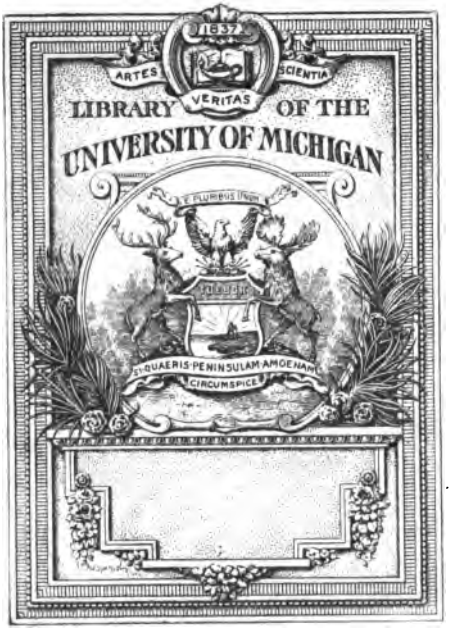
THE INDEPENDENCE OF THE EXECUTIVE

GROVER CLEVELAND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THE INDEPENDENCE OF THE EXECUTIVE

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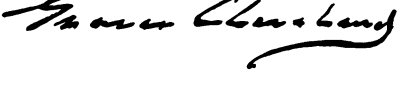

This portrait was
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THE INDEPENDENCE OF THE EXECUTIVE

BY

GROVER CLEVELAND

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PREFATORY NOTE

President Cleveland first visited Princeton at the time of the Sesquicentennial Celebration and made the chief address of that occasion on October 22, 1896. A few months later he retired from the Presidency and made Princeton his home for the remaining eleven years of his life. For the last seven of these years he served as Trustee of Princeton University and for the closing four years also acted as Chairman of the Committee on the Graduate School having special charge of the project for the residential Graduate College. He died on June 24, 1908, and was buried, as he desired, in his family plot in Princeton. By express provision of his will the only monument to mark his grave was to be the simple one which has already been erected.

Shortly after Mr. Cleveland came to live in Princeton it was proposed to found a Lectureship on Public Affairs in his honor. In the

early summer of 1899 Mr. Henry Stafford Little, an alumnus of the University, endowed the lectureship and expressed the hope that Mr. Cleveland would consent to hold it, or at any rate to be the first incumbent. Mr. Cleveland was reluctant to undertake any new work at that time, but on receiving special word from Mr. Little, who was then critically ill, agreed to prepare an address for the next year.

On April 9 and 10, 1900, every seat in Alexander Hall was taken and there were throngs standing to hear his two addresses on "The Independence of the Executive." The next spring he lectured twice on "The Venezuelan Boundary Question." For the next two years there were no lectures, and in 1904 Mr. Cleveland read one lecture on "The Government in the Chicago Strike." He always had crowded audiences, both for himself and the grave importance of the questions he treated. He was heard with the closest attention and repeatedly welcomed with affectionate enthusiasm.

Seventeen years ago to the day since Mr. Cleveland first spoke in Princeton, his Prince-

ton lectures are now republished in expanded form on the day of the dedication of the Graduate College he so strongly supported and did not live to see realized, and also the dedication day of the Cleveland Memorial Tower, erected by national subscription and built into the Graduate College for which he labored.

The lectures here reprinted are disclosures of the meaning of important happenings in our national history. They are even more; for they make clear as light that plain, strict, unswerving and unaffected honesty which was the vigorous central power in Grover Cleveland's life. It is well his words should be heard again at the time we gather to dedicate his national monument.

ANDREW F. WEST.

The Graduate College
Princeton University
October 22, 1913

THE INDEPENDENCE OF THE EXECUTIVE

I

In dealing with "The Independence of the Executive," I shall refer first of all to the conditions in which the Presidency of the United States had its origin, and shall afterward relate an incident within my own experience involving the preservation and vindication of an independent function of this high office.

When our original thirteen States, actuated by "a decent respect for the opinions of mankind," presented to the world the causes which impelled them to separate from the mother country and to cast off all allegiance to the Crown of England, they gave prominence to the declaration that "the history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States." This was followed by an indictment containing not less than eighteen

counts or accusations, all leveled at the King and the King alone. These were closed or clenched by this asseveration: "A Prince whose character is thus marked by every act which may define a tyrant is unfit to be the ruler of a free people." In this arraignment the English Parliament was barely mentioned, and then only as "others," with whom the King had conspired by "giving his assent to their act of pretended legislation," and thus giving operative force to some of the outrages which had been put upon the colonies.

It is thus apparent that in the indictment presented by the thirteen colonies they charged the King, who in this connection may properly be considered as the Chief Executive of Great Britain, with the crimes and offenses which were their justification for the following solemn and impressive decree:

We, therefore, the Representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the name and by the authority of the good People of these Colonies, solemnly publish and declare

that these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that as free and independent States they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

To this irrevocable predicament had the thirteen States or colonies been brought by their resistance to the oppressive exercise of executive power.

In these circumstances it should not surprise us to find that when, on the footing of the Declaration of Independence, the first scheme of government was adopted for the revolted States, it contained no provision for an executive officer to whom should be intrusted administrative power and duty. Those who had suffered and rebelled on account of the tyranny

of an English King were evidently chary of subjecting themselves to the chance of a repetition of their woes through an abuse of the power that might necessarily devolve upon an American President.

Thus, under the Articles of Confederation, "The United States of America," without an executive head as we understand the term, came to the light; and in its charter of existence it was declared that "the articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual."

Let us not harbor too low an opinion of the Confederation. Under its guidance and direction the war of the Revolution was fought to a successful result, and the people of the States which were parties to it became in fact free and independent. But the Articles of Confederation lacked the power to enforce the decree they contained of inviolable observance by every State; and the union, which under their sanction was to be permanent and lasting, early developed symptoms of inevitable decay.

It thus happened that within ten years after the date of the Articles of Confederation their

deficiencies had become so manifest that representatives of the people were again assembled in convention to consider the situation and to devise a plan of government that would form "a more perfect union" in place of the crumbling structure which had so lately been proclaimed as perpetual.

The pressing necessity for such action cannot be more forcibly portrayed than was done by Mr. Madison when, in a letter written a short time before the convention, he declared:

> Our situation is becoming every day more and more critical. No money comes into the Federal treasury; no respect is paid to the Federal authority; and people of reflection unanimously agree that the existing Confederacy is tottering to its foundation. Many individuals of weight, particularly in the Eastern district, are suspected of leaning towards monarchy. Other individuals predict a partition of the States into two or more confederacies.

It was at this time universally conceded that if success was to follow the experiment of popular government among the new States, the

creation of an Executive branch invested with power and responsibility would be an absolutely essential factor. Madison, in referring to the prospective work of the convention, said:

> A national executive will also be necessary. I have scarcely ventured to form my own opinion yet, either of the manner in which it ought to be constituted, or of the authorities with which it ought to be clothed.

We know that every plan of government proposed or presented to the convention embodied in some form as a prominent feature the establishment of an effective Executive; and I think it can be safely said that no subject was submitted which proved more perplexing and troublesome. We ought not to consider this as unnatural. Many members of the convention, while obliged to confess that the fears and prejudices that refused executive power to the Confederacy had led to the most unfortunate results, were still confronted with a remnant of those fears and prejudices, and were not yet altogether free from the suspicion that the specter of monarchy might be con-

cealed behind every suggestion of executive force. Others less timid were nevertheless tremendously embarrassed by a lack of definite and clear conviction as to the manner of creating the new office and fixing its limitations. Still another difficulty, which seems to have been all-pervading and chronic in the convention, and which obstinately fastened itself to the discussion of the subject, was the jealousy and suspicion existing between the large and small States. I am afraid, also, that an unwillingness to trust too much to the people had its influence in preventing an easy solution of the executive problem. The first proposal made in the convention that the President should be elected by the people was accompanied by an apologetic statement by the member making the suggestion that he was almost unwilling to declare the mode of selection he preferred, "being apprehensive that it might appear chimerical." Another favored the idea of popular election, but thought it "impracticable"; another was not clear that the people ought to act directly even in the choice of electors, being, as alleged, "too little informed of personal characters in large districts, and liable

to deception"; and again, it was declared that "it would be as unnatural to refer the choice of a proper character for Chief Magistrate to the people as it would to refer a trial of colors to a blind man."

