THE PRESIDENT AND PARTY POLITICS

E. ALLEN HELMS
Ohio State University

The American system of government is not designed to promote a smooth-working party system. The setting is not the best type of setting when viewed from the standpoint of party politics. The framers of the Constitution obviously did not foresee the party system as we know it today. Moreover, in so far as they did foresee it, they were more interested in placing obstacles in its path than in promoting its effectiveness. The principles of separation of powers and checks and balances, for example, were designed, as Madison explained, to break the power of faction. History proves that they do so. More than twenty-seven times in the nation's history the opposition party to the President has controlled one or both houses of Congress. And a majority of the Supreme Court is often in opposition to both Congress and the President as indicated by the frequent declarations of unconstitutionality.

It is true that the party system has probably contributed something toward making the otherwise workable principle of separation of powers into a partially workable one. The fact remains that a single political party seldom finds itself in control of all three branches of government at the same time. Thus party spokesmen are enabled and encouraged to make promises freely; they are provided with iron-clad alibis for failure to carry them into action. As a consequence, job politics prevails over policies and programs. The essential point to victory in an election is control over personnel and patronage. Policies and programs are promoted by pressure groups operating both inside and outside the government, sometimes partisan but more often bipartisan or nonpartisan in composition. Party platforms merely reflect the interplay of these pressure groups.

The federal system, with its emphasis on localism, is likewise an obstacle to a smooth-working party system. We speak glibly of our two-party system in the United States. Actually, we do not have a two-party system. The labels for our so-called two major parties are really labels for groups of local parties. Our national parties are federations of state and local parties. The Republican party in Oregon or Wisconsin may differ markedly from the Republican party in Illinois or Pennsylvania. There are white-
supremacy Democrats, common-man Democrats and many other varieties. Senator Wayne Morse and Congressman Joe Martin have little in common. Similarly, Senator McGrath and Congressman Rankin have little in common. Conservative Democrats have more in common with conservative Republicans than with liberal Democrats and vice versa.

Thus it is unrealistic to speak of the President or any other prominent figure in a political party as the leader of that party. It is more appropriate to inquire as to the particular branch of the federation he leads. Even Franklin Delano Roosevelt in 1936, after the most overwhelming victory in the presidential election since Monroe and with overwhelming majorities in both houses of Congress, found himself facing insurmountable opposition to his Court reorganization plan in Congress the following year. Moreover, the opposition was led by Senator Wheeler, a member of his own political party.

The electoral college, another element of political conservatism in the Constitution, designated by the framers to take the election of the President out of the hands of the voters and throw it in most instances into the House of Representatives, tends to hold these federations together. Without the necessity of winning a majority in the electoral college they would in all probability disintegrate. Party leaders may engage in sharp conflict in the periods between presidential elections. But in presidential election years regularity and harmony are maintained. Prominent political figures who "take walks" or support the opposition in presidential campaigns are few and far between. Wide publicity was given to Al Smith's unwillingness to support Roosevelt, Senator Ball's refusal to support Dewey, and the so-called Dixiecrat revolt against Truman, but such cases receive publicity far out of proportion to the numbers of people involved. The electoral college system thus creates a strange paradox; it is at once an obstacle to the party system and a significant factor in preserving the two-party aspects of the system.

The amending process was also designated to place a break on the expression of a majority will. As a consequence, constitutional amendments must be bi-partisan. Political parties do not often have a two-thirds majority in each house of Congress and a majority in each house of the legislatures of three-fourths of the states. With the possible exception of the Civil War amendments, the
Thirteenth, Fourteenth and Fifteenth, the amendments thus far added to the Constitution have been bi-partisan. Naturally, partisanship may become involved. And the President who is neither required to sign proposed amendments nor authorized to veto them, may become involved as illustrated by President Wilson’s influence in persuading the Tennessee legislature to ratify the Nineteenth Amendment. The proposed two-term limitation amendment for the Presidency seemed to have a partisan atmosphere about it at first in that it seemed to be a Republican attack on the reelection of Roosevelt to third and fourth terms, but it, too, has gradually assumed a bi-partisan character.

The contrasts between the American and the parliamentary systems thus become apparent. As Harold Laski has so clearly pointed out in his able analysis of the American Presidency, there are striking differences between the positions of Prime Minister and President. The Presidency is an American office which operates in the American system of government, under American conditions and with American traditions. It bears only a superficial resemblance to the Prime Ministry. Normally, the Prime Minister is the leader of his political party before he becomes Prime Minister and he becomes Prime Minister because he is the leader of his political party. The American President is rarely the leader of his party before he becomes President. If he becomes the leader of his political party at all, he becomes such only after his election to the office.

In the pre-convention period the candidates fall into a variety of categories. Race-track terminology is evident in the labels. There are the “favorites”, the “favorite sons”, the “stalking horses”, the “dark horses”, etc. The “favorites” are those who come closest to meeting the criteria commonly listed under the general heading of “qualities of availability.” Obviously the best candidate from the standpoint of party strategy is the one who will please the largest number of voters and offend the smallest number. He is the one best able both to “hold the faithful” and to “win the doubtful.”

