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PRESIDENT TAFT AND THE EXTRA- CONSTITUTIONAL FUNCTION OF THE PRESIDENCY.

BY SAMUEL J. KORNHAUSER.

ALEXANDER HAMILTON, who perhaps more than any other man was responsible for the shape and direction which the Constitution has taken since its adoption, frequently expressed his belief in "the insufficiency of a mere parchment delineation" of the boundaries of the several divisions of our Government. In recognition of this doctrine, and of the necessity of making those lines of division distinct and efficient, reciprocal weapons of defence were provided in that instrument whereby one department might defend itself against encroachments of another; yet it is generally admitted by students of the subject that these potential checks, though calculated to serve the purposes for which they were intended, could not have succeeded in maintaining the separation of powers had there not existed an effective public opinion to support them. In France deep-seated habits of thought have survived every change in the form of its Government and have given to its constitution for the time being, whether monarchical or republican, its scope and character. But the strongest proof of the potent influence of public opinion on constitutions may be found in the experience of some of the so-

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called republics of South America, where, though the ink-and-paper imitation of our Constitution has been established as fundamental law, the type of governmental institutions that have arisen there are as widely different from ours as could well be imagined. If, then, ours is a Government by public opinion, as it has been often styled, and if that public opinion has exercised such important control over our institutions in the past, it follows as a natural consequence that the same popular conceptions which have heretofore prevailed must be maintained if those institutions are to be perpetuated. It may not be idle, therefore, to consider whether our recent history does not indicate that we are evincing a tendency to fly in the face of our basic concepts of political structure, whether in our eagerness to reach certain results regarded as essential to our happiness and progress we are not impairing the very foundation of that happiness and progress, our organic law.

William H. Taft came to the Presidency after many years of service on the bench and in posts demanding executive ability, sound judgment, grasp and courage to an unusual degree. In each capacity where he was called upon to show his talents he succeeded under prodigious difficulties and trying circumstances, giving the most convincing proof of his profound knowledge, his great and many-sided ability, his exalted sense of public duty, and his exceptional devotion to public service. Twice he refused his heart's desire, declining proffered appointments to the Supreme Court bench in response to the imperative call of duty to remain in a less congenial place. Coming to the Presidency, in short, possessed of an equipment for the work never equalled by any predecessor, endowed with a character of demonstrated worth, upright and unsuspected, frank and fearless, graced with a modest, genial exterior, it would surely seem that the established public confidence in the man could not be easily shaken. One would suppose, without hesitation, that the people, mindful of his past, would sustain an abiding faith in his wisdom, courage and integrity; that they would withhold judgment even in the face of the most damnatory appearances; that they would angrily resent unsupported charges against his character for rectitude and capability. Yet, if such a prophecy was voiced by any seer, history, as is said to be her wont, has shown her usual disregard for the reputation of the prophet.

When the President took office expressions of praise and hope blew in from all parts of the country, from the men on the street, from the press representing every type and shade of opinion,—praise of the sturdy man at the head of the nation, of the well-trained, conservative men with whom he surrounded himself, of the sound policies announced in his inaugural address, of the calm wisdom with which he approached his new duties; hope that the nation would now settle back, after the cheering and acclaim, to four years of quiet, steady, enduring progress. After an era of struggle to arouse the public to a sense of its dangers, to a realization of the necessity of readjusting our political, commercial and industrial forces, it seemed that a period of peace was dawning in which the constructive work of perpetuating the objects of that awakened reform sentiment would be carried forward in a vigorous but prudent and impartial manner; in which party strife would lessen, factional friction would soften, and the heat of overzealous reformers cool. "We are to have, it seems," says one editor, "during the next four years a Government of laws, of laws enforced by an Executive of just and deliberate mind." Another writes: "Progress, under the Taft *régime*, will evidently be more distinguished for orderliness than for jolting speed." And a third: "Another 'era of good feeling' seems to have dawned on the country. From every section, including the South, the inauguration of President Taft, his address on that occasion, and his selection of Cabinet officials have elicited commendation that is entirely free from any rancorous criticism and almost free from criticism of even the mildest type. The Roosevelt press and the anti-Roosevelt press vie with each other in their expressions of gratification. The radical 'yellow' papers and the conservative financial journals profess to derive equal pleasure from the new President's initial acts and words." Such were the characteristic comments at the hour of his induction, expressing the prevailing opinions of the time.

