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An Address Delivered by

ALEXANDER W. WEDDELL
Ambassador to the Argentine Republic

AT

THE COLLEGE OF WILLIAM AND MARY
WILLIAMSBURG, VIRGINIA
APRIL 23, 1937

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Before the President, Faculty, Students and Guests of the College of William and Mary
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Mr. President, Members of the Faculty, Ladies and Gentlemen:

My presence in Williamsburg today is in obedience to a command from the President and Faculty of this venerable and venerated Institution to assemble with them to receive a high honor. And since I can find no words with which to adequately express to them my gratitude for the distinction conferred on me this morning, I can only utter, in my solemn pride, a heartfelt "thank you,"—a thanks which I beg you to believe is "deeper than the lip."

In asking me to address you this evening the President and Faculty do me further honor, if at the same time they lay upon me a heavy burden. For in no place which I have ever known are the atmosphere and surroundings heavier with the memory,—the presence, I should say,—of great ones who have gone
before, than here. Who those great ones are, what names they bore, I have no need to remind you. Therefore, in grasping this second proffered honor, I do so, like the poet's schoolboy, with a "fearful joy," yet in the soothing consciousness that where true learning prevails, indulgence and charity are her handmaidens.

Rudyard Kipling reminds us somewhere that "the sole revenge that maturity can take upon youth for the sin of being young, is to preach at it." I hasten, therefore, to assure my young friends here this evening that I shall have nothing didactic or comminatory to address to them.

I hesitated a long time in selecting a topic for this talk. As I drew nearer to the homeland, with each revolution of the screw of my steamer the name "Virginia! Virginia!" sounded like a drum tap in heart and brain, provoking memories subconscious and ancestral; and I planned an address in which the dear syllables would be repeated with a happy iteration; "Virginia,"—with no pedantic or geographical implications, but as a word symbolizing an attitude toward life,—an attempt to see life clearly and see it whole.

But much in my mind also was the great nation to the south of us in which during the past four years I have labored as the diplomatic representative of our government. And so, in the weeks of travel preceding my landing, realizing that vital constitutional questions are now to the fore in our country, I nursed the idea that a comparison of the Constitution of the Argentine nation with that of the United States, on which the former is based, might not be without interest to you.
And just here, in support of my assertion that Argentine statesmen in drafting their Constitution chose that of the United States as a model, I quote the following declaration of the Chairman of the Committee on Constitutional Amendments to the Buenos Aires Convention of 1860; he said:

"The committee has been guided in its recommendations by the provisions of a similar constitution, recognized as the most perfect, viz., that of the United States. The provisions of this Constitution are most readily applicable to Argentine conditions, having served as the basis for the formation of the Argentine Confederation. The democratic government of the United States represents the last word of human logic, for the Constitution of the United States is the only one that has been made for and by the people."

Thirty-four years later we find the Argentine Supreme Court declaring that:

"The system of government under which we are living was not of our creation. We found it in operation, tested by the experience of many years, and adopted it for our system."

However, such a discussion as the one I had meditated to be adequate should be at least an attempt to show in what ways, with the passage of the years,
the Argentine nation has worked out the problem of the relation between constitutional form and constitutional practice,—in a word, the operation of constitutional provisions almost identical in form with our own under very different conditions.

And in this undertaking it would be also necessary to show that leaving aside the physical environment and economic conditions of the Argentine and the United States, which present certain points of similarity, the political antecedents and traditions of the two countries are fundamentally different.

But no one better than yourselves can appreciate why I shrank before the magnitude of such a task. There came to mind Taine's remark about the critic and Shakespeare. The critic, you will remember, he tells us, is lost in Shakespeare as a traveler in the streets of a great city; he is shown a few buildings and told to imagine the rest!

