The reasons why the veto provisions of the Constitution have succeeded appear to be two. One is that the President, being an elective and not a hereditary magistrate, is responsible to the people, and has the weight of the people behind him. The people regard him as an indispensable check, not only upon the haste and heedlessness of their representatives, the faults which the framers of the Constitution chiefly feared, but upon their tendency, a tendency whose mischievous force experience has revealed, to yield either to pressure from any section of their constituents, or to temptations of a private nature. The other reason is that a veto need never take effect unless there is a minority exceeding one-third in one or other House of Congress, which agrees with the President. Such a minority shares his responsibility and encourages him to resist the threats of a majority: while if he has no substantial support in public opinion, his opposition is easily overborne. Hence this arrangement is preferable to a plan, such as that of the French Constitution of 1791[1] (under which the king's veto could be overridden by passing a bill in three successive years), for enabling the executive simply to delay the passing of a measure which may be urgent, or which a vast majority of the legislature may desire. In its practical working the presidential veto power furnishes an interesting illustration of the tendency of unwritten or flexible constitutions to depart from, of written or rigid constitutions to cleave to, the letter of the law. The strict legal theory of the rights of the head of the state is in this point exactly the same in England and in America. But whereas it is now the undoubted duty of an English king to assent to every bill passed by both Houses of Parliament, however strongly he may personally disapprove its provisions,[2] it is the no less undoubted duty of an American

[1] As the majority in France was unable to attain its will by constitutional means without waiting three years, it was the more disposed to overthrow the Constitution.

[2] Queen Elizabeth, in A.D. 1597, assented to forty-three bills passed in that session, and "advised herself" upon forty-eight. William III. refused his assent to five bills. The last instance of the use of the "veto power" in England was by Queen Anne in 1707 on a Scotch militia bill. Mr. Todd (*Parliamentary Government in the English Colonies*, ii. p. 319) mentions that in 1858 changes in a private railway bill were compelled by an intimation to its promoters that, if they were not made, the royal power of rejection would be exercised.

President to exercise his independent judgment on every bill, not sheltering himself under the representatives of the people, or foregoing his own opinion at their bidding.[1]

As the President is charged with the whole Federal administration, and responsible for its due conduct, he must of course be allowed to choose his executive subordinates. But as he may abuse this tremendous power the Constitution associates the Senate with him, requiring the "advice and consent" of that body to the appointments he makes.[2] This confirming power has become a political factor of the highest moment. The framers of the Constitution probably meant nothing more than that the Senate should check the President by rejecting nominees who were personally unfit for the post to which he proposed to appoint them. The Senate has always, except in its struggle with President Johnson, left the President free to choose his cabinet ministers. But it early assumed the right of rejecting a nominee to any other office on any ground which it pleased, as for instance, if it disapproved his political affiliations, or wished to spite the President. Presently the senators from the State wherein a Federal office to which the President had made a nomination lay, being the persons chiefly interested in the appointment, and most entitled to be listened to by the rest of the Senate when considering it, claimed to have a para-

[1] The practical disuse of the "veto power" in England is due not merely to the decline in the authority of the Crown, but to the fact that, since the Revolution, the Crown acts only on the advice of responsible ministers, who necessarily command a majority in the House of Commons. A bill therefore cannot be passed against the wishes of the ministry unless in the rare case of their being ministers on sufferance, and even in that event they would be able to prevent its passing by advising the Crown to prorogue or dissolve Parliament before it had gone through all its stages. In 1868 a bill (the Irish Church Suspension Bill) was carried through the House of Commons by Mr. Gladstone against the opposition of the then Tory ministry which was holding office on sufferance; but it was rejected on second reading by a large majority in the House of Lords. Had that House seemed likely to accept it the case would have arisen which I have referred to, and the only course for the ministry would have been to dissolve Parliament.

