every schoolchild, which holds that every president elected in a year ending with zero will die in office, it serves as mnemonic for the continuing frequency of presidential successions: Andrew Johnson, after Abraham Lincoln died in 1865; Chester A. Arthur, who succeeded James Garfield in 1881; Theodore Roosevelt, after William McKinley's death in 1901; Calvin Coolidge, the successor to Warren G. Harding in 1923; Harry S. Truman, after Franklin D. Roosevelt in 1944; and Lyndon B. Johnson, who succeeded John F. Kennedy in 1963. (Evidently Zachary Taylor's death in 1850 and Richard M. Nixon's resignation in 1974, with vice presidents Millard Fillmore and Gerald R. Ford, respectively, succeeding them, happened independently of the curse.)

Despite this accumulation of precedents, the Constitution until recently remained vague about succession, even though several amendments touched on the subject. The Twelfth Amendment seemed to suggest, albeit offhandedly and not by clear congressional intent, that the vice president was to be acting president.[6] In providing for a failure of both the electoral college and the House of Representatives to elect a president by the start of the term, the Twelfth Amendment said that "the Vice President shall act as President, as in the case of the death or other constitutional disability of the President." The provision later was replaced by the Twentieth Amendment, which said more blandly that if a president had not been elected by inauguration day, "the Vice President shall act as President until a President shall have qualified." The Twenty-Second Amendment left the matter explicitly unresolved, stating that "no person who has held the office of President, or acted as President for more than two years of a term

to which some other person was elected President shall be elected to the office of the President more than once." Not until 1967 was the Constitution brought into conformity with more than a century of practice. Section 1 of the Twenty-Fifth Amendment dealt directly with this issue: "In case of the removal of the President from office or of his death or resignation, the Vice President shall become President."

Succession by Special Election?

The traditional (and now constitutional) succession process has many critics, most of whom regard it as inadequate to the task of assuring the nation effective leadership and would prefer that vacancies in the presidency be filled by special election. Vice presidents are not likely to be of presidential caliber, proponents of a special election argue. They are chosen according to election, not governance, criteria. (Or, as former representative, James O'Hara put it, presidential candidates will not choose running mates "to succeed them. They will choose them to succeed.") Nor is the experience of being vice president helpful preparation for the presidency. According to Eric Goldman, the historian and former aide to President Johnson, "If a man of ability and spirit is chosen [to be vice president], he is being placed in a role that is certain to be miserable, likely to be demeaning, and may well--depending on the personalities and circumstances--seriously corrode his potential for effective leadership in the future."[7]

Critics of vice presidential succession are as convinced of the virtues of special election as of the weaknesses of the vice

presidency. One line of advocacy is avowedly idealistic: American practice should conform to the original constitutional intent that the president "be elected," an ideal later enshrined, at least in part, in the 1792 succession act, which provided for a special election in the event of a double vacancy in the presidency and vice presidency.[8] The other main argument for a special election, practical in nature, draws attention to the experience of the French Fifth Republic. The constitution of France, like the United States a presidential system, provides that in the event of a vacancy in the presidency, the president of the Senate shall serve as the government's caretaker until a special election is held within five weeks to choose a new president for the full term of office. In 1974, when President Georges Pompidou died, the special election took place thirty-three days afterward, followed by a runoff two weeks later, and the inauguration of a new president eight days after that.

In the most advanced version of the special election proposal, Arthur Schlesinger, Jr., suggests some American variations on the French practice. Because any designated caretaker from Congress could well be a leader of a party different from the late president's, the acting president should be a member of the administration, preferably the secretary of state. Because American political parties are large and diffuse, the special election should not take place until ninety days after the vacancy, with the parties' national committees choosing candidates. Finally, to allow the usual presidential selection process to run its course, no special election should be held if a vacancy occurs during the final year of a president's tenure. Instead, the caretaker should serve out the term.[9]

What of the vice presidency in this new scheme? Logically, the office need not be abolished in the course of instituting special elections. The vice presidency still would have constitutional duties as the Senate president and would be the vital figure in situations of presidential disability, as well as certain of its ongoing modern activities and, perhaps, a new responsibility as caretaker pending the special election. But, as Schlesinger realizes, the office would best be eliminated under the special election proposal. It would be difficult to attract competent people to the vice presidency if it were stripped of its successor role, in which case even the office's limited powers would be exercised poorly. Also, after a special election brought in a new president, the vice presidency might well be occupied by a member of the opposition party, a problem best headed off by abolition.

