officers have met the presidential qualifications most of the time. A graver objection was that they might be on occasion members of the opposite party; in 1792, however, Congress was not thinking in terms of the party system. A still graver objection was that there might be times when there would be neither a Vice President nor a President *pro tem* nor a Speaker.

The Twelfth Amendment came a dozen years after the Act of 1792. It was intended to make it impossible for persons who had not been voted on for the Presidency to become President. It had precisely the opposite effect.⁶² After 1804 Vice Presidents were not voted on for the Presidency except in a highly metaphysical sense. But the retention of the office and the ambiguity of the Constitution enabled Vice Presidents to make themselves President.

IX

The Founding Fathers, so far as we can tell, assumed that, if a President died, the Vice President would inherit the powers and duties of the

⁶¹ E. S. Corwin, ed. *The Constitution of the United States of America: Analysis and Interpretation* (Washington, 1953), p. 387.

⁶² As Lucius Wilmerding, Jr., pointed out in two penetrating essays on the Vice

President but not the office itself; he would only be acting president. Corwin judged it the clear expectation of the Framers that, if there were a vacancy in the Presidency, “the Vice-President should remain Vice-President, a stopgap, a locum tenens, whatever the occasion of his succession, and should become President only if and when he was elected as such.”⁶³ A careful modern scholar, John D. Feerick, agrees that the men who signed the Constitution accepted the words limiting tenure (“until . . . a President shall be elected”) “as applicable to all successors, including the Vice-President.”⁶⁴

The final language was a hurried and cryptic condensation by the drafting committee of two resolutions previously adopted by the Convention. This language—that in case of the President’s death, resignation, removal “or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President”—contained a capital ambiguity. By “same” did the Framers mean merely the powers and duties of the Presidency or did they mean the office as well? Since earlier language consistently had the Vice President acting as President and exercising presidential powers and duties, the Framers plainly thought that the Vice President was *not* to inherit the office. The Twelfth Amendment substantiates this surmise; for it provides that, if a presidential choice went to the House and could not be made before inauguration day, “the Vice-President shall *act* as President, as in the case of the death or other constitutional disability of the President” (emphasis added). But the debate over the Twelfth Amendment showed incipient congressional confusion as to whether the Vice President, in the event of a vacancy in the Presidency, was only to exercise the powers and duties of the office or was to acquire the office as well, thereby becoming President in every sense of the term.⁶⁵

Then in 1841 William Henry Harrison died a month after his inauguration. At last there was brought to test, as John Quincy Adams said, “that provision of the Constitution which places in the Executive chair a man never thought of for it by anybody.” Vice President John Tyler in effect staged a constitutional coup by successfully insisting—“in direct violation,” Adams testily noted, “both of the grammar and context of the Constitution”⁶⁶—that, when a Vice President inherited the powers and

Presidency, “The Presidential Succession,” *Atlantic Monthly*, May 1947, and “The Vice Presidency,” *Political Science Quarterly*, vol. 68 (March 1953).

⁶³ E. S. Corwin, *The President: Office and Powers* (New York, 1957), p. 54.

⁶⁴ Feerick adds: “The debates at the Convention clearly show that the Vice-President was merely intended to discharge the powers and duties of the President temporarily. All of the drafts before the Committees of Detail and Style were explicit in this regard.” Feerick, *From Failing Hands*, pp. 50–51.

⁶⁵ *Ibid.*, pp. 74–75.

⁶⁶ J. Q. Adams, *Memoirs*, ed. C. F. Adams, vol. X (Philadelphia, 1877), pp. 457.

duties of the presidential office, he inherited the office too and became, not acting President but President in his own right. There were unavailing protests from senators who thought that a man could gain the Presidency only by election.⁶⁷ But Tyler won his point, though the point did not gain explicit constitutional sanction until 125 years later in the Twenty-fifth Amendment.

