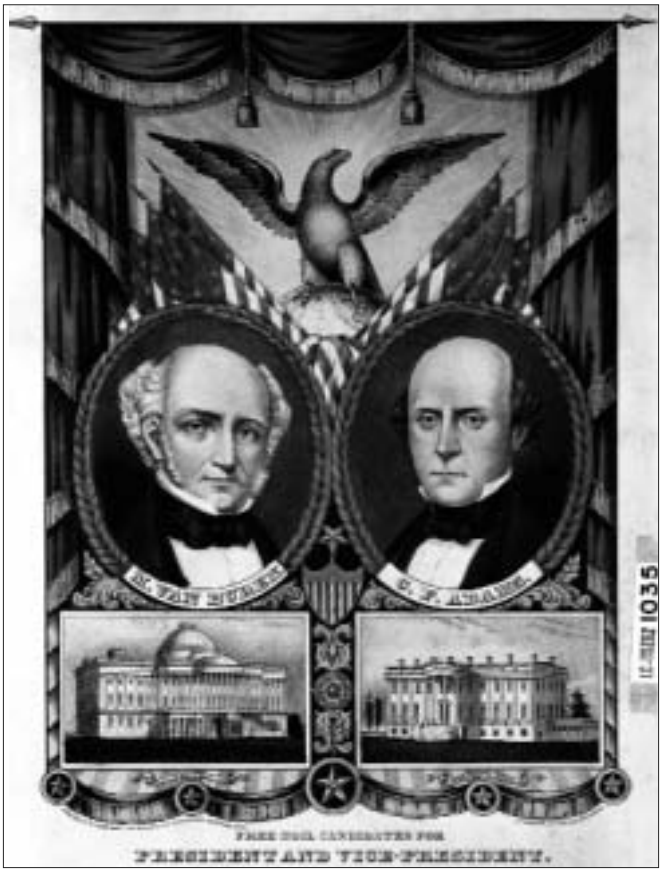
The Power of the Post-Presidency

"The Contemporary Presidency: Postpresidential Influence in the Postmodern Era" by Thomas F. Schaller and Thomas W. Williams, in *Presidential Studies Quarterly* (Mar. 2003), 1020 19th St., N.W., Ste. 250, Washington, D.C. 20036.

When Bill Clinton left the White House at age 54 in 2001, he entered that curious twilight zone in which the powers of the presidency have vanished but the afterglow remains. Thanks to today's increased longevity, the afterglow often lasts a lot longer than it used to, and it also burns a little brighter.

Clinton's nearest Democratic predecessor, Jimmy Carter, has made his 22-year "post-presidency" outshine his presidency, most recently winning the 2002 Nobel Peace Prize for his efforts to promote peace and human rights around the world, note Schaller, a political scientist at the University of Maryland, and Williams, a research analyst for a private firm. Some of Carter's post-presidential ventures have been controversial, such as his freelance trip to North Korea during the 1994 crisis over Pyongyang's nuclear efforts.

Carter, who left office in 1981 at age 56, has had the fourth-longest post-presidential term of all the 33 chief executives who lived to have one. He may soon overtake John Adams, who died in 1826, a little more than a quarter-century after he left office. Carter's immediate predecessor, Gerald Ford, is currently in second place in post-presidential longevity and may wind up ahead of Herbert Hoover, whose "term" lasted more than 31 years.



The first ex-president who tried to regain the office, Martin Van Buren (1837–41), failed miserably in his 1848 run on the Free Soil Party ticket.

Hoover perhaps needed all that time to refurbish his reputation after the Great Depression. He wrote more than two dozen books, coordinated a U.S. relief effort in Europe after World War II, and headed government reform commissions during the Truman and Eisenhower administrations.

Early ex-presidents "mostly retired to their homes and plantations," note Schaller and Williams. But the sixth, John Quincy Adams, is still reckoned among the most influential of former presidents. After leaving office at age 61 in 1829, he served with distinction in the House of Representatives for 17 years. He opposed slavery and the Mexican War, and helped establish the Smithsonian Institution.

Another middling president who had a very influential post-presidential career was William Howard Taft. Defeated for reelection

in 1912 (thanks in part to the third-party candidacy of his erstwhile mentor, ex-president Theodore Roosevelt), Taft went on to teach law at Yale University and then to serve from 1921 to 1930 as chief justice of the U.S. Supreme Court.

Abraham Lincoln faced a different kind of challenge from a predecessor when he took office: After trying to mediate the North-South conflict, John Tyler (1841–45) won a seat in the first Confederate congress. But Tyler died before taking office and openly confronting Lincoln.

Tyler was one of five ex-presidents still living when Lincoln took office, a number that was matched only when Bill Clinton moved into the White House. As lengthening lifespans and voracious mass media expand the powers and the number of ex-presidents, it's not hard to imagine that some future presidents will look back on Tyler's timely expiration as a precedent that more should follow.

A Despotic Supreme Court?

"Lincoln on Judicial Despotism" by Robert P. George, in *First Things* (Feb. 2003), Institute on Religion and Public Life, 156 Fifth Ave., Ste. 400, New York, N.Y. 10010.

Nearly everyone today accepts the idea that the Supreme Court has the final word on what the Constitution permits and forbids. But Abraham Lincoln, and before him, Thomas Jefferson, held a very different view: They feared that judicial supremacy meant judicial despotism. And their fear was well founded, argues George, a professor of jurisprudence at Princeton University.

In *Marbury v. Madison* (1803), which invalidated the Judiciary Act of 1789, the Supreme Court, according to most scholars, established the Court's power of judicial review over acts of Congress and the president. Jefferson condemned the ruling and later said that the claimed power would have the effect of "placing us under the despotism of an oligarchy."

The next time the Court declared an act of Congress unconstitutional was in 1857, in *Dred Scott v. Sandford*. In a 7 to 2 decision, the Court ruled that slaves were personal property under the Constitution, so the (already repealed) Missouri Compromise, which outlawed slavery in federal territories, was unconstitutional. The Court not only sent Scott back into slavery but held that blacks could not be citizens. Most scholars today think that the *Dred Scott* case further polarized the country and made the Civil War "almost inevitable," George says.

Lincoln denounced the ruling repeatedly in his 1858 senatorial campaign, and also in his presidential campaign two years later. The evil, in his view, was not merely the expansion of slavery but judicial supremacy. Supreme Court rulings must be binding on the parties immediately involved, and treated with respect in parallel cases by other branches of government, he conceded in his 1861 inaugural address. But if government policy in vital matters "is to be irrevocably fixed by decisions of the Supreme Court" the instant they are made, he said, then "the people will have ceased to be their own rulers."

In office, George notes, Lincoln refused to treat the *Dred Scott* decision as binding on the executive branch. His administration issued passports to free blacks, thus treating them as citizens, and he signed legislation putting restrictions on slavery in the western territories.

Ironically, nearly a century later, in *Brown v. Board of Education* (1954), the Supreme Court, in ruling school desegregation unconstitutional, acted to advance racial equality and civil rights. And in a ruling four years later upholding that desegregation order, the Court unanimously asserted, for the first time, that "the federal judiciary is supreme in the exposition of the law of the Constitution."

Though the Court's stance in *Brown* is widely approved today, George says, the grave danger perceived by Jefferson and Lincoln, and exemplified by the *Dred Scott* decision, remains.