As suddenly as one wakes from a dream the attitude of the people changed. The country became aflame with dissatisfaction, distrust and disgust, and among the very first objects to be immolated on the altar of this public passion was the reputation of President Taft. An interested, hypocritical press, aided by the ambitions of self-seeking politicians, fanned the blaze. Proof wanting, vituperation is a ready substitute. The President was

denounced as a poltroon. When open slander seems likely, by reason of its very baseness, to defeat its ends, innuendo serves the purpose. By sinister suggestions it was sought to cast doubt on his sincerity. His frankness was, with ironical sighs of pity, represented as want of tact; his stern refusal to subordinate his principles of public duty to party and personal expediency was scorned as imbecile politics. He has been assailed as the weak tool of unprincipled, designing men; the helpless colleague of those who would use the Government for private gain; an abject, hopeless failure as a President. Those who have not been moved by the specious and insinuating articles which have been constantly flashed before the eyes of the people in the print of many months must look with amazement on the complete change in sentiment that has ensued since the auspicious beginning of the administration. That a President of Mr. Taft's known character, possessing the unbounded confidence and esteem of the people, could so suddenly lose their faith and enthusiastic support, is a condition that cannot be lightly passed over, one that should give rise to the gravest consideration.

The opening months of the administration were coincident with the special session of Congress engaged in revising the tariff. Due to the public confidence, there was surprisingly little of the usual unrest and disturbance that obtain during sessions in which tariff bills are under consideration. The principal comment heard was to the effect that Congress should hurry and have it over. As time went on, however, people became persuaded that there was something particularly vicious in the shape the proposed legislation was taking. Doubts multiplied, suspicion grew into positive distrust, and the public gaze was turned to the President. To him, the only official in whose selection all the electors take part, they appealed to save them from their Congress. "Why does not Taft do something?" was the universal question. It was a shock to the public that a President, after merely submitting in calm and dispassionate tones his recommendations to Congress, should leave that body free to deliberate and frame a bill according to its best judgment. That he forbore to importune Congress, to threaten it, to insist dramatically that it revise schedules according to his ideas and the popular demands, that he did not bear down upon that body with all the force and power of his high office, appeared as an

unpardonable failure to perform his plain duties. To assume that Congressmen could be actuated by a patriotic desire to serve the people honestly was regarded as heresy. And such has come to be the normal feeling. A growing suspicion has ripened into a firm conviction that members of Congress do not represent public interests, but instead the interests of special groups seeking privileges. And as a corollary there has arisen the assumption that the President is not merely the administrative head of the nation, but also, and pre-eminently, the extraordinary representative of the people at large, to stand as the champion of their rights, and to compel their unfaithful direct representatives to do their bidding. He is the chief, the overshadowing figure in the Government. He must at all hazards secure demanded legislation. If the lawmaking body is unwilling, if it hesitates, if it disagrees as to the expediency of proposed laws, if it resists, it must be beaten into submission. No matter how drastic the means employed, the public will applaud the man wielding the power if their demands are satisfied. A President to-day is judged, not according to the success he achieves in enforcing laws, in managing the gigantic business of the nation that has been expressly committed to his care, but by how well he succeeds in securing legislation.