A plan was first adopted by the convention which provided for the selection of the President by the Congress, or, as it was then called, by the National Legislature. Various other plans were proposed, but only to be summarily rejected in favor of that which the convention had apparently irrevocably decided upon. There were, however, among the members, some who, notwithstanding the action taken, lost no opportunity to advocate, with energy and sound reasons, the substitution of a mode of electing the President more in keeping with the character of the office and the genius of a popular government. This fortunate persistence resulted in the reopening of the subject and its reference, very late in the sessions of the convention, to a committee who reported in favor of a procedure for the choice of the Executive substantially identical with that now in force; and this was adopted by the convention almost unanimously.

This imperfect review of the incidents that led up to the establishment of the office of President, and its rescue from dangers which surrounded its beginning, if not otherwise useful, ought certainly to suggest congratulatory and grateful reflections. The proposition that the selection of a President should rest entirely with the Congress, which came so near adoption, must, I think, appear to us as something absolutely startling; and we may well be surprised that it was ever favorably considered by the convention.

In the scheme of our national Government the Presidency, is preëminently the people's office. Of course, all offices created by the Constitution, and all governmental agencies existing under its sanction, must be recognized, in a sense, as the offices and agencies of the people—considered either as an aggregation constituting the national body politic, or some of its divisions. When, however, I now speak of the Presidency as being preëminently the people's office, I mean that it is especially the office related to the people as individuals, in no general, local, or other combination, but standing on the firm footing of manhood and Ameri-

can citizenship. The Congress may enact laws; but they are inert and vain without executive impulse. The Federal courts adjudicate upon the rights of the citizen when their aid is invoked. But under the constitutional mandate that the President "shall take care that the laws be faithfully executed," every citizen, in the day or in the night, at home or abroad, is constantly within the protection and restraint of the Executive power—none so lowly as to be beneath its scrupulous care, and none so great and powerful as to be beyond its restraining force.

In view of this constant touch and the relationship thus existing between the citizen and the Executive, it would seem that these considerations alone supplied sufficient reason why his selection should rest upon the direct and independent expression of the people's choice. This reason is reinforced by the fact that inasmuch as Senators are elected by the State legislatures, Representatives in Congress by the votes of districts or States, and judges are appointed by the President, it is only in the selection of the President that the body of the American people can by any possibility act to-

gether and directly in the equipment of their national Government. Without at least this much of participation in that equipment, we could hardly expect that a ruinous discontent and revolt could be long suppressed among a people who had been promised a popular and representative government.

I do not mean to be understood as conceding that the selection of a President through electors chosen by the people of the several States, according to our present plan, perfectly meets the case as I have stated it. On the contrary, it has always seemed to me that this plan is weakened by an unfortunate infirmity. Though the people in each State are permitted to vote directly for electors, who shall give voice to the popular preference of the State in the choice of President, the voters throughout the nation may be so distributed, and the majorities given for electors in the different States may be such, that a minority of all the voters in the land can determine, and in some cases actually have determined, who the President should be. I believe a way should be devised to prevent such a result.

It seems almost ungracious, however, to

find fault with our present method of electing a President when we recall the alternative from which we escaped, through the final action of the convention which framed the Constitution.

It is nevertheless a curious fact that the plan at first adopted, vesting in Congress the presidential election, was utterly inconsistent with the opinion of those most prominent in the convention, as well as of all thoughtful and patriotic Americans who watched for a happy result from its deliberations, that the cornerstone of the new Government should be a distinct division of powers and functions among the Legislative, Executive, and Judicial branches, with the independence of each amply secured. Whatever may have been the real reasons for giving the choice of the President to Congress, I am sure those which were announced in the convention do not satisfy us in this day and generation that such an arrangement would have secured either the separateness or independence of the Executive department. I am glad to believe this to be so palpable as to make it unnecessary for me to suggest other objections, which might subject

me to the suspicion of questioning the wisdom or invariably safe motives of Congress in this relation. It is much more agreeable to acknowledge gratefully that a danger was avoided, and a method finally adopted for the selection of the Executive head of the Government which was undoubtedly the best within the reach of the convention.

The Constitution formed by this convention has been justly extolled by informed and liberty-loving men throughout the world. The statesman who, above all his contemporaries of the past century, was best able to pass judgment on its merits formulated an unchallenged verdict when he declared that "the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man."

We dwell with becoming pride upon the intellectual greatness of the men who composed the convention which created this Constitution. They were indeed great; but the happy result of their labor would not have been saved to us and to humanity if to intellectual greatness there had not been added patriotism, patience, and, last but by no means least, forbearing

tact. To these traits are we especially indebted for the creation of an Executive department, limited against every possible danger of usurpation or tyranny, but, at the same time, strong and independent within its limitations.

The Constitution declares: "The executive power shall be vested in a President of the United States of America," and this is followed by a recital of the specific and distinctly declared duties with which he is charged, and the powers with which he is invested. The members of the convention were not willing, however, that the executive power which they had vested in the President should be cramped and embarrassed by any implication that a specific statement of certain granted powers and duties excluded all other executive functions; nor were they apparently willing that the claim of such exclusion should have countenance in the strict meaning which might be given to the words "executive power." Therefore we find that the Constitution supplements a recital of the specific powers and duties of the President with this impressive and conclusive additional requirement: "He shall take care that the laws be faithfully executed."

This I conceive to be equivalent to a grant of all the power necessary to the performance of his duty in the faithful execution of the laws.

The form of Constitution first proposed to the convention provided that the President elect, before entering upon the duties of his office, should take an oath, simply declaring: "I will faithfully execute the office of President of the United States." To this brief and very general obligation there were added by the convention the following words: "and will to the best of my judgment and power preserve, protect, and defend the Constitution of the United States." Finally, the "Committee on Style," appointed by the convention, apparently to arrange the order of the provisions agreed upon, and to suggest the language in which they would be best expressed, reported in favor of an oath in these terms: "I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States"; and this form was adopted by the convention without discussion, and continues to this day as the form of obligation which binds the con-

science of every incumbent of our Chief Magistracy.

It is therefore apparent that as the Constitution, in addition to its specification of especial duties and powers devolving upon the President, provides that "he shall take care that the laws be faithfully executed," and as this was evidently intended as a general devolution of power and imposition of obligation in respect to any condition that might arise relating to the execution of the laws, so it is likewise apparent that the convention was not content to rest the sworn obligation of the President solely upon his covenant to "faithfully execute the office of President of the United States," but added thereto the mandate that he should preserve, protect, and defend the Constitution, to the best of his judgment and power, or, as it was afterward expressed, to the best of his ability. Thus is our President solemnly required not only to exercise every power attached to his office, to the end that the laws may be faithfully executed, and not only to render obedience to the demands of the fundamental law and executive duty, but to exert all his official strength and author-

ity for the preservation, protection, and defense of the Constitution.

I have thus far presented considerations which while they have to do with my topic are only preliminary to its more especial and distinct discussion. In furtherance of this discussion it now becomes necessary to quote from the Constitution the following clause found among its specification of presidential duty and authority:

> And he shall nominate, and by and with the advice of the Senate shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law.

This clause was the subject of a prolonged and thorough debate in Congress which occurred in the year 1789 and during the first session of that body assembled under the new Constitution.

II

The question discussed involved distinctly and solely the independent power of the President under the Constitution to remove an officer appointed by him by and with the advice of the Senate. The discussion arose upon a bill then before the Congress, providing for the organization of the State Department, which contained a provision that the head of the department to be created should be removable from office by the President. This was opposed by a considerable number on the ground that as the Senate coöperated in the appointment, it should also be consulted in the matter of removal; it was urged by others that the power of removal in such cases was already vested in the President by the Constitution, and that the provision was therefore unnecessary; and it was also contended that the question whether the Constitution permitted such removal or not should be left untouched by legislative action, and be determined by the courts.

