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**THE CONSTITUTIONAL SIGNIFICANCE OF  
FORGOTTEN PRESEDENTS**

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I. INTRODUCTION

The story I intend to tell is not usually told in American law schools. It is not about the Supreme Court (at least much). Nor is it about the extraordinary challenges faced by, and the constitutional achievements of, widely admired leaders such as Abraham Lincoln and Franklin D. Roosevelt. My story is about a group of men who are usually ignored in law schools. They are neglected because they are

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widely regarded as failures and as not having made any constitutional difference worth mentioning.

Yet, every President enters office with the hope of leaving the office in better shape than he found it. They all try to protect the powers of their office, and some attempt to expand them. Presidents are challenged by encroachments from the other branches, particularly Congress, and must consider when, if at all, to defer to Congress or to reach accommodations with Congress. Presidents are further challenged to consider whether to curtail some congressional powers or to grab power abdicated by the Congress. Some Presidents make more enduring constitutional legacies than others, but every President makes a difference constitutionally.

My hope is to clarify the forgotten constitutional legacies of a number of American Presidents. This is only a small sliver of constitutional law, but not an insignificant one at that. My aim is to examine how the Presidents we commonly dismiss as constitutionally insignificant actually helped to shape the future of constitutional law. How these Presidents (and their administrations) exercised power, even for as short a time as William Henry Harrison, changed the constitutional landscape. I do not intend to make the case for rating these Presidents higher than historians or others usually do or for overstating what they accomplished in office. Rather, my objective is to clarify their constitutional impact, which has been overshadowed or obscured by the brighter lights cast by some other Presidents. Yet, no one—not even Millard Fillmore—has occupied the office of the Presidency without leaving some imprint on both the office and our Constitution.

The Presidents described herein as forgotten meet at least two criteria. First, they are frequently remembered, if at all, for their mistakes in office. They are commonly regarded as failures, though the reasons why may no longer be clear or known. Their mistakes, or errors of judgment, are regarded as pertinent in constitutional studies only insofar as they set the stage for other Presidents or required correction by Presidents, such as Abraham Lincoln and Franklin D. Roosevelt, whom we regard as more constitutionally significant. Second, the Presidents whom I will discuss did not invariably fail. They all achieved something, even though many of us neglect their accomplishments and the implications of those accomplishments for understanding the construction of constitutional law. Sometimes, the forgotten Presidents accomplished what they intended, and sometimes they did not. In many instances, they made decisions with unintended constitutional consequences. Perhaps, most importantly, these Presidents helped to shape the constitutional understandings of their day as well as constitutional practices that endure to this day.

Constitutional practices, or understandings, that we take for granted did not merely come to life during the tenure of some great President. In many instances, their foundation was laid, at least in part, by less significant—or less well-known or remembered—figures in constitutional history. Indeed, the forgotten Presidents, with the assistance of Congress or their cabinets and supporters, helped to clarify and to construct constitutional law pertaining to such diverse matters as Presidential succession, executive privilege, the scope of a President's nominating power, the scope of the House's impeachment authority, territorial regulation, the requirements for statehood, Presidential emergency powers, and the basic relationship between Congress and the President in formulating domestic policy.

By my calculations, at least 20 Presidents meet the criteria I have suggested (maybe more, depending on how others measure Presidential significance or apply

my suggested criteria). That strikes me as remarkable, because it means nearly half of our Presidents meet my criteria for being forgotten. This result may be a function of the history we have forgotten, or perhaps never learned or took seriously, as a people. Nevertheless, the phenomenon is striking given the popular obsession with the Presidency and the widespread acceptance of the Presidency as the most powerful—and maybe the most dangerous—of our federal institutions. My paper is not about why some Presidents have been forgotten, but rather about the constitutional practices they helped to construct. Their accomplishments and their failures are useful reminders of how people we have dismissed, or forgotten, as insignificant continue to influence what we think about the Constitution.

## II. JOHN QUINCY ADAMS

John Quincy Adams is a good President with whom to begin. He is probably best known less for what he did as President than for his having been one of two Presidential sons to be elected to the Presidency in his own right. John Adams may have helped his son's career more than once, but the son's pre-Presidential career was remarkable nonetheless.<sup>1</sup> Prior to becoming President, John Quincy Adams had served as, among other things, President James Madison's Minister to Russia, United States Senator (at the same time he occupied a chair at Harvard), and President Monroe's Secretary of State. The Senate had even confirmed Adams's nomination by President Madison to the Supreme Court, though Adams later decided not to take the job.<sup>2</sup>

Adams came into office after the dramatic Presidential election of 1824.<sup>3</sup> This was the first disputed election following the adoption of the Twelfth Amendment,<sup>4</sup> which had been designed to provide a process for fairly resolving the outcomes of Presidential contests in which no candidate had a majority in the Electoral College. Because no candidate in the 1824 election had won a majority in the Electoral College, the Twelfth Amendment (and the statutory mechanisms adopted pursuant to it) directed that the contest be turned over to the House of Representatives, which then would have the power to decide which among the top three vote-getters would become President. Consequently, Adams's Presidency began, in a sense, with the first significant test of the Twelfth Amendment. The top three vote-getters in the 1824 Presidential election were Adams, Andrew Jackson, and William Crawford. Henry Clay had finished fourth and was thereby excluded from further consideration for President. Even so, Clay had enough clout to determine who would be President.

One of the interesting dynamics of the race was that Adams actually liked Jackson personally and Jackson respected Adams. Neither Adams nor Jackson liked Clay, and all three intensely disliked Crawford. Adams, Jackson, and Clay also knew that Crawford, who had been serving with Adams in Monroe's cabinet as

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<sup>1</sup>See generally MARY W.M. HARGREAVES, *THE PRESIDENCY OF JOHN QUINCY ADAMS* 23-24 (Donald R. McCoy et al. eds., 1985).

<sup>2</sup>See Edward Pessen, *John Quincy Adams*, in *THE PRESIDENTS: A REFERENCE HISTORY* 105, 106 (Henry F. Graff ed., 1984).

<sup>3</sup>See HARGREAVES, *supra* note 1, at 36 (election was put before the House of Representatives when no Presidential candidate had majority in the electoral college).

<sup>4</sup>U.S. CONST. amend. XII (the election of the President and Vice President).

Treasury Secretary, was not a viable candidate because he was an invalid; in fact, he had been paralyzed from a stroke. Adams described Crawford as “a worm preying upon the vitals of the Administration within its own body.”<sup>5</sup> Jackson believed Crawford had been behind an effort to force his resignation as the junior of the nation’s two major generals after Jackson had waged war against the Spanish in Florida while he was there to battle Indians.<sup>6</sup> Jackson had entered the race in part to ensure Crawford’s defeat and to ensure his continued viability for state-wide office in Tennessee. Much to his and others’ surprise, Jackson won the plurality of the popular vote.

By process of elimination, Clay chose to support Adams. He disliked the other three, but he shared Adams’s nationalist vision of a strong federal government. Nine weeks before the House’s vote, he told his friends of his intention to support Adams.<sup>7</sup> Clay met privately with Adams in early January 1825 to convey his support. The problem for both was that the meeting was an open secret; almost everyone who mattered politically knew about it. Two days after the House voted for Adams, Adams announced that he had offered the position of Secretary of State to Clay and that Clay had accepted. Clay had not only secured the Presidency for Adams, but also secured for himself the position that was then the stepping-stone to the Presidency.

Jackson was livid. He joined the public outcry against the “corrupt bargain” struck between Adams and Clay.<sup>8</sup> He would ride the crest of that outrage to a decisive victory over Adams in the 1828 Presidential contest.

Adams understood better than most that the outcome was not good. Some months later, he confided in his diary that “perhaps two-thirds of the whole people [were] adverse to the actual result.”<sup>9</sup>

Nevertheless, Adams began his Presidency with a strong vision of the Presidency that Sean Wilentz describes as “moral as well as political—nothing less, he said, than a ‘sacred’ duty and trust. . . . Adams wanted to mobilize the resources of the federal government to increase what the old Democratic-Republican societies had championed as ‘social virtue.’”<sup>10</sup> Adams believed that “liberty is power” and that only the federal government had the constitutional authority allowing it to undertake an ambitious program of national improvements and to equip a strong army and navy.<sup>11</sup> As President, Adams subscribed to an active theory of statesmanship and frequently went before Congress to advocate his vision of the future of the country.

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<sup>5</sup>JOHN QUINCY ADAMS, MEMOIRS OF JOHN QUINCY ADAMS: COMPRISING PORTIONS OF HIS DIARY FROM 1795 TO 1848, at 315 (Charles Francis Adams ed., AMS Press 1970) (1875).

<sup>6</sup>SEAN WILENTZ, THE RISE OF AMERICAN DEMOCRACY: JEFFERSON TO LINCOLN 244 (2005).

<sup>7</sup>See HARGREAVES, *supra* note 1, at 37.

<sup>8</sup>*Id.*

<sup>9</sup>ADAMS, *supra* note 5, at 98.

<sup>10</sup>WILENTZ, *supra* note 6, at 259 (quoting John Quincy Adams, First Annual Message (Dec. 6, 1825), in 2 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 299, 311 (James D. Richardson ed., Washington, Gov’t Printing Office 1896)).

<sup>11</sup>Adams, *supra* note 10, at 316, *quoted in* WILENTZ, *supra* note 6, at 259.

Adams had what turned out to be an antiquated notion of appointments. Unlike any later Presidents, he promised that he would not use patronage to staff his administration. He pledged instead to place the government under the rule of “talents and virtue alone.”<sup>12</sup> Adams’s peculiar notion was that appointments should go not to his political friends but to the worthy. Consequently, he assembled a cabinet that was not invested in his bold initiatives. Nor did Adams try to keep his cabinet in line by putting constraints on their use of patronage. Instead, he allowed them to appoint his political enemies, including many of Henry Clay’s Republican followers and some Jacksonian Democrats. Adams’s strategy did not produce a harmonious administration; it required that he do a great deal of work himself and alienated, in the estimation of one contemporary, “hundreds of his former friends,” who subsequently refused “to promote his reelection.”<sup>13</sup> Half-way through his term, Adams was accomplishing so little and was so unpopular that he was already predicting Jackson would win the Presidential election in 1828.

While Adams accomplished less than he would have liked, Congress approved many of the projects he had requested, including canals connecting the Chesapeake Bay to the Ohio and Delaware Rivers; national roads binding regions of the country together; and military academies that trained the brightest youths in the service of their country. Adams strongly encouraged development of the nation’s intellect, and he requested that the Congress establish astronomical observatories, research centers, and other educational institutions that would transform the country into an enlightened republic.<sup>14</sup>

The more Adams tried to invigorate and expand the powers of the national government, the less popular he became. He did not know it, but he was working against a Jeffersonian grain among the voting public that distrusted the power of government—particularly the federal government—and believed that anything worthwhile had to come directly from the people. Adams was the last of a generation of gentry-class leaders who refused to cater to the masses in order to stay in power. As he and others predicted, the refusal cost him any chances for reelection.

In fact, Jackson trounced Adams in 1828. Jackson won 68 percent of the electoral vote and nearly 60 percent of the popular vote.<sup>15</sup> The latter figure represents a margin of victory that would not be surpassed for the rest of the nineteenth century. Adams, stung by his defeat, followed the precedent set by his father—and ignored by most subsequent Presidents—of refusing to attend his successor’s inauguration.

After leaving office, Adams did not disappear into obscurity. Two years after leaving the Presidency, he was elected to the House of Representatives. He served

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<sup>12</sup>John Quincy Adams, Inaugural Address (Mar. 4, 1825), in 2 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS, *supra* note 10, at 294, 297, *quoted in* WILENTZ, *supra* note 6, at 259.

<sup>13</sup>Letter from Joseph Durham Learned, Attorney & Editor, *Federal Republican and Baltimore Telegraph*, to Henry Clay, Secretary of State, United States of America (Sept. 27, 1827), in 6 THE PAPERS OF HENRY CLAY 1077, 1079 (Mary W.M. Hargreaves & James F. Hopkins eds., 1982).

<sup>14</sup>*See* WILENTZ, *supra* note 6, at 260.

<sup>15</sup>*See id.* at 309.

for 17 years in the House, where his most notable achievement was ending the gag rule under which the House regularly voted to table petitions bearing on slavery or its abolition.<sup>16</sup> A little more than a month after securing that victory, Adams suffered a fatal stroke on the floor of the House. As he was rushed off the House floor and was waiting for medical assistance, he asked to speak privately to Henry Clay. They made their peace in Adams's last few moments of consciousness. Adams lapsed into a coma and died on February 23, 1848.

### III. MARTIN VAN BUREN

Martin Van Buren became President by one of the slimmest margins in American history. He won just fifty-one percent of the popular vote against William Henry Harrison and two other regional Whig candidates.<sup>17</sup> Although Democrats controlled the Congress, Van Buren lacked a working majority in the House and spent most of his time as President trying vainly to cobble coalitions together to support his policies.

The first great issue Van Buren had to address was slavery. Van Buren figured that the only way to maintain the unity of the Democratic party that he had helped to found was to take a Pro-Southern stance on slavery. In his inaugural address, Van Buren pledged to "resist the slightest interference with [slavery] in the States where it exists," and to veto any bill interfering with slavery.<sup>18</sup> As proof of his good faith, Van Buren ordered that the fugitive slaves who had mutinied aboard the Spanish ship *Amistad* in July 1839 be returned to Cuba. The order triggered a dispute that was eventually resolved by the Supreme Court.

A stellar legal team was assembled on the slaves' behalf. The team included Connecticut Whig Roger Sherman Baldwin, Seth Staples (one of the founders of what would become Yale Law School), and Theodore Sedgwick III (a prominent lawyer and editor).<sup>19</sup>

The Spanish insisted that the captives be released to their custody and that, under existing treaties, the United States had no authority to try a case involving Spanish subjects. Van Buren agreed with the Spanish position; but with his re-election looming, he requested that Secretary of State John Forsyth order the United States Attorney to ensure that the Africans remain formally under the control of the President while the abolitionists got the hearing they wanted.

Van Buren personally monitored the legal proceedings and did not hesitate to interfere when he felt the political necessity to do so. While the Africans' legal counsel persuaded Van Buren to order his State Department to release all relevant documents on the case to the defendants, Secretary of State Forsyth continued to

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<sup>16</sup>See NORMA LOIS PETERSON, *THE PRESIDENCIES OF WILLIAM HENRY HARRISON AND JOHN TYLER* 251 (Donald R. McCoy et al eds., 1989) (Adams's motion to repeal the gag rule was approved by a vote of 108 to 80.).

<sup>17</sup>See MAJOR L. WILSON, *THE PRESIDENCY OF MARTIN VAN BUREN* 19 (1984). "Van Buren won 170 electoral votes . . . [His] popular margin was about 26,000 [votes], and a shift of 2,183 votes in Pennsylvania alone could have . . . thrown the election into the House." *Id.*

<sup>18</sup>Martin Van Buren, *Inaugural Address*, in *THE PRESIDENTS SPEAK: THE INAUGURAL ADDRESSES OF AMERICAN PRESIDENTS FROM WASHINGTON TO CLINTON* 71, 78 (Davis Newton Lott ed., 1994).

<sup>19</sup>See generally CHRISTOPHER MARTIN, *THE AMISTAD AFFAIR* (1970).

press for the conviction of the slaves. After the circuit court ruled that it lacked jurisdiction in the case, U.S. District Judge Judson ordered a new hearing, in his court, to settle the Spaniards' property claims. Almost everyone expected the Judge to rule in accordance with Van Buren's preferences because he had been appointed by Van Buren and was well known for his hostility to abolition.