Appealing as the special election idea may be, it has attracted a variety of critics. Some identify problems in the proposal itself. Unlike France, the United States is a superpower; it cannot afford the uncertainty that would attend caretaker leadership, especially in view of the frequency with which presidential vacancies have occurred. Also, unlike France, presidential selection in the United States is an inherently lengthy undertaking: the nominating process is diffuse, the pool from which presidents are drawn is broad, and time is required for voters and political activists to sort through all the alternatives. Staffing a new president's administration and developing its policies also is time-consuming. In practice, the proposed ninety-day interregnum, itself long, might effectively last thirty to sixty days

longer, with the added time serving as a de facto transition period for the new president.

Other criticisms of the special election proposal concern its actual operation. For example, would the caretaker president be allowed to run in the special election? If not, the nation would be guaranteed a lack of continuity in leadership and, perhaps, deprived of an able president. If so, how would the caretaker's candidacy influence the conduct of the temporary "administration"? And how would the selection of people to fill the office that provides the caretaker be affected? The qualifications of a good acting president and those of, say, a good secretary of state may be different. Other questions come to mind. Could the parties' national committees do an adequate job of nominating the presidential candidates, an assignment for which they have little experience? Would the presidential and congressional elections remain forever unsynchronized? Would the caretaker be granted the full range of presidential powers and duties?

In addition to attacking the special election idea, some have defended the virtues of vice presidential succession. Above all, they argue, the traditional procedure of instant, certain, and full succession by the vice president is a source of stability in the political system. Presidential deaths are, in a literal sense, traumatic events for many citizens, triggering feelings not only of personal grief but of fear for the republic.[10] In this uncertain and emotional setting, Americans historically have accepted the vice president's succession as legitimate; indeed, survey data for the last three successions show the public rallying to each new president's

support to an extent unrivaled by even the most popular elected president.[11] Legitimacy and stability are qualities of the historic system of vice presidential succession; they are not qualities that a polity can take for granted when there are leadership changes.

Beyond the virtues of vice presidential succession as a procedure in its own right, one can argue that the system also works well in practice, by providing able presidents when needed. In the view of historians, the five twentieth century successor presidents actually rate slightly higher, as a group, than the century's ten elected presidents.[12] Voters have agreed, electing four of the five successors to full terms while rejecting the reelection bids of three of the ten presidents. And, as was evident in the two preceding chapters, changing electoral incentives mean that vice presidents in the late twentieth century are chosen more with their successor role in mind, and are better prepared for it while in office, than at any time in history. In a real sense, proponents of a special election are prescribing a cure for an ailment that is healing of its own accord.

Pre-inaugural Succession

The certainty that is such a virtue of the presidential succession process does not characterize current provisions for pre-inaugural succession. Section 3 of the Twentieth Amendment deals with the matter in part: it provides that the vice president-elect is to become president if the president-elect dies. But "elect" status only exists during the two-week period between January 6, when Congress counts the electoral votes for president and vice president and declares the

winners, and January 20, when the new term begins. Succession procedures for the period from the national nominating conventions, six to seven months prior to the inauguration, until January 6 are less well defined.

If a presidential nominee died or left the ticket between the convention in July or August and election day in November, the party national committee probably would choose the vice presidential nominee as the replacement; that choice would be even more likely if a vacancy on the winning presidential ticket occurred between election day and the day in mid-December when the electors cast their ballots, considering that the vice presidential nominee would by then have received a national endorsement of sorts. But such a decision by the national committee is not guaranteed, which has prompted one scholar to propose that Congress enact legislation covering this possibility.[13]

The death of a presidential candidate between mid-December and January 6, would pose the most difficult situation of all. Because Congress has failed to legislate for this possibility, as it is called upon to do so in the Twentieth Amendment, Section 4, it would be left with the absurd task of choosing between the dead winning candidate, prompting an immediate vice presidential succession to the presidency on inauguration day, and the nominee of the losing party.

