

Constitutional Government in the United States

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Chapter 3: The President of the United States

It is difficult to describe any single part of a great governmental system without describing the whole of it. Governments are living things and operate as organic wholes. Moreover, governments have their natural evolution and are one thing in one age, another in another. The makers of the Constitution constructed the federal government upon a theory of checks and balances which was meant to limit the operation of each part and allow to no single part or organ of it a dominating force; but no government can be successfully conducted upon so mechanical a theory. Leadership and control must be lodged somewhere; the whole art of statesmanship is the art of bringing the several parts of government into effective cooperation for the accomplishment of particular common objects—and party objects at that. Our study of each part of our federal system, if we are to discover our real government as it lives, must be made to disclose to us its operative coordination as a whole: its places of leadership, its method of action, how it operates, what checks it, what gives it energy and effect. Governments are what politicians make them, and it is easier to write of the President than of the presidency.

The government of the United States was constructed upon the Whig theory of political dynamics, which was a sort of unconscious copy of the Newtonian theory of the universe. In our own day, whenever we discuss the structure or development of anything, whether in nature or in society, we consciously or unconsciously follow Mr. Darwin; but before Mr. Darwin, they followed Newton. Some single law, like the law of gravitation, swung each system of thought and gave it its principle of unity. Every sun, every planet, every free body in the spaces of the heavens, the world itself, is kept in its place and reined to its course by the attraction of bodies that swing with equal order and precision about it, themselves governed by the nice poise and balance of forces which give the whole system of the universe its symmetry and perfect adjustment. The Whigs had tried to give England a similar constitution. They had had no wish to destroy the throne, no conscious desire to reduce the king to a mere figurehead, but had intended only to surround and offset him with a system of constitutional checks and balances which should regulate his otherwise arbitrary course and make it at least always calculable.

They had made no clear analysis of the matter in their own thoughts; it has not been the habit of English politicians, or indeed of English-speaking politicians on either side of the water, to be clear theorists. It was left to a Frenchman to point out to the Whigs what they had done. They had striven to make Parliament so influential in the making of laws and so authoritative in the criticism of the king's policy that the king could in no matter have his own way without their cooperation and assent, though they left him free, the while, if he chose, to interpose an absolute veto upon the acts of Parliament. They had striven to secure for the courts of law as great an independence as possible, so that they might be neither over-awed by parliament nor coerced by the king. In brief, as Montesquieu

pointed out to them in his lucid way, they had sought to balance executive, legislature, and judiciary off against one another by a series of checks and counter-poise, which Newton might readily have recognized as suggestive of the mechanism of the heavens.

The makers of our federal Constitution followed the scheme as they found it expounded in Montesquieu, followed it with genuine scientific enthusiasm. The admirable expositions of the *Federalist* read like thoughtful applications of Montesquieu to the political needs and circumstances of America. They are full of the theory of checks and balances. The President is balanced off against Congress, Congress against the President, and each against the courts. Our statesmen of the earlier generations quoted no one so often as Montesquieu, and they quoted him always as a scientific standard in the field of politics. Politics is turned into mechanics under his touch. The theory of gravitation is supreme.

The trouble with the theory is that government is not a machine, but a living thing. It falls, not under the theory of the universe, but under the theory of organic life. It is accountable to Darwin, not to Newton. It is modified by its environment, necessitated by its tasks, shaped to its functions by the sheer pressure of life. No living thing can have its organs offset against each other as checks, and live. On the contrary, its life is dependent upon their quick cooperation, their ready response to the commands of instinct or intelligence, their amicable community of purpose. Government is not a body of blind forces; it is a body of men, with highly differentiated functions, no doubt, in our modern day of specialization, but with a common task and purpose. Their cooperation is indispensable, their war-fare fatal. There can be no successful government without leadership or without the intimate, almost instinctive, coordination of the organs of life and action. This is not theory, but fact, and displays its force as fact, whatever theories may be thrown across its track. Living political constitutions must be Darwinian in structure and in practice.

Fortunately, the definitions and prescriptions of our constitutional law, though conceived in the Newtonian spirit and upon the Newtonian principle, are sufficiently broad and elastic to allow for the play of life and circumstance. Though they were Whig theorists, the men who framed the federal Constitution were also practical statesmen with an experienced eye for affairs and a quick practical sagacity in respect of the actual structure of government, and they have given us a thoroughly workable model. If it had, in fact, been a machine governed by mechanically automatic balances, it would have had no history; but it was not, and its history has been rich with the influences and personalities of the men who have conducted it and made it a living reality. The government of the United States has had a vital, and normal organic growth and has proved itself eminently adapted to express the changing temper and purposes of the American people from age to age.

