

## NUCLEAR WEAPONS AND THE PRESIDENTIAL SUCCESSION ACT OF 1947

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I am here today to talk about the effect of nuclear anxiety on the push for presidential succession and inability reform that resulted in the 1947 Presidential Succession Act.<sup>1</sup>

From the nation's founding through the 1947 Presidential Succession Act, questions of presidential succession have frequently tapped into deep-seated anxieties about the durability of democratic government and, specifically, whether it could withstand the threats posed by disruptive, unplanned changes in the nation's highest office. Following the United States's use of atomic bombs against Japan at the end of World War II, those anxieties took on new gravity.

"Merely by existing [nuclear weapons] have already set off chain reactions throughout American society and within every one of its institutions," stated *The Bulletin of Atomic Scientists*.<sup>2</sup> *The Bulletin of Atomic Scientists* recognized that nuclear anxiety had become a staple of American popular and political culture overnight, but also that it was difficult to quantify. In response, they designed the Doomsday Clock in 1947 as a gauge of how close mankind is to destroying itself, with midnight being the apocalypse.<sup>3</sup>

With the development of the atomic bomb came a concomitant increase in presidential power and a strong desire for stability at the top echelon of the United States government at all times. The president had the Zeus-like power to destroy entire nations and snuff out millions of lives in an instant; all other powers were trivial by comparison.

In 1945, the first superficial cultural representations of Hiroshima and Nagasaki, such as the new atomic cocktail made of Pernod and gin, appeared to celebrate America's victory in the Pacific. Yet even these festive

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1. 3 U.S.C. § 19.

2. Robert Karl Manoff, *The Media: Nuclear Secrecy vs. Democracy*, 40 BULL. ATOMIC SCIENTISTS 26, 29 (1984).

3. See *Doomsday Clock: FAQ*, BULL. ATOMIC SCIENTISTS, <https://thebulletin.org/doomsday-clock/faq/> [<https://perma.cc/S4ZN-CVJ2>] (last visited Nov. 3, 2022).

representations of U.S. power demonstrated that the awesome power of the bomb, once detonated, was never far from the Americans' thoughts.

Any lightheartedness on the topic soon gave way, as one sociologist wrote at the time, to an intrinsic paralyzing anxiety.<sup>4</sup> I term this "nuclear anxiety," defined here as the fear of nuclear war and its consequences. The first images of the destruction caused by the bomb were grainy photographs in *Life Magazine* on August 20, 1945,<sup>5</sup> but the sense of foreboding was implanted in the nation's psyche by John Hersey's gruesome account of the human suffering published in the August 31, 1946, issue of *The New Yorker*.<sup>6</sup> Hersey's articles were developed into a bestselling book, *Hiroshima*, and depicted scenes too horrible to imagine, such as dress-fabric motifs permanently imprinted into women's bodies and the burnt skin of children hanging from their faces.<sup>7</sup>

The destructive possibilities of this new weapon were immediately portrayed on film for a popular audience. That year, for example, the Truman White House officially approved the script of an MGM Studios production depicting the bombing of Japan.<sup>8</sup> The title, *The Beginning or the End*, was provided by the president himself in an early interview. "Make your film, gentlemen, and put this message into your picture—tell the men and women of the world that they are at the beginning, or the end,"<sup>9</sup> Truman said. It was meant to suggest that the world was at a tipping point because of the harnessing of atomic energy.

While in the Senate, Truman had formed the Special Committee to Investigate the National Defense Program and served as its chair from 1941 through 1945.<sup>10</sup> Tasked with investigating all war plants, Truman had sent inspectors to find out what the extraordinary installations in Tennessee and Washington were being used for.<sup>11</sup> Unbeknownst to all but those with the most top-secret clearance, these were two of the three Manhattan Project locations where the atomic bomb was being developed.<sup>12</sup> But Secretary of War Henry Stimson asked Truman not to look into these installations, explaining that it was "the greatest project in the history of the world," that it was "most top secret," and that many of the people engaged in the work did not even know their own purpose.<sup>13</sup> Truman, believing Stimson to be an

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4. See PAUL BOYER, *BY THE BOMB'S EARLY LIGHT: AMERICAN THOUGHT AND CULTURE AT THE DAWN OF THE ATOMIC AGE* 12 (1994) (first citing Erich Kahler, *The Reality of Utopia*, 15 AM. SCHOLAR 167, 176 (1946); and then citing William Fielding Ogburn, *Sociology and the Atom*, 51 AM. J. SOCIO. 267, 269 (1946)).

