the criteria presidential candidates apply when choosing their running mates as about the haste and pressure with which they make their choices, conditions that may distort their judgment. Others seek wider public participation in the selection process, believing both that the legitimacy criterion of democratic choice is violated by the current process of de facto presidential designation and that at least one governance criterion, vice presidential competence, would be better served by letting voters participate in the decision Finally, some critics are convinced that election criteria--uniting the party and winning votes for the ticket--are inherently in conflict with the governance criteria of competence and loyalty. A number of them have proposed that all vice presidents be appointed, using the procedures described in Section 2 of the Twenty-Fifth Amendment.

Haste. The traditional order of business at the national nominating convention provides for the vice presidential candidate to be selected the evening after the presidential candidate is chosen. In practice, the nominee for president is expected to announce a recommendation no later than the afternoon of the vice presidential nomination, which reduces the interval to about half a day. To some reformers, this schedule conjures up images--sometimes drawn from experience--of exhausted and emotionally drained presidential candidates meeting into the wee hours of the morning with equally frazzled advisers, trying desperately to make an intelligent decision about a matter that they are concentrating on for the first time, and, all too often, failing in that effort.[6]

A number of proposals have been made to remedy the problem of

haste. Varied as they are, each would prolong the vice presidential selection process by injecting more time--some before, others during, still others after the convention. A number of commissions--including the Democratic party's Vice Presidential Selection Committee, which was chaired by former vice president Hubert H. Humphrey in 1973, the 1976 Study Group on Vice Presidential Selection of the John F. Kennedy School of Government at Harvard University, and the American Bar Association's Special Committee on Electoral Reform, which also met in 1976--have suggested that candidates who are seeking a party's presidential nomination be required or encouraged to release, in advance of the convention, the names of those they are considering as running mates for public scrutiny.[7] The Democrats' experience with Eagleton was fresh in the minds of these reformers. (George McGovern had tapped Eagleton as his running mate in 1972, only to find out later from press reports that he had once undergone electric shock treatments for mental illness.) By releasing names in advance, reformers believed, the problems a prospective vice presidential nominee might present could be identified before it was too late.

Other proposals born of concern about haste would modify the convention itself, usually by inserting a day between the presidential and vice presidential nominations. This could be done within the bounds of the customary four-day convention by reversing the order in which the party platform is adopted and the presidential candidate nominated. (The revised order would be: presidential nomination on the second day, platform on the third day, vice presidential nomination on the fourth day.) Or the traditional order could be maintained but with

an "off" day added after the nomination for president. Finally, some have suggested that the convention adjourn without nominating a vice presidential candidate, allowing the presidential nominee to present a choice to the party's national committee within a designated period. The Humphrey commission proposed that national committee selection, which was used to nominate Sarget Shriver for vice president in 1972 after Eagleton resigned from the ticket, be made an option the presidential candidate could ask to use, pending the convention's approval.

Wider participation. A number of individuals have worried that the current system of vice presidential selection gives too much power to the presidential nominee, whom they fear will wield it solely to increase the chances of winning the general election, with governance criteria shunted aside. Their expressed purpose is to make the process more democratic and, thus, they argue, more legitimate and more effective.

Some would broaden participation in the nominating of vice presidential candidates by allowing the electorate a direct role. One such idea, which could be accommodated within the current system, would be to require presidential candidates to designate their running mates before the start of the primary season, so that voters could choose among complete tickets. In 1976, Reagan, desperate to halt President Ford's march to the nomination, announced the name of his candidate for vice president weeks in advance of the Republican convention and moved that the convention require Ford to do the same before the presidential balloting began. Reagan's motion failed; in any event, his own

announcement did not come until after the primaries were over. A somewhat different proposal would urge states to hold separate but simultaneous presidential and vice presidential primaries or caucuses, leading to a convention nomination for vice president that is independent of the presidential nomination. Under such an arrangement, candidates would run for vice president as they do now for president. A third suggestion for wider voter participation is more radical in form but conservative in spirit. In an effort to approximate the original constitutional ideal that the vice president should be the second-most qualified person to be president, it would create a national primary for each party in which voters would cast two ballots for president, with the runner-up winning the vice presidential nomination.[8]