Particular attention must be given to the “fifth voter”—that twenty per cent of the voting population which is sufficiently inde-

pendent as to be uncertain. Still more especially, the independent vote in the "pivotal" or doubtful territory must be given careful consideration. As a consequence of the electoral college system, presidential elections are won or lost by victory or defeat in key states. It thus becomes easy to describe the perfect candidate. He is one who has demonstrated vote-getting ability repeatedly in large doubtful territory, but one who at the same time has avoided qualities that would be offensive to the faithful elsewhere.

Now what about party leaders on the national level such as Vice-Presidents, Cabinet members, members of Congress, etc.? For one reason or another they are generally regarded as "unavailable." Vice-Presidents have no opportunity to demonstrate vote-getting ability in their own right. They may be considered as having ridden into office on the coat-tail of the presidential candidate, and the office itself provides little or no opportunity for demonstration of capacities for statesmanship.

Cabinet positions are in much the same class. In contrast with England and France where cabinet positions are the pinnacle of success in party politics, they are held in rather low esteem in this country. With the exception of the Secretaryship of State and possibly one or two others, they do not have particularly high prestige standing. Men are not willing to give up positions in Congress or state governorships for cabinet appointments. Under the parliamentary system cabinet members need not give up their parliamentary status and they are chosen largely from the parliamentary group. Some of them will be regarded at any given time as potential Prime Ministers.

In this country in recent years Cabinet positions have not been looked upon as stepping-stones to the Presidency, the instance of Herbert Hoover to the contrary notwithstanding. Men who have previously been candidates may be included, as illustrated by Hughes and Bryan. Many of them, however, come out of the unknown and disappear again into the unknown.

Active party leadership in Congress is a negative quality. The very people who would be in preparation for Prime Ministerships under the parliamentary system may, under the presidential

*Institute of Public Opinion figures in June, 1948, indicated that the percentage of independent voters had risen to about 29 per cent. This rise was explained in part by the fact that the Wallace supporters called themselves independents.
system, become unavailable. Such people, if they are active in
Congress, must take stands on national issues—on many national
issues. They may make friends from such stands; they will inevi-
tably make enemies. They thereby acquire labels such as Taft's
anti-labor label via the Taft-Hartley Act, or Vandenberg's inter-
nationalism, or Martin's isolationism. They lose increasingly the
quality of vagueness which would make it possible for them to
straddle national issues and to present formulae to the public
which are capable of varied interpretation. Naturally, men who
have not been active in Congress such as Senator Harding prior to
his nomination in 1920 may not be at so great disadvantage,
particularly if this negative quality of membership in Congress can
be countered by one or more positive qualities of availability
such as Harding's residence in the pivotal state of Ohio. On the
whole, however, national level party leaders have a low priority.

State party leaders are preferred. The perfect candidate would
be a happily married Protestant who has been successively elected
Governor of a large pivotal state, who has not been involved in
any sex or other scandals, who is neither too rich nor too poor,
who is photogenic, and who has a good platform and radio manner.
It is not easy to find the perfect candidate, perhaps, but the
favorites are those who most nearly approximate perfection.

Public opinion polls are tending to modify this type of analysis
somewhat. The scientific-sampling technique provides a new
method of demonstrating vote-getting ability. Willkie, for example,
had not been elected to any public office prior to the Republican
convention in 1940. Nevertheless, his popularity, stimulated by a
liberal expenditure of money and by bang-wagon psychology, had
been demonstrated by public opinion polls prior to the opening
of the convention. As demonstrations of candidate popularity,
public opinion polls may be as significant, if not more significant,
in the future, than popular votes.

Unfortunately, from the point of view of party strategy as
well as from the point of view of democratic government, conven-
tions do not always nominate the people's choice. There is no
assurance of strategic wisdom in conventions composed as they
are today. Many things may happen. Favorites may destroy
favorites through their unwillingness to compromise. Or the nomi-
nation of a favorite may be blocked by the determined opposition
of the "field", i.e., a combination of delegates pledged to "favorite
sons." Or again, the convention may nominate a "dark horse" either as a last resort or in the interests of party harmony. Thus men may be nominated who are not even moderately powerful in state party leadership.

Once a candidate has been nominated by a convention, however, he begins to rise to the national leadership of his party. In the interests of harmony and strategy and in the hope of a share in the spoils of victory, party leaders everywhere climb on the band wagon and rally to the support of the candidate. In fact, potential patronage at this stage may be more effective in placing a man in a position of leadership than real patronage at a later time. There are no disappointed job seekers until appointments begin to be made. Candidates have learned the strategic significance of insisting that no commitments have been made. Dewey's acceptance speech in Philadelphia in 1948 presents an excellent illustration of this point. Such statements are not only strategically significant within the party organization but they are popular with the public as well. Voters generally look upon deals and bargains as sordid business. Nevertheless, deals are made and they are probably an essential part of the great game of politics. As the frequently-quoted Lincoln remark indicates, the deals are not always made by the candidate himself. He may be able to say honestly that he has incurred no obligations. In all probability they will have been made by his managers, however, and many of them will have to be fulfilled if the party is victorious in November. It is quite possible that, in their enthusiasm, a candidate's managers may make conflicting promises, some of which cannot possibly be kept. Some people may be double-crossed or wounded feelings may have to be salved by substitute balm. However that may be, deals are almost inevitable in sharply contested pre-convention and convention campaigns.