It was urged against the provision in the Constitution of 1789 for the President's veto that the power would be useless, because in England the Crown did not venture to use it. Wilson replied by observing that the English Crown had not only practically an antecedent negative, but also a means of defeating a bill in the House of Lords by creating new peers.—Elliot's *Debates*, ii. p. 472

[2] Congress is however permitted to vest in the President alone the appointment to such "inferior offices" as it thinks fit.

mount voice in deciding whether the nomination should be confirmed. Their colleagues approving, they then proceeded to put pressure on the President. They insisted that before making a nomination to an office in any State he should consult the senators from that State who belonged to his own party, and be guided by their wishes. Such an arrangement benefited all senators alike, because each obtained the right of practically dictating the appointments to those Federal offices which he most cared for, viz. those within his own State; and each was therefore willing to support his colleagues in securing the same right for themselves as regarded their States respectively. Of course when a senator belonged to the party opposed to the President, he had no claim to interfere, because places are as a matter of course given to party adherents only. When both senators belonged to the President's party they agreed among themselves as to the person whom they should require the President to nominate. By this system, which obtained the name of the Courtesy of the Senate, the President was practically enslaved as regards appointments, because his refusal to be guided by the senator or senators within whose State the office lay exposed him to have his nomination rejected. The senators, on the other hand, obtained a mass of patronage by means of which they could reward their partisans, control the Federal civil servants of their State, and build up a faction devoted to their interests.[1] Successive Presidents chafed under the yoke, and sometimes carried their nominees either by making a bargain or by fighting hard with the senators who sought to dictate to them. But it was generally more prudent to yield, for an offended senator could avenge a defeat by playing the President a shrewd trick in some other matter; and as the business of confirmation is transacted in secret session, intriguers have little fear of the public before their eyes. The senators might, moreover, argue that they knew best what would strengthen the party in their State, and that the men of their choice were just as likely to be good as those whom some private friend suggested to the President. Thus the system

[1] As the House of Representatives could not allow the Senate to engross all the Federal patronage, there has been a tendency towards a sort of arrangement, according to which the greater State offices belong to the senators, while as regards the lesser ones, lying within their respective Congressional districts, members of the House are recognized as entitled to recommend candidates.

throve and still thrives, though it received a blow from the conflict in 1881 between President Garfield and one of the New York senators, Mr. Roscoe Conkling. This gentleman, finding that Mr. Garfield would not nominate to a Federal office in that State the person he proposed, resigned his seat in the Senate, inducing his co-senator Mr. Platt to do the same. Both then offered themselves for re-election by the State legislature of New York, expecting to obtain from it an approval of their action, and thereby to cow the President. The State legislature, however, in which a faction hostile to the two senators had become powerful, rejected Mr. Conkling and Mr. Platt in favour of other candidates. So the victory remained with Mr. Garfield, while the nation, which had watched the contest eagerly, rubbed its hands in glee at the unexpected *dénouement*.

It need hardly be added that the "Courtesy of the Senate" would never have attained its present strength but for the growth in and since the time of President Jackson, of the so-called Spoils System, whereby holders of Federal offices have been turned out at the accession of a new President to make way for the aspirants whose services, past or future, he is expected to requite or secure by the gift of places.[1]

The right of the President to remove from office has given rise to long controversies on which I can only touch. In the Constitution there is not a word about removals; and very soon after it had come into force the question arose whether, as regards those offices for which the confirmation of the Senate is required, the President could remove without its consent. Hamilton had argued in the *Federalist* (though there is reason to believe that he afterwards changed his opinion) that the President could not so remove, because it was not to be supposed that the Constitution meant to give him so immense and dangerous a reach of power. Madison argued soon after the adoption of the Constitution that it did permit him so to remove, because the head of the executive must have subordinates whom he can trust, and may discover in those whom he has appointed defects fatal to their usefulness. This was also the view of Chief-Justice Marshall. When the question came to be settled in the Senate during the presidency of Washington, Congress, influenced perhaps by respect

[1] See Chapter LXV. on the Spoils System in Vol. II.

for his perfect uprightness, took the Madisonian view and recognized the power of removal as vested in the President alone. So matters stood till a conflict arose in 1866 between President Johnson and the Republican majority in both Houses of Congress. In 1867, Congress fearing that the President would dismiss a great number of officials who sided with it against him, passed an Act, known as the Tenure of Office Act, which made the consent of the Senate necessary to the removal of office-holders, even of the President's (so-called) cabinet ministers, permitting him only to suspend them from office during the time when Congress was not sitting. The constitutionality of this Act has been much doubted, and its policy is now generally condemned. It was a blow struck in the heat of passion. When President Grant succeeded in 1869, the Act was greatly modified, and in 1887 it was repealed.

How dangerous it is to leave all offices tenable at the mere pleasure of a partisan Executive using them for party purposes, has been shown by the fruits of the Spoils system. On the other hand a President ought to be free to choose his chief advisers and ministers, and even in the lower ranks of the civil service it is hard to secure efficiency if a specific cause, such as could be proved to a jury, must be assigned for dismissal.

