

Walter Mondale and the Recalibration of the Vice Presidency

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From the Fifth Wheel to the Engine: Walter Mondale and the Recalibration of the Vice Presidency

For the better part of American history, vice presidents have described their anomalous office in less than civil terms. John Adams' complaint that it is "the most insignificant office that ever the invention of man contrived or his imagination conceived," was not without its support at the Constitutional Convention. [1] Theodore Roosevelt's disdain for the vice presidency, so much so that he would rather be a history professor, reflects its own history of "cranks, tax cheats, and golfers" in the nineteenth century.[2] Even John Nance Garner's sentiment that "the vice presidency isn't worth a pitcher of piss,"[3] symbolizes the impact of its primary constitutional role: to wait for the president to die.

Nevertheless, these are unparalleled times. The term 'vice presidential power' is no longer oxymoronic, and its

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development throughout the twentieth century from Truman to Cheney has made it a modern fundamental institution. Indeed, changes to the vice president selection process, national security institutions, and presidential relations were not just the products of the Cold War and post-9/11 environments, but also they were in reaction to the constitutional amendments and historical precedents from the nineteenth and twentieth centuries. Now, there is a once unfathomable question to consider: has the vice president become too powerful and far past its constitutional parameters? The answer is in the vice presidency of an often forgotten politician: Walter Mondale. The Mondale Model allowed the strengths of the vice president as a trusted advisor and international diplomat to be constitutionally legitimate and accountable to its executive position.

The constitutional framework for the vice presidency remains quite obscure, as the position was an afterthought of Philadelphia Convention. Framers spent less time on the formal roles of the vice presidency and more on the need for a competent national leader. Against the common great-man mythology of the Founding Fathers, the republic-driven elites remained quite skeptical of a full popular and democratic election for the highest office of the land. The Electoral College system was a solution; however, there still remained a concern that Electors would vote on a regional home-state basis, and not on a national basis.[4] The constitution therefore proposed for each elector to have two votes, one of which would expectedly be based on national interests, and the person with the second highest amount of votes would become vice president. The vice president would also be granted the tie-breaking role of the President of the Senate.[5] During this system, as every candidate is running for the presidency of the United States, the vice president also was a man of great caliber, from the likes of John Adams and Thomas Jefferson.

Nonetheless, such a system drew criticism due to the vice presidency's futility and hybrid nature. Elbridge Gerry, who ironically was later vice president under James Madison, regarded the vice presidency as a violation of the separation of powers, and a corrupting presidential influence in the legislature.[6] George Mason agreed with Gerry during the ratification process in 1788, calling the vice president an "encroachment on the rights of the Senate" and "not only an unnecessary but dangerous officer." [7] However, it was concluded pragmatically that without the role of the President of Senate, the vice president simply "would be without employment." [8] Despite the seldom use of the vice president's constitutional roles and the understanding that the vice presidency was a legislative office, concerns of foreign influences and aristocratic corruption dominated the backlash.[9] As Alexander Hamilton concluded in the Federalist Papers:

"the appointment of an extraordinary person, as Vice President, has been objected to as superfluous, if not mischievous." [10]

Such condemnations of the vice presidency underwent a fundamental change in 1804. The elections of 1796 and 1800 saw the emergence of party politics and partisanship, a concept not readily considered by the Framers of the Constitution. With the split executive of John Adams and Thomas Jefferson in 1796, and the tie between Aaron Burr and Jefferson in 1800, there was a consensus that presidential elections should be amended. However, this debate, which resulted in the Twelfth Amendment, created new problems in terms of vice presidential incompetency.[11] The Twelfth Amendment, which stipulated that the Electors vote separately for President and Vice President, enabled the running mate to be chosen based upon electoral concerns, rather than based on merit. The result was the rapid decline of the vice presidency, as the next century's vice presidents were filled with personal and political failures. From Richard M. Johnson having several slave mistresses, to Andrew Johnson appearing intoxicated during his inauguration, to Schuyler Colfax's near-impeachment due to dubious finances, the corruption, scandal, and inadequacy which plagued the second-in-command became the norm throughout the nineteenth century.[12]

