

JURISPRUDENCE

Insta-Gov

Can America oust our electoral losers from Washington as fast as Britain does from 10 Downing Street?

BY AKHIL REED AMAR

MAY 14, 2010 • 4:40 PM

| David Cameron

As the world speeds up, can American constitutional democracy keep pace? This month floods hit, terrorists plotted, oil gushed, markets nosedived (then rebounded), and ash spewed. In response, our government moved at warp speed to calm investors, nab suspects, tweak airline rules, redeploy ships, and operate floodgates. But what if a month like this coincided with a period in which the wrong people are in power—that is, in the lame-duck moment when our country is being run by leaders who have just been evicted by the voters but have yet to vacate the premises?

On this score, Britain and America offer a study in contrast. In Britain, voters vote and losers leave almost instantly, as we have just witnessed. Gordon Brown is dead (electorally speaking); long live David Cameron! But in America, George W. Bush continued to hold office for months after his policies were decisively repudiated by the voters. Even as the economy continued to crater, the people's choice, Barack Obama, had no right to take charge.

American history serves up other such particularly awkward transitions. On Nov. 8, 1932, Herbert Hoover lost the presidency to Franklin Delano Roosevelt by a whopping margin of 472 to 59 electoral votes (57 percent to 40 percent in the popular vote count), yet remained in power until March 4, 1933, as the nation drifted further downward and government did ... nothing. Between Abraham Lincoln's election in November 1860 and his inauguration in March 1861, the nation plunged into its deepest crisis ever because the electorally repudiated incumbent, James Buchanan, refused to nip secession in the bud. For most of the nation's first century and a half, voters waited even longer for a new Congress—13 months after Election Day for the House (yes, from a November election until December of the following year) and also for the Senate, elected via state legislatures.

Now we wait 10 weeks for the whole federal government to turn over, thanks to the 20th Amendment, ratified shortly after FDR thumped Hoover. Could America sync up with the 21st century's pace and transfer power with near-British speed?

It is widely thought not: Because various dates are fixed in our written Constitution,

Americans have generally assumed that we could never approximate British briskness without a major constitutional overhaul. But in fact, Americans could speed things up dramatically without any need to amend our good old Constitution. All we need to do is creatively revise our political customs and tweak our election statutes.

Begin with the executive branch. Imagine that in November 2012, Mitt Romney and Chris Christie decisively best Barack Obama and Joe Biden on Election Day. In fact, Romney could become president in a matter of minutes after the concession speeches, regardless of the official timetables in the Constitution. First, Vice President Biden could graciously step down, Gordon Brown style. Next, President Obama could nominate Romney to be vice president, under the 25th Amendment (the one that enabled Richard Nixon to nominate Gerald Ford in 1973 after Spiro Agnew resigned). Congress could immediately confirm Romney by simply voting yes for him (as Congress eventually voted yes for Ford in 1973). And then Obama could gracefully step aside for President Mitt Romney.

Romney, in turn, could immediately use the 25th Amendment to install Christie as the new vice president (just as Ford, after becoming president in 1974, named Nelson Rockefeller). President Romney could also name his slate of Cabinet officers, and the Senate could confirm these secretaries in a few days, in keeping with America's honeymoon tradition of deference to an incoming president's Cabinet choices. (The first time in American history that a newly elected president was denied his choice for a Cabinet position was in 1989, when the Senate refused to confirm John Tower to serve as George H.W. Bush's secretary of defense.) It's also useful to remember in thinking about a quick changeover of the executive branch, that most senators are old hands at the confirmation game, and the Senate's staggered election calendar ordinarily ensures that at any given moment at least two-thirds of the body are seasoned veterans.

Of course, if Obama and Biden were willing to do all this in November 2012, they should announce their intentions long in advance, so that their Republican opponents and the voters are not caught by surprise. And they could even cite precedent. Nearly a century ago, President Woodrow Wilson devised a similar plan to approximate British-style transitions. When running for re-election in 1916, Wilson decided that he would resign shortly after the election in the event that he was defeated by Republican Charles Evans Hughes. The plan was for Wilson to name Hughes secretary of state, an office that at the time was first in the line of succession after the vice president. Thus, if both Wilson and his vice president, Thomas Marshall, resigned after Hughes's confirmation, Hughes could take over as acting president long before his formal inauguration in March.

As things actually turned out, Wilson won re-election and nothing came of his early-resignation idea (which was probably just as well, since he did not properly announce his intentions). But if Obama and Biden were to revive Wilson's idea, future incumbents might feel morally bound to follow their precedent, much as presidents after George Washington typically felt obliged to follow his lead of resigning after a maximum of two terms long before the 22nd Amendment required them to do so.

Now turn to House and Senate elections. Here, too, creative resignations could dramatically shorten the current lame-duck period. If every incumbent representative and every senator facing the end of her six-year term were to formally resign the day before the November election, that election could in effect do double duty. First, the election could determine who

will serve in the new Congress that will begin service on Jan. 3, as it does now. But it could also operate as a special vacancy-filling election, with the winner entitled to fill out the remainder of the term for the resigning Congress member. Of course, any incumbent who runs for re-election and wins immediately fills the seat she just officially vacated by resignation. But any incumbent who loses would leave early. If we were worried about the very short continuity-in-government gap between resignations and certifications of replacements, then each resignation could be drafted so as to operate conditionally—“effective when my successor’s election shall have been certified.” (Several recent Supreme Court justices—most recently, Sandra Day O’Connor—have drafted just this sort of conditional resignation, formally effective only upon the appointment of a successor.)

Custom, rather than law, would drive this new system. Formally, losing presidents and vice presidents would be choosing to resign, and incumbent lawmakers would likewise be opting to step down earlier than required by law. But the same is true in Britain—it is longstanding custom that obliged Gordon Brown to step down as soon as it became clear that his political opponents had managed to form a majority coalition. (A legalized alternative would be to move American elections to late December, but this approach leaves little margin for error in the event of an Election Day or Electoral College mishap.)

If Americans truly want to streamline our transfers of power, the Constitution does not stand in the way. The question is thus not whether we can easily emulate the Brits. It’s whether we want to.

Like [Slate](#) on Facebook. Follow us on [Twitter](#).

SLATEGROUP

Slate is published by The Slate Group, a Graham Holdings Company.
All contents © 2021 The Slate Group LLC. All rights reserved.