

TRANSFERRING THE PRESIDENTIAL POWER –HISTORIC OVERVIEW OF THE U.S. PRESIDENTIAL INAUGURATIONS –

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Resumen: La toma de posesión es el proceso de legitimación ceremonial del jefe del Estado norteamericano. Esta institución no fue regulada; los elementos de programa se desarrollaron con el tiempo por medio de tradiciones y costumbres desde la primera toma de posesión de George Washington en el año 1789. El objetivo del presente ensayo es de introducir la historia de los días de las primeras inauguraciones, al mismo tiempo planteando la cuestión de si la inauguración tiene importancia legal, aparte de su importancia social. La conclusión es que el juramento al cargo es el único elemento omnipresente en el procedimiento de la introducción del jefe del estado al cargo y, por consiguiente es el único elemento necesario y suficiente para completar la legitimación ceremonial del Presidente

Abstract: The inauguration is the ceremonial legitimization process of the American head of state. This institution has not been regulated in the United States; the elements of the programs have developed through tradition and customs over time since George Washington's first inauguration in 1789. This writing aims to introduce the history of the early U.S. presidential inauguration days; at the same time it also raises the question whether the inauguration has a legal role apart from its social one. The conclusion shows that the oath-taking is the single omnipresent element in the head of state's induction into office, therefore, that is the legally relevant and necessary element sufficient in itself to complete the President's ceremonial legitimization.

Palabras Clave: Presidente, toma de posesión, legitimación ceremonial, Estados Unidos, juramento, proceso de transferencia de poder.

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1. Introduction

The President of the United States is arguably the most powerful politician today, which is why the U.S. presidential elections are closely monitored all around the world every fourth year – and 2012 is no exception. The “*leader of the free world*” – as the American head of state is often referred to – is still being elected according to the system set up in the Constitution of the United States in 1787.² Securing the popular votes and then winning the majority in the Electoral College is necessary to the presidency, but with the election, the successful candidate merely becomes the so-called President-elect. In order to be vested with the full array of rights and obligations, he³ needs to be inducted into office and take an oath, the text of which had also been engraved in said Constitution.⁴ The inauguration of the U.S. President is though a very scarcely regulated and primarily ceremonial procedure, one that has developed through history, is maintained by tradition, and is considered essential to the legitimization of the head of state. The inauguration is the occasion for the peaceful transfer of power and the reunification of a nation – possibly – divided throughout the election campaigns.

The aim of this study is to provide a brief historic overview of the U.S. presidential inaugurations with special emphasis on determining which elements of the inaugural ceremonies are of legal relevance and which could be disregarded without further effects to the office of the President and his power.

² The Constitution of the United States (hereinafter: the Constitution) Article II. Section 1. Clauses 1-4. and the 12th Amendment to the Constitution enacted in 1804.

³ Due to the fact that all of the 44 U.S. Presidents so far have been men, the present study will refer to the President in the third person as “*he*” despite recognizing that there is no legal restriction for women to become Presidents and maybe some day there will be a female “*leader of the free world*”.

⁴ The Constitution Article II. Section 1. Clause 8.

2. The U.S. Presidential Power

Article II of the American Constitution regulates the executive branch and begins its Section 1 as follows: “*The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, (...)*.”⁵ It had not always been clear what kind of a leader the Founding Fathers⁶ had envisioned. Following the Declaration of Independence, in which Thomas Jefferson used simple logic to clearly state that “*if neither the king nor Parliament can rule America, then Americans must be independent and rule themselves,*”⁷ the Americans had to come to an agreement on how they saw their future best secured. The Articles of Confederation which was enacted by the First Continental Congress in 1777 and which – following its ratification by the states in 1781 – served as the country’s first *quasi* constitution, tried to establish a loose connection between sovereign states but it “*did not provide for a strong executive*”.⁸ This concept quickly proved insufficient and consequently by the time the legislators gathered in Philadelphia in 1787, they had already been convinced that they needed a strong executive and a single-person leader. The drafters of the Constitution did not only rely on their personal knowledge and experience from other countries, documents and legal theories, but also on the existing examples in the original colonies. At that time, in every one of the 13 states “*there was a chief executive (the governor) and, with the exception of Pennsylvania, a bicameral legislature*”.⁹ It seemed logical to build the Union based on the model of the states, which is why the U.S. Constitution created a very strong legislature in Article I and subsequently a presidency in Article II, where the aim was to have a head of state who – as a sort of chief governor – could lead the

⁵ The Constitution Article II. Section 1. Clause 1.

⁶ The term is accredited to Warren G. Harding according to Paul F. Boller, Jr. and refers to those statesmen collectively who were involved in the wording of the Constitution and the laying of the new country’s foundation during the second half of the 18th century. BOLLER, Paul F. Jr, *Congressional Anecdotes*, New York, 1992, p.4.

⁷ HALL, Kermit L. – FINKELMAN, Paul, – ELY, James W. Jr., *American Legal History, Fourth Edition*, New York, 2011, p.91.

⁸ FRIEDMAN, Lawrence M., *A history of American Law*, New York, 2007, p.71.

