

APPENDIX.

MEMORIAL ORATION,

DELIVERED AT

THE CELEBRATION OF THE ONE-HUNDREDTH ANNIVERSARY OF
THE FRAMING AND PROMULGATION OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA
IN INDEPENDENCE SQUARE, PHILADELPHIA, SEPTEMBER 17th, 1887,

BY MR. JUSTICE MILLER.

MR. PRESIDENT AND FELLOW-COUNTRYMEN :

The people of the United States, for ten or twelve years past, have commemorated certain days of those different years as the centennial anniversaries of important events in their history. These gatherings of the people have been in the localities where the historic events occurred. It is a little over eleven years since the great centennial anniversary of the adoption of the Declaration of Independence was celebrated in this city, where the Congress sat which proclaimed it. The grand industrial exhibition, the august ceremonies of the day, and all the incidents of the commemoration, in no respect fell below what was demanded by the importance of the occasion. May it be long before the people of the United States shall cease to take a deep and pervading

The Centennial Address of Chief Justice Fuller before the two Houses of Congress, on the 11th day of December, 1889, having been printed in the Appendix to Volume 132 of these Reports, and the speeches of the Chief Justice, of Mr. Justice Field and of Mr. Justice Harlan, at the Centennial Celebration in New York, in the Appendix to Volume 134, it has been thought proper to complete the work by preserving, in the Appendix to this Volume, Mr. Justice Miller's Oration at the celebration in Philadelphia, September 17, 1887, of the one hundredth anniversary of the formation of the Constitution.

interest in the Fourth of July, as the birthday of our national life, or the event which then occurred shall be subordinated to any other of our national history.

We are met here to commemorate another event in our progress, in many respects inferior to none in importance in our own history, or in the history of the world. It is the formation of the Constitution of the United States, which, on this day, one hundred years ago, was adopted by the convention which represented the *people* of the United States, and which was then signed by the delegates who framed it, and published as the final result of their arduous labors, — of their most careful and deliberate consideration, — and of a love of country as unmixed with selfishness as human nature is capable of.

In looking at the names of those who signed the instrument, our sentiment of pious reverence for the work of their hands hardly permits us to discriminate by special mention of any. But it is surely not in bad taste to mention that the name of George Washington is there as its first signer and president of the convention; the man of whom it was afterwards so happily declared by the representatives of a grateful people, that he was “first in war, first in peace, and first in the hearts of his countrymen.” He was the first man selected to fill the Chief Executive office of President created by the Constitution; and James Madison, another name found in the list of signers, filled the same office.

James Wilson, of Pennsylvania, John Blair, of Virginia, and John Rutledge, of South Carolina, were made justices of the court established by that instrument, with a large view among its other functions of expounding its meaning. With no invidious intent it must be here said that one of the greatest names in American history — Alexander Hamilton — is there as representing alone the important State of New York; his colleagues from that State having withdrawn from the convention before the final vote on the Constitution. Nor is it permissible, standing in this place and in this connection, to omit to point to the name of Benjamin Franklin, the venerable philosopher and patriot; of Robert Morris, the financier of the Revolution; and of Gouverneur Morris, the brilliant scholar and profound statesman.

It is necessary to any just appreciation of the Constitution, whose presentation for acceptance to the people of the United States a hundred years ago on this day we commemorate, that some statement of its origin, and of the causes which led to it, should be made. The occasion requires that this shall be brief.

The war of seven years, which was waged in support of the independence of these States, former provinces of Great Britain, — an independence announced by the Declaration of July 4th, 1776, already referred to, — the war which will always be known in the history of this country as the war of the Revolution, was conducted by a union of those States under an agreement between them called Articles of Confederation. Under these articles each State was an integer of equal dignity and power in a body called the Congress, which conducted the affairs of the incipient nation. Each of the thirteen States which composed this confederation sent to Congress as many delegates as it chose, without reference to its population, its wealth, or the extent of its territory; but the vote upon the passage of any law, or resolution, or action suggested, was taken by States, the members from each State, however numerous or however small, constituting one vote, and a majority of these votes by States being necessary to the adoption of the proposition.

The most important matters on which Congress acted were but little else than recommendations to the States, requesting their aid in the general cause. There was no power in the Congress to raise money by taxation. It could declare by way of assessment the amount each State should contribute to the support of the Government, but it had no means of enforcing compliance with this assessment. It could make requisitions on each State for men for the army which was fighting for them all, but the raising of this levy was wholly dependent upon the action of the States respectively. There was no authority to tax, or otherwise regulate, the import or export of foreign goods, nor to prevent the separate States from taxing property which entered their ports, though the property so taxed was owned by citizens of other States.