Those insisting upon retaining in the bill the clause permitting removal by the President alone, claimed that such legislation would remove all doubt on the subject, though they asserted that the absolute investiture of all executive power in the President, reinforced by the constitutional command that he should take care that the laws be faithfully executed, justified their position that the power already existed, especially in the absence of any adverse expression in the Constitution. They also insisted that the removal of subordinate officers was an act so executive in its character, and so intimately related to the faithful execution of the laws, that it was clearly among the President's constitutional prerogatives, and that if it was not sufficiently declared in the Constitution, the omission should be supplied by the legislation proposed.

In support of these positions it was said that the participation of the Senate in the removal of executive officers would be a dangerous step toward breaking down the partitions between the different departments of the Government which had been carefully erected, and were regarded by every statesman of that time as ab-

solutely essential to our national existence; and stress was laid upon the unhappy condition that would arise in case a removal desired by the President should be refused by the Senate, and he thus should be left, still charged with the responsibility of the faithful execution of the laws, while deprived of the loyalty and constancy of his subordinates and assistants, who, if resentful of his efforts for their removal, would lack devotion to his work, and who, having learned to rely upon another branch of the Government for their retention, would be invited to defiant insubordination.

At the time of this discussion the proceedings of the Senate took place behind closed doors, and its debates were not published, but its determinations upon such questions as came before it were made public.

The proceedings of the other branch of the Congress, however, were open, and we are permitted through their publication to follow the very interesting discussion of the question referred to in the House of Representatives.

The membership of that body included a number of those who had been members of the Constitutional Convention, and who, fresh

from its deliberations, were necessarily somewhat familiar with its purposes and intent. Mr. Madison was there, who had as much to do as any other man with the inauguration of the convention and its successful conclusion. He was not only especially prominent in its deliberations, but increased his familiarity with its pervading spirit and disposition by keeping a careful record of its proceedings. In speaking of his reasons for keeping this record he says:

The curiosity I had felt during my researches into the history of the most distinguished confederacies, particularly those of antiquity, and the deficiency I found in the means of satisfying it, more especially in what related to the process, the principles, the reasons and the anticipations which prevailed in the formation of them, determined me to preserve as far as I could an exact account of what might pass in the convention while executing its trust, with the magnitude of which I was duly impressed, as I was by the gratification promised to future curiosity, by an authentic exhibition of the objects, the opinions and the reasonings from which a new system of government was to receive its peculiar structure

and organization. Nor was I unaware of the value of such a contribution to the fund of materials for the history of a Constitution on which would be staked the happiness of a people great in its infancy and possibly the cause of liberty throughout the world.

This important debate also gains great significance from the fact that it occurred within two years after the completion of the Constitution, and before political rancor or the temptations of partizan zeal had intervened to vex our congressional counsels.

It must be conceded, I think, that all the accompanying circumstances gave tremendous weight and authority to this first legislative construction of the Constitution in the first session of the first House of Representatives, and that these circumstances fully warranted Mr. Madison's declaration during the debate:

I feel the importance of the question, and know that our decision will involve the decision of all similar cases. The decision that is at this time made will become the permanent exposition of the Constitution, and on a permanent exposition

of the Constitution will depend the genius and character of the whole Government.

The discussion developed the fact that from the first a decided majority were of the opinion that the Executive should have power of independent removal, whether already derived from the Constitution or to be conferred by supplementary legislation. It will be recalled that the debate arose upon the clause in a pending bill providing that the officer therein named should "be removable by the President," and that some of the members of the House, holding that such power of removal was plainly granted to the Constitution, insisted that it would be useless and improper to assume to confer it by legislative enactment. Though a motion to strike from the bill the clause objected to had been negatived by a large majority, it was afterward proposed, in deference to the opinions of those who suggested that the House should go no further than to give a legislative construction to the Constitution in favor of executive removal, that in lieu of the words contained in the bill, indicating a grant of the power, there should be inserted

a provision for a new appointment in case of a vacancy occurring in the following manner:

> Whenever the said principal officer shall be removed from office by the President of the United States, or in any other case of vacancy.

This was universally acknowledged to be a distinct and unequivocal declaration that, under the Constitution, the right of removal was conferred upon the President; and those supporting that proposition voted in favor of the change, which was adopted by a decisive majority. The bill thus completed was sent to the Senate, where, if there was opposition to it on the ground that it contained a provision in derogation of senatorial right, it did not avail; for the bill was passed by that body, though grudgingly, and, as has been disclosed, only by the vote of the Vice-President, upon an equal division of the Senate. It may not be amiss to mention, as adding significance to the concurrence of the House and the Senate in the meaning and effect of the clause pertaining to removal as embodied in this bill, that during

that same session two other bills creating the Treasury Department and the War Department, containing precisely the same provision, were passed by both Houses.

I hope I shall be deemed fully justified in detailing at some length the circumstances that led up to a legislative construction of the Constitution, as authoritative as any surroundings could possibly make it, in favor of the constitutional right of the President to remove Federal officials without the participation or interference of the Senate.

This was in 1789. In 1886, ninety-seven years afterward, this question was again raised in a sharp contention between the Senate and the President. In the meantime, as was quite natural perhaps, partizanship had grown more pronounced and bitter, and it was at that particular time by no means softened by the fact that the party that had become habituated to power by twenty-four years of substantial control of the Government, was obliged, on the 4th of March, 1885, to make way in the executive office for a President elected by the opposite party. He came into office fully pledged to the letter of Civil Service reform; and pass-

ing beyond the letter of the law on that subject, he had said:

There is a class of government positions which are not within the letter of the Civil Service statute, but which are so disconnected with the policy of an administration, that the removal therefrom of present incumbents, in my opinion, should not be made during the terms for which they were appointed, solely on partizan grounds, and for the purpose of putting in their places those who are in political accord with the appointing power.

The meaning of this statement is, that while, among the officers not affected by the Civil Service law, there are those whose duties are so related to the enforcement of the political policy of an administration that they should be in full accord with it, there are others whose duties are not so related, and who simply perform executive work; and these, though beyond the protection of Civil Service legislation, should not be removed merely for the purpose of rewarding the party friends of the President, by putting them in the positions thus made vacant. An adherence to this rule, based

upon the spirit instead of the letter of Civil Service reform, I believe established a precedent, which has since operated to check wholesale removals solely for political reasons.

The declaration which I have quoted was, however, immediately followed by an important qualification, in these terms:

> But many men holding such positions have forfeited all just claim to retention, because they have used their places for party purposes, in disregard of their duty to the people; and because, instead of being decent public servants, they have proved themselves offensive partizans and unscrupulous manipulators of local party management.

These pledges were not made without a full appreciation of the difficulties and perplexities that would follow in their train. It was anticipated that party associates would expect, notwithstanding Executive pledges made in advance, that there would be a speedy and liberal distribution among them of the offices from which they had been inexorably excluded for nearly a quarter of a century. It was plainly

seen that many party friends would be disappointed, that personal friends would be alienated, and that the charge of ingratitude, the most distressing and painful of all accusations, would find abundant voice. Nor were the difficulties overlooked that would sometimes accompany a consistent and just attempt to determine the cases in which incumbents in office had forfeited their claim to retention. That such cases were numerous, no one with the slightest claim to sincerity could for a moment deny.

With all these things in full view, and with an alternative of escape in sight through an evasion of pledges, it was stubbornly determined by the new Executive that the practical enforcement of the principle involved was worth all the sacrifices which were anticipated. And while it was not expected that the Senate, which was the only stronghold left to the party politically opposed to the President, would contribute an ugly dispute to a situation already sufficiently troublesome, I am in a position to say that even such a contingency, if early made manifest, would have been contemplated with all possible fortitude.

The Tenure of Office act, it will be remem-

bered, was passed in 1867 for the express purpose of preventing removals from office by President Johnson, between whom and the Congress a quarrel at that time raged, so bitter that it was regarded by sober and thoughtful men as a national affliction, if not a scandal.

