MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES

TRANSMITTING

The report of the commission appointed to devise rules and regulations for the purpose of reforming the civil service.

DECEMBER 19, 1871.—Read, ordered to lie on the table and be printed. Motion to print 10,000 additional copies referred to the Committee on Printing.

To the Senate and House of Representatives:

In accordance with the act of Congress, approved March 4, 1871, I convened a commission of eminent gentlemen to devise rules and regulations for the purpose of reforming the civil service. Their labors are now complete, and I transmit herewith their report, together with the rules which they recommend for my action. These rules have been adopted, and will go into effect on the 1st day of January, 1872.

Under the law referred to, as I interpret it, the authority is already invested in the executive to enforce these regulations, with full power to abridge, alter, or amend them at his option, when changes may be deemed advisable. These views, together with the report of the commissioners, are submitted for your careful consideration as to whether further legislation may be necessary in order to carry out an effective and beneficial civil service reform.

If left to me, without further congressional action, the rules prescribed by the commission, under the reservation already mentioned, will be faithfully executed; but they are not binding, without further legislation, upon my successors.

Being desirous of bringing this subject to the attention of Congress before the approaching recess, I have not time to sufficiently examine the accompanying report to enable me to suggest definite legislative action to insure the support which may be necessary in order to give a thorough trial to a policy long needed.

I ask for all the strength which Congress can give me, to enable me to carry out the reforms in the civil service recommended by the commissioners, and adopted, to take effect, as before stated, on January 1, 1872.

The law which provides for the convening of a commission to devise rules and regulations for reforming the civil service authorizes, I think, the permanent organization of a primary board, under whose general direction all examinations of applicants for public office shall be conducted. There is no appropriation to continue such a board beyond the termination of its present labors. I therefore recommend that a proper

appropriation be made to continue the services of the present board for another year, and in view of the fact that three members of the board hold positions in the public service which precludes them from receiving extra compensation under existing laws, that they be authorized to receive a fair compensation for extra services rendered by them in the performance of this duty.

U. S. GRANT.

EXECUTIVE MANSION, *December* 19, 1871.

REPORT OF THE COMMISSION.

To the President:

The ninth section of an act of Congress approved March 3, 1871, and entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirty, eighteen hundred and seventy-two, and for other purposes," provides "that the President of the United States be, and he is hereby, authorized to prescribe such rules and regulations for the admission of persons into the civil service of the United States as will best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose the President is authorized to employ suitable persons to conduct said inquiries, to prescribe their duties, and to establish regulations for the conduct of persons who may receive appointments in the civil service."

Having been designated by you as suitable persons to conduct said inquiries, we, the undersigned, beg leave respectfully to submit the following report:

Our duties were strictly limited by the act. We were not authorized to propose laws nor to reorganize the offices, but to inquire what rules and regulations for admission to the service, which the President could enforce under existing laws, would best promote its efficiency.

The public service of the United States is divided into three branches—the civil, military, and naval. The civil service may be defined as that which is neither military nor naval, and comprises all the offices by which the civil administration is carried on.

The Constitution authorizes each House of Congress to choose its own officers. It empowers the President to nominate, and, by and with the advice and consent of the Senate, to appoint certain officers, who are mentioned by name, and all other officers whose appointments are not otherwise provided for in the Constitution, and which shall be established by law. It authorizes Congress to vest, by law, the appointment of such inferior officers as it may think proper in the President alone, in the courts of law, or in the heads of Departments. The courts of law appoint their own officers. The President alone appoints very few, and they are mainly of an honorary character. Those who are appointed by the President, by and with the advice and consent of the Senate, are in number about three thousand. The other inferior officers, about fifty thousand in number, are appointed by the heads of Departments, sometimes directly, sometimes upon the nomination of another officer.

With the exception, therefore, of some who are appointed by the President alone, and those appointed by both Houses of Congress, and by

the courts of law, and a few who are appointed by the head of the Department of Agriculture, the civil officers of the Government are included in the seven great Departments of which the heads are Cabinet officers—the Department of State, of the Treasury, of War, of the Navy, of the Interior, of the Post-Office, and of Justice.

During the early administrations appointments were made from considerations of character and fitness, and removals took place for cause. This practice, as it was the wisest and most reasonable, was also to be expected, because Washington was unanimously elected to the Presidency, and party divisions, as we know them, were developed only toward the close of his administration. He required of applicants proofs of ability, integrity, and fitness. "Beyond this," he said, "nothing with me is necessary or will be of any avail to them in my decision." John Adams made few removals, and those for cause. Jefferson said that the pressure to remove was like a torrent. But he resisted it, and declared, in his famous phrase, that "the only questions concerning a candidate shall be: Is he honest; is he capable; is he faithful to the Constitution?" Madison, Monroe, and John Quincy Adams followed him so faithfully that the Joint Congressional Committee upon Retrenchment reported, in 1868, that, having consulted all accessible means of information, they had not learned of a single removal of a subordinate officer except for cause, from the beginning of Washington's administration to the close of that of John Quincy Adams.

During all this time, however, party pressure for removals was not unknown. Under Madison's administration, Josiah Quincy, in a familiar passage, described with caustic satire the sycophancy and servility of the pressure for office that followed the death of an incumbent. When an auditorship of the Treasury became vacant under Monroe, among the applicants were five United States Senators and thirty Representatives in Congress. John Quincy Adams, who steadily resisted the pressure, said that he was "tormented" with ceaseless applications for office; and in 1828 Mr. Van Buren said that the chief justice of the proudest and largest State was a candidate for a place in the Treasury Department to which none but third-rate men would aspire. Such facts illustrate the pressure for office under a system of mere personal favor and selection, although it required fitness, and refused to make vacancies by removals in obedience to party influence. Yet there was always a hope that, as the appointing power had established no independent method of determining fitness, a strenuous party or personal pressure might affect its will. A struggle was therefore inevitable. The party pressure was already "tormenting," and as the number of offices increased and the power of patronage developed it was to be expected that it would attempt to control the whole civil service for the benefit of a party.

This practice was virtually declared as a rule of action in the year 1832. Mr. Van Buren was in that year nominated minister to England, and, in advocating his confirmation, Senator Marcy, of New York, first used the famous phrase in reference to the offices of the civil service, "To the victor belong the spoils of the enemy." From that time it has been practically the motto of the administration of every party. As its evil results have been observed, various efforts have been made to obviate them. The most strenuous and continuous of these was that with which the Hon. Thomas A. Jenckes, of Rhode Island, is conspicuously identified. The investigations and reports upon this subject of the Joint Committee of Retrenchment, in the Thirty-ninth and Fortieth Congresses, of which he was a member, obtained and recorded a mass of valuable information, which he forcibly presented in his speeches upon the floor.

But the practice had become a tradition which was not readily disturbed. No measures for a general reform were taken until the close of the Forty-first Congress, when, upon the positive recommendation of the President, the section of the act was passed under which we have been employed.

In speaking of the present condition of the civil service we criticise a system, not individuals, and a system which has been hitherto sustained by common consent. It is pleasant to express our conviction not only that there are many men of the highest character and ability in the service of the Government, but that the large majority of the persons so employed cannot justly be suspected of improper conduct. Certainly incapable officers have not been sought, and doubtless there are honest and pure men enough in all parties to fill the offices. But certainly, also, proved character and tested capacity are not essential to admission to the civil service; and when partisan sympathy or activity take precedence of ability, industry, and special fitness, as qualifications for the inferior offices of the Government, it is impossible that the service should have the efficiency and purity which economical administration requires, and which the country has a right to demand.

In obedience to this system, the whole machinery of the Government is pulled to pieces every four years. Political caucuses, primary meetings, and conventions are controlled by the promise and the expectation of patronage. Political candidates for the lowest or the highest positions are directly or indirectly pledged. The pledge is the price of the nomination, and when the election is determined pledges must be redeemed. The business of the nation, the legislation of Congress, the duties of the Departments, are all subordinated to the distribution of what is well called "the spoils." No one escapes. President, Secretaries, Senators, Representatives, are dogged, besought, and denounced on the one hand to appoint, on the other to retain, subordinates. The great officers of the Government are constrained to become mere office-brokers. Meantime they may have their own hopes, ambitions, and designs. They may strive to make their patronage secure their private aims. The spectacle is as familiar as it is painful and humiliating. We accuse no individual. We appeal only to universal and deplorable experience.

The evil results of the practice may be seen, first, in its perversion of the nature of the election itself. In a free country an election is intended to be, and of right should be, the choice of differing policies of administration by the people at the polls. It is properly the judgment of the popular intelligence upon the case which has been submitted to it during the canvass by the ablest and most eloquent advocates. But the evil system under which the country suffers tends to change the election from a choice of policies into a contest for personal advantage. It is becoming a desperate conflict to obtain all the offices, with all their lawful salaries and all their unlawful chances. The consequences are unavoidable. The moral tone of the country is debased. The national character deteriorates. No country or government can safely tolerate such a surely increasing demoralization.

The influence of this system upon those who hold office may be inferred. Officers appointed chiefly as a reward for personal and party service and not upon proof of fitness, who know that there is no certain promotion for merit, and that they hold their places only until others with more influential friends can thrust them out, can have neither pride nor hope in the fulfillment of their duties. They are deprived of the usual incentives to diligence and efficiency of men in similar but private positions. Taught by the system to regard the office as a prize, and warned

by the same system that their tenure is neither character nor fitness, they are sorely tempted to make the most of it in the shortest time, both to repay the trouble and expense of procuring it and to provide against early removal. Meanwhile, as a part of the vast scheme of patronage, an officer who is appointed solely in deference to political pressure is judged not by the manner in which he does his duty, but by the zeal with which he serves the influence that secured his place. He is poorly paid, but a tax is levied upon his salary for the expenses of the party, and, although it is called a voluntary contribution, he is made to understand that there are scores of applicants who would gladly take his place with every incumbrance, and he therefore pays from fear of possible removal. Thus it has become the practice of every party in power to seek to retain power by levying upon the money paid to the public agents for the public service.