Another strategy to broaden participation in the vice presidential selection process would be to turn the decision over to the convention, giving party activists a role. The Democratic presidential nominee in 1956, Adlai Stevenson, elected to do so; the convention chose Estes Kefauver for vice president after a spirited contest. Some proponents of this idea would have the presidential nominee structure the convention's decision by offering it three or four acceptable choices and letting the delegates decide among them.[9]

Appoint the vice president. The process created by the Twenty-Fifth Amendment to fill vice presidential vacancies, and the nation's experiences with it in 1973 and 1974, impressed some reformers so deeply that they would redefine the vice presidency as an appointive office. Conventions no longer would nominate and the electoral college

no longer would select vice presidents under their proposal. Instead, the president-elect would nominate a vice president and both houses of Congress, voting separately, would confirm the nomination.

Supporters of an appointive vice presidency offer several arguments in defense of their idea. By removing vice presidential selection from the electoral process, they claim, their proposal would end any conflict between election criteria for vice presidential selection and governance criteria. Nor would legitimacy criterion be violated because people really do not vote for vice president anyway. (Indeed, the new system would be as democratic as the current one, in which the president and a representative body--the party convention currently, Congress in the new system--confirms the nomination.) An appointive vice presidency would draw from a broader talent pool, the case continues, because some leaders who would be excellent successors to the presidency are not willing to run for vice president in an election campaign. Finally, haste no longer would characterize the selection of vice presidents. The president could make a nomination, and Congress could review it, deliberately.[10]

Discussion

Each of the suggested reforms of the vice presidential selection process has flaws to match the virtues its proponents celebrate. With regard to haste, for example, to postpone nomination of the vice presidential candidate for one day seems trivial; to delay it until after the convention would deny the party the opportunity to leave the convention with its business complete, united and undistracted by any concern other than winning the election.

Most of the proposals to increase voter participation, notably vice presidential primaries and a national primary, bar the presidential nominee from any formal role in designating the vice president, which would undermine the chances for cooperation in office or a faithful succession. Requiring presidential candidates to announce their running mates at the start of the primary season would replace this problem with another: it would reduce the talent pool for vice president by excluding candidates for president. (The vice presidential primaries proposal also would exclude presidential candidates from consideration.)

Suggestions to widen the convention's participation in the nomination of vice presidents have limitations of their own. A truly open floor fight could produce a vice presidential candidate whom the presidential nominee does not want. In office, such a vice president might feel entitled to act independently or even oppose the president. Allowing the presidential nominee to limit the convention's choice to a few designated candidates would mitigate these problems. But it also would eliminate political leaders who would be willing to accept a vice presidential nomination but not to fight for one, and alienate those who, although perhaps disappointed not to be the presidential candidate's first choice for a running mate, would be offended if they were left off the list of three or four. Finally, what are presidential nominees to do if, as usually is the case, they have a clear first choice for a running mate: Conceal their preference and run the risk of having to accept a less happy alternative? Stack the deck with unpalatable candidates so that the preferred nominee will stand

out as the only reasonable selection? A process that invites its own undermining also invites cynicism.

As for the appointive vice president idea, it is as flawed in some ways as it is seductive in others. It would distract the president and tie up Congress at the start of the new administration, when policy development should be the foremost concern. It would encourage the appointment of bland political figures, so as not to embroil the president in a nasty early fight. It would subvert the Twentieth Amendment, which assumes the existence of a vice president-elect to act as successor if the president-elect is unable to be inaugurated as president. It probably would not work as intended in practice: public pressure on the presidential candidates to reveal their preferences for vice president in advance of the election would be intense. And although an appointive vice president might well violate the forms of democratic control more than the substance, form is important in matters of legitimacy.