In the tariff discussions then before Congress the President refused to interfere beyond arguing his views to leading members of his party and urging upon them the redemption of the pledges made to the people through the party's platform. He steadfastly declined to employ powers at his command to force them against their will to enact a law precisely according to his views. Finally, when a bill passed by both Houses of Congress was presented to him he was importuned to veto it. He well knew that he would become immensely popular if he did so; but he also knew that if he grasped this alluring jewel he would do so at the risk of plunging his country into ruin, and he did not yield to the temptation that has perverted many a good man. The courage and patriotism involved in this act made no impression. The gathering storm broke and raged with impetuous, blind fury. He was condemned for refusing to veto a bill, not because it was a bad measure, but because it was not good enough. Though he showed that it was as good a tariff law as can ever be made under such conditions as we now have, though he freely

acknowledged its defects, though he pointed out the means by which such defects could be remedied in the future, his wise and honest words fell upon deaf ears. Once this angry dissatisfaction was aroused, pretexts were not found wanting to justify it till a ready prejudice attributed sinister motives to every act and plan of the administration. No important criticism, and, in fact, very little criticism of any sort, had been heard as to the manner in which the President discharged the duties imposed upon him by law; and a consideration of current events shows conclusively that the loss of confidence in the administration and all the embarrassments that followed in its train are clearly and directly traceable to the President's refusal to transcend the constitutional limitations, to exercise the extra-constitutional function of forcing Congress, or at least attempting to force Congress, to enact laws demanded at the moment by popular clamor.

That there is much justification for the wide-spread impression that there is something evil inherent in Congress, whether in its make-up or its management, cannot be denied. But is the remedy, unconsciously proposed by the people in their conduct, the setting-up of a power over and above Congress in the person of the Executive not more destructive than the disease complained of itself? This sentiment as to Congress and the Executive is of comparatively recent growth, and only of late has it become so conspicuous as to give rise to serious apprehension. It must be said that so far as most people are concerned our fundamental theories of Government are far more celebrated than well known. Perhaps the very familiarity with their visible product in the form of our concrete forces of Government has made study of what lies beneath seem superfluous. Yet the value of keeping ever fresh in mind those vital principles, of making our practices square with the precepts laid down for our guidance, cannot be overestimated if we continue to believe in the original virtue of those doctrines.

The framers of the Constitution were beset by two fears that explain the product of their labors. There was first the dread of a tyrannical Executive able to oppress the people. The War of Independence had been brought about because of Executive usurpation and oppression; the bugaboo of George III was still vividly before men's minds. Yet, though this dread continued to exercise an important influence, the years of anarchy and chaos

which had lately been experienced under the ineffectual Confederation had caused a new dread to predominate,—the dread of the recklessness and tyranny of an unrestrained majority of the people. As has been said by a noted writer, “the same tendencies to wanton abuse of power which exist in a despot or a ruling oligarchy may be expected in a democracy from the ruling majority, because they are tendencies incidental to human nature.” Recognizing the force of this doctrine long advanced by philosophers, and strengthened in their belief by the vivid recollection of occurrences during the recent “Critical Period,” the framers set about to tie the hands of the people. They understood the lesson of history that the people of a republic, unless constrained by stable forces to exercise self-control, will turn democracy into a curse instead of a blessing. Thus was produced the spectacle of a free people setting limitations upon the exercise of their own will; thus grew up a Government divided into legislative, executive and judicial branches, interwoven with mutual “checks and balances,” so adjusted as to make them safe from each other. The legislative branch was fashioned that the people can obtain any laws within the limitations set by the Constitution which they earnestly and persistently insist upon having, yet so restricted as to prevent passing fancies from being transmuted into binding acts; the executive branch, free to carry out the laws with vigor and directness, vested with power to check possible haste or misconduct on the part of the Legislature, and, in turn, restrained by the latter from overstepping the bounds of his broad field of action; the judicial branch equipped to preserve the integrity of the Constitution and laws made in conformity thereto. That Constitution has these many years been regarded with peculiar and solemn reverence. It has withstood the wear and shock of changing conditions and public excitement; it has supplied the wants of Government as well for the petty republic of homogeneous people and simple conditions of a century ago, and its gigantic outgrowth of to-day with its heterogeneous masses gathered from all quarters of the world, moulded into a coherent body, living amid our complex social and economic arrangement. To preserve it the most stupendous war of modern times was fought, and it is for us in our day to guard it against innovations which, if permitted to insinuate themselves, will in the course of time wear away the foundations of that venerable