⁹ FEERICK, John D., *From failing hands – The Story of Presidential Succession*, New York, 1965, p.24.

country.¹⁰ Even so, the position the Founding Fathers achieved to create was unlike any other in the world: The American President not only had and continues to have an exceptionally wide range of power but he personally embodies both the head of state and the head of the executive branch while being a part of the system of checks and balances and therefore interacting with both the legislature and the judiciary.

The presidential power includes rights and obligations relating to the other branches of power, intertwined with and mutually controlling the legislature, the operating executive departments and the judiciary as well as military matters and foreign policy. The President informs the U.S. Congress¹¹ – customarily – at least once every year about the “*State of the Union*”, that is in essence the achievements or failures of the past year. This creates a situation where the head of the executive branch reports to the legislature, a forum he is entitled to convene and adjourn. He may also propose measures to be taken by the legislature and set out plans for the near future.¹² The President has a right to veto bills that have passed both Houses of Congress,¹³ and he must take care that the laws are otherwise faithfully executed.¹⁴ In terms of the judiciary, the President appoints the justices of the Supreme Court¹⁵ and has the power to grant reprieves and pardons.¹⁶ It is not regulated in the Constitution – nor elsewhere in writing, but for the purposes of this study it is important to note – that the Presidential oath of office is customarily administered by the Chief Justice of the U.S. Supreme Court – or in his absence, another representative of the judiciary – adding to the list of checks and balances. Since the President is both the head of state and the leader of the executive branch, the appointed secretaries report to him on all operations of the individual executive departments.¹⁷ The

¹⁰ KÉPES, György, *A tökéletesebb unió: az Amerikai Egyesült Államok Alkotmánya [A more perfect Union: The Constitution of the United States]*, Budapest, Hungary, 2003, p.38.

¹¹ The United States has a federal bicameral legislature comprised of the U.S. Senate and the U.S. House of Representatives. The two Houses collectively are called the U.S. Congress.

¹² The Constitution Article II. Section 3.

¹³ The Constitution Article I. Section 7. Clause 2.

¹⁴ *Supra* 11.

¹⁵ The Constitution Article II. Section 2. Clause 2.

¹⁶ The Constitution Article II. Section 2. Clause 1.

¹⁷ *Supra* 15.

President is the commander in chief of the U.S. Army and Navy¹⁸ and has the power to conclude treaties and represent the United States abroad as well as appoint and receive ambassadors, public ministers, consuls and other officers.¹⁹

Despite the broad powers of the President, the Constitution provided for control over him and his activities and should he commit certain severe offenses,²⁰ a procedure of impeachment may be initiated against him. The House of Representatives has the exclusive power to decide on the commencement of the impeachment while the Senate serves as the trial court for this procedure. To complete the circle of counterbalanced controls, if the President is being impeached, the Chief Justice of the U. S. Supreme Court presides.²¹

The provisions of the American Constitution described above only created the starting point for the presidential office. Congress received the power to enact laws that would grant further rights and impose obligations on the head of state. The relevance of the presidency most often depended on the man in office. Some were great (most prominently George Washington, Abraham Lincoln and Franklin Delano Roosevelt), others are perceived as less significant in the development of the country. The twentieth century certainly brought about changes, especially due to the Great Depression where the people were desperately looking for a leader, a strong individual who could control the country and steer it in the right direction. This was the start of what Friedman calls "*imperial presidency*".²² The office of the U.S. President, his power coupled with the turn of events during the second half of the twentieth century, the end of the cold war era and the fall of the Soviet Union, helped the American head of state emerge as the most powerful politician of our time. His induction into office and the peaceful transfer of power in the United States every fourth year is not just another pompous ritual; it is a ceremony of both legal and social significance.

¹⁸ Supra 15.

¹⁹ The Constitution Article II. Section 2. Clause 2. and Section 3.

²⁰ These being "*treason, bribery, or other high crimes and misdemeanors*" – according to the text of the Constitution Article II. Section 4.

²¹ The Constitution Article I. Section 2. Clause 5., Section 3. Clause 6., Article II. Section 4.

²² FRIEDMAN, Lawrence M., *American Law in the 20th century*, New Haven, USA, 2002, p.5-6.

3. The Inauguration of the U.S. President

A presidential inauguration “*is important in the nation’s life as a public demonstration of the peaceful transfer of power from one president to another, regardless of political views and party affiliations, and as an occasion to celebrate the basic values that unite the American people – despite differences (...)*”.²³ Yet the details of such inaugurations have never been regulated in the Constitution, statutes or other bodies of law; most of the programs on Inauguration Day have developed through tradition and customs. The Constitution merely states that “[b]efore he enter on the execution of his office, he shall take the following oath or affirmation (...)”.²⁴ Apart from Article II of the U.S. Constitution, the 12th, 20th, 22nd and 25th Amendments to the Constitution contain rules regarding the executive but only one is relevant to the inauguration: Section 1 of the 20th Amendment, which moved the Inauguration Day from March 4th to January 20th.²⁵ “*All the other activities we have come to associate with the installation of a President – (...) the balls, the concerts, the choruses and the galas, the sometimes seemingly endless parades in the afternoon and the fireworks in the evening – all these are product not of law but of custom and tradition.*”²⁶ Certain elements of the early inaugurations derived from the joyful festivities surrounding the first visit of a newly appointed governor to the colony he was supposed to govern. Whenever a governor arrived for the inaugural official visit – generally within six months from his appointment – he was escorted with an honorary procession to the “*local government building, where he opened and published his commission (...) [following which] various oaths were administered to [him]*”.²⁷ The presence and significance of the oath-taking is probably the reason why the presidential oath of office was included in the text of the U.S. Constitution while none of the other details have. To a certain extent – though Inauguration Days have been carefully planned for most presidents entering office – every man wrote his own script. The first President set the tone for such occasions and created some precious

²³ BOLLER, Paul F. Jr., *Presidential inaugurations*, New York, USA, 2002, p.xviii.

