

ANSWERS ONLY TO AMERICAN PEOPLE

Constitutional Discretion of the President Outlined by Charles A. Gardiner in Speech to Phi Beta Kappa at New York University Commencement Exercises.

EXECUTIVE IS PLACED ABOVE ALL COURT ORDERS

Growth and Expansion of Executive Office as Shown by Historical Facts and Acts of Previous Presidents Who Constantly Created New Precedent.

(Journal Special Service.)
New York, June 5.—Charles A. Gardiner of the bar of New York City delivered the address of the day at the annual gathering of the Phi Beta Kappa society of New York university. He spoke as follows:

Constitutional Discretion.
The president is a constitutional creation. He is a corporation sole endowed with the attributes, properties, franchises and powers of the presidential office. My subject today is his discretion. That is a constitutional franchise. All its properties have been judicially determined.

What, then, is the constitutional discretion of the president. In importance it ranks next to his powers. What would his powers avail without discretion to use them? They would be mere academic theories for More's Utopia or Plato's Republic. The exercise of discretion constitutes practical politics. It marks the actual contact between the president and the people.

Jurisdiction of Discretion.
And, first, what is its territorial jurisdiction? Where can the president exercise his powers? It is coextensive with his powers. His powers are coextensive with the government. Our government," said Judge Shawcross, "is a government of the people for the people for the exercise of those powers which reside in them." We assume without reflection that it is a single organization, composed of congress, the courts and the executive, which alone administers both domestic and foreign sovereignties. But where is the authority? It is not in the constitution. That instrument nowhere declares that the government consists of one or more organizations or of more departments. Such theories originate with commentators.

Our Tripartite Government.
The tripartite organization exercises its powers exclusively in our domestic domain. "That the laws of a country have no extra-territorial force is an axiom of international jurisprudence," said Chancellor J. Waite. It is, moreover, strictly a government of law; congress enacts laws, the judiciary interprets them and the president executes them. It is thus solely a legislative government. That is what we mean when we say our government is a government of law, and the president's sole function is to execute the law. Like all other agencies, it is both true and false—true as to the legislative government; false in every other respect.

Such being the function of the legislative government, it requires no argument to show that many of our most important domestic sovereignties would not be executed at all, unless executed by some other agency. To convene and adjourn congress, to grant reprieves and pardons, to protect United States mails, aid the states in suppressing riots, and generally to act as commander-in-chief in domestic defense—these and countless other domestic sovereignties have never been exercised by the legislative government. As our constitution, therefore, confers some other "agency," or strand confessed, a mutilated and emasculated government, possessing vast domestic powers, but no governmental agency to execute them.

Our Presidential Government.
But our sovereignty is not confined to our domestic territory. Theoretically, it extends over the whole world; practically it exists wherever recognized by treaty or enforced by our arms. So with our external government. It is coextensive with our sovereignty. As our legislative government has practically no jurisdiction three miles beyond our shores (109 U. S. 336), it assuredly can exercise no foreign sovereignties; and hence again I say, unless there exists some other governmental agency, all the foreign sovereignties of our 50,000,000 people must lie dormant, unexercised and unused.

I advance the proposition that the constitution explicitly provides an "agency" or government to administer all such domestic powers and all such external sovereignties. That is the president himself. The jurisdiction of his government is our domestic territory and the whole world beyond, and within those far-reaching boundaries he rules, not as chief executive, but as chief magistrate, and his government is not legislative, but solely magisterial or presidential.

Such is the duplex government of the United States, and everywhere within its world-wide jurisdiction, as chief executive or chief magistrate, the president can exercise his constitutional discretion.

Nature of Discretion Analyzed.
Our next inquiry must be, what is the nature of this discretion? The president is a constitutional creation, and his discretion is constitutional. Subject to this basic limitation, it is synonymous with his decision or judgment. It is "the liberty or power of acting without other control than one's own judgment" (10 Wend., 291). "The word 'discretion,' said Vice-Chancellor Bacon, "has been very frequently used.

What does it mean? In honest, plain language it means, Do as you like." (13 Ch. Div. 659.)