That is the reason why it is easier to write of the President than of the presidency. The presidency has been one thing at one time, another at another, varying with the man who occupied the office and with the circumstances that surrounded him. One account must be given of the office during the period 1789 to 1825, when the government was getting its

footing both at home and abroad, struggling for its place among the nations and its full credit among its own people; when English precedents and traditions were strongest; and when the men chosen for the office were men bred to leadership in a way that attracted to them the attention and confidence of the whole country. Another account must be given of it during Jackson's time, when an imperious man, bred not in deliberative assemblies or quiet councils, but in the field and upon a rough frontier, worked his own will upon affairs, with or without formal sanction of law, sustained by a clear undoubting conscience and the love of a people who had grown deeply impatient of the regime he had supplanted. Still another account must be given of it during the years 1836 to 1861, when domestic affairs of many debatable kinds absorbed the country, when Congress necessarily exercised the chief choices of policy, and when the Presidents who followed one another in office lacked the personal force and initiative to make for themselves a leading place in counsel. After that came the Civil War and Mr. Lincoln's unique task and achievement, when the executive seemed for a little while to become by sheer stress of circumstances the whole government, Congress merely voting supplies and assenting to necessary laws, as Parliament did in the time of the Tudors. From 1865 to 1898, domestic questions, legislative matters in respect of which Congress had naturally to make the initial choice, legislative leaders the chief decisions of policy, came once more to the front, and no President except Mr. Cleveland played a leading and decisive part in the quiet drama of our national life. Even Mr. Cleveland may be said to have owed his great role in affairs rather to his own native force and the confused politics of the time, than to any opportunity of leadership naturally afforded him by a system which had subordinated so many Presidents before him to Congress. The war with Spain again changed the balance of parts. Foreign questions became leading questions again, as they had been in the first days of the government, and in them the President was of necessity leader. Our new place in the affairs of the world has since that year of transformation kept him at the front of our government, where our own thoughts and the attention of men everywhere is centred upon him.

Both men and circumstances have created these contrasts in the administration and influence of the office of President. We have all been disciples of Montesquieu, but we have also been practical politicians. Mr. Bagehot once remarked that it was no proof of the excellence of the Constitution of the United States that the Americans had operated it with conspicuous success because the Americans could run any constitution successfully; and, while the compliment is altogether acceptable, it is certainly true that our practical sense is more noticeable than our theoretical consistency, and that, while we were once all constitutional lawyers, we are in these latter days apt to be very impatient of literal and dogmatic interpretations of constitutional principle.

The makers of the Constitution seem to have thought of the President as what the stricter Whig theorists wished the king to be: only the legal executive, the presiding and guiding authority in the application of law and the execution of policy. His veto upon legislation was only his check on Congress—was a power of restraint, not of guidance. He was empowered to prevent bad laws, but he was not to be given an opportunity to make good ones. As a matter of fact he has become very much more. He has become the leader of his party and the guide of the nation in political purpose, and therefore in legal action. The

constitutional structure of the government has hampered and limited his action in these significant roles, but it has not prevented it. The influence of the President has varied with the men who have been Presidents and with the circumstances of their times, but the tendency has been unmistakably disclosed, and springs out of the very nature of government itself. It is merely the proof that our government is a living, organic thing, and must, like every other government, work out the close synthesis of active parts which can exist only when leadership is lodged in some one man or group of men. You cannot compound a successful government out of antagonisms. Greatly as the practice and influence of Presidents has varied, there can be no mistaking the fact that we have grown more and more inclined from generation to generation to look to the President as the unifying force in our complex system, the leader both of his party and of the nation. To do so is not inconsistent with the actual provisions of the Constitution; it is only inconsistent with a very mechanical theory of its meaning and intention. The Constitution contains no theories. It is as practical a document as Magna Carta.

