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ABSOLUTE POWER, AN AMERICAN INSTITUTION.*

It is the peculiar province of this Association to study those principles upon which American society is based and by which its conditions are controlled.

Laws may be passed and repealed in quick succession; individuals may rise to positions of commanding influence, only to be swept off in a moment into political oblivion, by a sudden turn of party tide; the rules of science, the inductions of philosophy, accepted for ages, may, as some new door of Nature's laboratory is unlocked, shrivel into ashes before the issuing flame; but in every land, civilized or barbaric, where a strong race has long made its home, there will be certain institutions of civil society, that have grown up to slow maturity, so rooted in the soil, that they form part of the nation's life, and make its history.

It is to such an institution that I desire, this evening, to direct your attention—an American institution, and one that, as the centuries roll on, is destined, I believe, to exercise greater and greater power in determining our country's destiny.

Among the constitutional governments now existing in the world, the United States rank as the oldest but one. It is, indeed, fairly open to question if our place is not the first. Great Britain, since our Constitution was adopted, by her union with Ireland and the introduction of a hundred Irish members into her House of Commons, followed by the Reform Bill and the recent Franchise Acts, has essentially changed the character of

*Being the annual address, delivered August 30, 1897, before the American Social Science Association, at Saratoga. The main body of the address was also delivered before the Georgia State Bar Association, at Warm Springs, Georgia, July 1, 1897.

that body, and transformed a monarchy into a representative democracy; while the new name of Empress of India, given to her titular sovereign seems but to mark the abandonment of her ancient colonial policy, too mild for an oriental race, too rigorous for the great English-speaking dominions that have risen up under her flag, to gain for themselves, one after another, substantial autonomy.

The United States are the offspring of a long-past age. A hundred years have scarcely passed since the eighteenth century came to its end, but no hundred years in the history of the world has ever before hurried it along so far over new paths and into unknown fields. The French Revolution and the first empire were the bridge between two periods that nothing less than the remaking of European society, the recasting of European politics, could have brought so near.

But back to this eighteenth century must we go to learn the forces, the national ideas, the political theories, under the domination of which the Constitution of the United States was framed and adopted.

There is something in that instrument that gave it coherence and vitality; something on which we have built up institutions that are real, traditions that are imperious, a national life that is organic, a national history of which no civilized man is wholly ignorant, a national power that is respected on every sea.

What is it that has brought us on so far, and given us an undisputed place among the great powers of the world? Is it a broad land and a free people, equal laws and universal education? Yes; but how are those laws administered? How are the forces of this great government that rules from sea to sea across a continent, directed and applied? How, and by whom?

I think it may be fairly said that of the leading powers of the world, two, only, in our time, represent the principle of political absolutism, and enforce it by one man's hand. They are Russia and the United States.

The Czar of Russia, indeed, stands for Russia in a broader sense than that in which we can say that the President of the United States stands for them. The people of the United States have not put all their power in the keeping of all or any of their temporary rulers. They are the sleeping giant, that sleeping or waking is a giant still. Their word is still the ultimate rule of conduct—their written word. But when they gave their assent to the Constitution of the United States, they created in it the office of a king, without the name.

They set the key, also, by this act, for our State governments and municipal governments.

The royal prerogative of pardon, which belongs to the President without limits, except in cases of impeachment, has been given to one after another of the Governors of our States. Their appointing power is like his; their veto power is like his. Of the statutes passed this year by the legislature of the State in which we are convened,¹ nearly one-third—in all, over five hundred—failed of effect for want of the Governor's approval.

In city governments the authority of the Mayor has been continually increased. He is held personally responsible for a fair and honest administration of municipal affairs, and each department under him is coming to be under the direction, not of some non-partisan board, but of one man, removable at the Mayor's will, and taking his instructions from him.

But the hour which is allotted to this address will only suffice for a brief and partial consideration of the centralization of power in the Federal Government.

In form, at least, there is less of national character in our executive than in our judicial department. The Judges of the United States have no relation to the States, except that the Senate of the States must confirm their nominations. The President, on the other hand, is chosen by the votes of local electors, appointed by each State for itself, and meeting separately in distant capitals. Three of these electoral votes are forever secured to the smallest State, so that a President may be—as, in the case of Hayes, a President was—elected by a majority in the electoral colleges, when the opposing candidate received the approval of a majority of the whole people. So, again, should the electoral colleges fail to make a choice, the States come together to take their place, like so many sovereign powers in an imperial diet; each casting in the House of Representatives an equal vote.