²⁴ The Constitution Article II. Section 1. Clause 8.

²⁵ 20th Amendment to the Constitution Section 1.

²⁶ LOMASK, Milton, “*I do solemnly swear...*” – *The story of the presidential inauguration*, New York, 1966, p.6.

²⁷ FEERICK, *From failing hands*, p.25.

precedents that successors have followed for centuries, therefore, his inauguration will be introduced in more detail.

3.1.- *The Inauguration of George Washington*

According to one of the last decisions of the Second Continental Congress, the first presidential inauguration should have taken place on March 4, 1789 at the seat of the federal government.²⁸ The location was the easier part; New York City hosted the federal government prior to its move to Philadelphia in 1790,²⁹ which is why this solemn occasion took place in the Federal Hall on the intersection of Wall Street and Broad Street.³⁰ The first Congress of the United States, which should have had to officially count and announce the Electoral College votes for the presidency, had not had a quorum prior to April 6, 1789. Therefore, President-elect George Washington and Vice President-elect John Adams travelled to New York after having been informed of the results, to be inaugurated. The designated day of April 30, 1789 was a Thursday,³¹ and George Washington was accompanied by a congressional delegation from his lodging at Franklin House to Federal Hall shortly after noon. He was escorted to the Senate Chamber where members of both Houses awaited him.³² The Inaugural Committee in charge of the preparations for the inauguration had decided earlier that the Chief Executive should be sworn in on a Bible.³³ The lack of a Bible at Federal Hall, however, was only realized when Robert R. Livingston, the Chancellor of the State of New York and presiding judge of the most important court in the state of New York, who had been appointed to administer the presidential oath – filling in for a member of the highest judicial body, the Supreme Court because the latter had not yet been set up at that

²⁸ BOLLER, *Presidential Inaugurations*, p. 2.

²⁹ The First Congress Session II. Chapter XXVIII. An Act for establishing the temporary and permanent seat of the Government of the United States, (a.k.a. The Residence Act of 1790) Section 5., July 16, 1790, In: <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=001/llsl001.db&recNum=253> Accessed: June 26, 2012.

³⁰ KITTLER, Glenn D., *Hail to the Chief! – The Inauguration Days of Our Presidents*, Philadelphia, New York, 1965, p. 2.

³¹ Supra 29.

³² BOLLER, Paul F. Jr., *Presidential Anecdotes*, New York, 1996, p. 18.

³³ KITTLER, *Hail to the Chief!...*, p. 2.

time – wished to proceed to the balcony with the President-elect.³⁴ A messenger was sent to the closest Masonic lodge, that of St. John to borrow their Bible.³⁵ The Secretary of the Senate, Samuel Allyne Otis raised the open Bible for Washington to place his left hand on it while reciting the thirty-five words of the oath as written in the Constitution.³⁶ Then the President added – and thereby created one of the most prominent and maintained traditions of the inaugural oath, – “*So help me God!*” and kissed the Bible while the crowds in the streets cheered.³⁷ The statesmen returned to the Senate Chamber where the newly inaugurated President delivered his inaugural address and then walked over to St. Paul’s Chapel for a service.³⁸ This was the only time that a religious service constituted a part of the official inaugural program.³⁹ The activities of the day were concluded with the “*illumination of the city and the display of fireworks*”,⁴⁰ yet another element of the ceremony which – weather permitting – became a regular item on the agenda.

Four years later Washington was reelected as President and – though he had been the incumbent – he made it clear that he was to be inaugurated again for his second term. He personally would have been satisfied taking the oath of office again in his home, witnessed only by the leaders of the executive departments. However, his secretary of war, Henry Knox – along with the otherwise ardent political enemies Alexander Hamilton and Thomas Jefferson – convinced him about the importance of the symbolism of making the inauguration a public act.⁴¹ This seemingly unimportant detail showed – and continues to show every fourth year – the real significance of the inaugural ceremony: It is the occasion where the agreement between the American people and their leader is sealed, when the power is

³⁴ LOMASK, “*I do solemnly swear...*”, p. 5.

³⁵ BOLLER, *Presidential Inaugurations*, p. 12-13.

³⁶ KITTLER, *Hail to the Chief!*..., p. 8.

³⁷ BOLLER, *Presidential Inaugurations*, p. 131.

³⁸ BOLLER, *Presidential Anecdotes*, p.19.