The role of party leader is forced upon the President by the method of his selection. The theory of the makers of the Constitution may have been that the presidential electors would exercise a real choice, but it is hard to understand how, as experienced politicians, they can have expected anything of the kind. They did not provide that the electors should meet as one body for consultation and make deliberate choice of a President and Vice-President, but that they should meet "in their respective states" and cast their ballots in separate groups, without the possibility of consulting and without the least likelihood of agreeing, unless some such means as have actually been used were employed to suggest and determine their choice beforehand. It was the practice at first to make party nominations for the presidency by congressional caucus. Since the Democratic upheaval of General Jackson's time, nominating conventions have taken the place of congressional caucuses; and the choice of Presidents by party conventions has had some very interesting results.

We are apt to think of the choice of nominating conventions as somewhat haphazard. We know, or think that we know, how their action is sometimes determined, and the knowledge makes us very uneasy. We know that there is no debate in nominating conventions, no discussion of the merits of the respective candidates, at which the country can sit as audience and assess the wisdom of the final choice. If there is any talking to be done, aside from the formal addresses of the temporary and permanent chairmen and of those who present the platform and the names of the several aspirants for nomination, the assembly adjourns. The talking that is to decide the result must be done in private committee rooms and behind the closed doors of the headquarters of the several state delegations to the convention. The intervals between sessions are filled with a very feverish activity. Messengers run from one headquarters to another until the small hours of the morning. Conference follows conference, in a way that is likely to bring newspaper correspondents to the verge of despair, it being next to impossible to put the rumors together into any coherent story of what is going on. Only at the rooms of the national committee of the party is there any clear knowledge of the situation as a whole; and the excitement of the members of the convention rises from session to session under the

sheer pressure of uncertainty. The final majority is compounded, no outsider and few members can tell how.

Many influences, too, play upon nominating conventions, which seem mere winds of feeling. They sit in great halls, with galleries into which crowd thousands of spectators from all parts of the country, but chiefly, of course, from the place at which the convention sits, and the feeling of the galleries is transmitted to the floor. The cheers of mere spectators echo the names of popular candidates, and every excitement on the floor is enhanced a hundred fold in the galleries. Sudden gusts of impulse are apt to change the whole feeling of the convention, and offset in a moment the most careful arrangements of managing politicians. It has come to be a commonly accepted opinion that if the Republican convention of 1860 had not met in Chicago, it would have nominated Mr. Seward and not Mr. Lincoln. Mr. Seward was the acknowledged leader of the new party; had been its most telling spokesman; had given its tenets definition and currency. Mr. Lincoln had not been brought within view of the country as a whole until the other day, when he had given Mr. Douglas so hard a fight to keep his seat in the Senate, and had but just now given currency among thoughtful men to the striking phrases of the searching speeches he had made in debate with his practised antagonist. But the convention met in Illinois, amidst throngs of Mr. Lincoln's ardent friends and advocates. His managers saw to it that the galleries were properly filled with men who would cheer every mention of his name until the hall was shaken. Every influence of the place worked for him and he was chosen.

Thoughtful critics of our political practices have not allowed the excellence of the choice to blind them to the danger of the method. They have known too many examples of what the galleries have done to supplement the efforts of managing politicians, to feel safe in the presence of processes which seem rather those of intrigue and impulse than those of sober choice. They can cite instances, moreover, of sudden, unlooked-for excitements on the floor of such bodies which have swept them from the control of all sober influences and hastened them to choices which no truly deliberative assembly could ever have made. There is no training school for Presidents, unless, as some governors have wished, it be looked for in the governorships of states; and nominating conventions have confined themselves in their selections to no class, have demanded of aspirants no particular experience or knowledge of affairs. They have nominated lawyers without political experience, soldiers, editors of newspapers, newspaper correspondents, whom they pleased, without regard to their lack of contact with affairs. It would seem as if their choices were almost matters of chance.

In reality there is much more method, much more definite purpose, much more deliberate choice in the extraordinary process than there seems to be. The leading spirits of the national committee of each party could give an account of the matter which would put a very different face on it and make the methods of nominating conventions seem, for all the undoubted elements of chance there are in them, on the whole very manageable. Moreover, the party that expects to win may be counted on to make a much more conservative and thoughtful selection of a candidate than the party that merely hopes to win. The haphazard selections which seem to discredit the system are generally made by

conventions of the party unaccustomed to success. Success brings sober calculation and a sense of responsibility.