But, once elected, the President, during half the year is the United States more truly than ever Louis XIV was France.

Our people had tried, during the Revolution and after the Revolution, the experiment of a confederacy without an executive head. They knew the evils of a weak administration, and they were determined to have an energetic one. They were ready to pay the price by submitting to a system of personal government.

¹ New York.

Had there not been, in 1787, a person at hand, to whom all eyes were turned with unfaltering trust, it is more than doubtful whether the Constitution, as thus framed, could have been ratified. Had they fully understood the great powers with which it invested the President, it is certain that it never would have been.

Hamilton and Madison in the *Federalist*, minimized these powers, to conciliate popular support. It was, in truth, impossible to predict beforehand what they were to prove. Pinckney, at the close of the convention, spoke of the new President as an officer of "contemptible weakness and dependence." Jefferson, on the other hand, wrote from Paris that he seemed "a bad edition of a Polish King," and would contrive to hold his power by successive reëlections for life. Between these views time was to decide.

A constitutional government is not constructed in a day. A constitution may be; but it is born into the world a helpless babe, to be nurtured and re-created by its environment and associations. Constitutions do not make history. History makes them. They may, indeed, be constructed in a day, but they cannot be construed in a day. The men who put such a document together do not know, cannot know, the meaning of their own work. It is what it comes to be. It is what later generations make it.

Plato tells us in his Republic that governments must change with every change in the character of those who constitute the political society, and in their relative conditions of life.

Think of the United States as they were in 1787, occupying a narrow strip of the Atlantic sea-coast; engaged only in agriculture; with no city larger than Utica or Savannah now is; with capital still so far in the hands of individuals that there were probably not a hundred business corporations in the whole country; with mails carried through half the States on horseback and at irregular intervals, if at all; and tell me if the President of such a people could, except in name, be the same as the President of the United States of to-day?

There were two theories of the executive before the convention of 1787.

Sherman insisted that the executive magistracy was really nothing more than an institution for carrying the will of the legislature into effect, and therefore that it should be confided to one or more officials, as experience might dictate, appointed by that body and removable by that body.

Madison contended for the other view, that the executive was a representative of the people, rather than of their legislators.

During the century that has passed since then, England, following the principle preferred by Sherman, has reduced her sovereign to a mere representative of the legislative will; and we, following the principle preferred by Madison, have raised our Executive to the position of an elective King, chosen by the people, and responsible only to them—a King who, for a four-years term, rules in his own right.

One of the most significant debates in the convention of 1787 was that over the proposition to surround the President with an executive council. Had it been carried, and his will thus subjected in any measure to cabinet control, the very foundation of our government would have been changed. It is the absolute supremacy of the President within his sphere of executive action, responsible to his own judgment, and to no other man's, that has been the mainspring of our political system. Custom and convenience have brought the heads of departments together, in the presence of the President, at stated meetings for consultation, and, when he asks it, for advice. We call them members of the Cabinet; but they have as such, no standing before the law. No Sultan in the presence of his divan is as uncontrolled and absolute as the President of the United States at a Cabinet meeting. Others may talk; he, only, acts.

It was an observation of Sir Henry Maine, that the success of the United States "has been so great that men have almost forgotten that if the whole of the known experiments of mankind in government be looked at together, there has been no form of government so unsuccessful as the republican."² And why unsuccessful? Because it was always inefficient in emergencies. Because it had no political center. Because no free people had been intelligent enough to know that a strong and stable government is the best government, provided it is first kept within narrow bounds, and then administered in the public interest.

The first step towards strengthening the executive power was taken by the first Congress in its decision in favor of the right of the President to dismiss his subordinates at will. The *Federalist* had adopted the other view. The argument that if confirmation by the Senate were necessary to appointment it must also be necessary to removal, was logical; but in politics

² "Popular Government," p. 202.

practical considerations are often stronger than logical ones. If the President was invested with the whole executive power of the United States (and so the Constitution reads); if he is to be held responsible to the people for his executive action (and certainly he must be); he ought to have no agent in his service who has lost his confidence; no man on whose judgment he must rely, whose judgment he distrusts.

