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

no present motive for aggression upon them. The President, however, has not a free hand in foreign policy. He cannot declare war, for that belongs to Congress, though to be sure he may, as President Polk did in 1845–6, bring affairs to a point at which it is hard for Congress to refrain from the declaration. Treaties require the approval of two-thirds of the Senate; and in order to secure this, it is usually necessary for the Executive to be in constant communication with the Foreign Affairs Committee of that body. The House of Representatives has no legal right to interfere, but it often passes resolutions enjoining or disapproving a particular line of policy; and sometimes invites the Senate to coincide in these expressions of opinion, which then become weightier. The President is nowise bound by such resolutions, and has more than once declared that he does not regard them. But as some treaties, especially commercial treaties, cannot be carried out except by the aid of statutes, and as no war can be entered on without votes of money, the House of Representatives can sometimes indirectly make good its claim to influence. Many delicate questions, some of them not yet decided, have arisen upon these points, which the Constitution has, perhaps unavoidably, left in half-light. In all free countries it is most difficult to define the respective spheres of the legislature and executive in foreign affairs, for while publicity and parliamentary control are needed to protect the people, promptitude and secrecy are the conditions of diplomatic success. Practically, however, and for the purposes of ordinary business, the President is independent of the House, while the Senate, though it can prevent his settling anything, cannot keep him from unsettling everything. He, or rather his secretary of state, for the President has rarely leisure to give close or continuous attention to foreign policy, retains an unfettered initiative, by means of which he may embroil the country abroad or excite passion at home.

The domestic authority of the President is in time of peace small, because by far the larger part of law and administration belongs to the State governments, and because Federal administration is regulated by statutes which leave little discretion to the executive. In war time, however, and especially in a civil war, it expands with portentous speed. Both as commander-in-chief of the army and navy, and as charged with the "faithful

execution of the laws," the President is likely to be led to assume all the powers which the emergency requires. How much he can legally do without the aid of statutes is disputed, for the acts of President Lincoln during the earlier part of the War of Secession, including his proclamation suspending the writ of *Habeas Corpus*, were subsequently legalized by Congress; but it is at least clear that Congress can make him, as it did make Lincoln, almost a dictator. And how much the war power may include appears in this, that by virtue of it and without any previous legislative sanction President Lincoln issued his emancipation proclamations of 1862 and 1863, declaring all slaves in the insurgent States to be thenceforth free, although these States were deemed to be in point of law still members of the Union.[1]

It devolves on the executive as well as on Congress to give effect to the provisions of the Constitution whereby a republican form of government is guaranteed to every State; and a State may, on the application of its legislature, or executive (when the legislature cannot be convened), obtain protection against domestic violence. Where, as in Louisiana in 1873, there are two governments disputing by force the control of a State, or where an insurrection breaks out, as in Rhode Island in 1840–2, this power becomes an important one, for it involves the employment of troops, and enables the President (since it is usually on him that the duty falls) to establish the government he prefers to recognize.[2] Fortunately the case has been of rare occurrence.

[1] The proclamation was expressed not to apply to States which had not seceded, nor to such parts of seceding States as had then already been reconquered by the northern armies. Slavery was finally legally extinguished everywhere by the thirteenth constitutional amendment of 1865.

[2] In the Louisiana case Federal troops were employed: in the Rhode Island case the President authorized the employment of the militia of Massachusetts and Connecticut, but the Rhode Island troops succeeded in suppressing the rebellion, whose leader was ultimately convicted of high treason against the State and imprisoned. See as to the guarantee of order and republican government in the States, the case of *Luther* v. *Borden* (7 How. 42) and the instructive article of Judge T. M. Cooley in the *International Review* for January 1875. He observes: "The obligation to guarantee a republican form of government to the States, and to protect them against invasion and domestic violence, is one imposed upon 'the United States.' The implication is that the duty was not to depend for its fulfilment on the legislative department exclusively, but that all departments of the government, or at least more than

