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Silva: PRESIDENTIAL SUCCESSION

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RECENT BOOKS

This department undertakes to note or review briefly current books on law and materials closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publishers' literature, and the ordinary library sources.

BRIEF REVIEWS

PRESIDENTIAL SUCCESSION. By *Ruth C. Silva*. Ann Arbor: University of Michigan Press. 1951. Pp. vi, 213. \$3.50.

Presidential Succession is a detailed study of the constitutional problems that arise when the president is removed, dies, resigns or is unable to discharge the powers and duties of his office.¹ Also, extensive treatment is given to the congressional efforts that have been made to designate "what Officer shall then act as President"² if both the president and vice-president can no longer serve.

The first problem discussed is the status of the vice-president upon the removal, death or resignation of the president. The question presented is whether the vice-president becomes president or merely acts as president for the unexpired portion of his term. This question arises because the Constitution, when describing the status of the vice-president in such a case, states that "the Same shall devolve on the Vice President."³ The antecedent of "the Same" is not clear; grammatically it could be the "Office"⁴ or "the Powers and Duties of said Office."⁵ Miss Silva recognizes that ever since John Tyler assumed the presidency, taking the presidential oath, it has been thought that the office itself was the antecedent of the words "the Same." When the president is removed, dies or resigns, the question of whether the vice-president assumes the office or merely the powers and duties of the office is of little importance. However, when there is an "Inability"⁶ on the part of the president, then the question is of great importance because, as most agree, two presidents cannot exist at the same time. Hence, if the vice-president assumes the *office* of the presidency, the elected president, who is perhaps only temporary disabled, finds himself effectively ousted. As a result of this thinking, it is unlikely that a president, although in fact unable to continue his duties, will allow the vice-president to assume

¹ Article II, section 1 of the Constitution provides: "In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President."

² Article II, section 1 of the Constitution continues: ". . . and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected."

³ See note 1.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ There is some question concerning the interpretation of this word in article II, section 1 of the Constitution. The author spends over 50 pages on this and related questions.

them. Such, the author feels, has happened twice in our history to the great detriment of the country,⁷ and could happen again even under more serious circumstances.

The second problem Miss Silva discusses lies in establishing a line of presidential succession when both the president and the vice-president, for some reason, cannot serve. The Constitution gives Congress the power to designate by law "what Officer" will then act as president. Congress has passed three statutes dealing with this matter. In 1792 an act was passed providing that those next in line were the president of the Senate pro tempore, and then the Speaker of the House of Representatives;⁸ the act of 1886 repealed the earlier act and substituted the cabinet officers in order of rank;⁹ in 1947 the cabinet officers were relegated positions in the line of succession after the speaker of the House of Representatives and the president of the Senate pro tempore (an inversion of the act of 1792).¹⁰ Miss Silva sees a constitutional difficulty in the acts of 1792 and 1947, claiming that the word "Officer" in article II, section 1 of the Constitution does not include officers of the legislative branch of the government. Policy objections to all three acts are also examined by the author indicating the various drawbacks to allowing either cabinet officers or heads of legislative bodies to follow the vice-president in the line of succession. In the closing pages, the author suggests that Congress should create the office of "assistant president." This officer would be appointed by the president with the advice and consent of the Senate. This, she feels, would cure the difficulties inherent in the succession of both cabinet officers and the heads of the legislative bodies.

Presidential Succession is tersely written and contains extensive documentation. The reader should be prepared to follow a very close and detailed investigation of the problems described above, and should have a desire to trace these ideas to their source. The author uses a historical approach to this technical subject and successfully interweaves past events with the constitutional problems presented. As a collection of materials and ideas on this subject, *Presidential Succession* is of high quality.

Wilber M. Brucker, Jr., S.Ed.

⁷ P. 68. The author refers to Presidents Garfield and Wilson.

⁸ 1 Stat. L. 240, §§9, 10 (1792).

⁹ 24 Stat. L. 1 (1886), 3 U.S.C. (1940) §§21-22.

¹⁰ 62 Stat. L. 677 (1948), 3 U.S.C. (Supp. IV, 1951) §19.