In the form of constitution adopted by the Southern Confederacy in March, 1861, the President's power of removal was essentially restricted. It should have been; for the guiding principle of that short-lived government was to secure at every point where it was practicable the sovereignty of each State, and to yield as little as possible to the confederate authority.

During the administration of Washington came another step in the development of the Constitution, in the act on his part, which nearly precipitated us into a war with France. The President, says the Constitution, is to receive public ministers. It follows, said the first President, that I can refuse to receive them, or, if I find reason to be dissatisfied with them, can request their recall. Genet was recalled, at his request, and the beginning thus established of a long line of diplomatic precedent, which has made the voice of the President, as to foreign nations, the only recognized expression of the sovereign will of the United States.

Federal taxation was no more popular under Washington than it is under McKinley. It became necessary for the government to show its teeth, and in 1792 was passed the first national militia law. In case the execution of the laws of the United States should be opposed in any State by combinations too powerful to be suppressed by the courts or marshals, it was made lawful for the President to call out the militia of the State, and should they refuse to act and Congress not be in session, the militia of other States, in such numbers as he might think necessary. It was also provided that every able bodied white male citizen, between eighteen and forty-five, with few exemptions, should be enrolled in the militia, and that the President should appoint an adjutant-general in each State to act as such, subject to the orders of the Governor. It was by virtue of these acts that Washington found the means to put down the Whiskey Rebellion in Pennsylvania; and while the general policy of Congress has since been to trench less on the military powers of the States, the militia of the United States, such as it is, has necessarily and always, when in actual service, been under the com-

mand of the President by constitutional right, and as the Supreme Court decided in *Martin v. Mott*,³ it is for him alone to determine when it is fit to call them out.

So, in regard to our standing military and naval establishment, the orders of the President are always absolute.

They may involve the pulling down or setting up the government of a State. Such was the effect of Presidential interposition in Dorr's Rebellion in Rhode Island, when the Courts declared⁴ that whichever government he recognized as the true and lawful one, they must respect.

They may bring a sudden stop to combinations of labor, which have put great railroads at their feet, and the commerce of the country in peril.

They may compromise our relations with foreign powers, and even authorize an invasion of foreign territory or the blockade of ports⁵ before Congress has declared the existence of war.

And when a state of war is fully recognized, what shall we say then of the limits of Presidential power? As it was practically administered during the civil war, it extended, in States that were not the seat of active hostilities, to domiciliary visits; to arrests by military warrant; to trials by military courts, ending in decrees sometimes of exile, and sometimes of death. The courts and the bar, as you well know, were at the time divided in opinion as to the question of right. The Chief Justice of the United States denied that the President could suspend the privilege of the writ of *habeas corpus* where there had been no proclamation of martial law; but even he did not venture to enforce his decision by process of contempt. At this point Taney yielded before Lincoln, as Marshall had yielded before Jefferson as to the subpoena issued and disobeyed, on the trial of Aaron Burr. Finally, after the close of the war, came the decision in Milligan's case, annulling a sentence of death passed by a military commission, sitting in Indiana, for a political offense; but a decision rendered by a divided court, four of the nine judges, with the then Chief-Justice at their head, holding that, in time of insurrection or invasion, the President might rule by martial law, when public danger required it, and there was no opportunity for Congress to act, in any part of the United States, though not the actual seat of war, if he found the ordinary law inadequate for public protection.⁶

³ 12 Wheat. 19.

⁴ *Luther v. Borden*, 7 How. 1.

⁵ *The Prize Cases*, 2 Black. 635.

⁶ *Ex parte Milligan*, 4 Wall. 2, 142.

It was Macaulay's criticism of the Constitution and government of the United States that we were "all sail and no rudder." He uttered it in the first half of the century, that half divided for us by so wide a chasm from that now closing—the chasm of the Civil War.