Uncertainty about these promises leads to wild speculation about future plans. Political columnists, newspaper editors, and radio commentators have field days making predictions as to possible Cabinet and other high level appointments. Long lists of names are presented to the public from which such selections are sure to be made. The candidates refrain from comment beyond

"They have gambled me all around," said Abraham Lincoln after the Republican convention in 1860, "bought and sold me a hundred times. I cannot begin to fill the pledges made in my name."
saying they have been too busy to think about such matters. A candidate of the party in power seeking reelection must try to find the middle ground between an appeal to the security of those now in office and hungry office seekers outside. The opposition party candidate may promise a big house-cleaning. This is a good rallying cry for the party, and the tax-conscious voting public will respond to it sympathetically if it does not resemble too closely a raid on the career service. The public has now come to regard the merit principle as sound. Confirmation of this is found in the fact that party platforms now regularly pledge protection to the career service.

Political parties live on patronage and the spoils of politics. Nevertheless, a newly elected President would not be wise to raid the civil service too extensively. To do so might produce an unfavorable public reaction. Moreover, it would be poor political strategy. A politically-wise President will conserve his patronage and distribute it discreetly.

During his first few months in office a new President is in a relatively favorable position. Critics, both inside and outside of Congress, are somewhat restrained. There is a tendency to wait and see—to give him a chance. Then too, there does not yet exist that accumulation of errors which inevitably comes with time.

Prior to his inauguration the President-elect will have reached decisions on his cabinet appointments and these appointees will go into office with him. There are possibilities here for strengthening his hold on the party. In addition to the deals made in his behalf, strong rival contenders in the convention may have to be recognized even if no deals were made with them. Hughes was given the State Department by Harding and Bryan the same Department by Wilson. The loyal followers of such persons will demand that kind of recognition. Failure to accord it may produce later difficulties. Franklin D. Roosevelt's refusal in 1932 to provide a Cabinet post for Al Smith is a case in point. Smith's "walk" in 1936 may have been motivated in part by peev.

Geographical considerations must also be kept in mind. The President must not appoint too many or too few from his own state nor may he choose them too heavily from one section of the country. Specialized qualifications for some Cabinet posts may also restrict the President's freedom of choice. Organized labor will want a union member for the Secretaryship of Labor. The
farmers seem to believe that the Secretary of Agriculture should be a "dirt farmer" or someone not too far removed from agriculture. The Secretary of Commerce should have had some prior contact with business and the Secretary of the Treasurer some experience in finance. The Post Office Department often goes to the campaign manager.

Not all Cabinet appointments conform to these criteria. The Roosevelt and Truman Cabinets stand in sharp contrast to one another in these respects. The Roosevelt Cabinets, although strategically sound in some respects, were quite unorthodox. Truman quickly returned to the more orthodox or traditional type of appointment. Seven of Roosevelt's original Cabinet members were from the Atlantic seaboard; three were from New York alone (Farley, Perkins and Morgenthau). Three were from Tennessee, Virginia and North Carolina in the Solid South (Hull, Swanson and Roper). One (Cummings) was from Connecticut. This left only three posts for the rest of the country. These went to Ickes of Illinois, Wallace of Iowa and Dern of Utah. The neglect of the Pacific coast was commented on by candidate Dewey in the 1944 and 1948 campaigns.

The appointment of his campaign manager, Jim Farley, to the Postmaster-Generalship was in the proper political tradition. Homer Cummings was approved as an effective party leader. The selection of Hull, Swanson and Roper from the Solid South seemed unnecessary, however, since that area could be depended upon to stay with the Democratic party. The doubtful regularity of some of his Cabinet personnel came in for some critical comment. Frances Perkins had no standing as a party worker. Her appointment thus not only irritated the politicians but aroused the ire of organized labor as well. Henry Morgenthau was neither a financier nor a politician and stood in striking contrast to Andrew Mellon, who had been Republican boss of western Pennsylvania. Neither Henry Wallace nor Harold Ickes was an organization man. In fact, Ickes was not only not a politician but he had an intense dislike of politicians. Moreover, in 1912 he was a Bull Moose Republican. In 1940 Roosevelt appointed two prominent Republicans, Stimson and Knox, to the War and Navy Departments respectively. This brought on some sharp criticism from the leadership of both parties but especially from the Republican side, and some of the Republican spokesmen demanded that Stimson
and Knox, notwithstanding their long records of service to the party, be read out of the Republican party.

After Roosevelt’s death, the resignations of Perkins, Morgenthau, Ickes, Stimpson, Stettinius, and Wallace, and the death of Knox, paved the way for a return to a more orthodox distribution of Cabinet appointments. Lewis Swollenbach, a former Senator from Washington and federal judge, became Secretary of Labor. John W. Snyder, a St. Louis banker became Secretary of the Treasury. The Department of the Interior went to J. A. Krug, the War Department to Robert Patterson, the Navy Department to James Forrestal, and the Commerce Department to Avril Harriman. The State Department went first to James Byrnes and then to General George C. Marshall. Robert Hannegan, Chairman of the Democratic National Committee, was retained as Postmaster General until his resignation in 1947. Although the press and the public seemed to approve these appointments, one press gallery wit is said to have characterized them as “government by crony.”