There are honorable men who enter the service with the sincerest purpose of doing their duty. But the evil condition of the system forces them often to profess what they do not believe, and in a manner which is repugnant to them. They do not have that pride in the civil service of the country which so distinguishes the military and naval services. For how can a position so often procured without proved qualification, and so often lost without fault, appeal to the desire or the ambition of worthy men? There are modest and honest and able citizens enough who would gladly serve the country for a moderate and permanent salary, and who are the very servants the country needs; but they decline to enter upon a competition not of excellence but of influence—a competition in which actual qualification does not determine the result. The conditions of the service are such that they cannot avoid the feeling that their minds are often regarded as mortgaged, their opinions as hired. Nor is this surprising, when it is remembered that a bill was introduced into Congress a year ago forbidding the minor officers in the civil service the usual political liberty of all American citizens, to serve as delegates in political conventions or as members of political committees. It is the sharpest criticism upon the system, that it is held to unfit a citizen for the honest discharge of his political duties. And yet there is no one who is familiar with its practical operation who does not feel that there was reason in the proposition.

But the mischief does not end here. When public offices are regarded only as rewards for political service they will be constantly multiplied to supply more places. There will be incessant temporary employments, as they are called, and consequent deficiency bills and supplementary appropriation bills. Meanwhile the influence which has obtained the office, not for the public service, but as a private reward, will be slow to see inefficiency or actual dishonesty in the conduct of the incumbent. The tendency will be to disbelieve and to excuse, and to postpone inquiry; so that, under this system, not only are useless offices created, but there is the strongest temptation to conceal corruption, and every abuse and every extravagance resulting from a multiplication of such offices are constantly increasing.

It is not easy to compute in figures the exact economical difference between a good and a bad system of the civil service. It is, necessarily, a matter of inference and of comparison between the probable operation of a careless and a careful method. But it is calculated, by those who have made a careful study of all the facts, that one-fourth of the revenues of the United States are annually lost in the collection, and for a large part of that loss a system of the service which is fatally unsound may reasonably be held responsible.

But while this is the necessary influence of the present system of admission both upon the service itself and upon the character of those who are employed in it, there are evils to be considered still more serious. The appointing power is vested chiefly in the President, by and with the advice and consent of the Senate, and in the heads of Departments. It is not possible that applicants for office should be personally known to the appointing power, and it is, therefore, compelled to depend upon the representations of others, while, from the unfortunate nature of the case, such representations must be distrusted. The knowledge of the system is so universal, that no appointing authority can be supposed to be ignorant of the probable personal or political interest in the appointment of those who urge it most strenuously. There are, indeed, many honorable men active in politics whose motives are beyond suspicion, and who recommend only fit persons for appointment. But even such persons, with no ill intention, suffer themselves to be wheedled. Persons in high position do not hesitate to sign certificates without knowledge, and from mere complaisance, privately notifying the appointing power to disregard their names. Thus the appointing officer must depend upon those whom he must of necessity distrust, either because of interest or of mere carelessness, and the appointment is often made without real knowledge of the qualification of the candidate, and the public service is filled with persons appointed in a manner that no sensible man would adopt in his own private service.

But when the application is urged upon the executive department by a member of the legislative branch of the Government, the mischief becomes intolerable. It is often by the power of patronage that a Representative is chiefly known to what are called the active politicians among his constituents. He is held to be their agent and broker of offices. They have done his work and he must do theirs, and his position often depends upon his fulfillment of pledges. When, therefore, he applies to the appointing power, there is a kind of urgency which it is hard to resist. It is not a favor only that he asks; it is the means of fulfilling a bargain. The appointing power is subjected to threats and the blandishment of personal solicitation. And these are incessant and urgent, not in the degree of the fitness of the candidates, but in that of the interest of those who urge him. The place is demanded in the name of the party. Yet granting the favor is not necessarily a benefit to the party; it is often a profit to one man only and his followers.

Even if the appointing power declares that it prefers a certain person, peculiarly fitted for the place, the appointment is, nevertheless, demanded or contested as of right by the friends of other persons. If the appointing power persists, and the place is filled as it prefers, it is only after a long and annoying resistance to pressure. But should it be the head of a Department, who has some measure before Congress for which he wishes every vote that he can procure, there is a powerful temptation to yield the appointment to secure the vote. Thus the evil system increases official temptation and makes honesty difficult; and it is not surprising that a bill was recently introduced into Congress making it a penal offense for members of Congress to importune the appointing power for places.

While, therefore, the appointing power is chiefly and properly vested in the executive department because that department is responsible for executive administration, yet the practice that has arisen under the evil theory of the civil service tends to make the President and Secretaries merely the appointment clerks of Congress, from which body the Constitution carefully withholds the appointing power. One result we have just considered, but there are others. Thus it is not denied that the

chief national appointments in the several States are now really made, not by the President and the Senate, but at the pleasure of the Senators from the States in which the office is to be filled. The President may have personal knowledge of the unfitness of certain persons whose appointment is sought, but if the Senators from the State are in favor of those persons, the President must yield his knowledge to their pleasure or the offices must remain unfilled. The Senate will, indeed, naturally and properly inform itself in regard to particular candidates by the knowledge of Senators who may be supposed to know something of them. But when it governs its own action merely by the will of such Senators it makes them virtually the appointing power, and so destroys one of the fundamental safeguards of the Constitution. It is impossible that the legislature should absorb the executive function of appointment and remain pure. One of the wisest of American political writers remarked, before the Constitution was adopted, "When the legislature is corrupted the people are undone."

These are some of the serious and threatening evils of the present practice of treating the inferior posts of administration as party prizes. It exasperates party spirit and perverts the election. It tends to fill the public service with incapacity and corruption, destroying its reputation and repelling good men. It entices Congress to desert the duties to which it is especially designated by the Constitution, and tempts the executive to perilous intrigue. But the effects of so mischievous a system cannot be confined to itself. Politics cannot be made a mere trade without dangerously relaxing the moral character of the country.

The arguments by which the present pernicious practice is justified seem to us wholly unsound. It is alleged that when the people vote to change the general policy of the Government they also intend to change every subordinate officer who is to assist in carrying out that policy. But this was certainly not the theory or the practice of those who established the Government. President Jefferson, who was one of the most conspicuous party chiefs in our history, and whose election showed a radical change of political opinion, was, as we have seen, careful both to disavow the theory and to resist its consequences. Moreover, the theory springs from a false conception of a general election. Such an election is, indeed, the declaration of the popular will as to the policy of government; but the great multitude of the subordinate officers are wholly ministerial, and do not determine measures of administration, and a practice which necessarily fosters extravagance and corruption in the details of administration is one which the people cannot justly be assumed to desire.

Again: the perversion of the service to personal and party ends, with the countless and perilous abuses which attend it, seems to many persons inseparable from a popular republican government. It is boldly urged that the offices belong to the successful party, and that party service should be paid with office, because what is called the hard work of a political campaign would not be performed unless there were an understanding that the workers should be so rewarded. This is to say that patronage is indispensable to party organization. But it is a mere assertion in palliation of an evil practice. To insist that service to the successful party ought to be rewarded by office is offensive to the just American principle that, while every citizen should be ready to fulfill every political duty that may be fairly asked of him, no one has any claim to any office whatever. If the money that a man has paid during a political campaign, and the time and effort that he has devoted to the success of principles and a policy which he must be supposed to approve,

are to be considered claims upon an office, then they are the price of the office, and his relation to the office and to the contest is venal, which is the precise evil of the present practice. Within a few years a Representative was expelled from Congress because he had sold an appointment to West Point. It was but an illustration of the inevitable result of an evil system of the civil service. For if offices may properly be bartered for party service, it is not surprising that appointments should be sold for money.

But when the present system is said to be of advantage to the party it is forgotten that it is a system under which the patronage of the office is not given to a party constituency, to be bestowed as it may choose, but to certain individuals. The office becomes, therefore, the reward, not of service to a party, but to an individual. Every minor officer, who holds his place by the favor of certain influential persons, will naturally regard the interest of those persons rather than that of the country. It is for this reason that the value of patronage to a party is greatly exaggerated. The present governor general of Canada, who has had long official experience in England as a lord of the treasury, said, some years since, that he considered patronage to be a source of weakness rather than of strength to a party; and close observers in this country would doubtless agree with his opinion. It may, indeed, be useful to certain persons as a matter of traffic, but the waste and dishonesty that it breeds recoil upon the party, by bringing it into disrepute. And this is especially true now that the press in this country is becoming more and more independent of favors from the administration, and rigorously tests the Government by the standard of private conduct.

It is true that the offices belong to the people, who are the source of the Government itself, and not to those who fill them; but they belong to all the people, not to individuals. The people may and do designate which shall be filled by election and which by appointment. But when once the appointing power is vested, no individual has any right to demand its exercise in his favor unless he can show superior fitness for the duties he seeks to perform. For the country justly expects in the appointed offices the highest character and capacity for which it pays, and the appointing power is morally bound to take all practicable means that seem to it most likely to ascertain those qualifications. When it is said that to do this, and to insure to the honest and capable officer the same security of tenure that he has elsewhere, is to create a privileged class, it seems to be forgotten that those who now dispense the patronage are already a privileged class, using the promise of patronage to secure for themselves the places which they then use the patronage itself to retain.