The end of this war of the Revolution, which had established our entire independence of the crown of Great Britain, and which had caused us to be recognized theoretically as a member of the family of nations, found us with an empty treasury, an impaired credit, a country drained of its wealth and impoverished by the exhaustive struggle. It found us with a large national debt to our own citizens and to our friends abroad, who had loaned us their money in our desperate strait; and worst of all, it found us with an army of unpaid patriotic soldiers who had endured every hardship that our want of means could add to the necessary incidents of a civil war, many of whom had to return penniless to families whose condition was pitiable.

For all these evils the limited and imperfect powers conferred by the Articles of Confederation afforded no adequate remedy. The Congress, in which was vested all the authority that those articles granted to the General Government, struggled hopelessly and with constant failure from the treaty of peace with England, in 1783, until the formation of the new Constitution. Many suggestions were made for enlarging the powers of the Federal Government in regard to particular subjects. None were successful, and none proposed the only true remedy, namely, authority in the National Government to enforce the powers which were entrusted to it by the Articles of Confederation by its own immediate and direct action on the people of the States.

It is not a little remarkable that the suggestion which finally led to the relief, without which as a nation we must soon have perished, strongly supports the philosophical maxim of modern times, — that of all the agencies of civilization and progress of the human race, commerce is the most efficient. What our deranged finances, our discreditable failure to pay our debts, and the sufferings of our soldiers could not force the several States of the American Union to attempt, was brought about by a desire to be released from the evils of an unregulated and burdensome commercial intercourse, both with foreign nations and between the several States.

After many resolutions by state legislatures which led to nothing, one was introduced by Mr. Madison into that of Virginia, and passed on the twenty-first day of February, 1786, which appointed Edmund Randolph, James Madison, Jr., and six others, commissioners, "to meet such commissioners as may be appointed by other States in the Union, at a time and place to be agreed, to take into consideration the trade of the United States; to examine the relative situation and trade of the said States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony."

This committee was directed to transmit copies of the resolution to the several States, with a letter respecting their concurrence, and proposing a time and place for the meeting. The time agreed upon was in September, 1786, and the place was Annapolis. Nine States appointed delegates, but those of five States only attended. These were New York, New Jersey, Pennsylvania, Virginia, and Delaware. Four other States appointed delegates who, for various reasons, did not appear, or came too late. Of course such a convention as this could do little but make recommendations.

What it did was to suggest a convention of delegates from all the States, "to devise such further provisions as might appear to be necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union." It also proposed that whatever should be agreed upon by such a convention should be reported to Congress, and confirmed by the legislatures of all the States.

This resolution and an accompanying report were presented to Congress, which manifested much reluctance and a very unreasonable delay in acting upon it, and a want of any earnest approval of the plan. But the proceedings of the Annapolis convention had been laid before the legislatures of the States, where they met with a more cordial reception, and the action of several of them in approving the recommendation for a convention, and appointing delegates to attend it, finally overcame the hesitation of Congress. That body, accordingly, on the 21st of February, 1787, resolved that, in its opinion, "it was expedient that on the second Monday in May next, a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress, and confirmed by the States, render the Federal Constitution adequate to the exigencies of government and the preservation of the Union."

On the day here recommended—May 14th—delegates from Virginia and Pennsylvania met and adjourned from day to day until the 25th, during which period delegates from other States made their appearance. On that day the delegates of seven States, duly appointed, being present, the convention was organized by the election of General Washington as its president, at the suggestion of Franklin. On the 28th the representation in the convention was increased to nine States; and on the 29th Edmund Randolph, delegate from Virginia, and governor of that State, inaugurated the work of the convention by a speech in which he presented an outline of a constitution for its consideration.

From this time on, the convention labored assiduously and without intermission, until, on the seventeenth day of September, one hundred years ago, it closed its work by presenting a completed instrument, which, being subsequently ratified by the States, became the Constitution of the United States of America.

All the States except Rhode Island were finally represented in

the convention and took part in framing the instrument, a majority of the delegates of each State assenting to it. That State sent no delegate to the convention; and when the Constitution was presented to it for ratification no convention was called for that purpose until after it had gone into operation as the organic law of the National Government; and it was two years before she accepted it and became in reality a State of the Union.

It is a matter for profound reflection by the philosophical statesman, that while the most efficient motive in bringing the other States into this convention was a desire to amend the situation in regard to trade among the States, and to secure a uniform system of commercial regulation, as necessary to the common interest and permanent harmony, the course of Rhode Island was mainly governed by the consideration that her superior advantages of location, and the possession of what was supposed to be the best harbor on the Atlantic coast, should *not* be subjected to the control of a Congress which was by that instrument expressly authorized "to regulate commerce with foreign nations and among the several States," and which also declared that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another, nor any vessel bound to or from one State be obliged to enter, clear, or pay duties in another."

That the spirit which actuated Rhode Island still exists, and is found in other States of the Union, may be inferred from the fact that at no time since the formation of the Union has there been a period when there were not to be found in the statute-books of some of the States acts passed in violation of this provision of the Constitution, imposing taxes and other burdens upon the free interchange of commodities, discriminating against the productions of other States, and attempting to establish regulations of commerce which the Constitution says shall only be done by the Congress of the United States.