An amusing story is told of a legislator who, endeavoring to persuade a friend and colleague to aid him in the passage of a certain measure in which he was personally interested, met the remark that his bill was unconstitutional with the exclamation, "What does the Constitution amount to between friends?" It would be unseemly to suggest that in the heat of strife the majority in Congress had deliberately determined to pass an unconstitutional law, but they evidently had reached the point where they considered that what seemed to them the public interest and safety justified them, whatever the risk might be, in setting aside the congressional construction given to the Constitution seventy-eight years before.

The law passed in 1867 was exceedingly radical, and in effect distinctly purported to confer upon the Senate the power of preventing the removal of officers without the consent

of that body. It was provided that during a recess of the Senate an officer might be suspended only in case it was shown by evidence satisfactory to the President, that the incumbent was guilty of misconduct in office or crime, or when for any reason he should become incapable or legally disqualified to perform his duties; and that within twenty days after the beginning of the next session of the Senate, the President should report to that body such suspension, with the evidence and reasons for his action in the case, and the name of the person designated by the President to perform temporarily the duties of the office. Then follows this provision:

> And if the Senate shall concur in such suspension and advise and consent to the removal of such officer, they shall so certify to the President, who may thereupon remove said officer, and by and with the advice and consent of the Senate appoint another person to such office. But if the Senate shall refuse to concur in such suspension, such officer so suspended shall forthwith resume the functions of his office.

On the 5th of April, 1869, a month and a

day after President Johnson was succeeded in the Presidency by General Grant, that part of the act of 1867 above referred to, having answered the purpose for which it was passed, was repealed, and other legislation was enacted in its place. It was provided in the new statute that the President might "in his discretion," during the recess of that body, suspend officials until the end of the next session of the Senate, and designate suitable persons to perform the duties of such suspended officer in the meantime; and that such designated persons should be subject to removal in the discretion of the President by the designation of others. The following, in regard to the effect of such suspension, was inserted in lieu of the provision on that subject in the law of 1867 which I have quoted:

> And it shall be the duty of the President within thirty days after the commencement of each session of the Senate, except for any office which in his opinion ought not to be filled, to nominate persons to fill all vacancies in office which existed at the meeting of the Senate, whether temporarily filled or not, and also in the place of all officers

suspended; and if the Senate, during such session, shall refuse to advise and consent to an appointment in the place of any suspended officer, then, and not otherwise, the President shall nominate another person as soon as practicable to said session of the Senate for said office.

This was the condition of the so-called tenure of office legislation when a Democratic President was inaugurated and placed in expected coöperation with a Republican majority in the Senate—well drilled, well organized, with partizanship enough at least to insure against indifference to party advantage, and perhaps with here and there a trace of post-election irritation.

Whatever may be said as to the constitutionality of the Tenure of Office laws of 1867 and 1869, certainly the latter statute did not seem, in outside appearance, to be charged with explosive material that endangered Executive prerogative. It grew out of a bill for the absolute and unconditional repeal of the law of 1867 relating to removals and suspensions. This bill originated in the House of Representatives, and passed that body so nearly unani-

mously that only sixteen votes were recorded against it. In the Senate, however, amendments were proposed, which being rejected by the House, a committee of conference was appointed to adjust, by compromise if possible, the controversy between the two bodies. This resulted in an agreement by the committee upon the provisions of the law of 1869, as a settlement of the difficulty. In the debate in the House of Representatives on the report of the committee, great uncertainty and differences of opinion were developed as to its meaning and effect. Even the House conferees differed in their explanation of it. Members were assured that the proposed modifications of the law of 1867, if adopted, would amount to its complete repeal; and it was also asserted with equal confidence that some of its objectionable limitations upon executive authority would still remain in force. In this state of confusion and doubt the House of Representatives, which a few days before had passed a measure for unconditional repeal, with only sixteen votes against it, adopted the report of the conference committee with sixty-seven votes in the negative.

So far as removals following suspensions are concerned, the language of the law of 1869 certainly seems to justify the understanding that in this particular it virtually repealed the existing statute.

The provision permitting the President to suspend only on certain specified grounds was so changed as to allow him to make such suspensions "in his discretion." The requirements that the President should report to the Senate "the evidence and reasons for his action in the case," and making the advice and consent of the Senate necessary to the removal of a suspended officer, were entirely eliminated; and in lieu of the provision in the law of 1867 that "if the Senate shall refuse to concur in such suspension, such officer so suspended shall forthwith resume the functions of his office," the law of 1869, after requiring the President to send to the Senate nominations to fill the place of officers who had been "in his discretion" suspended, declared "that if the Senate, during such session, shall refuse to advise and consent to an appointment in the place of any suspended officer,"—that is, shall refuse to confirm the person appointed by the President

in place of the officer suspended,—not that "such officer so suspended shall resume the functions of his office," but that "then, and not otherwise, the President shall nominate another person as soon as practicable to said session of the Senate for said office."

It seems to me that the gist of the whole matter is contained in a comparison of these two provisions. Under the law of 1867 the incumbent is only conditionally suspended, still having the right to resume his office in case the Senate refuses to concur in the suspension; but under the law of 1869 the Senate had no concern with the suspension of the incumbent, nor with the discretion vested in the President in reference thereto by the express language of the statute; and the suspended incumbent was beyond official resuscitation. Instead of the least intimation that in any event he might "resume the functions of his office," as provided in the law of 1867, it is especially declared that in case the Senate shall refuse to advise and consent to the appointment of the particular person nominated by the President in place of the suspended official, he shall nominate another person to the Senate for such

office. Thus the party suspended seems to be eliminated from consideration, the Senate is relegated to its constitutional rights of confirming or rejecting nominations as it sees fit, and the President is reinstated in his undoubted constitutional power of removal through the form of suspension.

In addition to what is apparent from a comparison of these two statutes, it may not be improper to glance at certain phases of executive and senatorial action since the passage of the law of 1869 as bearing upon the theory that, so far as it dealt with suspensions and their effect, if it did not amount to a repeal of the law of 1867, it at least extinguished all its harmful vitality as a limitation of executive prerogative. It has been stated, apparently by authority, that President Grant within seven weeks after his inauguration on the 4th of March, 1869, sent to the Senate six hundred and eighty cases of removals or suspensions, all of which I assume were entirely proper and justifiable. I cannot tell how many of the cases thus submitted to the Senate were suspensions, nor how many of them purported to be removals; nor do I know how many nominations of

new officers accompanying them were confirmed. It appears that ninety-seven of them were withdrawn before they were acted upon by the Senate; and inasmuch as the law of 1867 was in force during four of the seven weeks within which these removals and suspensions were submitted, it is barely possible that these withdrawals were made during the four weeks when the law of 1867 was operative, to await a more convenient season under the law of 1869. Attention should be here called, however, to the dissatisfaction of President Grant, early in his incumbency, with the complexion of the situation, even under the repealing and amendatory law of 1869. In his first annual message to the Congress in December, 1869, he complained of that statute as "being inconsistent with a faithful and efficient administration of the Government," and recommended its repeal. Perhaps he was led to apprehend that the Senate would claim under its provisions the power to prevent the President from putting out of office an undesirable official by suspension. This is indicated by the following sentence in his message: "What faith can an Executive put in officials forced upon him, and

those, too, whom he has suspended for reason?" Or it may be possible that he did not then appreciate how accommodatingly the law might be construed or enforced when the President and Senate were in political accord. However these things may be, it is important to observe, in considering the light in which the law of 1869 came to be regarded by both the Executive and the Senate, that President Grant did not deem it necessary afterward to renew his recommendation for its repeal, and that at no time since its enactment has its existence been permitted to embarrass executive action prior to the inauguration of a President politically opposed to the majority in the Senate.