There is, in our judgment, no justification for the present practice of appointment to the civil service, either in reason or in the character or necessities of the Government. Its evils are not denied, and the remedy is obvious. It is to substitute fitness for patronage as the ground of admission to the public service; to provide the same reasonable security of tenure which fidelity and capacity command in private positions; and to guarantee promotion to merit by insisting upon entrance to the service at the lowest grade. If these are the requirements and the assurances in the public service, and it be regulated accordingly, the utmost practicable efficiency and economy are guaranteed; honest, faithful, and competent men will be more and more attracted to it; and the ignorant and vicious will be repelled.

If, then, it be conceded that nobody should be appointed to any

position in the civil service who is not qualified by character, capacity, and intelligence to discharge its duties, it is obviously necessary to ascertain those qualifications. This can be done only by investigation, examination, and probation. It is a very common opinion, however, that examinations will be practically of no service, because the character and qualities required cannot be ascertained by investigation or tested by examination. To this kind of objection it might be enough to ask, in reply, whether they can be ascertained without investigation or tested without trial? The truth is, that the character of an applicant cannot be known without inquiry; his knowledge, without examination; or his special aptitude for duty, without probation. The sole question is, What shall be the scope and method of these inquiries?

It is constantly forgotten, by those who oppose examinations, that the alternative offered is the appointment of those who are found to be fit by examination, or of those of whose fitness the appointing power is otherwise satisfied. It is warmly asked whether a man cannot determine for himself what men he wishes for subordinates better than any examining board. Now, nobody will deny that some kind of qualification is necessary to the various positions in the civil service. Many of them may, indeed, demand a very limited education, an intelligence which is almost to be presumed in every applicant. But even here there are differences. If only mechanical copying is required of a clerk, that one of the applicants who, other things being equal, writes the most legible hand with the most ease, accuracy, and dispatch, should certainly be preferred; and that superiority can be ascertained only by a competing examination. There is no great appointing officer in the country whose acquaintance would enable him to fill the offices at his disposal with those whom he personally knows to be competent. The real question, therefore, is, Can this competence be more nearly ascertained by direct examination of the candidates or by the certificates of interested and virtually irresponsible persons?

If, by examination for admission to the civil service, nothing were understood but a test of mere literary proficiency, it might be reasonably opposed as unsatisfactory. For it is unquestionable that a man might be an excellent appraiser of linen and yet know nothing of history or of accounts. But, on the other hand, it is equally undeniable that an excellent appraiser of linen is not the less excellent because of general intelligence. Of two good accountants, the one who has the most general knowledge is certainly preferable; and a country which declares that, where technical skill is equal, it will select the candidate for its service who is the better educated, is a country which directly and practically encourages intelligence and morality. It is true that very distinguished men in the public service might not have passed a certain literary examination which is now required of younger men entering the same service. But it is equally true that the older men could have passed the examination had it in their case been required. And the proof is, the capacity of which their present distinction is the evidence.

It is suggested, also, that a system of examinations would end in filling the civil service exclusively with young men fresh from the academies and the colleges, or with persons who have failed or "broken down" in some of the learned professions. This, again, arises from a total misconception of the nature of a proper examination. If the post to be filled were, for instance, that of the keeper of a light-house, the examination would naturally have chief reference to the duties of such a position, to habits of regularity, in many cases to familiarity with the sea, to general faculty or "shiftiness," indispensable in such a post; indeed, to qualifi-

cations which cannot be presumed in the fresh graduate of the academy or the college, or in those who have failed in all other pursuits. So, if it were a position requiring technical knowledge, or one demanding moral qualities in a high degree, or practical familiarity with men and affairs, the literary examination might be excellent, but the special examination and the probation would possibly, in the cases mentioned, not be satisfactory.

Yet, on the other hand, a system which, by requiring impartial examinations in general and special knowledge, should tempt young men fresh from their studies, and with all the spirit of youth, to fill the positions in the public service for which they were qualified, would be a great public benefit. It would be the declaration that, as the country provides means of instruction freely for all, and rests its hopes of increasing greatness and glory upon the intelligence of its citizens, an honorable position in its civil service should be the reward of fidelity and zeal in study both in the common school and in the academy. It is true that it is not the purpose of a civil service to educate the citizen, and that the duties of those who hold its offices are not those of a school. But the relation between ignorance and vice is so close and familiar, that the wisdom and economy of a policy which, by encouraging education, raises the character and promotes the efficiency of the public service, cannot be denied.

It is sometimes thought, also, that men of the best character and fitness would object to be examined for entrance into the service. There may be individuals who would feel this reluctance, but when once it was the universal condition of admission their objections would disappear. When freed from associations which are wholly foreign to it, when the positions cease to be party rewards, employment in the civil service would be no less honorable in its degree than that in any other, and it would be entered as willingly upon the same terms.

Again: a system of the service founded upon fitness, to be ascertained by inquiry, disturbs, of course, many traditions. There are certain offices of very large emolument, the proper duties of which require great technical knowledge as well as high character and vigorous administrative will. These offices have become almost exclusively partisan agencies, in which the incumbent is expected, in the popular phrase, to "run the party," while some subordinate actually discharges the proper duty of the office. A system which should bestow such an office when it becomes vacant upon the subordinate, if he were fitted for it, would be indeed a strange innovation upon the present practice, but it would be only reasonable, economical, and patriotic. There could be no valid objection to it, unless it could be shown that the office was in its nature properly political and not merely ministerial.

But to promote the efficiency of the civil service it is not enough to ascertain fitness by examination, and to test aptitude by probation, unless there should also be provided a reasonable security of tenure of the office. This is so clearly seen by those who have reflected most carefully upon the subject that many of them are unable to perceive any remedy of the present evil, except in the provision of a fixed tenure for a term of years, and removal only for cause proved. It is undeniable, however, that such fixity of tenure tends to great perplexity and inconvenience in administration, and that the responsible head of a branch of the public service may justly complain if he has no immediate control of his subordinates. If it were necessary to establish unfitness or indolence, for instance, by such proof as would be accepted in a court of law, sentence would seldom be pronounced, even against notorious

delinquents. Moreover, the details of official conduct which most perplex a smooth and satisfactory administration are always obvious to the competent and responsible chief, but are not always, or indeed often, of a kind to be proved in a court. A discretion of removal in such cases, if so guarded in its exercise that it is not liable to be abused, is most desirable in every office. It is that which secures the efficiency of private business, where the chief has an unrestricted power of removal, which is not abused, because he desires only effective service, and has no irrelevant reason to discard a faithful servant. It is true that the head of a public office has not the same kind of interest in it that a private proprietor has in his own business. But he is held responsible for an efficient and rigorous discharge of duties which are done by subordinates; and if he has no inducement to remove those subordinates except such as would cause their removal from private employment, they have the same tenure which every honest and faithful agent everywhere enjoys.

At present both selection and removal are largely determined, not by the welfare of the service, but by political stress and exigency. Theoretically, the head of the Department appoints; actually, this is true only with great limitations. The power of appointment properly implies knowledge and discretion. But it has become merely approval of selections, which are made by others who are charged with no responsibility for the officers whom they designate. Indeed, it may be said that, except in certain positions where capacity and permanence are absolutely indispensable to the transaction of the daily business of the Government, there is no tenure whatever except personal influence.

We do not forget that, under the act of 1853, there are examinations held in some of the public offices in Washington, and sometimes elsewhere, for admission into the service, and we know that some of these examinations are thorough and impartial. But they are examinations of those only whom party influence has designated. This is substantially the method that was pursued in England after the order in council of May 21, 1855, the first order under the reform system, and which has been abandoned in favor of the more satisfactory results to the service of an open competitive examination. Examinations after nomination are exposed constantly to the malign pressure of an evil system. Indeed, where they exist they are merely tolerated, not approved, by that system, because, so far as they are really efficient, they tend to defeat the objects which the present system seeks, namely, the satisfaction not of general but of particular party considerations. Nor while the system continues can the results of such examinations be any guaranty of tenure. The difficulty is not in the examination, but in the coercion to nominate for examination, by dismissal of an incumbent to make a place for him who passes. Thus it is impossible that, under the present system, however apparently guarded, there should be any security of tenure, without which no real improvement can be expected. While, therefore, it cannot be fairly asked that the public officer should have any other security of his place than that which fidelity, industry, and efficiency would guarantee to him in a private situation, yet so much may justly be demanded and should be assured. For, whatever the disadvantages of an arbitrarily fixed tenure may be, they are certainly less than those of the present system of cruel uncertainty and causeless removal.

Notoriously, however, the pressure for appointment is not generally directed against an incumbent because of personal hostility, or of any knowledge of misconduct. It does not wish to put one man out, but it

does wish to put another man in. Yet one cannot come in unless the other goes out, and therefore honest and faithful men are constantly dismissed to make room for others no more honest or faithful, and of less experience, but who can command more powerful political support.

Nothing could be more fatal to a sound service. Yet it is not unreasonable that, under a system founded upon party patronage, such practices should prevail. After Mr. Marcy had said that "to the victor belong the spoils of the enemy," he remarked, "but I never said that the victor should plunder his own camp." Yet that was the logic of his principle. The hardest fighter should have the most spoils. There is no logic in equal division between him who merely wishes well to the cause and him who fights the battle. If influence is to appoint, the less influence must yield to the greater; and when a man has not been appointed by reason of his fitness, he must not ask that he be retained on account of his merit. The doctrine of rotation in office implies that merit should not be considered. It treats the public service as a huge soup-house, in which needy citizens are to take turns at the table, and they must not grumble when they are told to move on. Plainly, if this political pressure for the appointment of a particular person could be baffled the present uncertainty of tenure would be corrected. The head of a department who should fill the various offices under him, not with favorites of certain men, but with those who are found to be qualified, would then have none but legitimate reasons for the removal of any faithful and efficient officer. Conspiracy and slander against any individual would then have no especial inducement or opportunity, and capacity, character, and efficiency would secure the same tenure as in all other spheres of duty.