The accession of Theodore Roosevelt, with his New York charm and robust masculinity, broke the hundred-year mold of vice presidential mediocrity.[13] While he was the first president of succession to ever win his own term, it would take another four decades for the vice presidency to become an effective institution. According to Joel Goldstein, nevertheless, the first half of the twentieth century set the foundations for such an institution to grow under Truman. The improving quality of the vice presidents, increased national media attention stable presidential successions, and the establishment of official duties in the executive branch were the beginnings of the modern vice presidency.[14]

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When Harry S. Truman became Franklin Roosevelt's fourth vice president, however, it came at the turbulent time for the world and the Democratic Party. Before FDR, party leaders choose the vice president. Roosevelt, using his immense popularity and influence, broke the party line to pick his first vice president, John Nance Garner. Although Garner's vice presidency ironically backfired on FDR when Garner tried to run against him in 1940, he maintained his own precedent with his second and third vice presidents.[15] Nevertheless, FDR's feeble health became a major concern for party leaders. When FDR wanted "Assistant President" James Byrnes for his fourth term, the party leaders could no longer step back. Party leaders saw him as too eager and determined, and refused to support FDR himself with Byrnes at his side. With the Garner experience in mind, Truman, a well-experience and loyal man from the industrial heartland, was the compromise. However, with FDR's hubris in mind, the compromise turned into a snub with the vice president meeting FDR just twice during his three-month stint.[16]

Certainly, Truman's vice presidency was quite isolated from the President's wartime affairs. So isolated, in fact, that he did not know about the Manhattan Project, the research development for the S-1 atomic bomb, until the twelfth day of his presidency. It was the same day as the opening of the United Nations Conference in San Francisco when he read Henry Stimson's memorandum:

"Within four months we shall in all probability have completed the most terrible weapon ever known in human history, one bomb of which could destroy a whole city." [17]

Indeed, the consequences of his snub became ten-fold with the postwar development of European economic panics, atomic weaponry, and an entirely new international system on his shoulders. Naturally, his own lack of preparation for the presidency influenced his outlook on the vice presidential office. As Truman stated a day after FDR's passing: "I felt like the moon, the stars, and all the planets had fallen on me." [18]

The extent to which Truman changed the vice presidency was nevertheless dependent upon the postwar environment. While his vice president Alben W. Barkley regularly attended cabinet meetings and became a statutory member of the National Security Council (NSC) in 1949, Truman refused to have Barkley chair the NSC in his absence, leaving that responsibility to Secretary of State Dean Acheson. The reasoning for Truman was certainly within the context of the Cold War and the vice president's legislative role. In an off-record conversation with Truman, Frank McNaughton of *Times* wrote to his editor that Truman "is tremendously afraid there will be a postwar struggle between the executive and legislative and between the Allied powers, that will wreck peace once and for all." [19] Moreover, Barkley was less concerned about learning policy than Truman was on his behalf, making it much more difficult for an evolved office to be cemented.[20] In short, the need for diplomacy by Acheson, and for the Barkley's role as a trustworthy liaison between the legislature and the executive trumped Truman's desire to increase the power of the vice presidency.

Beginning with Richard Nixon, the executive nature of the vice presidency became standardized. Institutionalized sets of duties were created: diplomatic trips, chairing executive commissions, and being a lobbyist for the administration. No longer was the focus on the constitutional role as President of the Senate, but as an advisor of executive decisions.[21] To switch one's vice president for the next election, as Dwight Eisenhower intended, would no longer resolve electoral concerns, but rather would be seen as political weakness.[22] With Nixon's office moved to the Executive Office Building setting the stage, the proposal of the Twenty-Fifth Amendment in 1965 marked a greater executive role within the administration. The Amendment, which addressed problems of presidential succession and disability, rested on the premise that the vice president has the caliber to be the president's confidant in the executive.[23]

Nonetheless, Nixon's executive vice presidency and its subsequent erosion of its traditional hybrid nature made the expanded office also erode its constitutional checks of power. Indeed, such expansion occurred under Dick Cheney, resulting in his unprecedented and unaccountable authority. Certainly, Cheney manipulated the Nixon model as he went beyond the role of general advisor in order to become an operational function of the executive. Although some scholars argue his expansive powers were a product of the post-9/11 environment and the subsequent War on Terror, it seems more likely that 9/11 was a mere catalyst and the main allowance for Cheney's expansive power comes from President George W. Bush himself. Indeed, Cheney's unprecedented executive power relied upon Bush;

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a man Cheney had a long, strong working relationship with, particularly as the director of Bush's vice presidential selection task force.[24] Undeniably, President Bush was more than willing to have a vigorous vice presidency.