And it must be remembered also that our political system is not so coordinated as to supply a training for presidential aspirants or even to make it absolutely necessary that they should have had extended experience in public affairs. Certainly the country has never thought of members of Congress as in any particular degree fitted for the presidency. Even the Vice President is not afforded an opportunity to learn the duties of the office. The men best prepared, no doubt, are those who have been governors of states or members of cabinets. And yet, even they are chosen for their respective offices generally by reason of a kind of fitness and availability which does not necessarily argue in them the size and power that would fit them for the greater office. In our earlier practice, cabinet officers were regarded as in the natural line of succession to the presidency. Mr. Jefferson had been in General Washington's cabinet, Mr. Madison in Mr. Jefferson's, Mr. Monroe in Mr. Madison's; and generally it was the Secretary of State who was taken. But those were days when English precedent was strong upon us, when cabinets were expected to be made up of the political leaders of the party in power; and from their ranks subsequent candidates for the presidency were most likely to be selected. The practice, as we look back to it, seems eminently sensible, and we wonder why it should have been so soon departed from and apparently forgotten. We wonder, too, why eminent senators have not sometimes been chosen; why members of the House have so seldom commanded the attention of nominating conventions; why public life has never offered itself in any definite way as a preparation for the presidential office.

If the matter be looked at a little more closely, it will be seen that the office of President, as we have used and developed it, really does not demand actual experience in affairs so much as particular qualities of mind and character which we are at least as likely to find outside the ranks of our public men as within them. What is it that a nominating convention wants in the man it is to present to the country for its suffrages? A man who will be and who will seem to the country in some sort an embodiment of the character and purpose it wishes its government to have—a man who understands his own day and the needs of the country, and who has the personality and the initiative to enforce his views both upon the people and upon Congress. It may seem an odd way to get such a man. It is even possible that nominating conventions and those who guide them do not realize entirely what it is that they do. But in simple fact the convention picks out a party leader from the body of the nation. Not that it expects its nominee to direct the interior government of the party and to supplant its already accredited and experienced spokesmen in Congress and in its state and national committees; but it does of necessity expect him to represent it before public opinion and to stand before the country as its representative man, as a true type of what the country may expect of the party itself in purpose and principle. It cannot but be led by him in the campaign; if he be elected, it cannot but acquiesce in his leadership of the government itself. What the country will demand of the candidate will be, not that he be an astute politician, skilled and practised in affairs, but that he be a man such as it can trust, in character, in intention, in knowledge of its needs, in perception of the best means by which those needs may be met, in capacity to prevail by reason of his own weight and integrity. Sometimes the country

believes in a party, but more often it believes in a man; and conventions have often shown the instinct to perceive which it is that the country needs in a particular presidential year, a mere representative partisan, a military hero, or some one who will genuinely speak for the country itself, whatever be his training and antecedents. It is in this sense that the President has the role of party leader thrust upon him by the very method by which he is chosen.

As legal executive, his constitutional aspect, the President cannot be thought of alone. He cannot execute laws. Their actual daily execution must be taken care of by the several executive departments and by the now innumerable body of federal officials throughout the country. In respect of the strictly executive duties of his office the President may be said to administer the presidency in conjunction with the members of his cabinet, like the chairman of a commission. He is even of necessity much less active in the actual carrying out of the law than are his colleagues and advisers. It is therefore becoming more and more true, as the business of the government becomes more and more complex and extended, that the President is becoming more and more a political and less and less an executive officer. His executive powers are in commission, while his political powers more and more centre and accumulate upon him and are in their very nature personal and inalienable.

Only the larger sort of executive questions are brought to him. Departments which run with easy routine and whose transactions bring few questions of general policy to the surface may proceed with their business for months and even years together without demanding his attention; and no department is in any sense under his direct charge. Cabinet meetings do not discuss detail: they are concerned only with the larger matters of policy or expediency which important business is constantly disclosing. There are no more hours in the President's day than in another man's. If he is indeed the executive, he must act almost entirely by delegation, and is in the hands of his colleagues. He is likely to be praised if things go well, and blamed if they go wrong; but his only real control is of the persons to whom he deposes the performance of executive duties. It is through no fault or neglect of his that the duties apparently assigned to him by the Constitution have come to be his less conspicuous, less important duties, and that duties apparently not assigned to him at all chiefly occupy his time and energy. The one set of duties it has proved practically impossible for him to perform; the other it has proved impossible for him to escape.