structure. Not that the fathers of the Constitution were endowed with supernatural wisdom or foresight, not that to-day we lack men perhaps just as wise; but because it seems impossible that the wisdom of to-day, fortified by more than a century of experience, could substantially improve the work done by those fathers, the heritage that they have handed down to us should be guarded as a priceless possession. It is, accordingly, with feelings of apprehension, neither idle nor unwarranted, that thoughtful men must view the growing disposition to look to the President as the real source of legislation and to insist that he assume powers sufficient to satisfy the demands upon him which such a function involves.

By the Constitution the President is charged with conducting foreign affairs, with seeing that the laws are executed, with appointing officials, with informing Congress of the state of the Union, and recommending measures for their consideration. To these general powers are added numerous others, express and implied, incidental and necessary, to the effective execution of the former. There is also the qualified veto power. He is made, as nearly as practicable, a purely executive officer. His so-called legislative functions are, on the one hand, merely advisory and, on the other, merely negative. The power to send bills back to Congress for further consideration, called the veto power, and which, in general, has had the effect of an absolute veto, was clearly not intended to be exercised in every case where the President personally disagreed with Congress on the expediency of a proposed law; it was expected that it would be reserved for exceptional cases, where, owing to haste, want of due deliberation or design, Congress had passed measures which appeared likely to produce evil results. In the early days there was also a general feeling among publicists that the legislative department would show a propensity to intrude upon and absorb the powers of the other departments. The veto would here serve as a safeguard. Nowhere, however, can there be found in the Constitution the slightest suggestion that would support such a development of the executive functions as to give to the President leadership and control over Congress. What might have been the form of our Government had the executive department, either through the President or through his Cabinet, been given a voice on the floor of Congress, what are the relative

merits of the English cabinet system wherein the executive department of the Government is dependent on the majority in Parliament, and our system of separated and independent departments, are mere academic questions, interesting and suggestive, but of no practical importance. What is of gravest importance to us is the present tendency on the part of the President to assume, with the approval of the people, a place in our legislative machinery not authorized by law.

The House of Representatives is so constructed that, under proper conditions, every shade of view may be represented. This body is intended to be close to the people and sensitive to their views. The Senate, on the other hand, with its longer term, and the restriction on sudden change in its complexion, acts as a check on the hasty zeal and radicalism usually inherent in a popular assembly. Over these again lies the Presidential veto power. In short, this entire framework is based on the purpose of preventing the sudden and ill-considered views of the people from being quickly turned into laws. Our early statesmen clearly foresaw that no oppression, not even that of an absolute monarch, could become so tyrannical as that of an unrestrained majority. Upon a monarch there is at least the sobering influence of public opinion; a majority which is public opinion rests under no restraint whatsoever if not limited by positive law. It was well understood that the power to enact laws swiftly and easily might result in wild and immature notions becoming binding statutes; that the most valued rights of large numbers of citizens might be readily destroyed under the pressure of popular passion and impulse. Such a structure was created, therefore, as seemed best suited to permit not the excited fancies, but only the deliberate will of the people from becoming law. For this purpose we have the bicameral system fortified with those expedients that make for conservation. The wheels of our legislative machinery grind slowly; but they were deliberately contrived to grind slowly, so that the people might not go too fast nor too far. "In the Legislature," says Hamilton, "promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarrings of parties in that department of the Government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection and serve to check excesses in the majority." Thus far, in our history, we

have been singularly free from the tyranny of the majority usually found in republics; and this happy result is without question due to the fact that the limitations laid down in the Constitution have been constantly and substantially maintained.