³⁹ Some of the later presidents have also attended services on the day of the inauguration; during the twentieth century, following Franklin Delano Roosevelt it even became customary for the President-elect and his family to attend church in the morning but that has never been included in the official program of the day. See also: KITTLER, *Hail to the Chief!*, p. 8. and BOLLER, *Presidential Inaugurations*, p. 18.

⁴⁰ BOLLER, *Presidential Anecdotes*, p. 20.

⁴¹ BOLLER, *Presidential Inaugurations*, p. 140.

transferred not only from one leader to another, but from the people to the leader, giving rights and imposing obligations that the President is supposed to exercise and fulfill while keeping the best interest of the people in the forefront. To this he swears an oath and thereby becomes liable for any of his actions conducted to the contrary. With his second inauguration Washington made all of this very clear.

Inauguration Day was March 4, 1793 and it took place in the Congress Hall in Philadelphia, the then designated temporary capital of the United States.⁴² Only a few details differed from the previous inauguration: the oath-taking ceremony was held at noon and indoors in the Senate Chamber, Washington's inaugural address⁴³ preceded his oath, and the oath was administered by an Associate Justice of the United States Supreme Court, William Cushing.⁴⁴

3.2.- Following Inaugurations Until 1841

Based on Washington's inaugurations the following daily schedule could be observed in general: On Inauguration Day the President-elect proceeds to the designated place of the ceremony around midday. He then takes his oath in front of a representative of the judiciary – preferably an Associate or the Chief Justice of the United States Supreme Court – and delivers his inaugural address (the order of these two may be changed). The President goes on to spend the afternoon with friends or visitors and enjoys the fireworks display in the evening. Compared to this very basic agenda, the presidential inaugurations at the dawn of the twenty-first century are highly overcomplicated and the program extends over two or three days. The extra elements were added slowly and over time.

John Adams' inauguration on March 4, 1797 was very similar to that of President Washington, though lacked much character. It was held in the Congress Hall in Philadelphia as it still was the seat of the federal government. Adams first delivered his address and then took his oath of office in front of Oliver Ellsworth, the Chief Justice of the

⁴² Supra 28.

⁴³ President Washington's second inaugural address was the shortest in the history of inaugural addresses consisting of only 135 words. BOLLER, *Presidential Inaugurations*, p. 140.

⁴⁴ KITTLER, *Hail to the Chief!*..., p. 10-112.

U.S. Supreme Court, using a Bible and adding the words “*So help me God!*” in the end. The President then went back to his temporary lodging and called it an early night.⁴⁵ Though John Adams had been the first Vice President to win an election of his own,⁴⁶ his inauguration did not mirror popularity or appreciation.

Thomas Jefferson was the first President to be inaugurated in the nation’s capital, Washington D.C. on March 4, 1801. It was a solemn but simple affair producing a couple of new element to be added to the inaugural history books. This was the first occasion that the prepared inaugural address had been handed to the members of the press in the morning.⁴⁷ Jefferson left his lodging at noon and walked to the Senate Chamber of the temporary congressional building where he first delivered his address and then proceeded to taking his oath – on a Bible and adding the words “*So help me God!*” – in front of the Chief Justice of the United States Supreme Court, John Marshall.⁴⁸ Though there were ongoing celebrations on the streets, the President spent the afternoon with the Marshalls and retired to his hotel early. Jefferson’s very puritan and simplistic inauguration was repeated four years later on March 4, 1805. The only additional program on the agenda was that the President opened the doors of his residency for any and all who wished to pay him a visit, therefore masses of people wondered through the presidential mansion during the evening.⁴⁹

⁴⁵ John Adams, prior to becoming Vice-President had been a Senator for Massachusetts. He resided in Boston and never set up a permanent residence in New York or Philadelphia. He moved to Washington D.C. in 1800 for the couple of months remaining from his term in office. KITTLER, *Hail to the Chief!*..., p. 16.

⁴⁶ Apart from John Adams, Thomas Jefferson (1801), Martin Van Buren (1837) and George Bush Sr. (1989) succeeded in winning elections of their own directly following their Presidents’ terms, while Richard M. Nixon won his own presidential election only after leaving the White House for eight years (1869).

⁴⁷ Samuel Smith, the editor in chief of The National Intelligencer was one of the first journalists visiting the President-elect and that is how he obtained a copy of the speech. LOMASK, “*I do solemnly swear*”..., p. 53.

⁴⁸ John Marshall, probably the most famous Supreme Court Justice, who practically changed the judiciary’s role as a whole in the United States, was also the cousin of President Jefferson. KITTLER, *Hail to the Chief!*..., p. 18-19.

⁴⁹ KITTLER, *Hail to the Chief!*..., p. 20-21.