During the session of the Supreme Court which ended in May last no less than four or five decisions of the highest importance were rendered, declaring statutes of as many different States to be void because they were forbidden by this provision of the Federal Constitution.

Perhaps the influence of commerce in bringing into harmonious action a people whose interests are common, while the governments by which they are controlled are independent and hostile, is nowhere more strikingly illustrated than in the unification of

the German people, which has taken place under the observation of most of us. Only a few years ago—very few in the chronicles of a nation—what is now the great central Empire of Europe consisted of a number of separate kingdoms, principalities and free cities. Some of these were so powerful as to be rated among the great powers of Europe. Several of them were small dukedoms, each with an autonomy and government of its own. Each levied taxes and raised revenue from all the merchandise carried through its territory, and customs officers at the crossing of every line which divided one of them from the other collected duties on all that could be found in the baggage or on the person of the traveller. When the railroad system had pervaded Europe, and persons and property could be carried by them for two or three hundred miles on a continuous track through many of these States, the burden became intolerable. Their governments began to make treaties for the rates of taxation, for freer transit of persons and goods, and to these treaties the States became parties one after the other, until the Zollvereins of North Germany and of South Germany included at last all of them except Austrian Germany. When this was done the unification of Germany was a foregone conclusion. The war with France only hastened what the Zollverein had demonstrated to be a necessity. What her poets and statesmen, and the intense longing of the sons of Germany for a union of all who spoke the language of the Fatherland, and the wisdom of her patriotic leaders had never been able to accomplish, was attained through the Zollverein, and the demands of commerce were more powerful in the unification of the German people than all the other influences which contributed to that end.

We need not here pursue the detailed history of the ratification and adoption of the Constitution by the States. The instrument itself, and the resolution of Congress submitting it to the States, both provided that it should go into operation when adopted by nine States. Eleven of them accepted it in their first action in the matter. North Carolina delayed a short time, and Rhode Island two years later changed her mind; and thus the thirteen States which had united in the struggle for independence became a nation under this form of government.

Let us consider now the task which the convention undertook to perform, the difficulties which lay in its way, and the success which attended its efforts. In submitting to Congress the result of their labors, the convention accompanied the instrument with a letter signed under its authority by its president, and addressed to

the President of Congress. Perhaps no public document of the times, so short, yet so important, is better worth consideration than this letter, dated September 17th, 1787. From it I must beg your indulgence to read the following extracts:—

“Sir:— We now have the honor to submit to the consideration of the United States in Congress assembled that Constitution which has appeared to us the most advisable. The friends of our country have long seen and desired that the power of making war, peace and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the Union; but the impropriety of delegating such extensive trusts to one body of men” (meaning Congress) “is evident. Hence results the necessity of a different organization. It is obviously impracticable in the Federal Government of these States to secure all the rights of independent sovereignty to each, and yet provide for the interests and safety of all.” Again:

“In all our deliberations on this subject we kept steadily in view that which appears to us the greatest interest of every true American,—*the consolidation of our Union*, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the convention to be less rigid on points of inferior magnitude than might otherwise be expected; and thus the Constitution which we now present is the result of a spirit of amity, and of that natural deference and concession which the peculiarity of our political situation rendered indispensable.”

The instrument framed under the influence of these principles is introduced by language very similar. The opening sentence reads: “We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

This Constitution has been tested by the experience of a century of its operation, and in the light of this experience it may be well to consider its value. Many of its most important features met with earnest and vigorous opposition. This opposition was shown in the convention which presented it, and the conventions of the States called to ratify it. In both, the struggle in its favor was arduous and doubtful, the opposition able and active. For a

very perspicuous and condensed statement of those objections, showing the diversity of their character, the importance of some and the insignificance of others, I refer my hearers to section 297 of the Commentaries of Mr. Justice Story on the Constitution. Perhaps the wisdom of this great instrument cannot be better seen than by reconsidering at this time some of the most important objections then made to it. One of these which caused the opposition of several delegates in the Constitutional Convention, and their refusal to sign it, was the want of a well-defined Bill of Rights. The royal charters of many of the colonies, and the constitutions adopted by several States after the revolt, had such declarations, mainly assertions of personal rights and of propositions intended to give security to the individual in his right of person and property against the exercise of authority by governing bodies of the State. The Constitution was not void of such protection. It provided for the great writ of *habeas corpus*, the means by which all unlawful imprisonments and restraints upon personal liberty had been removed in the English and American courts since Magna Charta was proclaimed; and it declared that the privilege of that writ should not be suspended, unless in cases of rebellion or invasion the public safety should require it. The Constitution also declared that no *ex post facto* law or bill of attainder should be passed by Congress; and no law impairing the obligation of contracts by any State. It secured the trial by jury of all crimes within the State where the offence was committed. It defined treason so as to require some overt act, which must be proved by two witnesses, or confessed in open court, for conviction.