If, however, we foster this tendency of making the President the dominant figure in the Government, of practically uniting in him those functions of Government which had been carefully divided among the departments, if practice shall be permitted to forge this extra-constitutional function into an inveterate custom clothed with the force of law, then with the significant feature of our Constitution overridden, with the bulwarks erected for its protection dismantled, the entire form of our Government is revolutionized. In the apparent willingness on the part of the people that this occur, if only all obstacles, great or small, standing in the way of their immediate desires be swept aside, lies the gravest cause for apprehension. They applaud the exercise of the veto power; they shriek with glee when the "big stick" is wielded on the heads of those whom they regard as their misrepresentatives; they hail as their champion the President who urges their views for the time being against the slow, hesitating, resisting body charged with the responsibility of lawmaking. If our Presidents, one after the other, shall, in order to win popular approval, resort to practices that will satisfy clamor, if they use the tremendous prestige of their office to coerce Congress, if members opposing the Presidential will shall be belittled and degraded before their constituents as unfaithful to their trust, if by such tactics Congress shall again and again be beaten into submission, will it not follow, in due course, that, having lost its power to resist the executive department armed with the approval of a majority of the people, it will sink into a condition of helpless subserviency? Will it not follow that able men, men of force and intellect, will condemn services in such an impotent body? And will it not follow that with the independence of Congress destroyed, with that body fallen under the dominion of the President, the entire framework of our much-admired and venerated Constitution will be torn and twisted out of shape? What becomes of our checks and balances among the departments? What of the restraint upon popular impulse? If the logic of the situation is pursued, and, through the power of appointment, successive Presidents should reform the Supreme Court with men

who will construe according to the popular notion of what the law ought to be, you have public passion finally in the saddle, free to give rein to its hates and its prejudices—a chaos, a *régime* of anarchy worse even than that under the Confederation.

That a President of the United States should become so powerful as to be able to carry out designs opposed by a majority of the people, that our President might become a despot able to oppress the people, is a contingency so remote, so highly improbable as to make it unworthy of serious consideration. But that a President armed with the power of public assent, abetted by a Congress depressed into a condition of obsequious compliance, a Congress which merely registered the Presidential decrees, would be a menace to our institutions, no serious-minded citizen can honestly deny. It is high time that the average man should give himself up to earnest contemplation of our fundamental law, and that he calculate the effect upon it which our present drift is likely to have. We live in a century when, having reached a point of high material development, we have suddenly become aware that, while our attention was monopolized in achieving that material success, evils have been growing in many directions unseen, though often under our very eyes. The shock of this sudden discovery to a people fundamentally imbued with high moral principle, a people keenly sensitive to suffering and inequality, has a natural tendency to rouse it from the extremes of inattention and inaction to extremes of reckless interference with rights heretofore deemed unapproachably sacred. We are not a philosophical nor a speculative people; we prefer to make trial of a proposed reform rather than consider carefully its relation to our institutions and its probable effect upon them. I do not mean to say that in the long run we are a superficial people; that we do not, if forced to mature judgment, reach, in general, just and correct conclusions. If this were not so our ship of state would long since have been wrecked. But I do mean to say that our first impressions are likely to be inaccurate, unsound and often dangerous. And for these reasons we should carefully and constantly maintain our checks on misgovernment at their highest state of efficiency. Unless we do this, those constitutional checks will be overturned by the very elements they were created to restrain.

We are at present in the midst of an era of reform. Un-

questionably we have many grave and complex problems to master, for the solution of which careful discrimination and profound thought are required. Among the people at large there prevails a vague idea of wide-spread evils; and though these are not clearly understood, the belief in their existence is sufficient to produce the contagious spirit of discontent that is sweeping over the country. Dissatisfaction engenders demand for remedial measures, with the result that the Government is asked constantly to interfere more and more in the affairs of its citizens. With such a spirit running high the demagogue is in his element. Charges are readily believed and specious projects for reformation as readily accepted. If, then, our Government shall be permitted to drift from its normal channels, and the people laboring under such sentiments shall be able to give prompt effect to their opinions, the danger of unwholesome, destructive legislation must be apparent. With the independence of Congress destroyed, with that body reduced to a condition in which it dares not resist public clamor, the pronouncement of the President representing that public clamor will as surely and as promptly become law as that of a military dictator. With such conditions established, we face the peril of placing individual enterprise at the mercy of popular prejudices, of courting paternalism, of giving ourselves over, in short, to the inexorable tyranny of the majority.