Finally, if each proposal to change the vice presidential selection process has limitations of its own, together they share two common problems. The first, and more important, is the relative mildness of the pathology they seek to cure. The current system may be less in need of reform than at anytime in the history of the vice presidency. To be sure, the selection of vice presidents who, if called upon, would be worthy successors to the presidency is the standard against which any process should be judged. But the governance criteria that accord with this standard--competence and loyalty--still are subordinate in practice to the election criteria

that traditionally have dominated vice presidential nominations, namely, uniting the party and winning votes for the ticket. Fortunately, the public, ever more aware of the need for successor presidents who can fill the office ably and faithfully, has taught politicians that they cannot increase their chances to win the election except by applying governance criteria to the selection of vice presidential candidates.

A second common failing of almost all the remedies for what ails the vice presidential selection process is that they are all ill-suited or at best irrelevant to the renomination of incumbent vice presidents. This is not surprising, considering that the reforms invariably were invented in reaction to some poor initial nomination for vice president. But what need is there for more or different primaries, a prolonged convention, or a postelection appointment process when a vice president is to be simply renominated?

Partly because political leaders know that the public is watching, and partly because the modern presidential nominating process tends to produce early victors, haste and closed participation in vice presidential selection also have diminished in recent years. When the presidential nomination is effectively decided well in advance of the convention, the winning candidate has both the opportunity and the incentive to devote considerable time, attention, and resources to the choice of a running mate. It is now standard practice for the names of those being considered for vice president either to be leaked to the press or, as in 1976 and 1984, openly announced. There is ample time for public and party expressions of enthusiasm or scorn to be offered

about the prospective nominees. Investigations of their backgrounds can go forward.

Difficulties remain in the vice presidential selection process. But they can be better dealt with by simple actions than by the proposals made by reformers to date. Hasty, secretive nominations still are all too likely when the presidential contest lasts into the convention, which still happens on occasion. But such nominations need not occur. Journalists, activists, and voters can force presidential candidates to think about the vice presidency throughout the campaign by persistently asking them by what process and with what criteria they intend to fill it. Another remaining difficulty is that one election criterion--uniting the party--still may impede the selection of worthy presidential successors. The conflict is not inherent--not all, probably not most, political leaders whose nomination for vice president would help to heal a party are incompetent or disloyal. Nor is uniting the party a criterion without merit--to the extent that the American political system requires healthy political parties, anything that encourages party unity is much to be prized. And, of course, should factions in a party take matters to an extreme and make representation on the ticket the price of unity, even at the expense of competence or loyalty, voters can have the final say at the polls.

UNUSUAL SELECTION

Since the early formation of political parties, the passage of the Twelfth Amendment, and the invention of national nominating conventions, the usual method of vice presidential selection--party

nomination and election by the electoral college--have been adequate to the task in the great majority of cases. On five occasions, however, unusual selection methods have had to be employed: twice when the vice president was appointed under Section 2 of the Twenty-Fifth Amendment, once when the Senate elected the vice president, and twice when a vice presidential candidate was nominated by a party's national committee to fill a vacancy on the ticket. All of these methods still are available for use. None is wholly unproblematic.

Amendment XXV, Section 2

No provision was made in the original Constitution to fill vacancies in the vice presidency. Even as late as 1947, when the nation had been left without a vice president during parts of almost half its first thirty-three presidencies (by fourteen presidential and vice presidential deaths and one vice presidential resignation), the relatively low status of the vice presidency meant there was little sense of urgency about vice presidential vacancies. (The nation's good fortune in never having lost a successor president contributed to that sense of complacency.) Congress that year simply rewrote the presidential succession law to provide that, in the absence of a vice president, the speaker of the House and the president pro tempore of the Senate would be next in line to the presidency.