It seems to us, therefore, more desirable to afford this reasonable security of permanence in office, by depriving the head of illegitimate motives for removal rather than by providing a fixed tenure, to be disturbed only upon conviction, after formal accusation and trial. There is, indeed, no reason for such a tenure, unless it can be shown from the nature of the system that the power of removal is likely to be abused.

Admission to the higher grades of employment in the civil service by promotion is another cardinal condition of a sound system. When it is understood that good character and superior fitness procure entrance to office, and that the tenure is dependent upon conduct, and that conduct and ability determine promotion, the desire of entering a service which thus offers a career to honorable ambition will naturally be felt by many who command no political influence, and who do not care to enter now. At present all the advantages of promotion in stimulating zeal and fidelity are lost because there is practically no system of promotion. The most industrious and competent officers constantly see others, inexperienced and often incompetent, suddenly brought into the service from the outside and placed above them. It is disheartening to the officer and dangerous to the service, because, however bad the present practice may be, and however illogical under that practice to expect merit to be regarded, yet the simple fact that there is and can be but one true principle of a good service will constantly assert itself in the mind of the incumbent. The prospect of promotion by merit, upon the other hand, will quietly animate every officer to such discharge of his duty that there will be a constant competition of excellence.

Promotion by mere seniority would have no tendency to improve the service, because it is then a question of time merely, and is entirely beyond the will of the officer. He waits patiently for the death, or resignation, or removal of the man before him, sure that, except for

flagrant misconduct, he will succeed to his place. Official duty becomes a routine, and men will by seniority often be found in the higher places who are only fitted for the lower.

It is true that it is hard for a man who has grown gray in a lower post to see younger men newly entered and advancing by proved fitness beyond him. But his experience will always have necessary weight in any examination; and if that experience fails to qualify him for the higher post, although his age and long service may justly entitle him to support, they should not be held to entitle him to a position for which others are more qualified.

Carrying the same principle further, and seeking to obtain all the advantage which promotion by merit offers, it seems to us desirable to open every vacancy in the higher grades of offices to the free competition of applicants from all the lower grades of the same offices. Promotion, indeed, is often thought to be limited to an advance from one step to the next higher. But if promotion by mere seniority be abandoned; if it be understood that any one who is properly qualified to enter at the lowest point may, whenever the vacancy occurs, compete for the highest, not only is the best fitness secured for the highest point, but better men are attracted to enter at the lowest. Should it be objected that if fitness be required in the higher post the competition should be opened to everybody in or out of the service, we reply that the object is not only fitness in the highest post, but fitness everywhere, and that this would be more surely obtained by offering the first chance of promotion to all those who are in the line, and, should none be found fitted, then to all who may apply.

If the view that we have presented be correct, that the evils of the civil service arise chiefly from the system of appointment upon political, partisan considerations, and that they would be greatly remedied by making qualification alone the condition of appointment, it remains to consider whether the rules that we have the honor herewith to submit provide for the exclusion of political influence and may fairly be expected to produce a real reform. Those rules provide for the competitive examination of all applicants, for the appointment of those found to be best qualified, for entrance at the lowest grade of offices in which grading is practicable, for probation, and for promotion.

As we believe that the country is entitled to the services of any honest and able man who may wish to serve it, we propose that every person who, after due public notice, shall present himself at the time and place designated for the purpose, shall be examined; but he must have satisfactorily proved that he is of good character, of suitable age, and in sound health. He must also be a citizen of the United States, and be able satisfactorily to speak, read, and write the English language. Yet from the last two conditions two classes of persons are necessarily excepted. Upon the Pacific coast there must be employed in the post-office Chinese natives who are familiar with their own language and not with ours, and who, under our laws, cannot be naturalized. They are indispensable to the proper service of the Department, and they are, therefore, excepted from the rule of citizenship and of knowledge of the English language; and in all similar cases the exception must be made. So, also, in the consular service, there are many officers, such as consular agents, and sometimes consuls, at points where either the emolument is too insignificant to be desired by any properly qualified American citizen, or where there is no emolument whatever, the only advantage of the office to the incumbent being that of the American protection, which is often of very great value to a native.

If it be thought that if the examination be opened to everybody there will be an inconvenient throng of applicants, it is to be remembered, in the first place, that in no other way can the chance be made equal to all qualified persons; in the second, that the fact of any honest examination whatever will repel multitudes of those who are consciously unqualified; and, in the third, that the knowledge that the examination is to be competitive will reduce the applicants to a practicable number.

If it be further objected that, to open the opportunity to all qualified applicants, is to give the late enemy of the Government the same chance to serve it with the citizen who offered his life in its defense, the reply is, that it would be a fatally unwise policy to perpetuate proscription in a reformed civil service. Such a policy would stimulate slander and reward falsehood. It would incite every disappointed applicant and his friends to charge a successful rival with continued hostility to the Government, and the civil service would become the hot-bed of passions, which patriotism and wisdom equally seek to allay. To insist upon such a proscription would be to exclude peremptorily all of the citizens in one part of the country from any position in the civil service.

There might be those who would insist that everybody who sympathized with the attempted dissolution of the Union is as morally guilty as those who advised and directed the effort; there might be others who would assert that a certain political party did virtually so sympathize, and that therefore every one who could be proved to support or adhere to that party is an enemy of the Government, and must be excluded from the public service. This is merely, therefore, another way of reaching the old conclusion, that to the victor belong the spoils. It is the reassertion of the very principle which has demoralized the service, advanced as an argument for the continuance of the demoralization. To assert that there are capable persons enough for the offices among those who have always maintained the authority of the Government is to beg the question, unless it can be shown that all who resisted its authority or who sympathized with the resistance are still hostile, or that those who resisted should be punished by exclusion from the confidence of the Government—a policy which the country has wisely rejected. Yet, lest it should be supposed that the peril of the possible occupation of such positions by those who are actually unfriendly to the Government has been disregarded, it will be seen that such a peril is obviated by the regulations in two ways: first, these regulations contemplate only the filling of vacancies as they occur, and, therefore, unless those who are considered to be unfriendly to the Government were in all cases proved to be the fittest for the position, which cannot be supposed, a dangerous increase of their number is not to be expected; and second, as all appointments are to be made from a small class of the most fitted, it is within the absolute discretion of the appointing officer to be influenced by his own convictions on the subject.

The purpose of the examination is to ascertain the fitness of the applicant for the position that he seeks. But a mere pass or standard examination—that is, an examiuation which requires of an applicant only the ability to pass an easy line, and to become one of many from whom the appointment is to be made—is an examination which constantly tends, under the pressure of patronage, to become a mere form, such as many that are now held in custom-houses and elsewhere. If, however, the applicant knows that he must not only pass the line, but pass it so as to be ranked among the two or three highest of his associates, proficiency alone will determine the result. The most powerful patronage cannot make its candidate really quicker or more intelligent than competitors

who may present themselves with no patronage whatever. Its only hope, then, is to corrupt the examiners to permit collusion; and the possibility of collusion is to be obviated by the details of method of examination and certificate. The honest competitive examination is the only fundamental security against the power of mere patronage, because, without regard to irrelevant influences, it selects not those who are most strongly urged, but those who are most fully qualified.

A competitive examination, indeed, rigidly enforced, results in the selection of one candidate only for appointment. But this question early presented itself: If Congress should create a board of examiners wholly independent of the appointing power, with authority to designate a single person as entitled to appointment, would not the board of examiners, a body wholly unknown to the Constitution, be virtually the appointing power? This point was submitted to the Attorney General of the United States, who, in the opinion appended to this report, held that the appointing power mentioned in the Constitution necessarily implies the exercise of judgment and will, and that while Congress, in creating offices, could also prescribe the conditions upon which they should be filled, yet that the conditions must be so prescribed as still to leave scope for the exercise of the judgment and will of the appointing power; and that as the imperative designation of one person by the board in question destroyed that discretion, it is not within the constitutional power of Congress to authorize it; although the appointing power itself is entirely free to adopt such a method at its pleasure. Nor could there be any doubt of the right of Congress to provide for the presentation of a class from whom the appointments should be made, because, within a class or a certain number of persons, there is still room for the exercise of judgment and will.

To evade this objection, it has been suggested that, as the heads of Departments are but the agents and advisers of the President, and virtually removable at his pleasure, he could require their assent to the designation of a single person by a board of examiners. But as the heads of Departments are officers created by law, and as the Constitution has authorized Congress to vest in them, at its pleasure, the appointment of certain inferior officers, they have, during that pleasure, a constitutional authority which the President cannot rightfully supersede by regulation. He might, indeed, recommend a certain method of exercising that authority, and the recommendation of a President to his Cabinet would be doubtless very effective. If he declared that he proposed to exercise his appointing power in a certain way, it is not impossible that the Cabinet would see great advantages to the public service in that method, and conform to it in the various Departments. The President might, indeed, go further. He might declare a certain method of appointment to be the policy of his administration, and require the heads of Departments to conform; and without approval of the method, but to retain their positions, they might choose to conform. But that would be the deliberate sacrifice of one of the constitutional rights of their offices in order to retain the exercise of the rest. The Constitution has given Congress authority, if it thinks fit, to vest the appointment of all inferior officers mentioned in the President alone. But so long as it prefers to vest the appointment of many of them in the heads of Departments, the President cannot properly paralyze that power by intimidation.