The Constitution permits Congress to vest in the Courts of Law or in "the heads of departments" the right of appointing to "inferior offices." This provision has been used to remove many posts from the nomination of the President, and by the Civil Service Reform Act of 1883 competitive examinations have been instituted for about 34,000. A great number however, roughly estimated at 3500, and including more than 2000 post-masterships and some 600 places under the Treasury, remain in the free gift of the President; while even as regards those which lie with his ministers, he may be invoked if disputes arise between the minister and politicians pressing the claims of their respective friends. The business of nominating is in ordinary times so engrossing as to leave the chief magistrate of the nation little time for his other functions.

Artemus Ward's description of Abraham Lincoln swept along from room to room in the White House by a rising tide of office seekers is hardly an exaggeration. From the 4th of March, when Mr. Garfield came into power, till he was shot

in the July following, he was engaged almost incessantly in questions of patronage.[1] Yet the President's individual judgment has little scope. He must reckon with the Senate; he must requite the supporters of the men to whom he owes his election: he must so distribute places all over the country as to keep the local wire-pullers in good humour, and generally strengthen the party by "doing something" for those who have worked or will work for it. Although the minor posts are practically left to the nomination of the senators or congressmen from the State or district, conflicting claims give infinite trouble, and the more lucrative offices are numerous enough to make the task of selection laborious as well as thankless and disagreeable. In every country statesmen find the dispensing of patronage the most disagreeable part of their work; and the more conscientious they are, the more does it worry them. No one has more to gain from a thorough scheme of civil service reform than the President. The present system makes a wire-puller of him. It throws work on him unworthy of a fine intellect, and for which a man of fine intellect may be ill qualified. On the other hand the President's patronage is, in the hands of a skilful intriguer, an engine of far-spreading potency. By it he can oblige a vast number of persons, can bind their interests to his own, can fill important places with the men of his choice. Such authority as he has over the party in Congress, and therefore over the course of legislation, such influence as he exerts on his party in the several States, and therefore over the selection of candidates for Congress, is due to his patronage. Unhappily, the more his patronage is used for these purposes, the more it is apt to be diverted from the aim of providing the country with the best officials.

In quiet times the power of the President is not great. He is hampered at every turn by the necessity of humouring his party. He is so much engrossed by the trivial and mechanical parts of his work as to have little leisure for framing large schemes of policy, while in carrying them out he needs the co-operation of Congress, which may be jealous, or indifferent, or hostile. He has less influence on legislation, — that is to say, his individual volition makes less difference to the course legislation takes, than the Speaker of the House of Representatives.

[1] It is related that a friend, meeting Mr. Lincoln one day during the war, observed, "You look anxious, Mr. President; is there bad news from the front?" "No," answered the President, "it isn't the war: it's that postmastership at Brownsville, Ohio."

In troublous times it is otherwise, for immense responsibility is then thrown on one who is both the commander-in-chief and the head of the civil executive. Abraham Lincoln wielded more authority than any single Englishman has done since Oliver Cromwell. It is true that the ordinary law was for some particular purposes practically suspended during the War of Secession. But it will always have to be similarly suspended in similar crises, and the suspension makes the President a sort of dictator.

Setting aside these exceptional moments, the dignity and power of the President have, except as respects the increase in the quantity of his patronage, grown but little during the last fifty years, that is, since the time of Andrew Jackson, the last President who, not so much through his office as by his personal ascendency and the vehemence of his character, led and guided his party from the chair. Here, too, one sees how a rigid or supreme Constitution serves to keep things as they were. But for its iron hand, the office would surely, in a country where great events have been crowded on one another and opinion changes rapidly under the teaching of events, have either risen or fallen, have gained strength or lost it.

In no European country is there any personage to whom the President can be said to correspond. If we look at parliamentary countries like England, Italy, Belgium, he resembles neither the sovereign nor the prime minister, for the former is not a party chief at all, and the latter is palpably nothing else. The President enjoys more authority, if less dignity, than a European king. He has powers for the moment narrower than a European prime minister, but these powers are more secure, for they do not depend on the pleasure of a parliamentary majority, but run on to the end of his term. One naturally compares him with the French president, but the latter has a prime minister and cabinet, dependent on the Chamber, at once to relieve and to eclipse him: in America the President's cabinet is a part of himself and has nothing to do with Congress. The president of the Swiss Confederation is merely the chairman for a year of the Administrative Federal Council (Bundesrath), and can hardly be called the executive chief of the nation.