(1) The president's powers are all discretionary. None are ministerial. A ministerial power or duty is one "in respect to which nothing is left to discretion" (4 Wall, 498). It is subservient, subsidiary or mandatory, as opposed to discretionary (Standard, Dict.).

Discretion Unrestrained by Courts.
Much confusion of public thought exists, I admit, on the subject. From the beginning the courts have claimed jurisdiction over certain ministerial acts of executive officers. Whether right or wrong is here immaterial. The confusion that attaches to these cases has been extended in the popular mind to the president himself. But there is no instance in our jurisprudence where courts have held that they can enforce their process against the president or limit or control his discretion in any manner whatever.

Power of Initiative.
To make and maintain his decisions as head of the government, the constitution confers on the president two supreme sovereignties—the power of initiative and the power of the sword. The first is a "self-executing power," says the court. "It is complete in itself; it needs no further legislation to put it in force. It is self-executing and self-sustaining." (173 U. S. 463). The president can faithfully execute his office, preserve the republic, protect and defend the constitution—all on his own initiative and authority; and as the chief end of government is the good of the people, he can accomplish that end independently of any other department in the republic.

Power of the Sword.
Finally the president alone in our government has the constitutional power both to exercise his discretion and to enforce his decisions. In estimating the relative offensive and defensive powers of the departments let us remember that while congress holds the purse strings, the president alone "wields the sword." To administer his international sovereignties, to execute his internal magisterial powers—in short, to exercise all his omnipotent functions—the people have given the president absolute control of an irresistible physical force, the army, navy and militia in service of 80,000,000 people; and while his necessity to use it should be extreme and would be deplorable, yet he alone possesses the power granted expressly by the people through the constitution itself.

Impeachment and Other Remedies.
Assuming, however, that a president wantonly abuses his discretion, there are, I maintain, ample constitutional remedies. First, the terms of office are too brief for an unscrupulous president to formulate and execute a plan for the overthrow of the constitution. (Story Const., section 144). Next, congress has the power to impeach. It has already exercised a power that has extorted liberty from Tudor and Stuart tyrants should be able to preserve the liberties of the people from aggression of an unscrupulous president. A failed remedy is impeachment. As the exercise of presidential discretion in good faith, however erroneous, is constitutional, so its exercise in bad faith is an impeachable crime or misdemeanor.

But the president can be punished for abuse of discretion like any other criminal. The only test of guilt is bad faith. And as the court of impeachment is itself the sole and final judge of the president's discretion, there is little danger of abuse going unpunished.

Ultimate Appeal to the People.
But should these all prove futile, in the eloquent words of Chief Justice Fuller, there still lies an appeal to "the august tribunal of the people which is continually sitting" (173 U. S. 589). As the president is the highest tribunal in the government, so the people are the highest tribunal in the nation. Their jurisdiction is illimitable and, unlike the simple of Janus, their tribunal stands always open. "If it be asked," said Mr. Justice Woodbury, "what redress have the people, if wronged, the answer is, they go to the ballot boxes, to the legislature, or executive, for the redress of such grievances as are within the jurisdiction of each, and for such as are not to conventions and amendments of constitutions" (7 How., 55). With these ample constitutional remedies the people need not concern themselves unless they would abolish all discretion and thereby destroy the government itself.

Era of Executive Expansion.
I conceive that we have entered upon a new era of political development. This is the age of executive expansion. The supremacy of congress is giving way before the irresistible domination of the president. In 1790 congress numbered 81 members, the supreme court 6, the executive force 2,000. Had all kept pace with our population, congress would now number 1,965, the supreme court 132, and the executive force 41,000. Had all increased in proportion to our wealth, congress would now number 13,741, the supreme court 908, and the executive force 802,000. Instead con-

LOST CLOTHES IN FIGHT WITH 'GATOR

Keeper of the Zoo Nearly Killed in Battle With Big Em, the Pride of the Pond.

CRUELTY IS RESENTED BY BIG ANGRY MONSTER

Man Repeatedly Knocked Over by Slashing Strokes of Reptile's Scaly Tail.

