

of the returns transmitted by the Republican electors in the four disputed States, and Mr. Hayes was accordingly declared duly elected by a majority of 185 electoral votes against 184. The decision may have been right as matter of law — it is still debated by lawyers, — and there had been so much force and fraud on both sides in Florida, Louisiana, and South Carolina, that no one can say on which side substantial justice lay. Mr. Tilden deserves the credit of having induced his friends both to agree to a compromise slightly to his own disadvantage, and to accept peaceably, though with loud and long complaints, a result which baffled their hopes. I tell the story here because it points to a grave danger in the presidential system. The stake played for is so high that the temptation to fraud is immense; and as the ballots given for the electors by the people are received and counted by State authorities under State laws, an unscrupulous State faction has opportunities for fraud at its command. In 1887 Congress, having had the subject pressed on its attention by successive Presidents, took steps to provide against a recurrence of the danger described. It passed a statute enacting that tribunals appointed in and by each State shall determine what electoral votes from the State are legal votes; and that if the State has appointed no such tribunal, the two Houses of Congress shall determine which votes (in case of double returns) are legal. If the Houses differ the vote of the State is lost. It is, of course, possible under this plan that the State tribunal may decide unfairly; but the main thing is to secure some decision. Unfairness is better than uncertainty.

A President is removable during his term of office only by means of impeachment, a procedure familiar on both sides of the Atlantic in 1787, when the famous trial of Warren Hastings was still lingering on at Westminster. Impeachment, which had played no small part in the development of English liberties, was deemed by the Americans of those days a valuable element in their new constitution, for it enabled Congress to depose, and the fear of it might be expected to restrain, a treasonably ambitious President. In obedience to State precedents,<sup>1</sup>

<sup>1</sup> Impeachment was taken, not directly from English usage, but rather from the Constitutions of Virginia (1776), and Massachusetts (1780), which had, no doubt following the example of England, established this remedy against culpable officials.

it is by the House of Representatives that the President is impeached, and by the Senate, sitting as a law court, with the chief justice of the Supreme court, the highest legal official of the country, as presiding officer, that he is tried. A two-thirds vote is necessary to conviction, the effect of which is simply to remove him from and disqualify him for office, leaving him "liable to indictment, trial, judgment, and punishment, according to law" (Constitution, Art. i. § 3, Art. ii. § 4). The impeachable offences are "treason, bribery, or other high crimes and misdemeanours," an expression which some have held to cover only indictable offences, while others extend it to include acts done in violation of official duty and against the interests of the nation, such acts, in fact, as were often grounds for the English impeachments of the seventeenth century. As yet, Andrew Johnson is the only President who has been impeached. His foolish and headstrong conduct made his removal desirable, but as it was doubtful whether any single offence justified a conviction, several of the senators politically opposed to him voted for acquittal.<sup>1</sup> A two-thirds majority not having been secured upon any one article (the numbers being thirty-five for conviction, nineteen for acquittal) he was declared acquitted.

In case of the removal of a President by impeachment, or of his death, resignation, or inability to discharge his duties, the Vice-President steps into his place. The Vice-President is chosen at the same time, by the same electors, and in the same manner as the President. His only functions are to preside in the Senate and to succeed the President. Failing both President and Vice-President it was formerly provided by statute, not by the Constitution, that the presiding officer for the time being of the Senate should succeed to the presidency, and, failing him, the Speaker of the House of Representatives. To this plan there was the obvious objection that it might throw power into the hands of the party opposed to that to which the lately deceased President belonged; and it has therefore been now (by an Act of 1886) enacted that on the death of a President (including a Vice-President who has succeeded

<sup>1</sup> They may have doubted the expediency of displacing him at that moment; or their political prepossessions against him may have been restrained by a doubt whether the evidence was sufficient to support a quasi-criminal charge.

to the Presidency) the secretary of state shall succeed, and after him other officers of the Administration, in the order of their rank. Four Presidents (Harrison, Taylor, Lincoln, Garfield) have died in office, and been succeeded by Vice-Presidents, and in the first and third of these instances the succeeding Vice-President has reversed the policy of his predecessor, and become involved in a quarrel with the party which elected him, such as has never yet broken out between a man elected to be President and his party. In practice very little pains are bestowed on the election of a Vice-President. The convention which selects the party candidates usually gives the nomination to this post to a man in the second rank, sometimes as a consolation to a disappointed candidate for the presidential nomination, sometimes to a friend of such a disappointed candidate in order to "placate" his faction, sometimes as a compliment to an elderly leader who is personally popular. If the party carries its candidate for President, it also as a matter of course carries its candidate for Vice-President, and thus if the President happens to die, a man of small account may step into the chief magistracy of the nation.

## CHAPTER VI

### PRESIDENTIAL POWERS AND DUTIES

THE powers and duties of the President as head of the Federal executive are the following:—

Command of Federal army and navy and of militia of several States when called into service of the United States.

Power to make treaties, but with advice and consent of the Senate, *i.e.* consent of two-thirds of senators present.

"to appoint ambassadors and consuls, judges of Supreme court, and all other higher Federal officers, but with advice and consent of Senate.

"to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

"to convene both Houses on extraordinary occasions.

"to disagree with (*i.e.* to send back for re-consideration) any bill or resolution passed by Congress, but subject to the power of Congress to finally pass the same, after re-consideration, by a two-thirds majority in each House.

Duty to inform Congress of the state of the Union, and to recommend measures to Congress.

"to commission all the officers of the United States.

"to receive foreign ambassadors.

"to take care that the laws be faithfully executed.

These functions group themselves into four classes—

Those which relate to foreign affairs.

Those which relate to domestic administration.

Those which concern legislation.

The power of appointment.

The conduct of foreign policy would be a function of the utmost importance did not America, happy America, stand apart in a world of her own, unassailable by European powers, easily superior to the other republics of her continent, but with