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Presidents and Precedents

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### Third Term's the Charm

Within the recent political news cycle, President Donald Trump and some of his close allies have raised the prospect of him running for and serving a third term (Keith, “President Trump”; McHardy, “Steve Bannon”). This is not the first time Presidents of the United States have discussed or considered serving for more than two terms. However, in the modern era, this prospect conflicts with the 22<sup>nd</sup> Amendment of the United States Constitution, which says “No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once” (“The 22<sup>nd</sup> Amendment,” Section 1). The amendment was passed by Congress in 1947 and ratified by state legislatures through to 1951, following President Franklin Delano Roosevelt’s four term presidency. Until Roosevelt had ran for and won a third term in 1940, many presidents who served for two full terms voluntarily stepped down upon completion of the second term, emulating the practices of the first president, George Washington, and the third president, Thomas Jefferson. The two-term limit precedent was so significant in American history that upon the first (and thus far only) violation of the precedent, it was ratified into the Constitution and established as law. It can also be argued that such a precedent was difficult to break because it required a president to maintain their popularity to run and serve a third term, and the only time the precedent was broken was during a period of crisis.

The precedent initiated, as did a number of other precedents, from the nation's first president, George Washington. Despite calls to serve a third term, after several decades of service to the nation during its fight for independence and its initial establishment, Washington had grown tired of the duties of public service, and sought to retire to his home in Mount Vernon. He made as much clear in his 1796 Farewell Address, where he wrote "I constantly hoped, that it would have been much earlier in my power... to return to that retirement, from which I had been reluctantly drawn." (Washington "Farewell Address," par. 3). Though Washington was the first president to step down after two terms, the precedent was firmly established when Jefferson refused to stand for a third term in the Election of 1808. Jefferson feared that if he did not establish such a president, future presidents would become motivated to continue serving for the remainder of their lives, arguing, "history shows how easily that degenerates into an inheritance" (Jefferson, "Letter"). Jefferson invoked Washington's legacy and decision to retire to support his own decision, establishing the two-term precedent (Nelson "Crossroads," 34). Continuing into the 19<sup>th</sup> Century, many presidents who completed two terms either declined to run or did not maintain enough popularity to get re-nominated to the party ticket (NCC Staff, "On This Day"). This did not stop two-term presidents in the 19<sup>th</sup> Century such as Ulysses Grant and Grover Cleveland from considering and attempting to run for a third term (NCC Staff, "On This Day"). Given the failure of both candidates to receive their party's nomination, the precedent was not seriously challenged.

The first significant challenge to the precedent came from Theodore Roosevelt. Following the completion of his two terms— the first completing William McKinley's term following McKinley's assassination, the second his election to the position— Roosevelt campaigned in the Election of 1912 under a third party named the Progressive Party (Milkis

“Woodrow Wilson,” 3). This occurred following his dissatisfaction with the work of his successor, President William Howard Taft, and Roosevelt’s failure to earn the Republican Party nomination (Milkis “Woodrow Wilson,” 3). Upon being nominated by the Progressive Party, Theodore Roosevelt delivered a long, retrospective speech outlining his platform, insisting “the right of the people to rule,” critiquing the shortcomings of both the Republican and Democratic Parties’ platforms to address the pressing economic issues of the time, and concluded it by saying, “We stand at Armageddon, and we battle for the Lord” (Roosevelt “My Confession of Faith,” par. 3, 6, 43). It is interesting to note that although Roosevelt discussed his experience as president in his speech, saying that his power in the office stemmed from popular support, he never addressed the fact that his potential election would break the two-term precedent (Roosevelt, “My Confession of Faith,” par. 42). Roosevelt did not win the Election of 1912, as he split Republican votes with Taft, allowing Democratic candidate Woodrow Wilson to win the election (“1912;” Milkis “Woodrow Wilson,” 2). While Wilson had served two terms and expressed interest in running for a third term, his stroke in 1919 and his waning popularity following his speaking tour in support of the League of Nations prevented him from receiving the Democratic Party’s nomination for the 1920 election (Milkis “Woodrow Wilson,” 18).

It would not be until 1940 that the precedent was again challenged and ultimately broken by President Franklin Roosevelt. This Roosevelt was first elected in 1932, and his two terms were focused on the legislation and implementation of New Deal programs, which provided government jobs and economic recovery for the nation following the Great Depression (Milkis, “The Consolidation,” 1-2). With World War II beginning in Europe and continued Japanese aggression in the Pacific Ocean, Roosevelt stood for and received the nomination for the

Democratic ticket in the Election of 1940, making him the first two-term President to receive a major political party's nomination for a third term (Milkis "The Consolidation," 20).

Roosevelt recognized the gravity of both the developing international situation and the potential for him to break the two-term precedent. During his speech to the Democratic National Convention after receiving the nomination, Roosevelt stated that he had made plans before the start of World War II to retire, but these plans "have been in a sense repealed by an overriding public danger. In the face of that public danger all those who can be of service to the Republic have no choice but to offer themselves for service in those capacities for which they may be fitted" (Roosevelt, "Radio Address," par. 27). Looking towards future prospects, in line with the principle of electoral democracy, and in contrast to the authoritarianism of Nazi Germany addressed later in his speech, Roosevelt also states the decision whether or not he should serve another term "rests with the people through the American method of a free election," and should he be re-elected, Roosevelt stated "I say to you, in the utmost simplicity, I will, with God's help, continue to serve with the best of my ability and with the fullness of my strength" (Roosevelt, "Radio Address," par. 14, 29). The American electorate responded to that call, electing Roosevelt to a third term by a significant margin in the Electoral College (449 for Roosevelt vs 82 for Willkie, the Republican nominee) and a smaller, but noticeable margin in the popular vote (~55% for Roosevelt vs. 45% for Willkie) ("1940"). Roosevelt would go on to serve his third term, overseeing the entry of the United States into the Second World War following the Japanese bombing Pearl Harbor ("1940;" Milkis "The Consolidation," 20). Roosevelt was elected to a fourth term in 1944, but died three months into that term in April 1945 (Milkis "The Consolidation," 20).

