

Limiting Terms, Not Limiting the Executive Branch

Rachel Star

When the Framers drafted the 1787 Constitution, argument and controversy surrounded almost every issue except the election of George Washington as the first President of the United States. Washington was a great leader, so great that he was asked by Hamilton to become king and serve for life. However, after he served as president for eight years—two terms—Washington decided not to run again. In his Farewell Address published in 1796, he stated, “The disorders and miseries which result [in any country] gradually incline the minds of men to seek security and repose in the absolute power of an individual; and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of public liberty.”¹ In that address, Washington implicitly set the precedent for an unofficial two-term limit on all presidents to come. That precedent, often referred to as an unwritten rule, would not be broken for nearly 145 years, until the presidency of Franklin D. Roosevelt.

In 1941, Franklin Roosevelt became the first American president to be elected for a third term and thus the first to break with the two-term tradition begun by Washington. While he was extremely popular and was even re-elected in 1944 for a fourth term, his blatant disregard of the boundaries established by all his predecessors was a significant change. Like any change, it incited a backlash. The backlash came in the form of the 22nd Amendment, which converted the two-term limit from mere tradition into a formal part of the U.S. Constitution. The amendment reads, “No person shall be elected to the office of the President more than twice.”² The amendment was recommended by the Commission on Organization of the Executive Branch, also known

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as the Hoover Commission. At the urging of the Commission, the amendment was passed by Congress on March 21, 1947, and ratified by the requisite number of states on February 27, 1951.

There is little debate among historians about the original goal of the 22nd Amendment. The *de jure* goal, in terms of the law, was to limit a president to only two terms of office. While that goal is clearly reflected in the text of the amendment, the underlying objective sought by the Hoover Commission was to prevent any future administration from wielding the power and influence of the Roosevelt administration. In attempting to counteract the Roosevelt administration's elevation of the executive branch, the true, *de facto* goal of the 22nd Amendment was to weaken the power of the executive branch.

The amendment has clearly succeeded in its original mission of limiting presidents to two terms. Additionally, it has prevented subsequent politicians from amassing the influence and public dependence that Roosevelt did during the Great Depression and the Second World War. However, this is where historians disagree. While some argue that the amendment causes the president to lose influence and power during his or her second term, thereby weakening the effectiveness of the executive branch, not all agree. The amendment serves as a source of strength to the executive branch as a whole because it distributes and balances the power within the branch, which provides for greater continuity and allows for greater trust and stability.

Backlash

Franklin D. Roosevelt was the first and only person to serve as president for more than two terms. He held office from 1933 to 1945—a total of 12 years. Looking back on history, we know that Roosevelt never became a tyrannical dictator. However, at the time, some feared that Roosevelt was trying to strengthen the power of the executive branch in order to take complete control of the government. That prospect scared many people, especially the Republicans who disapproved of Roosevelt's liberal policies. They may have had reason to be concerned.

During his extended presidency, Franklin D. Roosevelt used loose construction of the Constitution and circumvention of the other branches to greatly expand the power and influence of the executive branch. Bruce Schulman discusses this in *LBJ and American Liberalism*, arguing that Roosevelt “made [the executive branch] the fountainhead and uncontested leader of American politics and policy making... [T]he major powers and responsibilities of American governance, foreign and domestic, lay in the White House and the executive agencies FDR had created.”³ Overwhelming evidence from Roosevelt’s direct actions while in office backs that viewpoint.

Roosevelt’s Lend-Lease Program gave the executive branch sole power over the nation’s weapons supply and exports. In order to conceal the United States’ entry into the Second World War, Roosevelt established a program—proposed in January of 1941 and passed by Congress in March—with Britain, and later the Soviet Union, so that the United States could lend arms, claiming that the arms would be returned once the war was over. In response, Senator Burton Wheeler published an article in 1941 bashing both Lend-Lease and Roosevelt. Wheeler argued that Lend-Lease (or as he liked to term it, “Lend-Lease-Give”) “gives to the President unlimited power to completely strip our air force of its every bomber, of its every fighting plane. It gives to one man—responsible to no one—the power to denude our shores of every warship.”⁴ Lend-Lease was a direct increase in executive power.