He cannot escape being the leader of his party except by incapacity and lack of personal force, because he is at once the choice of the party and of the nation. He is the party nominee, and the only party nominee for whom the whole nation votes. Members of the House and Senate are representatives of localities, are voted for only by sections of voters, or by local bodies of electors like the members of the state legislatures. There is no national party choice except that of President. No one else represents the people as a whole, exercising a national choice; and inasmuch as his strictly executive duties are in fact subordinated, so far at any rate as all detail is concerned, the President represents not so much the party's governing efficiency as its controlling ideals and principles. He is not so much part of its organization as its vital link of connection with the thinking nation.

He can dominate his party by being spokesman for the real sentiment and purpose of the country, by giving direction to opinion, by giving the country at once the information and the statements of policy which will enable it to form its judgments alike of parties and of men.

For he is also the political leader of the nation, or has it in his choice to be. The nation as a whole has chosen him, and is conscious that it has no other political spokesman. His is the only national voice in affairs. Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces will easily overpower him. His position takes the imagination of the country. He is the representative of no constituency, but of the whole people. When he speaks in his true character, he speaks for no special interest. If he rightly interpret the national thought and boldly insist upon it, he is irresistible; and the country never feels the zest of action so much as when its President is of such insight and calibre. Its instinct is for unified action, and it craves a single leader. It is for this reason that it will often prefer to choose a man rather than a party. A President whom it trusts can not only lead it, but form it to his own views.

It is the extraordinary isolation imposed upon the President by our system that makes the character and opportunity of his office so extraordinary. In him are centred both opinion and party. He may stand, if he will, a little outside party and insist as if it were upon the general opinion. It is with the instinctive feeling that it is upon occasion such a man that the country wants that nominating conventions will often nominate men who are not their acknowledged leaders, but only such men as the country would like to see lead both its parties. The President may also, if he will, stand within the party counsels and use the advantage of his power and personal force to control its actual programs. He may be both the leader of his party and the leader of the nation, or he may be one or the other. If he lead the nation, his party can hardly resist him. His office is anything he has the sagacity and force to make it.

That is the reason why it has been one thing at one time, another at another. The Presidents who have not made themselves leaders have lived no more truly on that account in the spirit of the Constitution than those whose force has told in the determination of law and policy. No doubt Andrew Jackson overstepped the bounds meant to be set to the authority of his office. It was certainly in direct contravention of the spirit of the Constitution that he should have refused to respect and execute decisions of the Supreme Court of the United States, and no serious student of our history can righteously condone what he did in such matters on the ground that his intentions were upright and his principles pure. But the Constitution of the United States is not a mere lawyers' document: it is a vehicle of life, and its spirit is always the spirit of the age. Its prescriptions are clear and we know what they are; a written document makes lawyers of us all, and our duty as citizens should make us conscientious lawyers, reading the text of the Constitution without subtlety or sophistication; but life is always your last and most authoritative critic.

Some of our Presidents have deliberately held themselves off from using the full power they might legitimately have used, because of conscientious scruples, because they were more theorists than statesmen. They have held the strict literary theory of the Constitution, the Whig theory, the Newtonian theory, and have acted as if they thought that Pennsylvania Avenue should have been even longer than it is; that there should be no intimate communication of any kind between the Capitol and the White House; that the President as a man was no more at liberty to lead the houses of Congress by persuasion than he was at liberty as President to dominate them by authority—supposing that he had, what he has not, authority enough to dominate them. But the makers of the Constitution were not enacting Whig theory, they were not making laws with the expectation that, not the laws themselves, but their opinions, known by future historians to lie back of them, should govern the constitutional action of the country. They were statesmen, not pedants, and their laws are sufficient to keep us to the paths they set us upon. The President is at liberty, both in law and conscience, to be as big a man as he can. His capacity will set the limit; and if Congress be overborne by him, it will be no fault of the makers of the Constitution—it will be from no lack of constitutional powers on its part, but only because the President has the nation behind him, and Congress has not. He has no means of compelling Congress except through public opinion.