Congress finally dealt with the vacant vice presidency in 1965. The rise in public anxiety about the office that occurred during the postwar era had helped to create a general climate of concern by then, but there were two more immediate spurs to action. The assassination

of President John F. Kennedy left the nation with a president, Lyndon Johnson, who had a history of heart trouble and whose designated successors were an old and ailing Speaker, John W. McCormack, and, as Senate president, an even older and iller Carl Hayden. In addition, President Eisenhower's various illnesses in the 1950s had prodded Congress to address the presidential disability issue, and it was clear that whatever solution it developed would rely on the participation and presence of a vice president.

Congress considered a number of proposals about how to fill vice presidential vacancies. Some would have made Congress the selecting body, empowering it to choose the vice president either completely on its own, subject to presidential veto, or from a list submitted by the president. Truman's widely expressed belief that presidents should not be allowed to appoint their own successors, which had helped persuade Congress in 1947 to make the speaker, not, as in the past, the secretary of state, second in line to the presidency, provided a strong argument for these proposals. But congressional selection ultimately was rejected for its potentially corrosive effects on administration unity (these effects were seen as harmful in general and perilous in view of the role Congress was about to assign the vice president in matters of presidential disability). Another proposal, offered by former vice president Nixon, would have left out Congress entirely, for fear that, if controlled by the opposition party, it might obstruct the president for partisan reasons. Nixon suggested that the president nominate a vice president for confirmation by the electoral college of the most recent election, since it had chosen the original vice

president. The fatal flaw in this proposal was that the electoral college is not a deliberative or investigative body--or any kind of body at all, considering that it never meets. Finally, some would simply have left the status quo unaltered, convinced that any method of vice presidential appointment would be so damaging to the Constitution's mandate that the president and vice president "be elected" that the 1947 law providing for succession by the speaker should be left to stand.[11]

In the end, Congress determined that "whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation of a majority vote of both Houses of Congress." Section 2 of the Twenty-Fifth Amendment, it was felt, would meet the governance criteria for vice presidential selection because it left the primary responsibility to the president and was divorced from electoral politics. It would meet the legitimacy criterion because it was familiar, operating in the spirit both of other constitutional appointments and of the usual process for choosing vice presidents, in which the presidential candidate nominates and the convention confirms.

In enacting the Twenty-Fifth Amendment, Congress seems to have assumed that death (either the president's or the vice president's) typically would produce the vice presidential vacancies that activate the selection provision, as it had in all but one of the sixteen previous cases. (The exception was Vice President John C. Calhoun's resignation in 1831.) But in 1973, Vice President Agnew resigned as part of a plea bargain that enabled him to avoid prosecution on

political corruption charges, and President Nixon and a Democratic Congress used their new constitutional power to make House Republican leader Gerald Ford vice president. Less than a year later Nixon resigned rather than undergo an impeachment trial. When Ford succeeded to the presidency, the vice presidency was vacant once more. Ford nominated former New York governor Nelson A. Rockefeller, and Congress again approved.

Remaining Concerns. Neither the enactment of Section 2 of the Twenty-Fifth Amendment, nor the nation's two experiences with it have ended debate about the filling of vice presidential vacancies. Some criticisms, based on the Ford and Rockefeller nominations, are procedural; others, more long-standing, are fundamental.

Most of the procedural concerns involve the confirmation process in Congress. At Congress's request, both Ford and Rockefeller underwent extensive background checks by the Federal Bureau of Investigation; congressional hearings and debates also were lengthy. In all, Ford's confirmation took nearly two months, Rockefeller's four. In view of the amendment's original rationale, which was to have a vice president available at all times for succession or disability, any substantial procedural delay is self-defeating. At one time, Congress had considered stipulating a thirty-day limit in the amendment, but decided that it should allow for unusually difficult nominations that would require more time. Yet neither Ford nor Rockefeller posed any special problems. Thus, one proposed reform would set a generous but firm limit of ninety days. If Congress failed

to act within that time, the nomination would be considered approved.