Similarly, Roosevelt attempted to increase the power of the executive branch with the introduction of the Judiciary Reorganization Bill of 1937, which would have allowed him and his cabinet to control the Supreme Court. Often known as court packing, the Judiciary Reorganization Bill of 1937 was just that—Roosevelt’s attempt to pack the courts with people who agreed with his values and policies. The bill’s main provisions would have granted Roosevelt the power to appoint several new justices to the Supreme Court. As historian Marian C. McKenna states in *Franklin Roosevelt and the Great Constitutional War: The Court Packing Crisis of 1937*, “Roosevelt failed to recognize or appreciate the power or reputation of the [Supreme Court] he attacked

and the institutional nature of the American system of government, with its built-in balance of power system.”⁵ Although the bill was not passed, it threatened the Supreme Court enough so that its members became much more conciliatory towards Roosevelt in their subsequent decisions.

Roosevelt openly attacked the upper class, most of which was composed of influential, wealthy, white Republicans. Because of this, many Republicans suffered at the hands of his New Deal programs during his lengthy presidency and wanted to ensure that nothing of the sort ever happened again. The Hoover Commission, which recommended the amendment, included many prominent Republicans. By the time the amendment was proposed, the Republicans had taken majority control in both chambers of Congress. The Republicans tried to protect their party from a repeat of the dominant Democratic force displayed by the Roosevelt administration. By passing the 22nd Amendment, even if another powerful president were to be elected, he or she could not wield the same amount of power and influence that Roosevelt had wielded. While the goal of the 22nd Amendment was very specific, the effects were extensive: the ratification of the amendment had both intended and unintended consequences.

Unintended Consequences

During a president’s second term, the fact that he or she cannot be re-elected weakens the executive branch by decreasing its influence and effectiveness within the federal government. This is one of the main arguments of present-day politicians who advocate for the repeal of the 22nd Amendment. A *New York Times* op-ed piece discussed this effect under the name of “second termites” and blamed the amendment for Nixon’s Watergate scandal and Clinton’s shenanigans with Monica Lewinsky.⁶ While that view might be extreme, there are reasonable arguments for how the two-term limit decreases the influence and motivation of the executive branch.

A common view is that the 22nd Amendment weakens the executive branch because it forces a president in his or her second term to

become a lame duck. In *The American Presidency*, Clinton Rossiter claims that “the real logic of the Twenty-second Amendment is, then, that it helps to shift the balance of power away from the executive and back towards the legislature.”⁷ Rossiter suggests that because the public looks directly towards the president for leadership, the weakening of the position leads to a weakening of the entire branch.⁸ Representative Steny Hoyer took a similar stance in his “Introduction of Bipartisan Bill to Repeal 22nd Amendment” speech. In that speech, Hoyer also discusses the concept of a “lame duck” president. He argues that “a ‘lame duck’ president serving in his second term is less effective dealing with the Congress and the bureaucracy than a president should be.”⁹ Furthermore, he claims that in their second terms, presidents become subordinate to the powers of Congress and lose much of their political sway.¹⁰ This not only shows a decrease in the power of the president as the head of the executive branch, but also suggests that the executive branch is no longer of equal power to the legislative branch.

In addition to becoming a lame duck, historians note that presidents and their administrations may become distracted during the second term, focusing on building a future legacy, rather than on effective governing. In his book, *Giving Up on Democracy*, Victor Kamber argues just this point about distractions in the second term.¹¹ He says, “Presidents also start thinking about their place in history...[I]t often translates into a distracted executive who is busy making retirement plans and establishing his presidential library.”¹² It stands to reason that a branch headed by a distracted leader would be less effective and weaker.

Furthermore, some argue that placing a restrictive expiration date on the presidency causes presidents to be plagued by a loss of motivation. In *Federalist No. 72*, Alexander Hamilton suggested that an administration restricted by term limits would be less likely to undertake larger projects, because the time constraints might mean that they would not be able to finish carrying out longer-term plans.¹³ He discussed his opinion that self-preservation is often stronger than the desire to serve one’s country when he says,

If [a president] could flatter himself with the prospect of being allowed to finish what he had begun, the love of fame...would, on the contrary, deter him from the undertaking, when he foresaw that he must quit the scene before he could accomplish the work, and must commit that, together with his own reputation, to hands which might be unequal or unfriendly to the task.¹⁴

The term limits imposed by the 22nd Amendment can hurt a president's motivation, in much the same way that these limits create a weak lame duck and a distracted, ineffective leader. This in turn weakens the executive branch, because both the public and the rest of the branch look towards the president for leadership—and weak leadership leads to a weaker branch. However, in addition to these effects there are other unforeseen counteracting forces that serve to strengthen the power of the executive branch.

Protecting the Nature of the Republic

When the 22nd Amendment was being written, the Hoover Commission seemed focused on the proximate effects of the amendment. In other words, they designed the amendment to protect Republicans against another dominant Democratic force exerting prolonged power over the government. But in reality the amendment protects the entire Republic from the abuses of a potential monarchy or dictatorship. By providing this ultimate protection of the Republic, the amendment actually serves to strengthen the executive branch, rather than to weaken it as the Republicans hoped.

