

ANNUAL ADDRESS,

DELIVERED BY

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THE CENTENARY OF MODERN GOVERNMENT.

The closing quarter of this century has been, and is still to be, crowded with great anniversaries. A long series of American centennials is soon to close with that of the voyage which first really added the new world to the old, and our greatest cities are contending in generous rivalry for the honor of its fitting celebration. England, last year, commemorated the peaceful revolution which set William of Orange on her throne, and France is now on fire with the recollections of the fiercer struggle that, a century later, re-created her institutions.

But among all these centennial years this in which we are now met stands out the first, because it has more than a national significance. It closes the centenary of modern government. Modern languages, modern literature, with its spirit of free inquiry, modern civilization and discovery bringing in powers and necessities, unknown before, had all given their new life to society before Europe began to demand political freedom. It was the incapacity of a highly civilized society, merely as such, to satisfy the human soul, that drove men to a new opening for their energies in public life and in the public good.

James Wilson, in the Convention by which Pennsylvania ratified our National Constitution, declared that the science of government seemed yet to be almost in its state of infancy.

(235)

It was not because mankind were unfamiliar with the different forms governments may assume, or the different ends they may serve. It was known that they might be constituted simply for the good of the governed and by their consent. We had had free constitutional commonwealths on our own soil, since the days of the Puritans, the sturdy outgrowth of the life of a liberty loving people. But those colonial republics, such as Connecticut and Rhode Island, had nothing in them of the nation. If, for a few years, they claimed a kind of autonomy, it was soon gladly exchanged for a chartered dependence on the British crown.

In Europe there had been democracies and republics through half the history of the human race, but which of them deserved the name or earned the place of a constitutional government? England, if any. England had tried and executed one king, and had driven another from her throne a hundred years before the Federal Constitution was adopted; but England was still a monarchy, supported by an hereditary aristocracy, and a corruptible and corrupted Commons, and limited by nothing stronger than traditions, as they might be interpreted by judges appointed by the crown. Frederick Robertson said, forty years ago, that he would close his bible forever if he did not look for better times for England—times when merit should find its level; when worth should be interpreted by what a man is, and not by what he has, nor by what his relations have been.

The Declaration of Independence brought in such times to America. If for the next quarter of a century there lingered too much deference for distinctions of birth; if for the last quarter of a century there has been growing up a new power of property to give the rich too much of public consideration; these tendencies, at most, have been too slight to affect the main current of American life. It has swept on towards a true liberty, equality, fraternity; truer than has ever yet come to the great nation where first those words were linked together; because she sought them by the path of destruction. She was

driven by a sad history to seek them there. But to American soil they had been borne by friendly hands a century before. The Mayflower brought with her more than her company of Pilgrims :

"Laws, Freedom, Truth, and Faith in God
Came with those exiles o'er the waves."

And the spirit of Puritanism was nobler than Puritanism. They "buildd better than they knew." It may be that the spirit of New England Puritanism was nobler than the spirit of Puritanism in the land they left. It looks so, as we review the history of their century, and see England turn so sharply from the austere simplicity of the Commonwealth to the gay license that came in with Charles the Second. No such revulsion of public feeling marked the return of the Stuarts, in the American colonies. No man here had been acting a part. Institutions had been founded on ideas, not on military successes or political triumphs. Those ideas, no doubt, fell short of the ideals of the Americans of those days, as they fall short of ours; but their direction was right. They heralded the approach of modern government. For the first beginnings of its actual, its acted life, we look to America; for the first beginnings of its philosophy, we look to France.

France was to the statesmen of our revolution what Greece in her days of greatness was to early Rome, the source of intellectual and political inspiration. They looked to England for precedents, to France for principles. The same year (1748) had given to the world the studies of Pothier and d'Aguesseau in Roman law, and of Montesquieu on the spirit of laws in general. In the youth of Jefferson and Adams, of Madison and Hamilton, Montesquieu's definitions of jurisprudence, his rule for the threefold division of power, his limitation of republican government to small states, were the talk of the day.

France and America were both preparing, though they hardly knew it, to put these philosophies to a test.

The two countries had before them, each, a very different task. Both were to reform their political institutions. But

France had also to reform, to re-adjust, to re-constitute, the relations of her people to each other.

The States General was a gathering of classes around a sovereign. King, nobles, clergy, commons met to work some unknown, yet inevitable change in their mutual attitude. The law might thenceforth make all commons, all sovereigns; but generations must pass before such a law could be a living thing. When a society is re-constructed from turret to foundation stone, by some fiat of legislation, make it what you will, and it remains still but a castle in the air, till long years have made men used to their new conditions. Then first will liberty, if it was gained, become a real possession, because then only will it be known for what it is.

No such issue lay before the American people, when our States General—the representatives of their thirteen free commonwealths—met at Philadelphia in 1787. There were no hereditary privileges to attack, no absolute power to check, no classes to harmonize.

It was in this very month, a hundred years ago, that the people of France, represented in a National Assembly, published their memorable Declaration of the Rights of Man. The States General, out of which that Assembly sprang, had been convoked for the first time for a century and a half. There is something majestic in the gathering of such a body, to be called into existence only at vast and unknown intervals, on some great emergency of State. So men felt, whatever their religious faith, when the Church of Rome brought together, twenty years ago, at the Vatican, the first council of her prelates throughout the world, that had met since that assembled at Trent three hundred years before, to stay the progress of the Protestant Reformation. So it was when the delegates of the American people, for the first and last time met in convention in 1787, to frame a Constitution that would perpetuate their union. Such an assembly, with its far-reaching powers, untried by use, may precipitate or it may prevent a revolution.