Another procedural concern about Section 2 is the absence of widely accepted criteria for congressional evaluation. Is profound disagreement with a nominee's policy views a suitable basis for rejection, as in an ordinary election? Or, at the opposite extreme, is the president entitled to relatively complete deference, unless there is serious concern about the nominee's integrity or competence, as with most cabinet appointments? The answer probably lies somewhere in between, but the wide-ranging Ford and Rockefeller confirmation hearings indicated profound uncertainty about where that middle ground should be.[13]

Some critics' objections to Section 2 involve basic issues of legitimacy and governance. By one reading, the Ford and Rockefeller experiences were encouraging: the United States was led during its bicentennial year by an appointed president and an appointed vice president, with no serious objections raised to their right to rule. Yet in 1976, Ford became the first successor president in this century not to be elected to a term in his own right, and Rockefeller became the first vice president not to be nominated even once by his party.

The Ford and Rockefeller experiences also serve as a remainder that one of Section 2's properties is to allow an endless string of appointed presidents and vice presidents. Even if the idea of an elected president appointing a vice president is regarded as legitimate, doubts may arise about the appropriateness of having an appointed-vice-president-turned-president appoint the new successor. By this reckoning, Nixon's nomination of Ford was more acceptable than

Ford's nomination of Rockefeller. It may be that no more than one exercise of Section 2 should be allowed in any four-year term. Any subsequent vice presidential vacancy would be left unfilled, with the speaker standing as successor.

Another fundamental criticism of the appointive vice presidency is that the president will feel compelled to fill a vacancy with a "respectable, pallid choice."[14] To appoint a vice president of presidential caliber is, perversely, to risk rousing resentment among politicians in both parties. Members of Congress from the opposition party may be reluctant to confirm (and thus create) a possible opponent in the next presidential election; legislators of the president's party with White House ambitions of their own may be even more hesitant to do so. Political self-interest could prevent the president from appointing certain eminently qualified nominees and subject the nominee who is selected to pressure from Congress to foreswear any presidential ambitions.

Senate Election I: Living Candidates

The Constitution provides that if no nominee for vice president receives a majority of electoral votes, the Senate shall elect one of the two vice presidential candidates with the highest number of electoral votes. Such an election has occurred only once. In 1836, the Democratic party's presidential nominee, Martin Van Buren, received a majority of electoral votes, but his running mate, Richard M. Johnson, fell one short. (The reason was that Virginia's twenty-three Democratic electors, disapproving Johnson's dalliances with a

succession of slave mistresses, denied him their support.) The Senate elected Johnson quickly, 33-16, but the straight party nature of the vote leaves one to wonder what would have happened if the opposition party had controlled the Senate. No protocol exists for such a situation; indeed, should it arise again, senators who felt that their party's candidate for vice president was being treated unfairly could boycott the proceedings, which in most cases would deny the Senate the two-thirds quorum that is constitutionally required for it to elect.

An 1836-style Senate vice presidential election conceivably could be triggered by, say, a serious scandal involving the winning vice presidential candidate that occurred or was revealed between the first Tuesday after the first Monday in November, when the electors are chosen, and the first Monday after the second Wednesday in December, when they vote. No law effectively binds electors to vote in a particular way.

More likely, however, the occasion for a Senate election would arise if a third party ticket prevented either major party from winning a majority of electoral votes. Under the Twelfth Amendment, while the Senate, assuming a quorum, was choosing between the two leading vice presidential candidates by simple majority vote (a process well-designed to produce a winner in most cases), the House would be voting for president by a much more complicated procedure. In the House, not only would the three highest electoral vote recipients be considered, but the support of a majority of state delegations is required for election, with evenly divided delegations casting no votes. Thus, Twelfth Amendment procedures might well produce a vice

president but no president by inauguration day, in which case the vice president would serve as acting president until the House reached a decision. If the House were hopelessly deadlocked, the vice president conceivably could exercise the powers and duties of the presidency for the entire four-year term.

At root, this is a flaw of the Twelfth Amendment, not of the vice presidency. Direct popular election, with the voters choosing among complete tickets, would eliminate the problem. So would a revision of the Constitution that made it easier for the House to elect a president in the event of an electoral college deadlock or that converted the election of the president and the vice president into a single choice for electors and legislators, not separate ones.