DISABILITY

Article II, Section 1, paragraph 6 of the original Constitution, which was imprecise about presidential succession, was triply so on the subject of disability. The meanings of death, resignation, and

impeachment--the events that prompt a succession--are clear. A procedure, if not useful criteria, for impeachment is spelled out in the Constitution; death and resignation, obviously, present only minor procedural issues. But the language of the Constitution pertaining to the disability initially was so vague as to be meaningless: "In the case of the . . . inability [of the president] to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President . . . until the Disability be removed, or a President shall be elected." "What is the extent of the term 'disability'," John Dickinson of Pennsylvania asked the Convention on August 20, "and who is to be the judge of it?" No one answered him.[14]

Lack of definition for disability or a procedure for temporarily removing a disabled president left the nation without a leader for parts of at least eleven presidencies prior to 1967. Garfield, who hovered near death for eighty days after he was shot (fatally, as it turned out) in 1881, and Woodrow Wilson, an apparent invalid for the final seventeen months of his second term, offer the most notorious examples. In Garfield's case, the cabinet, including the attorney general, believed that in view of Tyler's interpretation of paragraph 6, presidential power could only be transferred to the vice president permanently: there would be no getting it back if the president were to recover. Wilson's cabinet and many members of Congress were more disposed to transfer power to Vice President Thomas R. Marshall, but the Constitution's lack of guidance and a protective White House staff stayed their hands. When Secretary of State Robert Lansing broached the subject with Joseph Tumulty, Wilson's secretary, Tumulty replied,

"You may rest assured that while Woodrow Wilson is lying in the White House on the broad of his back I will not be a party to ousting him." Marshall confided to his secretary, "I am not going to seize the place and then have Wilson--recovered--come around and say 'get off, you usurper.'"[15]

President Dwight D. Eisenhower's ailments--a heart attack in 1955, an ileitis attack and operation in 1956, and a stroke in 1957--finally brought matters to a head. In an age of nuclear confrontation, he and many others felt, the nation could not run the risk of being leaderless even for an hour. Eisenhower's short term solution was to write Vice President Richard M. Nixon a letter stating that if the president ever were disabled again, he would instruct the vice president to serve as acting president until the disability passed. If Eisenhower were unable to communicate for some reason, Nixon could make the decision himself. In either event, Eisenhower would decide when it was time for him to resume the powers and duties of the presidency.

Presidents Kennedy and Johnson endorsed this arrangement when they took office, but it hardly solved the problem. For one thing, a letter, even a presidential letter, lacks the force of law. The legality of any veto, appointment, military order, or other action taken by a vice president acting as president under such authority could be challenged at the time or afterward. Equally important, the Eisenhower arrangement made no provision to relieve a president who was disabled, but like Wilson, refused to admit it. To deal with these problems, Congress included a disability procedure when it passed the Twenty-Fifth Amendment in 1965.

Three very different situations are provided for by the disability provisions of the Twenty-Fifth Amendment. In the first, covered in Section 3, the president is temporarily "unable to discharge the powers and duties of his office" and recognizes it. Such a situation could arise if the president's doctors advised complete rest while recovering from a stroke or similar malady, or if the president were going to be anesthetized during an operation. (It was just such an event that prompted Eisenhower to lament, after he had been in surgery for two hours, that "the country was without a Chief Executive, the armed forces without a Commander in Chief.")[16] In either case, the president would sign a letter to the president pro tempore of the Senate and the speaker of the House announcing disability. The vice president then would become acting president. When able, the president would write a letter to the congressional leaders and, within four days, resume office.

The Twenty-Fifth Amendment's provisions for the first two situations essentially codified the main points of the Eisenhower letter. But what would happen if a disability were in doubt, if the vice president and cabinet said that the president was disabled and the president claimed to be able. In many such instances (suspected mental illness, physical paralysis, sudden loss of sight or hearing) there would be room for honest disagreement about whether a severe disability existed. The Twenty-Fifth Amendment deliberately gives no definition to the word "inability." It is clear from the congressional debates that inability is not, namely, unpopularity, incompetence, laziness, or impeachable conduct. As to what an inability is, Congress thought it

best to leave the term undefined so that those actually confronted with the need to make such a determination would not be bound by an outdated or incomplete definition.[17] Thus, any decision regarding presidential disability would be by its nature subjective.