James Madison, the fourth President was accompanied by members of the military to his inauguration on March 4, 1809 making it the first morning procession in inaugural history.⁵⁰ He first took his oath in front of John Marshall and then delivered his address. The President and his wife hosted a reception in their home on F Street during the afternoon and the ball organized by the Washington Dancing Assembly in the Long Hotel in the evening is believed to have been the first official inaugural ball.⁵¹ The Madisons only moved into the presidential residency on March 11, when Jefferson left for his home in Virginia.⁵² Following his tight reelection, President Madison's second inauguration day on March 4, 1813 was just like his first, despite the country's ongoing war against Great Britain.⁵³

James Monroe got into a heated argument with the Speaker of the House, Henry Clay and decided to take his oath outside, thereby starting a tradition that lasts even today. The fifth President first addressed the people and then took his oath of office administered by John Marshall on the steps outside the Congress Hall on March 4, 1817.⁵⁴ This was also the first inauguration where the Marine Corps Band played selected songs.⁵⁵ Upon his reelection, President Monroe's second inauguration provided for certain exceptions: The weather forced the ceremonies to take place indoors where the address preceded the oath, and since March 4, 1821 was a Sunday, in order to observe that, the official oath-taking ceremony was postponed to the following day, March 5.⁵⁶ Very few people participated in the

⁵⁰ BOLLER, *Presidential Inaugurations*, p. 88-89.

⁵¹ BOLLER, *Presidential Inaugurations*, p. 198-200.

⁵² KITTLER, *Hail to the Chief!*..., p. 25.

⁵³ KITTLER, *Hail to the Chief!*..., p. 25-26.

⁵⁴ BOLLER, *Presidential Inaugurations*, p. 125-126.

⁵⁵ KITTLER, *Hail to the Chief!*..., p. 30.

⁵⁶ One of the most intriguing questions in the U.S. presidential history are those dates, when the official oath-taking was postponed to the following day, when technically the country was left without a head of state for twenty-four hours. John Quincy Adams called it "*interregnum*", a very interesting choice for a country that had not been a monarchy with a ruling king. The practices developed through those occasions of succession when the incumbent president died in office have helped overcome this challenge and resulted in the President taking an oath on the designated Inauguration Day, even if that was a Sunday in a closed and private ceremony, and repeated it on the following day for members of the public to see. BOLLER, *Presidential Inaugurations*, p. 23-24.

morning procession because of the weather and there was no inaugural ball to conclude the events of the day.⁵⁷

By the time the sixth President, John Quincy Adams, the son of the second President was about to be inaugurated, the program of the Day looked a little richer than at the first inauguration. A morning procession accompanied the President-elect to the Capitol Building where he took his oath using a Bible and adding Washington's words of "*So help me God!*" and then delivered his inaugural address. Subsequently the President returned to his lodging and participated at or gave a reception to receive congratulations. In the evening he attended an inaugural ball to socialize and celebrate with elite of D.C.

Regarding the inauguration on March 4, 1825 a single exception proved noteworthy: John Quincy Adams refused to use a Bible for his oath-taking and opted for a book containing the laws of the United States claiming that the Bible was only to be used for religious purposes.⁵⁸ In every other detail his inauguration mirrored what was already to be seen as customary with an indoors ceremony, his address preceding his oath-taking in front of the Chief Justice of the U.S. Supreme Court, receiving his well-wishers in his home during the afternoon and attending the inaugural ball in the evening.⁵⁹

Andrew Jackson lost his wife during the winter of 1828 just after winning the election. The tragedy influenced his inauguration despite his huge popularity.⁶⁰ The seventh President rode with a few veterans on his horse to the Capitol, took his oath and delivered his address outdoors and rode back to the White House. Masses accompanied him, however, on his way back and also entered the presidential mansion following him. The President practically escaped from his own new home and returned to his hotel.⁶¹ He did not attend the inaugural ball. During his second inauguration he took his oath inside and delivered his address outdoors. March 4, 1833 was the last – and ninth – time that Chief Justice John Marshall administered the presidential oath to the President-elect.⁶² The White House was opened for the members of the public but the presence of the police

⁵⁷ KITTLER, *Hail to the Chief!*..., p. 31.

⁵⁸ BOLLER, *Presidential Inaugurations*, p. 129.

⁵⁹ KITTLER, *Hail to the Chief!*..., p. 36.

⁶⁰ LOMASK, "*I do solemnly swear*"..., p. 70.

⁶¹ BOLLER, *Presidential Anecdotes*, p. 66-67.

⁶² BOLLER, *Presidential Inaugurations*, p. 62.

and other armed officials was palpable to maintain and secure order. The President briefly appeared at the inaugural ball in the evening.⁶³

Martin Van Buren, the first President born as an American citizen travelled with his predecessor to the Capitol on March 4, 1837. Having witnessed the vice presidential oath-taking, all members of Congress and delegates from the country have proceeded outside to the East Portico of the Building, where the President-elect delivered his address and took his oath in front of Roger Brooke Taney, Chief Justice of the U.S. Supreme Court. A reception in the White House and an inaugural ball completed the events of the day.⁶⁴

3.3.- *The Shortest Presidency and the First Accidental Succession*

The provisions of the Constitution regarding presidential succession – along with the framework of the 1792 Presidential Succession Act – were first tested in practice in 1841. The original text of the Constitution – prior to the 1967 enactment of the 25th Amendment, which ultimately elaborated on the succession – provided only for the office of the President to “*devolve on the Vice President*”.⁶⁵ The Presidential Succession Act set out the line of succession.⁶⁶ If for any reason the presidential office became vacated, the Vice President had to fill it. Lacking a Vice President, the duties and obligations were to devolve on the President pro tempore of the Senate and if that position was also empty, the Speaker of the House should become the President.⁶⁷

⁶³ KITTLER, *Hail to the Chief!*..., p. 41-42.