Notwithstanding the high calibre of some of these people, there are few if any potential Presidents among them. While a President may surround himself with a few personal friends, he is on the whole in something of a straight-jacket when it comes to filling these positions. The low prestige standing of Cabinet posts makes it difficult if not impossible for him to persuade members of the Senate or state governors to resign their offices to accept such assignments. An illustration of this occurred in the summer of 1948 when Judge Swollenbach, the Secretary of Labor, died. With probable defeat in November, President Truman was reportedly unable to find anyone of high calibre either in public service or private employment who would be willing to give up his existing connection for a Cabinet post that might end in a few months. Fortunately, the President was able to persuade ex-Governor Tobin of Massachusetts to accept the post. This was regarded as sound strategy. Tobin was a popular political figure in the pivotal state of Massachusetts. Moreover, he was opposed to the Taft-Hartley Act and could appeal to organized labor on that basis.

The President may bring his campaign manager into the

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Cabinet as Postmaster General where he will be close at hand for advice and guidance on patronage and other political matters. But even his campaign manager may desire and be able to demand something better. Mark Hanna, McKinley's exceptionally competent campaign manager, asked for a seat in the Senate and a place was made for him in that body. Ed Flynn, who assisted Jim Farley in the management of Roosevelt's campaign, also wanted a seat in the Senate. Plans were actually developed, according to Flynn,\(^5\) to make this possible. Senator Copeland was to be asked to resign to accept appointment as ambassador to Germany. Governor Lehman was then to appoint Flynn to fill the vacancy in the Senate. Lehman agreed on the condition that Al Smith would say that he did not want the appointment. This Al Smith refused to do and the plan collapsed.

It might be argued that a President would be using bad political judgment in placing top-level party leaders in his Cabinet since they or some of them might overshadow him. Presidents-elect and Presidents, being human, are doubtless not unaware of this possibility. Logic and common sense would suggest, however, that the argument has no validity. A strong Cabinet would surely make a President appear stronger rather than weaker. Moreover, there would surely seem to be less risk of scandals through inefficient administration. If any of the Cabinet members should have presidential aspirations, so much the better. Assuredly, they would be strategically better Cabinet members and department heads as a result. No such aspiring presidential candidate would try to maneuver a duly-elected President of his own party out of office until the latter had served his traditional two terms. A former Vice-President who had been elevated to the Presidency by the death of his predecessor might be an exception to this rule. Coolidge, for example, is said to have been somewhat jealous of the public praise which Herbert Hoover acquired as his Secretary of Commerce. Truman's troubles in this respect came from Henry Wallace. There is nothing to indicate, however, that Wallace had any intention of running for President until he was asked to resign from the Cabinet.

The Wallace episode illustrates another striking contrast between the presidential and parliamentary systems. Collective cabinet responsibility, an outstanding characteristic of the par-

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\(^5\)See Edward Flynn, You're the Boss (New York, 1947).
liamentary system, is not insisted upon under the presidential system. Secretary of Commerce Wallace was allowed to deliver an address, previously approved by President Truman, in Madison Square Garden in sharp criticism of the foreign policy of the United States. The matter might have rested there if Secretary of State Byrnes had not become peeved and had not demanded that the President either accept his own resignation or demand the resignation of Wallace. The President chose to retain Byrnes and asked for the resignation of Wallace. Thus collective Cabinet responsibility was established. It was established, however, only because Byrnes insisted on it and not because it was a traditional principle of Cabinet government in this country. Several months later the Secretary for Air was allowed to go before a committee of Congress and recommend a larger air force than the President had recommended and nothing was done about it. Moreover, a Cabinet member who is criticized for corruption or inefficiency may be dropped by the President with some assurance that the public will praise him for this bit of house-cleaning; or, safe in office until the end of his fixed tenure, he can rely on the voters to forget the episode by the time the next election rolls around. Neither Coolidge nor Hoover was President at the time of the Teapot Dome oil scandals. Nevertheless, both of them were attending Cabinet meetings regularly at the time and the conclusion might be drawn either that they must have known what was happening or that they were very stupid not to know. And yet there is no conclusive proof that either of them suffered politically since both of them were later elected to the Presidency by overwhelming margins.

In one other respect the President is in a favorable position in respect to Cabinet posts. Although Cabinet appointments are subject to senatorial approval, the Senate does not, as a matter of practice, create any serious difficulties. In a few instances the Senate has refused to confirm the President's nominations. On the whole, however, the Senate adheres to the tradition that these people are the President's official family and that he should be permitted to have unrestricted freedom of action in selecting them.

The Senate maintains somewhat the same tradition in respect to appointments to judgeships. Whatever the reasons may be, the President's nominations to judicial posts are usually confirmed. It is true that a few big battles have been fought over some of
these nominations in recent decades. The most noteworthy are those of Brandeis, Hughes, Parker, and Black. These were not partisan conflicts, however, but conflicts over the "major premises" of the men in question. Brandeis was regarded by his opponents as too liberal and too pro-labor; Hughes by his opponents as too pro-big-business; Parker by the National Association for the Advancement of Colored People and by labor groups as anti-Negro and anti-labor; while Black was denounced for alleged membership in the Ku Klux Klan. In Black's case the charge of Klanism was largely a smoke-screen to cover up the fact that his opponents really thought he was too liberal. Notwithstanding sharp struggles in each case, all of the appointments were confirmed except that of Judge Parker.