If the vice president and a majority of the cabinet were to declare the president disabled and the president disagreed, Section 4 provides that Congress would decide who it thought was right, taking no longer than three weeks to do so. (In the meantime, the vice president would be acting president.) If, within that three-week period, two-thirds of the House and Senate, voting separately, decided against the president, the vice president would continue to serve as acting president. If one-third plus one of either house sided with the president, the vice president would turn back the powers and duties of the office.

But even a vote by Congress would not necessarily be the end of it. For after Congress made an adverse judgement, the president could, in a day or a week or whenever, start the whole process over by claiming to be once again able. As many times as the president did so, Congress would have to decide the issue again. The prospect of such a president rousing public sympathy could discourage the vice president and the cabinet from acting in the first place.

Similarly, if one-third plus one of either house of Congress sided with the president, there would be nothing to stop the vice president and cabinet from again declaring the president disabled and throwing the issue back to Congress for another vote. The president could fire all the department heads and try to replace them with supporters--

Truman once said that if his cabinet removed him while he was flat on his back his first act upon rising would be to send them all packing.[18] But, of course, Congress then could replace, by simple majority vote, the cabinet with some other group, perhaps one of its committees. If this new body should agree with the vice president that the president was disabled, the issue would go back to Congress again.

None of the more dramatic incidents that one could imagine arising under the disability provisions of the Twenty-Fifth Amendment has yet occurred. What is distressing, though, is that the amendment failed its first real test and barely passed its second, even though the situations seemed straightforward. When Ronald Reagan was shot on March 30, 1981, it was clear to all that he would be anesthetized for surgery for an indefinite period. International tensions were high. It seemed all too possible that Soviet troops might enter Poland at any time. Yet presidential aides at the hospital privately decided not to ask Reagan to sign over his powers to Vice President George Bush under Section 3. Soon after, aides at the White House, where members of the cabinet had assembled, headed off any discussion of invoking Section 4. Four days later, when Reagan ran a sudden high fever, requiring more sedation so that a bronchoscopy could be performed, aides again explicitly decided that there would be no cabinet discussion of constitutional disability. Their motive in all cases seems to have been to forestall public confusion, particularly any suggestion that the president was not in control.

The first result of the decision not to invoke the Twenty-Fifth Amendment was that once again "the country was without a Chief

Executive; the armed forces without a Commander-in-Chief." The second was widespread anxiety over who really was in charge while Reagan was unconcious. Shortly after the shooting, Secretary of State Alexander Haig rushed before television cameras to say that he was "in control," at least until Bush returned to Washington. But, constitutionally, neither Haig, Bush, nor anyone else could have exercised the powers of the presidency during the critical hours of surgery and recuperation.

Criticism of the administration's failure to act in 1981 shaped its preparation for Reagan's cancer surgery on July 13, 1985. This time the president sent letters to the House speaker and the Senate president both before and after the surgery--the first relinquishing his powers and duties to Bush, the second reclaiming them. Strangely, however, Reagan did not explicitly invoke Section 3 of the Twenty-Fifth Amendment in his letters, instead writing that he was not convinced that the amendment was meant to apply to "such brief and temporary periods of incapacity" as his surgery. As for Bush, he spent his eight hours as acting president quietly at home, chatting and playing tennis with friends.

Concerns about Disability

One early fear about the disability provisions of the Twenty-Fifth Amendment, forcefully articulated by Rep. Henry B. Gonzalez of Texas, was that Section 4 was a "standing invitation" to the vice president and cabinet "to overthrow the President."[20] In truth, this fear never was well-founded--even if a president's colleagues seized the powers of the office, a farfetched possibility, they still would have

to convince two-thirds of the House and Senate to approve their coup. A more reasonable criticism of the amendment, in view of recent experience, is that it assumes too much willingness on the part of the vice president and cabinet to step forward and act in an uncertain and politically precarious situation. In practice, when questions of disability arise, it is the White House staff, not the constitutionally designated officials, that is most likely to determine what happens.