It can hardly be said that experience has demonstrated the sufficiency of these for the purpose which the advocates of a bill of rights had in view, because upon the recommendation of several of the States made in the act of ratifying the Constitution, or by legislatures at their first meeting subsequently, twelve amendments were proposed by Congress, ten of which were immediately ratified by the requisite number of States, and became part of the Constitution within two or three years of its adoption.

In the presentation and ratification of these amendments, the advocates of a specific bill of rights, and those who were dissatisfied with the strong power conferred on the Federal Government, united; and many statesmen who leaned to a strong government for the nation were willing, now that the Government was established, to win to its favor those who distrusted it by the adoption of these amendments. Hence a very slight examination of them

shows that all of them are restrictions upon the power of the General Government, or upon the modes of exercising that power, or declarations of the powers remaining with the States and with the people. They establish certain private rights of persons and property which the General Government may not violate. As regards these last, it is not believed that any acts of intentional oppression by the Government of the United States have called for serious reprehension; but, on the contrary, history points us to no government in which the freedom of the citizen and the rights of property have been better protected and life and liberty more firmly secured.

As regards the question of the relative distribution of the powers necessary to organized society, between the Federal and State governments, more will be said hereafter.

As soon as it became apparent to the convention that the new government must be a nation resting for its support upon the people over whom it exercised authority, and not a league of independent States brought together under a compact on which each State should place its own construction, the question of the relative power of those States in the new government became a subject of serious difference. There were those in the convention who insisted that in the legislative body, where the most important powers must necessarily reside, the States should, as in the Articles of Confederation, stand upon a perfect equality, each State having but one vote; and this feature was finally retained in that part of the Constitution which vested in Congress the election of the President, when there should be a failure to elect by the electoral college in the regular mode prescribed by that instrument. The contest in the convention became narrowed to the composition of the Senate, after it had been determined that the legislature should consist of two distinct bodies, sitting apart from each other, and voting separately. One of these was to be a popular body elected directly by the people at short intervals. The other was to be a body more limited in numbers, with longer terms of office; and this, with the manner of their appointment, was designed to give stability to the policy of the Government, and to be in some sense a restraint upon sudden impulses of popular will.

With regard to the popular branch of the legislature, there did not seem to be much difficulty in establishing the proposition, that in some general way each State should be represented in it in proportion to its population, and that each member of the body should vote with equal effect on all questions before it. But when it was

sought by the larger and more populous States, as Virginia, Pennsylvania and Massachusetts, to apply this principle to the composition of the Senate, the resistance of the smaller States became stubborn, and they refused to yield. The feeling arising under the discussion of this subject came nearer causing the disruption of the convention than any which agitated its deliberations. It was finally settled by an agreement that every State, however small, should have two representatives in the Senate of the United States, and no State should have any more; and that no amendment of the Constitution should deprive any State of its equal suffrage in the Senate without its consent. As the Senate has the same power in enacting laws as the House of Representatives, and as each State has its two votes in that body, it will be seen that the smaller States secured, when they are in a united majority, the practical power of defeating all legislation which was unacceptable to them.

What has the experience of a century taught us on this question? It is certainly true that there have been many expressions of dissatisfaction with the operation of a principle which gives to each of the six New England States, situated compactly together, as much power in the Senate in making laws, in ratifying treaties, and in confirming or rejecting appointments to office, as is given to the great State of New York, which, both in population and wealth, exceeds all the New England States, and nearly if not quite equals them in territory.

But if we are to form an opinion from demonstrations against, or attempts to modify, this feature of the Constitution, or any feature which concerns exclusively the functions of the Senate, we shall be compelled to say that the ablest of our public men, and the wisdom of the nation, are in the main satisfied with the work of the convention on this point after a hundred years of observation. And it is believed that the existence of an important body in our system of government, not wholly the mere representative of population, has exercised a wholesome conservatism on many occasions in our history.

Another feature of the Constitution which met with earnest opposition was the vesting of the executive power in a single magistrate. While Hamilton would have preferred a monarch, with strong restriction on his authority, like that in England, he soon saw that even his great influence could not carry the convention with him. There were not a few members who preferred in that matter the system of a single body (as the Congress) in which

should be reposed all the power of the nation, or a council, or executive committee, appointed by that body and responsible to it. There were others who preferred an executive council of several members, not owing its appointment to Congress.