The United States lived under the Succession Act of 1792 for ninety-four years. Since a double vacancy never occurred, the intermediate-election feature, evidently intended by the Founding Fathers as a routine part of the process, never came into play. In 1881 James A. Garfield, shot by an assassin, died at a time when there was neither a President *pro tem* of the Senate nor a Speaker of the House. If anything happened to his vice presidential successor, Chester A. Arthur, the Presidency would have been in limbo. This was strangely also the case when Grover Cleveland's Vice President died four years later. Moreover, the Republicans were in control of the Senate in 1885, which meant that the President *pro tem* of the Senate, when chosen, would be of the opposite party from Cleveland as well as his statutory successor.

The cry for reform produced the Presidential Succession Act of 1886. The new law put the line of descent through the cabinet, thereby making succession automatic and preventing the mechanics of succession from transferring the Presidency from one party to another without an election. Some members of Congress opposed this idea—among them Congressman William McKinley of Ohio—especially on the ground that it would contravene the elective principle by empowering a President to name his successor.⁶⁸ The 1886 law did not, however, eliminate the idea of intermediate elections. It provided that the cabinet successor should “act as President until the disability of the President or Vice-President is removed, or a President shall be elected.” It was “the powers and duties of the office of President,” and apparently not the office itself, that devolved upon the cabinet successor, and “it shall be the duty of the person upon whom said powers and duties shall devolve” to convene Congress within twenty days, presumably in order to provide for a special election.⁶⁹

463–464. J. Q. Adams' great-great-grandson, Thomas B. Adams, now president of the Massachusetts Historical Society, has speculated that, if a special election had been held following Harrison's death, Henry Clay would probably have been the choice of the nation, in which case there might have been no President Polk, no Mexican War, and a different course of national development. See “On the Threshold of the White House,” *Atlantic Monthly*, July 1974.

⁶⁷ Feerick, *From Failing Hands*, p. 95.

⁶⁸ *Ibid.*, p. 146.

⁶⁹ For text, Stanwood, *History of the Presidency*, pp. 451–452. Emphasis added.

The republic operated under this law for another sixty years. Again no occasion arose to call the provision for intermediate elections into play. Then in 1945 Harry S. Truman, abruptly translated to the Presidency, faced the prospect of serving the balance of Roosevelt's term—nearly four years—without a Vice President. The law of 1886 put the Secretary of State next in line. But Truman, as we have noted, thought it undemocratic for a President to have the power to appoint his successor, contending that the Vice President should always be an “elective officer”—i.e., someone who held public office through election. So he proposed a reversion to the principle of the Succession Act of 1792, though with the Speaker of the House first and the President *pro tem* of the Senate second. There were manifest defects in the scheme. Neither the Speaker nor the President *pro tem*, as we have seen, need be elective officers. Both posts were in part the reward of seniority, which often meant long tenure in a safe and therefore unrepresentative district. James F. Byrnes and George C. Marshall, Truman's second and third Secretaries of State in 1947–1948 were far better equipped for the Presidency than Joseph Martin of Massachusetts, who, as Speaker of the House, was heir apparent for the same period under the Truman reform. In general, Secretaries of State have been more impressive figures than Speakers. Polk is the only Speaker to have made it to the White House.

Truman, however, saw this part of the scheme as provisional. Re-affirming the conviction of the Founding Fathers, he said, “No matter who succeeds to the Presidency after the death of the elected President and Vice President, it is my opinion that he should not serve longer than until the next Congressional election or until a special election called . . . to fill the unexpired term of the deceased President and Vice President.”⁷⁰ As Walter Lippmann put it in 1946, the Founding Fathers “thought the country should never for more than a few months have a President who had not been elected. They did not believe, as we now assume, that there could never be a Presidential election except once every four years.”⁷¹ If the country was without an elected President, it should proceed as expeditiously as possible to elect a new one. There was nothing sacrosanct about the four-year election system.

X

Truman's proposal that the intermediate election fill the unexpired term has given some trouble to constitutional scholars who read the language

⁷⁰ Truman, *Public Papers . . . 1945*, p. 130.