A second early fear about the disability amendment, as yet unrefuted by experience, involves the lack of terminus in Section 4. Because the transfer of powers and duties from president to vice president is meant to cover only the period of disability, the president is always entitled to reclaim them, even if it seems to others that the disability persists. The prospect of a half-crazed Lear stalking Washington and the nation, howling for vindication and tying up the government until the four-year term expires, is not entirely fanciful. More dangerous, perhaps, would be the president whose mental disability, although known to those in government, could be disguised in carefully managed public appearances.

A more recent concern aroused by the Twenty-Fifth Amendment involves the physical and mental abilities of the vice president. The disability provisions assume that the vice president will be entirely able during any period of presidential disability. The vice presidential selection provision, by assuring that a vice president almost always will be available to succeed to the presidency in the event of a death, impeachment, or resignation, also takes for granted that the vice president will be able. This assumption, of course, is

by no means warranted. Yet neither the Twenty-Fifth Amendment nor any other part of the Constitution makes any provisions for vice presidential disability.

Finally, presidents and their staff assistants have attached a stigma of presidential weakness and public confusion to temporary disability that the authors of the Twenty-Fifth Amendment had hoped would not exist. Reagan's transfer of power to Bush in 1985 may have helped to mitigate this condition; future presidents who undergo surgery probably will regard it as a precedent. But perhaps not: Reagan's letter to Congress was grudging in tone, hazy about its grounding in the Twenty-Fifth Amendment, and explicit in stating that the president was "not intending to set a precedent binding anyone privileged to hold this office in the future." In all likelihood, brief transfers of power would be understood for what they are by the public and other nations and regarded as acts of presidential responsibility. But unless presidents invoke the amendment routinely, the onus attached to its use will become real.

ELECTORAL SUCCESSION

In addition to the succession and disability paths to the White House, the vice president also can become president by being elected to the office. Indeed, one of the most extraordinary qualities of the modern vice presidency is that it now is typically taken for granted that the vice president will run for president and lead the field in the race for the party's nomination.

The role of the vice presidency as springboard to the presidency

is an entirely new one in this century--no nineteenth century vice president after Martin Van Buren was seriously considered for a presidential nomination, not even the four vice presidents who succeeded to the presidency. Theodore Roosevelt's vice presidency marks one turning point in this regard: he was nominated for president in 1904 after succeeding to the office when McKinley died, setting the pattern for all future successor vice presidents. Roosevelt also was the first of fifteen twentieth century vice presidents (out of nineteen) later to seek the presidency. Of the exceptions, death or ill health account for three--James S. Sherman, Charles Curtis, and Nelson A. Rockefeller--and criminal conviction the fourth, Spiro T. Agnew.[21]

In the 1950s, the Nixon vice presidency opened an even more significant chapter in the electoral history of the vice presidency. Starting with Nixon, every vice president (including, as of summer 1987, George Bush) has led in a majority of the Gallup surveys that measure voters' preferences for their party's presidential nomination.[22] In both of the elections since 1956 in which the president did not or could not run for reelection, the incumbent party has nominated the vice president as its presidential candidate. Five of the seven most recent vice presidents, again beginning with Nixon, have been nominated for president: Nixon, Johnson, Hubert H. Humphrey, Ford, and Mondale. Even a vice presidential nomination is now a springboard of sorts: five of the seven losing vice presidential candidates since 1956--Henry Cabot Lodge, Edmund Muskie, Sargent Shriver, Robert A. Dole, and Walter F. Mondale--later showed support in presidential nominating contests.