When the Framers wrote the Constitution, they had specific reasons for creating terms of office [not the same as term *limits*] and democratic elections: they did not want to establish a monarchy such as existed in England. In Thomas Jefferson's letter to Edmund Pendleton, he explained, "My reason for fixing [members of government] in office for a term of years rather than for life, was that they might have in idea that they were at a certain period to return into the mass of the people & become the governed instead of the governor which might still keep alive that regard to the public good that otherwise they might perhaps be induced by their independence to forget."¹⁵ Later, in a letter to Isaac

Weaver, he argues that, “If some period be not fixed, either by the Constitution or by practice, to the services of the First Magistrate, his office, though nominally elective, will, in fact, be for life; and that will soon degenerate into an inheritance.”¹⁶ In those two letters, Jefferson demonstrates how term limits remind a president of the republican ideals and keep one man from becoming all-powerful. Jefferson understood that if a tyrannical president gained power, the executive branch as a whole would suffer because all of its power would be concentrated in one place. That concentration of power would actually undermine the system of checks and balances and cause instability within the entire executive branch.

The fear of Roosevelt becoming too powerful was clearly illustrated in a campaign button used by supporters of Wendell Willkie in the 1940 presidential election against Franklin D. Roosevelt: the election for Roosevelt’s third term. The text of the button reads “No Third Internationale, Third Reich, Third Term.” (See appendix.) Willkie and his followers believed that a president serving for more than two terms would become a dictator, which would lead to the suppression of civil rights and the demise of the Republic. Thus the aim of Willkie’s campaign was to paint Roosevelt as both a dictator and a suppressor of civil rights. In order to do this, the campaign drew parallels with dictatorial Germany under the Third Reich and the Third International under Stalin. Those parallels suggested that term limits could serve to strengthen the executive branch because they protect the distribution of powers within the executive branch. The Wilkie campaign implied that a monarch or dictator would negate the complicated structure of advisors and cabinet members that a current-day president has. The decision-making power could be concentrated in one man alone, and that one man could usurp the power of his peers—the rest of the executive branch. This button suggests that without term limits all of the power would be concentrated in one figure, the president, thus severely weakening the branch as a whole.

Vice Presidents

The term limits imposed by the 22nd Amendment have also had the effect of elevating the status of the vice president. In his book, *America’s*

Constitution: A Biography, Akhil Reed Amar claims that by limiting the number of terms allowed to a single president, the amendment forces second-term presidents to choose more competent vice-presidents as their own handpicked successors to carry on their legacy.¹⁷ Thus, the 22nd Amendment greatly increases the influence and status of the vice president. He argues:

*Indeed, since the adoption of the Two Term Amendment, America has witnessed a remarkable rise in the status of her vice presidents...Along this dimension, it would seem that the Amendment has been a remarkable success, prompting presidents to pick stronger VPs and encouraging the republic to avoid thinking of any one man as utterly indispensable.*¹⁸

This theory is supported by the drastic increase in the number of vice presidents who have headed their party's ticket in a subsequent election since the ratification of the 22nd Amendment. In the ten administrations prior to the amendment, only two vice presidents were powerful and popular enough to win the nomination of their party: Teddy Roosevelt and Harry Truman. However, since the 22nd Amendment, six out of ten vice presidents have gone on to head their party's ticket in a subsequent election: Lyndon Johnson, Hubert Humphrey, Richard Nixon, Gerald Ford, George H. W. Bush, and Al Gore.

While the vice president is only a single individual within the executive branch, the increase in his or her status enhances the overall power of the executive branch. This is because strengthening the vice president adds a second competent leader to the branch, translating into more brainpower, energy, and stability. It not only increases the number of powerful politicians in the branch but also causes the power within the executive branch to be more evenly distributed. In addition, having a more powerful and competent vice president counters the common public image that the executive branch depends solely on the power of the president, thus increasing the public's trust in the branch overall.

Nixon and Reagan: Examples in Practice

While it is difficult to prove that the 22nd Amendment has actually strengthened the power of the executive branch, many historical examples support that view. In particular, both the Nixon and Reagan administrations demonstrated extensive power in the executive branch. President Nixon transformed the executive branch into an even more powerful force in the federal government in order to protect the country from its enemies. Additionally, President Reagan's executive branch demonstrated increased power by enforcing his own opinions on the budget.