(Journal Special Service.)
New York, June 5.—"Big Em," a 12-foot alligator, tore the trousers off Head Keeper Bill Snyder at the Central park zoo today and cracked him over the head with its tail.

The water was let out of the tank in which a score of the 'gators bathe, and with an iron-shod pike, Snyder climbed in to clean it. He prodded the big alligator viciously. Instantly the tail of the alligator slashed through the air, striking the head of the keeper and knocking him from under him.

Snyder was dazed by the fall and almost helpless. The great ugly head was bearing down toward him with two great jaws opening over his legs. With a spasmodic movement the keeper jerked his legs from the jaws and managed to get to his feet, only to be knocked down again.

Snyder managed a second time to get out of the way, but the alligator was thoroughly aroused and danced angrily about the tank, its tail slashing and whipping about with such frightful rapidity that Snyder was sent to the floor time after time. The pike was snatched out of the keeper's hands, but the keeper made a successful leap for the edge of the tank. As he scrambled about the alligator was close behind him. Snyder's clothing was practically torn from him.

gross now numbers 474, the supreme court 9 and the executive force 240,000.

Thus while other departments have stood comparatively rigid and inelastic, the president has grown with the country's growth, expanded with every phase of its development, and more automatically than any other department has assumed those Protean forms required for the constantly increasing and varying demands of the republic. And this great army, 240,000 strong, in its myriad forms is everywhere and always the president, whether postmaster in Maine, or collector in Alaska, or consul at Peking, or ambassador to Great Britain, or chief executive in the White House—it is everywhere and always the president, inspiring, guiding, and dominating the irresistible onward march of this mighty and ever-expanding people.

Rejoice in President.
I rejoice in such a president, I exult in such an executive, I glory in such a chief magistrate. In all his proportions, majestic, constitutional figure, uncontrolled by congress, unrestrained by the courts, vested with plenary constitutional power and absolute constitutional discretion, a sovereign over 80,000,000 people, and the servant of 80,000,000 people, and grading up to his colossal stature are all the departments of government, centering in him is a hierarchy of office, and a hierarchy of power as well, and running through the whole vast organization is a constitutionally approved and beyond the courts and congress and the senate on up to the president himself, in whom reposes the highest discretion of the government, and beyond whom there exists in the republic no human discretion whatsoever except the omnipotent judgment of the mighty and multitudinous tribunal of the people.

TEACHERS ELECTED AT INDEPENDENCE
(Special Dispatch to The Journal.)
Independence, Or., June 5.—The board of directors of the Independence public school elected teachers as follows for the ensuing year: Principal, Professor T. J. Newbill; assistant, G. M. Murdoch; seventh grade, Mary Scott; sixth, J. W. Burton; fifth, R. A. Wilson; fourth, Ada Aldrich; third, Adona Cochran; second, Miss Church; first, Mary Tuck. During the present year it was found necessary to add one teacher to the corps at Independence. Professor Newbill has been principal of the Independence schools for two years and an effort was made by the Dallas board to secure his services at that place, but Independence raised his wages and he consented to stay.

Fast Train Service.
The Canadian Pacific has inaugurated a fast train service, placing in communication the Imperial Limited. This train is up-to-date in every particular, carries both standard and tourist sleepers, with a dining-car service unequalled.

PUPILS MAKE RAISED MAP OF POLK COUNTY
(Special Dispatch to The Journal.)
Independence, Or., June 5.—The eighth grade of the public school has just completed a map of Polk county, made of putty and clay. The students went out in squads in every section of the county, located the different wheat, dairy, fruit, timber, hop, and other sections of the county, measured the height of the mountains and hills, and located on this map the different products raised, the altitude of each section, the different railroads, the rivers, towns and the topographical features of the county. This map will be part of the Polk county exhibit at the Lewis and Clark fair.

INDEPENDENCE SCHOOL GIVES ENTERTAINMENT
(Special Dispatch to The Journal.)
Independence, Or., June 5.—The public school of Independence will give an entertainment tomorrow evening in the Independence auditorium. The graduation exercises will be held next Tuesday night when "The Merchant of Venice" will be played by the pupils. There are 12 graduates from the tenth grade this year. In the afternoon of June 12 a game of baseball will be played between the alumni and the public school, and at night the alumni banquet and reunion will be held at the opera house.