What is the explanation for this recent ascendancy of the vice presidency as an electoral office? Theodore Roosevelt and his successors took advantage of new national media and new norms of campaigning to make the vice president a more widely known and politically better-established figure. Nixon and later vice presidents capitalized on three other important developments. First, the two-term limit that was imposed on presidents by the Twenty-Second Amendment, ratified in 1951, made it possible for the vice president to launch a presidential campaign during the president's second term without unduly alienating the president. (This effect of the amendment, which was wholly unanticipated, may be almost as great as its intended effect on the presidency). Second, the role Nixon developed, with Eisenhower's encouragement, as party builder--campaigning during elections, raising funds in between them--and public advocate of the administration and its policies uniquely situates the vice president to win friends among the political activists who influence presidential nominations. Such campaigning also is good training for a national presidential campaign. Finally, the recent growth in the governmental roles and resources of the vice presidency has made it a more prestigious position, and thus a more plausible stepping-stone to the presidency. Foreign travel and the trappings of the office--airplane, mansion, seal, west wing office, and so on--are physical symbols of prestige.[23] Perhaps more important, in their efforts to assure the nation that they are fulfilling their responsibility to prepare for a possible emergency succession, presidents tend to make inflated claims about the role of the vice president in the administration. Thus, the

typical modern vice president can plausibly argue, as Mondale frequently did, that the vice presidency "may be the best training of all" for the presidency:

> I'm privy to all the same secret information as the president. I have unlimited access to the president. I'm usually with him when all the central decisions are being made. I've been through several of those crises that a president invariably confronts, and I see how they work. I've been through the budget process. I've been through the diplomatic ventures. I've been through a host of congressional fights as seen from the presidential perspective.

Yet for all their electoral advantages, vice presidents who are nominated by their parties for president typically lose in the general election: no incumbent vice president has been elected to the presidency since 1836. This is not to say that vice presidents are destined to lose--Nixon in 1960 and Humphrey in 1968 barely were defeated and Bush, if nominated, may well be a strong candidate in 1988. But they carry certain burdens into the fall campaign that are as surely grounded in their office as the advantages they bring to a nominating contest.

In fact, some of the activities of the modern vice presidency that are most appealing to the party activists who influence nominations may repel many members of the broader electorate that decides the election. Days and nights spent fertilizing the party's grass roots with fervent, sometimes slashing rhetoric can alienate voters, who look to the presidency for unifying, not partisan, leadership. So can the vice president's role as advocate of the president's policies. Some

administrations have relied on the vice president to defend their least popular actions and programs, freeing the president to dwell on more universally appealing proposals and accomplishments. (That was the fate of Vice President Humphrey on the Vietnam issue.) Such a course is likely to win the vice president friendship and influence in the west wing, but may lead voters to associate the vice president with controversy.

Certain institutional qualities of the modern vice presidency, some of which have helped raise the office to its recent stepping-stone status, also handicap the vice-president-turned-presidential-candidate. The vice president cannot plausibly claim credit for the successes of the administration--that is a presidential prerogative. But the vice president can be attacked by the other party's presidential candidate for the administration's shortcomings. Such attacks allow no good response. A vice president who tries to stand apart from the administration will alienate the president and cause voters to wonder why the criticisms were not voiced earlier, when they might have made a difference. The vice president can say instead that loyalty to the president forecloses public disagreement, but that course is no less perilous. Strength, independence, vision, and integrity are the qualities voters most seek in a president, not loyalty.

Discussion. The modern vice presidency is uniquely blessed and uniquely cursed in electoral politics. The new activities of the office make it the clearest path to a nomination for president, which in turn makes it attractive to a wider range of presidential-caliber

politicians. Yet the self-effacing, intensely loyal behavior that the vice presidents must engage in if they are to partake of the office's political benefits in a nominating contest are handicaps in a general election.

No doubt most vice presidents understand the electoral tensions that inhere in the office, which were well stated by President Eisenhower: "To promise and pledge new effort, new programs, and new ideas without appearing to criticize the current party and administration--that is indeed an exercise in tightrope walking."[25] But they also realize that presidential nominations are hard to come by and that, for all but a few political luminaries, the vice presidency represents their best chance to win one. And they remember that Eisenhower's vice president, Nixon, almost crossed the tightrope successfully, as did Humphrey. Near-misses only inspire other potential vice presidents to assume that their skill is greater and their luck better.

From the nation's standpoint, the political attractiveness of the vice presidency is mostly to the good. It keeps long the line of talented political leaders waiting at the door for vice presidential nominations, and that can only make the likelihood of able succession in the event of a presidential death, impeachment, resignation, or disability greater.