The review which I have thus made of the creation of our national Executive office, and of certain events and incidents which interpreted its powers and functions, leads me now to a detailed account of the incident mentioned by me at the beginning as related to the general subject under discussion and in which I was personally concerned. But before proceeding further, I desire to say that any allusion I may have made, or may hereafter make, recognizing the existence of partizanship in certain

quarters does not arise from a spirit of complaint or condemnation. I intend no more by such allusions than to explain and illustrate the matters with which I have to deal by surrounding conditions and circumstances. I fully appreciate the fact that partizanship follows party organization, that it is apt to be unduly developed in all parties, and that it often hampers the best aspirations and purposes of public life; but I hope I have reached a condition when I can recall such adverse partizanship as may have entered into past conflicts and perplexities, without misleading irritation or prejudice.

III

Immediately after the change of administration in 1885, the pressure began for the ousting of Republican office-holders and the substitution of Democrats in their places. While I claim to have earned a position which entitles me to resent the accusation that I either openly or covertly favor swift official decapitation for partizan purposes, I have no sympathy with the intolerant people who, without the least appreciation of the meaning of party work and service, superciliously affect to despise all those who apply for office as they would those guilty of a flagrant misdemeanor. It will indeed be a happy day when the ascendancy of party principles, and the attainment of wholesome administration, will be universally regarded as sufficient rewards of individual and legitimate party service. Much has already been accomplished in the direction of closing the door of partizanship as an entrance to public employment; and though this branch of effort in the public interest may well be still

further extended, such extension certainly should be supplemented by earnest and persuasive attempts to correct among our people long-cherished notions concerning the ends that should be sought through political activity, and by efforts to uproot pernicious and office-rewarding political methods. I am not sure that any satisfactory progress can be made toward these results, until our good men with unanimity cease regarding politics as necessarily debasing, and by active participation shall displace the selfish and unworthy who, when uninterrupted, control party operations. In the meantime, why should we indiscriminately hate those who seek office? They may not have entirely emancipated themselves from the belief that the offices should pass with party victory; but even if this is charged against them, it can surely be said that in all other respects they are in many instances as honest, as capable, and as intelligent as any of us. There may be reasons and considerations which properly defeat their aspirations, but their applications are not always disgraceful. I have an idea that sometimes the greatest difference between them and those who needlessly abuse

them and gloat over their discomfiture, consists in the fact that the office-seekers desire office, and their critics, being more profitably employed, do not. I feel constrained to say this much by way of defending, or at least excusing, many belonging to a numerous contingent of citizens, who, after the 4th of March, 1885, made large drafts upon my time, vitality, and patience; and I feel bound to say that in view of their frequent disappointments, and the difficulty they found in appreciating the validity of the reasons given for refusing their applications, they accepted the situation with as much good nature and contentment as could possibly have been anticipated. It must be remembered that they and their party associates had been banished from Federal office-holding for twenty-four years.

I have no disposition to evade the fact that suspensions of officials holding presidential commissions began promptly and were quite vigorously continued; but I confidently claim that every suspension made was with honest intent and, I believe, in accordance with the requirements of good administration and consistent with prior executive pledges. Some of

these officials held by tenures unlimited as to their duration. Among these were certain internal-revenue officers who, it seemed to me, in analogy with others doing similar work but having a limited tenure, ought to consider a like limited period of incumbency their proper term of office; and there were also consular officials and others attached to the foreign service who, I believe it was then generally understood, should be politically in accord with the administration.

By far the greater number of suspensions, however, were made on account of gross and indecent partizan conduct on the part of the incumbents. The preceding presidential campaign, it will be recalled, was exceedingly bitter, and governmental officials then in place were apparently so confident of the continued supremacy of their party that some of them made no pretense of decent behavior. In numerous instances the post-offices were made headquarters for local party committees and organizations and the centers of partizan scheming. Party literature favorable to the postmasters' party, that never passed regularly through the mails, was distributed through the

post-offices as an item of party service, and matter of a political character, passing through the mails in the usual course and addressed to patrons belonging to the opposite party, was withheld; disgusting and irritating placards were prominently displayed in many post-offices, and the attention of Democratic inquirers for mail matter was tauntingly directed to them by the postmaster; and in various other ways postmasters and similar officials annoyed and vexed those holding opposite political opinions, who, in common with all having business at public offices, were entitled to considerate and obliging treatment. In some quarters official incumbents neglected public duty to do political work, and especially in Southern States they frequently were not only inordinately active in questionable political work, but sought to do party service by secret and sinister manipulation of colored voters, and by other practices inviting avoidable and dangerous collisions between the white and colored population.

I mention these things in order that what I shall say later may be better understood. I by no means attempt to describe all the wrong-

doing which formed the basis of many of the suspensions of officials that followed the inauguration of the new administration. I merely mention some of the accusations which I recall as having been frequently made, by way of illustrating in a general way certain phases of pernicious partizanship that seemed to me to deserve prompt and decisive treatment. Some suspensions, however, were made on proof of downright official malfeasance. Complaints against office-holders based on personal transgression or partizan misconduct were usually made to the Executive and to the heads of departments by means of letters, ordinarily personal and confidential, and also often by means of verbal communications. Whatever papers, letters, or documents were received on the subject, either by the President or by any head of department, were, for convenience of reference, placed together on department files. These complaints were carefully examined; many were cast aside as frivolous or lacking support, while others, deemed of sufficient gravity and adequately established, resulted in the suspension of the accused officials.

Suspensions instead of immediate removals

were resorted to, because under the law then existing it appeared to be the only way that during a recess of the Senate an offending official could be ousted from his office, and his successor installed pending his nomination to the Senate at its next session. Though, as we have already seen, the law permitted suspensions by the President "in his discretion," I considered myself restrained by the pledges I had made availing myself of the discretion thus granted without reasons, and felt bound to make suspensions of officials having a definite term to serve, only for adequate cause.

It will be observed further on that no resistance was then made to the laws pertaining to executive removals and suspensions, on the ground of their unconstitutionality; but I have never believed that either the law of 1867 or the law of 1869, when construed as permitting interference with the freedom of the President in making removals, would survive a judicial test of its constitutionality.

Within thirty days after the Senate met in December, 1885, the nominations of the persons who had been designated to succeed officials suspended during the vacation were sent

to that body for confirmation, pursuant to existing statutes.

It was charged against me by the leader of the majority in the Senate that these nominations of every kind and description, representing the suspensions made within ten months succeeding the 4th of March, 1885, numbered six hundred and forty-three. I have not verified this statement, but I shall assume that it is correct. Among the officials suspended there were two hundred and seventy-eight postmasters, twenty-eight district attorneys, and twenty-four marshals, and among those who held offices with no specified term there were sixty-one internal-revenue officers and sixty-five consuls and other persons attached to the foreign service.

It was stated on the floor of the Senate, after it had been in session for three months, that of the nominations submitted to that body to fill the places of suspended officials fifteen had been confirmed and two rejected.

Quite early in the session frequent requests in writing began to issue from the different committees of the Senate to which these nominations were referred, directed to the heads of

the several departments having supervision of the offices to which the nominations related, asking the reasons for the suspension of officers whose places it was proposed to fill by means of the nominations submitted, and for all papers on file in their departments which showed the reasons for such suspensions. These requests foreshadowed what the senatorial construction of the law of 1869 might be, and indicated that the Senate, notwithstanding constitutional limitations, and even in the face of the repeal of the statutory provision giving it the right to pass upon suspensions by the President, was still inclined to insist, directly or indirectly, upon that right. These requests, as I have said, emanated from committees of the Senate, and were addressed to the heads of departments. As long as such requests were made by committees I had no opportunity to discuss the questions growing out of such requests with the Senate itself, or to make known directly to that body the position on this subject which I felt bound to assert. Therefore the replies made to committees by the different heads of departments stated that by direction of the President they declined fur-

nishing the reasons and papers so requested, on the ground that the public interest would not be thereby promoted, or on the ground that such reasons and papers related to a purely executive act. Whatever language was used in these replies, they conveyed the information that the President had directed a denial of the requests made, because in his opinion the Senate could have no proper concern with the information sought to be obtained.

It may not be amiss to mention here that while this was the position assumed by the Executive in relation to suspensions, all the information of any description in the possession of the Executive or in any of the departments, which would aid in determining the character and fitness of those nominated in place of suspended officials, was cheerfully and promptly furnished to the Senate or its committees when requested.