With such support from Bush, the culture of unaccountable power transcended the issue of separation of powers.[25] Even before 9/11, Cheney was the head of several task forces relating to energy and weapons of mass destruction, along with the Budget Review Board.[26] In particular, his previous experience in the Minority Report during Iran-Contra scandal, one that stated the Reagan administration made mistakes in judgment, but retained the rule of law, demonstrated his outlook on the constitutional theory of broad executive powers.[27] Insulating himself from informal checks with the media and consensus politics, Cheney capitalized on adept resources from his previous cabinet experience. His relationships with Secretaries Colin Powell and Donald Rumsfeld enabled Cheney to channel his domain and influence.

The result of Cheney's influence and knowledge was an unparalleled abuse of vice presidential power. In particular, his roles in warrantless surveillance, the creation of military commissions, and holding Geneva inapplicable demonstrate the extent of his abuse. With 9/11 as a catalyst, Cheney's rise in power coincided with the decline in vice presidential accountability, leading to the most powerful vice presidency in American history. As he said five days after 9/11 during his *Meet the Press* interview, America would henceforth work "sort of the dark side...in the shadows in the intelligence world." [28]

Firstly, concerning warrantless surveillance, Cheney worked with Central Intelligence Agency director George Tenet and Michael Hayden of the National Security Agency to expand the surveillance program. He consulted John Yoo of the Office of Legal Counsel to fashion a program for surveillance of domestic and international targets without showing probable cause or a judicially authorized warrant. As journalist Barton Gellman later wrote, "the new legal framework was meant to be invisible, unreviewable- its very existence unknown by legislative or judicial actors who might push back." [29] Although Cheney, without Bush present, lead briefings on the program with a small group of congressional leaders beginning in October of 2001, they provided little insight as they were sworn to secrecy and thereby limited the accessibility for legal expertise to analyze it constitutionally.[30] Cheney even withheld information on warrantless surveillance from Deputy Attorney General Larry Thompson and Bush's counterterrorism advisor, Fran Townsend. Cheney later defended the program under the 2001 Authorization for Use of Military Force and remarked it as consistent with the presidential authority as Commander-in-Chief. [31] Even if the Constitution justified the program with the president's role as Commander-in-Chief, which quite arguably it does not, Cheney was not president.

Secondly, Cheney used similar constitutional arguments with his key role in the creation of military commissions. Although the vice president did not attend White House Counsel Alberto Gonzales' meeting on handling foreign terrorists, Cheney obtained presidential approval for the creation of military commissions so quickly that National Security Advisor Condoleezza Rice did not even know of the order until after Bush signed it. Even more shockingly, Secretary of State Colin Powell only learned of it through a CNN report later that day.[32] The capacity of the military commissions was nonetheless apparent: it sanctioned the president to determine whether to place a noncitizen in a military commission without the writ of habeas corpus or appeal. Moreover, Cheney, not Bush, defended the program before the U.S. Chamber of Commerce in November of 2001, arguing terrorists do not "deserve the guarantees and safeguards that would be used for an American citizen" and he, along with the legal counsel of David Addington, resisted all suggestions to seek congressional approval.[33]

Thirdly, Cheney and Yoo spearheaded the effort to deny protections of the Geneva Conventions to al-Qaeda and Taliban members. Yoo drafted a memorandum to repudiate the idea that the Geneva Conventions were bound to the United States, a position that the State Department furiously opposed. Nevertheless, Bush allegedly approved Yoo's famously named "Torture Memo" on January 8, 2002, and Cheney obtained his signature in early February of 2002.[34] Cheney and this office henceforth remained heavily involved in the programs, sanctioning the use of waterboarding and other forms of interrogation techniques. He even pressed the Justice Department to issue another memorandum to approve the legality of torture and lobbied unsuccessfully against the McCain amendment to ban torture in interrogation proceedings.[35] Indeed, if one element of Cheney's vice presidency demonstrates his gross abuse of power, it is his advocacy and policies against the Geneva Conventions.