Chapter 6

RECOMMENDATIONS

The modern vice presidency is, on balance, a healthy institution. Most of its flaws are minor and can be better corrected through civic education and other informal avenues of change than through laws or constitutional amendments, although one such amendment may be desirable to clarify some harmful ambiguities in the office.

To assert a healthy vice presidency is to fly in the face of long standing common wisdom about the office, which regards it as variously pitiful, ridiculous, or contemptible and in need of either strong legal buttressing or outright abolition. This view of the vice presidency has prompted a number of proposals for dramatic reform. Some would alter the procedures for vice presidential selection, stripping the power to nominate from the parties' national convention and entrusting it to primaries, national committees, or even the president and Congress. Others target the activities and, sometimes, the constitutional status of the vice presidency. The reforms these critics suggest range from assigning new powers and duties to the office to redefining it as a purely executive (or purely legislative) position or even to encouraging vice presidents to assume a stance of political independence. Still other reformers propose replacing existing presidential succession procedures with a special election and, in the process, jettisoning the vice presidency altogether.

The common wisdom about the vice presidency and the severity of the recommendations it has provoked are hardly implausible. In truth, some elements of the conventional analysis seem, at least, to be persuasive. Constitutionally, the vice presidency is devoid of serious ongoing responsibilities and is unsuited by its independence for extraconstitutional executive or legislative assignments. Yet it also is charged with providing the successor to the president in the event of a presidential vacancy. How can an office, to paraphrase Vice President John Adams, so weak in esse be effective in posse--that is, how can the vice presidency attract people who are sufficiently competent and loyal to meet the requirements of presidency and to carry out a departed president's policies, and how can it help to prepare them to do so?

This challenge, which, for most of American history, seemed unanswerable, has been well met in recent years. Most recent vice presidents and vice presidential nominees have been well qualified--philosphically compatible with the president or presidential nominee and, as often as not, more experienced in high government office. Remarkably, the twentieth century vice presidents who have succeeded to the presidency, as a group, have been somewhat better presidents, in the minds of historians and voters, than those who were selected in the usual way. In addition, the roles and resources of the modern vice presidency are reasonably substantial and wide ranging.

The recent history of the vice presidency has been marked by some changes in law and Constitution, notably the 1949 amendments to the National Security Act, which made the vice president a member of the

National Security Council, and the Twenty-Fifth Amendment, ratified in 1967, which clarified the vice presidency's status as full successor to the presidency and established both the vice president's responsibilities during presidential disabilities and a procedure for filling vice presidential vacancies. These are major changes, but the main explanation for the enhanced status of the vice presidency involves the interplay of public expectations and presidential responses. Specifically, a combination of events--Vice President Harry S. Truman's dangerously unprepared succession to the presidency during World War II; constant, global postwar tensions between the United States and the Soviet Union; and new weapons technologies that make virtually instant total war possible--have raised public concern that the vice president be competent, loyal, and prepared to succeed to the presidency literally at a moment's notice. Most candidates for president, for fear of losing votes in the election or, if elected, sustaining sharp public criticism, have responded to these concerns by choosing qualified running mates and putting them to work in the administration. Those who have not done so have suffered politically.

The conditions that produced the modern vice presidency are not likely to be undone. Recent improvements in the office, although not codified in the statute books, are solidly grounded in political realities. Equally important, the conditions that have made for a generally successful vice presidency are interrelated--they constitute a fabric that could be unraveled if certain threads, however offending they may seem, were to be pulled. Thus, in 1980, the danger of entrusting the vice president with wide ranging operational

responsibilities (a possibility discussed at the Republican convention) was not that Gerald R. Ford would perform these tasks poorly--far from it--but rather that the vice presidency as an institution is ill-suited to such roles and that the office eventually would be weakened by having to perform them. Similarly, recurring pressures to name a member of a previously unrepresented group to the second spot of a national party ticket, such as those exerted by women's organizations in 1984 and by blacks in anticipation of 1988, pursue an admirable purpose but, if successful, could undermine the very vice presidential competence and loyalty that have made the office an attractive resource for presidents. Other proposals that may have a certain appeal on their own terms, such as a recent suggestion to make the vice president the de facto head of the National Security Council, also must be examined for their implications for the entire institution.[1]

Nonetheless, some problems, mainly of vice presidential selection and presidential disability, seem uniquely suited to careful institutional surgery. Most, including the more serious ones, can be dealt with in the same way earlier problems have been, through civic education to alter public expectations and presidential practice. Some would require a new law or constitutional amendment. For some, there is no universal remedy.

