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## BOOK REVIEWS

**Presidential Transitions.** By Laurin L. Henry. Washington, D. C.: The Brookings Institution. 1960. Pp. xviii, 755. \$7.50.

“Noon on January 20. The red-jacketed Marine Band strikes up ‘Hail to the Chief’ . . . . A few minutes later, after prayers and patriotic songs, the President-elect stands beside the Chief Justice and repeats a simple oath . . . . Symbolically and legally, there has been perfect continuity in the nation’s highest office.”<sup>1</sup>

Unfortunately, the transfer of the awesome power and responsibility of the Presidency is not so simple. It is, rather, a complex process extending over a year or more in its most active phases. Moreover, the most critical phases must proceed during the awkward interval between election and inauguration, a ten weeks period when no one can, or is willing, to act decisively for the nation. The outgoing President hesitates to take action which will commit his successor; the President-elect is reluctant to become too closely identified with the old order, especially when there is to be a change in party.

Despite the fact that some political observers, Alexis de Toqueville, for example, recognized the dangers inherent in the transfer of executive power in the United States as early as the 1830’s, the problems of continuity and change posed by the turnover in the executive office have, on the whole, been overlooked by students of American government and politics. Laurin Henry has taken a long step in filling the void with his excellent treatment of the transitions of Taft-Wilson, 1912-13; Wilson-Harding, 1920-21; Hoover-Roosevelt 1932-33; and Truman-Eisenhower, 1952-53.

These four transitions were chosen because they present complex problems of the twentieth century, and were party overturns, which occur most frequently and raise the sharpest problems of leadership, continuity and institutional adjustment. The method is historical and analytical; the narration is lively and the flashback is skillfully used to portray the problems of the outgoing President and his successor. The book should appeal to anyone interested in history, politics and the institution of the Presidency.

Although the early transitions, between the inaugurations of Wilson and Roosevelt, were conducted within the modern era of the Presidency, with its more pressing foreign problems and the growth of big complex, impersonal government, there still lingered a great deal of nineteenth-century simplicity and innocence. There was still time for long vaca-

<sup>1</sup> HENRY, *PRESIDENTIAL TRANSITIONS* 3 (1960).

tions between election and inauguration; little was done by the outgoing President to seek consultations with his successor and establish relationships intended to guard the national interest and facilitate a smooth transition. The only contact between Wilson and Harding was an hour and a half visit to the White House by Mrs. Harding for tea and to meet the White House staff. President Hoover eagerly tried to draw President-elect Roosevelt into the bank failure crisis after the election of 1932, by insisting that "a very early statement by you upon two or three policies of your administration would serve greatly to restore confidence and cause a resumption of the march of recovery."<sup>2</sup> But in the same note he also outlined what Roosevelt should say and maintained that the election, which had brought a "natural and inevitable hesitation all along the economic line,"<sup>3</sup> had contrived to undermine Republican policies designed to stop economic deterioration and restore confidence. The President-elect, however, declined to accede to such obvious demands that Hoover policies be continued, and little was done thereafter to smooth the path of transition to the new administration. It is notable too that Wilson, Harding and Roosevelt completed the selection of their cabinets less than a week before inauguration.

It was left to the Truman-Eisenhower transition of 1952-53 to set the pattern for the future. Preparations for the transition actually began as early as March 29, 1952, when President Truman announced that he would not be a candidate for another term. From that point on an orderly and responsible transfer of authority to the new President became the primary objective of the Truman administration. Still vivid in the President's memory was his own ordeal in 1945 when he had been thrust suddenly into the White House, required to make critical decisions promptly and had found it virtually impossible to acquire the necessary background information. Consequently, the President emphasized to his subordinates the importance of the transfer and gave his instructions added point by requiring every major department and agency to report to him on what was being done in this respect.

With General Eisenhower's election, the President not only conferred with the new President-elect but invited him to put representatives on the Budget Bureau, on the Policy Planning Staff of the Secretary of State and in the Pentagon to sit unofficially with defense policy planners. Mr. Truman also pointed out that there were decisions to be made, especially in foreign policy, where success would depend on continuity of policy under the new administration. He said, "We will

<sup>2</sup> *Id.* at 345.

<sup>3</sup> *Ibid.*

tell you about these issues and would welcome concurrence if you want to give it. . . . But we will not press for it. . . .”<sup>4</sup>

The reaction of the new administration to Truman’s proposals seems to reflect inherent difficulties in any transition, no matter how carefully planned. Although the President-elect did put representatives into the more sensitive government posts, they were quick to point out that they were not to be identified with any policy of the old administration. In reference to these representatives, an Eisenhower note to the President said,

“In your letter you use the word ‘authoritative’ by which I take it you mean my representative be able accurately to reflect my views. This he will be able to do, but quite naturally this will likewise be the limit of his authority since I myself can have none under current conditions.”<sup>5</sup>

In like manner, the President-elect made it clear that he would not accept what seemed to be an offer from President Truman to have a major voice in foreign policy decisions, when he gave notice that he would not participate in any government decisions before taking office.

Other barriers to a smooth transition after any inauguration are likely to be budget modifications and the bureaucracy in the federal establishment. Because of the time required to prepare a budget, any modifications by the incoming administrators must be accomplished in some haste and arbitrariness. In its approach to the bureaucracy, a new administration, especially with a change in party, is likely to adopt the view that most of the government’s policies were wrong, its programs badly administered and most of its leading officials incompetent or worse. As Henry points out, such an attitude makes it difficult for a new administration to have a “considered plan for preserving the strength of the administrative system while making the desired changes, for dealing with the inevitable resurgence of pressure for patronage, and for enlisting the enthusiasm of the civil service.”<sup>6</sup>

It is regrettable that the author did not include an account of the problems faced by Coolidge and Truman, the former plagued by a scandal-ridden administration, the latter succeeding with virtually no preparation in a period of war crisis.