When President Harrison, last spring, stood in New York, on the spot where, under his great predecessor, the first true government of the United States began, to celebrate the close of its first century, no memories were recalled but those of peace. But when, a week later, President Carnot, at Versailles, met the legislature of the French Republic to commemorate the anniversary of the opening of the States General, no one could forget the reign of terror that had so soon followed the reign of despotism. The States General had met in the beginning of the seventeenth century. They met next at the end of the eighteenth. During that long stretch of time France had had no government but the King. While Virginia was forming her House of Burgesses that brought representative government into America; while the Puritans were constituting Christian commonwealths in New England; while all the English colonies on this continent were slowly learning the true maxims of civil liberty; while the leaders of our revolution were growing into statesmen by slow experience; Frenchmen could know the principles of politics only by study of books, or by observation in foreign lands. We cannot wonder then that France, in 1789, felt that as for her civil institutions she had nothing to preserve; that all were bad, and that to abolish all was her first duty.

In his commemorative address, on the occasion I have just named, President Carnot declared that this meeting of the States General created a new era in history, and founded modern society.

It is a bold claim for any people to make that by one national event they have changed the current of human history. It has been made by Americans, for the social compact, signed upon the Mayflower; for the early Constitution of Connecticut; for the Declaration of Independence; for the formation of the Federal Constitution. But the real, unsolved problem of government, in 1789, was to make and keep a great people free; not any infant colony of Plymouth or Connecticut; not any petty republic of Attica or

San Marino; not even any cluster of States, bound together while fighting for independence; but a great people, spread over a great territory.

Bear in mind that the United States of 1789 rested on a Constitution made two years before, subversive and destructive of an earlier Constitution agreed to as perpetual; and that of our thirteen States two had deliberately refused to accept the second. To the National Assembly of France, as to the ministry of Great Britain, it seemed, in 1789, that the American experiment had already failed.

But modern government was not to be compassed in a day. For one thing it needed a revival of that spirit of national patriotism that had been dead or sleeping since the days of the Roman republic.

Patriotism had been the keystone of virtue to the ancient world. It had glorified with immortality the pass of Thermopylæ, and made men deem a few sprigs of laurel or a street procession the most precious thing in life. But from the day that Brutus trampled on human love, for love of country, to the day when the dagger of political assassination re-appeared in Europe, in the hands of a woman, and Charlotte Corday slew one of the new Cæsars of new-born France, the very word patriotism had gone out of the speech of men, and almost out of the thought of poets. Loyalty had usurped its place: the bond to law, not to country; to your King, your feudal lord, not to your fellow citizens; to the church universal, perhaps, not to the altars of your own community.

"Patriotism," said Johnson, after the American Revolution had done its work, "is the last refuge of a scoundrel." "Patriotism," wrote Lessing a few years before, "is, at the highest, a heroic weakness which I am very glad to be without." The world had been without it since the first century of the Christian era. It fell at Rome, when free government fell. It found no help in the Christian church. That had for its purpose the submission of all nations to a common faith, and it strove for a thousand years to achieve it by

subordinating civil to ecclesiastical authority. The spirit of individualism arose, in protest, and put manhood before citizenship. The middle ages rolled away; the Renaissance was followed by the Reformation; the Stuarts yielded to the Commonwealth, the Commonwealth to the Stuarts; the new world was peopled with European colonies; and still the life of modern society was unconceived.

The light broke when French philosophers asserted that correlation of forces in political power, by which a true socialism complements a true individualism; by which the authority, which must always be administered by a few, shall be constituted and controlled by the many; by which, as Mill has said, "the importance of the masses becomes constantly greater, that of individuals, less."

France has made the "ideas of Eighty-nine" a familiar phrase, but they were only the acted expression of ideas struck out on the same soil a generation before. And modern government has risen out of them but slowly into form. The key with which the spirit of our time unlocks all mysteries, the law of evolution, life-giving and life-lifting, has done its work. In institutions, as in animated nature, there is the struggle for existence, and the survival of those fittest to survive.

And what, as we review the century, has been achieved, what retained, and what discarded? How has socialism been blended with individualism? What new ends have been proposed for legislation, what new immunities secured; what new chapter of liberty opened?

We must answer, first, that modern government does not concern itself only with the material well-being of the community. *Magna Charta* is no more its measure than is the Decalogue the measure of Christianity. The right to personal security, to property, to trial by one's peers, to tax one's self,—these were the ultimate ends of ancient government. Modern government retains them all, but adds the right of equality before the law, and in the law; the duty in civil matters to

ignore distinctions of religion; the duty of spreading education, information, intelligence, at public cost.

If I were to say which of these things was in the highest sense the fruit of this last century, I should name religious liberty.

Nowhere, until the last part of the eighteenth century, had the State been kept totally separate from the institutions of religion. The original beginning of human society, in the family, the clan, the tribe, made the patriarch also the priest. The household gods were peculiar to the household; the national gods to the nation. Religion was a part of patriotism. Rulers might change; kings might give place to republican magistrates; but the national deities, the national worship, would remain the same. *Pro aris et pro focis* was the watchword of war.