SELECTION

The traditional problems of vice presidential selection--poor criteria, applied in haste--for the most part have been solved. Presidential nominating contests now are usually settled well in advance of the convention. In these circumstances, candidates have

more than enough time to select their running mates; they do so with ample incentive to choose political leaders whom the voters will regard as competent and loyal. Nonetheless, some presidential nominating contests will go down to the wire, distracting the candidates from anything but the challenge at hand and making the choice of the vice presidential nominee an afterthought. Even candidates who lock up their nominations reasonably early may experience heavy pressure to tap a representative of some faction of the party for the second spot on the ticket, rendering considerations of competence and loyalty secondary to the imperative of partisan unity.

To some degree, selection problems now contain their own remedy--the price of a poor vice presidential nomination is press criticism, negative advertising, and, ultimately, a loss of votes. But that is small comfort to the nation if both parties nominate weak vice presidential candidates or if, out of intense support for one presidential nominee or opposition to the other, voters elect a ticket anyway and end up with a poorly qualified successor in the vice presidency. Thus, to reduce the likelihood of a hasty or weak vice presidential nomination, voters and journalists should be urged to question presidential candidates early and often about both the criteria they intend to apply in choosing a vice president and the process by which they will screen potential running mates in light of these criteria. Such questioning should be easy to accomplish, considering the recent proliferation of candidate debates and forums during the year preceding the conventions.

Situations in which vice presidents must be selected in unusual ways--in Senate elections, national committee nominations, or appointments under the Twenty-Fifth Amendment--arise infrequently; thus, the problems that they create may seem less in need of attention. But procedural certainty actually may be most necessary in these situations, precisely because they do not occur often--citizens are bound to be confused about what is supposed to happen when a vice president or vice presidential candidate dies or resigns, and should not have their bewilderment compounded by ambiguities inherent in the procedures themselves. Specifically, Congress should pass legislation, as called for by the Twentieth Amendment, Section 4, to empower the national committees of the political parties to replace any candidate for president or vice president who dies either before Congress counts the electoral votes and declares a president-elect and vice president-elect on January 6 or, if no candidate receives a majority of electoral votes, afterward. Congress also should, as part of an omnibus constitutional amendment, consider revising the Twenty-Fifth Amendment to impose a ninety-day limit for congressional confirmation of vice presidential appointments, lest the amendment's original purpose of always having a vice president available in situations of succession and disability be undermined. Under this amendment, if Congress failed to act by the end of the period, the nomination would be confirmed. The omnibus amendment also should modify the Twenty-Fifth Amendment to permit no more than one appointed vice president per term, to prevent the presidency from having as successor someone who was neither elected by the people nor appointed by the president whom the people did elect.

DISABILITY

The issue of presidential disability is inherently vexing. To transfer a president's powers and duties to someone else, even though the transfer is temporary and to the vice president, is no small matter, psychologically or politically. To tie such a transfer to a declaration of inability compounds the difficulties. The Twenty-Fifth Amendment dealt with the disability issue forthrightly in Sections 3 and 4 by creating procedures both to transfer and restore power and to determine the existence of a disability; these procedures probably cannot be improved.

But even the best procedures are not self-executing. During the two clear occasions of presidential disability that arose under President Reagan, the barriers to effective implementation of Sections 3 and 4 became clear. For fear of appearing weak and creating public confusion, the president and his aides refused to transfer power to Vice President George Bush after Reagan was shot; they did so only grudgingly when Reagan entered the hospital for cancer surgery four years later.

The fears of the Reagan administration threaten to become self-fulfilling. If presidents treat invocations of the Twenty-Fifth Amendment's disability provisions as harmful to themselves and the nation, the provisions will come to be regarded that way, rendering the amendment useless in most circumstances. Instead, presidents should be encouraged--again, the election campaign is the time to pin them down--to invoke the amendment routinely, whenever medical procedures take them out of commission for even an hour or two. If they do so,

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