The difficulty in forming a just estimate of the President's power arises from the fact that it differs so much under ordi-

nary and under extraordinary circumstances. This is a result which republics might seem specially concerned to prevent, and yet it is specially frequent under republics, as witness the cases of ancient Rome and of the Italian cities in the Middle Ages. In ordinary times the President may be compared to the senior or managing clerk in a large business establishment, whose chief function is to select his subordinates, the policy of the concern being in the hands of the board of directors. But when foreign affairs become critical, or when disorders within the Union require his intervention, — when, for instance, it rests with him to put down an insurrection or to decide which of two rival State governments he will recognize and support by arms, everything may depend on his judgment, his courage, and his hearty loyalty to the principles of the Constitution.

It used to be thought that hereditary monarchs were strong because they reigned by a right of their own, not derived from the people. A President is strong for the exactly opposite reason, because his rights come straight from the people. We shall have frequent occasion to observe that nowhere is the rule of public opinion so complete as in America, or so direct, that is to say, so independent of the ordinary machinery of government. Now the President is deemed to represent the people no less than do the members of the legislature. Public opinion governs by and through him no less than them, and makes him powerful even against a popularly elected Congress. This is a fact to be remembered by those Europeans who seek in the strengthening of the hereditary principle a cure for the faults of government by assemblies. And it also suggests the risk that attaches to power vested in the hands of a leader directly chosen by the people. A high authority observes[1]: —

"Our holiday orators delight with patriotic fervour to draw distinctions between our own and other countries, and to declare that here the law is

[1] Judge T. M. Cooley, in the *International Review* for Jan. 1875. He quotes the words of Edward Livingston: "The gloss of zeal for the public service is always spread over acts of oppression, and the people are sometimes made to consider that as a brilliant exertion of energy in their favour which, when viewed in its true light, would be found a fatal blow to their rights. In no government is this effect so easily produced as in a free republic; party spirit, inseparable from its existence, aids the illusion, and a popular leader is allowed in many instances impunity, and sometimes rewarded with applause, for acts which would make a tyrant tremble on his throne."

master and the highest officer but the servant of the law, while even in free England the monarch is irresponsible and enjoys the most complete personal immunity. But such comparisons are misleading, and may prove mischievous. In how many directions is not the executive authority in America practically superior to what it is in England! And can we say that the President is really in any substantial sense any more the servant of the law than is the Queen? Perhaps if we were candid we should confess that the danger that the executive may be tempted to a disregard of the law may justly be believed greater in America than in countries where the chief magistrate comes to his office without the selection of the people; and where consequently their vigilance is quickened by a natural distrust."

Although recent Presidents have shown no disposition to strain their authority, it is still the fashion in America to be jealous of the President's action, and to warn citizens against what is called "the one man power." General Ulysses S. Grant was hardly the man to make himself a tyrant, yet the hostility to a third term of office which moved many people who had not been alienated by the faults of his administration, rested not merely on reverence for the example set by Washington, but also on the fear that a President repeatedly chosen would become dangerous to republican institutions. This particular alarm seems to a European groundless. I do not deny that a really great man might exert ampler authority from the presidential chair than its recent occupants have done. The same observation applies to the Popedom and even to the English throne. The President has a position of immense dignity, an unrivalled platform from which to impress his ideas (if he has any) upon the people. But it is hard to imagine a President overthrowing the existing Constitution. He has no standing army, and he cannot create one. Congress can checkmate him by stopping supplies. There is no aristocracy to rally round him. Every State furnishes an independent centre of resistance. If he were to attempt a *coup d'état*, it could only be by appealing to the people against Congress, and Congress could hardly, considering that it is re-elected every two years, attempt to oppose the people. One must suppose a condition bordering on civil war, and the President putting the resources of the executive at the service of one of the intending belligerents, already strong and organized, in order to conceive a case in which he will be formidable to freedom. If there be any

danger, it would seem to lie in another direction. The larger a community becomes the less does it seem to respect an assembly, the more is it attracted by an individual man. A bold President who knew himself to be supported by a majority in the country, might be tempted to override the law, and deprive the minority of the protection which the law affords it. He might be a tyrant, not against the masses, but with the masses. But nothing in the present state of American politics gives weight to such apprehensions.