

CHAPTER I

CENTRALIZATION OF GOVERNMENT

DE TOCQUEVILLE says that the history of the world affords no instance of a great nation retaining the form of republican government for a long series of years, and that this has led to the conclusion that permanency is impracticable. While for his own part he thinks it imprudent to limit what is possible, yet he believes it may be said with confidence that a great republic will always be exposed to more perils than a small one. He observes: —

All the passions which are most fatal to republican institutions increase with increasing territory, whilst the virtues which favor them do not augment in the same proportion. The ambition of private citizens increases with the power of the state; the strength of parties, with the importance of the ends in view; but the love of country, which ought to check these destructive tendencies, is not stronger in a large than in a small republic. It might, indeed, be easily proved that it is less powerful and less developed. Great wealth and extreme poverty, capital cities of large size, a lax morality, selfishness and antagonism of interests, are the dangers which almost invariably arise from the magnitude of states. . . . In monarchical states . . . the more numerous are the people, the stronger is the prince. But the only security which a republican government possesses against these evils lies in the support of the majority. . . . [On the other hand] in great republics political passions become irresistible, not only because they aim at gigantic objects, but because they are felt and shared by millions of men at the same time.¹

Are we in this Republic exempt from these dangers? Have we not "great wealth and extreme poverty, capital cities of large size, a lax morality, selfishness and antago-

¹ "Democracy in America," Vol. I, pp. 203-206.

nism of interests"? And do we not find that "political passions" have "become irresistible, not only because they aim at gigantic objects, but because they are felt and shared by millions of men at the same time"?

While it is certain that the idea of direct, popular election of United States Senators and the even larger idea of popular initiation of legislation and the reference of all important legislative matters to popular vote are rapidly gathering adherents in the United States, it has to be admitted that these ideas must have a long and bitter fight before they can triumph over conditions that have fastened and hardened upon us. For, as we have seen (Bk. VI, Chaps. I and II), Privilege has been busy shaping politics to its own interest and away from general democratic control. In this respect the tendency of politics and the administration of government is toward centralization — the centering of power in fewer and fewer hands. Indeed, this result we already find greatly developed in municipal, State and Federal political affairs.

In local affairs we have traveled far from the New England town-meeting idea, which Jefferson declared to be "the wisest invention ever devised by the wit of man for the perfect exercise of self-government and for its preservation." The movement is toward centralized power — a power at once removed from the immediate inspection and control of the people in general, and at the command of Privilege.

Many are the evidences of this in our State and municipal Governments. The Pennsylvania Railroad desired certain extensions of an earlier grant to enter and leave New York City by tunnel. The Mayor and other administrative officials favored the extension. The Board of Aldermen saw, or feigned to see, material objections. They refused to give consent which, under the city's charter, was required to make such extension valid. The Board asserted that it was protecting public interests. The railroad corporation broadly intimated in the newspapers

that the Board's action was a pure and simple "hold-up," and that for once the corporation was resolved not to be "bled." There was a protracted dead-lock, and then the railroad, anxious to get its tunnel built and in operation, went to the State Legislature and procured an amendment of the city's charter, depriving the Board of Aldermen of the right to grant franchises and vesting that power solely in the Mayor and the administrative heads.

Rarely has there been a more striking and balder exhibition of the power of a privileged corporation to effect legislation to its liking. Was there a general outcry? Scarcely a protest. The general feeling was that the aldermanic body was venal, and that it would be for the immediate public good to have the proposed railroad facilities. So the railroad corporation was permitted to work its will.

In the District of Columbia, the capital of the nation, fear of domination by colored voters has superseded democratic government. Congress acts as the local Board of Aldermen, and the administration is placed in the hands of three commissioners appointed by the President. The expense of erecting and keeping up the Federal buildings is borne solely by the Federal Government, while one half the general expense of conducting the District is paid out of the Federal treasury, the other half out of District taxes. This is commonly spoken of as "government by commission."