Preparing for what he considered to be the inevitable verdict of the District Judge, Van Buren issued a secret executive order commanding the federal marshal to deliver, as soon as the proceedings ended, the prisoners to the schooner USS *Grampus*, which the Secretary of the Navy had ordered to stand by in New Haven.<sup>20</sup> Van Buren expected that the ship would take the slaves back to Havana, Cuba. But, the Judge defied expectations by accepting the closing arguments of Baldwin and Sedgwick and ordering the slaves returned to Africa.<sup>21</sup> Van Buren was embarrassed by the ruling and even more by the public disclosure of his orders, made beforehand, to return the Africans to Cuba. In spite of the reputation he had built as a magician in orchestrating legislative outcomes, Van Buren's machinations backfired. He had alienated Northerners by appearing to be catering to slaveholders while the lower court decision had alienated southerners.

Van Buren, through his Secretary of State, ordered the United States Attorney to appeal the District Judge's decision to the Supreme Court. Pending the appeal, the defense added John Quincy Adams to the team. Opening arguments in the Court were scheduled to begin ten days before the next Presidential inauguration.

By then, Van Buren was a lame duck and nearly out of office. While Democrats re-nominated Van Buren and made him the first major party nominee to receive a party platform, he lost his rematch with Harrison badly. In the meantime, the case had been delayed because of the unexpected death of Justice Philip Barbour.<sup>22</sup> When the case was finally argued, Adams closed the Africans' case. His argument before the Court was more political than legal. Near its end, he famously directed the justices' attention to two framed copies of the Declaration of Independence that hung in the room: "The moment you come, to the Declaration of Independence, that every man has a right to life and liberty, an inalienable right, this case is decided. I ask nothing more in behalf of these unfortunate men, than this Declaration."<sup>23</sup> Eight days later, the Court, 7-1 in an opinion by Justice Story, ruled in favor of the *Amistad* defense, declaring that the rebels had never been slaves and ordered them freed once and for all.<sup>24</sup>

Van Buren's second great challenge—the nation's first depression—occurred in the interim between his election and inauguration. In response to the dramatic

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<sup>20</sup>See generally IYUNOLU FOLAYAN OSAGIE, *THE AMISTAD REVOLT* (2000); JOHN QUINCY ADAMS, ARGUMENT IN THE CASE OF UNITED STATES VS. CINQUE 84 (McPherson & Katz eds., Arno Press & New York Times 1969) (1841) (questioning why the Secretary of the Navy moved the USS *Grampus* to New Haven just three days before Judge Judson's decision was delivered).

<sup>21</sup>See ADAMS, *supra* note 20, at 69.

<sup>22</sup>See *id.* at 53-54 ("Death of Judge Barbour—The Proceedings of the Court Suspended. . . Feb. 25, 1841."). The trial resumed March 1, 1841. *Id.* at 54.

<sup>23</sup>*Id.* at 89.

<sup>24</sup>United States v. *Amistad*, 40 U.S. (15 Pet.) 518 (1841).

economic downturn, Van Buren requested a special session of Congress.<sup>25</sup> His principal proposal was a unique sub-treasury bill. He envisioned a system of depositories to hold national funds, replacing the network of “pet banks” favored by Jackson. The Whigs blocked it as long as they could, until finally in 1840 the Congress enacted Van Buren’s Independent Treasury Act. Until then, Van Buren relied on his executive prerogatives, ordering collecting officers to hold public funds rather than deposit them in state banks, many of which had failed. As a result, the vast majority of treasury expenditures in 1838 were made by drafts drawn on collecting officers, in effect creating the sub-treasury network by fiat.

Van Buren responded to the depression further by what he called “retrenchment and reform.”<sup>26</sup> He cut public expenditures by twenty percent and opposed internal improvements that would have helped to alleviate national unemployment. The cutbacks cost him political support, partly because he was no longer allowing the Congress to invest in the nation’s infrastructure and because he was continuing to spend money rather lavishly on the White House. While Van Buren’s proposal of an independent treasury was prescient, it was a radical departure from the premise upon which his party had been based.<sup>27</sup> It split Democratic unity.

Van Buren’s proposal for an independent treasury was not his only innovative initiative. At the outset of his Presidency, he decided not to maintain Jackson’s reliance on a kitchen cabinet for advice. Instead, Van Buren restored the cabinet’s traditional role by conducting weekly meetings and soliciting advice from department heads. Moreover, Van Buren took the unusual step of condemning a miscarriage of justice in Syria; namely, the imprisonment and torture of several Jews in order to get them to confess to murdering a priest there. Van Buren authorized his Secretary of State, John Forsyth, to condemn the treatment of the Jews and to direct the Mohammed Ali of Syria “to employ, should the occasion arise, all those good offices and efforts which are compatible with discretion and your official character, to the end that justice and humanity may be extended to these persecuted people whose cry of distress has reached our shores.”<sup>28</sup> Subsequently, two prominent French Jews met with Mohammed Ali and successfully negotiated the unconditional release and exoneration of the nine Jewish prisoners who were still alive. (At least four other Jews are known not to have survived the ordeal.)

Despite losing to William Henry Harrison in 1840, Van Buren remained active in politics. He tried for the Presidency again in 1844, but he ended up opposing the annexation of Texas at exactly the same time as his rival Henry Clay did. Their joint opposition to the annexation hurt them both. To some, it looked like another corrupt bargain, while most of the public actually supported annexation of Texas. Thus, with one stroke, each knocked himself out as a Presidential contender.

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<sup>25</sup>See PETERSON, *supra* note 16, at 22.

<sup>26</sup>Martin Van Buren, Third Annual Message (Dec. 2, 1839), in 3 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS, *supra* note 10, at 529, 554.

<sup>27</sup>See PETERSON, *supra* note 16, at 22 (Van Buren recommended the creation of an Independent Treasury.).

<sup>28</sup>Letter from John Forsyth, Secretary of State, United States of America, to John Gliddon, United States Consul at Alexandria, Egypt (Aug. 14, 1840), *quoted in Martin Van Buren*, in DAVID G. DALIN & ALFRED J. KOLATCH, THE PRESIDENTS OF THE UNITED STATES AND THE JEWS 38, 41 (2000).

## IV. WILLIAM HENRY HARRISON

William Henry Harrison is not usually regarded as having achieved anything significant as President, except perhaps for dying. Yet, he was distinctive for many reasons. First, he was the oldest person elected President up until then. Second, Harrison delivered the longest inaugural address of any President (nearly two hours). Third, he was—as perhaps many a school child knows—the first President to die in office. Fourth, he was the first person elected President to vow to serve but a single term. Fifth, his service as President is the shortest ever. Sixth, he was the first Ohioan elected President.<sup>29</sup> Seventh, Harrison appointed the first Jew to a judgeship—Mordecai Manuel Noah.

Harrison was distinctive for the additional reason that he had a remarkable record of public service prior to becoming President. His prior public service was nearly as extensive as that of John Quincy Adams, including serving in such diverse offices as an officer in the army, Secretary of the Northwest Territory, territorial Governor of Indiana, Major General in the Army, a member of the House, a member of the Ohio Senate, a United States Senator, Minister to Columbia, and clerk of the county court of common pleas. It was from the latter position that he ran successfully as the Whigs' candidate for the Presidency in 1840.

After Harrison's victory, Henry Clay met more than once with Harrison to offer suggestions on what Harrison should do as President. Clay figured that he could dominate the administration since he was the most prominent member of the Whig party. In their final meeting barely two weeks after the inauguration, Harrison made clear that he, not Clay, would be in charge of the administration. It was one of the last times the two would ever speak. Clay had managed to alienate Harrison, and he ended up wielding no power with the administration as long as Harrison was President.<sup>30</sup> It turned out that Clay's exile was shorter than either he or Harrison expected.

In his lengthy, long-winded inaugural, Harrison expressed support for the principle of a limited executive and for congressional leadership on domestic policies. He promised restraint to not overuse the veto nor employ patronage to enhance his authority. He vowed that the Congress should control the public revenue; the further the President was removed from control of public revenue, the more wholesome the arrangement. To demonstrate his vigor during the nearly two-hour oration, Harrison chose to brave the icy wind without a hat or overcoat. He caught a bad cold that weakened him and eventually made him vulnerable to the pneumonia that killed him.

Harrison died after calling a special congressional session to address the country's financial conditions. Andrew Jackson, never one to mince words, was jubilant, remarking that a "kind of overruling providence has interfered to prolong our glorious Union and happy republican system which General Harrison and his cabinet was preparing to destroy under the dictation of that profligate demagogue, Henry Clay."<sup>31</sup> Jackson turned out to be wrong both about Clay and Harrison's successor.

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<sup>29</sup>See generally *id.* at 42.

<sup>30</sup>See *id.* at 34, 37.

<sup>31</sup>Letter from Andrew Jackson, Former President, United States of America, to Francis Blair, Editor, *Washington Globe* (Apr. 19, 1841), quoted in WILENTZ, *supra* note 6, at 522.

## V. JOHN TYLER

At 51, John Tyler was the youngest man at that point to become President. Polk, who succeeded him, would be younger (and the youngest until Teddy Roosevelt).<sup>32</sup> Much to everyone's surprise, Tyler proceeded to have one of the most contentious Presidencies ever, including several notable (but largely forgotten) constitutional achievements.

Since Harrison was the first President to die in office, Tyler's status was uncertain. The Constitution says "the Same shall devolve on the Vice-President,"<sup>33</sup> but the antecedent of this phrase is unclear: "The Same" may refer to "the powers and duties of the office" (in which case Tyler would remain Vice-President) or to the office itself (in which case Tyler would become President). The Whigs favored the former interpretation, not surprisingly, because Tyler was not a Whig. They thus addressed Tyler, when he arrived in Washington after Harrison's death, as "Vice-President, Acting as President." Others, less discrete, referred to Tyler as "His Accidency."<sup>34</sup> Tyler insisted on being called "President Tyler," and he soon got Congress to agree with him. Throughout his Presidency, he refused to open any mail addressed to "Acting President Tyler."<sup>35</sup> Subsequently, the example set by Tyler was codified as an amendment to the Constitution.

Tyler's first order of business was to convene a special session of Congress, at which Henry Clay pressed for a banking bill designed to overturn Jacksonian banking policies by abolishing the sub-treasuries created by Van Buren and resurrecting the National Bank that Jackson had killed.<sup>36</sup> Near the end of the session, Tyler vetoed a compromise measure drafted by Daniel Webster with cabinet approval. Two days after the veto, all cabinet secretaries (except Secretary of State Webster) resigned in protest of Tyler's refusal to abide by Harrison's policy preferences. Once Congress adjourned, the Whigs issued a statement disassociating them from Tyler. He was now a man without a party, given that he had left the Democrats to join Harrison's ticket. Whigs called for his resignation, but Tyler refused to resign. Tyler, who had twice resigned from the Senate in protest, stood his ground.

Using recess appointments to avoid confirmation votes that he knew his nominees would not win, Tyler formed a cabinet of Democrats. He blocked Whig bills that would have distributed among the States the receipts from the sale of public lands to pay for public works and other internal improvements.<sup>37</sup> Frustrated Whigs attempted to censure Tyler.<sup>38</sup> Led by John Quincy Adams, a Whig-dominated Select

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<sup>32</sup>PETERSON, *supra* note 16, at 45.

<sup>33</sup>U.S. CONST. art. II, § 1, cl. 6.

<sup>34</sup>See PETERSON, *supra* note 16, at 50.

<sup>35</sup>See ROBERT SEAGER II, AND TYLER TOO: A BIOGRAPHY OF JOHN AND JULIA GARDINER TYLER 149 (1963).

<sup>36</sup>See PETERSON, *supra* note 16, at 60 (Clay "erroneously declared that the election of 1840 was a referendum on the bank and said that he had in mind a perfect plan for such an institution.").

<sup>37</sup>See *id.* at 103-05.

<sup>38</sup>See *id.* at 105-06.

Committee of Thirteen charged in a report to the House that Tyler had misused his veto power to such an extent that the misuse constituted an impeachable abuse of power. This became the first time an impeachment resolution had been introduced in the House and a committee had formally recommended a President's impeachment. As Jackson had done when he had been censured,<sup>39</sup> Tyler responded with a formal "Protest" in which he defended his conduct.<sup>40</sup> Taunting the Whigs, Tyler declared that if he had committed a genuine impeachable offense, Congress had the authority to remove him from office; it had no authority, in his judgment, to issue any lesser sanction, including a committee's censure.

The lame duck session of the 27th Congress was replete with proposals either to impeach Tyler or to require his production of internal White House documents. In opposing these measures, Tyler fortified basic executive prerogatives, particularly executive privilege. Representative John Minor Botts of Virginia introduced nine impeachment resolutions against Tyler, all accusing him, in one way or another, of abusing his powers. In response, Tyler made the strongest statement thus far by a chief executive on the President's right to use discretion in complying or refusing to comply with congressional requests or demands for information from the executive branch. He refused to comply with a formal House request for all correspondence relating to the Maine boundary negotiations with Great Britain. In March 1842, Tyler refused another House request, this time for the names of any members of the 26th and 27th Congresses who had been applicants for office and for details of their applications, whether they had applied in person or through friends, and, if the latter, whether the friends made recommendations in person or in writing. In his refusal to comply with the request, Tyler explained that appointments were a concern of the Senate, not the House, and that the applications were confidential. When Tyler refused to produce documents relating to negotiations between the War Department and the Cherokee nation, the House adopted yet another resolution stating that it had the right to demand from the executive branch any information in the latter's possession relating to matters on which the House was deliberating. It further directed the President to produce all data relating to an executive investigation of fraud in land sales to the Cherokee Indians. In January 1843, Tyler responded with another vigorous defense of executive privilege. He characterized the House's refusal to recognize a President's entitlement to executive privilege as "equivalent to the denial of its possession by him and would render him dependent upon that branch in the performance of a duty purely executive."<sup>41</sup>

Tyler was just as aggressive in asserting and trying to expand Presidential power in foreign affairs. His primary interest was the annexation of Texas.<sup>42</sup> When Tyler announced his support for the annexation of Texas as a slaveholding state, Webster

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<sup>39</sup>*See id.* at 14 (In December of 1833, Clay called upon the Senate to censure Jackson for "open, palpable, and daring usurpation." The resolution passed 26 to 20.).

<sup>40</sup>*See id.* at 106 (In his protest, "Tyler expressed his resolution to uphold the constitutional authority of the executive to his utmost ability and in defiance of all personal consequences.").

<sup>41</sup>John Tyler, Special Message to the House of Representatives (Jan. 31, 1843), in 4 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS, *supra* note 10, at 220, 222 (1897), *quoted in* PETERSON, *supra* note 16, at 172.

<sup>42</sup>*See* PETERSON, *supra* note 16, at 176.

resigned in opposition, and Tyler appointed Calhoun as his Secretary of State. Calhoun drew up a treaty to annex Texas; but the Whigs, almost without exception, opposed it. Although the Senate rejected the treaty, Tyler sent it to the House, which he asked to initiate the process of annexation by joint resolution.

Yet another constitutional challenge arose when civil war effectively broke out over the rightful government of the State of Rhode Island.<sup>43</sup> The war pitted the conservative state legislature against the leader of the state's reform movement, Thomas Wilson Dorr. After Dorr was seemingly elected, the legislature declared his election illegal. It tried to arrest him under newly passed treason laws. Eventually, Dorr would return to the State, be imprisoned, and then freed due to the efforts of Democratic leaders in the State. Tyler had decided earlier to send federal troops to preserve the former government and to keep Dorr from taking over the State. Later, the Supreme Court ruled, in *Luther v. Borden*,<sup>44</sup> that the judiciary lacked the authority to define what constituted a republican form of government.

On February 28, 1844, the administration and the country were confronted with a terrible tragedy: Tyler, members of his cabinet, and various dignitaries had taken a cruise on the Potomac on the most modern ship in the Navy, the Princeton.<sup>45</sup> On the homeward trip, the ship fired its huge gun for the entertainment of those on board. Unfortunately, the gun exploded. Eight people were killed, including the Secretaries of War and the Navy, and nine people, including Senator Thomas Hart Benton, were injured. Tyler chose John Calhoun as his Secretary of War, and Calhoun, to no one's surprise, strongly supported the annexation of Texas as a slaveholding state. While the appointment satisfied southerners, it merely alienated Tyler further from the rest of the country.