That I say he has no means of compelling Congress will show what I mean, and that my meaning has no touch of radicalism or iconoclasm in it. There are illegitimate means by which the President may influence the action of Congress. He may bargain with members, not only with regard to appointments, but also with regard to legislative measures. He may use his local patronage to assist members to get or retain their seats. He may interpose his powerful influence, in one covert way or another, in contests for places in the Senate. He may also overbear Congress by arbitrary acts which ignore the laws or virtually override them. He may even substitute his own orders for acts of Congress which he wants but cannot get. Such things are not only deeply immoral, they are destructive of the fundamental understandings of constitutional government and, therefore, of constitutional government itself. They are sure, moreover, in a country of free public opinion, to bring their own punishment, to destroy both the fame and the power of the man who dares to practice them. No honorable man includes such agencies in a sober exposition of the Constitution or allows himself to think of them when he speaks of the influences of "life" which govern each generation's use and interpretation of that great instrument, our sovereign guide and the object of our deepest reverence. Nothing in a system like ours can be constitutional which is immoral or which touches the good faith of those who have sworn to obey the fundamental law. The reprobation of all good men will always overwhelm such influences with shame and failure. But the personal force of the President is perfectly constitutional to any extent to which he chooses to exercise it, and it is by the clear logic of our constitutional practice that he has become alike the leader of his party and the leader of the nation.

The political powers of the President are not quite so obvious in their scope and character when we consider his relations with Congress as when we consider his relations to his party and to the nation. They need, therefore, a somewhat more critical examination. Leadership in government naturally belongs to its executive officers, who are daily in

contact with practical conditions and exigencies and whose reputations alike for good judgment and for fidelity are at stake much more than are those of the members of the legislative body at every turn of the law's application. The law-making part of the government ought certainly to be very hospitable to the suggestions of the planning and acting part of it. Those Presidents who have felt themselves bound to adhere to the strict literary theory of the Constitution have scrupulously refrained from attempting to determine either the subjects or the character of legislation, except so far as they were obliged to decide for themselves, after Congress had acted, whether they should acquiesce in it or not. And yet the Constitution explicitly authorizes the President to recommend to Congress "such measures as he shall deem necessary and expedient," and it is not necessary to the integrity of even the literary theory of the Constitution to insist that such recommendations should be merely perfunctory. Certainly General Washington did not so regard them, and he stood much nearer the Whig theory than we do. A President's messages to Congress have no more weight or authority than their intrinsic reasonableness and importance give them: but that is their only constitutional limitation. The Constitution certainly does not forbid the President to back them up, as General Washington did, with such personal force and influence as he may possess. Some of our Presidents have felt the need, which unquestionably exists in our system, for some spokesman of the nation as a whole, in matters of legislation no less than in other matters, and have tried to supply Congress with the leadership of suggestion, backed by argument and by iteration and by every legitimate appeal to public opinion. Cabinet officers are shut out from Congress; the President himself has, by custom, no access to its floor; many long-established barriers of precedent, though not of law, hinder him from exercising any direct influence upon its deliberations; and yet he is undoubtedly the only spokesman of the whole people. They have again and again, as often as they were afforded the opportunity, manifested their satisfaction when he has boldly accepted the role of leader, to which the peculiar origin and character of his authority entitle him. The Constitution bids him speak, and times of stress and change must more and more thrust upon him the attitude of originator of policies.

His is the vital place of action in the system, whether he accept it as such or not, and the office is the measure of the man—of his wisdom as well as of his force. His veto abundantly equips him to stay the hand of Congress when he will. It is seldom possible to pass a measure over his veto, and no President has hesitated to use the veto when his own judgment of the public good was seriously at issue with that of the houses. The veto has never been suffered to fall into even temporary disuse with us. In England it has ceased to exist, with the change in the character of the executive. There has been no veto since Anne's day, because ever since the reign of Anne the laws of England have been originated either by ministers who spoke the king's own will or by ministers whom the king did not dare gainsay; and in our own time the ministers who formulate the laws are themselves the executive of the nation; a veto would be a negative upon their own power. If bills pass of which they disapprove, they resign and give place to the leaders of those who approve them. The framers of the Constitution made in our President a more powerful, because a more isolated, king than the one they were imitating; and because the Constitution gave them their veto in such explicit terms, our Presidents have not hesitated to use it, even when it put their mere individual judgment against that of large majorities

in both houses of Congress. And yet in the exercise of the power to suggest legislation, quite as explicitly conferred upon them by the Constitution, some of our Presidents have seemed to have a timid fear that they might offend some law of taste which had become a constitutional principle.

In one sense, their messages to Congress have no more authority than the letters of any other citizen would have. Congress can heed or ignore them as it pleases; and there have been periods of our history when presidential messages were utterly without practical significance, perfunctory documents which few persons except the editors of newspapers took the trouble to read. But if the President has personal force and cares to exercise it, there is this tremendous difference between his messages and the views of any other citizen, either outside Congress or in it: that the whole country reads them and feels that the writer speaks with an authority and a responsibility which the people themselves have given him.