⁷¹ Walter Lippmann, “Wrong Answer, Right Question,” *New York Herald Tribune*, November 12, 1946.

on the Presidency in Article II, Section 1, of the Constitution—"He shall hold his Office during the term of four Years"—as guaranteeing every new President four years in the White House. The Succession Act of 1792 did provide that the term following the special election should be for four years. The Act of 1886 was mute on the point, though the debate assumed a four-year term. It is far from self-evident, however, that the Constitution forbids elections to fill unexpired terms. We have such elections every day for senators and representatives, though they, no less than Presidents, serve for terms specified in the Constitution. The House Judiciary Committee, under the chairmanship of that rugged old Texas strict constructionist Hatton W. Sumners, went into this question at length in 1945 and found no constitutional problem in the case of the Presidency

The Constitution, the House Judiciary Committee said, "does not provide that the term of each incumbent shall be 4 years, but that the President shall hold his office 'during the term of 4 years.' This language appears to have reference to a fixed quadrennial term, permitting the filling of an unexpired portion thereof by elections. The tradition of special elections for unexpired terms of other officers also supports the provision."⁷² "During" often means "in the time of"; it does not necessarily mean "throughout the entire course of." Had the Constitution said "for a Term of four Years," this would clearly assure a four-year term to every new President. But the Constitution does not say this.

And if John Tyler was correct in saying that a Vice President became President, not just acting president, and if it is correct to construe the Constitution as assuring every President a four-year term, then this reading must surely apply to Presidents who gain the office by inheritance quite as much as to those who gain it by election. This would mean that, when a President dies, the Vice President who succeeds him is entitled to a four-year term of his own. Ben Butler made this point during the impeachment trial of Andrew Johnson. "Whose presidential term is the respondent now serving out?" he asked. "His own or Mr. Lincoln's? If his own, he is entitled to four years up to the anniversary of the murder, because each presidential term is four years by the Constitution."⁷³ But no one has ever argued, not even John Tyler, that a Vice President has any right to do more than serve out his President's unexpired term. On what principle, when there is no Vice President, should a specially elected "constitutional substitute" be in a more favored position?

The House unwisely deleted Truman's provision for special presiden-

⁷² The report is reprinted in the *Congressional Record*, June 26, 1947, 7854-7855.

⁷³ D. M. DeWitt, *Impeachment and Trial of Andrew Johnson* (New York, 1903), p. 411.

tial elections before passing the Sumners bill in 1945, and the Senate took no action on the proposed change in the line of succession. The 1946 mid-term election gave the Republicans control of Congress. The Republican leadership, determined to make Joe Martin Truman's absolute and not provisional successor, now favored Truman's bill while opposing the idea of intermediate elections. As finally enacted, the law thus departed critically from Truman's original intention. He signed it, however, in order to shift the succession back to elective officers.

The elimination of intermediate elections was a bad mistake. The mistake was compounded twenty years later by the ratification of the Twenty-fifth Amendment. Section 2 of that amendment, by authorizing a President, whenever there was a vacancy in the Vice Presidency, to nominate a new Vice President, sanctified the appointive principle at the highest level of government and created the monstrous possibility—within a decade a probability—that an appointed Vice President would himself become President and appoint his own Vice President.

There was some opposition to this procedure. The Presidency, as Charles Mathias of Maryland observed in a brilliant dissent from the House report, would no longer be a purely elective office if the amendment were adopted. The Constitutional Convention "would surely have rejected an appointed Vice President on grounds of principle alone." The amendment, Mathias continued, was based not only on a false view of democracy but on a false view of human nature. It assumed

that a President will always be enlightened and disinterested in naming a Vice President. While this optimism reflects well on the 20th Century's opinion of itself in contrast to the pragmatic 18th century estimate of human frailty, it may not be a prudent basis for constitutional law.