Our ancient ally — the French nation — following rapidly in our footsteps, abolished the monarchical form of government, and in attempting the establishment of a representative republic has found the governments so established up to the present time very unstable and of short duration. It is impossible for an American, familiar with the principles of his Government, and the operation of its Constitution, to hesitate to attribute these failures of the French people very largely to the defects in their various constitutions in points where they have differed from ours. Their first step, upon the overthrow of the monarchy, was to consolidate into one the three representative estates of nobles, clergy and commons, which had always, when called together by the king, acted separately. After a little experience in governing by committees, this body selected seven of their number, called the directors, to whom the executive powers were committed. It is sufficient to say of this body that, though tolerated for a while as an improvement on Robespierre and his Committee of Public Safety, it was easily overturned by Napoleon, who in rapid succession established an executive of three consuls, of which he was chief, then of consul for life in himself, and finally the empire, of which he was the head, and was at the same time the executive, the legislature and the fountain of justice. It is needless to recount the history of the second republic and the second empire. For a third time France now has a republican government. This has a president, a senate, and a house of deputies, as our Constitution has; but its president is a cipher, elected by the assembly for seven years. It was supposed that the length of the term would give stability to the government and efficiency to the office. It has in practice turned out that the president is but a public show, the puppet of the prevailing faction (it can hardly be called a party) in the house of deputies. His main function — a very disagreeable one — is to reconstruct perpetually dissolving cabinets, in which he has no influence, and whose executive policy is controlled by the deputies on whose demand they are appointed, all of them acting under constantly impending dread of a Parisian mob. The senate of this system, like the house of lords of Great Britain, is without any actual influence on the government, and is unlike our Senate, the members of which represent States, and have both the power

and the courage, when they deem it necessary, to resist the President or the House of Representatives, or both.

The present government of France has existed longer than any republic ever set up in that country. The sentiment of the people is essentially republican. The strongest sympathies, the ardent wishes of every lover of liberty and of republicanism in the world, are with that gallant people; and, commemorating, as we do to-day, the events of a hundred years ago,—the successful establishment of the grandest republic the world has ever known,—our hearts, filled with grateful remembrance of their valuable aid, are warm with ardent wishes that they may share the blessings we enjoy.

It was urged against our Constitution by many liberty-loving men, both in the convention and out of it, that it conferred upon the executive, a single individual, whose election for a term of four years was carefully removed from the direct vote of the people, powers dangerous to the existence of free government. It was said that with the appointment of all the officers of the government, civil and military, the sword and the purse of the nation in his hands, the power to prevent the enactment of laws to which he did not assent—unless they could be passed over his objection by a vote of two-thirds in each of the two legislative houses—and the actual use of this power for four years without interruption, an ambitious man of great personal popularity could establish his power during his own life and transmit it to his family as a perpetual dynasty.

Perhaps of all objections made to important features of the Constitution this one had more plausibility, and was urged with most force. But if the century of our experience has demonstrated anything, it is the fallacy of this objection and of all the reasons urged in its support.

The objection that the electoral college was a contrivance to remove the appointment of the President from the control of popular suffrage, was, if it had any merit, speedily overcome without any infraction of the Constitution by the democratic tendencies of the people. The electors composing the college, who it was supposed would each exercise an independent judgment in casting his vote for President, soon came to be elected themselves on distinct pledges made beforehand, that they would vote for some person designated as a popular favorite for that office. So that at the present time the electors of each State, in sending to the capital their votes for President, do but record the instruction of a

majority of the citizens voting in that State. The term of four years for the Presidential office is not now deemed too long by any one, while there are many who would desire that it should be made longer, say seven or ten years.

The power of appointment to office requires the consent of the Senate to its exercise; and that body has asserted its right of refusing that assent so courageously and so freely, that there can be no real fear of its successful use by the President in a manner to endanger the liberty of the country, unless the Senate itself shall be utterly corrupted. Nor can the means for such corruption be obtained from the public treasury unless Congress in both branches shall become so degenerate as to consent to such use.

Nor have we had in this country any want of ambitious men, who have earnestly desired the Presidency, or, having it once, have longed for a continuation of it at the end of the lawful term. And it may be said that it is almost a custom when a President has filled his office for one term acceptably, that he is to be re-elected, if his political party continues to be a popular majority. Our people have also shown the usual hero worship of successful military chieftains, and rewarded them by election to the Presidency. In proof of this it is only necessary to mention the names of Washington, Jackson, Harrison, Taylor and Grant. In some of them there has been no want of ambition, nor of the domineering disposition, which is often engendered by the use of military power. Yet none of these men have had more than two terms of the office. And though a few years ago one of the most largely circulated newspapers of the United States wrote in its paper day after day articles headed "Cæsarism," charging danger to the republic from one of its greatest benefactors and military chiefs, it excited no attention but derision, and deserved no other.

There is no danger in this country from the power reposed in the Presidential office. There is, as sad experience shows, far, far more danger from nihilism and assassination, than from ambition in our public servants.