Therefore, before this mental impasse,—this gulf separating inclination from capacity,—I decided I might best fulfill the flattering mandate of President Bryan and the Faculty if I limited my remarks to suggesting certain analogies and differences between those clauses of the respective constitutions which relate to the powers of the executive and the powers of the judiciary, in the hope that my words might stimulate some of you to independent study of the whole field. Such a study is well worth your while, for, apart from its intrinsic value as an outstanding work of legislation, the Argentine Constitution provides the best example to be found of the application of English law under Hispanic administration, of the
grafting of a shoot from Anglo-Saxon genius on a stock whose roots grew in Latin soil.

By way of baldest background, I would recall to you the Declaration of Independence given to the world by the United Provinces of La Plata on July 9, 1816. But these United Provinces, despite their name, were sadly torn asunder for many years. Various governing juntas gave way under stress of circumstances to a triumvirate, to be displaced by a supreme director.

Finally, in 1829, there appears on the stage of Argentine history a sanguinary figure,—Juan Manuel Rosas. Becoming Governor of Buenos Aires, he inaugurated a period of personal rule known in Argentine history as "The Tyranny," which lasted until 1852, when, following the defeat of his army, he fled the country, never to return.

In 1853, the year succeeding the flight of Rosas, there met in the city of Santa Fe a group of outstanding men charged with the duty of drafting a constitution for the Argentine nation. The result of their labors, based on our great charter, remains today, with amendments made in 1860, 1866, and 1898, the palladium of the people's rights.

These delegates were not representatives of united states or provinces, but of the Argentine nation.—"We, the representatives of the people of the Argentine nation," reads the preamble.

Let us now consider the clauses of the Argentine Constitution referring to the executive and judicial power—to which I have alluded as being the subject of my remarks.

In any consideration of the position of the ex-
ecutive under the Argentine Constitution as compared with our own, it should be borne in mind that, as a political philosopher once observed, the Anglo-Saxon mind is essentially legislative, and the Latin mind essentially executive. Argentina inherited from Spain traditions of a vigorous executive, accustomed to act without consulting any other authority, and dominating the legislative authority whenever brought into conflict therewith. The idea of an executive subordinated to the legislature was completely foreign to Spanish ideas of the eighteenth century, and through the past hundred years in Argentine history the supremacy of the executive over the legislative authority has been characteristic of the political development of the country, both in provincial and federal governments.

The Argentine Constitution declares that "the executive power of the nation shall be exercised by a citizen with the title of 'President of the Argentine Nation.'" The remaining clauses under this head in general follow those of the United States, but go beyond them, for it was the desire and the intent of the framers of the Argentine Constitution to grant far greater power to the executive than is granted under our own, to the end that he should be able to maintain national unity. On the other hand, at the time of the adoption of the Argentine Constitution the country was still staggering under the shock of the Rosas dictatorship; and since this could not be quite forgotten, the result was a grant of great power, coupled with numerous provisions intended to prevent its abuse.

Some of the clauses which depart from the Ameri-
can model may be appositely cited: The President may not leave the country, or even the capital, without the consent of Congress; should he do so, the Vice-President becomes President pro-tempore. Again, an Argentine President must be a member of the Roman Catholic Church, with all the conservative implications of such allegiance. He must have an income of approximately two thousand dollars. He must be a native citizen, or, if born abroad, the son of a native citizen. (The inclusion of sons of native Argentinians born in foreign lands as presidentially eligible was deemed advisable primarily because of the great number of patriots who had been driven from the country under "The Tyranny," and whose sons, in consequence, had been born abroad.) The moderate income requirement inserted in this article serves to illustrate the conservatism of the men of 1853 who dominated the Santa Fe convention.

A fierce parliamentary debate was waged over the provision that the President and Vice-President be members of the Roman Catholic communion. Some pointed out that it was contrary to the liberal spirit of the day; others maintained that the proviso was unnecessary, since the overwhelming majority of the inhabitants of the nation were, as they are today, Roman Catholics, and would naturally elect a member of their own faith to the highest office of the nation. Still others argued vehemently that the very fact of Roman Catholic numerical superiority in Argentina made it necessary for the welfare of the country to guard against the possibility of any but a Roman Catholic becoming President; and, as is seen, this latter view ultimately prevailed.
The period of office of the President and Vice-President of Argentina is six years, and they cannot be re-elected without the interval of one term. In this provision we again see uneasiness over the possibility of a dictatorship. (And just here I may mention that in Argentine legal and journalistic circles the proposition recently advanced looking to extending the term of the President of the United States to six years, without the right of immediate re-election, is being followed with great interest; there seems to be a consensus of opinion in Argentina that the six-year term presents many advantages over quadrennial periods).