The history of our cabinets affords a striking illustration of the progress of the idea that the President is not merely the legal head but also the political leader of the nation. In the earlier days of the government it was customary for the President to fill his cabinet with the recognized leaders of his party. General Washington even tried the experiment which William of Orange tried at the very beginning of the era of cabinet government. He called to his aid the leaders of both political parties, associating Mr. Hamilton with Mr. Jefferson, on the theory that all views must be heard and considered in the conduct of the government. That was the day in which English precedent prevailed, and English cabinets were made up of the chief political characters of the day. But later years have witnessed a marked change in our practice, in this as in many other things. The old tradition was indeed slow in dying out. It persisted with considerable vitality at least until General Garfield's day, and may yet from time to time revive, for many functions of our cabinets justify it and make it desirable. But our later Presidents have apparently ceased to regard the cabinet as a council of party leaders such as the party they represent would have chosen. They look upon it rather as a body of personal advisers whom the President chooses from the ranks of those whom he personally trusts and prefers to look to for advice. Our recent Presidents have not sought their associates among those whom the fortunes of party contest have brought into prominence and influence, but have called their personal friends and business colleagues to cabinet positions, and men who have given proof of their efficiency in private, not in public, life,—bankers who had never had any place in the formal counsels of the party, eminent lawyers who had held aloof from politics, private secretaries who had shown an unusual sagacity and proficiency in handling public business; as if the President were himself alone the leader of his party, the members of his cabinet only his private advisers, at any rate advisers of his private choice. Mr. Cleveland may be said to have been the first President to make this conception of the cabinet prominent in his choices, and he did not do so until his second administration. Mr. Roosevelt has emphasized the idea.

Upon analysis it seems to mean this: the cabinet is an executive, not a political body. The President cannot himself be the actual executive; he must therefore find, to act in his stead, men of the best legal and business gifts, and depend upon them for the actual

administration of the government in all its daily activities. If he seeks political advice of his executive colleagues, he seeks it because he relies upon their natural good sense and experienced judgment, upon their knowledge of the country and its business and social conditions, upon their sagacity as representative citizens of more than usual observation and discretion; not because they are supposed to have had any very intimate contact with politics or to have made a profession of public affairs. He has chosen, not representative politicians, but eminent representative citizens, selecting them rather for their special fitness for the great business posts to which he has assigned them than for their political experience, and looking to them for advice in the actual conduct of the government rather than in the shaping of political policy. They are, in his view, not necessarily political officers at all.

It may, with a great deal of plausibility, be argued that the Constitution looks upon the President himself in the same way. It does not seem to make him a prime minister or the leader of the nation's counsels. Some Presidents are, therefore, and some are not. It depends upon the man and his gifts. He may be like his cabinet, or he may be more than his cabinet. His office is a mere vantage ground from which he may be sure that effective words of advice and timely efforts at reform will gain telling momentum. He has the ear of the nation as of course, and a great person may use such an advantage greatly. If he use the opportunity, he may take his cabinet into partnership or not, as he pleases; and so its character may vary with his. Self-reliant men will regard their cabinets as executive councils; men less self-reliant or more prudent will regard them as also political councils, and will wish to call into them men who have earned the confidence of their party. The character of the cabinet may be made a nice index of the theory of the presidential office, as well as of the President's theory of party government; but the one view is, so far as I can see, as constitutional as the other.

One of the greatest of the President's powers I have not yet spoken of at all: his control, which is very absolute, of the foreign relations of the nation. The initiative in foreign affairs, which the President possesses without any restriction whatever, is virtually the power to control them absolutely. The President cannot conclude a treaty with a foreign power without the consent of the Senate, but he may guide every step of diplomacy, and to guide diplomacy is to determine what treaties must be made, if the faith and prestige of the government are to be maintained. He need disclose no step of negotiation until it is complete, and when in any critical matter it is completed the government is virtually committed. Whatever its disinclination, the Senate may feel itself committed also.