No one who watched the progress of that great contest would have failed to see that there was rudder, no less than sail. There was a rudder, and there was but one man at the helm. Lincoln's course may be commended or condemned, but this, at least, all must agree, that his personality dominated the course of political events during those stirring years from 1861 to 1865. It was far from being a consistent course. The Constitution, on his accession to the Presidency, did not seem to him the same thing that it grew in his mind to be, as the long struggle wore on. He came to feel, as he wrote in 1864, "that measures, otherwise unconstitutional, might become lawful, by becoming indispensable to the preservation of the nation." This is a doctrine without limits, in the mouth of a military commander in time of war. It led him to the proclamation of emancipation, as imperial a decree as that by which the Czar of Russia, in the same year, abolished serfdom in his dominions. We need not stop to ask whether this proclamation was a legal act. It is one of the great facts of human history: its practical consequences were immeasurable, and whatever else it accomplished, it demonstrated the absolute power of an American President, whether it be rightfully or wrongfully exercised.

But it is not to times of war that one should look for authoritative definitions of political powers. Those of every department of government are then commonly strained to the utmost, and all tend to support the military arm.

When Lincoln assumed to suspend the privilege of habeas corpus, Congress came to his aid by an Act⁷ formally investing him with such a power, to be exercised anywhere and at any time at his discretion, and granting immunity for any acts in restraint of liberty done at his command. Similar action was taken in the Confederate Congress to strengthen the hands of President Davis, and his influence in shaping legislation was even more evident and effective, throughout the war, than that of President Lincoln at Washington.

Let us go back to times of peace and ask which President was the first to startle the country by the exercise of powers not before generally thought to appertain to the Executive Department.

⁷ Of March 3, 1863.

It was Jefferson, when in 1803 he bought the Louisiana territory from Napoleon, and by a stroke of his pen doubled the area of the United States. It inevitably moved the center of political rule to the valley of the Mississippi. It destroyed the existing balance of power between the States. But it was fortunate that under our political system there was one man able thus to commit the country, without consulting it, to so great a departure from its earlier traditions.

A generation later, another executive act proved that the President was stronger than any combination capital could form, though supported by far-reaching political influences. The United States Bank was the greatest financial institution which the United States have ever seen. It had paid a million and a half to the government for its charter. It was made by Act of Congress the standing depository of the cash funds of the United States, unless at any time the Secretary of the Treasury should order their withdrawal. President Jackson believed that the affairs of the bank were being improperly conducted, and requested the Secretary of the Treasury to remove the deposits. The Secretary declined, stating that he saw no reason for it, and that the authority to decide had been lodged with him. His removal followed, and a successor was appointed who promptly complied with the President's wishes. The Senate denounced Jackson's action as unwarranted by the Constitution. He sent in a protest against this resolution which they voted to be a breach of privilege. A commercial crisis followed, which shook the country to its foundation, and by one of the great parties of the day was attributed to Jackson's act. Whether the cause of it or not, the removal of the deposits was certainly the occasion, and it came by the absolute will of the President alone.

It was Jackson, also, who first showed the people how almost irresistible, in strong hands, and on great occasions, is the force of the executive veto. It is the common prerogative of royalty, but one to which modern royalty seldom dares to resort.

Queen Victoria has, in law, the same absolute veto power as to every bill which Parliament presents to her for the royal assent, which Queen Elizabeth or William the Conqueror had. But does she use it? No English sovereign since the Hanoverian dynasty came in has ever used it, and none ever will. And why? Because it is an absolute power, and because no men of Anglo-Saxon stock will ever again stoop to absolute power, exercised by hereditary right.

The disuse of the royal veto has brought on a silent but fundamental change in the whole system of British government. The ministry, unwilling to ask the sovereign to approve a bill that they do not, if such a measure is forced upon them, resign their offices or dissolve the Parliament. As the Crown cannot be held responsible to the people the ministry must be—a vicarious sacrifice at the altar of liberty.

In every form of government that stops short of despotism, the people must have some share or some semblance of a share in legislation, either by way of origination or approval.

In the palmiest days of monarchy in France the edicts of the King were submitted for registration to the parliaments of justice; and the convocation of the States General was always in reserve. Under the reign of the Cæsars the absolutism of the Emperor was rested on the assumption that the people had delegated to him their powers and the functions of their tribunes to intervene for them to defeat an unjust law.

But the American veto is supported by no legal fiction, and impeded by no fear of popular discontent. During his short term of office, and because of his short term of office, the President of the United States may set down his foot at any point and oppose his individual will to the judgment of the whole people speaking by their representatives, and of all the States, speaking by their ambassadors in the Senate. If such a veto is sent in during the closing days of the session, as Congress is now constituted, with so great a number of members in each of the houses, and the opportunity for unlimited discussion in one, it is almost certain to be fatal to the bill; and under any circumstances it is fatal, if the President and Congress are in general political accord.

