

to command such wholesale legislative support as this? ¹

It cannot be said, either, that the mass of the American people feel any dissatisfaction with these restrictions on their power of change. Their general mental attitude has had an odd illustration during the past winter. One of our leading weekly journals sent out a request to a number of distinguished gentlemen to enumerate the points in which they believe that the Constitution should be amended. Then, having advertised his action, and reserved a sufficient portion of the next issue, the editor awaited the responses. With one exception, they came in the shape of curt notes stating broadly that the distinguished gentlemen were certain that the Constitution, unchanged and reasonably construed, was quite good enough still for all the needs of the country. The editor closed the account with a protesting list of amendments which, to his thinking, deserved consideration at least. Very many of us are strongly inclined to agree with the editor, but the people are not. The responses in this case are a peculiarly clear indication of the popular indifference, since they come from our distinguished men, whose office, the true *noblesse oblige* of a democracy, is to reflect the prevailing type of their people.

If this be substantially true of "distinguished men," it is even more so of the men who declare the law — the judges. On any theory of the source and origin of law, it must be admitted that no law, whatever the forms under which it is passed, has much chance of life unless it is in harmony with the spirit and temper of the people. In this respect the judges also reflect the popular type. Even when an amendment passes the congressional Scylla and the Charybdis of the legislatures, as did the civil war amendments, the judges will always be apt to meet it, as in their case, and prune its scope and meaning into entire harmony with the general system to which it was intended and supposed to be a radical change.

The politicians, apart from their natural desire to pose as distinguished Americans, have found a further use for this constitutional American trait; they have made it their Golgotha for embarrassing reforms, their easiest way of how not to do it. If they could persuade the Prohibitionist that he must confine his efforts to obtaining a constitutional amendment, there would be a long breath of relief, at the South as well as at the North. If they attack ballot reform, it is always by selecting some essential point, declaring it in conflict with the Constitution, and asking that that be covered by an amendment; that is, that it and the whole scheme with it be postponed to the Greek Kalends. Garfield's death and the popular feeling growing out of it gave civil-service reform a considerable exemption from the parallel charge of being an unconstitutional restriction upon the President's appointing power. If the present efforts to secure uniformity in marriage, divorce, and interstate extradition law were as distasteful to the "old war horses" of either party, complaint would

soon be made that the proper constitutional road to the end in view would have been the adoption of an amendment permitting States to form combinations or alliances for such purposes.

It seems hardly necessary to do more than present such considerations as these to show that any isolated amendment starts on a course of predestined neglect or ill-usage to an inevitable failure. It may be that changes in the Constitution are likely to be made through a second convention, like that of 1787. It would propose a number of amendments together; and, though these would not necessarily be at all interdependent, those of them which should be sufficiently in harmony with the genius of the people would undoubtedly have, in the common support of only slightly different interests, a prospect of success such as no isolated amendment can ever command.

But the second convention seems very far off, and its road is as yet as hopeless as that of the single amendment. This fact postpones many reforms indefinitely, for the maintenance of constitutional orthodoxy, of a high standard of popular knowledge and respect for the details of the Constitution, is itself a continuing process of reform, outweighing in importance other more pretentious claims. But there are some cases where the provision of the Constitution is not so much mandatory as permissive; where the agent, by giving up a constitutional privilege, while shirking no constitutional duty, may clear the way for great reforms. Ought the President to be considered as acting unconstitutionally when he restricts the appointing power by bringing new classes of public servants under the civil-service rules? or the House of Representatives, if it should consent to accept as final the decision of Federal judges on disputed cases under a general election law? In default of any possibility of an amendment at present, the charge of unconstitutionality, as a barrier to such reforms as these, seems hardly worthy to be final; here, at least, is a fair substitute for an amendment.

The Coast and the Navy.

SMALL as is the excuse for the recent system of international armament in time of peace adopted by the governments of Europe, there would be even less excuse for a voluntary assumption of the burdens of the system by the United States. To enter upon such a course would be to give up at once all the advantages of the wise policy which has guided American diplomacy from the beginning. The nation which, through the kind offices of three thousand miles of stormy ocean, can afford to decline on principle all manner of "entangling alliances," to confine its attention mainly to its own continent, and to ignore the diplomatic combinations and policy of the Old World, has an advantage which it would be folly to forego. Up to the present time the path of wisdom has been readily perceived and willingly followed by the Ameri-

the determination of the dominant party to gather up and store away the successive results of the civil war. The congressional difficulty was also surmounted in 1807 by an amendment forbidding American citizens to accept foreign honors, and in 1861, by the narrowest of margins, by Douglas's proposed XIIIth Amendment. But neither of these had any real or general impelling force behind it; the latter was ratified by but two States, and the former still hangs in limbo, and it would be difficult to say whether it is now constitutionally dead or alive.