⁶⁴ KITTLER, *Hail to the Chief!*..., p. 45.

⁶⁵ The Constitution Article II. Section 1. Clause 6.

⁶⁶ The Second Congress Session I. Chapter VIII. An Act relative to the Election of a President and Vice President of the United States, and declaring the Officer who shall act as President in case of Vacancies in the offices both of President and Vice President, (a.k.a. Presidential Succession Act of 1792) Section 9., March 1, 1792, In: <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=001/llsl001.db&recNum=363> Accessed: June 26, 2012

⁶⁷ The line of succession was altered by Congress two other times. In 1886 the members of the Cabinet became successors following the Vice President. The order of the Secretaries was: the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Attorney General, the Postmaster-General, the Secretary of the Navy, the Secretary of the Interior. The Forty-

William Henry Harrison, with 68 years of age was the oldest person ever to have been elected President. He delivered the longest inaugural address in history while standing in the cold for nearly two hours. He became ill and succumbed to pneumonia on April 4, 1841, making his presidency the shortest one ever.⁶⁸ His Vice President, John Tyler was informed by a messenger in his home in Virginia about the passing of the Chief Executive. Therefore, he travelled to Washington D.C. and was ready on April 6, 1841 to take the oath of office and succeed the late President.⁶⁹ Highly ranked politicians tried to persuade the Vice President to become an “Acting President”, but Tyler was adamant that the text of the Constitution clearly prescribed for the Vice President to fully inherit the office with all of its power.⁷⁰ Since Chief Justice Taney was out of town, the Vice President called Judge William Cranch of the United States Circuit Court for the District of Columbia to his suite in the Brown’s Indian Queen Hotel to have the presidential oath administered to him at noon on April 6, 1841. With his conduct John Tyler created a precedent⁷¹ for all those sad occasions in the history of the United States when the President died in office.⁷²

Ninth Congress, Session I. Chapter IV. An Act to provide for the performance of the duties of the office of President in case of the removal, death, resignation, or inability both of the President and the Vice-President, (a.k.a. Presidential Succession Act of 1886) Section 1., January 19, 1886.; Subsequently in 1947, following President Truman’s succession to the presidential office, Congress passed yet another law returning to the original line of succession with the only difference of placing the Speaker of the House before the President pro tempore of the Senate. The Eightieth Congress, Session I. Chapter CCLXIV. An Act to provide for the performance of the duties of the office of President in case of the removal, death, resignation, or inability both of the President and the Vice-President, (a.k.a. Presidential Succession Act of 1947) Sections (a) and (b), July 18, 1947; 3. U.S.C. § 19. In: <http://www.law.cornell.edu/uscode/text/3/19> Accessed: June 26, 2012.; SINDLER, Alan P., *Unchosen Presidents – The Vice Presidents and Other Frustrations of Presidential Succession*, Berkeley, Los Angeles, 1976, p. 19-20.

⁶⁸ KITTLER, *Hail to the Chief!...*, p. 46-50.

⁶⁹ BOLLER, *Presidential Anecdotes*, p. 95-96.

⁷⁰ BOLLER, *Presidential Inauguration*, p. 115.

⁷¹ SOBEL, Lester A. (ed.), *Presidential Succession – Ford, Rockefeller & the 25th Amendment*, New York, 1975, p. 12.

⁷² After 1841 there were another eight occasions when the Vice President had to step in and complete the term of his predecessor. William Henry Harrison

The example of 1841 is vital to categorize the elements of the Inauguration Day's agenda and to prove the occasion's legal significance along with its social one. In 1841 Tyler travelled to the capital and had his oath administered to him by a representative of the judiciary. He recited the thirty-five words using a Bible and adding Washington's phrase of "*So help me God!*"⁷³ No other event has been organized however, and that shows how the oath-taking has been the vital element of the inauguration, it alone sufficed for the ceremonial legitimization of the head of state.⁷⁴

3.4.- Further Additions to the Inaugural Agenda

By the middle of the 19th century most Inauguration Days on March 4 every fourth year seemed very similar. The President-elect met the incumbent President at either the White House or where the President-elect resided and they rode together to the Capitol, accompanied by the primarily military morning procession. The oath-

(1841), Zachary Taylor (1850), Warren G. Harding (1923) and Franklin Delano Roosevelt (1945) died of natural causes in office, while Abraham Lincoln (1865), James A. Garfield (1881), William McKinley (1901) and John F. Kennedy (1963) were assassinated during their term. Richard M. Nixon was the only President to resign (1974).

⁷³ KITTLER, *Hail to the Chief!*..., p. 53-55.