Christianity came, and found the world subject to this law. But the spirit of Christianity was universal, catholic, not national. Its kingdom was not of this world. As, however, its doctrines spread, and as some of them began to be but half understood by those who taught them, government turned to it for aid. It became a part of the imperial system; when that fell, it conquered the conquerors, and for fourteen hundred years was the stay of every civilized government in Europe and America.

The religious liberty for which the Puritans crossed the sea was simply liberty to make their form of religion the law of a new community. Rhode Island, with her utmost toleration, allowed no Roman Catholic in public office until long after the Declaration of Independence.* In Protestant Europe, as in Catholic Europe, the union of Church and State remained unbroken. Men had risen up against the tyranny of ecclesiastical power; men had pulled kings from their thrones and set up others, or set up none. The same struggle against unjust

* 1783.

government had sometimes been shared by those who attacked the church and those who attacked the State. The same leaders might indeed attack both, but they seldom attacked or questioned the union of both. In England the Puritans fought against Episcopal, the Republicans against royal tyranny; but both were ready to bind the Commonwealth to another form of national religion.

A State church had, no doubt, been long the scorn of atheists and indifferentists; but it endured until religion itself rose to the level of rejecting it; until Christianity came to see and teach that there are two worlds about us, the world we live in knowingly, the world of time, the world of the body, and the mind; and the world we live in unknowingly, the world of eternity, the world of the spirit; that governments belong only to the world of the present, with no larger life than it can give; that they are less than the men they govern, and when they have sought to give laws to the human spirit, have opposed themselves to the order of the universe.

Modern government began when the State withdrew from its long alliance with Christianity.

It was a natural epoch in the history of individualism. Family, patriarchal, tribal governments, had rested on a family, patriarchal, tribal religion. The teachers of Christianity had sought to make one family of all nations, under the Church of Rome, and had failed in the attempt. The Protestant Reformation had—so far as governments were concerned—done little except to put the power of the church into the hands of the civil magistracy. But, so far as individual men were concerned, it had declared a new right of private judgment in matters of religion. And, however kings and legislators may have endeavored to reconcile this right with religious establishments at the common cost, the struggle has been a hopeless one.

Nor need I say that religion has nowhere suffered by being left to itself. In Leipsic, for instance, where a certain form of

religious establishment exists, with a population of nearly 200,000, there are now but six churches in which Sunday services are regularly held. In no American city of that size would there be found less than a hundred; and it is on American soil that disestablishment had its earliest and has struck its deepest roots.

Virginia, in 1786, in a statute drafted by Jefferson, proclaimed it "to be a natural right of mankind that religious opinions shall never affect civil capacities, and that no man can be compelled to support any religious worship." This declaration, soon translated into French and Italian, was circulated widely in Southern Europe. Madison had defended it in the legislature with his accustomed vigor. The question, he said, had been stated by the opponents of the bill, as if it were, "Is religion necessary?" But the true question was, "Are establishments necessary for religion?"

Next came the Ordinance of 1787, to lay the foundations of government for the vast territory out of which sprang this State, in which we meet, and her great sister commonwealths of the northwest. It has not the ring, upon this point, of the statute of Virginia, but it does declare that no person shall ever be molested on account of his mode of worship or religious sentiments, so long as he keeps the public peace.

That same summer, the convention that framed our Constitution was sitting with closed doors in Philadelphia. Their work was, no doubt, in the main, a re-arrangement of existing materials. It took American institutions and put them in a new order and combination. But it did more.

Every delegate came from a State where some civil distinctions had always flowed from religious distinctions. There was, probably, no one of them who would not have considered himself an adherent of the Christian faith. The leaders were familiar with the political philosophy of antiquity, and with that of their own day; with Montesquieu and with Adam Smith. They found an unbroken current of authority in favor of uniting civil and religious institutions, to some extent, in

every government. And yet, at the call of the youngest of them, Charles Pinckney, of South Carolina, fresh from his law studies in the Inner Temple, they were ready to take this great step forward, by forever prohibiting all religious tests for office or public trust, under the United States. He made the proposition a month after the enactment of the Ordinance of 1787. The committee of detail, to which it was referred, took no notice of the suggestion in their report; but Pinckney secured its adoption as an amendment, and it stands as the close of the last Article but one.

In advocating the ratification of the Constitution in the South Carolina Convention, a year later, he insisted on this feature as all important. There was, he said, but one great government in Europe which provided for the security of private rights, and that withheld from part of its subjects the equal enjoyment of their religious liberties. Avoiding this error, we were to "be the first perfectly free people the world had ever seen."*

At this time, we must not forget, and for forty years later, the Test Act and Corporation Act of England excluded all men from office who were not members of the Church of England. Most of our own states retained some religious test as a qualification for the higher offices, and religious establishments were not forbidden in any, and expressly provided for in the Constitutions of six.†

This opening public trusts to all men, on an equal footing, found warm support from the leaders of the clergy, even in New England, where their influence was strongest. Fifteen ministers were members of the Massachusetts Convention, and all but one voted for the ratification of the Constitution.

"Many," said one of them, the Rev. Isaac Backus, with reference to this abolition of religious tests, "appear too much concerned about it, but nothing is more evident, both in reason

*4 Elliot's Debates, 319.