Given that Franklin Roosevelt is the only president to have been elected to a third (and fourth) term, the circumstances under which he did so inevitably define the requirements that, without the 22<sup>nd</sup> Amendment, would allow a President to run and serve a third term if elected. Assuming that the president has served two terms and desires a third term, there are three conditions that must be met, not necessarily in any order. First, the president must have enough popularity within their party to receive that party's nomination, as Roosevelt had attained with the Democratic Party's nomination. Second, the two-term president must have overseen (or is currently overseeing) some sort of "crisis," whether domestically or internationally. In Roosevelt's case, he had overseen the domestic recovery of the United States from the Great Depression, and was overseeing preparations for the defense of the United States against aggression in World War II, recognizing the possibility that the United States may have to enter the war (which it would inevitably do). Lastly, the electorate-at-large must both recognize the crises, and approve of the president's response to them; or at the very least, they must maintain a high enough popularity to be reelected. According to popularity polls between 1941 and 1943, Roosevelt always maintained an approval rating of 65% or higher ("Franklin D. Roosevelt Public Approval"). Given this polling, in the electorate's eyes Roosevelt had responded well to these crises and was very popular in part because of that response.

These standards can be contrasted with Theodore Roosevelt, the president that previously came closest to winning a desired third term. Theodore Roosevelt was not popular enough to receive the Republican Party's nomination for the Election of 1912, and formed his own political party which nominated him as their presidential candidate, arguably fulfilling (if not circumventing) the first requirement (Milkis "Woodrow Wilson," 3). Although Roosevelt ran championing his Progressive Era reforms, there was no pressing-enough crisis as was present

with the Great Depression. Lastly, despite calling his election era “Armageddon,” given that Theodore Roosevelt split the Republican vote with Taft and allowed Wilson to win the election, there was no recognized crisis by the electorate-at-large, nor did Roosevelt have significant electorate-wide popularity (Roosevelt “My Confession of Faith,” par. 43; “1912;” Milkis “Woodrow Wilson,” 2).

Following Franklin Roosevelt’s death, Congressional Republicans began drafting and debating an amendment to the Constitution that would limit the number of terms a president could serve to two. Much of the debate was focused on the language that not only limited presidents elected to two terms, but also considered vice presidential succession or other circumstances where a person may be considered as an “acting” president. In the midst of contentious debates, text drafted by Senator Robert Taft balanced limiting acting presidents to one term “as short as 5½ years” and allowing them to serve long enough up until “11½ years,” which became the language of the ratified amendment (Peabody and Grant “The Twice and Future President,” 593-598). This amendment passed both the Senate and the House of Representatives on March 21<sup>st</sup>, 1947, with the two-thirds majorities needed in both chambers to pass constitutional amendments, and was sent to state legislatures for approval (Peabody and Grant “The Twice and Future President,” 598). Following the approval of three-fourths of state legislatures in 1951, the informal precedent became constitutional law (Peabody and Grant “The Twice and Future President,” 598-599).

Looking past the passage of the 22<sup>nd</sup> Amendment, many two-term presidents indicated interest in serving a third term, with discussions of overturning the amendment beginning— but not being thus far fulfilled— not long after its ratification. Eisenhower indicated interest and those closest to him believed he would have won if he was allowed to be renominated, and Reagan

shared a similar interest in running (Molotsky “Reagan Wants;” Peabody and Grant “The Twice and Future President,” 604-606, 608-609). Reagan would most likely have been successful, as he maintained a significant popularity in both elections he stood for, he saw the resolution of the stagflation economic crisis of the 1970s, and he mostly maintained a significant approval rating (which went down during the Iran-Contra Affair) (Milkis “A Restoration,” 2, 10, 19). It can be argued that the election of Reagan’s vice president, George H.W. Bush, to the Presidency in the election of 1988 on margins similar Reagan’s election was Reagan’s unofficial third term (Milkis “A Restoration,” 28-29).

The precedent of a president serving no more than two terms in office was unofficially established as a tradition by George Washington and Thomas Jefferson, both of whom were tired and wished not to make the position they were elected to be seen as something that was guaranteed to the officeholder. However, this did not stop future presidents from trying to seek that third term, all but one of which would fail. The one that succeeded, Franklin Roosevelt, did so through significant popularity recognized by both their party and American voters, especially during a time of crisis. Regardless, the fact the precedent was broken led to a backlash that resulted in an amendment that codified the precedent into the law. As discussions over the amendment and presidents serving for a third term continue into the modern day, an understanding of the precedent and its one and only violation will ultimately inform whether the tradition-turned-law is again violated, whether repealed by another constitutional amendment, circumvented by legal loopholes, or ultimately ignored.

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