So far have the incumbents of the Presidency, during the hundred years of its history, been from grasping, or attempting to grasp, powers not warranted by the Constitution, and so far from exercising the admitted power of that office in a despotic manner, a candid student of our political history during that time cannot fail to perceive that no one of the three great departments of the Government—the Legislative, the Executive and the Judicial—has been more shorn of its just powers, or crippled in the exercise of them, than the Presidency.

In regard to the function of appointment to office,—perhaps the most important of the executive duties,—the spirit of the Constitution requires that the President shall exercise freely his best judgment and follow its most sincere conviction in selecting proper men.

It is undeniable that for many years past, by the gradual growth of custom, it has come to pass that in the nomination of officers by the President, he has so far submitted to be governed by the wishes and recommendations of interested members of the two houses of Congress, that the purpose of the Constitution in vesting this power in him, and the right of the public to hold him personally responsible for each and every appointment he makes, is largely defeated. In other words, the great principle lying at the foundation of all free governments, that the legislative and executive departments shall be kept separate, is invaded by the participation of members of Congress in the exercise of the appointing powers.

History teaches us in no mistaken language how often customs and practices, which were originated without lawful warrant and opposed to the sound construction of the law, have come to overload and pervert it, as commentators on the text of Holy Scripture have established doctrines wholly at variance with its true spirit.

Without considering many minor objections made to the Constitution during the process of its formation and adoption, let us proceed to that one which was the central point of contest then, and which, transferred to the question of construing that instrument, has continued to divide statesmen and politicians to the present time.

The convention was divided in opinion between those who desired a strong national government, capable of sustaining itself by the exercise of suitable powers, and invested by the Constitution with such powers, and those who, regarding the Articles of Confederation as a basis, proposed to strengthen the General Government in a very few particulars, leaving it chiefly dependent on the action of the States themselves for its support and for the enforcement of its laws.

Let us deal tenderly with the Articles of Confederation. We should here, on this glorious anniversary, feel grateful for any instrumentality which helped us in the days of our earliest struggle. Very few are now found to say anything for these articles, yet they constituted the nominal bond which held the States together during the war of independence. It must be confessed that the

sense of a common cause and a common danger probably did more to produce this united effort than any other motives. But the articles served their purpose for the occasion; and though when the pressure of imminent danger was removed they were soon discovered to be a rope of sand, let them rest in a peaceful, honorable remembrance.

Between those who favored a strong government of the Union and those who were willing to grant it but little power at the expense of the States, there were various shades of opinion; and while it was the prevailing sentiment of the convention that "the greatest interest of every true American was the consolidation of the Union," there were many who were unwilling to attain this object by detaching the necessary powers from the States and conferring them on the National Government.

These divergent views had their effect, both in the constitutional convention and in those held for its ratification. Around this central point the contention raged, and it was only by compromises and concessions, dictated by the necessity of each yielding something for the common good,—so touchingly mentioned in the letter of the convention to Congress,—that the result was finally reached. The patriotism and the love of liberty of each party were undisputed. The anxiety for a government which would best reconcile the possession of powers essential to the state governments with those necessary to the existence and efficiency of the government of the Union, was equal, and the long struggle since the adoption of the Constitution on the same line of thought, in its construction, shows how firmly these different views were imbedded in our political theories.

The party which came to be called the party of State Rights has always dreaded that the alleged supremacy of the national power would overthrow the state governments, or control them to an extent incompatible with any useful existence. Their opponents have been equally confident that powers essential to the successful conduct of the General Government, which either expressly or by implication are conferred on it by the Constitution, were denied to it by the principles of the State Rights party. The one believed in danger to the States, from the theory which construed with a free and liberal rule the grants of power to the General Government, and the other believed that such a construction of the Constitution was consistent with the purpose and spirit of that instrument, and essential to the perpetuity of the nation.

If experience can teach anything on the subject of theories of

government, the late civil war teaches unmistakably that those who believed the source of danger to be in the strong powers of the Federal Government were in error, and that those who believed that such powers were necessary to its safe conduct and continued existence were in the right. The attempted destruction of the Union by eleven States, which were part of it, and the apparent temporary success of the effort, was undoubtedly due to the capacity of the States under the Constitution for concerted action, by organized movements, with all the machinery ready at hand to raise armies and establish a central government. And the ultimate failure of the attempt is to be attributed with equal clearness to the exercise of those powers of the General Government, under the Constitution, which were denied to it by extreme advocates of State Rights. And that this might no longer be matter of dispute, three new amendments to the Constitution were adopted at the close of that struggle, which, while keeping in view the principles of our complex form of State and Federal Government, and seeking to disturb the distribution of powers among them as little as was consistent with the wisdom acquired by a sorrowful experience, confer additional powers on the government of the Union, and place additional restraints upon those of the States. May it be long before such an awful lesson is again needed to decide upon disputed questions of constitutional law.