† Delaware, Georgia, Maryland, Massachusetts, New Hampshire and South Carolina.

and the Holy Scriptures, than that religion is ever a matter between God and individuals. . . . The imposing of religious tests hath been the greatest engine of tyranny in the world."*

"God, alone," said Rev. Phillips Payson, in the same body, "is the God of the conscience; and consequently attempts to erect human tribunals for the consciences of men are impious encroachments on the prerogatives of God."†

The provision against religious tests for office left Congress still free to set up a religious establishment. One may well fall without the other. Such has been the slow course of English history. But when the sons of New England Puritans, New York Churchmen, Pennsylvania Quakers, Maryland Catholics, Virginia Cavaliers, Huguenot Carolinians, came together to join their independent commonwealths in a national life, they could not fail to see that church unity was impossible. The very fact that so many of our States had had a state religion, was the strongest argument why the union should have none. New Hampshire, where Roman Catholics were debarred from office until 1877,‡ was the first to propose a further guaranty of religious liberty as an amendment to the Constitution. Virginia and New York acted promptly in the same direction, and it was for want of this, among other provisions, that North Carolina refused to ratify the Constitution at all. At the first session of the first Congress, such an amendment, as we all know, was proposed to the States, heading a list of twelve; fitly placed first, because the most important, the most novel of all.

The National Assembly of France was also moving towards the same end, and there, too, the mass of the clergy were, at first, with the reformers. Progress in Europe has been naturally slower than with us, for there was more to surrender. The support of the nation has often been accorded to different churches, on equal terms. There has been disestablishment

* 2 Elliott's Debates, 148.

† *Ibid.*, 120.

‡ June 21, 1788.

in one part of a country, and not in another. But, it is safe to say that in no country of Christendom is any church connected with the government in the same close way, in which it was throughout the course of ancient society.

And this again has thrown new functions on the State.

The church, in former days, had the general charge of education. It collected the scholars, it supplied the teachers, it paid them, it regulated their work, and saw that its own doctrines and discipline were made a part of all instruction. But when it could no longer draw from the public treasury, or when the State went one step further and deprived it of its accumulated possessions, this duty of education became a public one. The more ignorant the people, the firmer the government, when that government exists for others' benefit. But give the people real power, and they must be taught how to use it, if you would not have it used to their destruction.

I do not forget that public education had been the child of New England from the days of the Puritans. But only in this century has it become national, and, we may say, universal in free governments.

It was the French Constitution of 1791 that really introduced it as a feature of modern government, on a great scale; and Germany adopted the principle of compulsory education when it was, even here, but a half-tried experiment.

That the ideal State should rest on a basis of public instruction is indeed no idea of modern times. When Plato sketched his plan of the republic of the future, he set it on that foundation. It was the hope of Harrington; the practice, as I said, of the New England Puritan. It was for our times to extend it to great nations, at the cost of millions; to bring it even into Oriental government, so that in Japan, to-day, there are 30,000 public schools, nearly 200 colleges, and two great universities, all largely supported from the imperial treasury.

But this transfer of a great prerogative from the Church to the people has its inevitable dangers. If there is a national peril towards which we are now drifting, it lies in this direction.

It is the question of the right and duty of the State as to education in matters of religion.

It is the law of many of our states that every child must be educated to a certain point, either at a public school, or under private instruction. The Roman Catholic Church has always believed that religion, and the religion which it holds itself, is a necessary part of all true education. It has, during the last decade, taken formal issue with the American public school system and organized a system of its own, of parochial schools. Whether this policy be right or wrong, there should be, surely, the fullest liberty to pursue it. Laws have been recently proposed in more than one of the States, to forbid the use of any text-book in a private school, not examined and approved by some public authority, and even to make it penal to use influence upon a father to induce him to take his children out of a public school. If such laws ever come to be enacted, it would be indeed a sign that the principles of American liberty are losing ground.

The State Church was never without a State University, and it was a fitting thing that the hand which drew the Declaration of Independence was also that which sketched the plan for the first great State University in America. The epitaph of Jefferson, written by himself, names but three events in a long life of public service, and they epitomize the history of American liberty. "HERE," say the solemn words,

"HERE LIES BURIED

"THOMAS JEFFERSON,

"AUTHOR OF THE DECLARATION OF AMERICAN INDEPENDENCE,

"OF THE STATUTE OF VIRGINIA FOR RELIGIOUS FREEDOM,

"AND FATHER OF THE UNIVERSITY OF VIRGINIA."

The influence of an established Church, also, in literature was always a controlling one. The great libraries, from which all good books grow, were founded and maintained by its revenues. Modern government has inherited this function,

and the public library, free to all, and open to all books, from vast collections, like the British Museum, to the book-case in the country school-house, is the great gift of the age towards a larger national life.

The State Church was a great bureau of registration, tracing out where it was strongest, by its entries of baptisms, marriages, and funerals, the course of every individual life. The place of this is now everywhere supplied by a system of public record offices.

In thus separating from any political union with the church, the State does not cease to regard it as a natural ally. And, in token of this, an exemption from taxation of property held for religious uses of any kind, is almost universally conceded, the equivalent, of course, of a large annual grant from the treasury. Government seeks no longer, from the Church, the aid of any divine sanction for constituted authority, but it still recognizes religion as the best teacher of morals, and therefore the best friend of public order among a free people.