By those who fear the weakness as well as by those who fear the strength of the people, it is hailed as an ideal example of wise municipal government. Such persons would have the municipalities in all our States governed by similar commissions, the members of such bodies to be appointed by the respective Governors. The public-spirited Dr. Goldwin Smith urges this idea. He does it regretfully, it would seem, but yet with the implication that the people must be saved from themselves. No attempt is made to seek out and remedy the cause of sloth-

fulness, indifference or corruption of the people. The fact that the people are slothful, indifferent or corrupt is sufficient in the minds of such interested or disinterested persons to prove a failure of popular government, at least in local affairs, and to require resort to centralized powers.

With that ground thus prepared, Privilege, using one or another of the political parties, resorts to centralization; or political parties so act themselves "for what there might be in it." The Mayor of New York at the time of the Pennsylvania Railroad amendment of the city charter was a Democrat, while the Governor and a majority in the State Legislature were Republicans.

Several times the Republican party boss of New York State has vainly attempted to put the police force of the Democratic city in the hands of a commission to be appointed by a Republican Governor. For a precedent he went to the State of Missouri, where control of the St. Louis police had been removed from a Republican Mayor and vested in commissioners named by a Democratic Governor.

The Democratic Governor of Missouri orders the sheriff of St. Louis County to prevent all betting at Delmar race track, and intimates that he will, if necessary, support the sheriff with State militia. Chicago merchants appeal to the Governor of Illinois to send State troops to prevent occasional missile-throwing from ten-story windows during a strike.

Governor after Governor in Northern as well as in Southern States has deemed it necessary to call out troops to prevent lynchings, so far has local authority failed or been set aside.

In Pennsylvania the unique "Coal and Iron Police," created for the express use of the coal and iron companies, has been superseded by a State constabulary, ostensibly to act as fire, forest, game and fish wardens, and to protect the farmers; but really to serve as a more efficient police body for the coal and iron companies. The coal and iron

workers have denounced the new institution as a fresh weapon for use against them in time of strike. One of the provisions of the constabulary law is that any man trespassing on property whereon a warning sign is displayed is subject to arrest and a fine of ten dollars. As a coal mine worker observed, "During a strike this will put strike pickets in jail faster than they can be supplied."

Nor is there general or effective protest at this march of centralization. How much objecting was heard in Colorado from men of standing and influence at the trampling on local rights by the Governor and the militia acting under his general command during the gold, silver, coal and smelting strike? Little or none. Everywhere the remark was repeated that if the action of the Governor and of those bodies of citizens who acted with him was not lawful, yet it was for the public good.

Is not all this tending directly away from that form of democratic government which Jefferson called "the wisest invention ever devised by the wit of man for the perfect exercise of self-government and for its preservation"? Yet many men of just mind and not ungenerous motives hold that local affairs are not properly political, but are business affairs. They fail utterly to see that local affairs are the business affairs of everybody and therefore the very corner-stone of politics. De Tocqueville speaks forcibly here:—

It must not be forgotten that it is especially dangerous to enslave men in the minor details of life. For my own part, I should be inclined to think freedom less necessary in great things than in little ones, if it were possible to be secure of the one without possessing the other. Subjection in minor affairs breaks out every day and is felt by the whole community indiscriminately. It does not drive men to resistance, but it crosses them at every turn, till they are led to surrender their own will. Thus their spirit is gradually broken and their character is enervated. . . . It is vain to summon a people who have been rendered so dependent on the central power to choose from time to time the representatives of that power; this rare and brief exercise of their free choice, however important it may be, will not prevent them from gradually losing the faculties of think-

ing, feeling and acting for themselves. . . . It is, indeed, difficult to conceive how men who have entirely given up the habit of self-government should succeed in making a proper choice of those by whom they are to be governed; and no one will ever believe that a liberal, wise and energetic government can spring from the suffrages of a subservient people.¹