But if they are not, what then? He has a greater prerogative in reserve.

The executive power of the United States, and the whole of it, is vested in this one man. What are laws, if they are not executed? And who is to judge, except the President, or above the President, whether an Act of Congress, which he is called upon to execute, is or is not such an Act as Congress had power to pass?

We have, indeed, now passed from questions of expediency to questions of jurisdiction.

The President can veto a bill because he deems it inexpedient, or because he deems it unconstitutional. He can only decline to execute a statute which has become such without his

approval, because he believes it to be no law at all. But the absolute power of decision, and of action or inaction, in either case, is equally in him.

This was the position of Jefferson and of Jackson, but it required the civil war to make it an unquestioned principle. You recollect the occasion. In every one of the States South of Kentucky society was confused and disorganized. The *status* of almost half the population had been revolutionized. The natural political leaders had been set aside. A general re-adjustment of civil government to meet all these new social conditions was necessary. President Lincoln and after him President Johnson proposed to accomplish it by the exercise of the executive power. Temporary governments were set up under military authority. Executive orders were issued, authorizing popular elections, under certain conditions, to replace military by civil rule, and home rule. Congress interposed to prevent it. The "Reconstruction Laws" were enacted, and others, intended to subordinate the President of the United States, as to military affairs to the General then in command, and, as to civil administration, to the will of Congress. These Acts were vetoed. They were passed over the veto. They were disobeyed. The President was impeached, and the one vote that saved him from conviction, I might almost say, re-made the Constitution of the United States. If such a President as Andrew Johnson, so defiant of opposition, so abusive to his opponents, so distrusted by the party that had elected him, on the one side, and by the party which had rejected him, on the other, could not be successfully impeached for following out, in matters so all-important to the people and the States, his view of the Constitution against that of Congress, no President ever could be.

The same thing is true of a difference of opinion as to his constitutional duty, between the President and the courts. You recollect Jackson's declaration, when he vetoed the re-charter of the United States Bank, that he had sworn to support the Constitution as he, not others, understood it, and that the authority of the Supreme Court must not be permitted to control either Congress or the Executive when acting in their legislative capacities. It was left for another Tennessean, in another generation, to vindicate the doctrine that the President was equally independent of the courts, when acting in his executive capacity.

Can the President be prevented from executing an Act of Congress which the Supreme Court considers to be unconstitutional and void?

This was the great question which Mississippi brought to the bar of the Supreme Court of the United States in 1866.

The Reconstruction Acts, to which I have alluded, purported to set aside the existing governments of certain States—governments existing by the authority or sanction of the President as Commander in-chief of the military power of the United States. Mississippi was one of these. She asserted that these statutes were unconstitutional and void, and sought leave to file a bill for an injunction to prevent President Johnson from undertaking to enforce them. No one would have been better pleased than he, to see them fail. But he knew that it was his duty to defend the dignity of his great office. By his direction the Attorney-General opposed the motion of the State of Mississippi. It was denied, and the cause of *Mississippi v. Johnson*⁸ established by judicial decision what had been only feebly and sporadically claimed by Johnson's predecessors, that the President was the absolute judge of his duty in the execution of a statute, subject only to the power of the courts to pass upon the legal effects of his action, should they afterwards become proper matters of judicial controversy.

We have seen how far the military powers of the Executive may serve as a warrant to interfere with the administration of justice in State courts. In time of war and in the presence of war, it extends to their temporary abolition. When enemies' territory is occupied, or territory to which the rules of public law assign that name, though it be that of a State of the Union, the President can replace its courts by courts of his own, exercising both civil and criminal jurisdiction, and disposing of life, liberty and property, not as instruments of the judicial authority of the United States, but as instruments of the executive authority. Such was President Lincoln's Provisional Court, established by a mere military order in Louisiana in 1862. Four years later Congress ordered its records transferred to the Circuit Court for the Eastern District of the State, and made its judgment in legal effect the judgments of that court.

The validity of this legislation was attacked, but it was finally supported by the Supreme Court of the United States,⁹ and under this decision, in the case of the *Grapeshot*, what were really decrees of the President, speaking by his military deputy, the judge of the Provisional Court, were made to stand for and

⁸ 4 Wall. 475.