In considering the requests made for the transmission of the reasons for suspensions, and the papers relating thereto, I could not avoid the conviction that a compliance with such requests would be to that extent a failure to protect and defend the Constitution, as well

as a wrong to the great office I held in trust for the people, and which I was bound to transmit unimpaired to my successors; nor could I be unmindful of a tendency in some quarters to encroach upon executive functions, or of the eagerness with which executive concession would be seized upon as establishing precedent.

The nominations sent to the Senate remained neglected in the committees to which they had been referred; the requests of the committees for reasons and papers touching suspensions were still refused, and it became daily more apparent that a sharp contest was impending. In this condition of affairs it was plainly intimated by members of the majority in the Senate that if all charges against suspended officials were abandoned and their suspensions based entirely upon the ground that the spoils belonged to the victors, confirmations would follow. This, of course, from my standpoint, would have been untruthful and dishonest; but the suggestion indicated that in the minds of some Senators, at least, there was a determination to gain a partizan advantage by discrediting the professions of the President, who, for the time, represented the party they opposed.

This manifestly could be thoroughly done by inducing him to turn his back upon the pledges he had made, and to admit, for the sake of peace, that his action arose solely from a desire to put his party friends in place.

Up to this stage of the controversy, not one of the many requests made for the reasons of suspensions or for the papers relating to them had been sent from the Senate itself; nor had any of them been addressed to the President. It may seem not only strange that, in the existing circumstances, the Senate should have so long kept in the background, but more strange that the Executive, constituting a coordinate branch of the Government, and having such exclusive concern in the pending differences, should have been so completely ignored. I cannot think it uncharitable to suggest in explanation that as long as these requests and refusals were confined to Senate committees and heads of departments, a public communication stating the position of the President in the controversy would probably be avoided; and that, as was subsequently made more apparent, there was an intent, in addressing requests to the heads of departments, to

lay a foundation for the contention that not only the Senate but its committees had a right to control these heads of departments as against the President in matters relating to executive duty.

On the 17th of July, 1885, during the recess of the Senate, one George M. Duskin was suspended from the office of District Attorney for the Southern District of Alabama, and John D. Burnett was designated as his successor. The latter at once took possession of the office, and entered upon the discharge of its duties; and on the 14th of December, 1885, the Senate having in the meantime convened in regular session, the nomination of Burnett was sent to that body for confirmation. This nomination, pursuant to the rules and customs of the Senate, was referred to its Committee on the Judiciary. On the 26th of December, that committee then having the nomination under consideration, one of its members addressed a communication to the Attorney-General of the United States, requesting him, "on behalf of the Committee on the Judiciary of the Senate and by its direction," to send to such member of the committee all papers and information in

the possession of the Department of Justice touching the nomination of Burnett, "also all papers and information touching the suspension and proposed removal from office of George M. Duskin." On the 11th of January, 1886, the Attorney-General responded to this request in these terms:

The Attorney-General states that he sends herewith all papers, etc., touching the nomination referred to; and in reference to the papers touching the suspension of Duskin from office, he has as yet received no direction from the President in relation to their transmission.

At this point it seems to have been decided for the first time that the Senate itself should enter upon the scene as interrogator. It was not determined, however, to invite the President to answer this new interrogator, either for the protection and defense of his high office or in self-vindication. It appears to have been also decided at this time to give another form to the effort the Senate itself was to undertake to secure the "papers and information" which its Committee had been unable to secure. In

pursuance of this plan the following resolution was adopted by the Senate in executive session on the 25th of January, 1886:

> Resolved, That the Attorney-General of the United States be, and he hereby is, directed to transmit to the Senate copies of all documents and papers that have been filed in the Department of Justice since the 1st day of January, A.D. 1885, in relation to the conduct of the office of District Attorney of the United States for the Southern District of Alabama.

The language of this resolution is more adroit than ingenuous. While appearing reasonable and fair upon its face, and presenting no indication that it in any way related to a case of suspension, it quickly assumes its real complexion when examined in the light of its surroundings. The requests previously made on behalf of Senate committees had ripened into a "demand" by the Senate itself. Herein is found support for the suggestion I have made, that from the beginning there might have been an intent on the part of the Senate to claim that the heads of departments, who

are members of the President's Cabinet and his trusted associates and advisers, owed greater obedience to the Senate than to their executive chief in affairs which he and they regarded as exclusively within executive functions. As to the real meaning and purpose of the resolution, a glance at its accompanying conditions and the incidents preceding it makes manifest the insufficiency of its disguise. This resolution was adopted by the Senate in executive session, where the entire senatorial business done is the consideration of treaties and the confirmation of nominations for office. At the time of its adoption Duskin had been suspended for more than six months, his successor had for that length of time been in actual possession of the office, and this successor's nomination was then before the Senate in executive session for confirmation. The demand was for copies of documents and papers in relation to the conduct of the office filed since January 1, 1885, thus covering a period of incumbency almost equally divided between the suspended officer and the person nominated to succeed him. The documents and papers demanded could not have been of

any possible use to the Senate in executive session, except as they had a bearing either upon the suspension of the one or the nomination of the other. But as we have already seen, the Attorney-General had previously sent to a committee of the Senate all the papers he had in his custody in any way relating to the nomination and the fitness of the nominee, whether such papers had reference to the conduct of the office or otherwise. Excluding, therefore, such documents and papers embraced in the demand as related to the pending nomination, and which had already been transmitted, it was plain that there was nothing left with the Attorney-General that could be included in the demand of the Senate in its executive session except what had reference to the conduct of the previous incumbent and his suspension. It is important to recall in this connection the fact that this subtle demand of the Senate for papers relating "to the conduct of the office" followed closely upon a failure to obtain "all papers and information" touching said suspension, in response to a plain and blunt request specifying precisely what was desired.

IV

I have referred to these matters because it seems to me they indicate the animus and intent which characterized the first stages of a discussion that involved the rights and functions of the Executive branch of the Government. It was perfectly apparent that the issue was between the President and the Senate, and that the question constituting that issue was whether or not the Executive was invested with the right and power to suspend officials without the interference of the Senate or any accountability to that body for the reasons of his action. It was also manifest if it was desired to deal with this issue directly and fairly, disembarrassed by any finesse for position, it could at any time have been easily done, if only one of the many requests for reasons for suspensions, which were sent by committees of the Senate to heads of departments, had been sent by the Senate itself to the President.

Within three days after the passage by the

Senate, in executive session, of the resolution directing the Attorney-General to transmit to that body the documents and papers on file relating to the management and conduct of the office from which Mr. Duskin had been removed, and to which Mr. Burnett had been nominated, the Attorney-General replied thereto as follows:

In response to the said resolution, the President of the United States directs me to say that the papers that were in this department relating to the fitness of John D. Burnett, recently nominated to said office, having already been sent to the Senate Committee on the Judiciary, and the papers and documents which are mentioned in the said resolution, and still remaining in the custody of this department, having exclusive reference to the suspension by the President of George M. Duskin, the late incumbent of the office of District Attorney for the Southern District of Alabama, it is not considered that the public interests will be promoted by a compliance with said resolution and the transmission of the papers and documents therein mentioned to the Senate in executive session.

This response of the Attorney-General was referred to the Senate Committee on the Judiciary. Early in February, 1886, a majority of the committee made a report to the Senate, in which it seems to have been claimed that all papers—whatever may be their personal, private, or confidential character—if placed on file, or, in other words, if deposited in the office of the head of a department, became thereupon official papers, and that the Senate had therefore a right to their transmittal when they had reference to the conduct of a suspended official, and when that body had under advisement the confirmation of his proposed successor. Much stress was laid upon the professions made by the President of his adherence to Civil Service reform methods, and it was broadly hinted that, in the face of six hundred and forty-three suspensions from office, these professions could hardly be sincere. Instances were cited in which papers and information had been demanded and furnished in previous administrations, and these were claimed to be precedents in favor of the position assumed by the majority of the committee. Almost at the outset of the report it was declared:

The important question, then, is whether it is within the constitutional competence of either House of Congress to have access to the official papers and documents in the various public offices of the United States, created by laws enacted by themselves.

