

Sec. 1—The President

Clause 1—Powers and Term of the President

Doctrinally, the distinction is important and subject to unfortunate application.⁶⁵ Whether the brief, unilluminating discussion in *Dalton* will bear fruit in constitutional jurisprudence, however, is problematic.

TENURE

Formerly, the term of four years during which the President “shall hold office” was reckoned from March 4 of the alternate odd years beginning with 1789. This came about from the circumstance that under the act of September 13, 1788, of “the Old Congress,” the first Wednesday in March, which was March 4, 1789, was fixed as the time for commencing proceedings under the Constitution. Although as a matter of fact Washington was not inaugurated until April 30 of that year, by an act approved March 1, 1792, it was provided that the presidential term should be reckoned from the fourth day of March next succeeding the date of election. And so things stood until the adoption of the Twentieth Amendment, by which the terms of President and Vice-President end at noon on the 20th of January.⁶⁶

The prevailing sentiment of the Philadelphia Convention favored the indefinite eligibility of the President. It was Jefferson who raised the objection that indefinite eligibility would in fact be for life and degenerate into an inheritance. Prior to 1940, the idea that no President should hold office for more than two terms was generally thought to be a fixed tradition, although some quibbles had been raised as to the meaning of the word “term.” The voters’ departure from the tradition in electing President Franklin D. Roosevelt to third and fourth terms led to the proposal by Congress on March 24, 1947, of an amendment to the Constitution to embody the tradition in the Constitutional Document. The proposal became a part of the Constitution on February 27, 1951, in consequence of its adoption by the necessary thirty-sixth state, which was Minnesota.⁶⁷

⁶⁵ “As a matter of constitutional logic, the executive branch must have some warrant, either statutory or constitutional, for its actions. The source of all Federal Governmental authority is the Constitution and, because the Constitution contemplates that Congress may delegate a measure of its power to officials in the executive branch, statutes. The principle of separation of powers is a direct consequence of this scheme. Absent statutory authorization, it is unlawful for the President to exercise the powers of the other branches because the Constitution does not vest those powers in the President. The absence of statutory authorization is not merely a statutory defect; it is a constitutional defect as well.” 108 HARV. L. REV. at 305–06 (footnote citations omitted).

⁶⁶ As to the meaning of “the fourth day of March,” see Warren, *Political Practice and the Constitution*, 89 U. PA. L. REV. 1003 (1941).

⁶⁷ E. Corwin, *supra* at 34–38, 331–339.