Tyler never ceased to take a bold approach to making appointments. In the last two years of his administration, the Senate rejected a majority of his nominations, including Caleb Cushing's nomination as Treasury Secretary three times. The Senate rejected five of Tyler's six nominations to the Supreme Court. Tyler's only successful Court appointment, Samuel Nelson, served with distinction from 1845-1872. Nelson had appeal as a relatively apolitical Whig and particularly as a widely respected Chief Judge of the New York Supreme Court. Since Nelson was a Whig, Tyler became the first President to nominate someone from outside his party to the Supreme Court.<sup>46</sup>

Near the end of his Presidency, Tyler had become unpopular with both Whigs and Democrats. His only support came from a renegade convention of Whigs and Democrats, who nominated him for the Presidency. He opted out of the race when Polk, the Democratic nominee, assured him that Tyler's followers would be accepted into the ranks of the Democratic party.<sup>47</sup>

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<sup>43</sup>See WILENTZ, *supra* note 6, at 540-41.

<sup>44</sup>*Luther v. Borden*, 48 U.S. (7 How.) 1 (1849).

<sup>45</sup>See PETERSON, *supra* note 16, at 201-03.

<sup>46</sup>See MICHAEL J. GERHARDT, *THE FEDERAL APPOINTMENTS PROCESS: A CONSTITUTIONAL AND HISTORICAL ANALYSIS* 56 (rev. ed., 2003).

<sup>47</sup>See PETERSON, *supra* note 16, at 238 (Though Jackson had forbid any publication of such an agreement, Walker had originally suggested Polk and Jackson go so far as to write a letter "welcoming Tyler and his friends back into the party.").

After Polk's election (over Clay), Tyler attempted, yet again, to engineer the annexation of Texas. He brokered a deal in which the House and Senate each approved a joint resolution endorsing the annexation of Texas.<sup>48</sup> It was widely expected that Tyler would allow Polk to sign the resolution, which empowered the President to offer Texas prompt admission as a state into the Union with certain conditions attached or to negotiate the terms and conditions under which it could be admitted with Texas authorities. Polk favored the second option, but Tyler favored the first. So, Tyler did not allow Polk to sign the resolution. Instead, he did, and he sent an agent to Texas offering Texas statehood under the first option. When Polk entered office, he did not call the emissary back. He would finish what Tyler started.

#### VI. JAMES K. POLK

Throughout his political career, James Polk was known as Young Hickory, because he was from Tennessee and his mentor was Andrew Jackson. Polk was also the first dark horse elected President. He was selected as the Democratic nominee on the ninth ballot after it appeared that the convention was going to be deadlocked.<sup>49</sup> Though not widely known or remembered by many contemporary Americans, Polk may have had the most successful one-term Presidency yet.

To preserve party unity, Polk pledged that, if elected, he would serve only a single term.<sup>50</sup> Polk did not, however, intend to serve as a lame duck. Once he entered office, Polk privately disclosed to some cabinet officers that he had four objectives: (1) to pass a tariff that would be acceptable to Northerners and Southerners, (2) to bring order to the country's banking system by establishing an independent treasury, (3) to complete negotiations with the British to settle the Oregon boundary, and (4) to acquire California from Mexico.<sup>51</sup> He might have added a fifth—completing the acquisition of Texas. It was an ambitious agenda, just as had been his decision to put together a cabinet of his own choosing (rather than one that would appease other party leaders or factions). Though Polk won the Presidency by a slim margin, he vowed, "to be *myself* President of the U. S."<sup>52</sup>

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<sup>48</sup>“Tyler was ready to use every means possible to induce the House and the Senate to act on a joint resolution during the final session of the Twenty-eighth Congress . . . . He had been preparing his message since October . . . .” *Id.* at 250. The resolution was passed and Tyler signed it on March 1, 1845 with only three days left of his Presidency. *Id.* at 257.

<sup>49</sup>See PAUL H. BERGERON, *THE PRESIDENCY OF JAMES K. POLK* 16 (Donald R. McCoy et al. eds., 1987) (After seven ballots at the conclave in Baltimore, the convention had reached a stalemate.).

<sup>50</sup>See *id.* at 17 (Though the platform did not call for this pledge, Polk felt such a promise would preserve unity in the party.).

<sup>51</sup>See CHARLES A. MCCOY, *POLK AND THE PRESIDENCY* 50 (Haskell House Publishers 1973) (1960).

<sup>52</sup>Letter from James K. Polk, President Elect, United States of America, to Cave Johnson, Representative from Tennessee, United States House of Representatives (Dec. 21, 1844), quoted in EUGENE IRVING MCCORMAC, *JAMES K. POLK: A POLITICAL BIOGRAPHY* 287 (Russell & Russell Inc. 1965) (1922); CHARLES SELLERS, *JAMES K. POLK: CONTINENTALIST* 164-65 (1966).

Polk achieved these five objectives and more. One of his other accomplishments included the founding of the United States Naval Academy in Annapolis.<sup>53</sup> He oversaw the addition of the western third of the continental United States to the national domain, including California, Oregon, and the Southwest. In the process, he restated and refined the Monroe Doctrine.<sup>54</sup> His administration added 1.2 million square miles of territory to the country—far more than any other administration before or since—and the enormous value of this territory was underscored by the discovery of gold in California.<sup>55</sup>

Polk ran his cabinet in a unique way. First, the price he exacted for appointing someone to the cabinet was the appointee's pledge not to run for the Presidency. The only cabinet member to resist was James Buchanan, whom Polk had asked to become Secretary of State. Not surprisingly, as a consequence, the two often clashed. Buchanan made daily visits to the White House, because Polk did not trust Buchanan and wanted to monitor foreign affairs closely. At one point, Buchanan agonized over Polk's offer to appoint him to the Supreme Court, but he ultimately declined the offer. Many people suspect that Polk had made the offer to get Buchanan out of his cabinet. Moreover, Polk used his cabinet as a sounding board. Holding cabinet meetings twice a week, he opened all subjects to discussion, though he often kept his own opinions secret until he was ready to act.

"In his handling of Congress, Polk was the first President consistently to mount campaigns for administrative measures, and he exercised a degree of control unique in the period between Jackson and Lincoln . . ."<sup>56</sup> Like his mentor Jackson, Polk did not back down from confrontations with the Senate. In 1845, he decided to nominate George Woodward to the Supreme Court, ignoring the fact that Simon Cameron had just beaten Woodward to become one of Pennsylvania's two Senators.<sup>57</sup> Cameron urged his colleagues to reject the nomination as a personal insult, and he persuaded five Democrats and several Whigs to vote against the nomination. Polk thought he might be able to break Cameron's grip on the Senate by nominating Buchanan, who once served as one of Pennsylvania's Senators and retained influence in the State. As Buchanan, characteristically, fretted over the decision, and before he made any final decision, Polk decided to nominate to the Court a Pennsylvanian more agreeable to Cameron; Robert Grier. Grier's close

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<sup>53</sup>See DUNCAN A. BRUCE, *THE MARK OF THE SCOTS* 53 (1998) ("[Polk] founded the US Naval Academy, authorized the Smithsonian Institution, and created the Department of the Interior.").

<sup>54</sup>See BERGERON, *supra* note 49, at 123. The Monroe doctrine asserted a sphere of influence in the Americas exclusive to the United States, in return for which the U.S. would remain neutral in European conflicts. *Id.* Polk used the Monroe doctrine in support of the westward expansion during his Presidency. *Id.*

<sup>55</sup>See THOMAS R. HIETALA, *MANIFEST DESIGN: AMERICAN EXCEPTIONALISM AND EMPIRE* 121 (rev. ed. 2003) (1985).

<sup>56</sup>See David M. Pletcher, *James K. Polk*, in *THE PRESIDENTS: A REFERENCE HISTORY*, *supra* note 2, at 183, 186.

<sup>57</sup>See GERHARDT, *supra* note 46, at 146.

friendship with Buchanan would become extremely important years later when the Court was deciding *Dred Scott v. Sandford*.<sup>58</sup>

In several ways, Polk's handling of the armed forces established precedents for subsequent Presidents. By stationing troops in disputed territory on the border of Mexico, he was able to provoke Mexico into war without prior recourse to Congress.<sup>59</sup> (Abraham Lincoln, then in his only term in the House, supported a resolution condemning Polk for waging an illegal war with Mexico and introduced another calling upon Polk to point out the spot where the United States had been invaded by Mexican forces.<sup>60</sup>) "In fighting the war Polk [exceeded] Madison . . . in the number of detailed orders he issued to his generals . . . thereby reasserting the traditional American assumption of civilian control of the military."<sup>61</sup> This infuriated Taylor, whom Polk tried to discharge; but congressional support made his removal impossible. He recognized the limitations of his experience and often had to defer to the Whig generals in the field, Winfield Scott and Zachary Taylor. Once the battle with Mexico ensued, Polk sought ratification and support from Congress. The war bill passed by an impressive margin.<sup>62</sup>

## VII. ZACHARY TAYLOR

Zachary Taylor became the third war hero elected to the Presidency. He ran as a Whig, though he had been apolitical as a general and few, if any, had any sense of his political preferences at the time he ran for the Presidency. The first time Taylor took political stands was as a Presidential candidate. As the Whig candidate, he expressed his belief that Congress, not the President, should have complete control of the major issues before the country. Yet, he took George Washington as his model and sought not to be "the slave of a party instead of the chief magistrate of the nation."<sup>63</sup> Using Washington as his model, Taylor vainly tried to govern above sordid partisanship.

At the time he ran for office, what most people knew about Taylor was that he had been a successful general in the Mexican War. In fact, the Mexican War provided the most significant opportunity prior to the Civil War for young Americans interested in the military to get experience in combat. Serving under Taylor were two young officers, Robert E. Lee and Ulysses S. Grant, and Jefferson

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<sup>58</sup>Scott v. Sandford, 60 U.S. (19 How.) 393 (1856).

<sup>59</sup>See BERGERON, *supra* note 47, at 81.

<sup>60</sup>See MCCOY, *supra* note 51, at 155. This was Lincoln's maiden address before Congress, and on January 3, 1848, the House passed a formal resolution by a vote of 85 to 81 that the war had been "unnecessarily and unconstitutionally begun by the President of the United States." CONG. GLOBE, 30th Cong., 1st Sess. 95 (1847), *quoted in* MCCOY, *supra* note 51, at 155.

<sup>61</sup>See Pletcher, *supra* note 56, at 188.

<sup>62</sup>See MCCOY, *supra* note 51, at 118-19 (The bill passed in the House by a vote of 174 to 14, the Senate took a day to debate the bill but then supported Polk by a vote of 42 to 2.).

<sup>63</sup>Zachary Taylor, General, United States Army, to R. C. Wood, Surgeon, United States Army (Sept. 27, 1847), *quoted in* ELBERT B. SMITH, THE PRESIDENCIES OF ZACHARY TAYLOR & MILLARD FILLMORE 40 (Donald R. McCoy et al. eds., 1988).

Davis, another West Point graduate, was his son-in-law.<sup>64</sup> Taylor would remember Lee as an outstanding officer but had little, if any, recollection of Grant. Grant, however, would not only remember Taylor, but also emulate his preference to forego formal military attire. Taylor was Grant's model of a successful general.<sup>65</sup> He became a model of leadership for another Whig who would become President, Abraham Lincoln, who had campaigned for Taylor and strongly supported him.

In fashioning his cabinet and administration, Taylor deliberately left his Vice-President, Millard Fillmore, in the cold.<sup>66</sup> Taylor did not know Fillmore before he became his Vice-President. Nor did Fillmore control the patronage in New York. He had lost control of New York patronage to William Seward and Thurlow Weed, who wielded considerable power both in their home state and the Whig party in those days. Fillmore had been chosen as Vice-President because he was an old-line Whig who would counter-balance Taylor's meager Whig credentials.

Taylor turned out not to be as much of a Whig as his supporters had hoped. He had surprisingly strong opinions about the major constitutional and political issue of the day: Whether to allow the admission of California into the Union as a free state.<sup>67</sup> In 1849, there were 15 slave states and 15 free states, so that there was equality among the states in the Senate. Taylor did not equivocate. He favored California's admission as a free state and, thus, angered southerners. His policies further divided the House. Taylor stood his ground. In his inaugural, he advocated the immediate recognition of California's statehood under its new constitution, and he noted that New Mexico would soon be asking for admission. He strongly repeated "the solemn warning of the first and most illustrious of my predecessors against furnishing 'any ground for characterizing parties by geographical discriminations.'"<sup>68</sup> Taylor reminded members of Congress that their first obligation was to the nation, not to slavery. It is not hard to see why Lincoln admired Taylor.

What followed was an enormous drive to reach a compromise in Congress that would keep the nation whole and avoid civil war. Like the Missouri Compromise in 1820, the compromise suggested in 1848 consisted of several laws. Consequently, it was more, as Sean Wilentz suggests, "of a balancing act, a truce that delayed, but could not prevent, even greater crises over slavery."<sup>69</sup> Henry Clay led the initial effort. Clay proposed an omnibus bill linking California's admission to the Union with several other measures, including abolition of slave trade in the District of Columbia and a strong fugitive slave law. It also would establish new territories in Utah and New Mexico and leave the question of whether to permit or forbid slavery up to the citizens of those territories. The plan sparked impassioned speeches from Daniel Webster, William Seward, and John Calhoun. A critical moment occurred

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<sup>64</sup>SMITH, *supra* note 63, at 1.

<sup>65</sup>See JEAN EDWARD SMITH, GRANT 40 (2001).

<sup>66</sup>See GERHARDT, *supra* note 46, at 54.

<sup>67</sup>See SMITH, *supra* note 63, at 65 (noting the debate over the admission of California as a free state was fierce between Southern Whigs, Northerners and Democrats).

<sup>68</sup>Zachary Taylor, First Annual Message (Dec. 4, 1849), in 5 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS, *supra* note 10, at 9, 19 (1897).

<sup>69</sup>See WILENTZ, *supra* note 6, at 637.

when Stephen Douglas surprisingly turned against Taylor and sided with Clay's efforts toward compromise. It was important because it revealed Democratic ties to Clay. Douglas praised Clay for proposing a solution to the issues before the country. Douglas prepared a series of bills giving something to each of the contending sides. In those preparations lie the foundations for what would become the Great Compromise of 1850.<sup>70</sup>

Taylor was so alienated by zealous secessionists (including his son-in-law Jefferson Davis) that he vowed to hang them if they ever carried out their threats. He blocked any effort at compromise. To end the dispute over which territories would be allowed to join the Union, Taylor urged settlers in New Mexico and California to bypass the territorial stage and draft constitutions and apply for statehood. Southerners were furious, because neither state's constitution was likely to allow slavery. Whigs in Congress were dismayed, because they felt the President was usurping their prerogatives. At the end of March, John Calhoun died, depriving southern extremists of their most powerful and revered leader. With no one immediately filling the void left by Calhoun, Clay worked furiously to put together a compromise. He, like almost everyone else, believed the silence from the White House was simply a reflection of Taylor's steadfast refusal to compromise. In fact, it was not. Taylor had contracted cholera, and he died on July 9, 1852.

#### VIII. MILLARD FILLMORE

Zachary Taylor's death thrust Vice-President Millard Fillmore onto center stage and the national limelight. Fillmore was the second Vice-President to ascend to the Presidency after a President's death in office. He had once been a powerful member of the House, including service as Chairman of its Ways and Means Committee.<sup>71</sup> After losing the race for Governor of New York, Fillmore became Comptroller of New York. It was from this office that he accepted the nomination as Taylor's Vice-President.

Throughout the 16 months of his Presidency, Taylor had marginalized Fillmore.<sup>72</sup> The cabinet, following Taylor's lead, did not look to Fillmore for advice and shunned his friends and allies.