We well might ponder this and wonder, as we review the political field near at hand and over a wider range, if it does not fit our case? For, as there is a centralizing movement in the respective States, so is there an even stronger centralizing movement from the States toward the Federal Government. 'Everywhere Privilege grows more potent; and as it strengthens, it centers power in fewer and fewer points. We can have no choice but concede that so far as actual political workings and results are concerned, our learned Russian contemporary, M. Ostrogorski, in his "Democracy and the Organization of Political Parties," presents a faithful picture. The will of the party machine has to a great extent superseded the great democratic will; at any rate in normal times and in the absence of any political convulsion. Popular will, through general suffrage, quickly superseded, as to effective operation at least, the electoral college, which had been established in the Federal Constitution for the periodical selection of the incumbent of the presidential office. But the general suffrage next abdicated its right of free, conscientious exercise, and has fallen into the habit of choosing between the candidates named by the party nominating conventions, these conventions being, M. Ostrogorski thinks, animated by the hope of patronage, while a larger, but in no way conflicting influence is embodied in the needs and desires of Privilege, the manipulator of politics. Any manifestations of independence by the individuals who have occupied the presidency do not, in the eminent observer's judgment, refute his conclusion, but confirm it, since they prove the rule by the exceptions.

¹ "Democracy in America," Vol. II, pp. 394-396.

That is to say, the people at large have long since been so engrossed by the business of getting a living that they have turned over the matter of their political thinking largely to party machines, and Privilege has had only to capture those machines to acquire control of a greatly centralized political power. Who of us will gainsay this statement by M. Ostrogorski:—

Instead of molding opinion, the caucus maims it, by forcing it into and keeping it within the groove of the stereotyped parties. It cripples the character and the intelligence of the citizens. Having monopolized the nomination to elective offices, it propagates, to get itself accepted, the conventional conception of "regular" candidates introduced by the congressional caucus, and establishes it more firmly on that other conventional conception of the will of the majority, which it (the machine) claims to represent by the mere character of its constitution. Continually invoking this majority and paying it ritual homage by the routine of its proceedings, it makes external conformity the sole criterion, a criterion which dispenses with private judgment and individual responsibility. Henceforth even a "yellow dog" had to be voted for, once he was put on the party ticket. The ticket could not be meddled with on pain of sacrilege; the party had become an object of fetich worship. For the individual conscience party piety substituted party discipline. To make that discipline binding, the caucus created an ethics of its own, it created conventional virtues, such as "party loyalty" and "party regularity"; it invented conventional vices, such as "bolt-ing" and "scratching"; the man who severed his connection with his party was a "kicker," a sort of public malefactor, whereas he who followed his party with his eyes shut was a "patriotic citizen."

We can find *why* the mass of citizens accept this condition of things if we do what M. Ostrogorski does not do—examine social conditions which underlie political conditions; for men are social before they are political; they must satisfy their physical wants before they will, at least in a sustained way, think about their political rights. If in its practical operation government is to be administered by only a part of the people, and for the advantage of that part solely or chiefly, then the ordinary man must wonder if, in this era of great economic disparities, when huge monopolies by their exactions intensify the struggle of the mass for mere bare comforts—the necessities in our stage

of civilization — it is not better for the average man in the mass to give up the dream of democracy and look rather to some kind of benevolent despotism, where the principle of *noblesse oblige* might be expected to cause the despot, while exclusively exercising the privileges of decreeing and administering the laws, to see that his political serfs, subjects or creatures obtained for their labor sufficient to guarantee their physical health, and also, within narrow limits, their mental and moral peace and development.

They might well conclude that a despotism that feeds them is better than a democracy that starves them.