It is not out of place to remark that while the pendulum of public opinion has swung with much more force away from the extreme point of State Rights doctrine, there may be danger of its reaching an extreme point on the other side. In my opinion, the just and equal observance of the rights of the States, and of the General Government, as defined by the present Constitution, is as necessary to the permanent prosperity of our country, and to its existence for another century, as it has been for the one whose close we are now celebrating.

Having considered the objections originally made to this great work, in the light of its operation for a century, what shall we say of it in regard to those great features which were more generally acceptable? The doctrine of Montesquieu, then in the height of his fame, that the powers essential to all governments should be distributed among three separate bodies of magistracy,—namely, legislative, executive and judicial,—was, as Madison affirms in number XLVII. of the *Federalist*, recognized by the convention as the foundation of its labors. The apparent departure from that principle in making the Senate a participant in the exercise of the

appointing power, and the treaty-making power, works well, because the initiative remains with the executive. The power of that body to try impeachments of public officers for high crimes and misdemeanors — a function essentially judicial — while it has not produced any substantial injury has, perhaps, operated as a safety-valve in cases of great popular excitement. As an efficient remedy, it must be conceded to be a failure.

But the harmony and success with which the three great subdivisions of the organized government of the Constitution have coöperated in the growth, prosperity and happiness of this great people, constitute the strongest argument in favor of the organic law, which governs them all. It is the first successful attempt, in the history of the world, to lay the deep and broad foundations of a government for millions of people and an unlimited territory, in a single written instrument, framed and adopted in one great national effort.

This instrument comes nearer than any of political origin to Rousseau's idea of a society founded on a social contract. In its formation, States and individuals, in the possession of equal rights, — the rights of human nature common to all, — met together and deliberately agreed to give up certain of those rights to government for the better security of others; and that there might be no mistake about this agreement it was reduced to writing, with all the solemnities which give sanction to the pledges of mankind.

Other nations speak of their constitutions, which are the growth of centuries of government, and the maxims of experience, and the traditions of ages; many of them deserve the veneration which they receive. But a constitution, in the American sense of the word, as accepted in all the States of North and South America, means an instrument in writing, defining the powers of government, and distributing those powers among different bodies of magistrates for their more judicious exercise. The Constitution of the United States not only did this as regards a national government, but it established a federation of many States by the same instrument, in which the usual fatal defects in such unions have been corrected, with such felicity that during the hundred years of its existence the union of the States has grown stronger, and has received within that union other States exceeding in number those of the original federation.

It is not only the first important written constitution found in history, but it is the first one which contained the principles necessary to the successful confederation of numerous powerful States.

I do not forget, nor do I mean to disparage, our sister, the federal republic of Switzerland. But her continuance as an independent power in Europe is so largely due to her compact territory, her inaccessible mountains, her knowledge of the necessity of union to safety, and the policy of her powerful neighbors, which demands of each other the recognition of her rights, that she hardly forms an exception. But Switzerland stands to-day—may she ever stand—as the oldest witness to the capacity of a republican federation of States for sound government, for the security of freedom and resistance to disintegrating tendencies. But when we look to the results of confederation in the Olympic Council, and the Achaian League of ancient history, and in modern times to the States of Holland and the old German Empire, we must admit that the United States presents the most remarkable, if not the only successful, happy and prosperous, federated government of the world.

Let us consider for a moment the evidence of this. When the Constitution was finally ratified, and Rhode Island also accepted it, the Government was composed of thirteen States. It now numbers thirty-eight. The inhabited area of those States was found between the Allegheny Mountains and the Atlantic Ocean, a region which, when we now look over a map of the United States, seems to be but the eastern border of the great republic. Its area now includes all the territory between the Atlantic and Pacific Oceans,—a distance of over three thousand miles east and west,—and between the St. Lawrence and the great lakes on the north and the Gulf and States of Mexico on the south. Besides these thirty-eight States, the remainder of this immense region is divided into eight Territories, with an organized government in each, several of which are ready to be admitted into the Union as States, under a provision of the Constitution on that subject, and in accordance with the settled policy of the nation.

The thirteen States which originally organized this Government had a population believed to be, in round numbers, three millions, many of whom were slaves. To-day it seems probable that sixty millions are embraced in the United States, in which there breathes no soul who owns any man master.

I have already suggested the impoverished condition of the country at the close of the Revolutionary war. To-day I do not hesitate to make the assertion, that if you count only that which is real wealth and not accumulated capital in the shape of evidences of debt,—which is but a burden upon such property,—I mean, if you count lands and houses and furniture, and horses and

cattle and jewels,—all that is tangible and contributes to the comfort and pleasure of life,—the United States to-day is the wealthiest country upon the face of the globe, and is the only great government which is so rapidly paying off its national debt that it is begging its creditors to accept their money not yet due, with a reasonable rebate for interest.

Under the Government established by this Constitution we have, in the century which we are now overlooking, had three important wars, such as are always accompanied by hazardous shocks to all governments. In the first of these we encountered the British Empire, the most powerful nation then on the globe,—a nation which had successfully resisted Napoleon, with all the power of Europe at his back. If we did not attain all we fought for in that contest, we displayed an energy and courage which commanded for us an honorable stand among the nations of the earth.