⁷⁴ Millard Fillmore, the Vice President who succeeded Zachary Taylor in 1850 was in Washington D.C. at the time the President passed away, so he proposed to take his oath in the Capitol Building with all members of Congress in attendance. He was also sworn in by Judge William Cranch, and following his oath-taking, the President sent a message to both Houses, that was read by the President pro tempore of the Senate and the Speaker of the House respectively, serving as a quasi inaugural address. KITTLER, *Hail to the Chief!*..., p.65-68.; Andrew Johnson took his oath of office only hours after the passing of President Lincoln in his hotel room in Washington D.C. on April 15, 1865, (KITTLER, *Hail to the Chief!*..., p. 94.) but Theodore Roosevelt took his oath in Buffalo, New York, where his predecessor died and Chester Alan Arthur had his oath administered to him in his home in New York City on August 20, 1881 only to have it repeated two days later in the Capitol with the Chief Justice's participation. BOLLER, *Presidential Inaugurations*, p. 110, 117. Through all these occasions of succession it has been established that as soon as the President passes away, the Vice President takes the oath of office in front of a member of the judiciary, wherever he may be at the time the news reaches him.

taking ceremony was simple and solemn and generally only included the reciting of the oath and the inaugural address. The new President rode back to his residence while his carriage was most often followed by the celebrating crowd. He would receive well-wishers at a reception during the afternoon and attend one or more inaugural balls in the evening.

Compared to this schedule, there have only been two events added to the list of programs of the Inaugural Day itself: The inaugural lunch and the afternoon parade. The latter is the most popular and most spectacular part of the modern inaugurations. Originally developed from the crowds who accompanied the President's carriage back to his lodging, it became a separate occasion for the afternoon hours where different groups could march in a parade, passing in front of the White House where the newly inaugurated Chief Executive would stand and watch them. Even today it is considered an honor to participate in the parade; it is an opportunity for the members of the public to express their respect for their leader and at the same time it is a wonderful occasion for the President to greet the members of the public. The first such afternoon parade is dated March 4, 1873 during the second inauguration of Ulysses S. Grant. It was an unseasonably hot day and the mainly military units that passed in front of the President were struggling to keep walking.⁷⁵ Though there was no parade at Rutherford B. Hayes' inauguration in 1877,⁷⁶ but the procession that President Garfield witnessed on March 4, 1881 took more than two hours to pass in front

⁷⁵ BOLLER, *Presidential Inaugurations*, p. 176-177.

⁷⁶ The election of 1876 created one of the largest scandals and uncertainties in U.S. presidential history. The results of the Electoral College votes were so tight and so strongly affected by fraudulent events that the elections were seemingly inconclusive. A special commission was appointed to decide on the final result of the election. This body originally had 7 Republican and 7 Democratic members (Senators, Representatives and Supreme Court Justices) and an independent Justice. When Justice David Davis was elected to the Senate and resigned his seat in the commission, his place was filled by a Republican, deciding the election in their favor. The decision has only been announced on March 2 and since March 4 was yet again a Sunday, the incumbent President Grant thought it useful to have President-elect Hayes take his oath already in the evening of March 3, while he attended an official dinner in the White House. The public ceremonies took place on March 5, but due to the uncertainty of the results, nobody made any plans and the inauguration was only vaguely prepared. HANSEN, Richard H., *The Year We Had No President*, Lincoln, 1962, p. 120-121.

of the executive mansion.⁷⁷ As the years passed, more and more civilian groups have requested permission to participate in the parade, making it the ultimate social event of the day.

The inaugural lunch initially became a part of the program for practical purposes: President McKinley's wife, Ida had severe difficulty moving which is why the President arranged for a luncheon buffet in the Capitol Building during both of his inaugurations on March 4, 1897 and March 4, 1901 respectively.⁷⁸ The inaugural luncheon however, had not yet become a tradition at that time. The Joint Congressional Committee for Inaugural Ceremonies⁷⁹ arranged for a luncheon in the Capitol on January 20, 1953⁸⁰ for the newly sworn-in President and a few invited guests.⁸¹

In addition to the traditional elements of the Inauguration Day program, the oath-taking ceremony has gotten much richer during the twentieth century. While the early Presidents only took their oaths and delivered their addresses – or completed the two in reverse order – at the most recent inauguration on January 20, 2009 the opening remarks of the JCCIC President, Senator Diane Feinstein, an invocation, a song and the Vice President's oath-taking as well as an orchestrated musical selection preceded Barack Obama's oath-taking and inaugural address, while a poet and a benediction followed it before the national anthem.⁸² Though religious participation has not been uncommon during the inaugurations with generally the Senate Chaplain offering an invocation or a benediction, it is well known that John F. Kennedy was the first president who had the poet Robert Frost recite a poem at his inauguration on January 20, 1961.⁸³ Music has most often been provided by the Marine Corps Band, but during the second half of the twentieth century, the careful selection of participating artists has also

⁷⁷ BEKE-MARTOS, Judit, "Az amerikai elnökök inaugurációjá, különös tekintettel az 1867-1918 közötti időszakra", In: *NAGY, Marianna (ed.): Jogi tanulmányok, II. kötet*, Budapest, 2010, p. 23.

⁷⁸ KITTLER, *Hail to the Chief!*..., p. 137, 140.

⁷⁹ Mostly referred to with its abbreviation: JCCIC.

⁸⁰ *Supra* 24.

⁸¹ <http://inaugural.senate.gov/history/chronology/ddeisenhower1953.cfm>

Accessed: June 26, 2012.

⁸² <http://inaugural.senate.gov/documents/doc-2009-program-swearingin.pdf>

Accessed: June 26, 2012.