But, it may be urged, so long as a majority demands a measure, what matters it how it is enacted? The majority shall rule; this is the principle of our Government. Such statements represent but half a truth; and half a truth is usually the most misleading inaccuracy. True it is that the deliberate opinions of the majority within constitutional limitations should and under our system must become law, but not temporary impulses. The will, not the whims of the people, should be enacted into the forms of law. Only their sober second thoughts should be inscribed in the statute-book. When the dust of temporary public excitement has been laid, and we are able to see clearly and calmly the relation and probable effect of proposed measures, then and only then can we build durably and well. Legislatures must not be hurried into ill-advised and immature action by transitory public sentiment. Than this nothing is more illusory and unstable. The febrile enthusiasm commonly incident to reform movements

is invariably succeeded by depression and reaction in proportion to its heat. In these days of experts and specialists, in every department of enterprise, surely the highly important function of making laws should not be left to the inexperienced public. Legislation is for the statesman. Breadth of vision, ability to preserve a just sense of proportion, calm foresight and freedom from the pressure of time are prerequisites to the proper discharge of legislative functions. Representatives are sent to legislative halls not to put into effect the transient opinions that pass current at the moment. Often they perform their highest service to the Republic in setting their faces bravely and immovably against passionate importunity. This matter has been epitomized in language that cannot be improved by the genius of political speculation of another age to whose matchless thought and expression we cannot too often recur. In these days when Congressmen who do not readily yield to the vociferous behests of press and people are so generally reprobated, we may study with profit the messages of Hamilton.

“The republican principle,” he writes in the “Federalist,” “demands that the deliberate sense of the community should govern the conduct of those to whom they entrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men who flatter their prejudices to betray their interests. It is a just observation that the people commonly *intend* the *public good*. This often applies to their very errors. But their good sense would despise the adulator who should pretend that they *always reason right* about the *means* of promoting it. They know from experience that they sometimes err; and the wonder is that they so seldom err as they do, beset as they continually are, by the wiles of parasites and sycophants; by the snares of the ambitious, the avaricious, the desperate; by the artifices of men who possess their confidence more than they deserve it, and of those who seek to possess rather than deserve it. When occasions present themselves in which the interests of the people are at variance with their inclinations, it is the duty of the persons whom they have appointed to be the guardians of those interests to withstand the temporary delusion, in order to give them time and opportunity for more cool and sedate reflection. Instances might be cited in which a conduct of this kind has saved the people from very fatal consequences of their own mistakes, and has procured lasting monuments of their gratitude to the men who had courage and magnanimity enough to serve them at the peril of their displeasure.”

If in Congress there is not found that ability for proper legis-

lation, that degree of fidelity to the public interest that should be there, the remedy is plain. The people should keep a vigilant eye on Congress, should make it the kind of body it was intended to be, should retire the inefficient and untrue and replace them with men of the right type. In this manner all proper legislation may be obtained and our Constitution kept intact. But if the present direction is pursued, if the people continue to seek legislation through the medium of executive control over Congress, all the evils described must follow; the balanced framework of our Constitution will be demolished, and with it those political ideas conceived in the hour of toil and trouble and confirmed by a century of fruitful experience. In these days of war upon monopoly and special privilege, the President should not be vested with the exclusive right of representing the people. Their wishes should be expressed through the established constitutional organs. The people should not shirk their plain duty of keeping watch over their Congress by relying upon the Executive to accomplish the ends they desire. This is far easier, but it is as dangerous as it is easy. As soon as we throw off this dependence upon the Executive attention will be riveted on Congress; and only in case this occurs may we hope to see such reforms in the structure and conduct of that body adopted as its present form seems to require.