As in our country, the President and Vice-President are elected by presidential electors from each province chosen by direct votes of the people. A noteworthy deviation of the Argentine Constitution from its American model is in the provision that the President shall take part in the framing of laws, in addition to approving and promulgating them. Hence the President, who is, or should be, in a better position than any one else to know the needs of the country, is permitted to frame and to introduce into Congress such measures as he may deem advisable, instead of making mere suggestions and recommendations, leaving it to friendly Congressmen to prepare measures which may only in part meet his wishes. Since the Argentine viewpoint is a flat recognition that good government implies sympathy and good-will between the executive and the legislature, it is unreasonable from this viewpoint to expect adequate enforcement of laws by a branch of the government which had no hand in their making and which may be out of sym-

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pathy with them. The authority thus conferred on the President to initiate legislation would seem to possess certain obvious advantages over our limitation of his powers to making and sending messages on the state of the Union! You will recall that the President of the United States, with the consent of the Senate, names all officers whose appointment is not otherwise provided for by the Constitution. No such limitation exists in the case of the President of Argentina. He can thus exercise a tremendous power, and is enabled to resist attempts of the legislative authority to encroach upon executive prerogative. And if critics have pointed out that from time to time there has been abuse of this exclusive appointing power, the question arises whether the requirement of senatorial approval would mean much more than that a greater number of politicians would share in the distribution of offices among faithful henchmen.

 Again, the Argentine President has power by himself alone to appoint as well as to remove the members of his cabinet. This seems an entirely reasonable and logical provision, when the intimate nature of their official relationship to the executive is considered. (This power of removal of members of the cabinet was also granted to the President under the Constitution of the Confederate States.)

 An essential point in the Argentine Constitution of 1853 is found in provisions requiring that all Acts and Orders of the President be countersigned by a member of his cabinet. This reflects an uneasiness on the part of Argentine political leaders, to be remarked from the earliest period, lest the executive
escape a measure of responsibility unless responsible ministers joined in his acts. Here we see an extraneous inflow, for a similar safeguard appears in the French Constitution of 1791.

It is thus to be remarked that under the Argentine political system cabinet ministers occupy a distinct constitutional position, whereas, as is well known, our Constitution is silent on this point. It would seem from this constitutional provision relating to Argentine ministers of State,—that each "is responsible for the acts which he authorizes,"—that some attempt would have been made to bring them under the control of the congress, in order that responsibility might be fixed. However, Article Sixty-three of the Argentine Constitution, which authorizes each house to require the presence of the ministers of the executive power to receive from them "explanations and information which may be deemed necessary," can hardly be said to achieve this purpose, since on at least one important occasion the minister in question refused to be interpellated, and contented himself with a declaration of his policy! Yet this provision of the Constitution does give the President the opportunity to have present in the sessions of the Congress a member of the cabinet ready at any time to set forth his position. In practice, therefore, a bill initiated by the executive power need not be left to the hostility or indifference of the Congress, but may be defended on the floor of either house by a member of the cabinet. Just here you will recall the provision in the Constitution of the Confederate States authorizing Congress by specific law to grant "To the principal officer in each of the executive departments a seat upon the
floor of either, with the privilege of discussing any measures appertaining to his department."

From what has been said it is evident that the Argentine constitutional system is essentially presidential, and this is a completely logical flowering of national political genius, since the political ideas of the Argentine people, inherited from Spain, led them instinctively to support the executive as against the legislative authority. And it is to the executive that the people have always looked for great reforms. This is well illustrated by the action of President Roque Saenz Pena, who brought about the enactment of a new election law making voting obligatory and providing for the secrecy of the ballot. The result of this law was to bring into Congress new and independent forces which have shown their influence, and which have marked a new epoch in the political development of the Republic.