Judgeships are life-time appointments and are held in high esteem. Thus vacancies in these positions are rich plums. The President, in filling them, is not unmindful of party politics. Most of his appointments are made from his own political party. Nevertheless, he is often more concerned with interest loyalties, i.e., with social and economic attitudes, than with party loyalties, particularly in filling vacancies on the Supreme Court. The clashes which we hear so much about on the Supreme Court are not partisan clashes but interest and attitude conflicts. These attitude conflicts stand out so sharply that it is inevitable that the President take them into consideration as vacancies occur. These "major premises" in men's minds may be unexpressed at the time of the appointment and the President may guess wrong. Holmes was more liberal than Theodore Roosevelt thought him to be and McReynolds was more reactionary than Wilson thought him to be.

Political considerations may be present even when a President appoints a member of the opposition party to a judgeship. He thereby gets credit for broadmindedness and yet indirect partisan benefits may be derived. President Truman appointed a Republican, Senator Harold Burton, to the Supreme Court. In doing so he removed a Republican from the Senate and provided the Democratic Governor of Ohio with an opportunity to appoint a Democrat to take his place. His own party was thus made stronger by one vote in the Senate and Burton, a moderate liberal, was regarded both inside and outside the Senate as a good addition to the Court.

Life tenure limits turnover in federal judgeships and thus
restricts the patronage possibilities in this area. President Roosevelt, in his Court reform plan in 1937, tried to increase the President's control over the Supreme Court by providing for the appointment of one additional justice up to a maximum of fifteen for each member of the Court over seventy years of age. Congress, after a bitter fight during which the President was charged with trying to pack the Court and with attempting to destroy its independence, rejected the proposal but judges may retire on full salary after ten years service. Since judges are showing an increasing tendency to accept this retirement arrangement, turnover is being speeded up somewhat.

In the President's relationship to Congress, patronage is a persuasive weapon. Reluctant and disgruntled Congressmen, hounded by office-seekers, may be brought into line in support of presidential policies by a discreet use of the weapon. Liaison officers may operate between the White House and Capitol Hill to good advantage to the President. The President's patronage powers are not without limitations, however, and it is easy to exaggerate the possibilities. There are both legal and practical limitations on both removals and appointments. About ninety-two per cent of the civilian personnel is under the merit system and covered by civil service regulations. These regulations prohibit removals for political reasons and permit them only for such causes as may be considered to be "for the good of the service." This is more a moral than a legal limitation. Actually the President can make removals without fear of anything more than a civil service commission investigation and report. Federal civil servants, in contrast with some state civil servants and many local civil servants, cannot demand reinstatement by civil service commission order or Court order. Even so, with the spotlight of publicity turned on such removals, the President is naturally reluctant to pay the price of public criticism on the charge of raiding the civil service. Moreover, raids of this type create uncertainty and fear and increase the ever-present difficulty of securing well-qualified personnel for the government service.

A newly-elected President, succeeding a member of the opposition party, may pretend to have a deep interest in economy and demand the elimination of presumably unnecessary bureaucrats and may claim that pay-rolls are padded with unessential personnel. Then, after some lapse of time, new positions may be
created quietly with new personnel. Most government agencies have their pressure-group supporters both inside and outside Congress, however, and action of this kind must be taken cautiously.

Congress has tried at various times to place legal limitations on the removal power of the President. Some uncertainty has existed as to how far Congress can go in this direction since the Constitution neither specifically confers removal power on the President nor withholds it from him. In the bill to create the Department of Foreign Affairs in 1789 Congress undertook to require the President to secure the consent of the Senate for the removal of the Secretary of that Department. This provision was defeated in the Senate by the casting vote of John Adams, the Vice-President. The issue arose again in the post-Civil War period during the struggle for domination of the Presidency between President Andrew Johnson and Congress. In 1867 Congress passed an act fixing the tenure of office of Cabinet members and prohibiting their removal without the consent of the Senate. This law was repealed in 1869 but in 1876 another Tenure of Office Act was passed which gave the first, second, and third-class postmasters four-year terms and provided that the President must seek the consent of the Senate for their removal as well as their appointment. The constitutionality of this law was not challenged until 1920 when President Wilson removed Frank S. Myers from the postmastership of Portland, Oregon, before his four-year term had expired. Myers died later but the administratrix of his estate brought suit for his salary from the time of his dismissal until his death alleging that he had been illegally dismissed. The United States Supreme Court, in an opinion prepared by Chief Justice Taft, held the statute unconstitutional. The President would not be able to discharge the duties of his office in seeing that the laws were faithfully executed, the Court said, if his power of removal was abridged.\(^6\)

At first the Myers decision seemed to settle the question. But in 1935 the Court backed down somewhat and held that Congress could create so-called "independent" boards and commissions, the members of which might be appointed for fixed terms and be protected against removal by the President if the removal was simply a result of a difference of opinion between the President and the member in question on matters of public policy. The

question arose in 1933 when President Roosevelt asked for the resignation of William E. Humphrey, the chairman of the Federal Trade Commission.