Congress was intended to be the main instrument by which the people should exercise control over the management of their political affairs, and it must not be permitted to fall under the sway of the President unless we are foolish enough to court disaster for the sake of short cuts to legislation. Either the present drift will continue till the principle shall become firmly fixed that popular demand shall become law forthwith upon the proclamation of the President, through the fiction of a message to Congress, or we must face squarely about and plant ourselves again solidly upon our original principles of representative Government; either we must keep and guard what has proved immensely successful or forsake it for what has, in other instances, been doomed to miserable failure. Congress should remain what it was created, the independent legislative branch of the Government limited only as provided by the Constitution. Abuses which have no necessary connection with our scheme of Government must not be suffered to tempt us, in order to accomplish

immediate aims, to do those things which tend directly to break up the balance and efficiency of that system. The responsibility rests with the people. They will obtain representation no better nor worse than their vigilance merits. That responsibility should not be shifted to the President. He, in turn, should remain what the Constitution made him, and devote his talents and energy to the task of performing the functions assigned to him.

In facing political problems, we are always fortunate if we find that similar questions having presented themselves to the sagacious judgment and keen vision of Abraham Lincoln, pertinent advice from that practical prophet is available. He has spoken on the subject under consideration, and I quote from him liberally. In 1848 he wrote:

“It appears to me that the national debt created by the war renders a modification of the existing tariff indispensable; and when it shall be modified I should be pleased to see it adjusted with a due reference to the protection of our home industry. *The particulars, it appears to me, must and should be left to the untrammelled discretion of Congress.* . . . Finally, were I President, I should desire the legislation of the country to rest with Congress, uninfluenced by the Executive in its origin or progress, and undisturbed by the veto unless in very special and clear cases.”

In the same year, answering the taunts of the Democrats on the floor of the House of Representatives, he said, in the course of a notable speech:

“My friend from Indiana has aptly asked, ‘Are you willing to trust the people? Some of you answered substantially, ‘We are willing to trust the people; but the President is as much the representative of the people as Congress.’ In a certain sense, and to a certain extent, he is the representative of the people. He is elected by them, as well as Congress is; but can he, in the nature of things, know the wants of the people as well as three hundred other men coming from all the various localities of the nation? If so, where is the propriety of having a Congress? That the Constitution gives the President a negative on legislation, all know; but that this negative should be so combined with platforms and other appliances as to enable him, and in fact almost compel him, to take the whole of legislation into his own hands, is what we object to, is what General Taylor objects to, and is what constitutes the broad distinction between you and us. To thus transfer legislation is clearly to take it from those who understand with minuteness the interests of the people, and give it to one who does not and cannot so well understand it.”

The soundness and logic of his views are sufficient to make them

stand on their own bottom without the support of his great name; with it they should be doubly impressive. Thus spoke the man who, when called to the Presidency, wielded, under the stress of his time, greater power than any other who has occupied the office; but who deplored the necessity which drove him to do it, and who would speedily have laid aside the assumed powers and would have receded within ordinary limits had he lived to do so.

Not that we should have a weak or pliant Executive. In his proper sphere, as defined by law, with its manifold duties and extensive powers sufficient to challenge the capacity of the ablest man, the greater the vigor, force and initiative the Executive brings to his tasks, the more will he benefit his country. "Energy in the Executive," to quote Hamilton again, "is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the law; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction and of anarchy." Moreover, not only does a feeble Executive convert the Government, no matter how good it may be in theory, into a bad Government in practice, but a languid, irresolute President would destroy the reciprocal forces of our Constitution as surely as would a degenerated Congress.