Olympia Rose Carnival.
(Special Dispatch to The Journal.)
Olympia, Wash., June 5.—The annual rose carnival was opened this morning under the management of the women of the Civic Improvement association. The display will be made in the lobby of the Hevris building. There are many entries registered.

Where Happiness is Found.
Don't look for true happiness in the mansions of the very rich, where high-priced pleasures are catered to in every detail. But seek it, and find it, too, in the comfortable homes of the middle class and so-called poor, where Green's August Flax is always used to keep the family healthy—to cure all summer troubles, whether indigestion, dyspepsia, constipation, loss of appetite, bilious attacks or tired liver. Trial bottle August Flax 25c. Big bottle, 75c. At all drug stores. Get Green's August.



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FINAL REDUCTIONS THROUGHOUT EVERY DEPARTMENT FOR THIS, THE LAST WEEK, OF OUR GREAT AND MOST SUCCESSFUL ANNUAL SUMMER SALE. SPECIAL INDUCEMENTS IN REMNANTS AND BROKEN LOTS. THEY MUST GO, AND WE HAVE MARKED THEM LESS THAN ONE HALF.

\$2.00 Underskirts \$1.12
Ladies' Mercerized Black Underskirt, in three different styles, made with 14-inch flounce with ruffles and straps, warranted rainproof; this skirt will give good wear; regular price \$2. Sale Price..... **\$1.12**

25c Mousseline de Soie 15c
This handsome line of Wash Goods, when made up in waists or shirtwaist suits, has all the appearances of a crepe de chine that would cost five times the price, 30 inches wide, in all colors; regular price 25c. Sale Price, yard..... **15c**

40c Figured Pongee 25c
This is the latest goods for the season. Figured Cotton Pongee, in full line of colors, in light and medium, beautiful silk finish, which they will retain in washing; regular price 40c. Sale Price, yard..... **25c**

McCall's Magazine
30c A YEAR. A swell monthly of fashion. Get a free copy of our Fashion Show for June.

WE GIVE TRADING STAMPS WITH EVERY 10c PURCHASE

McCall's Patterns
The latest and newest patterns for spring and summer, 10-15c. Ask for them.

\$6.50 Panama Skirts \$4.65
The best value offered this season in colors of brown, blue, cream and black, in a nice quality Panama made with 50 plaits; regular price \$6.50. Sale Price..... **\$4.65**

\$1.00 Misses' Dresses 52c
Nice quality Percalé, in a large assortment of colors and patterns, warranted fast colors, sizes 6 to 14 years; regular price \$1. Sale Price..... **52c**

50c Children's Dresses 28c
Good quality Gingham, in pink and white and blue and white check, sizes 1 to 4 years; regular price 50c. Sale Price..... **28c**

\$1.50 Misses' Dresses 98c
Good quality French Chambray and Gingham, in plain striped and plaids, nicely trimmed, sizes 6 to 14 years; regular price \$1.50. Sale Price... **98c**

\$1.00 Children's Dresses 63c
Best quality Scotch Gingham and German Percalé, trimmed with embroidery, nice assortment of colors, sizes 1 to 4 years; regular price \$1. Sale Price..... **63c**

40c Soiesette 25c
This beautiful new material having all the finish of a peau de soie, in a handsome line of colors, dark and light, 32 inches wide; regular price 40c. Sale Price, yard..... **25c**

25c Cotton Grenadine 15c
Cotton Lace Grenadine, 30 inches wide, in colors of tan, brown and cream; regular price 25c. Sale Price, yd. **15c**

\$4.00 Blankets \$2.35
This Blanket is extra value weighing full six pounds and extra large size, comes in white; regular price \$4. Sale Price, pair..... **\$2.35**

65c-Pongette 39c
Mercerized Pongette, has all the appearances of a pongee silk, and will give more satisfaction. We have it in pongee color and black; regular price 65c. Sale Price, yard..... **39c**