5. See Peter B. Hales, *The Atomic Sublime*, 32 AM. STUD. 5, 6 (1991).

6. John Hersey, *Hiroshima*, NEW YORKER (Aug. 23, 1946), <https://www.newyorker.com/magazine/1946/08/31/Hiroshima> [<https://perma.cc/H3US-Y9VJ>].

7. See JOHN HERSEY, *HIROSHIMA* 34 (1989).

8. See TONI PERRINE, *FILM AND THE NUCLEAR AGE: REPRESENTING CULTURAL ANXIETY* 48 (1998).

9. *Id.* at 49.

10. 1 HARRY S. TRUMAN, *MEMOIRS OF HARRY S. TRUMAN: YEAR OF DECISIONS* 10 (1955).

11. See *id.*

12. See *id.* at 10–11.

13. *Id.*

American patriot, took him at his word at the time and called off the investigation.<sup>14</sup> Truman left the Senate to become vice president on January 20, 1945, and then a few short months later, on April 12, 1945, the final sudden presidential succession before the nuclear age took place when Franklin Roosevelt died in Warm Springs, Georgia of a cerebral hemorrhage.<sup>15</sup> Roosevelt's death shocked the nation and it abruptly transformed Harry Truman from a relatively unknown and brand-new vice president to a wartime president.

Truman was on Capitol Hill when House Speaker Sam Rayburn told him that the president's Press Secretary Steve Early had telephoned that the vice president was wanted in the White House.<sup>16</sup> Truman ran through the Capitol basement back to his office to get his hat, and then with his driver, fought his way through rush-hour traffic to the White House—without any Secret Service protection.<sup>17</sup>

When he arrived in the private quarters of the White House, First Lady Eleanor Roosevelt informed him that the president was dead.<sup>18</sup> Within two hours and twenty-four minutes of FDR's death, Truman was sworn in and, shortly thereafter, informed of the existence of the bomb.<sup>19</sup> The nation's leaders gathered in the Cabinet room of the White House, including Secretary of State Edward Stettinius (now next in the line of succession), Speaker of the House Sam Rayburn, and House Majority Leader John McCormack, in a show of support to keep the gears grinding on the wheels of democracy.<sup>20</sup>

After the swearing-in ceremony, Truman asked the Cabinet to remain, and Stimson stayed behind when they were dismissed, informing the new president that a matter of the utmost urgency—a new explosive device of unbelievable power—must be discussed.<sup>21</sup> On the opening day of the United Nations Conference, the twelfth day of his presidency, Truman was briefed by Stimson on the development of the atomic bomb.<sup>22</sup> Rather than a focus on ending the war, Stimson's memorandum memorializing this meeting contained phrases such as “modern civilization might be completely destroyed” because of the existence of the bomb.<sup>23</sup> Nuclear anxiety was evident within the administration.

The nuclear question and presidential succession were very much on Truman's mind during the tumultuous events following the sudden accession to the presidency. Truman wrote in his memoirs that he already had in mind the idea of recommending to Congress a change in the order of succession in

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14. *See id.* at 11.

15. *See id.* at 4–5.

16. *See id.* at 4.

17. *See id.* at 4–5.

18. *Id.* at 5.

19. *See id.* at 8, 10.

20. *See id.* at 7.

21. *See id.* at 10–11.

22. *See* THE MANHATTAN PROJECT: A DOCUMENTARY INTRODUCTION TO THE ATOMIC AGE 93–94 (Michael B. Stoff et al. eds., 1991).

23. *Id.* at 95–96.

case the vice president, as well as the president, were to die in office.<sup>24</sup> In June 1946, the U.S. proposed a plan to retain its nuclear monopoly, while the United Nations implemented a system of international control, but the Soviets did not want to be prevented from developing their own atomic bomb.<sup>25</sup>

At an impasse, the U.S. decided to set aside its plans for international cooperation, and Congress passed the U.S. Atomic Energy Act<sup>26</sup> that created the U.S. Atomic Energy Commission to control research and development of nuclear energy.<sup>27</sup> The Act granted the cosmic authority to order the use of the bomb solely to the president.<sup>28</sup>

The increase in presidential power dovetailed with the heightened interest in the line of succession. In an age of nuclear missiles, the president might be forced to decide the fate of millions in a matter of mere minutes, and even if total annihilation did not occur, a nuclear attack could suddenly destabilize the American government. Structural and procedural safeguards were needed to guard against that possibility. Therefore, Truman worked more diligently towards succession and inability solutions than his predecessors to ensure that the line of succession was protected. The 1947 Presidential Succession Act was the result of these efforts.