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When analyzing Cheney's expansive power, it would be a mistake to see his tenure as a denunciation of the vice presidency: the institution, like other political offices, is subject to abuses by individuals. Nevertheless, one clear model for the vice presidency can come from understanding the history of Walter Mondale. A man often ignored if not forgotten by historians, Jimmy Carter and Walter Mondale generated a new institutional model for the vice presidency that made it an accountable figure in the executive branch. Although some scholars would argue a return to a more legislative and traditional vice presidency, the Mondale Model remains the more realistic and comprehensible approach to the ever-strengthened American executive.

With new resources provided and expectations finalized, the main crux of the Mondale Model is that it remained deferential to the president. To be sure, Mondale's relationship with Carter was a necessary factor to the expansion of the office.[36] Such compatibility reflected itself in his December 1976 memorandum to the president. In the memo, he cited the need for Carter's accessibility and political resources in his roles as a general advisor, troubleshooter, and diplomatic representative of the United States. As Mondale stated, the vice presidency has been "characterized by ambiguity, disappointment, and even antagonism." [37] Realizing his "political success is totally tied to [Carter's]," [38] the necessity to expand the office while remaining loyal to Carter's policies was vital to the accountability of the office.

Carter had no apprehension about permitting Mondale an active role in his administration. He agreed to remain accessible by having weekly Monday lunches, moving Mondale's office to the West Wing of the White House, and providing Mondale with security briefings and access to the meetings of the cabinet, the NSC, and the Economic Policy Group. More importantly, Carter signed an executive order for Mondale to be second in command over the control of the nuclear weapons.[39] Such innovative institutional changes translated into greater legitimacy for Mondale's office, and subsequently, more political capital to act in policy. From lobbying Senate associates over the Panama Canal treaties, to working towards Middle East negotiations with the Camp David Accords, to advocating for the end of the apartheid in South Africa and the beginnings of the SALT Treaty, Mondale was an active vice president.[40] Likewise, his extensive diplomatic travel and his speech at the United Nations to rescue Vietnamese boat people helped gain immense international support for American policies.[41]

The concept of vice presidential power is one that affects both the national and international sphere. The Vice Presidency has evolved along with the Constitution to enable its holder to become a major and loyal advisor to the President. Such evolution has allowed necessity and circumstance to come to the forefront. Therefore, political figures and scholars need to understand the context of the Constitution in order to maintain the accountability of the office. The Mondale Model would ensure accountability through its established deference to the President. The future of vice presidential prerogative remains, nevertheless, dependent on the evolving nature of the Constitution within the political sphere.

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[2] *Ibid*, 3, 23.

[3] *Ibid*, 3.

[4] *Ibid*, 9. See also Joel K. Goldstein, "Vice President," in Leonard W. Level and Louis Fisher, eds., *Encyclopedia of the American Presidency*, Volume 4 (New York: Simon & Schuster, 1994), 1557.

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[11] Jody C. Baumgartner, *The American Vice Presidency Reconsidered*, 14.

[12] Joel K. Goldstein, "Vice President," 1558-1559. In the nineteenth century, only Martin Van Buren succeeded in becoming President after his Vice Presidency, with John C. Breckinridge later on considered a strong candidate.

[13] John Milton Cooper Jr, "A Shadowed Office: The Vice Presidency and its Occupants, 1900-1920," in Timothy Walch, eds., *At the President's Side: The Vice Presidency in the Twentieth Century*, (Columbia, University of Missouri Press, 1997), 9-10.

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[16] Robert H. Ferrell, "Seasoned Politicians: Harry S. Truman and Alben W. Barkley as Vice Presidents," *At the President's Side: The Vice Presidency in the Twentieth Century*, (Columbia, University of Missouri Press, 1997), 68.

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[20] Richard E. Neustadt, "Vice Presidents as National Leaders," in Timothy Walch, eds. *At the President's Side: The Vice Presidency in the Twentieth Century*, (Columbia, University of Missouri Press, 1997), 187

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[31] Ibid.

[32] Ibid, 119.

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[37] Walter F. Mondale, "Memorandum to Jimmy Carter," Minnesota Historical Society, December 9, 1979, <http://www.mnhs.org/collections/upclose/Mondale-CarterMemo-Transcription.pdf>

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[40] Ibid, 147.

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