The President has the right of speaking to the nation by addresses or proclamations, a right not expressly conferred by the Constitution, but inherent in his position. Occasions requiring its exercise are uncommon. On entering office, it is usual for the new magistrate to issue an inaugural address, stating his views on current public questions. Washington also put forth a farewell address, but Jackson's imitation of that famous document was condemned as a piece of vain-glory. It is thought bad taste for the President to deliver stump speeches, and Andrew Johnson injured himself by the practice. But he retains that and all other rights of the ordinary citizen, including the right of voting at Federal as well as State elections in his own State. And he has sometimes taken an active, though a covert, share in the councils of his own party.

The position of the President as respects legislation is a peculiar one. The King of England is a member of the English legislature, because Parliament is in theory his Great Council which he summons and in which he presides, hearing the complaints of the people, and devising legislative remedies.[1] It is as a member of the legislature that he assents to the bills it presents to him, and the term "veto power," since it suggests an authority standing outside to approve or reject, does not happily describe his right of dealing with a measure which has been passed by the council over which he is deemed to preside, though he now no longer appears in it except at the beginning and ending of a session. The American President is not a member of either House of Congress. He is a separate authority whom the people, for the sake of protecting themselves against abuses of legislative power, have associated

one, were or might be charged with some duty in this regard. It has been Congress which hitherto has assumed to act upon the guarantee, while application for protection against domestic violence has, on the other hand, been made to the President. From the nature of the case the judiciary can have little or nothing to do with questions arising under this provision of the Constitution."

[1] It need hardly be said that the actual separation of Parliament into two branches, each of which deliberates apart under the presidency of its own chairman (the chairman of one House named by the sovereign, whom he represents, that of the other chosen by the House, but approved by the sovereign), does not exclude the theory that the King Lords and Commons constitute the common council of the nation.

with the legislature for the special purpose of arresting its action by his disapproval.[1] So again the King of England can initiate legislation. According to the older Constitution, statutes purported to be made, and were till the middle of the fifteenth century actually made, by him, but "with the advice and consent of the Lords Spiritual and Temporal and of the Commons."[2] According to modern practice, nearly all important measures are brought into Parliament by his ministers, and nominally under his instructions. The American President cannot introduce bills, either directly or through his ministers, for they do not sit in Congress.[3] All that the Constitution permits him to do in this direction is to inform Congress of the state of the nation, and to recommend the measures which his experience in administration shows to be necessary. This latter function is discharged by the messages which the President addresses to Congress. The most important is that sent at the beginning of each session.

George Washington used to deliver his addresses orally, like an English king, and drove in a coach and six to open Congress with something of an English king's state. But Jefferson, when his turn came in 1801, whether from republican simplicity, as he said himself, or because he was a poor speaker, as his critics said, began the practice of sending communications in writing;

[1] The term "veto" was not used in the Convention of 1787: men talked of the President's "qualified negative."

[2] In the fourteenth century English statutes are expressed to be made by the king, "par conseil et par assentement" of the lords and the commonalty. The words "by the authority" of the Lords and Commons first appear in the eleventh year of Henry VI. (1433), and from the first of Henry VII. (1485) downwards a form substantially the same as the present is followed, viz. "Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, and by the authority of the same."

[3] Nevertheless, the Congressional Globe for July 14, 1862, records that "The President (*pro tempore*) of the Senate presented the following message from the President of the United States: 'Fellow Citizens of the Senate and the House of Representatives: Herewith is the draft of a bill to compensate any State which may abolish slavery within its limits, the passage of which, substantially as presented, I respectfully and earnestly recommend. Abraham Lincoln.'" The bill was thereupon read a second time, and a debate arose as to whether the President had a right to submit bills. In the House the message as a whole was referred to the Special Committee on Emancipation. This seems to be the only instance in which a President has submitted a draft bill.

and this has been followed ever since. The message usually discusses the leading questions of the moment, indicates mischiefs needing a remedy, and suggests the requisite legislation. But as no bills are submitted by the President, and as, even were he to submit them, no one of his ministers sits in either House to explain and defend them, the message is a shot in the air without practical result. It is rather a manifesto, or declaration of opinion and policy, than a step towards legislation. Congress is not moved: members go their own ways and bring in their own bills.