The statute creating the Federal Trade Commission authorized the President to remove commissioners for "inefficiency, neglect of duty, or malfeasance in office." However, President Roosevelt gave no other reasons for demanding Humphrey's resignation than differences of opinion on policy and belief that the work of the Commission would be better handled by personnel of his own choosing.

Under the Constitution the executive power is vested in a President. Thus the essential constitutional question presented by the Humphrey case was whether the creation by Congress of such independent boards or commissions as this one could be regarded as an encroachment on the executive powers of the President. The Court said that it was not an encroachment on the executive power.7 The reasoning of the Court is somewhat difficult to follow but it placed considerable emphasis on the alleged fact that such "independent" agencies were designed to perform "quasi-legislative" or "quasi-judicial" powers. The following excerpts from its opinion summarizes its explanation:

The Federal Trade Commission is an administrative body created by Congress to carry into effect legislative policies embodied in the statute in accordance with the legislative standard therein prescribed, and to perform other specified duties as a legislative or as a judicial aid. Such a body cannot in any proper sense be characterized as an arm or an eye of the executive. Its duties are performed without executive leave and, in the contemplation of the statute, must be free from executive control. . . . To the extent that it exercises any executive function, as distinguished from executive power in the constitutional sense, it does so in the discharge and effectuation of its quasi-legislative or quasi-judicial powers, or as an agency of the legislative or judicial departments of the government . . . .

The President's power of appointment is also subject to both practical and legal limitations. Those who are under the merit system must meet the standards set by the Civil Service Commission. The "rule of three," under which an appointment is made from one of the three highest of those who are eligible, offers some opportunity for manipulation in behalf of party patronage. Since this rule also paves the way for the expression of race, religious and other forms of prejudice, it is likely to be superseded

sooner or later by the "rule of one" under which the highest person on the eligible list is appointed. Greater confidence in the evaluation techniques of the Civil Service Commission will help bring this about. While such a charge is probably desirable, it should be noted that most of the gossip about manipulation of the "rule of three" is exaggerated. The possibilities for manipulation are not great.

Congress has further limited the President's powers of appointment by classifying almost twenty thousand positions as "superior" offices within the meaning of the Constitution, thereby making them subject to senatorial confirmation. Appointments to the diplomatic and consular service and to the Supreme Court must be so confirmed. The Constitution requires it. For all except a few hundred positions, however, the classification is unnecessary. They might better be allocated to the President alone or to heads of departments.

This is rich patronage since many of these offices are key positions with good salaries. But the President loses much of it to members of the Senate through application of the unwritten, but none-the-less iron-clad, rule of senatorial courtesy. Under this rule the President is obligated to consult the member or members of the Senate of his own party, if any, from each state for appointments to positions located in those states. If he fails to do so the Senate will refuse to confirm the appointment. As a consequence, these nominations are really made by Senators. Thus valuable patronage is lost to the President. This is a triple loss. He is unable to use this patronage for trading purposes or to strengthen the party organization; he cannot assure himself that well-qualified people are appointed; and he cannot escape blame if scandals arise. There is even a fourth loss; he must exercise great caution in removing such appointees lest he make an enemy of the Senator who made the appointment.

In the interval between sessions of Congress, the President may make recess appointments which hold until the end of the next session of the Senate. If the Senate, at this next session, refuses to confirm the appointment, the President may give the same person another recess appointment. In a few instances Presidents have defied the Senate by keeping appointees in office over long periods of time in spite of senatorial refusal to confirm the appointment. Congress has undertaken to make this practice
difficult by providing by law that no recess appointee may draw the salary of the office after the first recess appointment.

Naturally, a President will encounter more difficulty in getting his nominations confirmed if the Senate is controlled by the opposition than he will encounter if his own party is in power there. If the opposition is hopeful of getting the Presidency at the next election it will be especially negative. President Truman had considerable trouble in 1948. The Republican leadership in the Senate seemed determined to save as much patronage as possible for what they felt would be a Republican administration in 1949.

Congress also tried on one occasion to control the President’s power by providing that no part of the money appropriated in a given appropriation act should be paid to certain named people. Three men, noted for their liberalism in politics, were thus listed. President Roosevelt denounced the action as unconstitutional encroachment on the powers of the President and Secretary of the Interior Ickes appointed one of the three to office.

Notwithstanding these limitations on the President’s power of appointment, he still has a vast amount of valuable patronage at his disposal and the disposal of his department heads. Hundreds of thousands of positions are in his and their hands. This patronage is a valuable weapon not only in his dealings with Congress but in strengthening and solidifying state and local party organization as well. Intraparty strife may thus be eliminated and the foundation stones laid for a stronger national organization. It was announced in The New York Times and The Herald Tribune in the summer of 1948 that, while the national Democratic party organization was taking no part in the fight between Mayor O’Dwyer and Tammany Hall, President Truman would withhold federal patronage from the Hall until it complied with the Mayor’s demands for a reorganization.

Patronage is a tremendously important tool in party politics. The fact must not be forgotten that it is also always a risk and sometimes a serious liability. The number of office-seekers may exceed the number of offices-to-be-filled. For every one person appointed there may be others bitterly disappointed. Even the person who received the appointment may be disgruntled. He may have been aiming for something higher and be insulted because he did not get it. Presidents and political parties pay stiff
prices at times for the rewards which they reap from patronage and spoils.