Mathias dismissed the argument that Presidents picked their Vice Presidents anyway at the nominating convention. A candidate for the Presidency, bent on winning the approval of the electorate, was a different man from an incumbent President safe and secure in the White House. "The electability of the vice-presidential candidate is a form of accountability for the head of the ticket." Once elected, a President could employ any criteria he personally preferred. Since the rest of the proposed amendment gave the Vice President new authority with regard to the declaration of presidential inability, a President might well "hesitate in seeking a vigorous and aggressive Vice President" and prefer instead a "respectable, but pallid" appointment. Congressional confirmation would be "a mere formality in a period of national emotional stress." In addition, the choice by the presidential candidate of his running mate was merely the contemporary political custom. It had not always been the custom in

the past and might not be the custom in the future. Putting it into a constitutional amendment would transform a passing practice into a permanent principle.⁷⁴

Nonetheless, Congress, with the support of the establishment press, the American Bar Association, and, alas, an assortment of scholars, voted overwhelmingly for the Twenty-fifth Amendment. The error was deepened in 1973 when Congress, cheering through the nomination of Gerald Ford, acquiesced in Nixon's interpretation of the amendment as making a Vice President thus nominated not a choice genuinely shared with Congress (as some in Congress had ingenuously supposed when voting for the amendment) but a unilateral presidential appointment subject to congressional confirmation.

XI

This removal of the Presidency from the elective principle is unnecessary, absurd, and incompatible with the constitutional traditions of American democracy. It is also not beyond recall. If the American people want to restore authentic legitimacy to their government, it is plain what must be done. We must adopt a constitutional amendment abolishing the Vice Presidency, an office that has become both more superfluous and more mischievous than Hamilton could have imagined when he wrote *Federalist* #68; and then provide for the succession in the spirit of Founding Fathers through a congressional statute reestablishing the principle of special presidential elections. This principle, announced by Madison in the Constitutional Convention, authorized by the Constitution, applied by the Second Congress in 1792 to the prospect of a double vacancy, reaffirmed in this context by the Forty-eighth Congress in 1886, reaffirmed again by Truman in 1945 (and actually again by Eisenhower

⁷⁴ Senate Judiciary Committee, *Selected Materials on the Twenty-fifth Amendment*, 67–68. Oddly Richard M. Nixon at the time took what superficially appeared to be a similar position, arguing that the selection of the Vice President “should reflect the elective, rather than the appointive process” so that “whoever held the office of President or Vice President would always be a man selected by the people directly or by their elected representatives, rather than a man who gained the office by appointment.” On closer examination, however, the Nixon proposal was designed to strengthen the presidential domination of the process. His objection to placing the power of confirmation in Congress was that Congress might be controlled by the opposition party. Instead he proposed that the President make his recommendation to the reconvened electoral college, which “will always be made up of a membership a majority of which is the President’s own party,” and which would presumably serve as a rubber stamp, as in the quadrennial elections. This seems an emaciated view of an elective process. *Selected Materials*, 94, 97.

in 1965),⁷⁵ would, if the Vice Presidency were abolished, work fully as well for a single vacancy. More than this: it would repair the fatal errors of the Twelfth and Twenty-fifth Amendments and make it certain that the republic would never have to suffer, except as a *locum tenens*, a Chief Executive who, in the words of John Quincy Adams, was never thought of for that office by anybody.

The notion is occasionally advanced that intermediate elections would be unconstitutional. This can be ignored. Madison himself introduced language into the Constitution specifically to make such elections possible. The Second Congress, which contained men who had served five years before in the Constitutional Convention, authorized them by statute. Anything with such patriarchal blessing may be taken as safely constitutional.

Most of the objections to intermediate elections seem to spring primarily from a reverence for routine. The quadrennial rhythm, though not regarded as untouchable by the Founding Fathers, has evidently become sacrosanct for their descendants. Thus Lewis Powell (before, it must be said, his ascension to the Court, though he was still holding forth from a respectable eminence as president-elect of the American Bar Association) rejected the idea of intermediate elections as a "drastic departure from our historic system of quadrennial presidential elections."⁷⁶ One must regard such an objection, especially in view of the clear expectation of the Founding Fathers, as frivolous. If the specially elected President fills out his predecessor's term, the sacred cadence will not be disturbed. If not, then Congress could consider E. S. Corwin's proposal: if the vacancy occurs in the first half of the time, the special presidential election should take place at the time of the mid-term congressional election, thereby preserving the assumption that the terms of the new President, a new House and one-third of the Senate would start together.⁷⁷

⁷⁶ Eisenhower proposed that in case of a double vacancy there should be a return to the 1886 law, but the cabinet successor would be an "acting President" and "unless the next regularly scheduled presidential election should occur in less than 18 months, the Congress should provide for a special election of a President and Vice President to serve out the presidential term." He seemed to believe this would require a constitutional amendment. See Eisenhower, *Waging Peace*, p. 648. It is also of interest that, when the Louis Harris survey put the question in 1973 whether it would be a good idea to have a special election for President in 1974, its respondents favored such an election by 50 to 36 percent. *Washington Post*, January 7, 1974.