The exclusion of the Church, with its paternal authority and paternal bounty, from a voice in government, has contributed greatly towards the development of that State socialism, which no civilized country is now wholly without.

It begins with giving free schools, free libraries, perhaps free universities; but it does not stop there. It establishes parks, museums, galleries of art; builds railroads, and controls them; inspects the tenement house; lays paved side-walks in every village. It arranges this vast system of national and international mails, by which two cents takes a letter from Boston to San Francisco, and five cents carries it to Tokio or Australia. It regulates the hours of labor, the age of labor. It throws new duties on the employer. In Germany, where State socialism goes farthest, it forces the laborer to insure himself, out of his wages, against the chance of future want,

as we have long compelled our seamen to insure in the same way against sickness or disability, by payments to the Marine Hospital fund.

But while State socialism means more in one country than another, modern government has one universal characteristic—popular representation in the legislature, based on a wide and constantly widening grant of suffrage.

There were hardly any of our American States, a hundred years ago, which did not demand that the elector should be a tax-payer. There are hardly any now that do require it. England has reached almost the same result. Germany, France, and Greece have gone beyond it, and made suffrage universal. Every citizen is incorporated into the German Empire by taking him through a public education and military service, up to the ballot-box, on equal terms.

The republic is but one form of modern government, but this republican principle of a broad suffrage is at work in all. Its inevitable tendency is towards the universal abolition of class distinctions; a tendency stronger, of course, in proportion to the freedom and equality already gained. It was this that forced negro suffrage upon the South at the close of the civil war. There were weighty reasons against thus pushing the freedman at once into the ranks of the electors. He belonged to a race that has known little of political power, and done nothing to prove its fitness to enjoy it, and he had been reared in ignorance and dependence. But negro suffrage was an American idea. It prevented the formation of a new social class. Laws had already been passed in several of the Southern States—"apprentice laws"—which would soon have formed one, had a class of freedmen survived the war. The negro has often used the suffrage ignorantly, selfishly, unwisely. You and I may sometimes have done the same. But when he received the gift and passed into the great circle of American citizenship, the last class less than citizens was abolished, I hope forever, from American statute-books.

Nor was it, as an indication of political development, to be compared in significance to the movements in a similar direction in England, beginning with the Reform Bill of 1832, and ending with the vote last May in the House of Commons, when 160 members declared themselves in favor of abolishing all hereditary seats in the House of Lords, and the government could muster but about 200 to defeat the motion.

The grant of suffrage to women is now becoming common in municipal elections. It has been tried in those of a more public character. If I were to forecast the future I should say that whether modern government in Europe is to tend towards republicanism or towards monarchy, will depend in no small degree upon its treatment of this question. Goethe has declared that women love order rather than freedom. If the number of voters is doubled by their admission to it, the stability of settled dynasties and the glitter of courts may find a new support against any movement towards the rough changes of republican administration.

Modern government makes the ballot more and more the instrument of suffrage, even in legislatures. The change in this has been almost revolutionary.

In England, landlords seeking to control their tenants, employers seeking to control those in their service, established interests seeking to prevent reform, and sentimentalists relying on the dignity of manhood, had combined to exclude it from her institutions. Even in the Municipal Corporations Act of 1835, the ballot in municipal elections was made an open one, with the name of the voter who cast it written upon each.

Our own colonies passed into independence under the influence of the same ideas. Down to 1787 the State of New York had always elected the members of its legislature by acclamation, and its first Constitution permitted a change to election by ballot simply as something worthy of a "fair

experiment"* and subject to a return to the old system, if the legislature should decide that the experiment was unsuccessful.

But no free nation has ever adopted the ballot and then discarded it, unless she was ready to discard her freedom. The ends of modern government demand it in its completest form. It was for remote Australia to revive this form, after the lapse of two thousand years, and give the world again the secret ballot as Cicero knew it, when he described it as the *vindex tacitæ libertatis*. The Roman ballot, under the Gabinian law, was furnished by the State, and bore the names of all who were in nomination, the elector marking by a point that of the candidate whom he preferred. The interplay of national influences, so characteristic of the age, was never more conspicuous than in the re-introduction of this plan in modern use. Successful in Australia, England, under the lead of Gladstone, did not disdain to follow one of her youngest children in extending it to Parliamentary elections, and now our own States are adopting it in rapid succession.

Modern government is coming to put a new limitation on the suffrage—that the majority shall not govern.

Minority representation in office is the invention of the last half of the century, both as regards elections by districts of inhabitants of the district, as distinguished from voting for a general ticket, and as regards voting for less than the number to be elected.

Twenty years ago this latter plan was adopted by the British Parliament for the election of its own members from some of the larger constituencies, and a few years later the cumulative vote became a part of the elective system of this State for members of its legislature, and was adopted by Pennsylvania for the government of her private corporations. In our municipal corporations, one or the other of these methods is rapidly becoming the rule for the election of all official boards.

* Poore's Charters and Constitutions; II., 1333.

But with all these changes in the range and mode of suffrage, the power that goes with it, as distinguished from the numbers by whom it is shared, has not risen to the height anticipated in the "ideas of '89," as these were formulated then, in the Constitution of the French Republic. Sovereignty, they said, belonged to the people. It was one and indivisible; imprescriptible and inalienable. One generation could not bind succeeding generations to its laws.*

Jefferson's private correspondence shows that he brought back from France these conceptions of the rights of the people, but they found no place in his political action nor in the institutions of America.