Far more effective is the President's part in the last stage of legislation, for here he finds means provided for carrying out his will. When a bill is presented to him, he may sign it, and therewith make it law. If, however, he disapproves of it, he returns it within ten days to the House in which it originated, with a statement of his grounds of disapproval. If both Houses take up the bill again and pass it by a two-thirds majority in each House, it becomes law forthwith without requiring the President's signature.[1] If it fails to obtain this majority it drops.

Considering that the arbitrary use, by George III. and his colonial governors, of the power of refusing bills passed by a colonial legislature had been a chief cause of the Revolution of 1776, it is to the credit of the Americans that they inserted this apparently undemocratic provision (which, however, existed in the Constitution of Massachusetts of 1780) in the Constitution of 1789.[2] It has worked wonderfully well. Most Presidents have employed it sparingly, and only where they felt either that there was a case for delay, or that the country would support them against the majority in Congress. Perverse or headstrong Presidents have been generally defeated by the use of the two-thirds vote to pass the bill over their objections. Washington "returned" or vetoed two bills only; his successors down till 1830, seven. Jackson made a bolder use of his power — a use which his opponents denounced as opposed to the spirit of the Constitution: yet until the accession

[1] If Congress adjourns within the ten days allowed the President for returning the bill it is lost. His retaining it under these circumstances at the end of a session is popularly called a "pocket veto."

[2] The New York State Constitution of 1777 gave a veto to the Governor and Judges of the highest Court acting together.

of President Cleveland in 1885 the total number vetoed was only 132 (including the so-called pocket vetoes) in ninety-six years.[1] Mr. Cleveland vetoed 301, the great majority being bills for granting pensions to persons who served in the northern armies during the War of Secession.[2] Though many of these bills had been passed with little or no opposition, two only were repassed over his veto. The only President who acted recklessly was Andrew Johnson. In the course of his three years' struggle with Congress, he returned the chief bills passed for carrying out their Reconstruction policy, but as the majority opposed to him was large in both Houses, these bills were promptly passed over his veto.

So far from exciting the displeasure of the people by resisting the will of their representatives, a President generally gains popularity by the bold use of his veto power. It conveys the impression of firmness; it shows that he has a view and does not fear to give effect to it. The nation, which has often good grounds for distrusting Congress, a body liable to be moved by sinister private influences, or to defer to the clamour of some noisy section outside, looks to the man of its choice to keep Congress in order, and has approved the extension which practice has given to the power. The President's "qualified negative" was proposed by the Convention of 1787 for the sake of protecting the Constitution, and in particular, the executive, from Congressional encroachments. It has now come to be used on grounds of general expediency, to defeat any measure which the Executive deems pernicious either in principle or in its probable results.

[1] Of these 132 (some reckon 128), 21 emanated from Johnson and 43 from Grant, while John Adams, Jefferson, J. Q. Adams, Van Buren, Taylor, and Fillmore sent no veto messages at all. (W. H. Harrison and Garfield died before they had any opportunity.) Among the most important vetoes were those of several reconstruction bills by Johnson (these were re-passed by two-thirds votes), that of a paper currency measure, the so-called Inflation Bill, by Grant, and that of the Dependent Pension Bill by Cleveland. No bill was passed "over a veto" until 1845. Presidents have occasionally (*e g.* Lincoln more than once) in signing a bill stated objections to it which Congress has thereupon obviated by supplementary legislation.

[2] Out of these 433 vetoed bills only 29 were passed over the veto, 15 of these in the time of Johnson.

The numbers are differently reckoned by different authorities. I have here followed the calculation of Mr. E. C. Mason, in his clear and useful essay in *Harvard Historical Monographs*. Boston, 1891.