One primary objective in the distribution of patronage is to get the time, energy, and financial resources of those who are on the receiving end. On the national level, the Hatch Clean Politics Acts have done serious damage to these possibilities. With the exception of a few top-level policy-making officers, the Hatch Acts forbid government employees who are paid in whole or in part out of federal funds from participating in politics. They may not serve on party committees or engage in active campaign work. Moreover, federal officers and employees are prohibited from soliciting campaign contributions from other federal officers and employees, and no one is permitted to solicit or receive campaign funds on federal property. Penalties are provided for violations. Admittedly the legislation is vague, evasion easy, and enforcement is difficult. Even so, it virtually destroys some of the most valuable assets of the patronage system.

The setting in which a President is compelled to deal with Congress is more important than patronage. A President who is dealing with a Congress in which his own political party has an overwhelming majority in both houses is far better off than one who is compelled to deal with an opposition or even one where his own political party has only a small margin of control. Most legislation is bipartisan. The roll calls in Congress indicate that economic and geographical considerations out-weigh party considerations. Intraparty struggles are even sharper sometimes than inter-party conflict. Nevertheless, partisan considerations are there and they will have a great influence on the techniques which a President may use in his relationship with Congress.

Congress is not held in high esteem by the public. Hence a President can usually produce a favorable public response if he criticizes Congress in press conferences or in White House chats or in swings-around-the-country. It would be an admission of weakness, however, and a self-destructive undertaking for a President to criticize a Congress in which his own party is in power.

Similarly, congressional investigating committees, dominated by members of the President's own party, may be expected to be somewhat more sympathetic than committees controlled by the opposition. There is no guarantee that this will be the case, however, as illustrated by the Dies committee on Un-American activities
in the Roosevelt period. Although a fellow-Democrat, Congress-
man Dies seemed determined to discredit New Dealers. It
would be difficult to defend the proposition that this committee
was any less political than the Thomas committee, even though the
latter, dominated by Republicans, seemed determined, in the midst
of the presidential campaign in the summer of 1948, to discredit
the Truman administration. The inevitable jealousy of con-
gressional leaders of the executive branch set the stage for this
approach.

Perhaps the greatest handicap to the President in his relation-
ship to Congress is the seniority rule. This rule, simply stated,
is an automatic or mechanical device for the selection of committee
chairmen. By application of the rule of seniority, the chairman-
ship of each standing committee goes automatically to the member
of the majority party with the longest period of service on that
particular committee. Minor deviations will occur of course.
A member may be compelled to forego one committee chairman-
ship to accept another, or he may be persuaded because of age
or illness to decline a chairmanship. On the whole, however,
committee chairmanships are such coveted plums that men will
demand them when their turns come regardless of senility, ill
health, or other handicaps.

As ex-Congressman Jerry Voorhis has pointed out, those Con-
gressmen who get good committee assignments early in their
service in Congress have an advantage over the others. Voorhis
was first elected to the Seventy-fifth Congress and asked at that
time to be assigned to the Committee on Agriculture. However,
it was not until the Seventy-eighth Congress that he was able to
get this committee assignment. By that time he was outranked
on the committee by three other members who had had from two
to four years less congressional service than he had had. Those
committeemen who had been elected to Congress at the same time
he was elected so far outranked him as to be "almost out of sight."8

Committee assignments in the House depend in the main on
the extent of the power and the influence of the state delegations.
A new member from an influential state delegation is more likely
to get good committee assignments than one who does not belong
to such a delegation. The power of a state delegation depends
in turn on the voting habits of its constituents. A solid one-party

delegation whose members are reelected for term after term and which represents a single economic or social philosophy is more powerful than one that is mixed politically with a frequent turnover in membership and with some members from rural areas and others from urban districts. Moreover, power begets power. A delegation, once it has acquired control of important positions, can perpetuate its position by getting good assignments for its new members. On the other hand, the very states or parts of states where the most intense and vigorous campaign battles are carried on are the ones having the least to gain from the outcome.9

In short, then, the seniority rule in essence means the domination of Congress by those members who come from politically safe areas. Not only are committee chairmen from this group; the Speaker of the House, the President pro tempore of the Senate, the floor leaders, the Ways and Means Committees, the Rules Committees, the policy committees, etc., all will be in the hands of this group. When the Democrats are in power, Southerners are in control. When the Republicans are in the majority, the leadership is in the hands of those Republicans who come from such rockribbed Republican areas as upstate New York, Michigan, New England, Iowa, and Kansas.10 Thus a President, aware of a nation-wide public opinion and particularly aware of the attitudes of the independent voters in the doubtful states, may be compelled to try to work with a congressional leadership which is largely unsympathetic to his policies. Roosevelt was often compelled to deal with such antagonistic leadership in Congress. It was evident in 1948 that if Dewey was elected he would be compelled to depend for cooperative support upon such men as Martin, Taft, Taber, Knutson, etc.—men who had considerable experience in Congress and who would be reluctant to yield leadership to the President. Coming as they do from safe territory, such men, moreover, have a vested political interest in negativism. This was tragically illustrated during the short special session in the summer of 1948. Undoubtedly many members of Congress, Republicans as well as Democrats, hesitated to go home and tell their constituents that Congress had done nothing about high prices, housing, and civil rights. The leadership, however, preferred a do-nothing position.