So, it was no surprise that as soon as Fillmore became President, Taylor's entire cabinet offered their resignations, and Fillmore accepted them all.<sup>73</sup> Fillmore only wanted Whigs committed to the national government's success in his cabinet.<sup>74</sup> Webster became his Secretary of State, John Crittenden became Attorney General, and Thomas Corwin, a popular Whig from Ohio, became Secretary of the Treasury. With Fillmore as President, the drift toward chaos and uncertainty abruptly ended.

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<sup>70</sup>See generally MARK J. STEGMAIER, *TEXAS, NEW MEXICO, & THE COMPROMISE OF 1850: BOUNDARY DISPUTE AND SECTIONAL CRISIS* (1996) (The Great Compromise, also called the Pearce Act, was a series of Congressional legislative measures addressing slavery and the boundaries of territories acquired during the Mexican-American War.).

<sup>71</sup>See SMITH, *supra* note 63, at 159 (Fillmore had received great praise for his work as chairman.).

<sup>72</sup>See GERHARDT, *supra* note 46, at 54.

<sup>73</sup>See *id.*

<sup>74</sup>See ROBERT J. SCARRY, *MILLARD FILLMORE* 169 (2001).

Compromise was the order of the day. Fillmore's cabinet, all reflecting his preference for compromise, altered the political climate in Washington. Northern Whigs who once supported Taylor shifted to Fillmore, and some Southern Whigs moved back into the Whig mainstream.

Though Clay seized the moment to try to push his omnibus bill through the Senate, his effort failed. The ambitious young senator from Illinois, Stephen Douglas, wasted no time in taking advantage of Clay's failure. With Clay depleted from his failure, Douglas introduced a series of bills seriatim rather than as a whole. Each bill passed in the Senate. The House, under Douglas's guidance, passed all compromise measures. Congress, thus, approved the Great Compromise of 1850, which Fillmore signed.<sup>75</sup>

Although the Great Compromise of 1850 helped to allay concerns about secession, it may have made secession more likely. The Fugitive Slave Act of 1850, part of the Great Compromise, helped the movement toward secession by placing federal enforcement agencies at the disposal of slaveholders.<sup>76</sup> Abolitionists in the North were outraged. Fillmore's enforcement of the Act produced what one critic termed "an era of slave-hunting and kidnapping."<sup>77</sup>

The Great Compromise, as it turned out, was not the only controversy commanding Fillmore's attention. Texas, supported by other slaveholding states, threatened to invade New Mexico and forcefully take land that it considered its own.<sup>78</sup> If Texas made any move, it might have started the Civil War. Fillmore did not hesitate. To discourage an invasion, he sent 750 more federal troops to New Mexico and reminded the Governor of Texas that the boundary between Texas and New Mexico had been established by treaty and that the New Mexico territory belonged to the United States. A few months later, he learned that South Carolinians were preparing to seize the federal forts in Charleston as a first step toward secession.<sup>79</sup> Again acting quickly, Fillmore strengthened the Charleston forts, posted troops in North and South Carolina, and urged General Winfield Scott to develop a contingency plan in case an armed insurrection should occur.

Fillmore bluntly told Congress that if the laws of the United States are opposed and obstructed in any state or territory by combinations too powerful to be suppressed by the judicial or civil authorities, it is the duty of the President to either call out the militia, employ the military and naval force of the United States, or to do

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<sup>75</sup>See SMITH, *supra* note 63, at 188, 195.

<sup>76</sup>See *id.* at 189 (The Fugitive Slave bill passed in the House with a vote of 109 to 76 three days after the Senate accepted the House's combination of Texas and New Mexico.).

<sup>77</sup>See 2 HOLMAN HAMILTON, ZACHARY TAYLOR: SOLDIER IN THE WHITE HOUSE 404 (Archon Books 1966) (1951).

<sup>78</sup>See SMITH, *supra* note 63, at 191. During his Presidency, Taylor said that he would defend New Mexico in person, if necessary. *Id.* at 191. Following Taylor's death, Fillmore stated that Taylor's policy remained unchanged; New Mexico belonged to the United States. *Id.* at 192.

<sup>79</sup>See SCARRY, *supra* note 74, at 182.

both if, in his judgment, the exigency of the occasion should so require.<sup>80</sup> In the face of such opposition, the Texas delegation backed down, and the crisis subsided for a while.

Meanwhile, the Fugitive Slave Law met stiff resistance in the North. Many northerners denied the law's legitimacy and refused to uphold its provisions. Some northern states passed personal liberty laws that attempted to nullify the federal legislation.<sup>81</sup> Resisting these challenges to federal authority, Fillmore consistently authorized the use of federal force to assist local officials in carrying out the return of fugitive slaves.<sup>82</sup>

Fillmore's enforcement of the Fugitive Slave Act came to a head in 1851.<sup>83</sup> Christiana, Pennsylvania was a Quaker settlement that welcomed fugitive slaves. But, in 1851, a Maryland slaveholder named Edward Gorsuch arrived there to claim two fugitive slaves. When they resisted with the help of other African-Americans present, Gorsuch was shot to death, and his son was seriously injured. Fillmore decided to try to end northern resistance to the Fugitive Slave law once and for all. A large force of federal marines rounded up nearly forty prisoners, including thirty African-Americans. They were charged with treason, which led the largest treason trial in American history. But, the charge that these people were waging war against the United States lacked credibility, even if they were guilty of some crimes. After the first defendant was cleared of the charges, the rest were let go.

When Daniel Webster formally announced that he was running for the Presidency in 1850, Fillmore decided not to run. Fillmore's friends talked him back into the race, producing one of the most fractured party conventions in history. On the 53d ballot, Mexican War hero Winfield Scott won the Republican nomination for President.<sup>84</sup> Scott would get trounced in the general election by a man almost universally considered to be a disaster as President, Franklin Pierce.

The most notable event during Fillmore's four months as a lame duck was his effort to fill a vacancy that had arisen on the Court after the Presidential election. Because the Democratic-controlled Senate wanted to preserve the vacancy for Pierce to fill, Fillmore faced stiff resistance. In 1851, he had successfully nominated Benjamin Curtis, an eminent Whig lawyer, to the Court, and tried again in 1852 to find a Whig who would be agreeable to the Democrats in charge. Since he was finding a replacement for John McKinley of Alabama who had died, he looked in vain for Southern Whigs whom the Democrats would accept. They rejected his second nominee, George Badger, in spite of the fact he had been a Senator from

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<sup>80</sup>Millard Fillmore, Special Message to the Senate and House of Representatives (Aug. 6, 1850), in 5 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS, *supra* note 10, at 67, 69 (1897).

<sup>81</sup>*See* WILENTZ, *supra* note 6, at 590 (noting Massachusetts in 1843, Vermont in 1843, New Hampshire in 1846 and Pennsylvania in 1838).

<sup>82</sup>*See id.* at 646-47. Fillmore assured one slave owner that his slaves would be apprehended if need be by sending in Federal troops. *Id.* at 646. Then, in 1851, Fillmore sent troops into Christiana, Pennsylvania to enforce the Fugitive Slave Act during an outburst of violence. *Id.* at 647.

<sup>83</sup>*See id.* at 647.

<sup>84</sup>*See* SMITH, *supra* note 63, at 246.

North Carolina. His third nomination was more notable: He nominated then-Louisiana Senator Judah Benjamin, making Fillmore the first President to nominate a Jew to the Court. Since Benjamin had just been elected to the Senate, he was not eager to leave, and he turned down the appointment. Eventually, the nomination fell to Pierce to make. He acceded to the recommendation of the current members of the Court, including Justice Curtis, to nominate as McKinley's replacement another Alabamian, the widely revered Supreme Court advocate, John Campbell. Neither Curtis nor Campbell lasted long on the Court. Curtis resigned in disgust over the *Dred Scott* decision, and Campbell resigned in support of the confederacy at the beginning of the Civil War in 1861.

After leaving the Presidency, Fillmore pursued other opportunities for public service. As one of the first ex-Presidents to devote his time to public service after leaving office, Fillmore became the first Chancellor of the University of Buffalo and the first President of the Buffalo Historical Society.

#### IX. FRANKLIN PIERCE

Franklin Pierce, a Democrat, was known as the second Young Hickory. Whereas the first Young Hickory (Polk) had been both decisive and bold, Pierce was neither. One of his closest college friends at Bowdoin College was Nathaniel Hawthorne, who would later write his campaign biography.<sup>85</sup> Some people consider it to be the worst fiction Hawthorne ever wrote.

Pierce spent ten uneventful years in the Congress, the first four in the House and the last six in the Senate. In all that time, he made no noteworthy speech and did not sponsor any important bills. Instead, he was widely known for being the congressman least able to hold his liquor.<sup>86</sup> Some might say he became qualified to run for the Presidency because he had avoided any firm stances on the great issues of the day. In fact, Pierce became eligible because he was an Easterner who was sympathetic to slaveholders.

When not in office, Pierce made a fortune as a lawyer. He was especially adept at reading juries, a talent that helped him on the campaign trail as well. Political connections enabled Pierce to serve in the Mexican War as a Brigadier General.<sup>87</sup> Although Pierce had led his men in the assault on Mexico City, he arrived too late. He was wounded when his horse stumbled and he fainted and fell off.

Pierce became the standard bearer of the Democratic party in 1852 because his mediocrity and amiability appealed to the badly divided party.<sup>88</sup> Any candidate with

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<sup>85</sup>See LARRY GARA, *THE PRESIDENCY OF FRANKLIN PIERCE* 35 (Donald R. McCoy et al. ed., 1991).

<sup>86</sup>See *id.* at xi, xii, 31. Pierce is so well known for his drinking habit that when the New Hampshire Legislature decided to provide \$20,000 to save Pierce's Concord home from urban development, they raised the funds by selling bourbon whisky in commemorative bottles. *Id.* at xi-xii.

<sup>87</sup>See *id.* at 30.

<sup>88</sup>See *id.* at 23, 33, 41. Though none of the leading contenders for the nomination could garner the necessary majority of votes, Pierce was still seen as a "man without claims or qualifications." Letter from Robert Toombs, Representative from Georgia, United States House of Representatives, to John J. Crittenden, Attorney General, United States of America

firm positions on issues was likely to be divisive, but Pierce had none. He was the Northern man whom southerners could trust.

Although there is little reason to have expected much from Pierce as President, his Presidency effectively ended before it began. On the trip to the Capitol, his train derailed, and his 11-year old son was killed before his eyes.<sup>89</sup> Neither he nor his wife recovered.

As a former party boss in his state, Pierce knew how to conciliate, and the cabinet he put together was intended to be conciliatory.<sup>90</sup> The problem is that it was too conciliatory: He left out the middle of his party; only the extremes from each party were represented, including Jefferson Davis, a West Point graduate, as his Secretary of War. In the end, his patronage choices satisfied very few in his party and none outside of it.

In his inaugural address, Pierce defended the constitutionality of slavery. He declared that not only did the Constitution recognize slavery but that it was an “admitted right . . . I fervently hope that the question [of slavery] is at rest . . .”<sup>91</sup> He was wrong.

The major accomplishment of the Pierce administration was the Kansas-Nebraska bill.<sup>92</sup> It repealed the Missouri Compromise barrier against western slavery and directed that territorial citizens could decide for themselves against slavery. The Kansas-Nebraska bill was controversial in its own right, but Pierce did not enforce the law fairly. Under his watch, freedom was never given a fair chance in Kansas. While anti-slavery forces forced their own government and pro-slavery groups forced theirs, and while pro-slavery forces used violence to extend their power, Pierce asserted in his annual Message to Congress that nothing had happened in Kansas “to justify the interposition of the Federal Executive.”<sup>93</sup> Yet, it was clear by that time that the law had backfired. In time, it would lead to the rise of the Republican Party, Bleeding Kansas, the collapse of the national Democratic Party, and the election of Abraham Lincoln.

By the time Pierce decided to act, it was too late. In late January 1856, he sent a special message to Congress about Bleeding Kansas. He reviewed the territory’s history, characterized the actions of Free Staters as revolutionary, and declared, “[I]t is not the duty of the President of the United States to volunteer interposition by force to preserve the purity of elections either in a State or Territory.”<sup>94</sup> Several days later, he issued a Proclamation ordering the Free Staters and the Border Ruffians to

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(Dec. 5, 1852), *quoted in* ALLEN NEVINS, *ORDEAL OF THE UNION* 41 (1947), *quoted in* GARA, *supra* note 85, at 41.

<sup>89</sup>GARA, *supra* note 85, at 32, 44.

<sup>90</sup>*See id.* at 44.

<sup>91</sup>Franklin Pierce, Inaugural Address, *in* THE PRESIDENTS SPEAK, *supra* note 18, at 118, 125-26.

<sup>92</sup>*See generally* GARA, *supra* note 85, at 88-96.

<sup>93</sup>Franklin Pierce, Third Annual Message (Dec. 31, 1855), *in* 5 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS, *supra* note 10, at 327, 340 (1897).

<sup>94</sup>Franklin Pierce, Special Message to the Senate and House of Representatives (Jan. 24, 1856), *in* 5 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS, *supra* note 10, at 352, 358 (1897).

disperse under the threat of the local militia and federal troops.<sup>95</sup> In March, Congress was confronted with rival measures: The Free States' request for statehood and an administration bill permitting Kansas to hold a constitutional convention. Congress split over the options. As evidence of the election fraud of pro-slavery forces in Kansas mounted, and as Congress rejected any middle course, Senator Charles Sumner delivered a fiery speech in which he insulted the Slave Power, personified as he saw it by South Carolina Senator Andrew Butler. Two days later, Sumner was badly beaten on the floor of the Senate by a cousin of Butler's, Representative Preston Brooks.<sup>96</sup> As the beating occurred, other Senators, including Stephen Douglas, watched in silence. Finally, anti-slavery Whig Representative Ambrose Murray, who by happenstance was visiting the Senate that day, stopped Brooks before he killed Sumner. It would take Sumner four years to recover enough from his injuries to return to work. Two days after his beating, John Brown and his band murdered five proslavery settlers in Kansas.<sup>97</sup> He was later apprehended by Army troops led by Robert E. Lee.

Pierce's constitutional stand continued to fuel tensions within the country. When abolitionists recoiled against the imprisonment of an African-American based on what appeared to be trumped up charges, a race riot broke out in Boston in 1854, and Pierce reacted more fiercely than Fillmore had in the Thomas Sims case.<sup>98</sup> Pierce ordered his Secretary of War, Jefferson Davis, to send Marines, cavalry, and artillery to Boston, along with a federal revenue cutter that would await the inevitable order and return to slavery the African-American thought responsible for the rioting. Richard Henry Dana, Jr., led the defense for Anthony Burns, who was captured and incarcerated by federal troops.

Yet another debacle for Pierce was the Ostend Manifesto.<sup>99</sup> After Spanish authorities in Cuba seized an American vessel (the *Black Warrior*), he instructed his ministers in Spain, France, and England to devise a policy for Cuba. The product was the Ostend Manifesto, a blunt statement that said that if Spain refused to sell the island to the United States, and if the United States believed Spain's possession endangered "our internal peace and the existence of our Cherished Union," the United States would be "justified in wresting it from Spain."<sup>100</sup> Intended to be secret, the document became public and aroused a stormy protest, particularly in the North.

Not all that Pierce did was disastrous. His most positive act as President was his successful negotiation to extend the United States' territory to include 45,000 square miles purchased from Mexico for 10 million dollars. A more modest

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<sup>95</sup>Franklin Pierce, A Proclamation (Feb. 11, 1856), in 5 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS, *supra* note 10, at 390 (1897).

<sup>96</sup>*See* GARA, *supra* note 85, at 121.

<sup>97</sup>*See id.* at 122.

<sup>98</sup>*See generally* WILENTZ, *supra* note 6, at 647-52. In April 1851, hundreds of U.S. troops and federal marshals secured seventeen year old Thomas Sims, a fugitive slave. *Id.* at 646. His capture and return cost the government more than five thousand dollars. *Id.* at 648.