We have, therefore, preferred to avoid all questions whatever by providing that the three names standing highest upon the list of excellence in the examination shall be presented to the appointing power, and that

from the three the selection of one shall be made for appointment. This reserves the exercise of the judgment and will within all constitutional limits. The open competitive examination will have selected only the three who are most fitted, not who are most pressed; but the consideration which will determine the final choice among the three is left absolutely to the appointing power. If, in the desire to baffle political pressure, it were provided that discretion in appointment from the three should not be controlled by partisan considerations, not only would it be impossible to determine whether it was so controlled or not, but, under the opinion of the Attorney General, the restriction would justly be considered an unconstitutional constraint of the appointing power. If one condition could be imposed, so could another, until the choice might be restricted to one person. In the method that we provide to baffle political pressure, we do the utmost that the Constitution allows, and reduce that pressure to its lowest point.

It is interesting to know that, after we had decided upon this method of selection, not only as unquestionably constitutional, but as preferable to the designation of a single candidate, we heard from the British civil service commission, with which we had been in correspondence, and to which we had forwarded the opinion of the Attorney General, that the same question had been considered by them. In the English system it is provided that when the required number of candidates has been selected by open competition they shall have the right of selecting, in their order, the appointments which they are to have. It is now, however, suggested that the head of a Department in which there are vacancies shall fill them from qualified persons, and that to secure a reasonable number to choose from there should be more candidates presented than there are vacancies. It appears probable that this method, which is precisely the one we have adopted, will also be approved in England.

It will be observed, also, that we treat vacancies as single and successive. If we did otherwise, it would result that, as a class of three is to be presented for each appointment, there must be, for five vacancies at the same time, five classes of three persons each, making fifteen in all; and supposing the selection to be made of the first in each three, the five appointed would not be the first at the head of the list, but the first, fourth, seventh, tenth, and thirteenth. But if we treat the appointment to be made to each vacancy as successive, although practically simultaneous, the result would be that the first three names would be offered for the first appointment, the second, third, and fourth for the second; the third, fourth, and fifth for the third, and so on; so that the five vacancies would be filled from the first seven applicants who were found qualified, yet in such a way that the first five would probably receive the appointment.

But, still further to limit and baffle insidious political influence, we propose not only that the appointment shall be made from the few who are proved to be best qualified, but that it shall be made to the lowest grade of any graded group of positions. The prizes for which there is the strongest pressure are often the higher positions in the various Departments. But if a vacancy occurs among those, we propose, for the reasons already mentioned, that the first chance of the appointment shall be given to those who are already within the group; and if none are found qualified, that it shall then be filled by the same competitive method as the positions in the lowest grade. Here again patronage would be baffled. For usually some person, already experienced in the office, would prove to be amply qualified for the promotion; while, if

it were not so, the candidate of patronage would be subjected to the competitive test which only his superior fitness would satisfy.

A competitive examination in general and special knowledge, however, although it would show certain attainments which are indispensable to the proper discharge of certain duties, would not necessarily prove the faculty of skillfully adapting that knowledge to the public service. It is a common remark, that a man could answer all the book questions, as they are called, and yet prove to be an inefficient officer, while one who knew nothing of books might be very serviceable. This may sometimes be true; but there are intelligent persons enough who have also the necessary swift, accurate, and thorough business aptitude. In a general examination this can be little more than inferred; nothing but practice tests this kind of efficiency, and we therefore provide that when an applicant has satisfied all other examinations, his skill in applying his knowledge to the duties of the office shall be proved by a practice of six months, and that he shall be finally appointed only when he has satisfied this test. Probation, indeed, is nothing but the test of those essential qualities of an officer which it is often asserted cannot be ascertained by examination.

There are, however, many officers who must necessarily be excepted from such a rule. Those who are appointed by the President, by and with the advice and consent of the Senate, are not, after their confirmation by the Senate, removable but by its consent. The rules that the President might adopt to determine the nomination could not bind the Senate, and such cases must, therefore, be excepted. Neither could a system of probation be practicably applied to consuls appointed at foreign ports; and all officers in the foreign service are, therefore, excepted. So with postmasters, a very large number of whom hold their positions rather as a convenience to the public than as an advantage to themselves. They are separate and independent, often solitary officers. There can be no test of their service except the correctness of their accounts with the General Post-Office, and the satisfaction of those who are served by them. The discharge of the duty must, therefore, be the probation, and if that is unsatisfactory the appointment must be revoked.

If it be asked why this principle is not made universal, the reply is, that wherever a stipulated probation is practicable it not only stimulates the incumbent to a more intelligent and efficient discharge of duty, but that it makes his dismissal sure if the results of trial are unsatisfactory. It is a very much easier and simpler process that an unsatisfactory officer should drop from the pay-roll at the end of a certain time, without positive action of the appointing power, than that he should be discharged only by a direct order of removal. The candidate upon probation knows that his permanent appointment depends upon himself alone. Any unconditional appointment would of itself be a certificate of fitness. But the probation is part of the examination which determines whether the certificate shall be issued. Should the examination by probation be unsatisfactory, the candidate could no more reasonably insist upon appointment than after failure at any other stage of the examination.

While, however, we provide that the general rule of appointment shall be that of satisfactory examination and probation, and entrance at the lowest grade of any group of officers, there must be a modification for a class of officers, such as cashiers of collectors of customs, of assistant treasurers, of postmasters, and others, who deal with large sums of money, and for whose fidelity other officers are responsible. Such officers would very naturally decline to assume that responsibility except upon

their own personal satisfaction. A person might be found entirely competent for any of the positions mentioned, and his testimonials of character might seem to be unquestionable, but unless he were satisfactory to the officer who is to be held pecuniarily responsible for his conduct he ought not to be appointed. We therefore provide that in such cases the appointment of those who are found in the prescribed manner to be qualified shall depend upon the approval of the responsible officer.

From the general system of examinations also, we have excepted postmasters whose annual salary is less than $200. The number of postmasters in the United States is about thirty thousand. The annual salary emolument of more than half of these is less than $50. There are twenty-two thousand who receive less than $100, and there is usually little competition for positions which are less than $200 in annual value. Very many of the small offices are held, as we have already stated, for public convenience, and often at the request of the Department. In such offices there are constant daily resignations and changes. They are often situated at points where there is no other house than the shop or office of the postmaster. Indeed, in such cases there is no choice of any kind for the Government. Where there is no competition, and where the office is not desired, there can, of course, be no competitive examination, and the general rule must therefore be relaxed.

The point at which the rule should be applied is evidently that at which the mischief begins, which the rule seeks to remedy; that is to say, the point at which the strife of patronage appears. Personal preferences, upon various grounds, cannot, indeed, be avoided. But in places where the office is of small pecuniary value its position must be determined by such considerations as convenience to the neighborhood, and these are not of a kind to be properly settled by the prescribed examination. But as it is desirable that, in the case of every officer in the civil service, there shall be upon record evidence of his fitness, in cases such as those of the smaller post-offices, where the general regulation is inapplicable, we propose that the evidence shall consist of the written request of the applicants, with such evidence of character or reference to witnesses as shall satisfy the Postmaster General. The practical result will often be that, for the smaller offices, for which there is usually no competition, the Postmaster General will depend very much upon the statements of the Representative in Congress from the district in which the office is situated. But in the cases mentioned the Representative is not likely to be influenced by any other consideration than that of the convenience of all his constituents in the neighborhood of the office. If there be no competition for the office, there is no dangerous power of patronage in filling it as we propose.

It has often been suggested that the postmasters should be elected. We have no authority to propose such a change, even if we approved it. But it is a point which has been presented to us in the consideration of the general subject, and there seem to be two serious objections: The first is, that party divisions and organizations are so universal in this country that party spirit, rather than local convenience, would be very likely to decide such a contest; and the second is, that the limits of a post-office constituency are so vaguely defined that it would be difficult to determine who might rightfully vote upon the question. Upon the whole, appointment made upon the recommendation of those who could have no personal motive so powerful as the public convenience, and upon approved evidence of proper character and capacity, seems, in the case of post-offices for which there is little or no competition, to be the preferable method.

Our next inquiry is the independence of the examining board. Can that be protected? All the safeguards of methods of examination are in vain unless the examiners are, so far as practicable, removed from political coercion. The section of the act of Congress under which we are employed, by authorizing the President to make rules and regulations for admission to the civil service and for the conduct of officers, has thrown upon him the responsibility. Congress has not asked or implied that further legislation should be sought by the President, nor are we empowered or requested to submit to it the draught of an act. The question for us to consider is, what the President can do under existing laws.

We propose, therefore, that under the section of the act already quoted, he shall employ suitable persons to act as an advisory board, which shall regulate and supervise all the examinations mentioned; and that he shall further designate three persons in each Department as a board of examiners, who shall conduct the examinations personally, or by persons approved by the advisory board, and under its immediate supervision. The advisory board, which would be in fact the civil service board, would be as independent as any board, however appointed, could be, and would be constantly in communication with the examiners, and thus informed of their efficiency and fidelity. The examiners would undoubtedly be exposed to solicitation and influence, as all persons in similar positions are. But there is no reason to suppose that they would yield to it more readily than others; for if it be thought that they would be coerced by the threat of influence to procure their own removal, yet, on the other hand, to yield would be to subject themselves to instant removal by the recommendation of the advisory board.

It might be supposed that the examiners would be more independent of improper influences if they were selected from persons not in the public service. Nor are we disposed to deny that this might be an additional security. But our desire is to act within existing laws, and without multiplication of offices. If a system of independent examiners were proposed, it is evident that, with due regard to the character of the civil service, and to the great extent of the country, there must be a large number of them, and that special appropriations must be asked for their maintenance. But the cause of reform of the civil service would be most seriously prejudiced in the public mind by a proposition to begin with an increase of the offices, however urgently it were pleaded that it was but for the purpose of making all offices more efficient, and to save money to the Treasury. And if the beginning of the reform should be delayed until Congress had decided that it was advisable to multiply offices for this purpose, it would certainly be held to be an intentional postponement of reform. Those who earnestly desire it, but who doubt any serious intention of effecting it, would feel their suspicions to be confirmed, and would justly hold the President responsible for not promptly attempting the reform under the authority already conferred, and with the resources at his command.