The Argentine people have never been afraid of conferring great powers on their chief executives; at the same time they have endeavored, as suggested, to provide safeguards against an excessive and arbitrary use of the powers thus granted. Political leaders and others in the United States would seem to have had a somewhat contrary view. And in this connection it seems apposite to quote from two great political philosophers concerning the position of the President of the United States.

Woodrow Wilson, a number of years before becoming President, wrote:

"The President is at liberty, both in law and conscience, to be as big a man as he can. His capacity will set the
limit; and if the Congress be overborne by him it will be no fault of the makers of the Constitution,—it will be from no lack of constitutional powers on its part, but only because the President has the nation behind him, and the Congress has not. He has no means of compelling Congress except through public opinion.”

James Bryce, discussing the power of the executive, in his great work says:

“It used to be thought that hereditary monarchs were strong because they reigned by a right of their own, not derived from the people. A President is strong for the exactly opposite reason, because his rights come straight from the people. We shall have frequent occasion to observe that nowhere is the rule of public opinion so complete as in America, or so direct; that is to say, so independent of the ordinary machinery of government. Now the President is deemed to represent the people no less than do the members of the legislature. Public opinion governs by and through him no less than them, and makes him powerful even against a popularly elected Congress.”
Bryce continues:

"Although few Presidents have shown any disposition to strain their authority, it has often been the fashion in America to be jealous of the President's action, and to warn citizens against what is called 'the one man power.' General Ulysses S. Grant was hardly the man to make himself a tyrant, yet the hostility to a third term of office which moved many people who had not been alienated by the faults of his administration, rested not merely on reverence for the example set by Washington, but also on the fear that a President repeatedly chosen would become dangerous to republican institutions. This particular alarm seems to a European groundless. I do not deny that a really great man might exert ampler authority from the presidential chair than most of its occupants have done...."

Concluding, this great authority says:

"But it is hard to imagine a President overthrowing the existing Constitution. He has no standing army, and he cannot create one. Congress can checkmate him by stopping supplies. There is no aristocracy to rally round him. Every State furnishes an independent centre of resistance. If he were
to attempt a coup d'état it could only be by appealing to the people against Congress, and Congress could hardly, considering that it is re-elected every two years, attempt to oppose the people. One must suppose a condition bordering on civil war, and the President putting the resources of the executive at the service of one of the intending belligerents, already strong and organized, in order to conceive a case in which he will be formidable to freedom.”

Let us turn now to those clauses of the Argentine and United States Constitutions which refer to the judiciary:

With those of our own Constitution you are familiar in their general lines, while recent discussions of this subject in the press and elsewhere should have added to,—or clouded,—your knowledge of it.

The organization, jurisdiction, and powers of the federal judiciary of Argentina follow closely those outlined in the Constitution of the United States. Article ninety-four of the Argentine Constitution is similar to Section 1, Article 3, of our Constitution. It provides that:

“The judicial power of the nation shall be vested in a supreme court of justice and in such other inferior courts as Congress may establish in the national territory.”
As was intimated in our examination of the executive authority,—that in earlier days the legislative power was largely subservient to it,—so, in considering the Argentine judicial system it must equally be borne in mind that neither in the historical background of Spanish tradition nor in the early political development of the country is there evidence of the existence of an independent judicial authority sufficiently strong to assert itself as against the executive. In fact, as has been indicated by an outstanding modern scholar, Dr. L. S. Rowe, to whom I am greatly indebted, the history of Spain during the eighteenth century both at home and in the colonies is a record of the complete subordination of the judiciary to executive control. It flows from this that the problem confronting the people of Argentina was totally different from that with which the people of the United States had to deal. The United States inherited a system in which the foundations for the development of an independent judiciary had been already laid. In Argentina, on the contrary, there was a long struggle between the executive and the judiciary, resulting in the ultimate freeing of the latter from a subservient position and the attainment of its present high independent character.