Senate Election II: Deceased Winning Candidate

Section 3 of the Twentieth Amendment provides that: "If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President." Should that occur, the Twenty-Fifth Amendment then would cover the filling of the vacant vice presidency, as it would if the vice president-elect were to die.

But what would happen if a presidential or vice presidential candidate who had received a majority when the electors voted in mid-December died or resigned before attaining "elect" status, which occurs only when Congress counts the votes on January 6?[15] Constitutionally, if a vice presidential candidate dies, Section 4 of the Twentieth Amendment applies:

> The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

But Congress has passed no such law. Thus, in counting the electoral votes on January 6, it would have to improvise. One course of action would be for Congress to declare that no candidate for vice president had received a majority of votes, in which case the Senate would have to choose the vice president. Since the Senate's choice is confined by the Twelfth Amendment to the two highest electoral vote recipients, its only alternatives would be to pick the opposition party nominee for vice president or to elect no one at all, which would violate the Constitution's instruction that the Senate "shall choose" and leave the nation without a vice president for the next four years. The other course Congress could take would be to count the electoral votes and declare the dead vice presidential candidate elected. That would produce a more pleasing result--after the inauguration the president would pick a new vice president under the Twenty-Fifth Amendment--but, as a procedure, it would fly in the face of both common sense and the Constitution's requirement that to be eligible to the vice presidency a person must be at least thirty-five years old, a citizen, and a resident.

Roughly the same set of problems would arise if a winning candidate for president were to die between mid-December and

January 6. Clearly, under the Twentieth Amendment, the winning vice presidential candidate would be declared vice president-elect. If Congress chose to count the deceased presidential candidate's electoral votes, the vice president-elect would be inaugurated as president, then would invoke the Twenty-Fifth Amendment to appoint a new vice president. But if Congress elected not to count the votes, the House--again because of Congress's failure to legislate under Section 4 of the Twentieth Amendment--would have to choose between the two living presidential candidates who had received the most electoral votes. Realistically, its choice would be to elect the defeated major party nominee or make no selection at all. In the latter case, the vice president would serve as acting president for four years, with no one acting as vice president.

Selection by Party National Committee

The rules of both major parties provide that if a vacancy on the ticket occurs before the election, the national committee is empowered to fill it. Such a procedure is straightforward and uncontroversial when a vice presidential vacancy occurs prior to election day in November. As in 1972, when McGovern asked the Democratic National Committee to nominate Shriver for vice president, the public would almost certainly accept the legitimacy of the presidential candidate turning to the national committee as a proxy for the convention.

A somewhat different reaction might occur if the national committee nomination came between election day in November and the day in mid-December when the electors cast their votes. In 1912, the

Republican vice presidential candidate, incumbent James S. Sherman, died on October 30. The Republican National Committee met after the election, which the Republicans lost overwhelmingly, and nominated Nicholas Murray Butler to receive Sherman's eight electoral votes for vice president. Butler's nomination was accepted without controversy, but certain broader questions remained unanswered. Would the public and its electors accept the right of the victorious party's national committee in effect to name the vice president, even if the committee simply confirmed the choice of the presidential candidate? If the winning presidential candidate died, would the winning vice presidential candidate be the presumptive replacement of the national committee? If so, as seems likely, would the committee then accept the former vice presidential candidate's choice of a new running mate? Would electors?

Questions such as these may do nothing more than underscore again the importance of using governance criteria for vice presidential selection, to assure that an able successor will be standing by even before the term begins. In any event, the right of national party committees to fill vacancies on the ticket thus far has been wholly uncontroversial as an emergency arrangement. Indeed, some critics of the usual vice presidential selection process would prefer to make the national committee method standard practice.

CONCLUSION

For all its imperfections, vice presidential selection has improved greatly in recent decades. The main goal of the selection

process--namely, to choose vice presidents who, if needed, will be worthy successors to the presidency--is being achieved more successfully than at any time in history. The remaining problems are, for the most part, solvable, minor, or both.