⁹ The *Grapeshot*, 9 Wall. 129.

virtually become, by legislative action, the judgments of a regularly constituted judicial tribunal, which could only have pronounced them by virtue of its judicial powers.

But how far, in time of absolute peace, can the President of the United States, in the exercise of his civil authority, interfere with the police of a State, and set aside its ordinary course of justice? Let Neagle's case, which arose from threats of violence against Mr. Justice Field of the Supreme Court, give the answer. The President can surround civil officers of the United States, within a State, with armed guards, who can defend them, even to the death, without responsibility to the State whose peace may be disturbed. He may send such guards in the train of every judge upon the circuit, and however they may overstep the line of duty, the State cannot call them to account. There is, says the Supreme Court, a peace of the United States as well as of the State, which is broken by an attack upon such an officer, and although the peace of the State be also broken by the defense, this can be determined only by the courts of the United States.¹⁰

I have spoken of the President as the sole representative of the United States in our dealings with foreign nations, except, indeed, that the ordinary executive prerogative of declaring war has not been confided to him. If he cannot declare war, however, he can create one.

Take, for instance, his power, to which I have already alluded, of receiving foreign Ministers. To receive them as coming from what foreign sovereigns? From such, and such only, as he may choose to recognize as sovereign. From Hawaii, if he chooses to recognize the Hawaiian Republic. From Cuba, if he chooses to recognize the Cuban Republic. Such an act of recognition, in case of a political revolution that has obtained temporary success, may obviously constitute a *casus belli* in favor of the former government, should it ultimately prevail.

In all America that lies South of us we have long taken an especial interest. As to the foreign relations of our sister republics there, we may almost say that our will is law; and our will is uttered by our President. Let one of these republics complain to him of encroachments threatened by an European power. It is Mexico, struggling to free herself from an Austrian Emperor sent and supported by Louis Napoleon. At a few words from our Department of State, in the name of President

¹⁰ Neagle's Case, 135 U. S. 1.

Johnson, the French troops are recalled, and Maximilian is led to execution. It is Venezuela, charging England with pushing too far the boundaries of British Guiana. A sudden message to Congress from President Cleveland asks for the appointment of a commission to aid him in determining which nation is in the right and intimates that if Venezuela proves in the right she shall have right done. In an hour, by this executive act, we are brought face to face with a question of war with the leading power in Europe, and the danger of it passes away through a diplomatic correspondence for the issue of which the President was again alone responsible.

The very ground of our interference in this quarrel of Venezuela—what was it but a doctrine proclaimed, and indeed invented, by a President of the United States? The Monroe Doctrine has laid down the law for our hemisphere, and it was the single act of one executive department.

Has any sovereign in Europe, of his own motion, ever done as much?

The place of the President in our government was prepared for those who could be safely trusted with imperial power—for ideal heroes of the nation whom the leaders in each State, chosen by the people for that sole purpose, in the secret conclave of the electoral college, might agree on—must agree on—for in no nation at any time can there be more than one to whom all true men look as the foremost citizen.

The framers of the Constitution sat in convention under the Presidency of such a hero. It was for Washington that they prepared the place of President of the new Republic. It was by such as Washington that they hoped the powers of this great office would be administered, when he should fill it no longer.

Their forecast has been but half fulfilled. The electoral colleges have sunk to the condition of so many patent voting machines. They are a survival of the unfittest. Human government, like natural government, is administered, in the long run, on the principle of natural selection; but we are more apt to change the substance than the form of political institutions. England has slipped into a republic without knowing it. They keep their Queen, indeed, and are proud of her reign of sixty years—how proud, the pageants of this summer have well shown—but she is little more than a historical curiosity. Our Presidential electors were brought into being as the safest and surest way of declaring the will of the people. We have found a better way, in national conventions of great parties and the

popular verdict upon their work, at the polls; but, by the force of the *vis inertiae*, we still cling to the out-worn form of the electoral college.

The tailors persist in sewing two buttons on the backs of our coats, because in the England of the Tudors, when all traveling was done on horseback, one had to button back the skirts of his riding coat, to keep them from flapping and fraying against the saddle-bags. The tailor is the despot of modern society, and he still insists on his two buttons, though we have forgotten their use; and so the electoral colleges seem destined to cling to the skirts of the Constitution, simply because nobody cares to take the trouble to have them cut off.