It may be fairly assumed that Congress, which, recognizing the necessity of reform in the civil service, at its last session authorized the President to prescribe rules and regulations to promote its efficiency, and which made an appropriation for him to begin the work; having further shown its interest at the opening of the present session by the introduction of bills in both Houses and by the appointment of a committee upon the subject, would not hesitate to aid him in continuing the work, so long as it involved no increase of the offices or until it had itself provided by law for promoting greater efficiency in the service. We are

unwilling to imperil so necessary and vital a reform by suggestions involving indefinite delay. But meanwhile the advisory board retain, under the President, control of the whole subject. If the method provided for examination, or any other provision of the rules, should be found upon trial to be inconvenient or abortive, the board would recommend to the President any method or amendment which experience may show to be preferable to those originally provided.

A reform of the civil service which contemplates its restoration to higher consideration than it now enjoys will undoubtedly attract to it many who will devote to it the strength of their lives. There seems to be no good reason why those who will thus have performed services not less essential to the general welfare than those of the Army or Navy, should not be honored by the same recognition, and allowed to retire upon pensions graduated by the term and kind of service. There are many civil positions in which special knowledge, skill, fidelity, and experience are as essential as in the military and naval branches of the service. This is recognized in other countries where the civil service is made a career or profession. Those who, after a long and faithful discharge of duty, are incapacitated from further activity, are held to have deserved well of the state, which does not leave them to die deserted.

Provision for pensions in this country, however, even if it were thought desirable, could be made only by law, not by regulation, and it is, therefore, a subject not within our discretion. But it has been forced upon us by observation. There are some—not many—faithful servants of the country, who see with increasing years a decreasing chance of provision for their powerless old age. They have not been able to save from their salaries; and as they become infirm, no head of a Department could remove them without a sense of cruelty which no generous man would endure. With the improvement of the system and the greater permanence of tenure this class of persons will probably increase. Some now procure appointments for a temporary purpose; but as the service becomes more of a career its shifting character will be somewhat changed. We propose, therefore, that those who, after long and faithful service, shall be incapacitated by mental or bodily infirmity for the discharge of their duties, may, at the discretion of the head of the Department, be appointed to some position of less responsibility, in which they may still be of service.

The prohibition which we recommend of political assessments upon the minor officers of the Government, requires no explanation or advocacy. In many cases it is, without the knowledge of the appointing power, the price of the office; in every case it is an intolerable abuse. Yet it is the natural growth of the evil system. If the position be given as a reward of party service, performed either by the person appointed or by him who asks the appointment, it is only logical that the spirit of the same bargain should continue. When party supremacy is the first object of the service, every servant must conform to its impositions or retire without complaint. If he is taught that he could not have obtained his place except for the success of his party, and that that success is his tenure, he will not deny the justice of requiring him to pay a tax to keep the party successful. But, under such a system, an officer who will pay an assessment of six per cent. on his salary is more serviceable to the party than he who will pay only three. Moreover, the tax is proportioned not only to the nominal salary, but to the supposed receipts of the office, and is thus a direct incentive to unlawful emoluments. Those who pay heavy party taxes out of small salaries are

tempted to make up the loss by dishonest gains. Many will pay to command the chances of such gains. Indeed, it is upon this very disposition that dishonest politicians count to secure the activity of those who are taxed.

But we do not believe that the country wishes to see the active management of politics in the hands of those who have a personal pecuniary interest in certain results. We have no wish to suggest that those who are in the civil service should not take such interest in politics as their feelings may dictate, but we propose that it shall be upon equal terms with all other citizens. They may be members of political clubs and associations, and pay as they will the taxes which they themselves assess. But all honest men are interested in prohibiting premiums upon dishonesty in politics. And although, in the system that we propose, which contemplates fitness, and not political opinion, as the condition of admission to the service, this kind of political taxation will naturally disappear, yet an imperative rule forbidding at once this injurious practice will be both an earnest of the spirit of the reformed system and in itself an immediate and inspiring reform.

It will be observed that no express provision is made in the rules for the examination of persons who are already in the service. But this has seemed to us unnecessary. It will be wholly within the discretion of the appointing power to require any person now in the service to be examined, should there be any reason to doubt his competency. Yet, for considerations already stated, we have not intended to prescribe a method of removal; for as the rules seek to destroy all illegitimate motives for its exercise, the power of removal, which in our judgment is essential to the highest efficiency of the service, is left untouched.

The officers who are exempted from the general provisions of the rules are certain high officers of state, who are properly political, as distinguished from merely administrative officers—professional officers, whose careers are a constant examination, and who have already passed actual technical examinations in their professions; certain officers of a peculiar responsibility, and boards of visitors and examiners, whose positions are honorary, or whose emoluments are nominal. A general election, as we have already remarked, is the declaration of the popular will upon the general policy of government. The people select as candidates those who are satisfactory representatives of the differing policies, and the successful candidate properly surrounds himself in his Cabinet with heads of Departments who sympathize with the policy he represents, and who will assist him in its development. It may be difficult to determine precisely the limits of the offices which in this sense may be called political. But we do not think that we have extended those limits beyond general approval, or so far as to impair the efficiency of the system that we propose.

In submitting these suggestions with the rules which we have framed we feel that it is not so much we who do it as the intelligent public opinion of the country. There has long been a profound conviction that the system of appointments to the civil service upon political considerations only is one which reason and experience equally show to be fatal to economy of administration and to republican institutions. "All I claim upon the subject of your resources," said Edmund Burke, a century ago, pleading for reform in England, "is this, that they are not likely to be increased by wasting them." But our system of the civil service courts waste. It violates the fundamental principles of thrift and economy; it fosters personal and political corruption; it paralyzes legislative honor and vigilance; it weakens and degrades official con-

duct; it tempts dangerous ambition; and, by poisoning the springs of moral action, it vitiates the character of the people and endangers the national prosperity and permanence.

We would not exaggerate the importance of the peril; but the constant exposure of official dishonesty, the vast system of political corruption, the disclosure of which has produced a peaceful revolution in the city of New York, should suggest to every good citizen the possibility of a similar revolution which might not be peaceful. If, by that great and organized corruption, it had been possible—and such a contingency is not improbable—to decide a presidential election, and in a manner universally believed to be fraudulent, the consequences would probably have been civil war. If such corruption is not stayed, the result is only postponed; and nothing so surely fosters it as the system which makes the civil service a party prize, and convulses the country every four years with a desperate strife for office.

We do not, indeed, suppose that the adoption of any rules, however skillfully framed, would at once remedy the evils in the civil service which are universally acknowledged: and experience will doubtless show how every method of reform may be improved. But those evils will certainly not be remedied without an effort. Those who are content to demand civil service reform, but who oppose every practical attempt to promote it, must be suspected of having little real hostility to the system which they decry. Fortunately, however, public attention was never more resolutely turned to the subject, and there was never a more favorable moment to begin the reform. The party issues of the last few years are gradually disappearing. The perilous questions of fundamental policy have been determined, and the paramount interests of the country are now those of the administration. Honesty and efficiency of administration of the settled national policy will now be the chief demand of every party. But nowhere can that purpose be shown so plainly as in the reformation of the civil service so as to secure integrity, efficiency, and economy.

A similar reform has been made elsewhere, and has succeeded. In a speech delivered at Greenwich, in England, on the 28th of October of this year, the prime minister, Mr. Gladstone, in reviewing the results of his administration, said: "It has been our happy lot, in almost every department of the State—I believe there are but two exceptions—to give up that which has always been considered the special patronage and the highly prized patronage of a government, namely, the appointment of clerks to the civil offices of the country. We have abandoned that power; we have thrown every one of them open to public competition. The transition is now nearly complete, and, with regard to the future, I can say that, as to the clerkships in my own office—the office of the treasury—every one of you have just as much power over their disposal as I have." And at the close of the same speech, recurring to the subject, Mr. Gladstone said: "And in order that the public service might be, indeed, the public service; in order that we might not have among the civil officers of the State that which we had complained of in the army, namely, that the service was not the property of the nation, but of the officers, we have now been enabled to remove the barriers of nomination, patronage, jobbing, favoritism in whatever form; and every man belonging to the people of England, if he so pleases to fit his children for the position of competing for places in the public service, may do it entirely irrespective of the question, what is his condition in life, or the amount of means with which he may happen to be or not to be blessed."

We propose also that in this country the places in the public service

shall be restored to those who are found to be fitted for them; and if any one is disposed to think that an abuse of forty years is a law of the republican system, a little reflection will show him his error. If he believes a reform to be impossible, he merely shows that he is the victim of the abuse, and forgets that in America every reform is possible.

The enforcement of the rules that we submit for approval depends, of course, upon the pleasure of the President. Yet, should they receive the sanction of Congress in the form of law, their enforcement would become, until repealed, not only the pleasure, but the duty of the President. That sanction, whether to the rules now submitted, or to any scheme which shall more surely promote the purity and efficiency of the civil service, the country most earnestly desires. If that sanction should be delayed, the rules adopted for his action by the President could not bind his successor. But unless we are wholly mistaken, the reform would so vindicate itself to the good sense of the country that the people themselves would reject any party and any candidate that proposed to relapse into the present practice. The improvement of the civil service is emphatically the people's cause, the people's reform, and the administration which vigorously begins it will acquire a glory only less than that of the salvation of a free Union.