On the contrary, it is the corner-stone of modern government that there shall be obligations created or preserved by an organic law which no popular majority and no legislative majority can overcome, except through forms and delays prescribed by that law for its own defense. It is this that makes the modern republic—that has made the United States and every State that is associated to compose it—possible. And it is itself made possible by an American device. The history of all republics before ours had been that either of weakness, or of certain lapse into the hands of tyrants. It was for us to show that supreme and ultimate power could be so entrusted to a few men, that they would have slight temptation to abuse it, and that its exercise would seldom cause political disturbance, or even attract so much as the notice of the community.

The problem was to make the legislative power, whether exercised by popular or parliamentary vote, subject to some superior authority, and still leave it free to represent the public will. The American solution is through the judiciary, but it does not consist in simply writing down that will in the form of a Constitution and comparing every statute with it.

The justiciary of Arragon once had the power of annulling laws which he deemed contrary to the fundamental principles

* Constitution of 1793, Articles 25 and 28.

of the monarchy. But he could exercise it of his own motion, as an abstract political question; and the power was found too great to be tolerated. The modern plan of making the political question dependent on the issues of some private litigation, to be decided like any other contested matter incidental to the suit, seems illogical and unsystematic, but it does not offend by any show of authority; it takes the initiative from the court and gives it to any private citizen; it secures respect without seeming to command it.

A Rhode Island Court, in 1786, first brought this function of the judiciary distinctly into action, in determining the construction of her charter, and the Circuit Courts of the United States exercised it without hesitation, in reference to an early Act of Congress, five years later,* so that when, in *Marbury vs. Madison*,† it was first applied by the Supreme Court, it had already come to be recognized as a necessary part of our American institutions.

The three-fold division of the powers of government, insisted on by Montesquieu, is expressed in most modern Constitutions. In monarchies they seek to hold the power of the executive in check by increasing that of the legislature. In republics, they seek to hold the legislative power in check by strengthening the executive.

With us, this confidence in the executive power is not any traditional inheritance from colonial days. The veto of the Colonial Governors, when they had one, was rarely used except in opposition to the popular will and the popular interests. In the early State Constitutions, it was rejected, with one solitary exception,—that of Massachusetts. It is now found in all but six.

We have adopted it because experience, and experience is the result of many experiments, has taught us to believe in a strong executive, provided it is a good one, and because we find it easier to watch one man than an assembly of men.

* Hayburn's case, 2 Dallas, 410.

† 1 Cranch, 137.

We adopted it in the face of the course of the mother-country, which had turned so sharply in another direction. The Puritans left England before she came to be governed by a ministry, responsible to her legislature. Americans saw her change, in the hundred years that followed the accession of William and Mary, her whole system of administration. The executive was deprived of its veto; the upper house of Parliament crowded back into insignificance; the leader of the House of Commons had become the real king.

All this the new States of America saw, but they still, even while, at first, following England in abolishing the veto power, agreed in rejecting the device of a parliamentary ministry; and deliberately preferred to leave the responsibility of administration unchecked in the hands of their Governors. The Federal Constitution followed in the same lines. The President has his cabinet, but they are nothing in power,—men of his choosing, the agents and assistants of his will, with no seat in Congress, and no fear of it.

The veto that English kings retain only in name, has been with us often the best safeguard of the people, and was never more powerful for good than it is to-day. The legislature itself has come often to rely on the executive, and not in vain, to defeat bills which it has not the courage to reject, or the patience to examine. At the last session of that of our greatest State, two-thirds of the bills enacted were passed within the last ten days; thus leaving it wholly in the hands of the Governor to say, after the adjournment, whether they should become laws, or not.

We are not afraid of the executive, because we have guarded ourselves against any act of his that might oppress us by something stronger than *Magna Charta*. We have made him powerful because history has proved, even our own, that the executive power is often the best protection against the tyranny of majorities.

Nor does modern government in any way tend to lessen the personal dignity and weight of the executive. It recognizes

the strong impulse of the human mind to respect and reverence for authority, as represented in whatever individual is the titular head of the nation. The public interest in every incident in the daily life of the President of the United States, or of Queen Victoria, means something. It is what has kept alive so many monarchies in the past, which existed only as an incumbrance on society. The personal equation in government is a constant force, the more powerful because unmoved by reason, uncontrolled by law.

We recognize the sentiment of hero-worship, but we see its limits. Our governments guard against the hero, and against the unwisdom of his worshipers, by laws and institutions that are insensible to enthusiasm. Carlyle may still preach in this century, that national well-being depends not on any merit of laws or institutions, but on human goodness and human greatness. The century listens to him with respect, but not with faith. It would have men good, if it can, but it would have good laws, because it can. The people may stand for many bad men, many foolish men, many headstrong men; but the machinery of modern government keeps them in check. Marcus Aurelius was one of the best of rulers that mankind has ever had, but the machinery of ancient government allowed him—in all ignorance and honesty of purpose—to persecute and tread down the new religion that had come to transform the earth. The laws of New England, rather than the Puritans, were guilty, when women were burned as witches in Salem and Stamford.