Their purpose was good, but it has become an impossible one. Only a great war can give us, again, a national hero, and even then the successful General can never be President unless he is formally adopted as the candidate of a great party.

The successors of Washington have been often weak men; never, as yet, bad men; but it is hard to name more than three of them who can in any sense be termed the heroes of the nation. The great powers, however, are always there, if the great man is not; and every generation has made them powers greater still.

Time has also brought a greater permanence to them.

Thrones are allowed to descend by hereditary succession, because it is believed that the son is most likely to follow the policy of the father, and to resemble him in character.

The election of our Vice-President is arranged with a similar view; but for a hundred years the vacancy that might occur by the event of his death was left by Congress to be filled by officers chosen by one or the other House of Congress.

What might have been expected, finally happened. A Vice-President became President, and the legislative officer next in succession was of a different political party. It was a time of deep party feeling, and there was serious danger that the President might be pushed from his place to make room for a representative of widely different views; coming into power, perhaps, by his own vote as a member of a Court of Impeachment. Twenty years later, when passion had had time to cool, a wiser law was enacted under which the President, in such a case, names, in effect, his own successor, and so secures the continuance of the same policy until the people have had another opportunity to declare their will.

Aristotle said that the principle or spirit of two governments, widely different in political form, might be the same.

The principle of despotism may exist in any government. It may dominate in a democracy. It does when the popular majority legislates at will on matters of individual liberty or property. Despotism was never more terrible than in the hands of the people in the French Revolution.

We need not be surprised, therefore, that beginning in 1787, by granting our President more extensive powers than the Chief Magistrate in any democratic confederation had ever received before in times of peace,¹¹ we have finally drifted into a kind of modified constitutional despotism. It was the logical outcome of our attempt to unite in one government the form of a confederation and the principle of a nation. If sovereign States were to be kept within the limits which the Constitution set, it must be by something in the nature of a sovereign power that was even greater than they. The people of the United States are greater than any or all of the United States, but they cannot meet together, and none to represent them can meet together, save in the extraordinary and yet unknown event of a second national constitutional convention. They must therefore speak by the chief magistrate of the Republic; and so has come his transcendent power.

I have compared that power with the authority exercised in his dominions by the Czar of Russia. It has become a political aphorism that Russia is governed by despotism, tempered by assassination. Enhance human power to a certain point, and it becomes to some men intolerable. As we look back on the dagger of Booth, and the *sic semper tyrannis* with which he struck home his blow; at the shot of a disappointed office-seeker that cost the life of President Garfield; we cannot but feel that there are fanatics in America, also, who proceed by the methods of fanatics, and are actuated by the blind impulse of destruction in the presence of political absolutism.

But such men are few. There is despotism in American government; but all who look at it with open eyes and honest hearts know that it is despotism in reserve and despotism in division. Russia would center absolute power once and forever, in a single man. We part it between three departments of government, and however great the share of the executive may be, it is still kept within limits, and held, at most, only for

¹¹ 2 Woolsey's "Political Science," 258.

eight years. I say for eight, because American tradition has made a third term impossible.

Our ultimate despot is the people of the United States; but they are the knights in armor that from generation to generation may slumber in the enchanted chambers of the eternal hills. They lay down to rest when a declaration of their rights had been added to the Constitution of the United States by its first ten amendments in the third year of Washington's administration. They rose to action for a moment, when, three years later, they found that their ministers of justice had so far misunderstood their meaning as to hold a sovereign State subject to the federal jurisdiction, at the suit of a private individual. Again, at the beginning of this century, they awoke, when party machinery had so far controlled personal patriotism, that Aaron Burr had almost been seated in the place which they designed for Thomas Jefferson.

A longer period of inaction followed, till the time came to proclaim by law what had been before only asserted by the sword, that slavery had become incompatible with free institutions. But the long war that made freedom national, had done much more. It had struck at States. It had conquered States. It had borne down with its strong hand barrier after barrier set by former generations to guard that vast and indefinable domain of rights "reserved to the States respectively, or to the people." It had brought into existence a new class of persons; a great class; utterly unfitted to their new position; surrounded by those who had been their masters, distant from those who had been their liberators.