Arthur M. Schlesinger, Jr. discusses the especially powerful executive branch under presidents Nixon and Reagan in his book, *The Imperial Presidency*. Schlesinger observes that after the Korean War, "the executive branch...continued, it seemed inexorably, to accumulate power at the expense of Congress."¹⁹ That viewpoint is supported by the actions of both presidents and their administrations during their time in office.

In 1971, the Symington Committee discovered Nixon's covert operations in Laos. According to Schlesinger, "the executive branch had led Congress to believe that American bombing over Laos was directed against the North Vietnamese troops passing along the Ho Chi Minh trails in southeastern Laos...[T]he executive branch had been waging a separate and secret war in support of the Vientiane government."²⁰ In that instance, the executive demonstrated an increase in power and influence by bypassing Congress and carrying out his own plans secretly. President Reagan displayed his power and influence by consistently rejecting advice regarding the fiscal budget. Despite economic turmoil and severe budget gaps, Reagan repeatedly refused to change his plans and said that he would "stay the course." In his "Message to the Congress Transmitting the Fiscal Year 1983 Budget," he said, "Our task is to persevere; to stay the course; to shun retreat; to weather the temporary dislocations and pressures that must inevitably accompany the restoration of national economic, fiscal, and military health," despite many recommendations for specific contrary action.²¹

Conclusion

The initial goal of the 22nd Amendment was to prevent another period of prolonged Democratic control by weakening the power of the executive branch. However, that goal has not been achieved. In fact, the executive branch has been strengthened by the limits imposed by the amendment—both in theory and in practice. The amendment changed the Constitution by limiting the president to only two terms, but also changed the balance of powers in the federal government—and thus effectively altered the fundamental structure of our government. ●

Appendix



Source: “No Third Internationale, Third Reich, Third Term.”
New Hampshire Political Library Digital Archives.
<http://collections.politicallibrary.org/> (accessed December 6, 2009).

Notes

1. George Washington, "Farewell Address, 1796" (Published in *American Daily Advertiser*, September 26, 1796), Institute for American Liberty, <http://www.liberty1.org/farewell.htm> (accessed March 6, 2010).
2. "The Constitution of the United States," Amendment 22.
3. Bruce Schulman, *Lyndon B. Johnson and American Liberalism* (Boston: Bedford/ St. Martin's, 2007), 14.
4. Burton K. Wheeler, "The Menace of Lend-Lease" (speech, Washington, D.C., January 6, 1941) *Annals of American History*, <http://america.eb.com/america/print?articleId=387091>, (accessed March 6, 2010).
5. Marian C. McKenna, *Franklin Roosevelt and the Great Constitutional War: The Court-Packing Crisis of 1937* (New York: Fordham University Press, 2002), xxiv.
6. James MacGregor Burns and Susan Dunn, "No More Second-Term Blues," *New York Times*, January 5, 2006, Op-Ed.
7. Clinton Rossiter, *The American Presidency* (New York: The New American Library, 1964), 226.
8. *Ibid.*, 224-226.
9. Steny Hoyer, "Introduction of Bipartisan Bill to Repeal 22nd Amendment," (speech, Washington, D.C., February 17, 2005), Office of the Majority Leader, <http://democraticleader.house.gov/media/press.cfm?pressReleaseID=1028> (accessed December 6, 2009).
10. *Ibid.*
11. Victor Kamber, *Giving Up on Democracy* (Washington, D.C.: Regnery Publishing, Inc., 1995), 123.

12. Ibid.

13. Alexander Hamilton, "The Federalist No. 72," March 19, 1778, Gale History Resource Center, <http://galenet.galegroup.com/servlet/HistRC/> (accessed December 6, 2009).

14. Ibid.

15. Thomas Jefferson to Edmund Pendleton, August 26, 1776, *The Letters of Thomas Jefferson*, http://avalon.law.yale.edu/18th_century/let9.asp (accessed February 15, 2010).

16. Thomas Jefferson to Isaac Weaver Jr., Washington, June 7, 1807, in *The Writings of Thomas Jefferson*, ed. Albert Ellery Bergh (Washington D.C.: The Thomas Jefferson Memorial Association, 1905), 220.

17. Akhil Reed Amar, *America's Constitution: A Biography* (New York: Random House, 2005), 438.

18. Ibid.

19. Arthur M. Schlesinger, Jr., *The Imperial Presidency* (New York: Mariner Books, 2004), 163.

20. Ibid., 203.

21. Ronald Reagan, "Message to the Congress Transmitting the Fiscal Year 1983 Budget," (speech, Washington, D.C., February 8, 1982), University of Texas, <http://www.reagan.utexas.edu/archives/speeches/1982/20882b.htm> (accessed February 16, 2010).

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