Nor should it be said that the President ought take no part whatsoever in legislation. He is nominated by a political party and goes before the people upon a platform enunciated by that party as its foremost exponent. In fact, it is generally said that the President is the head of the party. Whether, at any given time, the President is the real or merely the nominal head of his party depends upon the personal equation of the man. At any rate, there is a vast difference between his being the leader and the dictator of his party. Though great deference is naturally paid to him, owing to the dignity of his high office, he should at most be but one of the great leaders of the party to which he belongs. For any party which falls into a state of complacent submission to the will of any man, be he President of the United States or some other body, shows a lack of vitality and independent spirit which deprives it of capacity for useful service

to the country. Likewise a man occupying the Presidential chair who could not exercise an important influence in the councils of his party would obviously be so weak and spiritless as to be unfit for the duties in general devolving upon him. The President, then, as one of the leaders of his party, without involving himself in the petty, undignified and purely personal elements of party strife, should direct his influence, as a political leader, toward the realization of such wholesome aims as form the basis of his party's claim to preferment; he should, in conjunction with other party leaders, urge upon members of his party such measures as will carry out those aims. His success in such efforts should be dependent on the convincing force and logic of his arguments, not upon their official source. So far he should go, and no further. To insist that the President shall procure legislation and to hold him responsible for failure to obtain the enactment of measures widely demanded is to invite him to employ, if resisted, every available expedient to coerce Congress and save himself from being regarded as a failure. The functions of the President would become the instrument of the very evils they were intended to combat.

We must return to first principles if we would avert the dangers which have been pointed out; and we shall return to those principles only if the people at large become impressed with the wisdom of maintaining them. It is, therefore, upon the creation of public opinion in favor of this view that the preservation of those original ideas depends. President Taft, however, can do perhaps more than any one to bring about this result. Possessed of a judicial mind, a deep-seated veneration for law, and an inflexible determination to follow it, endowed not only with a just sense of proportion, a cool and strictly impartial judgment, but also with indomitable courage that hesitates neither to carry out plain duty nor to resist public clamor at any cost when it demands what he deems wrong or illegal, he is pre-eminently fitted to give this country an example of what the President of the United States should be; and by such an example he will ultimately do more to instil determination to resist the threatened change than could be done by volumes of argument and rhetoric. In the light of what we know of his character and conduct, we may confidently expect that the President will continue in his straight course and be the means of leading the American people

back to faith in their ability to work out the salvation of the nation within constitutional limitations, without doing violence to our organic law; of causing them to resolve, as Lincoln said, to keep our fences where they are and cultivate our present possessions. He has again and again braved condemnation to follow the dictates of his conscience and his conceptions of legal duty; he has stood like a rock in his refusal to veto a bill or to blight the reputation of men to secure for himself certain popularity; he has devoted himself with tireless energy and skill to the achievement through legal methods of those reforms which the country seems most to need, going fully as far as a President is justified in going to promote remedial legislation. During a period of wide-spread discontent and tumultuous criticism he has kept his poise; in the face of bitter and distracting attacks, he has kept his eye single to the fulfilment of the duties he assumed. It is easy and pleasant for a President to discharge faithfully the duties incumbent upon him when the performance of those duties happens to arouse the enthusiastic applause of the people; it requires a heroic nature to do so when it results in retarding the consummation of their impatient desires and elicits the acrimonious strictures of disappointment. But if Mr. Taft, by his unwavering fidelity to moral and legal precept, has brought down upon himself the hasty censure of the hour, yet as surely as the American people admire courage and esteem well-balanced judgment, as surely as they are a just, a clear-headed and a sound-headed people, so surely, when the mists of falsehood and flattery shall have been dissipated by the inevitable light of truth and reason, will they render to him the measure of praise he so richly deserves. This people, in its right mood, will not revolutionize its form of Government, and in the course of time will gratefully do justice to the President, who, by acting in accordance with its limitations, will open their eyes to the errors which have taken hold. Once convinced that this extra-constitutional function of the President strikes at the integrity of the Constitution, they will suffer neither personal government nor government by mob spirit and the certain consequences of its exercise, to become established; but will continue to cherish and protect that Constitution, their safeguard in the past, and the hope of their future.

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