I have not dwelt upon this power of the President, because it has been decisively influential in determining the character and influence of the office at only two periods in our history; at the very first, when the government was young and had so to use its incipient force as to win the respect of the nations into whose family it had thrust itself, and in our own day when the results of the Spanish War, the ownership of distant possessions, and many sharp struggles for foreign trade make it necessary that we should turn our best talents to the task of dealing firmly, wisely, and justly with political and commercial rivals. The President can never again be the mere domestic figure he has been throughout so large a part of our history. The nation has risen to the first rank in

power and resources. The other nations of the world look askance upon her, half in envy, half in fear, and wonder with a deep anxiety what she will do with her vast strength. They receive the frank professions of men like Mr. John Hay, whom we wholly trusted, with a grain of salt, and doubt what we were sure of, their truthfulness and sincerity, suspecting a hidden design under every utterance he makes. Our President must always, henceforth, be one of the great powers of the world, whether he act greatly and wisely or not, and the best statesmen we can produce will be needed to fill the office of Secretary of State. We have but begun to see the presidential office in this light; but it is the light which will more and more beat upon it, and more and more determine its character and its effect upon the politics of the nation. We can never hide our President again as a mere domestic officer. We can never again see him the mere executive he was in the thirties and forties. He must stand always at the front of our affairs, and the office will be as big and as influential as the man who occupies it.

How is it possible to sum up the duties and influence of such an office in such a system in comprehensive terms which will cover all its changeful aspects? In the view of the makers of the Constitution, the President was to be legal executive; perhaps the leader of the nation; certainly not the leader of the party, at any rate while in office. But by the operation of forces inherent in the very nature of government he has become all three, and by inevitable consequence the most heavily burdened officer in the world. No other man's day is so full as his, so full of the responsibilities which tax mind and conscience alike and demand an inexhaustible vitality. The mere task of making appointments to office, which the Constitution imposes upon the President, has come near to breaking some of our Presidents down, because it is a never ending task in a civil service not yet put upon a professional footing, confused with short terms of office, always forming and dissolving. And in proportion as the President ventures to use his opportunity to lead opinion and act as spokesman of the people in affairs, the people stand ready to overwhelm him by running to him with every question, great and small. They are as eager to have him settle a literary question as a political; hear him as acquiescently with regard to matters of special expert knowledge as with regard to public affairs, and call upon him to quiet all troubles by his personal intervention. Men of ordinary physique and discretion cannot be Presidents and live, if the strain be not somehow relieved. We shall be obliged always to be picking our chief magistrates from among wise and prudent athletes—a small class.

The future development of the presidency, therefore, must certainly, one would confidently predict, run along such lines as the President's later relations with his cabinet suggest. General Washington, partly out of unaffected modesty, no doubt, but also out of the sure practical instinct which he possessed in so unusual a degree, set an example which few of his successors seem to have followed in any systematic manner. He made constant and intimate use of his colleagues in every matter that he handled, seeking their assistance and advice by letter when they were at a distance and he could not obtain it in person. It is well known to all close students of our history that his greater state papers, even those which seem in some peculiar and intimate sense his personal utterances, are full of the ideas and the very phrases of the men about him whom he most trusted. His rough drafts came back to him from Mr. Hamilton and Mr. Madison in great part

rephrased and rewritten, in many passages reconceived and given a new color. He thought and acted always by the light of counsel, with a will and definite choice of his own, but through the instrumentality of other minds as well as his own. The duties and responsibilities laid upon the President by the Constitution can be changed only by constitutional amendment—a thing too difficult to attempt except upon some greater necessity than the relief of an overburdened office, even though that office be the greatest in the land; and it is to be doubted whether the deliberate opinion of the country would consent to make of the President a less powerful officer than he is. He can secure his own relief without shirking any real responsibility. Appointments, for example, he can, if he will, make more and more upon the advice and choice of his executive colleagues; every matter of detail not only, but also every minor matter of counsel or of general policy, he can more and more depend upon his chosen advisers to determine; he need reserve for himself only the larger matters of counsel and that general oversight of the business of the government and of the persons who conduct it which is not possible without intimate daily consultations, indeed, but which is possible without attempting the intolerable burden of direct control. This is, no doubt, the idea of their functions which most Presidents have entertained and which most Presidents suppose themselves to have acted on; but we have reason to believe that most of our Presidents have taken their duties too literally and have attempted the impossible. But we can safely predict that as the multitude of the President's duties increases, as it must with the growth and widening activities of the nation itself, the incumbents of the great office will more and more come to feel that they are administering it in its truest purpose and with greatest effect by regarding themselves as less and less executive officers and more and more directors of affairs and leaders of the nation—men of counsel and of the sort of action that makes for enlightenment.