<sup>99</sup>*See* GARA, *supra* note 85, at 153. The Ostend Manifesto was a supposedly secret communiqué of the State Department listing all the reasons for Spain to sell Cuba to the United States. *Id.*

<sup>100</sup>*Id.*

accomplishment is Pierce's distinction as the only President whose name appears on the charter of a synagogue, an honor he earned when he signed into law a bill proclaiming that "all the rights, privileges and immunities heretofore granted by law to the Christian churches in the City of Washington, be, and the same are hereby extended to the Hebrew congregation of said city."<sup>101</sup> The law made possible the establishment of the first synagogue in the nation's capitol.

With no other apparent accomplishments and tensions within the party and the country mounting, Pierce had little, if any, realistic prospect for reelection. He withdrew from contention for his party's nomination after more than a dozen ballots at the convention indicated he had no chance to win. The Democrats eventually nominated James Buchanan, Pierce's Minister to Great Britain. It was the first and only time in American history that a sitting President lost his party's nomination to someone from within his own administration.

#### X. JAMES BUCHANAN

For many people, James Buchanan is one of the few Presidents who could give Franklin Pierce a genuine contest as the all-time worst President. Whereas Pierce's hallmark had been to make a few, largely tragic errors in judgment, Buchanan's fate was to make many.

Buchanan's public service prior to becoming President did not signal he would be a disaster as President. To the contrary, over the course of forty years, he served as a member of the House, a United States Senator, Secretary of State, and Minister to Great Britain.<sup>102</sup> Yet, in spite of these credentials, Buchanan was not a conciliator, nor someone prone to compromise. He was that peculiar Eastern politician who, like Pierce, sympathized with slaveholders. Buchanan blamed abolitionists for secession. Even after leaving the Presidency on the eve of the Civil War, he stubbornly held onto the belief that a few misguided Northerners were driving Southerners to leave the Union.<sup>103</sup>

In his inaugural address, Buchanan vowed to oppose disunion.<sup>104</sup> He undermined that pledge by appointing a cabinet that did not include any representatives from major factions of his party. He remained stubbornly oblivious to the need for different views, relying mainly on the advice of friends and cronies, most of whom were Southerners. Believing that Northerners were responsible for the pressure felt by Southerners to secede, his cabinet was overwhelmingly pro-slavery: In a cabinet of seven, four were Southerners, and one of the three Northerners was known for his pro-slavery views.<sup>105</sup>

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<sup>101</sup>Act of June 2, 1856, ch. 37, 11 Stat. 449.

<sup>102</sup>*See generally* FREDRICK MOORE BINDER, *JAMES BUCHANAN AND THE AMERICAN EMPIRE* 11-39 (1994).

<sup>103</sup>*See generally* JAMES BUCHANAN, *MR. BUCHANAN'S ADMINISTRATION ON THE EVE OF THE REBELLION* 152-53 (New York, D. Appleton and Co.1866); Elbert B. Smith, *James Buchanan*, in *THE PRESIDENTS: A REFERENCE HISTORY*, *supra* note 2, at 235.

<sup>104</sup>*See* James Buchanan, *Inaugural Address* (Mar. 4, 1857), in *THE MESSAGES OF PRESIDENT BUCHANAN* 5, 7-8 (J. Buchanan Henry ed., New York 1888).

<sup>105</sup>*See* William E. Gienapp, "No Bed of Roses": *James Buchanan, Abraham Lincoln, and Presidential Leadership in the Civil War Era*, in *JAMES BUCHANAN AND THE POLITICAL CRISIS OF THE 1850S*, at 93, 101-02 (Michael J. Birkner ed., 1996) (noting Buchanan's cabinet was

Aware of the failure of the Kansas-Nebraska Bill to unify the country, Buchanan turned to the Supreme Court. He believed the Court could take the heat off of the political branches from having to resolve conflicts over slavery. Hence, he directly interfered with the Court as it was deciding *Dred Scott*. As he walked to the podium at his inaugural, Buchanan stopped to chat briefly with Chief Justice Taney. A few minutes later, Buchanan told the nation that a case pending before the Court would soon settle outstanding issues regarding slavery and the territories. He urged everyone to submit “cheerfully” to the decision, “whatever [it] may be.”<sup>106</sup> When the Supreme Court’s decision in *Dred Scott* came down just two days later, it was widely suspected Taney had tipped off Buchanan.<sup>107</sup>

In fact, the story is more disturbing. In response to a letter from Buchanan, Justice Catron informed Buchanan that the five Southern justices would probably allow the lower court’s order to stand and avoid a broad ruling on the subject. Catron suggested that if Justice Robert Grier from Pennsylvania were to support their position, the Southerners might change their minds and directly dispose of the big constitutional questions posed in the case. Buchanan wrote Grier a strong request that he join the Southerners. Though Grier did just that, the Court’s decision did not settle the issue of territorial slavery, as Buchanan had hoped. Instead, the decision thoroughly discredited the Taney Court among Republicans. It persuaded them more than ever before that slavery and the powers protecting it had to be eradicated. It was the beginning of the end for Buchanan.

Buchanan strongly defended the decision.<sup>108</sup> He believed the decision would not expand slavery, but he was wrong. After a clear majority in Kansas had apparently rejected a pro-slavery constitution written by a small number of Kansans, Buchanan ignored the pleas of his own appointed Governor of Kansas and endorsed the constitution. His efforts to support pro-slavery forces in Kansas subjected him to extensive criticism in Congress and elsewhere, particularly the North.<sup>109</sup> Illinois’ Little Giant, Senator Stephen Douglas, tried in vain to keep it from being endorsed by the Congress. A subsequent congressional investigation determined that the President’s efforts to bulldoze the Lecompton constitution through Congress had included several forms of bribery, through third parties, to members of Congress.<sup>110</sup> In response to the investigations, Buchanan sent two messages denying on constitutional grounds that the Congress had any authority over the executive branch.

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excessively pro southern and one member in particular, Slidell, was an ardent pro slavery sectionalist).

<sup>106</sup>See Buchanan, *supra* note 104, at 7.

<sup>107</sup>See Gienapp, *supra* note 105, at 115.

<sup>108</sup>See JEFFREY W. COKER, PRESIDENTS FROM TAYLOR THROUGH GRANT, 1849-1877: DEBATING THE ISSUES IN PRO AND CON PRIMARY DOCUMENTS 105 (2002).

<sup>109</sup>See Mark W. Summers, *Dough in the Hands of the Doughface? James Buchanan and the Untameable Press*, in JAMES BUCHANAN AND THE POLITICAL CRISIS OF THE 1850S, *supra* note 105, at 68, 79.

<sup>110</sup>See PHILIP SHRIVER KLEIN, PRESIDENT JAMES BUCHANAN A BIOGRAPHY 339 (1962) (Bribery in the form of government contracts and use of public offices was widespread in Buchanan’s administration, though also quite common for Presidential administrations at the time.).

The only exception, he said, occurred during impeachment proceedings before the Judiciary Committee.<sup>111</sup> The House committee, however, was merely an investigating committee considering censure, not impeachment. Buchanan also argued that, in the event of impeachment, his accusers would become his judges.<sup>112</sup> He noted that the executive and legislative branches were coordinate and had no authority to investigate each other. He wrote, "I defy all investigation. Nothing but the basest perjury can sully my good name."<sup>113</sup> The committee responded that there had been three earlier congressional investigations of corruption in the executive branch that had not risen to the level of impeachment, as the committee noted its findings did not. Buchanan exulted in the fact that no criminal charges were proffered, but many people were shocked at the amount of graft permeating his administration.<sup>114</sup>

Buchanan responded to Douglas's lack of support by using every power he had to thwart Douglas's reelection in 1858.<sup>115</sup> Those efforts failed, as did any hopes Buchanan may have had of reelection. Although he had vowed at the outset of his Presidency to serve but a single term, Buchanan privately resented the absence of any requests that he break his pledge.

As his Presidency was ending, Buchanan faced the prospect of secession. He argued that it was unconstitutional.<sup>116</sup> He argued that the Framers had never intended any such right, and "[t]he solemn sanction of religion" had been added in the oaths of office by federal and state officials.<sup>117</sup> But he suggested that it might be lawful if it were called a revolution instead of an inherent constitutional right. Initially, Buchanan defended the secessionists and claimed that, based on his narrow reading of Presidential power, he had no authority to prevent it. He rejected compromises fashioned in Congress. He also refused either to surrender or to fortify Fort Sumter. Buchanan refused to negotiate, and his Secretary of War, Lewis Cass, resigned after Buchanan refused to send additional men to the forts under siege. With his cabinet and administration falling apart, Buchanan replaced departing secretaries with less

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<sup>111</sup>See James Buchanan, Special Message to the House of Representatives: The President's Solemn Protest Against the Attack Upon the Independence of the Executive as a Co-ordinate Branch of the Federal Government By the House of Representatives, in the So-called "Covode" Investigation Resolutions (Mar. 28, 1860), in THE MESSAGES OF PRESIDENT BUCHANAN, *supra* note 104, at 233, 234.

<sup>112</sup>See *id.* at 236-37.

<sup>113</sup>See *id.* at 239.

<sup>114</sup>See, e.g., Peter Knupfer, *James Buchanan, the Election of 1860, and the Demise of Jacksonian Politics*, in JAMES BUCHANAN AND THE POLITICAL CRISIS OF THE 1850S, *supra* note 105, at 146, 163 (noting the "unprecedented" extent of political corruption in Buchanan's administration); KLEIN, *supra* note 110, at 339-40.

<sup>115</sup>See Knupfer, *supra* note 114, at 158.

<sup>116</sup>Buchanan stated that, to justify the secession, the Federal Government must be guilty of "a deliberate, palpable, and dangerous exercise" of power not granted by the Constitution. James Buchanan, Fourth Annual Message (Dec. 3, 1860), in 5 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS, *supra* note 10, at 626, 628 (1897), *quoted in* JEAN H. BAKER, JAMES BUCHANAN 124 (Arthur M. Schlesinger, Jr. ed., 2004).

<sup>117</sup>See Buchanan, *supra* note 116, at 633.

pro-southern cabinet officers, such as Ohio's Edwin Stanton, whom he appointed Attorney General.

After South Carolina formally seceded in early December 1860, Buchanan delivered his annual message, in which he denied that it had the constitutional right to secede.<sup>118</sup> At the same time, Buchanan extended an encouraging olive branch to seceding states in his denial of federal authority over their actions. They could go in peace, because neither he as President nor the Congress had the authority to declare and make war on them. He figured that the power to coerce a state could not be found among the enumerated powers of the federal government. "It is," he argued, "equally apparent that its exercise is not 'necessary and proper for carrying into execution' any one of these powers."<sup>119</sup> For two months after Lincoln's election, he did nothing. He surrounded himself with Southerners and had nothing to do with Republican leaders. All he did was to tell Major Anderson, who was in charge of Fort Sumter, that it would be treason for him to abandon his post. He also authorized the commander to move his troops to the most defensible position, though he denied he had done this to his Southern friends. His friend and Secretary of State, Jeremiah Black, threatened to leave the cabinet unless Buchanan took a more forceful stand against the secessionists. He then finally took the path back toward Unionism. He supported what General Scott and most of his cabinet had been demanding for weeks—the reinforcement Fort Sumter. Anderson thus had enough of a force to defend the fort for at least a little while. On the day of Lincoln's inauguration, Buchanan had received a message from Anderson that he needed more men.<sup>120</sup> Happily for Buchanan, this was now Lincoln's problem.

A Senate resolution to condemn Buchanan failed but received wide publicity.<sup>121</sup> Northern newspapers roundly condemned Buchanan's inaction in the face of direct threats to federal property.<sup>122</sup> Five members of Buchanan's cabinet joined Lincoln's administration and never bothered to defend Buchanan publicly.<sup>123</sup> Buchanan's portrait was removed from the Capitol rotunda to keep it from being defaced.<sup>124</sup> Buchanan spent the remainder of his life defending his actions. In his memoirs, he blamed the Civil War primarily on Northern radicalism.<sup>125</sup>

#### XI. RUTHERFORD B. HAYES

Rutherford B. Hayes was the second of five Civil War officers elected President. Not long after volunteering for military service in the Civil War, Hayes became a Major in the Ohio infantry. He served four years, was wounded five times, and was

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<sup>118</sup>*Id.* at 628.

<sup>119</sup>*Id.* at 636, *quoted in* BAKER, *supra* note 116, at 125.

<sup>120</sup>*See* KLEIN, *supra* note 110, at 402.

<sup>121</sup>*See* Smith, *supra* note 103, at 205.

<sup>122</sup>*See id.*

<sup>123</sup>*See id.*

<sup>124</sup>*See* 1 CARL SFERRAZZA ANTHONY, *FIRST LADIES: THE SAGA OF THE PRESIDENTS' WIVES AND THEIR POWER 1789-1961*, at 167 (1990).

<sup>125</sup>*See generally*, BUCHANAN, *supra* note 103; Smith, *supra* note 100.

breveted Major General. Immediately after the war, he began a successful political career upon his election to the House of Representatives. Subsequently, he was elected to three successive terms as Governor of Ohio. In his third term, the Republican convention was held in Cincinnati, and Hayes was chosen as his party's nominee on the seventh ballot based on his military service and history as a reformer.<sup>126</sup>

Hayes is remembered primarily for winning the controversial election of 1876.<sup>127</sup> The Democratic candidate, Samuel Tilden, had won the popular vote but lacked a majority in the Electoral College. Pursuant to the Twelfth Amendment, the matter went to the House, which appointed a special 13-member commission to resolve disputed electoral votes. When David Davis, then a Supreme Court justice, decided not to serve on the commission in order to remain a viable candidate to be a Senator from Illinois, another Republican, Justice Joseph Bradley, was appointed to the Commission. The membership was then seven Republicans and six Democrats. Tilden remained aloof and silent during the commission's deliberations, while Hayes, with the help of his friend and personal lawyer Stanley Matthews, lobbied the commission behind the scenes. Hayes helped to broker a deal by promising to serve only a single term and to end Reconstruction. The commission eventually voted 7-6 in favor of Hayes on each contested elector. Tilden took the decision magnanimously, promising to support Hayes and calling upon Democrats to do the same. Over the course of Hayes's Presidency, Tilden faded into political obscurity.<sup>128</sup>

Hayes achieved more than a few constitutional legacies. First, he successfully battled Congress for primacy over federal appointments.<sup>129</sup> He set the tone with his cabinet. He had left out of the mix Republican Stalwarts, including New York's Roscoe Conkling and Maine's James Blaine. Only the certainty that Democrats would supply the necessary votes (because he included Democrats in the cabinet) made their confirmation possible.

Hayes's interest in appointments extended to civil service reform. He had adopted civil service reform as a priority in response to the large number of corruption scandals in the preceding administration. Using his executive power, he issued an order in June 1877 prohibiting federal employees from taking part in political activity.<sup>130</sup> This directive exacerbated the already troublesome fracturing of the Republican party, particularly the Stalwarts led by the charismatic, temperamental Senator from New York, Roscoe Conkling, whose power largely emanated from his control of lucrative patronage appointments in the Port of New York. At this point, Conkling was in his heyday. He was a colorful speaker and

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<sup>126</sup>See KENNETH E. DAVISON, *THE PRESIDENCY OF RUTHERFORD B. HAYES* 19-40 (Robert H. Walker ed., 1972).

<sup>127</sup>The Presidential election of 1876 has been the subject of numerous books, including the last written by Chief Justice William Rehnquist.

<sup>128</sup>See ROY MORRIS, JR., *FRAUD OF THE CENTURY* 252-55 (2003).

<sup>129</sup>See GERHARDT, *supra* note 46, at 275-76; *see also* ARI HOOGENBOOM, *THE PRESIDENCY OF RUTHERFORD B. HAYES* 127-51 (Donald R. McCoy et al. eds., 1988).

<sup>130</sup>See HOOGENBOOM, *supra* note 129, at 130.

character who had declined President Grant's offer of the Chief Justiceship in order to make money and cultivate his chances to become President.