Usual Selection

To understand the reason why the process by which vice presidents usually are selected has improved is as important as to mark the improvement itself. It is not that politicians have put aside the election criteria--uniting the party and winning votes for the ticket--that traditionally have animated their vice presidential choices for the sake of accommodating the governance criteria--competence and loyalty--and the legitimacy criterion--constitutional and democratic values--that the rest of the political system prizes. It is rather that, ever since the importance of having an able and faithful vice president available to assume the presidency became clear with the birth of the nuclear age, the public has demanded that governance criteria be served in vice presidential selection, lest electoral consequences be paid. Politicians, notably presidential nominees, have come to realize that good government and good politics are not that different when it comes to choosing vice presidents.

The lessons of this experience may be helpful in remedying the remaining flaws in the vice presidential selection process. The election criterion of uniting the party still can impede the selection of competent and loyal vice presidents. Any faction within a party that sets representation on the national ticket as the price for its

support narrows the presidential nominee's range of choice severely and runs the risk of costing the party support in the general election. In addition, haste still can cloud judgment when vice presidential choices are being made, especially if the presidential nominating contest rages unresolved into the convention, distracting candidates until the last minute from the task of selecting a running mate.

The best lesson for dealing with these remaining problems, derived from experience, may be that changes in rules and procedures are less important than changes in electoral incentives. If the public continues to punish presidential nominees who choose inferior running mates, whatever the motive for choosing them, then future nominees will find other devices for uniting their parties than vice presidential nominations. If voters and journalists press candidates during the primary season to explain their thinking about the vice presidency and to describe their plans for choosing a running mate, candidates will give the matter more time and attention for fear of looking foolish or irresponsible.

Unusual Selection

In discussions of every method of unusual vice presidential selection--the Twenty-Fifth Amendment, Senate election, and national committee nomination--the main object of concern has been not so much electoral or even governance criteria as legitimacy. In all cases, the standby methods purport only to make the best of bad situations, in which the usual method of vice presidential selection is unavailable. In all cases, too, on the rare occasions when these methods have been

employed, the legitimacy of their use or result has not been seriously challenged.

As with the usual selection process, one can identify flaws, inherent or potential, in all the methods of unusual selection. But, again, as with the usual selection process, improvements probably are more likely to come about through public pressure than through changes in rules. Congressional confirmation hearings may take too long in some cases, but a dissatisfied public can prod legislators to expedite the process almost as effectively as a constitutional time limit, while allowing for a prolonged inquiry should circumstances require one. Representatives and senators may prefer that politically harmless nominations be made to fill a vacant presidency, but a president usually can force Congress's hand by rousing public opinion in favor of any competent nominee. The possibility of partisan shenanigans may inhere in the Senate election of the vice president that would follow an electoral college deadlock, but the risk of offending public notions of fairness is one that senators are bound to keep in mind. As for national committees, with the election still before them, they have every incentive to keep their proceedings free from any provocation to criticism.

Chapter 4

ACTIVITIES

Widespread public concern about the vice presidency is a product of the nuclear age. In a world shadowed by the possibility of virtually instant total war, Americans want the president's successor to be competent, loyal, and prepared. Changes in the vice presidential selection process have increased the likelihood that the first two of these standards will be met. The activities of vice presidents also have been changed in recent years, mainly to assure the nation that a successor vice president will be ready, if necessary, to assume the presidency. It has become politically necessary for presidents to keep the vice president busy, informed, and in the public eye.

Modern presidents have other, perhaps more positive, incentives to make the vice president not just an active, but an influential member of the administration. The rapid growth of the national government and of the U.S. role in world affairs has increased the volume of demands from various groups and nations for presidential attention. The president can satisfy some of these demands by using the vice president as an emissary. Executive policymaking has become more centralized even as pressures have arisen to limit the size of the White House staff. The vice president, who also has a policy staff, is willing and usually able to help out the president. Decisionmaking in Congress has become steadily more fragmented. Again, the vice president and the legislative liaison staff are a ready resource. Finally, having probably chosen the vice president with governance criteria at least partly in mind, the president is likely

to respect the vice president's abilities, trust the vice president's loyalty, and want to put the vice president to work in the administration.