\$1.00 Wrappers 58c
Nice quality Percalé Wrappers, in a good line of patterns and colors, and all sizes, made with flounce; there are also a few flannelette wrappers with them; regular price \$1. Sale Price... **58c**

20c Cotton Voile 10c
Figured and Flaked Cotton Voile, in all the leading colors for street wear. They look very nearly like the wool, fast colors; regular price 20c. Sale Price, yard..... **10c**

25c Cotton Foulard 15c
Cotton Liberty Foulard, a beautiful satin-finished material, in a full line of colors, in checks, figures and dots. This material will wash; regular price 25c. Sale Price, yard..... **15c**

\$1.25 Fancy Mohair 75c
This is a very stylish line of Fancy Mohair, in all the leading colors, 44 inches wide. Nothing better for a shirtwaist suit; regular price \$1.25. Sale Price, yard..... **75c**

20c Curtain Madras 15c
Roman Striped Madras, for long or short curtains, also makes a pretty drape, good fast colors; regular price 20c. Sale Price, yard..... **15c**

\$2.00 Shirtwaists \$1.12
This Waist, made from the best quality French mercerized zypher, has all the appearances of silk and will wear better, in a large assortment of colors, warranted fast; regular price \$2. Sale Price..... **\$1.12**

\$1.50 Bed Spreads 95c
Full double bed size, hemmed and laundered, Crochet-Spread, ready for use; regular price \$1.50. Sale Price, each..... **95c**

\$1.50 Lace Curtains 98c
Nottingham Double Thread Lace Curtains, three yards long and 48 inches wide. A large assortment of patterns; regular price \$1.50. Sale Price, pair..... **98c**



CONVICTED WASHINGTON MAN COMMITS SUICIDE

(Special Dispatch to The Journal.)
Olympia, Wash., June 5.—Peter Currie, who, with Albert Wilson, was convicted of cattle-stealing at the last term of the superior court of this county, shot and killed himself yesterday at the town of Woodland, located in Chehalis county. Currie was under a bond of \$1,000 pending an appeal to the supreme court. The sheriff has gone to identify the body; he will also take Wilson into custody and return him to this city. It is said that Currie served a term in the Oregon penitentiary for stealing cattle.

Fears of Fool Play.
(Special Dispatch to The Journal.)
Olympia, Wash., June 5.—Lewis Mays, a recent arrival from Michigan, has been missing from his home for a week and fears of fool play are entertained by his family. When last heard of he was on his way to the logging camp of Hanna Bros. near this city.

Where Happiness is Found.
Don't look for true happiness in the mansions of the very rich, where high-priced pleasures are catered to in every detail. But seek it, and find it, too, in the comfortable homes of the middle class and so-called poor, where Green's August Flax is always used to keep the family healthy—to cure all summer troubles, whether indigestion, dyspepsia, constipation, loss of appetite, bilious attacks or tired liver. Trial bottle August Flax 25c. Big bottle, 75c. At all drug stores. Get Green's August.

JURY FAILS TO AGREE IN TICKSON TRIAL

(Special Dispatch to The Journal.)
Butte, Mont., June 5.—The jury in the case of Victor North, ex-policeman, charged with the murder of Matt Tickson, failed to reach a verdict and was discharged last night, after 26 hours' deliberation. North cut Tickson's throat during a drunken quarrel, but claimed self-defense. Tickson's end was very dramatic. With blood gushing from a wound in his neck he ran about a block in a crowded street, falling in the doorway of a saloon, dying in the presence of a large crowd of persons, after vainly making efforts to speak.

Economics.

Some buy an inferior tea because it is cheap. Might as well buy a cheap tea because it is inferior. The same thing, but not economy either way. With Gal's Ceylon Tea you have strength, flavor, quality, value. That's economy!

Drygoods Merchants Meet.
(Journal Special Service.)
New York, June 5.—The National Wholesale Drygoods association, embracing leading members of the trade throughout the country, held a general meeting in this city today. The subject of selling direct to retailers on the part of commission merchants and manufacturers was the principal matter discussed.

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