Hayes's interest in civil service reform led to his ordering an investigation into the New York Custom House that Conkling had controlled through his lieutenant, Chester Arthur, for years. When the investigation revealed vast corruption among Conkling's men (including Arthur) at the New York Custom House, Hayes sent fresh nominations to the Senate, including Theodore Roosevelt, Sr. Following the custom of senatorial courtesy (deferring to senators on appointments made in their respective states), the Senate deferred to Conkling. Hayes vowed to defend the executive prerogative of the President and not to "give up the contest."<sup>131</sup> Once the congressional session ended, Hayes suspended the incumbents and used recess appointments to replace them with men of merit. When Congress reconvened, thirteen Republicans joined with twenty Democrats to sustain Hayes's actions. The President, thus, took a big step to restore the executive independence he regarded as having been squandered during the administrations of Andrew Johnson and Ulysses Grant.

Soon after Hayes became President, the nation's four largest railroads agreed to raise rates and lower wages by ten percent. This pay cut, the second major reduction since the depression began in 1873, led to the July 1877 Great Uprising, during which striking workers shut down most of the country's rail service.<sup>132</sup> As fighting between strikers and state militiamen intensified, Hayes sent federal troops to restore order in West Virginia and Pennsylvania. These orders made Hayes the first President since Jackson to use federal troops in a labor dispute.

One of Hayes's most important legacies is his formally ordering the repeal of Reconstruction. To mollify Tilden's supporters after he had been declared the winner of the 1876 election, Hayes agreed to end the military occupation of the South, to support genuine reconstruction of education and transportation in the South, and to bring at least one southern Democrat into his cabinet.

One thing that Hayes did not want to do was to withdraw protection for blacks trying to vote in Southern elections. The tactic favored by Democrats for withdrawing the protection was attaching riders to unrelated appropriation bills. On April 29, 1879, Hayes vetoed an appropriations measure carrying such a rider. Democrats responded with a rider on another bill, and Hayes vetoed it. In all, Congress passed seven such bills, and Hayes vetoed them all.<sup>133</sup>

Meanwhile, animosity towards Chinese immigrants in the West led Congress to pass a bill, contrary to an 1868 treaty, restricting Chinese immigration. Hayes, who had championed black suffrage, vetoed this as well. Though he remarked with regret that the American experience on race had not up until then been "encouraging," he

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<sup>131</sup>Rutherford B. Hayes, *Diary* (Dec. 13, 1877), in *HAYES: THE DIARY OF A PRESIDENT 1875-1881*, at 107, 107 (T. Harry Williams ed., 1964), *quoted in* HOOGENBOOM, *supra* note 129, at 136.

<sup>132</sup>See Ari Hoogenboom, *Rutherford B. Hayes*, in *BUCKEYE PRESIDENTS: OHIOANS IN THE WHITE HOUSE* 86, 111 (Philip Weeks ed., 2003).

<sup>133</sup>James A. Rawley, *Rutherford B. Hayes*, in "TO THE BEST OF MY ABILITY": *THE AMERICAN PRESIDENTS* 140, 144 (James M. McPherson, ed., rev. U.S. ed. 2004).

ordered his Secretary of State to negotiate a new treaty with China that restricted (but did not ban) future immigration.<sup>134</sup>

Hayes's Presidency ended on a note of defeat. The Senate, in what may have been the first filibuster on a judicial nomination, refused to allow a vote on the nomination of his friend, Stanley Matthews, to the Supreme Court. As a senator from Ohio, Matthews expected to be approved because of senatorial courtesy; but labor unions, Democrats, and Republican Stalwarts like Conkling opposed the nomination.<sup>135</sup> It smacked of cronyism given that Matthews had been a long-time adviser to the President (including during the 1876 election dispute).

## XII. JAMES A. GARFIELD

James Garfield was the third Ohioan, Civil War veteran, and Republican in a row elected President in this era. Garfield was the first dark horse chosen by the Republicans.<sup>136</sup> He was nominated on the 36th ballot in the Republican convention, still the longest in history. His nomination was awkward from the outset, because he had come to the convention to promote the nomination of his friend and fellow Ohioan, John Sherman.

As the party's nominee, Garfield tried in vain to broker unity among competing Republican factions. Over Conkling's objection, his lieutenant Chester Arthur accepted the party's nomination as Vice-President.<sup>137</sup> A subsequent meeting with Conkling did not smooth things over. Garfield, as a candidate, had made the mistake of arousing expectations of patronage (especially in Conkling) greater than he wished to fulfill. He complicated matters by choosing James Blaine as his Secretary of State, who was a bitter enemy of Conkling.

The principal focus of Garfield's shortened Presidency was appointments.<sup>138</sup> Three weeks into office, Garfield allowed Blaine to persuade him to nominate a Blaine lieutenant as collector of the Port of New York, the chief patronage plum in the country (since it was responsible for almost a third of the money coming into the federal treasury). Charging that the nomination violated senatorial courtesy, Conkling urged his fellow senators to reject the nomination. Garfield refused to withdraw the nomination. After several months in which Conkling had managed to stall the nomination through a filibuster, Blaine outsmarted Conkling. Conkling's filibuster was working: It stalled not only the nomination to head the Custom House, but other pending nominations as well. Garfield was anxious to get his government in place, and turned to Blaine for counsel. Blaine hit upon a brilliant move to break

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<sup>134</sup>Rutherford B. Hayes, Diary (Feb. 20, 1879), in HAYES: THE DIARY OF A PRESIDENT 1875-1881, *supra* note 131, at 187, 187, *quoted in* HOOGENBOOM, *supra* note 129, at 180. *See generally id.* at 173-84.

<sup>135</sup>*See* HARRY BARNARD, RUTHERFORD B. HAYES AND HIS AMERICA 498-99 (American Political Biography Press 1992) (1954); ARI HOOGENBOOM, RUTHERFORD B. HAYES: WARRIOR AND PRESIDENT 457 (1995).

<sup>136</sup>*See* KENNETH D. ACKERMAN, DARK HORSE: THE SURPRISE ELECTION AND POLITICAL MURDER OF PRESIDENT JAMES A. GARFIELD (2003).

<sup>137</sup>*See id.* at 130-33.

<sup>138</sup>*See generally* JUSTUS D. DOENECKE, THE PRESIDENCIES OF JAMES A. GARFIELD & CHESTER A. ARTHUR 30-36, 41-45 (Donald R. McCoy et al. eds., 1981).

the stalemate. The day arrived when, in the course of the debate over the nomination, a note came to the Presiding Officer in the Senate, Chester Arthur, who was well known as Conkling's creature. Arthur turned white when he read it and gestured for Conkling, then on the floor, to see it. When Conkling saw it, he, too, paled. Arthur then read the note directing that the President had withdrawn all nominations but the one for the head of the Custom House. Now it became impossible to hide what was at stake and to keep the Senate bottled up over a single problematic nomination. Blaine had outmaneuvered Conkling.

Facing defeat, Conkling tried something dramatic—he resigned from the Senate and urged his fellow New York Senator, Thomas Platt, to resign as well. Conkling figured the state legislature would send him back to the Senate, but it did not. Garfield had won, and Conkling never returned to the Senate.

This was not Garfield's only victory in the appointments process. Shortly after becoming President, Garfield re-nominated Stanley Matthews to the Supreme Court.<sup>139</sup> When Matthews had been nominated to the Court a year earlier by Hayes, the Senate had failed to act on the nomination, which never made it out of committee. In spite of his having been a Senator, Matthews had faced opposition from within his own party and from some Democrats. With Garfield in office, the objection to Matthews as a crony of the President faded away. And with Conkling out of the Senate, Garfield was able to exert more control over his party's caucus. Eventually the nomination went to the floor of the Senate, where it passed by the closest margin ever for a Supreme Court nomination—a single vote.

On the last day of June 1881, Garfield made another historic appointment—the first Jew as Council General to Egypt, Simon Wolf. The next day, a mentally disturbed and disgruntled office seeker fatally shot the President.

### XIII. CHESTER A. ARTHUR

It's hard to imagine anyone less likely than Chester Arthur to become President. His highest office before becoming Vice-President was head of the New York Custom House. Indeed, he surprised most people by taking the Vice-Presidency. When it became clear the Republican convention had picked Arthur as Vice-President, Arthur sought the approval of his mentor, Roscoe Conkling. Amazingly, when the two met at the convention, they did not notice a reporter hiding in the corner.<sup>140</sup> Conkling asked Arthur not to take the position, but Arthur refused. He said that it was undoubtedly the greatest honor he could ever conceive receiving, and the two parted on less than friendly terms. Their friendship would never be the same.

Once Arthur became President, he met again with his former mentor and friend, Conkling. He told Conkling in no uncertain terms that he intended to be President in his own right and that he would not be beholden to him or any other special interests. Thus, he refused to do Conkling's bidding to remove the person Garfield had appointed to head the New York Custom House.<sup>141</sup> Arthur tried to mend fences by

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<sup>139</sup>See HENRY J. ABRAHAM, JUSTICES AND PRESIDENTS: A POLITICAL HISTORY OF APPOINTMENTS TO THE SUPREME COURT 136 (3d ed. 1992) (1974).

<sup>140</sup>ZACHARY KARABELL, CHESTER ALAN ARTHUR 40-42 (Arthur M. Schlesinger, Jr. ed., 2004).

<sup>141</sup>*Id.* at 69.

nominating Conkling to the Supreme Court, but Conkling refused even after the Senate had confirmed the nomination.<sup>142</sup>

Arthur went on to make two first-rate appointments to the Supreme Court: Horace Gray and Samuel Blatchford.<sup>143</sup> Gray had been actively involved in the anti-slavery movement since he graduated from Harvard at 17, and he even wrote a blistering critique of the *Dred Scott* opinion in 1857 (when he was 29). Gray was appointed to Massachusetts's highest court in 1864, and served as its Chief Justice. He was widely regarded as one of the nation's leading jurists at the time of his appointment to the Supreme Court. Blatchford had nearly as good a reputation: At the time of his appointment to the Court, Blatchford was known nationally as an excellent judge with fifteen years of experience—five as a Federal District Judge in New York and ten on the U.S. Court of Appeals.

Perhaps Arthur's greatest accomplishment was to sign into law the Pendleton Civil Service Reform Act, by far the most ambitious civil service reform enacted to that time.<sup>144</sup> In the immediate aftermath of Garfield's assassination by a deluded office-seeker, the public support for civil service reform mounted. Arthur took advantage of it to do what he regarded as the right thing, in spite of previous decades as a beneficiary and dispenser of patronage.

On at least one other issue, Arthur made his mark. He tried, largely in vain, to keep Congress from outlawing Chinese immigration. His veto of the Chinese Exclusion Act forced Congress to reduce its ban from twenty to ten years (in order to win enough votes to avoid an override).<sup>145</sup>

#### XIV. GROVER CLEVELAND

Grover Cleveland has several distinctions as President: First, he is the only President to serve for two, non-consecutive terms. He is the 22d and 24th President of the United States. Second, he is the only Democrat elected President during the last quarter of the nineteenth century. Third, he had a majority of votes in all three Presidential contests in which he was a candidate.<sup>146</sup> Franklin D. Roosevelt and Andrew Jackson are the only other Presidents who can make similar or superior claims. Fourth, Cleveland has the distinction of having won a Presidential contest by one of the smallest popular margins in history, about 30,000 votes in 1884.<sup>147</sup> It was

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<sup>142</sup>JAMES A. GARFIELD: 1831-1888 CHESTER A. ARTHUR: 1830-1886, at 61-62 (Howard B. Furer ed., 1970). Previously, Conkling had turned down Grant's offer to nominate him as Chief Justice of the United States. Conkling turned down that offer for the same reason he declined Arthur's offer—he was holding out for the possibility of becoming President.

<sup>143</sup>See ABRAHAM, *supra* note 139, at 138.

<sup>144</sup>KARABELL, *supra* note 140, at 107.

<sup>145</sup>See DOENECKE, *supra* note 133, at 83-84.

<sup>146</sup>Cleveland won the 1884 election with a popular majority of 24,000 votes. HENRY F. GRAFF, GROVER CLEVELAND 66 (Arthur M. Schlesinger, Jr. ed., 2002). Cleveland lost his campaign in the 1888 election, yet still won the popular vote by slightly more than a hundred thousand votes. *Id.* at 94. Cleveland recaptured the Presidency in 1892 by convincingly defeating Benjamin Harrison with greater than a third of a million more of the popular vote. *Id.* at 109.

<sup>147</sup>See *id.* at 66; H. PAUL JEFFERS, AN HONEST PRESIDENT: THE LIFE AND PRESIDENCIES OF GROVER CLEVELAND 121 (2000).

actually closer than that: The person who won New York in 1884 was going to be President, and Cleveland carried his home state over James Blaine by less than 1200 votes. A shift of 600 votes would have made Blaine President.

Pressured during the campaign to extend civil service reform, Cleveland spent considerable time going over the records of applicants and weighing the merits of candidates for both major and minor posts. He promised not to remove Republicans except for cause, but battled the Senate for control over executive appointments.<sup>148</sup> At one time, the Senate stalled several hundred of his nominations in response to his efforts to consolidate executive control of appointments to the executive branch and to the courts.

One of Cleveland's most significant successes in battling the Senate for control over the appointments process involved Supreme Court nominations. In 1893, New York Senator David Hill had blocked Cleveland's nominations of two New Yorkers to the Court.<sup>149</sup> In response, Cleveland did an end run around Hill. He refused to nominate a third New Yorker to fill the vacancy then on the Court, and instead decided to nominate Senator Edward Douglass White from Louisiana to the Court. The nomination went through without a hitch because of senators' traditional willingness to defer to their colleagues' nominations. When Cleveland had another vacancy, he nominated a New Yorker and, thus, broke the hold of regions over particular seats on the Court.

Cleveland oversaw the enactment of several landmark pieces of legislation,<sup>150</sup> including the Interstate Commerce Act of 1887; the Dawes Severalty Act, which invested Indians with American citizenship; and a law elevating the Department of Agriculture to cabinet status. Although he contributed little of substance to these laws, they are among the most enduring laws enacted by the Congress.

Because Cleveland believed campaigning was beneath his dignity, he did not actively campaign in 1888, while Benjamin Harrison gave more than a hundred campaign speeches. Harrison won in the Electoral College, though he lost the popular vote to Cleveland.<sup>151</sup> Later, this contest would be singled out for its distinction as the last time before the Presidential election of 2000 in which the winner won the electoral vote but lost the popular vote.

In 1892, Cleveland ran against Harrison for the third time and won. In his second term, Cleveland became famous for his mishandling of the Pullman strike in 1894.<sup>152</sup> That strike would not have been of concern to the federal government but for the fact that the American Railway Union, responding to the strikers' appeal, refused to move trains carrying Pullman cars. Soon rail traffic west of Chicago became paralyzed. Cleveland asked his Attorney General, Richard Olney, to handle the matter. Olney, a former railroad lawyer, did. After consulting with railroad management, he sought and obtained an injunction from a federal court forbidding

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<sup>148</sup>JEFFERS, *supra* note 147, at 129 (noting that Cleveland "vow[ed] not to remove on partisan grounds anyone in the government service who was doing his job").

<sup>149</sup>See ABRAHAM, *supra* note 139, at 144-46.

<sup>150</sup>See RICHARD E. WELCH, JR., THE PRESIDENCIES OF GROVER CLEVELAND 90 (Donald R. McCoy et al. eds., 1988).

<sup>151</sup>GRAFF, *supra* note 146, at 94.