That said, it also is true that the vice presidency is severely limited by its constitutional nature, and sometimes, by political constraints. Constitutionally, the vice presidency is a fundamentally weak office, with clear boundaries defining both the range of activities it can perform and the extent of influence in government it can achieve. No amount of change in the political environment or effort on the part of the president or vice president can alter that. Political constraints on vice presidential activity and influence, such as distrust by the White House staff, also exist but are more malleable.

Thus, even if the do-nothing vice presidency is a thing of the past, a do-nothing-important, or "Potemkin village" vice presidency still is possible. A vice president may be limited to titles, such as commision chair, and ceremonial duties (commencement speeches, goodwill trips abroad) that seem important but really are devoid of substance. "I go to funerals," lamented Vice President Nelson A. Rockefeller, describing his job toward the end of the term. "I go to earthquakes."[1]

THE CONSTITUTIONAL VICE PRESIDENCY

Some powers and duties of the vice presidency are grounded squarely in the Constitution. The vice president is president of the Senate, with the right to cast tiebreaking votes; holds a constitutionally independent office; has full successorship status in the event of a presidential vacancy; and is both the main figure in determining whether a president is disabled and the acting president during a period of disability. Clearly,

this is a weak array of formal powers. The irony is that what few responsibilities the Constitution does confer upon the vice presidency, for the most part, have weakened the office or retarded its development.

President of the Senate

According to paragraph 4 of Article I, Section 3 of the U.S. Constitution, "The vice president of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided." At one time, the vice president's Senate responsibilities were reasonably important. The first vice president, John Adams, operated in a manner not unlike a modern Senate majority leader, helping to shape the Senate's agenda and organizing and intervening in debate. He also decided, on average, nearly four tie votes each year during his two terms as vice president. In contrast, modern vice presidents have cast fewer than one tiebreaking vote every two years. (Even this small number exaggerates the importance of the power, because unless a measure is significant and the administration wants it to pass, the vice president's vote is of little consequence,) Similarly, modern vice presidents usually have treated their responsibility as Senate president in a passive and ceremonial way (one recent vice president spent only eighteen hours presiding over the Senate during an entire year), with deviations from that practice frankly frowned upon by senators. When Vice President Spiro T. Agnew wandered onto the Senate floor to ask Senator Len Jordan, a fellow Republican, if the administration could count on his vote for a tax bill, Jordan barked, "You had it until now," then vowed to oppose any bill that Agnew asked him to support. Rockefeller was severely criticized in the Senate for a

controversial parliamentary ruling that he made concerning cloture, especially when he failed to recognize an opposing senator who wished to speak.[2]

What explains the atrophy of the vice president's constitutional power as president of the Senate? For one thing, the Senate has changed. As new states have been admitted, the number of senators has almost quadrupled from the original twenty-six, making tie votes statistically less probable. The Senate also has been institutionalized, developing its own body of rules and procedural precedents, which the president of the Senate is expected merely to announce, on the advice of the parliamentarian. To be sure, until 1961, the vice president's only office was in the Capitol and almost the entire vice presidential staff was funded by the congressional budget. But these were mere vestiges of the vice presidency's early legislative identity. And in recent years the vice president's main offices have been in the west wing of the White House and the Executive Office Building, with the bulk of the staff paid for by the executive budget.

A more important explanation for the decline in the vice president's Senate responsibilities is the ambiguous constitutional status of the office. A member of both (or neither) the executive and legislative branch, the vice presidency has never been fully at home in either one. In this century, to the extent that vice presidents have become closely identified with the presidents whose elections brought them to office, the Senate has become steadily less receptive to vice presidents who hoped to play a formal role there. Nothing illustrates this better than the rebuff that Senate Democrats handed Lyndon B. Johnson, arguably the most

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