

By Arthur Schlesinger Jr.

When the 25th Amendment was ratified on Feb. 10, 1967, few would have guessed that within a decade the nation would be wondering how to apply it. But history is blessedly full of surprises; and in the autumn of 1973 Congress may well have to ponder the meaning of those bland words in the Amendment's Section 2: "Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress."

It is clear that "shall" in the sentence above is to be read as "must," not as "may." For Section 1 says that, in case of the removal of the President from office or of his death or resignation, "the Vice President shall become President," and this was obviously not meant as optional. But Section 2 lays down no deadlines, so a President can presumably dally for a time before obeying the constitutional command to fill the vacancy. Once he sends his nomination to the Hill, what is the responsibility of Congress?

President Nixon has had his own view of this. During his effort to adorn the Supreme Court with G. Harrold Carswell, he instructed Senator Saxbe of Ohio that the President was "the one person entrusted by the Constitution with the power of appointment," a singular claim repeated twice more in the course of the letter. The claim was singular because, had Mr. Nixon bothered to consult the Constitution, he would have discovered that this document says, with customary precision, that the President "shall nominate and by and with the Advice and Consent of the Senate, shall appoint" designated public officers.

The difference between nomination and appointment was something that Presidents of the United States before Mr. Nixon had no particular difficulty grasping. "I was only one-half the appointing power," Theodore Roosevelt wrote in his "Autobiography"; "I nominated; but the Senate confirmed." President Nixon, however, clearly hoped to transform what the Constitution had intended as a shared power into what he described to Saxbe as the exclusive "constitutional responsibility" of the President, with the Senate permitted the honor of ratifying the Presidential choice.

Perhaps Watergate has chastened Mr. Nixon. But, if so, there has not been much evidence of this so far. It therefore seems likely that, if Mr. Agnew should fade out of the scene, Mr. Nixon will give Congress its marching orders and try to persuade the people that the Congressional obligation is to rubber-stamp his nomination. Still, if the President has the

constitutional duty to nominate a Vice President, the Congress has an equal constitutional duty to submit that nomination to the most scrupulous and intensive review.

That duty would be considerable at any time. But it surely becomes more imperious than ever at the present time. These are grim days for our nation. The Presidency itself is in crisis. The land is overflowing with doubt and mistrust. The great national need is for unifying acts of statesmanship. If Mr. Agnew goes, President Nixon should rise to the occasion and propose as Vice President a man whose appointment will reassure the nation rather than one whose nomination would only deepen and embitter existing tensions. If he does not rise to the occasion, then it surely becomes the responsibility of Congress to exercise the power assigned to it by the Constitution and force him to make a national-unity appointment.

The criterion here is simple and obvious: Congress should vote to confirm as Vice President only a person who has made it clear that he will not be a candidate for President in 1976. A Vice President who plans to use his office as a springboard for the Presidential nomination would only exacerbate all the present troubles between the executive and legislative branches. Mr. Nixon must, of course, nominate a Republican. But there are able Republicans without Presidential ambitions whose appointment would cheer the nation and who, if Mr. Nixon himself should be obliged to go, would inspire general confidence as a caretaker President. An excellent example is former Senator John Sherman Cooper of Kentucky.

If Congress ever intends to start reclaiming its constitutional powers, this would be a good time and place to begin. And there is reason to suppose that President Nixon himself, if he thinks about it for a moment, might be induced to see certain advantages in this course. For, if the President should name as Vice President a man who is actively seeking the Presidency for himself, then Congress and the people may begin to see the new Vice President as a genuine alternative to Mr. Nixon, and one more argument against impeachment would fall away.

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