Of more importance than a history of the past, however interesting and informative, are the requirements for the future. Henry concludes that in spite of considerable effort in recent years to formalize the steps necessary to an orderly transition, “it is debatable whether the public interest is safeguarded now much better than it was in

<sup>4</sup> *Id.* at 484.

<sup>5</sup> *Id.* at 481.

<sup>6</sup> *Id.* at 701.

1912.”<sup>7</sup> In his concluding chapter, “Problems and Prospects,” the author makes suggestions that we can only hope will furnish guide lines for future transitions, especially for the outgoing chief executive. If so, perhaps they will serve to accomplish what President Truman tried to correct—the “‘omission in our political tradition that a retiring President did not make it his business to facilitate the transfer of the government to his successor.’”<sup>8</sup>

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**Gentlemen of the Law.** By Michael Birks. London: Stevens & Sons Ltd. 1960. Pp. xi, 304. \$4.25.

Except to the dedicated, the reading of formal legal history tends to be a dry and abstract task which fails to evoke the human interest and excitement that lurks behind the record. On the other hand, too little is known about the lives of even the greatest lawyers of early times (apart from the incomparable and exceptional More, L. C.<sup>1</sup>) to provide the stuff of many biographies. Mr. Birks' achievement is thus an unusual one in compiling, mainly through the personal stories of a succession of lawyers from the twelfth century onwards, a most entertaining account of the history of the solicitor's profession in England presented, as he says, as “a slice of social history.”

He starts with a good explanation of the difference, so confusing to the stranger, between the modern barrister and the solicitor. What is perhaps not emphasized sufficiently for the American reader is the predominance of the solicitor. There are about ten times as many of them as there are barristers, and it is therefore not surprising that a corresponding percentage of the ordinary legal work of the country passes through their offices without going to the barristers' chambers. This is easier to understand for the American attorney who has visited both these places in action and has found that of the two the solicitor's working day is much more like his own.

Mr. Birks tells us that it is inaccurate to speak of two branches of the legal profession, for they had separate medieval origins, and are today quite separate despite some association in the past. The Bar is considered as the senior, and there is indeed a curious flatness in the course of the solicitor's profession which in some 700 years has produced no household names except those of Thomas Cromwell, who later

<sup>7</sup> *Id.* at 735.

<sup>8</sup> *Id.* at 468.

<sup>1</sup> Sir Thomas More, 1478-1535, was Lord Chancellor in the reign of Henry VIII. (Ed.)

became the sinister Secretary to Henry VIII, and Mr. Lloyd George the Great Prime Minister of World War I, who incidentally is not mentioned in this book.

The attorney starts as a court official with a sideline. With the rise of Equity the solicitor emerges as a Chancery practitioner, at first supernumerary and inferior to the common attorney, then combining the two callings; by the early nineteenth century he prefers to call himself a solicitor. Nowadays the wheel is coming full circle, for there is a certain literary hankering to call oneself an attorney again, but it is too late, for the other title is now embalmed in statute.

A wealth of incidental learning is included: why solicitors are "gentlemen by Act of Parliament" (a problem which can still disturb the roots of an Englishman; Mr. Birks makes use of it for his title); the contrast in the Middle Ages between the few who could read and the very few who could write; the role played by the now abolished Order of Serjeants; the bucolic and enviable life of an eighteenth-century country attorney. We are introduced to mainpernors, notaries, protonotaries, scriveners, conveyancers, special pleaders, commissioners for oaths, common attorneys and special attorneys. We meet that amazing trio of founders of the profession in New South Wales, Robinson, Crosseley and Eager, convicts respectively of blackmail, forgery and perjury, notorious yet unfortunately indispensable to both the Governor and the public. There is an account of the dress history of the attorney. Those who have worked with the English lawyer will not be surprised to learn that he was directed in the time of Elizabeth I "not to wear any gownes but such as are of a sad colour." Among the illustrations, which are well chosen, is the first extant portrait of an attorney, in 1450. Just like his successor of 500 years later, here he is in Court behind the bewigged counsel whom he has instructed, and who is turning his head to catch further instructions that are being hissed into his ear.

There is a sketchy picture of the emergence of a legal profession in the American colonies but we see clearly why the American lawyer, the heir to the traditions of both branches, emerges in modern times as an attorney rather than as a barrister. The experience of the early settlements showed that in pioneer times it was the attorney who was necessary while the barrister was still a luxury.

The final chapter contains a well-balanced discussion of the problems and shortcoming of the modern profession, far advanced in disciplining its own defaulters and compensating their victims, but equally behindhand in broadening its scope and modernising its offices. It is a pity that there is little more than a passing reference to the legal aid

scheme. A great deal is heard nowadays about its medical counterpart but too little about this most successful public benefit, set up by Parliament but devised and run by the Law Society (the solicitors' official body) in complete independence. On the perennial question of amalgamating with the Bar the author states, correctly, that both professions are overwhelmingly against such a step but does not tell us why. There is a good index but the author should not have foregone the use of detailed footnotes. These modern faults, however, detract nothing from the historical and human interest of this most readable book.

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