

## SYMPOSIUM

### CONTINUITY IN THE PRESIDENCY: GAPS AND SOLUTIONS

#### DEDICATION TO SENATOR BIRCH E. BAYH

*John D. Feerick\**

Former U.S. Senator Birch Bayh of Indiana has been honored many times for his outstanding career in public service. Fordham University School of Law and the *Fordham Law Review* have been beneficiaries of his selfless service of others.

In 1976, he participated in a major program, published in a special issue of the *Law Review*, concerning the selection of Vice Presidents of the United States.<sup>1</sup> In 2010, he participated in a three-day program, also published in the *Law Review*,<sup>2</sup> on the adequacy of the presidential succession system. The *Law Review* issue tied to the symposium included an oral history with Senator Bayh that resulted from an interview in his home by two *Fordham Law Review* editors.<sup>3</sup> Of his role in the symposium, former Dean of Fordham Law School William M. Treanor said,

I am . . . deeply grateful to Senator Bayh, one of the great legislators of our time as well as the principal architect of the Twenty-Fifth Amendment. Senator Bayh was involved in planning the Symposium almost from its outset, and his participation was critical to the Symposium's success. Moreover, in addition to speaking at the Symposium with extraordinary

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\* Norris Professor of Law, Founder and Senior Counsel of the Feerick Center for Social Justice, Fordham University School of Law. I acknowledge with the deepest of appreciation Adjunct Professor John Rogan for his outstanding work in the development of the symposium and for his assistance with this Dedication. I also acknowledge the students of the Presidential Succession Clinic for all of their superb efforts, especially on the Clinic's report and the presentation of their recommendations at the symposium

1. See generally *Symposium on the Vice Presidency: American Bar Association Special Committee on Election Reform*, 45 FORDHAM L. REV. 707 (1977).

2. See generally Symposium, *The Adequacy of the Presidential Succession System in the 21st Century: Filling the Gaps and Clarifying the Ambiguities in Constitutional and Extraconstitutional Arrangements*, 79 FORDHAM L. REV. 775 (2010); see also Symposium: *The Adequacy of the Presidential Succession System in the 21st Century, Part 1*, FORDHAM L. ARCHIVE SCHOLARSHIP & HIST. (Apr. 10, 2010), [http://ir.lawnet.fordham.edu/twentyfifth\\_amendment\\_photos/2/](http://ir.lawnet.fordham.edu/twentyfifth_amendment_photos/2/) [https://perma.cc/BLW2-SL3H] (providing a video recording of the symposium).

3. *A Modern Father of Our Constitution: An Interview with Former Senator Birch Bayh*, 79 FORDHAM L. REV. 781, 783 (2010) [hereinafter *A Modern Father of Our Constitution*].

eloquence and power, he literally sat on stage during the panels to offer insights, and all who sat in the audience felt as if they were eyewitnesses to history.<sup>4</sup>

In the 2010 to 2011 academic year, Senator Bayh participated in Fordham Law School's first Presidential Succession Clinic, the report from which was published in volume 81 of the *Law Review*, entitled, "Ensuring the Stability of Presidential Succession in the Modern Era."<sup>5</sup> Similarly, in the 2016 to 2017 academic year, Senator Bayh was an inspiring presence in the school's second Presidential Succession Clinic, whose report is featured in this volume.<sup>6</sup> He was the first of many experts to speak with the clinic students, who drew encouragement from his words.

In an earlier period of time, in the 1960s, he drew into his work in the crafting of the Twenty-Fifth Amendment three articles published in the *Fordham Law Review* that I was privileged to write.<sup>7</sup>

Senator Bayh has lived a storied life in the service of others and as the framer of two constitutional amendments—the Twenty-Fifth and Twenty-Sixth Amendments—and a third constitutional amendment on equal rights that passed the Congress by two-thirds of each house and was ratified by 35 states, just three states short of adoption.<sup>8</sup> Raised on his family farm in Terre Haute, Indiana, and after attending Purdue University School of Agriculture and serving in the U.S. Army, Senator Bayh began his incredible political career at age twenty-six, starting as a member of the Indiana State Legislature, where he served as Minority Leader and then as Speaker of its House of Representatives.<sup>9</sup> This was followed by his election in 1962, at the age of thirty-four, to the U.S. Senate, where he served three terms until 1981.<sup>10</sup> His service in the Senate and legislative accomplishments were nothing short of spectacular, as outlined in volume 79 of the *Fordham Law Review*.<sup>11</sup>

I asked Jason Berman, a Chief of Staff and legislative aide to Senator Bayh, about the Senator's greatest accomplishments, and he pointed to his service as the gatekeeper to the Constitution in his role as chair of the Senate

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4. William Michael Treanor, *The Adequacy of the Presidential Succession System in the 21st Century: Filling the Gaps and Clarifying the Ambiguities in Constitutional and Extraconstitutional Arrangements: Introduction*, 79 FORDHAM L. REV. 775, 777 (2010).

5. Fordham Univ. Sch. of Law's Clinic on Presidential Succession, Report, *Ensuring the Stability of Presidential Succession in the Modern Era*, 81 FORDHAM L. REV. 1, 8 (2012).

6. Second Fordham Univ. Sch. of Law Clinic on Presidential Succession, Report, *Fifty Years After the Twenty-Fifth Amendment: Recommendations for Improving the Presidential Succession System*, 86 FORDHAM L. REV. 917 (2017).

7. See BIRCH BAYH, ONE HEARTBEAT AWAY: PRESIDENTIAL DISABILITY AND SUCCESSION, at ix (1968). See generally John D. Feerick, *The Problem of Presidential Inability—Will Congress Ever Solve It?*, 32 FORDHAM L. REV. 73 (1963); John D. Feerick, *The Proposed Twenty-Fifth Amendment to the Constitution*, 34 FORDHAM L. REV. 173 (1965); John D. Feerick, *The Vice-Presidency and the Problems of Presidential Succession and Inability*, 32 FORDHAM L. REV. 457 (1964).

8. See *A Modern Father of Our Constitution*, *supra* note 3, at 782–83.

9. See *id.* at 781.

10. *Id.*

11. See *id.* at 781–83.

Judiciary Committee's Subcommittee on Constitutional Amendments. Jason wrote, "Our campaign reelection theme in 1968 was 'One Man Who Made A Difference.' Birch did."<sup>12</sup>

On a personal note, Senator Bayh has been a role model for me of an extraordinary lawyer in the service of others and a friend in public life without peer for me. I am delighted that the Law School and *Law Review* decided to recognize him in this manner and to be afforded the opportunity to write this dedication honoring a truly great lawyer.

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12. E-mail from Jason Berman, former Chief of Staff, Office of Senator Birch E. Bayh, to author (Sept. 19, 2017, 11:42 AM) (on file with author).