For another feature of modern government, we may look back to a Roman origin. The difficulty of combining a strong central administration for an immense territory, with due provision for the good government of every part, Rome met by the organization of municipal corporations to regulate local interests. The dark ages, the institutions of feudalism, the strengthening of monarchical power, swept municipal autonomy out of existence. This century has restored it with new

guaranties against corruption, or abuse of power, and broadened it from the walled town to the village, the school-district, the county, colony, province and State.

To these local agencies, more and more, matters of local regulation are being confided, and Home Rule has become the watchword of free government.

One quarter of our population is now centered in our cities. A hundred years ago there was no city in the Union which numbered 40,000 inhabitants. How many States are now without one? And how, except in this way, could such great gatherings of freemen be kept in order?

The combination of local home rule, with a central authority to direct inter-communication between the several communities, and determine all questions of foreign relations, is the best form that modern constitutions assume. It was a daring experiment to attempt it here in 1789, and the hazard grew when the Louisiana purchase came, a few years later.

I think it is not too much to say that only the mechanical inventions of the century have preserved its political ideals. The steamboat, the railroad, the telegraph, the newspaper, dashed from electrotypes by the cylinder press, have in quick succession brought the broadest territories into close communication with their centers.

In some respects they have reversed the practical working of our own Constitution, as men anticipated it. The electoral colleges, for instance, meeting on the same day in every State, might now agree by telegraph on common candidates; but, on the other hand, modern facilities of travel have made those national conventions possible, the power of which has made the presidential electors but empty names. The capital, which many fancied, from the length of the journey to it, would become the ordinary residence of senators, if not of representatives, the seat of an intriguing oligarchy, is the home now of no one but the President and the department clerks. The center of affairs for every office-holder remains the community from which he comes.

The rule of local laws for local interests, enacted under such limitations as may be prescribed by some central authority, has smoothed the way for another innovation of transcendent importance: that all laws must be general, applicable to all men, and all interests, in similar positions. To this modern society is driven by its rule of equality. The world was not much given to legislation before the days of the French Revolution. All the statutes of Rome, in the days of her greatness, were not more in number than one of our larger States is accustomed to enact in every decade. As was ably urged in the annual address of our last president, there is but one remedy to be applied: the universal prohibition of special legislation, where a general law will secure the end. And this is only possible by granting extended powers of local administration to local governments.

The evils of over-legislation, in this country, however, are by no means proportioned to its amount. Much of it is, at worst, but useless. Americans do not often legislate except to meet some practical necessity, real or imagined. There is little speculative or theoretical statute law, such as marked the entry of France into the field of modern government. This makes our statute-books unsymmetrical, but it makes them safe. Nor are our Constitutions as open to this charge as our ordinary legislative Acts. We have not forgotten that there are laws so deeply rooted in the society out of which they spring, that they execute themselves. We know that these are the best laws, and that the modern Constitution does best, when it is their simplest expression.

Another characteristic of modern government is its support from journalism. It may be fairly said that it could not exist, and could not have existed, without it, less from the direct influence which it exerts, than from the publicity and close scrutiny of official action which it secures. Until a hundred years ago, legislatures, the world over, sat, practically, with closed doors. Journalism, during this century, has

demanding that they be thrown open, and has thus put the people bodily into the legislative assembly. Secrecy has been lost, and safety gained: safety, for no law is so bad as the ill-considered law, and no law can be well considered that has not been fully discussed in public, by the men whose interests it concerns.

Here, I think, has been the great work of the newspaper in politics. It has turned on the electric light. Its direct influence on the masses of the people may be easily overrated. It acts on the politicians, more than on the community at large. It distributes offices, and brings men into power, but it is often forced to think and act too quickly, perhaps too selfishly, to be in touch with the real movements of public opinion.

Newspaper discussion of questions of State is, no doubt, often flippant, and sometimes shows a desire to say something striking, rather than to say something true. In a government like Germany, but half modernized, the newspaper, too, is but half modernized. Bismarck, this year, brought into the Reichstag a bill to visit editors of socialistic journals, who deny the right of private property, with three years' imprisonment. He wishes no schemes of socialism but his own; and his law shows what Germany lacks, a Constitution which makes socialism, in the evil sense, impossible, and leaves it a harmless theory, the more harmless when the most discussed.

Modern government is becoming, more and more, a government by party. But parties represent less than they once did. As class lines fade out, and class interests no longer exist to be protected; as public education lifts the mass of the community to a more intelligent and, therefore, more candid view of political questions; as the general tone of morals is strengthened, as strengthened it is by all these influences; parties come to have no policy but to get into power, or to keep in it, for the sake of place and patronage. Practical

politics is thus becoming the art of managing and supporting nominations; and our American system of primary nominating assemblies, by which the voter has two opportunities of power, one at the caucus and one at the polls, seems likely to spread wherever popular election is found.

It often proves a means of undue minority representation. The nominees ordinarily gain their positions by a slender majority of their own party, and are opposed by the whole of the other. Where parties are nearly equal in numbers, their election, therefore, is really contrary to the will of the majority of the people, though a sense of party obligation may give them the votes of that majority.

And, on the other hand, this exposing every candidate for office to the gauntlet of two votes, one of his political associates, and one of the whole people, is no slight guaranty that men notoriously unfit will be set aside in the caucus, or rejected at the polls.

As some barrier to the demands of party, those governments where it is strongest, have taken care that their lesser functions shall be performed by those who have some special fitness and training for it. This training may be done by the Government or by a private education, but in either case some public examination is the test of its success. Offices are no longer sold, or given. That "public office is a public trust," all governments are coming to acknowledge.