GEORGE WILLIAM CURTIS.
ALEXANDER G. CATTELL.
JOSEPH MEDILL.
DAWSON A. WALKER.
E. B. ELLIOTT.
JOSEPH H. BLACKFAN.
DAVID C. COX.

RULES AND REGULATIONS FOR THE CIVIL SERVICE.

1st. No person shall be admitted to any position in the civil service within the appointment of the President or the heads of Departments, who is not a citizen of the United States; who shall not have furnished satisfactory evidence in regard to character, health, and age; and who shall not have passed a satisfactory examination in speaking, reading, and writing the English language.

2d. An advisory board of suitable persons to be employed by the President under the 9th section of the act of March 3, 1871, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirty, eighteen hundred and seventy-two, and for other purposes," shall, so far as practicable, group the positions in each branch of the civil service according to the character of the duties to be performed, and shall grade each group from lowest to highest for the purpose of promotion within the group. Admission to the civil service shall always be to the lowest grade of any group; and to such positions as cannot be grouped or graded, admission shall be determined as provided for the lowest grade.

3d. A vacancy occurring in the lowest grade of any group of offices shall be filled, after due public notice, from all applicants who shall present themselves, and who shall have furnished the evidence and satisfied the preliminary examination already mentioned, and who shall have passed a public competitive examination to test knowledge, ability, and special qualifications for the performance of the duties of the office. The board conducting such competitive examination shall prepare, under

the supervision of the advisory board, a list of the names of the applicants, in the order of their excellence, as proved by such examination, beginning with the highest; and shall then certify to the nominating or appointing power, as the case may be, the names standing at the head of such list, not exceeding three; and from the names thus certified the appointment shall be made.

4th. A vacancy occurring in any grade of a group of offices, above the lowest, shall be filled by a competitive examination of applicants from the other grades of that group, and the list of names from which the appointment is to be made shall be prepared and certified as provided in the preceding rule; but if no such applicants are found competent, the appointment shall be made upon an examination of all applicants, conducted in accordance with the provisions for admission to the lowest grade.

5th. Applicants certified as otherwise qualified for appointment as cashiers of collectors of customs, cashiers of assistant treasurers, cashiers of postmasters, superintendents of money-order divisions in post-offices, and such other custodians of large sums of money as may hereafter be designated by the advisory board, and for whose pecuniary fidelity another officer is responsible, shall, nevertheless, not be appointed, except with the approval of such other officer.

6th. Postmasters whose annual salary is less than two hundred dollars may be appointed upon the written request of applicants, with such evidence of character and fitness as shall be satisfactory to the head of the Department.

7th. The appointment of all persons entering the civil service in accordance with these regulations, excepting persons appointed by the President, by and with the advice and consent of the Senate, postmasters, and persons appointed to any position in a foreign country, shall be made for a probationary term of six months, during which the conduct and capacity of such persons shall be tested; and if, at the end of said probationary term, satisfactory proofs of their fitness shall have been furnished by the board of examiners to the head of the Department in which they shall have been employed during said term, they shall be reappointed.

8th. The President will designate three persons in each Department of the public service to serve as a board of examiners, which, under the supervision of the advisory board, and under regulations to be prescribed by it, and at such times and places as it may determine, shall conduct personally, or by persons approved by the advisory board, all investigations and examinations for admission into said Departments, or for promotion therein.

9th. Any person who, after long and faithful service in a Department, shall be incapacitated by mental or bodily infirmity for the efficient discharge of the duties of his position, may be appointed by the head of the Department, at his discretion, to a position of less responsibility in the same Department.

10th. Nothing in these rules shall prevent the appointment of aliens to positions in the consular service, which, by reason of small compensation or of other sufficient cause, are, in the judgment of the appointing power, necessarily so filled; nor the appointment of such persons within the United States as are indispensable to a proper discharge of the duties of certain positions, but who may not be familiar with the English language or legally capable of naturalization.

11th. No head of a Department, nor any subordinate officer of the Government, shall as such officer authorize, or permit, or assist in levy-

ing, any assessment of money, for political purposes, under the form of voluntary contributions or otherwise, upon any person employed under his control, nor shall any such person pay any money so assessed.

12th. The advisory board shall at any time recommend to the President such changes in these rules as it may consider necessary to secure the greater efficiency of the civil service.

13th. From these rules are excepted the heads of Departments, Assistant Secretaries of Departments, Assistant Attorneys General, and First Assistant Postmaster General, Solicitor General, Solicitor of the Treasury, Naval Solicitor, Solicitor of Internal Revenue, Examiner of Claims in the State Department, Treasurer of the United States, Register of the Treasury, First and Second Comptrollers of the Treasury, judges of the United States courts, district attorneys, private secretary of the President, embassadors and other public ministers, Superintendent of the Coast Survey, Director of the Mint, governors of Territories, special commissioners, special counsel, visiting and examining boards, persons appointed to positions without compensation for services, dispatch agents and bearers of dispatches.

OPINION OF ATTORNEY GENERAL AKERMAN ON QUESTIONS PROPOUNDED BY THE CIVIL SERVICE COMMISSION.

DEPARTMENT OF JUSTICE,
Washington, August 31, 1871.

The President:

SIR: You have called for my opinion upon certain questions presented by the body known as the Civil Service Commission.

That commission has been appointed under the ninth section of the act of March 3, 1871, making appropriations for sundry civil expenses of the Government for the year ending June 30, 1872, and for other purposes, which is as follows:

> That the President of the United States be, and he is hereby, authorized to prescribe such rules and regulations for the admission of persons into the civil service of the United States as will best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose the President is authorized to employ suitable persons to conduct said inquiries, to prescribe their duties, and to establish regulations for the conduct of persons who may receive appointments in the civil service. (16 U. S. Stat., 514.)

The commission had under consideration the following resolution:

> *Resolved*, That we recommend to the President that all admissions to the civil service of the United States, with such exceptions as may be specified, shall be determined by a competitive examination, open to all applicants who shall have satisfied such preliminary examination in regard to health, age, character, and other qualifications, excepting political and religious opinions, as may be required.

The objection was made that the designation of a single person for appointment by a board not established by the constitutional appointing power would virtually vest the appointment in a body unknown to the Constitution. My opinion is asked upon the validity of this objection.

I suppose that the inquiry relates only to those public employments known as offices; for no one could seriously contend that there is a constitutional limit to the discretion of Congress in prescribing the terms of admission to such public employments as do not come within this description. I suppose, also, that the phrase *civil service* is used in distinction from the military and naval service.

The objection is substantially this: That a rule, whether prescribed by Congress, or by the President in pursuance of authority given by Congress, that a vacant civil office must be given to the person who is found to stand foremost in a competitive examination, in effect makes the judges in that examination the appointing power to that office and thus contravenes the constitutional provisions on the subject of appointments.

The civil officers with reference to whom this question should be considered are these: The officers (except the Speaker) of the House of Representatives, the officers (except the President *pro tempore*) of the Senate; these, by Article I of the Constitution, sections two and three, are to be chosen by the bodies which they serve; embassadors, other public ministers and consuls, and judges of the Supreme Court, who are appointed by the President, after nomination to the Senate, and with the advice and consent of that body; and all other officers of the United States who are to be appointed by the President under the same conditions, except inferior officers, who, when Congress thinks proper, may be appointed by the President alone, the courts of law, or the heads of Departments. (Art. II, sec. 2.) It was the opinion of Chief Justice Marshall that these provisions covered all the offices of the United States. (*Maurice* vs. *The United States*, 2 Brockenborough's Rep., p. 101.) And these provisions must be construed as excluding all other modes of appointment. The Senate and House of Representatives are to "choose" their respective officers. The President, (with or without the consent of the Senate,) the courts of law, and the heads of Departments, "appoint" all the other officers. These words *choose* and *appoint*, as used in the Constitution, are of the same signification.

Confining my attention, for the sake of brevity, to the latter word, I ask what does it mean? If to appoint is merely to do a formal act, that is, merely to authenticate a selection not made by the appointing power, then there is no constitutional objection to the designation of officers by a competitive examination, or any other mode of selection which Congress may prescribe or authorize. But if appointment implies an exercise of judgment and will, the officer must be selected according to the judgment and will of the person or body in whom the appointing power is vested by the Constitution; and a mode of selection which gives no room for the exercise of that judgment and will is inadmissible. If the President in appointing a marshal, if the Senate in appointing its Secretary, if a court or head of Department in appointing a clerk, must take the individual whom a civil service board adjudge to have proved himself the fittest by the test of a competitive examination, the will and judgment which determine that appointment are not the will and judgment of the President, of the Senate, of the court, or of the head of Department, but are the will and judgment of the Civil Service Board, and that board is virtually the appointing power. Viewing the appointing power conferred in the Constitution as a substantial, and not merely a nominal, function, I cannot but believe that the judgment and will of the constitutional depositary of that power should be exercised in every appointment. The power was lodged where it is because the makers of the Constitution, after careful consideration, thought that in no other depositaries of it could the judgment and the will to make proper appointments so certainly be found. They assigned it to functionaries who were expected to have an adequate knowledge of men and of affairs, to have capacity for public business, and to feel responsible to conscience, and to the opinion of good citizens. As a further security, they placed the power in the hands of

those who would have a particular interest in using it well. If a legislative body is ill-officered, the members cannot do their work with ease or advantage; therefore, each branch of Congress chooses its officers. Without efficient servitors, a court of law is impotent; therefore, Congress may vest appointments in courts. The first need of the head of a Department is a body of capable and trusty assistants; therefore, Congress may vest appointments in the heads of Departments. In all cases not thus provided for the appointment is with the President, whose success in his weighty charge essentially depends on the competency of the appointees. Thus the reasons for the constitutional provision all forbid that any judgment and will but those of the constitutional appointing power should have legal operation in the matter of the appointment.