Perhaps a mixture of these feelings and a further feeling of the futility and the danger of protesting kills enterprise in men who otherwise would be active in politics and the promotion of the democratic idea. But are not men who have even such an inclination growing less numerous? Disagreeable though it be to admit it, candor nails us to the truth that the strong-man idea is rapidly growing in favor among us. Give the strong man authority — that is the thought. And the argument in favor of it is: if the strong man be honest, let him alone. And what if he prove inconsistent in many things or even that he make blunders? Shall these things be held against him who is working for the public weal? What if he takes to himself powers not given him by law, if he do this in order to act in the public interest? And who cares if this assumption of power prove a precedent for some other strong man later — some other man who may not be so single-minded? When such a situation arises it can be met. Meanwhile let the strong man alone. Give him added powers and grudge him not their extension if he sees how by such extension he can do things.

Put this to the test of facts. Mr. James Ford Rhodes, the historian, has told us how during the Pullman-Chicago railroad strike, in 1894, Mr. Cleveland, "under advice of his able Attorney-General, made a precedent in the way

of interference for the supremacy of law and the maintenance of order."¹ How much "supremacy of law and maintenance of order" followed this action we may judge from the report made by the investigating Commission appointed by President Cleveland himself.² But that aside, we may agree with Mr. Rhodes that President Cleveland did "make a precedent," and a very serious precedent, in sending Federal troops to Chicago on appeal of the railroad corporations and against the repeated and most solemn protests of the Governor of Illinois.

That was the action of a Democratic President. In the spring of 1899 a Republican President, Mr. McKinley, made a similar "precedent." He sent regulars to Cœur d'Alene, Idaho, during a labor trouble. If the Governor there did not protest at the Federal Executive's action, neither he nor the Idaho Legislature invited it. Certainly no such action by the President, considering the circumstances, was contemplated by the authors of the nation's Constitution.

Mr. Elihu Root, after he had retired from Mr. Roosevelt's cabinet as Secretary of War and before he had returned to it as Secretary of State, gave public utterance to the evil flowing from such a course, saying: —

There is a constant tendency to ignore such limitations and condone the transgression of them by public officers, provided the thing done is done with good motives, from a desire to serve the public. Such a process, if general, is most injurious. If continued long enough, it results in an attitude of personal superiority on the part of great officers which is inconsistent with our institutions, a destruction of responsibility and independent judgment on the part of lower officers, and a neglect of the habit of asserting legal rights on the part of the people.³

"The moment that a people," says an editorial in the *New York Independent*,⁴ "ceases to decide what things

¹ "The Presidential Office," *Scribner's Magazine*, February, 1903.

² See Bk. V, Chap. IV.

³ Address before the Yale Law Seniors, New Haven, Conn., June 27, 1904.

⁴ Nov. 24, 1904.

it wants and proposes to have, and leaves all such decisions to its Government, with a merely general demand that the Government promote the general welfare and the common happiness, that moment the reality of republicanism has ceased, and the reality of personal rule, under whatever name or disguise, has begun."

And has not "the reality of personal rule" begun? As has been remarked, a strong tide is at present running toward the abdication of power, of responsibility, even of thought, by the people in favor of the Chief Executive of the nation. The fancy is for a "strong man" in that office and a strenuous policy; for a man who will "do things." And encouraging and strengthening that fancy is a great party movement which thrives and expects to continue to thrive by supporting such a man and policy. Behind it and directing it is vested Privilege, which in one way or another hopes to make such a man its friend and figurehead, or at least to shear the locks of whatever aggressiveness he may have against it.

This "strong man" idea is not without bold legal portrayal. Mr. Charles A. Gardiner, the constitutional lawyer and distinguished member of the New York bar, calling the present time "the age of executive development," describes the attributes of the President of the United States as those of "a majestic, constitutional figure, uncontrolled by Congress, unrestrained by the courts, vested with plenary constitutional power, and absolute constitutional discretion — a sovereign over eighty million people and the servant of eighty million sovereigns, whose sole inspiring purpose is to serve his fellow-citizens, guard their liberties, and make this nation the freest, most enlightened, most powerful sovereignty ever organized among men."¹

What does the lawyer mean by this? A dictatorship? A dictator would scarcely ask more power than Mr.