⁷⁷ Senate Judiciary Committee, *Selected Materials on the Twenty-fifth Amendment*, 124.

⁷⁷ Corwin, *The President*, p. 57. Corwin's proposal was directed to the possibility of a double vacancy, but it would serve as well for a single vacancy. If the President vanished after the mid-term election, however, it would risk leaving the country in the hands of a nonelected President for as long as twenty-six months.

There is also the objection, formulated by (among others) that thoughtful and lamented student of the Presidency, the late Clinton Rossiter, that "it would be simply too much turmoil and chaos and expense to have a special nationwide election."⁷⁸ But one wonders how carefully Professor Rossiter considered the proposition. This plainly was not the French experience with regard to the Presidency in 1974, nor indeed has it been the experience in parliamentary states where elections are held at unpredictable intervals. Are we to suppose that the French and Italians, for example, are so much more cool and imperturbable, so much more Anglo-Saxon, than the Americans?

It could of course be said that special elections in a time of national disarray might only deepen popular confusions. Would it have been a good idea to hold such elections after the wartime death of Franklin Roosevelt, after the murder of John Kennedy, after a successful presidential impeachment? Hubert Humphrey has made the point that special elections in wartime, for example, might cause dangerous delay and irrelevant bickering at a time when the nation could afford neither.⁷⁹ No doubt such elections would test the poise and stamina of American democracy. Yet what is the gain in undue protectiveness? The same argument can be made against holding presidential elections in wartime at all. The elections of 1864 and 1944 were held in the midst of the two greatest crises of our history. They caused much irrelevant bickering. Had Lincoln and Roosevelt lost, there would have been an embarrassing interlude of lame-duckery and interregnum. But the nation survived these elections without undue trauma. Democracy is a system for foul weather as well as for fair. Though a special election in a time of stress might conceivably demoralize the country, it might equally help it to resolve its confusions and restore its nerve. At the very least it would reaffirm the principle of self-government and place in the White House a man chosen by the people to be their President rather than, as the present system has done, a man chosen by a President who himself was forced to resign to avoid the virtual certainty of being then impeached and convicted for high crimes and misdemeanors.

XII

If the principle be accepted—the principle that, if a President vanishes, it is better for the people to elect a new President than to endure a Vice

⁷⁸ Professor Rossiter's reference, however, was to the proposal of a special election to choose a new Vice President. He might have thought differently if the purpose was to choose a new President. See Senate Judiciary Committee, *Selected Materials*, 136.

⁷⁹ "On the Threshold of the White House," *Atlantic Monthly*, July 1974.

President who was never voted on for that office, who became Vice President for reasons other than his presidential qualifications, and who may very well have been badly damaged by his vice presidential experience—the problem is one of working out the mechanics of the intermediate election. This is not easy but far from impossible. The great problem is that there can be no gap, no chink, in the continuity of the Presidency. “The President under our system, like the king in a monarchy,” said Martin Van Buren, “never dies.”⁸⁰ It would require up to three months to set up a special election. In the meantime the show must go on. If the Vice Presidency were abolished, who would act as President until the people have a chance to speak?

The historical preference, except for 1886–1947, has been for the President *pro tem* of the Senate (Committee of Detail in the Constitutional Convention, Succession Act of 1792) or the Speaker of the House (Succession Act of 1947). But given the regularity with which in recent years one party has controlled Congress and the other the executive branch, this formula risks an unvoted change in party control of the White House and in the whole direction of government. Such a change would be a graver infringement of the democratic principle than the provisional service of an appointed officer as acting President. The confusion would be even greater in the event of temporary presidential disability, in which case the Presidency might shuttle back and forth between the two parties in a period of a few months.