<sup>152</sup>*Id.* at 118; see also JEFFERS, *supra* note 147, at 293-309.

the strikers from interfering with the movement of the mail. But the strike continued. Olney arranged for army units to be sent to Chicago to enforce the injunction. Cleveland then ordered the troops into the city to preserve order. The governor of Illinois, John Peter Altgeld, a friend of a feisty lawyer named Clarence Darrow, resented Cleveland's order. He believed local and state authorities could handle the problem and sent a telegram to Cleveland denying his right to use troops without the Governor's consent. Cleveland's response was categorical: "I have neither transcended my authority nor duty . . . [I]n this hour of danger and public distress, discussion may well give way to active efforts on the part of all in authority to restore obedience to the law and to protect life and property."<sup>153</sup> Altgeld then threw all of his influence against the administration. The strike was broken after the strike's leader, Eugene Debs, ignored the injunction. The Supreme Court upheld Cleveland's executive action.<sup>154</sup> Cleveland's last act as President was to veto a bill excluding immigrants who could not read and write at least one language.

Cleveland left a few enduring marks on the Presidency aside from successfully reducing the extent of Senate and regional control over Supreme Court appointments and appointments in the executive branch. He is second only to Franklin Roosevelt for the most vetoes cast by a President.<sup>155</sup> Taken together, his predecessors vetoed a total of 205 bills, while Cleveland vetoed 414 bills in his first term alone. He succeeded in terminating the Tenure in Office Act, which had served as the basis for Johnson's impeachment and been a problem for Presidents ever since.<sup>156</sup> Cleveland also strengthened the Presidency during the 1885 border dispute between Venezuela and the British colony of Guiana when he personally supervised negotiations for a settlement with Great Britain.<sup>157</sup> Interestingly, before Cleveland's Presidency, then-political scientist Woodrow Wilson was convinced that congressional supremacy was the critical dynamic in the American system. After Cleveland's two terms, Wilson changed his mind. He praised Cleveland as the only President between 1865 and 1898 who "played a leading and decisive part in the quiet drama of our national life."<sup>158</sup>

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<sup>153</sup>Telegram to Governor John P. Altgeld (July 6, 1894), in *LETTERS OF GROVER CLEVELAND: 1850-1908*, at 361, 361-62 (Allan Nevins ed., 1933). *See generally* *LETTERS OF GROVER CLEVELAND: 1850-1908*, *supra*, at 357-62. *See also* H. WAYNE MORGAN, *FROM HAYES TO MCKINLEY: NATIONAL PARTY POLITICS 1877-1896*, at 471 (1969).

<sup>154</sup>*In re Debs*, 158 U.S. 564 (1895); *see also* JEFFERS, *supra* note 147, at 306.

<sup>155</sup>Mitchel A. Sollenberger, *Presidential Vetoes, 1789-Present: A Summary Overview 2-3* (Cong. Research Serv., CRS Report for Congress Order Code 98-148, April 7, 2004), *available at* [www.rules.house.gov/archives/98-148.pdf](http://www.rules.house.gov/archives/98-148.pdf).

<sup>156</sup>JEFFERS, *supra* note 147, at 193.

<sup>157</sup>President Cleveland had become convinced that the Monroe Doctrine was relevant to the border dispute and intervened accordingly for American interests. In doing so, he also increased public acceptance of the Monroe Doctrine as a principle of United States foreign policy. *See* WELCH, *supra* note 150, at 180-92.

<sup>158</sup>WOODROW WILSON, *CONSTITUTIONAL GOVERNMENT IN THE UNITED STATES* (1908), *reprinted in* *WOODROW WILSON: THE ESSENTIAL POLITICAL WRITINGS 177* (Ronald J. Pestritto ed., 2005).

## XV. BENJAMIN HARRISON

Benjamin Harrison was the last Civil War General to serve as President, but he was the first and to date the only grandson of a President (William Henry Harrison) to become President in his own right. In fact, he took the oath of office 48 years to the day after his grandfather had become President.

Benjamin Harrison graduated from Miami University in Ohio and studied law in Cincinnati. He then made the decision to commence his practice of law in Indianapolis. Because he was a war hero, he was constantly approached to run for office. For awhile he turned down the requests so he could build a lucrative law practice. He became a national symbol of Republican loyalty when, at the request of President Grant, he defended Union generals in a civil action arising out of the Supreme Court's 1866 decision in *Ex Parte Milligan*.<sup>159</sup> As that decision established, Lambin Milligan, a civilian, had been illegally tried and imprisoned by a military court, and now Milligan was suing for damages. Harrison's job was to limit them to the smallest amount possible. When the jury returned with a five-dollar reward, Harrison became an instant favorite of the Republican faithful.

Harrison turned down an offer to serve in Garfield's cabinet in order to serve as a United States Senator.<sup>160</sup> In the Senate, Harrison persistently attacked Cleveland's vetoes of veterans' pension bills. His popularity with veterans was to be a major factor in his election as President in 1888.<sup>161</sup> But Harrison lost his reelection bid to the Senate when the state's Democratically controlled legislature rejected his retention in office by a single vote.

Harrison was inaugurated in a rainstorm with Grover Cleveland holding an umbrella over his head while he read his inaugural address. The inaugural is distinctive for his call to end any special treatment of the South in civil rights or any other laws, his call that African-Americans be given the right to vote, and his lament at the proliferation of monopolies and trusts.<sup>162</sup>

Harrison put together a very competent and experienced cabinet, but at a cost: None of the eight cabinet secretaries had worked actively for his nomination, and their selection did not serve the traditional function of placating important party factions to build consensus for future policy.<sup>163</sup>

Harrison's appointments caused him trouble in another way. His Postmaster General removed half of the postmasters.<sup>164</sup> Unlike Cleveland, Harrison removed

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<sup>159</sup>*Ex Parte Milligan*, 71 U.S. (4 Wall.) 2 (1866); CHARLES W. CALHOUN, BENJAMIN HARRISON 27-28 (Arthur M. Schlesinger, Jr. ed., 2005).

<sup>160</sup>CALHOUN, *supra* note 159, at 37.

<sup>161</sup>Louis W. Koenig, *Benjamin Harrison*, in THE PRESIDENTS: A REFERENCE HISTORY, *supra* note 2, at 351, 352; PAM CORNELISON & TED YANAK, THE GREAT AMERICAN HISTORY FACT-FINDER: THE WHO, WHAT, WHERE, WHEN, AND WHY OF AMERICAN HISTORY 159-60 (2d ed. 2004).

<sup>162</sup>See Grover Cleveland, Inaugural Address, in, THE PRESIDENTS SPEAK, *supra* note 18, at 171, 177-89.

<sup>163</sup>See HOMER E. SOCOLOFSKY & ALLAN B. SPETTER, THE PRESIDENCY OF BENJAMIN HARRISON 28 (Donald R. McCoy et al. eds., 1987).

<sup>164</sup>NATHAN MILLER, THEODORE ROOSEVELT 208 (1992).

many officials before they had completed their four-year terms of office. Nor did his appointments placate congressional leaders from his own party. Harrison's penchant for appointing newspaper editors and publishers to diplomatic and other posts angered Senators who were aggrieved by some past journalistic expose or story.<sup>165</sup> And so the Senate, for example, rejected Harrison's nominee for ambassador to Germany, the distinguished Cincinnati editor Murat Halstead.<sup>166</sup> It was Harrison's first, but not last, defeat from his own party.

While Harrison spent considerable time at informal White House dinners with congressional leaders or other members of Congress whose support he needed, it did not help. He was hampered by divisions within his party over patronage appointments.<sup>167</sup> In the Senate, where Republicans had only a bare majority, a "silver bloc" of sixteen senators held the balance of power.<sup>168</sup> He needed their support to implement his party's platform, including civil rights for African-Americans. Things got worse after the mid-term elections, in which Republicans got hammered in both House and Senate races.

Congress hampered Harrison more than it helped. The only major piece of legislation enacted during Harrison's administration was the Sherman Anti-trust Act, though his Justice Department refused to enforce it. This might help to explain the antipathy towards Harrison expressed by a later Republican President who vigorously enforced the act. Teddy Roosevelt described Harrison as "a cold-blooded, narrow-minded, prejudiced, obstinate, timid old psalm-singing Indianapolis politician."<sup>169</sup> Contrary to this description, Harrison publicly protested the treatment of Jews in Czarist Russia in his Annual Message to Congress of December 9, 1891.

The election of 1892 was distinctive as the only Presidential contest in which the nominees from both parties had served as President. With his wife dying, Harrison devoted little attention to the race. Cleveland refused to campaign out of respect for Mrs. Harrison, who died in the middle of the contest. Thus, the race became distinctive as the last presidential contest in which neither of the major candidates campaigned.

#### XVI. WILLIAM MCKINLEY

The next President from Ohio, William McKinley, had the distinction of being the last Civil War veteran elected President. During the war, he had served on the staff of Major Rutherford B. Hayes, who supported McKinley's rise in Ohio politics.<sup>170</sup> (Ohio was home to six of the seven Republican Presidents elected between 1876 and 1920.)<sup>171</sup> McKinley distinguished himself as a champion of the

<sup>165</sup>See HARRY J. SIEVERS, BENJAMIN HARRISON 46-50 (1996).

<sup>166</sup>*Id.*

<sup>167</sup>See *id.* at 41-42.

<sup>168</sup>SOLOLOFSKY & SPETTER, *supra* note 163, at 57.

<sup>169</sup>See Catherine Clinton, *Benjamin Harrison, in "TO THE BEST OF MY ABILITY": THE AMERICAN PRESIDENTS*, *supra* note 133, at 168, 172.

<sup>170</sup>See KEVIN PHILLIPS, WILLIAM MCKINLEY 21-25 (Arthur M. Schlesinger, Jr. ed., 2003).

<sup>171</sup>Rutherford B. Hayes served as President from 1877-1881. FRANK FREIDEL, OUR COUNTRY'S PRESIDENTS 122 (Donald J. Crump et al. eds., 9th ed. 1981). He was followed by James Garfield, 1881. *Id.* at 126. Next from Ohio was Benjamin Harrison, 1889-1893, *id.* at

most powerful theme of the late nineteenth century Republican party—American nationalism. His major initiative in his first term was not to wave the “bloody shirt” of the Civil War or inveigh against Catholics, immigrants, and people who consumed alcohol.<sup>172</sup> He defended high tariffs as providing critical protection for America’s workingmen. The tariff issue helped to bind farmers and the rising middle class. The outcome in his re-election campaign in 1900 was the largest Republican victory since Grant’s in 1872.

The Spanish-American War helped to redefine the Presidency.<sup>173</sup> The White House clerical staff grew from six to eighty people to keep up with the paperwork. The President backed off protectionist policies to maintain support from around the world. In 1898, McKinley requested and received a Declaration of War against Spain. The declaration was made in response to the explosion of an American ship in the Havana harbor. It sank with a loss of 266 lives. The ship had been sent to reduce tensions with Spain, which Americans and others believed was trying to crush rebellion in Cuba against Spanish domination. Based on a report that the cause of the explosion was external (with Spanish agents possibly the cause), McKinley tried to avoid war with requests to arbitrate, but they did not work. McKinley eventually signed a treaty providing that Cuba should become independent and that Puerto Rico, Guam, and the Philippines should be ceded to the United States. The Americans also took control over Guantanamo Bay in Cuba. The Senate eventually ratified the treaty by a margin of one vote.<sup>174</sup>

What followed was extensive involvement of the McKinley administration with the governance of territories outside the continental United States.<sup>175</sup> One of McKinley’s most prominent actions was appointing William Howard Taft to lead the transition from military to civilian government in the Philippines. Taft turned down McKinley’s offer to appoint him to the Supreme Court in order to finish the job.

One of McKinley’s most important decisions came in 1900 when he chose a running mate (his first Vice-President had died in office).<sup>176</sup> Over the objection of his political adviser, Mark Hanna, McKinley chose Teddy Roosevelt, who had become Governor of New York based on his popularity as a leader of the Rough Riders in the Spanish-American War. Hanna was not happy with the choice of Roosevelt, because “only ‘one heartbeat’ would separate ‘that damned cowboy’ from

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140, and William McKinley, 1897-1901, *id.* at 145. William Howard Taft, also born in Ohio, was the nation’s twenty-seventh President, 1909-1913. *Id.* at 161. Elected in 1920, Warren Harding served from 1921-1923. *Id.* at 175. The only republican elected in these years not from Ohio, was Theodore Roosevelt, 1901-1909, from New York. *Id.* at 153.

<sup>172</sup>ANDREW GUMBEL, STEAL THIS VOTE: DIRTY ELECTIONS AND THE ROTTEN HISTORY OF DEMOCRACY IN AMERICA 124 (2005); Morton Keller, *William McKinley*, in “TO THE BEST OF MY ABILITY”: THE AMERICAN PRESIDENTS, *supra* note 133, at 174.

<sup>173</sup>See Keller, *supra* note 172, at 174, 177.

<sup>174</sup>See LEWIS L. GOULD, THE PRESIDENCY OF WILLIAM MCKINLEY 149-50 (Donald R. McCoy, et al. eds., 1980).

<sup>175</sup>See PHILLIPS, *supra* note 170, at 107-8; Paul W. Glad, *William McKinley*, in THE PRESIDENTS: A REFERENCE HISTORY, *supra* note 2, at 365, 378-80.

<sup>176</sup>See PHILLIPS, *supra* note 170, at 120-22.

the White House.”<sup>177</sup> After McKinley easily won his party’s nomination to run again for the Presidency, Hanna warned McKinley, “[Y]our *duty* . . . is to *live for four* years from next March.”<sup>178</sup>

Immediately after his second inauguration, McKinley took an extensive tour of the western States. He planned to return to the White House after delivering an address at the Pan-American Exposition in Buffalo on September 5. The speech was his last. He was fatally wounded when an anarchist, who had come to the exhibition for the sole purpose of killing McKinley, shot him twice.<sup>179</sup>

#### XVII. WILLIAM HOWARD TAFT

William Howard Taft never wanted to be President. His life’s ambition was to be a judge, preferably on the Supreme Court.<sup>180</sup> But his wife wanted him to be President, and Taft did what he could to please her. He accepted a series of important political appointments, culminating in his serving as Teddy Roosevelt’s Secretary of War and Roosevelt’s self-appointed successor.

While Teddy Roosevelt wanted to make the Presidency the most important branch and interpreted its powers broadly, Taft narrowly construed its powers. Taft wanted to keep the branches in equilibrium and limit government in order to give personal and property rights free rein. He declared that he would not act unless he found the power to do so in the Constitution or in a law and believed “[t]here is no undefined residuum of power which [a President] can exercise because it seems to him to be in the public interest.”<sup>181</sup> In contrast, Roosevelt believed a President was empowered to act unless the Constitution clearly barred him from acting. These differences did not bode well for their future relationship.

As President, Taft, did not use government as an agency to relieve the misery of the masses. He never intervened to settle a labor strike. He relied upon southern whites to solve the problems African-Americans were experiencing, and he opposed women’s suffrage.

Yet, Taft implemented a number of reforms to make government more efficient. He persuaded Congress to enact an income tax to raise revenue, sought reform of the tariff and the banking systems, tried to exert greater control than did Roosevelt over big business in order to improve competition, and oversaw an expansion of conservation of natural resources.<sup>182</sup>

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<sup>177</sup>Glad, *supra* note 175, at 381.

<sup>178</sup>Letter from Marcus Hanna, Senator from Ohio, United States Senate, to William McKinley, President, United States of America (June 25, 1900) (on file in the Library of Congress, Manuscripts Division, Washington, D.C.), *quoted in* H. WAYNE MORGAN, WILLIAM MCKINLEY AND HIS AMERICA 381 (Kent State Univ. Press rev. ed. 2003) (1963).

<sup>179</sup>*See* ERIC RAUCHWAY, MURDERING MCKINLEY: THE MAKING OF THEODORE ROOSEVELT’S AMERICA 14-20 (2003).

<sup>180</sup>*See* DAVID H. BURTON, WILLIAM HOWARD TAFT: CONFIDENT PEACEMAKER 13 (2004).

<sup>181</sup>WILLIAM HOWARD TAFT, OUR CHIEF MAGISTRATE AND HIS POWERS 140 (H. Jefferson Powell ed., Carolina Academic Press 2002) (1916).