Two great things remained to be accomplished. These millions of slaves, new born into freedom, must be protected in it, or given some means of self-protection; and these new relations of the States to the United States, of the old States to the new nation, must be more definitely marked and secured.

Again the knights in armor stirred in the enchanted chamber. The fourteenth amendment succeeded the thirteenth; the fifteenth soon followed, and the chapter of the civil war was closed.

But the freedom of the slave was the least of its political consequences. These three amendments of the Constitution readjusted and reset our whole system of fundamental law.

Down to 1868 each State had said for herself, My people shall be free from arbitrary arrests; their liberty and property shall be secure; their rights equal; the law impartially administered;

the stranger within my gates protected from wrong, as fully as my own sons. Now came back for a brief moment to the scene of action the people of the United States, to say, by the fourteenth amendment, that thenceforth every man should have their guaranty that the State would not recede from these obligations, but they should forever and forever be the foundation stones of American institutions.

Was this great change a welcome one to every State? You well know that it was not. Only absolute power, the absolute power of a three-fourths vote under a written Constitution—the absolute power of a Congress with the right in each of its houses to determine on the qualifications of its own members and the admission of members from any recalcitrant State—with the right to pack the jury even, by admitting to Statehood a row of mining camps on barren mountains, and giving to Nevada an equal vote with Virginia or Massachusetts—this is what forced the fourteenth if not the thirteenth amendment into organic law.

But there it is. It was a slight matter that it hastened the day of negro suffrage; and paved the way for the fifteenth amendment, passed two years later. Whenever and wherever the American negro has education enough to enable him to cast an intelligent vote, he will cast that vote, and he ought to cast it. And whenever and wherever he has not such education, he ought not to vote, and—in the long run—he will not vote. Mississippi and South Carolina have put themselves upon solid ground in saying that education must be a condition of suffrage. It is no new doctrine. In the North there is more than one State in which such has been the law for nearly half a century.

The great change wrought by the fourteenth amendment has been to concede and perpetuate to the United States vast and far-reaching national powers; to unify and centralize their government, for good or ill.

It has been said that the ideals of the Teutonic race have been in perpetual vibration from one period to another, as the pendulum of time swung to and fro across the ages, between two social forces—Individualism and Collectivism; between the cry of each man for himself, *sauve qui peut*, and the broader note of each for all.

If absolute power has risen up in the United States, and for the United States, during this century, to a height our fathers never contemplated, it is because we have departed from our Anglo-Saxon inheritance of Individualism; because the people demand more of their government, and have given it more.

When Coleridge declared that

“ We receive but what we give,
And in our life alone does nature live,”

he spoke what is, above all things, true of free institutions. For each of them, the individual citizen has parted with something. They are the great result of a common contribution; and whatever they give back we who receive have paid for, are paying for, whether we recognize it or not.

It was Collectivism that wrote the fourteenth amendment; Collectivism that ratified it; Collectivism that enforces it. Does it protect individual rights, as in no land under the broad heaven they were ever, in any age, protected before? Yes; but only by the sacrifice of other rights of Individualism; only by extension of the sovereignty of the Union at the cost of the sovereignty of the State; only by giving to the courts new authority to control legislatures, and Congress new power to control the citizen; only by giving to the President new laws to execute, of such a kind as put him forward into fields before unoccupied.

In the impeachment trial of Andrew Johnson, one of the managers of the prosecution described the President as nothing but “the constable of Congress.” Had that impeachment been successful, the contemptuous taunt might have seemed simple truth. It was not successful, because all honest men, not blinded by party passion, felt that the President held great constitutional functions, which made him, in his sphere, little short of the dictator of the Republic.

I am glad that we have so great an officer. The foe that threatens American institutions to-day is not absolutism, but anarchy; not the tyranny of a man, but a tyranny of the mob. To meet it we need the strong hand of power. If we were not a nation before the civil war, we have been since. A nation must have a head. I have no fear that the President of the United States, absolute as he is, within his sphere, will ever act the part of Cæsar. The foundations of American liberty are laid too deep. The checks of the Constitution, backed by the sentiment of a free and intelligent people, are ample for any strain.

Proudly and safely rides the ship of State into the opening harbor of the twentieth century; prouder and safer because one hand and one hand only, is on the wheel.

Simeon E. Baldwin.