Examining now the Argentine Supreme Court, it may be pointed out that the number of justices is five. Retirement is voluntary. Any time between the ages of fifty-five to sixty-nine the justices may retire, provided they have completed thirty years in the federal service. (By this is meant any position in the civil service of the federal government; it would not include service in the Argentine Congress, army, or
On reaching seventy a justice may retire, provided he has served ten years in federal service. On retirement a justice receives a pension equivalent to that of his former salary. Justices hold office during good behavior but may be removed therefrom under conditions precisely the same as those affecting justices of the United States Supreme Court. While the Argentine Constitution of 1853 provided for nine justices, the present court, whose creation dates from 1863, is composed of five justices whose number has never been changed. The present Chief Justice is aged fifty-six; the aggregate age of the five justices is two hundred and ninety-seven years, an average of just over fifty-nine years.

The court chooses its own Chief Justices, and possesses the powers equivalent to those of the United States Supreme Court with regard to passing upon the constitutionality of any federal, provincial, or municipal law. No decision of the Argentine Supreme Court in this respect has ever been disputed. The court may on occasion declare a portion of a law unconstitutional, whereupon the executive may submit to Congress for enactment that portion which received the tacit approval of the Supreme Court.

The various influences at work in the attempt to erect a free government upon the ruins of an absolutism, which so long crushed the people of Spain and her subjects abroad, is plainly evident in the Argentine legal fabric. Furthermore, let us keep in mind that in countries accepting the Roman law the executive branch of government was the dominating element, while under the common law it was the legislative power. In other words, administrative control in
general characterized Roman law nations, while legis­
lative control has characterized those having the com­
mon law. Centralization is therefore natural in Ar­
gentina, and its initial problem now, as formerly, is

to democratize a government with centralized ten­
dencies; in other words, to develop democracy from

the top down, or the reverse of the process in the

United States and England. And if one may dare to

prophesy with regard to this great country, it would

be that in Argentina, where there is familiarity with

French political history and experience there will be

evolved with the passage of the years, in orderly steps,
a government of the French type,—a centralized
democracy. And here, merely as illustrative of the

influence of the Roman or French judicial concepts
on Argentine law, it may be pointed out that under
Clause 102 provision is made whereby the Congress
may designate where offenders against the law may
be tried for offences committed beyond the boundaries
of the nation. Ordinarily, however, the trial of a
criminal case is held in the province in which the act
is alleged to have been committed.

The matter of procedure under Argentine law has
been a frequent topic in my conversations with Ar­
gentine lawyers and jurists. These seem to be of one

mind in considering that Argentina is still struggling
under the burden of an unwieldy system, inherited
from Spain, and that reform is necessary. Both in
the federal and provincial courts procedure is ex­
ceedingly cumbersome compared with either American
or European countries, and the courts are behind in
their docket. One cause of this doubtless arises from
the fact that there is practically no oral procedure;
everything must be reduced to writing, including the testimony of witnesses.

But when the high character and capacity of the judges of the Argentine Supreme Court and of the Buenos Aires bar is borne in mind, it can not but be anticipated that essential reforms will come with the passage of time.

In closing these unpretentious observations of a layman, there comes to mind a remark of an English statesman to the effect that public speeches have their use—or justification—"if they lead men to dwell on thoughts of service to their country and of help to one another." I confess that the motive inspiring my words today is the desire to provoke in your minds a "high curiosity" to know better the great country to the south of us,—now my temporary home. Such study would be a form of service to both countries.

After all, Argentina and the United States are set on the same course. Our goal is the same. Our methods of traveling may sometimes be different, but our paths run parallel. And the root of any differences which may occur at any time between the two peoples is the root of most of the trouble in the world—ignorance. And because it is an essential object of this great College to eradicate ignorance in all its protean forms—including that which sunders peoples who should be closest friends—I rejoice in its existence and its continuance (as I do, may I add, in the privilege of being within its gates tonight).