In conclusion, the majority recommended the adoption by the Senate of the following resolutions:

Resolved, That the Senate hereby expresses its condemnation of the refusal of the Attorney-General, under whatever influence, to send to the Senate copies of papers called for by its resolution of the 25th of January and set forth in the report of the Committee on the Judiciary, as in violation of his official duty and subversive of the fundamental principles of the Government, and of a good administration thereof.

Resolved, That it is under these circumstances the duty of the Senate to refuse its advice and consent to proposed removals of officers, the documents and papers in reference to the supposed official or personal misconduct of whom are withheld by the Executive or any head of a department when deemed necessary by the Senate and called for in considering the matter.

Resolved, That the provision of Section 1754 of the Revised Statutes, declaring that persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty shall be preferred for appointment to civil offices provided they are found to possess the business capacity necessary for the proper discharge of the duties of such offices, ought to be faithfully and fully put in execution, and that to remove or to propose to remove any such soldier whose faithfulness, competency, and character are above reproach, and to give place to another who has not rendered such service, is a violation of the spirit of the law and of the practical gratitude the people and the Government of the United States owe to the defenders of constitutional liberty and the integrity of the Government.

The first of these resolutions contains charges which, if true, should clearly furnish grounds for the impeachment of the Attorney-General—if not the President under whose "influence" he concededly refused to submit the papers demanded by the Senate. A public officer whose acts are "in violation of his official duty and subversive of the fundamental

principles of the Government, and of a good administration thereof," can scarcely add anything to his predicament of guilt.

The second resolution has the merit of honesty in confessing that the intent and object of the demand upon the Attorney-General was to secure the demanded papers and documents for the purpose of passing upon the President's reasons for suspension. Beyond this, the declaration it contains, that it was the "duty of the Senate to refuse its advice and consent to proposed removals of officers" when the papers and documents relating to their "supposed official or personal misconduct" were withheld, certainly obliged the Senate, if the resolution should be adopted, and if the good faith of that body in the controversy should be assumed, to reject or ignore all nominations made to succeed suspended officers unless the documents and papers upon which the suspension was based were furnished and the Senate was thus given an opportunity to review and reverse or confirm the President's executive act, resting, by the very terms of existing law, "in his discretion."

The third resolution is grandly phrased,

and its sentiment is patriotic, noble, and inspiriting. Inasmuch, however, as the removal of veteran soldiers from office did not seem to assume any considerable prominence in the arraignment of the administration, the object of the resolution is slightly obscure, unless, as was not unusual in those days, the cause of the old soldier was impressed into the service of the controversy for purposes of general utility.

A minority report was subsequently submitted, signed by all the Democratic members of the committee, in which the allegations of the majority report were sharply controverted. It was therein positively asserted that no instance could be found in the practice of the Government whose similarity in its essential features entitled it to citation as an authoritative precedent; and that neither the Constitution nor the existing law afforded any justification for the action of the Senate in the promises.

These two reports, of course, furnished abundant points of controversy. About the time of their submission, moreover, another document was addressed to the Senate, which, whatever else may be said of it, seems to have

contributed considerably to the spirit and animation of the discussion that ensued. This was a message from the President, in which his position concerning the matter in dispute was defined. In this communication the complete and absolute responsibility of the President for all suspensions and the fact that the Executive had been afforded no opportunity to speak for himself was stated in the following terms:

> Though these suspensions are my executive acts based upon considerations addressed to me alone, and for which I am wholly responsible, I have had no invitation from the Senate to state the position which I have felt constrained to assume in relation to the same, or to interpret for myself my acts and motives in the premises. In this condition of affairs I have forborne addressing the Senate upon the subject, lest I might be accused of thrusting myself unbidden upon the attention of that body.

This statement was accompanied by the expression of a hope that the misapprehension of the Executive position, indicated in the majority report just presented and published,

might excuse his then submitting a communication. He commented upon the statement in the report that "the important question, then, is whether it is within the constitutional competence of either House of Congress to have access to the official papers and documents in the various public offices of the United States, created by laws enacted by themselves," by suggesting that though public officials of the United States might be created by laws enacted by the two Houses of Congress, this fact did not necessarily subject their offices to congressional control, but, on the contrary, that "these instrumentalities were created for the benefit of the people, and to answer the general purposes of government under the Constitution and the laws; and that they are unencumbered by any lien in favor of either branch of Congress growing out of their construction, and unembarrassed by any obligation to the Senate as the price of their creation." While not conceding that the Senate had in any case the right to review Executive action in suspending officials, the President disclaimed any intention to withhold official papers and documents when requested; and as to such papers and

documents, he expressed his willingness, because they were official, to continue, as he had theretofore done in all cases, to lay them before the Senate without inquiry as to the use to be made of them, and relying upon the Senate for their legitimate utilization. The proposition was expressly denied, however, that papers and documents inherently private or confidential, addressed to the President or a head of department, having reference to an act so entirely executive in its nature as the suspension of an official, and which was by the Constitution as well as by existing law placed within the discretion of the President, were changed in their nature and instantly became official when placed for convenience or for other reasons in the custody of a public department. The contention of the President was thus stated:

> There is no mysterious power of transmutation in departmental custody, nor is there magic in the undefined and sacred solemnity of departmental files. If the presence of these papers in the public office is a stumbling-block in the way of the performance of senatorial duty, it can be easily removed.

The Senate's purposes were characterized in the message as follows:

The requests and demands which by the score have for nearly three months been presented to the different departments of the Government, whatever may be their form, have but one complexion. They assume the right of the Senate to sit in judgment upon the exercise of my exclusive discretion and Executive function, for which I am solely responsible to the people from whom I have so lately received the sacred trust of office. My oath to support and defend the Constitution, my duty to the people who have chosen me to execute the powers of their great office and not relinquish them, and my duty to the chief magistracy which I must preserve unimpaired in all its dignity and vigor, compel me to refuse compliance with these demands.

This was immediately supplemented by the following concession of the independent and unlimited power of the Senate in the matter of confirmation:

To the end that the service may be improved, the Senate is invited to the fullest scrutiny of

the persons submitted to them for public office, in recognition of the constitutional power of that body to advise and consent to their appointment. I shall continue, as I have thus far done, to furnish, at the request of the confirming body, all the information I possess touching the fitness of the nominees placed before them for their action, both when they are proposed to fill vacancies and to take the place of suspended officials. Upon a refusal to confirm, I shall not assume the right to ask the reasons for the action of the Senate nor question its determination. I cannot think that anything more is required to secure worthy incumbents in public office than a careful and independent discharge of our respective duties within their well-defined limits.

As it was hardly concealed that by no means the least important senatorial purpose in the pending controversy was to discredit the Civil Service reform pledges and professions of the Executive, this issue was thus distinctly invited at the close of the message:

Every pledge I have made by which I have placed a limitation upon my exercise of executive power has been faithfully redeemed. Of course

the pretense is not put forth that no mistakes have been committed; but not a suspension has been made except it appeared to my satisfaction that the public welfare would be promoted thereby. Many applications for suspension have been denied, and an adherence to the rule laid down to govern my action as to such suspensions has caused much irritation and impatience on the part of those who have insisted upon more changes in the offices.

The pledges I have made were made to the people, and to them I am responsible for the manner in which they have been redeemed. I am not responsible to the Senate, and I am unwilling to submit my actions and official conduct to them for judgment.

There are no grounds for an allegation that the fear of being found false to my professions influences me in declining to submit to the demands of the Senate. I have not constantly refused to suspend officials and thus incurred the displeasure of political friends, and yet wilfully broken faith with the people, for the sake of being false to them.

Neither the discontent of party friends nor the allurements, constantly offered, of confirmation of appointees conditioned upon the avowal that suspensions have been made on party grounds

alone, nor the threat proposed in the resolutions now before the Senate that no confirmation will be made unless the demands of that body be complied with, are sufficient to discourage or deter me from following in the way which I am convinced leads to better government for the people.