In the second,—the war with Mexico,—while our reputation as a warlike people suffered no diminution, we made large accessions of valuable territory, out of which States have been since made members of the Union.

The last war,—the recent civil war,—in the number of men engaged in it, in the capacity of the weapons and instruments of destruction brought into operation, and in the importance of the result to humanity at large, must be esteemed the greatest war that the history of the world presents. It was brought about by the attempt of eleven of the States to destroy the Union. This was resisted by the Government of that Union under the powers granted to it by the Constitution. Its results were the emancipation of three millions of slaves, the suppression of the attempt to dis sever the Union, the resumption of an accelerated march in the growth, prosperity and happiness of this country. It also taught the lesson of the indestructibility of the Union, of the wisdom of the principles on which it is founded, and it astonished the nations of the world, and inspired them with a respect which they had never before entertained for our country.

I venture to hope that with the earnest gaze of the wisest and ablest minds of the age turned with profound interest to the experiment of the federative system, under our American Constitution, it may suggest something to relieve the nations of Europe from burdens so heavy that if not soon removed they must crush the social fabric. Those great nations cannot go on forever adding millions upon millions to their public debts, mainly for the support of permanent standing armies, while those armies make such heavy

drafts upon the able-bodied men whose productive industry is necessary to the support of the people and of the government.

I need not dwell on this unpleasant subject further than to say that these standing armies are rendered necessary by the perpetual dread of war with neighboring nations.

In the principles of our Constitution by which the autonomy and domestic government of each State are preserved, while the supremacy of the General Government at once forbids wars between the States, and enables it to enforce peace among them, we may discern the elements of political forces sufficient for the rescue of European civilization from this great disaster.

Do I claim for the Constitution, whose creation we celebrate to-day, the sole merit of the wonderful epitome which I have presented to you of the progress of this country to greatness, to prosperity, to happiness and honor? Nay, I do not; though language used by men of powerful intellect and great knowledge of history might be my justification if I did.

Mr. Bancroft, the venerable historian, who has devoted a long and laborious life to a history of his country, that is a monument to his genius and his learning, says of the closing hours of the convention: "The members were awe-struck at the result of their councils; the Constitution was a nobler work than any one of them believed possible to devise." And he prefaces the volume of his invaluable history of the formation of the Constitution with a sentiment of Mr. Gladstone, the greatest living statesman of England. He says: "As the British constitution is the most subtle organism which has proceeded from progressive history, so the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man."

And while I heartily endorse this, and feel it impossible to find language in which to express my admiration and my love for the Constitution of the United States, and my profound belief that the wisdom of man, unaided by inspiration, has produced no writing so valuable to humanity, I should fail of a most important duty if I did not say on this public occasion, that no amount of wisdom in a constitution can produce wise government unless there is a suitable response in the spirit of the people.

The Anglo-Saxon race, from whom we inherit so much that is valuable in our character, as well as our institutions, has been remarkable in all its history for a love of law and order. While other peoples, equally cultivated, have paid their devotion to the man in power, as representative of the law which he enforces, the

English people, and we their descendants, have venerated the law itself, looking past its administrators, and giving our allegiance and our obedience to the principles which govern organized society. It has been said that a dozen Englishmen or Americans, thrown on an uninhabited island, would at once proceed to adopt a code of laws for their government, and elect the officers who were to enforce them. And certainly this proposition is borne out by the early history of our emigrants to California, where every mining camp organized into a political body, and made laws for its own government, which were so good that Congress adopted them until they should be repealed or modified by statute.

I but repeat the language of the Supreme Court of the United States when I say that in this country the law is supreme. No man is so high as to be above the law. No officer of the Government may disregard it with impunity. To this inborn and native regard for law, as a governing power, we are indebted largely for the wonderful success and prosperity of our people, for the security of our rights; and when the highest law to which we pay this homage is the Constitution of the United States, the history of the world has presented no such wonder of a prosperous, happy civil government.

Let me urge upon my fellow-countrymen, and especially upon the rising generation of them, to examine with careful scrutiny all new theories of government and of social life, and if they do not rest upon a foundation of veneration and respect for law as the bond of social existence, let them be distrusted as inimical to human happiness.

And now let me close this address with a quotation from one of the ablest jurists and most profound commentators upon our laws,—Chancellor Kent. He said, fifty years ago: "The Government of the United States was created by the free voice and joint will of the people of America for their common defence and general welfare. Its powers apply to those great interests which relate to this country in its national capacity, and which depend for their stability and protection on the consolidation of the Union. It is clothed with the principal attributes of sovereignty, and it is justly deemed the guardian of our best rights, the source of our highest civil and political duties, and the sure means of our national greatness."