Fidelity to the results of the last election and to the requirements of continuity in policy creates, it seems to me, an irresistible argument for returning the line of provisional descent to the executive branch. A convenient way would be simply to make the Secretary of State acting President for ninety days. If the Secretary of State is foreign-born or under thirty-five or has some other disqualifying eccentricity, then the Secretary of the Treasury could be the automatic successor, and so on down the 1886 list of succession.⁸¹

Then, as soon as possible, let the people make their choice (unless the

⁸⁰ Martin Van Buren, *Inquiry into the Origin and Course of Political Parties in the United States* (New York, 1867), p. 290.

⁸¹ In an earlier version of this argument, in the *Atlantic Monthly* (May 1974), I proposed devolution to the Secretary of State only long enough to permit the choice of an acting President from the cabinet. The reason for this was that the Secretary of State might not be the member of the cabinet best qualified to serve as acting President. It then seemed to me that the cabinet itself might well select the acting President, using the corporate authority already bestowed on it by the Twenty-fifth Amendment, which gives a majority of the cabinet, plus the Vice President, power to declare the President *non compos mentis*. An alternative would have been to permit Congress to select an acting President from the cabinet—a device that would preserve continuity, spread re-

President vanishes in his last year in office, in which case it might be simpler to let the acting President serve out the term). Some have argued that a national election is too hard to organize; therefore Congress should choose the person to serve the remainder of the term. But this would give Congress the right, limited as it might be, to elect a President—a right the Founding Fathers carefully denied Congress and reserved for the voters. If it be said that ninety days is not time enough to organize an election, let us recall that the French allow themselves only thirty-five days, and who will say that the French are better organizers than the Americans? This would only be an election to fill out a term and thus would not require the elaborate foreplay of the quadrennial orgy. Candidates can be established with astonishing speed in the electronic age. Let the national committees, which have become increasingly representative bodies under the new party rules, canvass opinion and make the nominations. Short campaigns, federally financed, would be a blessing, infinitely appreciated by the electorate. Perhaps their brevity and their economy might have a salutary impact on the quadrennial elections, which in recent years have stretched out to intolerable length and swelled to intolerable expense.

In doing this, we would not be departing from the spirit and intent of the Founding Fathers. Quite the contrary: we would be reaffirming their view—and what view could be more sensible for a self-governing democracy?—that the Chief Magistrate of the United States must, except for the briefest periods, be a person elected to that office by the people. “We have only to operate the Constitution as the men who wrote it thought it should operate,” Walter Lippmann wrote in arguing for inter-

sponsibility, afford a choice of sorts, and perhaps stimulate Presidents to choose better cabinets. I agree, however, with Richard Neustadt (in the *Atlantic Monthly*, July 1974) that the temporary succession should be automatic within the cabinet.

I still think there is merit in this more complex approach; but on balance I have come to believe that two acting Presidents in a period of three months before a new President is chosen would be too cumbersome and confusing. I therefore now favor the simpler system outlined in the text. I have also dropped the proposal that the acting President be declared ineligible as a candidate in the special election, this in order to avoid the advantage created by the inevitable rush of sympathy to the new person in the White House. Demetrius Sakellarios has reminded me that democracy implies as few restrictions as possible on a people's right to choose its rulers.

I have not discussed the issue of presidential inability—an issue that may have received attention out of all proportion to its importance. In any case, the Vice President is not indispensable to a solution of the inability issue. The majority of the cabinet, when making its determination of presidential inability as authorized in the Twenty-fifth Amendment, could simply designate one of their own number to serve as acting President until the inability is removed.

mediate elections in 1946. "If we are the prisoners of a rigid system today, the fault lies not in the Constitution but in our own habits which have only rather recently become so hard and so fixed."⁸² *

⁸² Lippmann, "Wrong Answer, Right Question."

* This article has been adapted from a new appendix prepared for the forthcoming paperback edition of *The Imperial Presidency*.