As described today, all of Truman's proposals, with the exception of a special election, were incorporated in the bill passed in 1947.<sup>29</sup> Among those voting in favor were Representative Lyndon B. Johnson of Texas and Senator John W. McCormack of Massachusetts, both of whom would play key roles in the passage of the Twenty-Fifth Amendment drafted by Senator Birch Bayh with the help of Fordham University School of Law Dean Emeritus John D. Feerick and others.

In this case, anxiety, an amorphous concept that ebbs and flows but is ever present, contributed to a concrete law that allowed for a better sense of presidential continuity. Even beyond the Twenty-Fifth Amendment, further reform is warranted.

The development of increasingly powerful weapons heightened tensions between the superpowers, while political rhetoric has fed off of, and contributed to, nuclear anxiety. Today, Russia has again brought the world to the brink of nuclear war. Russian President Vladimir Putin has ordered his country's nuclear forces to a higher state of readiness and has warned

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24. See TRUMAN, *supra* note 10, at 22.

25. See Larry G. Gerber, *The Baruch Plan and the Origins of the Cold War*, 6 *DIPLOMATIC HIST.* 69, 72–73 (1982).

26. Atomic Energy Act of 1946, ch. 724, 60 Stat. 755 (codified as amended in scattered sections of 2 and 42 U.S.C.).

27. See generally *id.*

28. See *id.* at 763.

29. See JOHN D. FEERICK, *FROM FAILING HANDS: THE STORY OF PRESIDENTIAL SUCCESSION* 207 (1965).

foreign powers that might hinder its advance through Ukraine of “consequences that you have never encountered in your history.”<sup>30</sup>

*The Economist*, in an article entitled *The Risk That the War in Ukraine Escalates Past the Nuclear Threshold*, speculates that even if Putin does not use strategic nuclear weapons, he may use small tactical ones of which Russia is said to have thousands.<sup>31</sup> In another recent article, *U.S. Makes Contingency Plans in Case Russia Uses Its Most Powerful Weapons*, the *New York Times* describes a team assembled by the White House composed of national security officials that are sketching out scenarios of how the U.S. and its allies should respond if Putin unleashes nuclear weapons.<sup>32</sup>

*The Bulletin of Atomic Scientists*, which has now set the doomsday clock to 100 seconds to midnight, suggests that “leaders around the world [like Putin] must immediately commit themselves” to reducing these existential risks, and its citizens must urge their leaders to do so because “the doorstep of doom is no place to loiter.”<sup>33</sup>

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30. *Putin Says ‘There Can Be No Winners in a Nuclear War and It Should Never Be Unleashed’*, NBC NEWS (Aug. 1, 2022, 3:35 PM), <https://www.nbcnews.com/news/world/putin-says-can-no-winners-nuclear-war-never-unleashed-rcna40964> [<https://perma.cc/W8LL-HWHE>].

31. See *The Risk That the War in Ukraine Escalates Past the Nuclear Threshold*, ECONOMIST (Mar. 19, 2022), <https://www.economist.com/briefing/2022/03/19/the-risk-of-escalation-past-the-nuclear-threshold> [<https://perma.cc/7VKS-D2WN>].

32. See David E. Sanger, Eric Schmitt, Helene Cooper & Julian E. Barnes, *U.S. Makes Contingency Plans in Case Russia Uses Its Most Powerful Weapons*, N.Y. TIMES (Mar. 23, 2022), <https://www.nytimes.com/2022/03/23/us/politics/biden-russia-nuclear-weapons.html> [<https://perma.cc/V9PL-7GZ7>].

33. BULL. ATOMIC SCIENTISTS, AT DOOM’S DOORSTEP: IT IS 100 SECONDS TO MIDNIGHT 3 (John Mecklin ed., Jan. 20, 2022), <https://thebulletin.org/wp-content/uploads/2022/01/2022-doomsday-clock-statement.pdf> [<https://perma.cc/SU3A-RVKE>].