The temper and disposition of the Senate may be correctly judged, I think, from the remarks made upon the presentation of this message by the chairman of the Committee on the Judiciary and the acknowledged leader of the majority. On a formal motion that the message be printed and lie upon the table, he moved as an amendment that it be referred to the committee of which he was chairman, and said:

I merely wish to remark, in moving to refer this document to the Committee on the Judiciary, that it very vividly brought to my mind the communications of King Charles I to the Parliament, telling them what, in conducting their affairs, they ought to do and ought not to do; and I think I am safe in saying that it is the first time in the history of the republican

United States that any President of the United States has undertaken to interfere with the deliberations of either House of Congress on questions pending before them, otherwise than by messages on the state of the Union which the Constitution commands him to make from time to time. This message is devoted simply to a question for the Senate itself, in regard to itself, that it has under consideration. That is its singularity. I think it will strike reflecting people in this country as somewhat extraordinary—if in this day of reform anything at all can be thought extraordinary.

King Charles I fared badly at the hands of the Parliament; but it was most reassuring to know that, after all said and done, the Senate of the United States was not a bloodthirsty body, and that the chairman of its Committee on the Judiciary was one of the most courteous and amiable of men—at least when outside of the Senate.

The debate upon the questions presented by the report and resolutions recommended by the majority of the committee, and by the minority report and the presidential message, occupied almost exclusively the sessions of the Senate

for over two weeks. More than twenty-five Senators participated, and the discussion covered such a wide range of argument that all considerations relevant to the subject, and some not clearly related to it, seem to have been presented. At the close of the debate, the resolution condemning the Attorney-General for withholding the papers and documents which the Senate had demanded was passed by thirty-two votes in the affirmative and twenty-five in the negative; the next resolution, declaring it to be the duty of the Senate to refuse its advice and consent to proposed removals of officers when papers and documents in reference to their alleged misconduct were withheld, was adopted by a majority of only a single vote; and the proclamation contained in the third resolution, setting forth the obligations of the Government and its people to the veterans of the civil war, was unanimously approved, except for one dissenting voice.

The controversy thus closed arose from the professed anxiety of the majority in the Senate to guard the interests of an official who was suspended from office in July, 1885, and who was still claimed to be in a condition of sus-

pension. In point of fact, however, that official's term of office expired by limitation on the 20th of December, 1885—before the demand for papers and documents relating to his conduct in office was made, before the resolutions and reports of the Committee on the Judiciary were presented, and before the commencement of the long discussion in defense of the right of a suspended incumbent. This situation escaped notice in Executive quarters, because the appointee to succeed the suspended officer having been actually installed and in the discharge of the duties of the position for more than six months, and his nomination having been sent to the Senate very soon after the beginning of its session, the situation or duration of the former incumbent's term was not kept in mind. The expiration of his term was, however, distinctly alleged in the Senate on the second day of the discussion, and by the first speaker in opposition to the majority report. The question of suspension or removal was therefore eliminated from the case and the discussion as related to the person suspended continued as a sort of post-mortem proceeding. Shortly after the resolutions of the committee

were passed, the same person who superseded the suspended and defunct officer was again nominated to succeed him by reason of the expiration of his term; and this nomination was confirmed.

At last, after stormy weather, Duskin, the suspended, and Burnett, his successor, were at rest. The earnest contention that beat about their names ceased, and no shout of triumph disturbed the supervening quiet.

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I have thus attempted, after fourteen years of absolute calm, to recount the prominent details of the strife; and I hope that interest in the subject is still sufficient to justify me in a further brief reference to some features of the dispute and certain incidents that followed it, which may aid to a better appreciation of its true character and motive.

Of the elaborate speeches made in support of the resolutions and the committee's majority report, seven dealt more or less prominently with the President's Civil Service reform professions and his pledges against the removal of officials on purely partizan grounds. It seems to have been assumed that these pledges had been violated. At any rate, without any evidence worthy of the name, charges of such violation ranged all the way from genteel insinuation to savage accusation. Senators who would have stoutly refused to vote for the spoils system broadly intimated or openly declared that if suspensions had been made con-

fessedly on partizan grounds they would have interposed no opposition. The majority seem to have especially admired and applauded the antics of one of their number, who, in intervals of lurid and indiscriminate vituperation, gleefully mingled ridicule for Civil Service reform with praise of the forbidding genius of partizan spoils. In view of these deliverances and as bearing upon their relevancy, as well as indicating their purpose, let me again suggest that the issue involved in the discussion as selected by the majority of the Committee on the Judiciary, and distinctly declared in their report, was whether, as a matter of right, or, as the report expresses it, as within "constitutional competence," either House of Congress should "have access to the official papers and documents in the various public offices of the United States, created by laws enacted by themselves." It will be readily seen that if the question was one of senatorial right, the President's Civil Service reform pledges had no honest or legitimate place in the discussion.

The debate and the adoption of the resolutions reported by the committee caused no surrender of the Executive position. Never-

theless, confirmations of those nominated in place of suspended officers soon began, and I cannot recall any further embarrassment or difficulty on that score. I ought to add, however, that in many cases, at least, these confirmations were accompanied by reports from the committee to which they had been referred, stating that the late incumbent had been suspended for "political reasons," or on account of "offensive partizanship," or for a like reason, differently expressed, and that nothing was alleged against them affecting their personal character. If the terms thus used by the committee in designating causes for suspension mean that the persons suspended were guilty of offensive partizanship or political offenses, as distinguished from personal offenses and moral or official delinquencies, I am satisfied with the statement. And here it occurs to me to suggest that if offenses and moral or official delinquencies, not partizan in their nature, had existed, they would have been subjects for official inspection and report, and such reports, being official documents, would have been submitted to the committee or to the Senate, according to custom, and would have

told their own story and excluded committee comment.

It is worth recalling, when referring to committee reports on nomination, that they belong to the executive business of the Senate, and are, therefore, among the secrets of that body. Those I have mentioned, nevertheless, were by special order made public, and published in the proceedings of the Senate in open session. This extraordinary, if not unprecedented, action, following long after the conclusion of the dispute, easily interprets its own intent, and removes all covering from a design to accomplish partizan advantage. The declaration of the resolutions that it was the duty of the Senate "to refuse its advice and consent to the proposed removal of officers" when the papers and documents relating to their supposed misconduct were withheld, was abandoned, and the irrevocable removal of such officers by confirmation of their successors was entered upon, with or without the much-desired papers and documents, and was supplemented by the publication of committee reports, from which the secrecy of the executive session had been removed, to the end that, pursuant to a fixed

determination, an unfavorable senatorial interpretation might be publicly given to the President's action in making suspensions.

I desire to call attention to one other incident connected with the occurrences already narrated. On the 14th of December, 1885,—prior to the first request or demand upon any executive department relating to suspensions, and of course before any controversy upon the subject arose,—a bill was introduced in the Senate by one of the most distinguished and able members of the majority in that body, and also a member of its Committee on the Judiciary, for the total and complete repeal of the law of 1869, which, it will be remembered, furnished the basis for the contention we have considered. This repealing bill was referred to the Senate Committee on the Judiciary, where it slumbered until the 21st of June, 1886,—nearly three months after the close of the contention,—when it was returned to the Senate with a favorable report, the chairman of the committee alone dissenting. When the bill was presented for discussion, the Senator who introduced it explained its object as follows:

This bill repeals what is left of what is called the Tenure of Office act, passed under the administration of Andrew Jackson, and as a part of the contest with that President. It leaves the law as it was from the beginning of the Government until that time, and it repeals the provision which authorizes the suspension of civil officers and requires the submission of that suspension to the Senate.

On a later day, in discussing the bill, he said, after referring to the early date of its introduction:

It did not seem to me to be quite becoming to ask the Senate to deal with this general question while the question which arose between the President and the Senate as to the interpretation and administration of the existing law was pending. I thought as a party man that I had hardly the right to interfere with the matter which was under the special charge of my honorable friend from Vermont, by challenging a debate upon the general subject from a different point of view. This question has subsided and is past, and it seems to me now proper to ask the Senate to vote upon the question whether it