9Ibid., p. 69.
10Idem.
Unfortunately, the Legislative Reorganization Act of 1946 did nothing about the seniority rule. The chief difficulty seemed to be to devise satisfactory substitutes. But until alternatives are approved, there is little likelihood of improvement. Obviously, much depends on personalities and on the conditions of the period. The personality of the President and the personalities of the congressional leaders will affect the relationship. A President who is tactful in dealing with Congress will be more effective than one who does not understand Congress. A President who can catch the imagination of the public may be able to build fires under Congress. White House chats, press conferences, messages on the state of the union, and public addresses may all be used to good advantage in this connection. Moreover, in times of crises (wars and depressions) Congress itself seems somewhat less reluctant to accept presidential leadership than in periods of peace and prosperity. A pessimist might find some hope in this!

The President may use his pardoning power to some political advantage. Harding's pardon of Eugene Debs was popular with liberals. Truman's pardon of Mayor Curley of Boston was doubtless popular with Irish Catholics. On the national level the President's power of pardon is practically unlimited. He may pardon before or after conviction and conditionally or unconditionally. His pardoning power is limited to federal offenses, however, and he may be politically embarrassed at times by the necessity for refusing to intervene in behalf of state and local offenders.

In foreign policy, presidential leadership is an established tradition as illustrated by the Monroe Doctrine, the Truman Doctrine, the Marshall Plan, etc. Unlike other chief executives, however, the President's treaty recommendations may be blocked by one-third of the Senators. Too, his foreign policy may be stifled by an economy-minded or isolationist-minded congressional leadership. While it is true that the Senate and Congress as a whole have generally accepted presidential guidance in this area, the President, nevertheless, has been handicapped by the lack of a strong tradition of a bi-partisan or non-partisan foreign policy. The State Department has been trying to establish a trend in that direction in recent years by maintaining close contacts with congressional leaders. Even so, the temptation to create issues out of foreign policies as well as domestic policies is very strong, particularly in campaign periods. Dewey, for example, in ad-
dressing an audience of Italian-Americans in August, 1948, was unable to resist the temptation to bring the ultimate disposition of the former Italian colonies into the presidential campaign despite the fact that the Defense Department and the State Department did not believe that it was in the national interest to have the question raised at that time.

Three fundamental questions run through any discussion of the President and party politics. Do we want party responsibility? If we want it, is there any practical possibility of getting it? If we want it and can get it, should leadership be placed in Congress or in the President? Certainly we do not have a strong tradition of party responsibility in this country. The structure of our government has stood in the way of its development. Consequently, the voters have become increasingly skeptical about the value of the party system. They fail to realize that political parties are an essential characteristic of democratic government and that the public would benefit greatly from party responsibility.11 It would place public welfare above politics and national interest above special interest.

But how can party responsibility be accomplished? Should it be via minor modifications in mechanisms such as the formation of policy committees and the elimination of the seniority rule? Or should more far-reaching reforms be undertaken? A legislative cabinet might be created. The off-year elections might be abolished. Since discontented opposition party voters tend to turn out better in off years and thereby to increase the opposition party's voting strength in Congress sometimes to the point of control of one or both houses, these off-year elections are nuisances and probably should be eliminated by constitutional amendment. The two branches could also be brought into closer harmony by an amendment or even a tradition which would require the President to resign if Congress comes under the control of the opposition party. The opposition would then be compelled to fill the vacancy.

Congressional domination over the Presidency might also be accomplished at least in part by giving the members of Congress more power in presidential nominations. Something in the nature of joint congressional caucuses of the two houses of Congress

could be substituted for the existing delegate convention system of nominating candidates for the Presidency and Vice-Presidency.

In general these proposals are based on the assumption that leadership and control should rest with Congress. It is assumed that the two branches should be brought into a more harmonious relationship by making Congress dominant. There is little likelihood that such proposals could be made popular or that they would give the public what it wants. The tradition of the separation of powers is strong and congressional jealousy of the executive branch is an inevitable consequence. The members of Congress are generally more interested in Presidents whom they can manage than in strong Presidents. Moreover, Congress is not held in high esteem. The public looks to the President for leadership and regards him as more representative of the general interest. Congress, it believes, is more representative of special interests. As the problems of government become more complex, the public tends to demand stronger chief executives. Hence reforms in the processes of nominating and electing the President are more likely to produce popular response. More extensive and more genuine use of direct primaries in the selection of delegates would help. More seriousness in the nominating conventions themselves and fewer deals in smoke-filled rooms would be popular. Elimination or at least modification of the electoral college system would at least place the election process in a safer position. The election of a minority President would not go down as well with the public today as it has in the past. Elevation of the Vice-President to a more important place in the government is a badly needed reform. Anything that would raise that office to a higher level of public esteem would result in a higher level of candidate for the office.

These objectives of securing the nomination and election to the Presidency and Vice-Presidency of men of greater public esteem and greater stature may be accentuated by more extensive use of scientific public opinion polls and more wide-spread radio and television coverage of campaigns, conventions, and other political activities. Men with experience in politics, men with ability and with qualities of leadership as candidates and in the White House can get results in party leadership, in leadership in Congress, and in leadership of the public where dull and incompetent men will fail. The greatest hope at present lies in that direction.