The most important civil appointments are made by the President, with the advice and consent of the Senate. If Congress can compel the President to nominate a person selected by others, it can compel the Senate to advise and consent to that nomination. If the foremost man in the competitive test is entitled to the office, that test must be conclusive upon all whose action is required to place him in the office; and, in fact, the action of all of them is merely formal, except that of the judges in the test. But advice and consent imply an exercise of judgment and will; so does nomination; so does appointment. There is this difference: that the judgment and will of the Senate can regard only the person proposed by the President, while there is no similar constitutional limitation upon his judgment and will. But there is no right in Congress to constrain either to adopt the judgment and the will of others. Such constraint frustrates the constitutional design, that the judgment of the Senate shall revise the judgment of the President, and that the judgment of both shall concur in filling the office. Although it might not be thought expedient to apply the competitive test, if established, to appointments in which the Senate must concur, it should be remembered that there is as much constitutional right to do so as in the case of appointments of the other class. When the appointment of an inferior officer is vested in the President alone, his individual act accomplishes what is done by himself and the Senate together in the appointment of a superior officer, and should be as independently performed as each part of the compound process in the latter case.

The appointing power may avail itself of the judgment of others as one means of information. For want of personal knowledge of canditates, it has habitually done so from the foundation of the Government. But this has been done in its discretion. I see no constitutional objection to an examining board, rendering no imperative judgments, but only aiding the appointing power with information. A legal obligation to follow the judgment of such a board is inconsistent with the constitutional independence of the appointing power.

The argument has been made, that the unquestioned right of Congress to create offices implies a right to prescribe qualifications for them. This is admitted. But this right to prescribe qualifications is limited by the necessity of leaving scope for the judgment and will of the person or body in whom the Constitution vests the power of appointment. The parts of the Constitution which confer this power are as valid as those parts from which Congress derives the power to create offices, and one part should not be sacrificed to the other. An office cannot be created except under the condition that it shall be filled according to the constitutional rule.

The legislation of the country from an early period has been supposed

to authorize a different constitutional view from that which is herein expressed. "A practical construction of the Constitution by Congress," says the Supreme Court in *Veazie Bank* vs. *Fenno*, 8 Wallace Reports, 544, "is entitled to great consideration, and should be followed in all cases of doubt." But when a congressional construction is inconsistent with the plain meaning of the Constitution, as ascertained by authoritative canons, that meaning cannot be overruled by such construction, how often soever repeated.

Congress has, at various times, authorized appointments independently of the President, courts of law, or heads of Departments, in departmental bureaus, in the customs service, in the internal revenue service, in the land offices, and in some other branches of the civil service. Upon this legislation it may be observed:

First, that in some of these cases, such as those of deputy marshals and deputy clerks, the persons appointed are representatives of the officers who appoint them, and who, in some particulars, are responsible for their conduct, and, perhaps, it was considered by Congress that the office was substantially in the principal.

Second, that it was, no doubt, considered by Congress that some of the persons whose appointments were thus provided for were not officers in the constitutional sense of the term. Many employments now universally held to be offices were not esteemed such at the outset, but with the growth of the Government were raised to that rank.

Thus the force of legislative precedents is somewhat weakened. Yet it cannot be denied that some of them take for granted that Congress is absolute in the matter of appointment. Such, however, is not the constitutional rule. Congress has power to distribute, at its pleasure, the appointment of inferior officers between the President, courts of law, and heads of Departments, or to vest such appointments exclusively in one or two of those depositaries, but it has no power to vest appointments elsewhere, directly or indirectly. Attorney General Legare says: "Congress has no power whatever to vest the appointment of any employé, coming fairly within the definition of an inferior officer of the Government, in any other public authority but the President, the heads of Departments, or the judicial tribunals." (4 Opinions, 164.) He also was of opinion that, where a customs officer is appointable by the collector, with the approbation of the Secretary of the Treasury, this approbation is really the appointment, or else the appointment "is null and void under the Constitution." (*Ib.* 164, 166.) So the Supreme Court has held that a clerk appointed by the Assistant Treasurer, with the approbation of the Secretary of the Treasury, was "appointed by the head of the Department, within the meaning of the constitutional provision on the subject of the appointing power." (*United States* vs. *Hartwell*, 6 Wallace Rep., 393–4.) Attorney General Speed thought that a provision in the internal revenue act of March 3, 1865, giving to assessors the appointment of assistant assessors, (13 U. S. Statutes, 469,) was "clearly unconstitutional." (11 Opins., 212.) And such appears to have been the opinion of Congress itself when its attention was called to the subject, for the act of January 15, 1866, repealed that provision, and gave the appointment of assistant assessors to the Secretary of the Treasury. (14 U. S. Stats., 2.)

I have not discussed the statutes relating to promotions in the Army and Navy, and the appointment of cadets. Some of the provisions of those statutes have been seriously assailed as unconstitutional, and the defense of them has been less frequently rested on the clauses in the Constitution on the subject of appointments than on the power of Con-

gress "to make rules for the government and regulation of the land and naval forces." (See Report of Senate Committee on Military Affairs, April 25, 1822, Niles Register, vol. 22, p. 418; Debate on civil service, in House of Representatives, May, 1870.) Unless controlled by authority, I should not take this power to embrace the subject of appointments, and I only refer to it for the purpose of showing that the claim made for Congress in relation to military and naval appointments has been put on grounds not applicable to civil appointments.

It more concerns us to ascertain what is the constitutional rule than to learn whether that rule has always been observed. Nineteen violations of the Constitution do not justify a twentieth. The present question, in its essence, is, whether the appointing power belongs to Congress, or to those named in the Constitution as the depositaries of that power; for, if Congress can ordain that an office shall be filled by the person whom the examiners pronounce the fittest, it can ordain that the office shall be filled by the person whom Congress judges the fittest, and may directly appoint its favorite. The constitutional aspect of the matter is not changed by the suggestion that Congress might prescribe the principles on which the examiners should judge; for it might prescribe the principles on which itself should judge, and might vary and apply them at pleasure. The objections would not be removed by interposing the formal action of the constitutional appointing power. An enactment that the President shall appoint to a certain office the person adjudged by the examiners to be the fittest is not different in constitutional principle from an enactment that he shall appoint John Doe to that office. In neither case are his judgment and will called into exercise. The appointment is effected in one case by the judgment and will of the examiners, under authority from Congress, and in the other case by the judgment and will of Congress. In the cases particularly propounded by the commission, if the President, authorized by an act of Congress, should prescribe that the courts and heads of Departments should always appoint the persons named by a civil service board, that board would virtually be the appointing power, and that act of Congress would be the foundation of its authority. That Congress cannot give such authority, I think, is manifest.

It has been suggested that the appointments now vested in the courts, and in the heads of Departments, could be transferred by Congress to the President, and that he could appoint according to the result of a competitive test, certified by an examining board. To this mode of selection, if discretionary with the President, there is no constitutional objection, and the same mode, under a similar condition, could be used by the various appointing powers under present laws; it being always understood that the appointing power resorts to this test as a way of finding out the fittest person for the vacant office, and is not bound to abide by it if satisfied that the appointment of another would best serve the public interests. In short, the test of a competitive examination may be resorted to in order to inform the conscience of the appointing power, but cannot be made legally conclusive upon that power against its own judgment and will.

The other question proposed by the commissioners is this:

May the President, under the act by which this board is organized, regulate the exercise of the appointing power now vested in the heads of Departments, or in the courts of law, so as to restrict appointments to a class of persons whose qualifications or fitness shall have been determined by an examination instituted independent of the appointing power?

My opinion is that he may. Though the appointing power alone can designate an individual for an office, either Congress, by direct legislation, or the President, by authority derived from Congress, can prescribe qualifications, and require that the designation shall be made out of a class of persons ascertained by proper tests to have those qualifications; and it is not necessary that the judges in the tests should be chosen by the appointing power. Attorney General Legare has given an opinion upon a question similar in principle. Discussing the subject of appointment of inspectors of customs by the Secretary of the Treasury, he considers that it would "be a fair constitutional exercise of the power of Congress to require that the Secretary should make an appointment out of a certain number of nominees proposed by a collector." (4 Opins., 164.) The act under which the present civil service commission has been organized gives the President authority "to prescribe such rules and regulations for the admission of persons into the civil service of the United States as will best promote the efficiency thereof;" and this very ample authority will certainly embrace the right to require that the persons admitted into the service shall have been found qualified by competent examiners.

It has been argued that a right in Congress to limit in the least the field of selection implies a right to carry on the contracting process to the designation of a particular individual. But I do not think this a fair conclusion. Congress could require that officers shall be of American citizenship, or of a certain age; that judges should be of the legal profession and of a certain standing in the profession; and still leave room to the appointing power for the exercise of its own judgment and will; and I am not prepared to affirm that, to go further, and require that the selection shall be made from persons found by an examining board to be qualified in such particulars as diligence, scholarship, integrity, good manners, and attachment to the Government, would impose an unconstitutional limitation on the appointing power. It would still have a reasonable scope for its own judgment and will. But it may be asked At what point must the contracting process stop? I confess my inability to answer. But the difficulty of drawing a line between such limitations as are, and such as are not, allowed by the Constitution, is no proof that both classes do not exist. In constitutional and legal inquiries right or wrong is often a question of degree. Yet it is impossible to tell precisely where in the scale right ceases and wrong begins. Questions of excessive bail, cruel punishments, excessive damages, and reasonable doubts, are familiar instances. In the matter now in question it is not supposable that Congress or the President would require of candidates for office qualifications unattainable by a sufficient number to afford ample room for choice.

Very respectfully, your obedient servant,

A. T. AKERMAN,
Attorney General.

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