¹ The difficulties have been overcome in the first ten amendments, which were almost a part of the original instrument, though two others founded after passing the congressional barrier (see Professor McMaster's article in this number); in the XIth Amendment, which had behind it the selfish interests of the States; in the XIIth Amendment, which had behind it the determination of the dominant party to make the electoral system a trifle at least more democratic; and in the XIIIth, XIVth, and XVth Amendments, which had behind them

can people and their most trusted leaders; and the spirit of which the so-called Monroe Doctrine is really but a narrow phase has governed American policy from Washington's time onwards.

However it may have been in the early years of weakness, it has become more and more evident, as the nation has grown more powerful, that its traditional attitude of neutrality is not the result of fear. European governments have been progressively more willing to permit the American Republic to go on its own undisturbed course in consideration of the fact that their own system was not to be disturbed by the entrance into it of *this new planet* whose possible attracting influences were so far beyond calculation. This steadily neutral position of a great and growing nation has been of the highest service to all neutrals, whose interests are regularly those of civilization itself. The American Government, by accepting and supporting those principles of international law which have seemed in accordance with abstract justice and natural law, and rejecting or resisting such as were the product of mere local jealousies, European policy, or overmastering force, has been able, with the slow acquiescence of older governments, to do far more than its share in that amelioration of the intercourse among nations which has been the hope of all the great publicists since Grotius. With some few errors, the international record of his country is one on which an American may look with satisfaction and pride.

Events seem to be tending towards the imperiling of this historical position of the United States. It was probably inevitable that there should be some change for the worse as the process of armament in other countries became more intense. Although the foreign commerce of the country has diminished to a miserable showing, and the people have shown again and again that they have sufficient self-restraint to reject even the most tempting opportunities of foreign annexation or conquest, yet it should be remembered that reasons or excuses for the clashing of American and foreign interests must recur, and that every such rude contact with an armed nation contains the germ of a possible war. This is an age in which neutrals have fallen upon evil times. There are countries which would be but weak antagonists for ours in a war for which both were fully prepared, but which have provided in advance iron-clad navies strong enough to lay San Francisco or the Atlantic or Gulf cities hopelessly under contribution from the declaration of war. Under such circumstances, is the great American Republic to trust supinely for safety to luck or to the forbearance of other governments? Spain or Chili could do our coasts more damage in six months than we could recoup by final war indemnities, even if we took possession of the whole of the offending country. Nor is it so certain as is often assumed that their naval success would be limited to the first six months of a war, with a series of retributive victories over them during the remainder of the hostilities: how or where are we to build a navy when every nook and corner of our coasts is open to entrance and search by a superior iron-clad force? It may be thought that we have only to accumulate money in order to have guns and iron-clads at command, and that we have nothing to fear while the Clyde is open and our treasury has a surplus. But we ourselves are responsible for a case which fairly bris-

gles with awkward precedents as to the duties of neutrals in preventing the sale of armed vessels to either of two belligerents; and it is not likely that the precedents would ever be disregarded in favor of the United States. All the modern circumstances unite to demand a care in fortifying our coasts, and a liberality of expenditure upon our navy, such as have not been thought of before; but there is not necessarily any waste involved. The case is simply that of the belated traveler, who, knowing that his road is infested with foot-pads, goes to the expense of providing himself with a pistol.

There are many evidences, however, that the intoxication of warlike expenditure is not to spend its force in simply making the nation's coasts and commerce safe; that the sense of power and the combative instinct grow as they are fed. There are in every country, our own being no exception, newspapers and public men who are always ready to float on the crest of a wave of popular passion, no matter whether it may be driving, or on what inhospitable shore it is to break in tumultuous surf at last. The case will bring its peculiar temptations for the United States, for the navy is just that branch of the service for which our people have a traditional weakness, and on which they will spend the public money with least complaint. We may still echo the fine saying of Webster, in his appeal to Congress in 1814 for a naval rather than a land war: "Even our party divisions, acrimonious as they are, cease at the water's edge."

The dangers involved are of course too great to admit of parsimony. It was a pleasant jest of Washington's, when some one in the Convention of 1787 moved a permanent restriction of the standing army to 5000 men, to suggest as an amendment a solemn constitutional requirement that no enemy should ever invade the United States with more than 3000; and we should take care not to expose ourselves to the spirit of the sarcasm. But when the building of a single vessel has come to cost millions of dollars, instead of the modest two or three hundred thousand which sufficed to build even a 74-gun ship in 1815; when scores of ambitious naval officers are anxious to show a clear justification for this expenditure; and when the thoughtless people who are always ready to have every fancied insult wiped out in blood are the ones who are apt to be heard first, loudest, and most persistently, who shall say there is no possible danger in the "new navy"? It is beyond question that it is a necessity; but in yielding for the time to the evident necessity it should be with the determination that the war-spirit shall find no further admission to the American policy than an honest, though liberal, estimate of the necessity of the case shall require.

The interests with which this Congress and the next are to deal are vast, varied, and delicate. It is of course the first business of our legislators to see that the Republic receives no detriment. But the provision for this duty should not be made the means of transferring the once great neutral Republic to the list of quasi-belligerents who now give an added stigma to the term civilization by their system of permanent armament. A failure to guard this point would rank as one of the most unfortunate events in the history of international law.