¹ "The Constitutional Powers of the President," an address before the New York State Bar Association, Jan. 18, 1905.

Gardiner construes the Constitution as giving the President. The lawyer cites the Tenth Amendment, which reads, "The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people." Mr. Gardiner interprets this to mean that all powers belonging to the States, and not delegated by them to the United States, remain reserved to the States; and that likewise all powers belonging to the people of the United States at large, and not delegated by them to the United States, remain reserved to the people. And then, argues he, since the people created the President, and endowed him with their executive and magisterial attributes, "they expressly invested him with practically all their executive and magisterial powers. The whole is equal to the sum of the parts. Hence such executive and magisterial sovereignties, passive and active, must include those that may at any time have been reserved in the Tenth Amendment; and the President has express constitutional power to execute them."

From this follows as a logical consequence the idea of presidential "absolute discretion."

The discretion of the President is exclusive and absolute. The President's powers are political. They are *pro tanto* the sovereign will of the people. Will implies judgment or discretion. Free will, a free and absolute discretion. Political power, which is the sovereign will, necessarily carries the sovereign and absolute discretion in its exercise; therefore, the President has plenary and absolute discretion, and is responsible to no human power except a court of impeachment.

Whether the Constitution is properly to be construed in this way is not the question here. What we are noting is that, whether properly or improperly, this argument *is* made, and that it defends a movement that is virile and strong — a movement that gathers in aggressive, militant executive hands.

This concentrated power manifests itself in a marked degree in various directions. One of these is the develop-

ment of the "Executive Order," based upon the President's construing of certain laws. By such an order Mr. Roosevelt retired in one day last summer fifty-five navy officers, practically in the prime of life, each officer receiving the next highest rank on retiring and a pension of three-quarters of the pay of his new grade. These men were retired on their own application and were free to go into other employment, which doubtless many of them have done or will do. Certainly this is not according to the simple reading of the law. Such a result probably never occurred to the members of Congress who drafted and passed the statute. After a similar generous fashion, Mr. Roosevelt has "suspended" the operation of the civil service laws relative to appointments. He has also made tariff rulings which have been equivalent to distinct enactments.

But more prominent than any of these cases is that of a pension order, No. 78, issued through the Secretary of the Interior. A bill had been introduced into Congress known as "H. R. 11199." It proposed that any person who had served ninety days in the army or in the navy during the War of the Rebellion, and who had reached the age of sixty-two years, should become entitled to a pension of eight dollars a month; that every one who had become sixty-six years of age should be entitled to ten dollars a month, and every one who had reached seventy years should be entitled to a pension at the rate of twelve dollars a month. This measure involved a great increase in the pension expenditures. Congress refused, or at any rate failed, to pass it. Yet the President appeared to be determined to carry out its terms precisely as if it had been passed. He required the Secretary of the Interior to issue an order decreeing that the Pension Office would so act. This order was issued on March 15, 1904. The majority in Congress being of the same party as the President, this arbitrary action went without more than a brief bickering.

“Why is it necessary for Congress to do any labor on pension affairs?” asked a Democratic United States Senator. “Why not leave it all to the Secretary of the Interior and let him run it by Executive Order in the future?”

This indulgence of mild satire was practically the only weapon the Democrats in Congress could use in the case, for when they attacked, the Republicans retorted that President Roosevelt, Republican, had merely followed a precedent established by President Cleveland, Democrat. That smothered Democratic opposition. Which is as much as to say that party spirit is ready to condone executive aggression. Does this not verify De Tocqueville’s words, “In great republics political passions become irresistible, not only because they aim at gigantic objects, but because they are felt and shared by millions of men at the same time”?

And it is always to be remembered that what democracy loses in the centralization movement Privilege directly or indirectly acquires and temperately or intemperately uses. Privilege is the antithesis, the enemy, the destroyer, of equality. It seeks embodiment in highly centralized government, from which to despotism is but a step.