The principles of modern government make new nations conservative, and unsettle old ones. In no country in the world is property as secure as it is with us. The guaranties of a Constitution, now, Mr. Bancroft tells us, the oldest in Christendom, have intrenched it against public as well as private attack. The British Parliament, during the last half century, has destroyed vested rights, broken up titles, seized private property for private use, in a way that to an American seems almost revolutionary. Such

legislation is the attempt of an old government to adjust itself to new conditions of society, by the use of powers that belonged to its old conditions. It is putting new wine into old bottles. It benefits one class and spreads a feeling of insecurity through all.

It was the want of guaranties against acts like these, that kept the ratification of our Federal Constitution so long in doubt. Its framers guarded the people against unequal or unjust legislation by the States, but as against the United States they only preserved the writ of *habeas corpus*, ensured trial by jury in prosecutions for crime, forbade an increase of penalty, after the commission of the act, and defined the nature and consequences of treason.

The contrast is marked between these scanty securities against the unknown powers of the new government they were creating, and the warm declaration of the rights of man that, at about the same time, came from the National Assembly of France. But the ideas of '89 in America, were not the ideas of '89 in France. They were then, where we were in '76, thirteen years before, proclaiming the universal rights of mankind. They had not reached the consideration of the particular rights and privileges best suited to the condition of their own people. Or, if they had reached it, they were not ready for it.

Our Constitution, therefore, has a cold and unshapen look as compared with those which France struck off in rapid succession, in the closing years of the eighteenth century. This was one of the most telling arguments of those who opposed its ratification.

"In this Constitution," said Thomas Tredwell, in the New York convention of 1788, "we have departed widely from the principles and political faith of '76, when the spirit of liberty ran high, and danger put a curb on ambition. Here we find no security for the rights of individuals, no security for the existence of our State governments; here is no Bill of Rights,

no proper restriction of power; our lives, our property, and our consciences are left wholly at the mercy of the legislature, and the powers of the judiciary may be extended to any degree short of almighty."*

And, in truth, the people everywhere, with a truer instinct than their leaders, saw with surprise that the Bill of Rights which they had framed into every State Constitution, was wanting here. They gave a hesitating assent to the new scheme, but recommended, in language that meant command, that the omission should be supplied, and supplied at once. Congress obeyed, and the first ten amendments placed the personal rights of the American citizen on higher ground than those then or now belonging to any other people.

But with all this there is no permanence in modern government. In its fundamental principles there is; in the proper adaptation of them to the needs of each particular community, there is not, and there never can be.

For this very reason, it cannot fasten on the East—on Asia or Africa—until untold generations have passed away. Its instability is radically foreign to their national ideas. They can tolerate revolutions of dynasties, but not of laws.

Japan has signalized the opening years of the second century of modern government, by the promulgation of a written Constitution. But it emanates from a single hand, which retains still the ultimate sovereignty, as an hereditary and irrevocable right, and forbids any future extension or alteration of its provisions, unless on the proposition of the crown.

A centenary of modern government is closed. A hundred years to come, this Association may be called upon to commemorate its bi-centenary. This country, with a population now exceeding that of any European power, but Russia, may not improbably have, then, one as large as all of them com-

* 2 Elliott's Debates, p. 401.

bined. It will have had new perils to meet, a larger life to live, a greater work to do.

Carlyle has said that the true bible for every nation was its own history. If so it be, the last books must be better, wiser, truer, than the first. There must be a new testament built upon the old—with its broader, freer, higher life. And such, thank God, is to us, thus far, our bible of American history.

We have taken up the ideas of '89, and advanced them. We have taken religious freedom from the National Constitution, and put it into our State Constitutions also. We have widened suffrage, improved its methods, set guards to the power of the majority. We have advanced and extended public education. We have been loyal to our institutions, faithful to our laws; each of us, as he understood them; and when men differed, and hesitated in their allegiance between State and Nation, by the strong hand of war the will of the Nation was lifted into acknowledged and unchallenged supremacy. It has cost much: years of angry debate, years of fierce war, millions and thousands of millions of money; but it has been done, and there are few to-day who, if they could, would have the result reversed.

We have carried human charity—in its widest sense—farther than it was ever pushed in any age or land before. We have struck hands with other nations in honest and successful efforts to make the whole world better. The slave-trade has fallen by our aid. International arbitration, in the place of war, has had its noblest illustration in the last few years of American history. The right of choosing one's own sovereign—of voluntary expatriation—we have made, throughout the earth, free to every man who has once left his native land. The project of a code of general laws, common to all nations, once the mere dream of poets, has been put in form by our distinguished president, to whose labors in jurisprudence the world is debtor, and is now under serious discussion by the jurists of every civilized country.

Washington, in his inaugural address, a hundred years ago, declared that "the destiny of the republican model of government" was "justly considered as deeply and perhaps finally staked on the experiment entrusted to the hands of the American people." We have fulfilled the solemn trust, and we have done more. In leading the way towards good republican government, we have, almost unconsciously, led the way too toward all that is best in modern government of every name. The great kingdom, to which we once belonged, is the better because we struck for independence, and has been glad to copy both from our public and our private law. The influence of our institutions is felt in every country where men read and think. God send that in the century to come, this great work of our fathers, may be safe in the hands of their children, and of ours.