<sup>182</sup>*See* Paolo E. Coletta, *William Howard Taft*, in THE PRESIDENTS: A REFERENCE HISTORY, *supra* note 2, at 413, 414-17.

In addition to their contrary conceptions of the Presidency, the split with Roosevelt turned on several different issues. The first was Taft's failure to keep Roosevelt's cabinet intact.<sup>183</sup> Of Taft's nine cabinet secretaries, seven studied law, five were corporate lawyers, none was a progressive reformer, and only three had served Roosevelt. In a major scandal, a Teddy Roosevelt loyalist, Gifford Pinchot, the nation's chief forester, charged the Interior Secretary Richard Ballinger with improperly disposing of some Alaskan coal fields. Taft responded to Pinchot's insubordination (Ballinger was his superior) by firing Pinchot.<sup>184</sup>

By June 1910, differences over reform widened the division between Taft and Roosevelt.<sup>185</sup> Taft was enacting more reforms in four years than Roosevelt had in seven. Taft's reforms included more power for the Tariff Commission, a limit on the use of labor injunctions, a post-savings bank, the parcel post, federal budget systems (including elaborate plans for a balanced budget), streamlining the postal office to put it on a pay as you go basis, and creating the United States Court of Commerce. Congress rejected his budget plans, leaving the United States then as the only important nation in the world without a federal budget.

The final break between Taft and Roosevelt occurred in 1911, when Attorney General George W. Wickersham filed an antitrust suit against U.S. Steel. The Taft administration had already filed successful suits against American Tobacco and Standard Oil, but the suit against U.S. Steel was different because Roosevelt had personally consented (in 1907) to the trust's formation. Therefore, the suit implied that [Roosevelt] had approved an illegal monopoly.<sup>186</sup>

Taft eventually lost the Presidency in a three-way race in 1912. For a President who believed he only had the powers expressly given to him by the Constitution, Taft had a surprising number of accomplishments. These included the first tariff revision since 1897, the placing of conservation on a legal basis, improvement of railroad regulation, an antitrust crusade, the building of most of the Panama Canal, adding two new amendments to the Constitution, developing a responsible federal budget, and peacefully settling several international disputes.

Taft's most bittersweet accomplishment was making six appointments to the Supreme Court—the most ever made by a President in a single term. Taft took these and other judicial appointments quite seriously. He put a premium on a nominee's commitment to protecting private property rights and narrowly construing congressional powers. When Taft offered the chief justiceship to then-Justice Edward Douglass White, Taft lamented that he was offering White the one job he coveted the most.<sup>187</sup> Nine years later, Taft would realize his life's dream to become

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<sup>183</sup>See DAVID H. BURTON, *WILLIAM HOWARD TAFT: IN THE PUBLIC SERVICE* 59-60 (1986).

<sup>184</sup>See PAOLO E. COLETTA, *THE PRESIDENCY OF WILLIAM HOWARD TAFT* 84-94 (Donald R. McCoy et al. eds., 1973).

<sup>185</sup>See Coletta, *supra* note 182, at 420.

<sup>186</sup>Mark C. Carnes, *William Howard Taft*, in "TO THE BEST OF MY ABILITY": THE AMERICAN PRESIDENTS, *supra* note 133, at 188, 192-93; *see also* *United States v. U.S. Steel Corp.*, 251 U.S. 417 (1920); COLETTA, *supra* note 184, at 159-60.

<sup>187</sup>JUDITH ICKE ANDERSON, *WILLIAM HOWARD TAFT: AN INTIMATE HISTORY* 191 (1981).

Chief Justice of the United States after lobbying the next Ohioan elected to the Presidency, Warren Harding.

#### XVIII. WARREN G. HARDING

Warren Harding was the eighth and, to date, the last Ohioan elected President. His opponent in the 1920 Presidential election was Ohio Governor James Cox, so the winner was guaranteed to be a man from Ohio. Harding is the only Senator, besides Jack Kennedy, to have been elected President directly from the Senate during the 20th century.

Harding campaigned as the opposite of Woodrow Wilson. Wilson was patrician, and Harding was not. Wilson was a public intellectual and arrogant, and Harding was neither. Wilson was progressive, and Harding was not. Harding won the election by what was then the largest popular majority in American Presidential history.

Most of what people know about Harding are the scandals that consumed his Presidency.<sup>188</sup> Yet, these do not tell the full story of his shortened Presidency. He made a number of excellent appointments to his cabinet,<sup>189</sup> including Charles Evans Hughes as Secretary of State and Herbert Hoover as Commerce Secretary. But, not all of his appointments worked out as intended. His appointment of his campaign manager, Henry Daughery, as Attorney General was a disaster that would eventually damage Harding's legacy.

Harding took Supreme Court appointments no less seriously than Taft did. After securing Harding's nomination as Chief Justice, Taft advised Harding on his three other appointments, including Senator George Sutherland as an Associate Justice.<sup>190</sup> Harding also allowed Taft, as Chief Justice, to provide consistent counsel on appointments that he made both to the Supreme Court and to the lower courts.<sup>191</sup>

Harding ducked the League of Nations controversy, which had consumed Wilson; but he gave qualified support to United States' entry into the World Court.<sup>192</sup> He supported Hughes's plan for international naval disarmament.<sup>193</sup> On the domestic front, he persuaded Congress to adopt unified federal budget-making.<sup>194</sup> On a personal and humane note, he surprised many people when he pardoned Eugene

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<sup>188</sup>See, e.g., Robert K. Murray, *Warren G. Harding*, in *THE PRESIDENTS: A REFERENCE HISTORY*, *supra* note 2, at 465, 476-77 (expounding on the Veterans Bureau Scandal, Teapot Dome Scandal, the Alien Property Custodial Scandal, and the posthumous effect on Harding's reputation); see also ROBERT H. FERRELL, *PRESIDENTIAL LEADERSHIP: FROM WOODROW WILSON TO HARRY S. TRUMAN* 25-63 (2006).

<sup>189</sup>See Morton Keller, *Warren G. Harding*, in "TO THE BEST OF MY ABILITY": *THE AMERICAN PRESIDENTS*, *supra* note 133, at 206, 208 ("[Harding] filled his cabinet with some of the best minds of the day: Charles Evans Hughes at State, Herbert Hoover at Commerce, Henry C. Wallace . . . at Agriculture, and, more questionably, Andrew Mellon at Treasury.").

<sup>190</sup>See ABRAHAM, *supra* note 139, at 186-87.

<sup>191</sup>See JOHN W. DEAN, *WARREN G. HARDING* 122 (Arthur M. Schlesinger, Jr. ed., 2004).

<sup>192</sup>See ROBERT K. MURRAY, *THE HARDING ERA* 368-73 (1969).

<sup>193</sup>*Id.* at 152-53.

<sup>194</sup>*Id.* at 173-74.

Debs, the Socialist Party leader who had been imprisoned under the 1917 Espionage Act for opposing American involvement in World War I. Upon his release from prison, Debs accepted Harding's invitation to visit him at the White House.<sup>195</sup>

Harding died shortly after being informed of impending scandals in his administration. His death has left unanswered the extent of his responsibility for the scandals that became the first piece of business for his successor, Calvin Coolidge.

#### XIX. CALVIN COOLIDGE

Calvin Coolidge may be most famous for his wry sense of humor and for his general reticence. In one exchange, a woman sitting next to him at a state dinner said, "I made a bet today that I could get more than two words out of you." "You lose," he responded.<sup>196</sup> A biting and memorable remark made about him came from Dorothy Parker, who said, upon being told Coolidge had died, "How can they tell?"<sup>197</sup>

For a man of few words, Coolidge tried to do a lot for both Presidential power and the Constitution. He continued Harding's practice of regular press conferences.<sup>198</sup> Perhaps his greatest achievement was his handling of the Teapot Dome scandal he had inherited from Harding.<sup>199</sup> Senate investigations indicated that oil magnates had bribed the Interior Secretary, Albert Fall, in order to gain leasing rights to the government's Teapot Dome oil reserve in Wyoming and the Elk Hills Reserve in California. Almost immediately upon taking office, Coolidge appointed two individuals as special counsel, one a Democrat, Atlee Pomerene, and the other a Republican named Owen Roberts. His timing was impeccable, because the Senate was on the verge of taking more extreme action. The appointees were perfect, for they had all the professional experience necessary to conduct a responsible, fair, and thorough investigation. It would also meet Coolidge's clear directive to let the chips fall where they may.

In 1925, Coolidge nominated then-Attorney General Harlan Fiske Stone to the Supreme Court.<sup>200</sup> Coolidge had replaced Daugherty with Stone, whom he had known since they were classmates at Amherst College. As Attorney General, Stone had won nearly universal respect for restoring integrity to the Justice Department. Nevertheless, he became the first Court nominee to personally appear before the Senate Judiciary Committee to respond to complaints leveled against him for allowing an investigation and prosecution of a Montana Senator. Stone deftly answered the questions and was swiftly and overwhelmingly confirmed.

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<sup>195</sup>See DEAN, *supra* note 191, at 128.

<sup>196</sup>PAUL F. BOLLER, JR., *PRESIDENTIAL ANECDOTES* 241 (rev. ed. 1996) (1981).

<sup>197</sup>*Id.* at 235.

<sup>198</sup>See ROBERT SOBEL, *COOLIDGE: AN AMERICAN ENIGMA* 239 (1998) ("[Coolidge] met with the press, telling the reporters he intended to continue Harding's practice of twice weekly press conferences.").

<sup>199</sup>See ROBERT H. FERRELL, *THE PRESIDENCY OF CALVIN COOLIDGE* 43-48 (Homer E. Socolofsky ed., 1998).

<sup>200</sup>See *id.* at 79.

Coolidge's calm under fire helped him win the Presidency in his own right in 1924. In fact, he entered his second term with a larger majority in Congress than he had inherited.

In spite of his popularity and his party's control of Congress, Coolidge ran into trouble early in his second term. The Senate rejected his nomination of Charles Beecher Warren to become Attorney General (to replace Stone).<sup>201</sup> Warren's rejection was the first time in the 20th century that the Senate had rejected a cabinet nominee. Indeed, it was the first time since 1868. But Coolidge re-nominated him. Again, the Senate rejected him. When Coolidge offered to nominate him a third time, Warren declined.

Part of the legacy of Coolidge can be found in the enormous success of people who had worked closely with him. Some of those successful individuals include the following: Hughes and Stone, both of whom would become Chief Justice; Owen Roberts, whom Hoover would nominate to the Court; Vice-President Charles Dawes, who would receive the Nobel Peace Prize for his drafting of the Dawes Plan of 1924 that temporarily solved an international crisis by reducing German reparations payments and stabilizing Germany's shaky economy; Hoover, who would become President; Frank Kellogg, his Secretary of State, who won a Nobel Peace Prize for drafting the Kellogg-Briand Act of 1928 that purported to outlaw war "as an instrument of national policy";<sup>202</sup> and Hubert Work, Coolidge's Presidential Secretary and Interior Secretary, who would become President of the National Republican Party.

## XX. HERBERT HOOVER

Herbert Hoover might be remembered primarily as the President on whose watch the Great Depression occurred and who lost to Franklin D. Roosevelt in the first of his four successful runs for the Presidency. Yet, Hoover had a reputation as a reformer at the time he first ran for the Presidency in 1928.<sup>203</sup> He had received international acclaim for his efforts to relieve famine abroad.

Hoover's approach to judicial appointments provoked some praise and a lot of criticism from members of his own party. When he first became President, he pledged to not allow senators to dominate the selection process for partisan or personal gain. Republican senators were displeased with the slight, and many of his lower court nominations and nearly all his Supreme Court appointments met resistance in the Senate. In nominating progressives Charles Evans Hughes as Chief Justice and Benjamin Cardozo as an Associate Justice, Hoover further displeased conservatives within his party. (Indeed, as Taft's health failed and he foresaw the likelihood that Hoover would appoint his successor, he grew increasingly despondent.) Hoover also nominated John Parker of the Fourth Circuit to the Court. This became the first Supreme Court nomination rejected in the 20th century after civil rights and labor groups mounted successful campaigns against the nomination.

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<sup>201</sup>See GERHARDT, *supra* note 46, at 164-65; *see also* SOBEL, *supra* note 198, at 321-23.

<sup>202</sup>Treaty for the Renunciation of War as an Instrument of National Policy, Aug. 27, 1928, 46 Stat. 2343, 94 L.N.T.S. 57 (Kellogg-Briand Peace Pact or Pact of Paris).

<sup>203</sup>See YANEK MIECZKOWSKI, *THE ROUTLEDGE HISTORICAL ATLAS OF PRESIDENTIAL ELECTIONS* 96 (Mark C. Carnes ed., 2001).

His subsequent nomination of Owen Roberts was far less controversial but did little or nothing to heal the rifts within the party.

Hoover's difficulties with his own party included his ill-fated efforts to thwart the National depression. His increase in loans through Federal Reserve banks and efforts to stimulate economic expansion with increased federal spending—some \$19 million on internal improvements—were bold steps when compared to earlier Presidential responses to economic downturns. Moreover, the Reconstruction Finance Corporation (hereinafter RFC), which he pushed through Congress in 1932, was a significant attempt to stimulate business by infusing \$2 billion into the economy.<sup>204</sup> The RFC funded loans to banks, railroads, agricultural credit corporations, and land banks.

Hoover compounded problems by continually promising economic reversals that never came<sup>205</sup> and, especially, by ordering federal troops under General Douglas MacArthur to remove World War I veterans from Washington's Anacostia Flats (where they had gathered to ask for early payments of bonuses due to them).<sup>206</sup> Hoover lost further public support with his tough response to the 1932 Bonus March.<sup>207</sup> If this were not enough, he offered no meaningful initiatives to deal with outbreaks of military hostilities abroad.

Hoover's lasting mark on the Presidency may be what he did after he was trounced by Roosevelt in the 1932 Presidential election. After the defeat, Hoover began a 31-year post-Presidential career.<sup>208</sup> He preached both conservation and philanthropy. In the late 1940's, he served at President Truman's request on a fact-finding international relief trip and then as Chairman of the Commission on Organization of the Executive Branch of the Government. Many of his recommendations on saving money were adopted. He chaired a similar commission under President Eisenhower. One example of his improved status was the renaming of the Boulder Dam, which was begun during his administration, as the Hoover Dam in 1947.

## XXI. CONCLUSION

There is, of course, a good deal more that could be said about each of the Presidents I have discussed and their respective impact on constitutional practices. My hope is that, at the very least, I have been able to illustrate how some Presidents made a constitutional difference, even Presidents whom we dismiss as failures or worse. The forgotten Presidents made decisions that have shaped constitutional practices pertaining to Presidential succession, executive privilege, the Supreme Court's direction and composition, the regulation of federal territories, the conditions

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<sup>204</sup>See MARTIN L. FAUSOLD, *THE PRESIDENCY OF HERBERT C. HOOVER* 154 (Donald R. McCoy et al. eds., 1985).

<sup>205</sup>Robert Dallak, *Herbert Hoover*, in "TO THE BEST OF MY ABILITY": THE AMERICAN PRESIDENTS, *supra* note 133, at 218, 221.

<sup>206</sup>See HARRIS GAYLORD WARREN, *HERBERT HOOVER AND THE GREAT DEPRESSION* 231-37 (1959); FAUSOLD, *supra* note 204, at 199-203.

<sup>207</sup>See FAUSOLD, *supra* note 204, at 199-203.

<sup>208</sup>See generally GARY DEAN BEST, *HERBERT HOOVER: THE POSTPRESIDENTIAL YEARS 1933-1964* (1983).

for statehood, the scope of the House's impeachment authority, censure, the size and responsibility of the national government, and the balance of power between the President and the Congress on appointments, treaties, and other international agreements. The Constitution does not merely depend on the Court, the "great" Presidents, or the Supreme Court for its construction and implementation; it depends, at the very least, on the contributions of all of our leaders, including the forgotten Presidents.