⁸³ <http://inaugural.senate.gov/history/chronology/jfkennedy1961.cfm>

Accessed: June 26, 2012.

proved to be yet another opportunity for symbolism; hence the musical selections at all of the 21st century inaugurations.⁸⁴

4.- Brief Analysis of the U.S. Presidential Inaugurations

Both the history of and the stories surrounding the presidential inaugurations are well documented and therefore could be introduced here in much greater detail. However, based on everything that has already been expressed here above, certain conclusions may be drawn as to the peaceful and mainly ceremonial transfer of power in the United States.

The leader's induction into office with a certain ceremony has always been of importance in any human society that has ever existed. Sometimes it served to show the leader's God-given privileges, at other occasions to demonstrate force. All these had in common a solemnity and an either written or unwritten set of rules, a sequence to be followed on the day and repeated over time. It was self-explanatory that the head of state of the United States needed to be inducted into office. How that was to happen depended largely on the statesmen participating in the preparation of the event. Their primary negative example was the British monarchs' coronation; something the Americans desperately wished to avoid. Every program on the agenda of the Inauguration Day has developed through traditions – as evidenced by the above-described history of the early inaugurations – and most of these elements only served entertainment purposes with rich symbolism but lacking legal relevance. This thus poses the question whether the inauguration or any part of it is at all necessary or could be cancelled and disregarded all together.

Strangely enough, the significance of the inauguration which proves that it is more than a mere pompous ritual to entertain the masses is highlighted by those exceptional cases where the new head of state had to be inaugurated on a day and often also at a venue other than the customary date and place of the Inauguration Day. There was one element that took place on every single one of the fifty-six inaugurations the U.S. has seen so far: the oath-taking. It lies in the nature of the oath that it consists of the exact repetition of certain

⁸⁴ For example President Obama, as the first African-American President, had Aretha Franklin sing a song at his inauguration. *Supra* 81.

words in the given order; it must be administered by a person of authority and it needs to be witnessed by others. This is why even those Presidents who took their oaths in private locations – such as their own or someone else’s homes –, did it in the presence of their peers and with the participation of a member of the judiciary. This also explains why President Obama repeated his oath in the White House a day after his official inauguration where the thirty-five words originally engraved in the Constitution were mistakenly tangled up.⁸⁵

Depending on the method of interpretation used to understand the American Constitution, it could be concluded that the officially elected President who is announced as the winner of the majority of the Electoral College votes, automatically becomes the head of state at noon on Inauguration Day based on the text of Section 1 of the 20th Amendment.⁸⁶ However, the text of the Constitution strictly stipulates that the President has to take an oath – or affirmation – prior to entering his office.⁸⁷

It may be concluded that while all other programs during the inauguration may be dismissed without further legal consequences, the President has to take the oath of office in order to receive his full power as the American head of state. The oath is where the significance of this primarily ceremonial and traditionally developed institution lies and it is what makes the inauguration legally relevant and necessary.

The next U.S. presidential inauguration is scheduled for January 20, 2013. Whether it will be the incumbent President Obama or his Republican challenger waiting to be inaugurated, it will be interesting to see how the program of the day unfolds, especially since

⁸⁵ This has been widely publicized in the papers and the television that because the Chief Justice John G. Roberts mixed up the order of the words in the oath and President-elect Obama therefore could not properly repeat them. Mr. Obama retook the oath in the evening of January 21, 2009 in the White House.

http://www.msnbc.msn.com/id/28780417/ns/politics-white_house/t/obama-retakes-oath-office-after-flub/,
<http://abcnews.go.com/GMA/Inauguration/story?id=6705930&page=1#.T-3Uixf87gU>, <http://www.theweek.co.uk/people/40923/obama-repeats-fluffed-oath-office>,
<http://www.guardian.co.uk/world/2009/jan/22/obama-inauguration-second-swearing-in-ceremony>, Accessed: June 26, 2012.

⁸⁶ 20th Amendment to the Constitution Section 1.

⁸⁷ The Constitution Article II. Section 1. Clause 8.

it – once again, for the sixth time in inaugural history⁸⁸ – will fall on a Sunday. It can be presumed that the President-elect will take his oath of office at a private ceremony on the designated Inauguration Day while all the other festivities will be postponed to the following day, Monday, January 21.⁸⁹ Depending on the winner, members of the JCCIC will be selected and the preparations for the detailed program will begin. It is certain that the President-elect will observe all of the traditional elements of the inaugural program from the morning procession through the outdoors oath-taking, the inaugural address, the luncheon, the parade and the inaugural balls. Still, the most important moment of that day will once again be at midday, when the future head of state repeats the words of the oath of office and thereby seals his agreement with the American people.

⁸⁸ The previous occasions having been: James Monroe (1821), Zachary Taylor (1849), Rutherford B. Hayes (1877), Woodrow Wilson (1917), Ronald Reagan (1985), In: <http://inaugural.senate.gov/history/chronology/index.cfm>, Accessed: June 26, 2012.

⁸⁹ <http://dc.about.com/od/specialevents/a/Presidential-Inauguration-2013-Washington-Dc.htm>, Accessed: June 26, 2012.