

“CUSHMAN KELLOGG DAVIS”

BY

GEORGE F. HOAR

FOREWARD

BY

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In *The Politicos, 1865-1900*, Matthew Josephson drew portraits of the leading political figures in post-bellum America, including Cushman Kellogg Davis, whom he described as “one of the more cultivated lawyers in the upper chamber.”¹ There are many words that can be applied to Cushman Davis, and “cultivated” is one of the better ones.

There seems to have been something of a battle within him—between the active life of the trial lawyer and politician and the contemplative life of writing and reading Shakespeare, biographies of Napoleon,

¹ Matthew Josephson, *The Politicos, 1865-1900* 583 (New York: Harcourt, Brace and Co., 1938). Henry Cabot Lodge, the junior senator from Massachusetts, also used this word to describe Davis in his eulogy on January 12, 1901. “Address of Mr. Lodge, of Massachusetts,” in *Memorial Addresses on the Life and Character of Cushman Kellogg Davis (Late Senator from Minnesota) Delivered in the Senate and House of Representatives, Fifty-Sixth Congress, Second Session* 38, 41, 42 (Washington, D.C.: Government Printing Office, 1901) (“Yet was he none the less a man of letters—was so by his wide reading, his cultivation, and his love of learning for its own sake....Like all men of broad cultivation...”).

histories and poetry.² In his biography of Mark Hanna, Thomas Beer paints a vivid impression of Davis merging his work in politics with his passion for literature:

He was a personage, oddly forgotten by historians, a reformer, a jingo, an imperialist, and yet a critical patriot. It was Davis who launched an economist's demand for the control of big corporations in 1886, denouncing the theory of *laissez faire* as a profound economic fallacy spawned by Adam Smith. It was Davis who retorted in 1892 when a German imperialist invited the Reichstag to secure the decent dismemberment of the United States by planting colonies of civilized Europeans, commanded by their own ecclesiastics and speaking their own tongues, in yonder savage nation. The Senator from Minnesota thunderously told the Senate that this notion was less civilized than the political ideas of Confucius, and then was found by reporters in his office reading an unknown work named *The New Spirit*, by Havelock Ellis. He drawled that Dr. Ellis was a sort of improved Emerson and told the journalists where they could read the ideas of Confucius. The prose of *Moby Dick* moved him, but so did the rhythm of Tennyson's moral poems. He read

² Davis's interest in Napoleon was well known. During his presidential boomlet in 1895, a political cartoon appeared in the *Minneapolis Times* on April 12, 1895. It depicts "Napoleon Davis" wearing a military uniform and a cocked bi-corner hat, sitting in his library strewn with volumes on Napoleon. He tells Congressman James Tawney, who sits before him, "What they want in the presidency is a strong man, a new Napoleon....Strong men, James, me and Napoleon." Tawney replies, "Admiringly—A'int he a beaute." The cartoon is reproduced in Kent Kreuter & Gretchen Kreuter, "The Presidency of Nothing: Cushman K. Davis and the Campaign of 1896," 41 *Minnesota History* 301, 305 (Fall 1969).

constantly, slumped on a couch beside a box of violent cigars, and dallied with essays on Madame Roland and the law in the plays of Shakspere. He thought of a volume on musical instruments, described a history of prostitution in America that ought to be written by somebody else, and collected Napoleonana. But the war had done for him, he yawned. He would never amount to a damned thing, after the excitements and maladies of soldiering in the sixties. It took another war to rouse him. He set off for Paris ready to laugh aloud when the Spanish commission posed that the United States accept the debts of Cuba along with Cuba.³

While he led a successful public life, he always felt the pull of his library. At his death on November 27, 1900, in St. Paul, the competition for his attention was pretty much a draw.

It was the mixture of these qualities that earned the respect of George F. Hoar, whose eulogy to Davis follows. Hoar represented Massachusetts in the Senate from 1877 to 1904. That Hoar would reprint his lengthy tribute to Davis in his memoirs is proof of a great friendship.⁴

³ Thomas Beer, *Hanna* 209-10 (New York: Alfred A. Knopf, 1929)(Beer's spelling has not been changed).

⁴ George F. Hoar, II *Autobiography of Seventy Years* (New York: Charles Scribner's Sons, 1903). Hoar's eulogy, delivered on January 12, 1901, in the Senate is reprinted in *Memorial Addresses on the Life and Character of Cushman Kellogg Davis (Late Senator from Minnesota) Delivered in the Senate and House of Representatives, Fifty-Sixth Congress, Second Session 17-24* (Washington, D.C.: Government Printing Office, 1901).

When Davis joined a floor debate, other Senators must have listened closely and wondered—whom would he quote, in what language would he speak, would they fail to get one of his obscure literary allusions? In his eulogy, Hoar quotes Davis quoting Juvenal—in Latin.⁵ We wonder, how many times has Juvenal been quoted in the original on the floor of the United States Senate? If Davis impressed his Senate colleagues with an oratory laden with literary references, what must a Minnesota jury, listening to him in the 1870s and 1880s, have thought?

Davis seems to have been especially attracted to forms of literature that he could use in his work. There is a line in Davis's *The Law in Shakespeare* that is worth quoting because it provides some insight into his own character:

It is the prerogative of Shakespeare that whatever he
stoops to touch becomes authoritative in quotation.⁶

Davis was a fountain of quotes. As Hoar recalled, “He liked to share with a friend the pleasure he took in finding some flower or gem of literature which, for long ages till he found it in some out-of-the-way nook, had—

Blushed unseen,
And wasted its sweetness on the desert air.

This is not to say that he was a cerebral mechanic, always on the look out for tools of his trade. All we now about him—and his biography is yet to be written—suggests that he genuinely enjoyed literature for

⁵ Juvenal was a Roman poet and satirist who lived, scholars think, in the late First and early Second Century AD.

⁶ Cushman Kellogg Davis, *The Law in Shakespeare* 175-76 (Washington, D. C.: Washington Law Book Co., 1883).

its own sake.⁷ As Hoar noted, “He was a great lover of books, of which he had a costly collection.” Yet, while Shakespeare is to be read, he is also to be performed. And here we may recall that trial lawyers and politicians—and Davis was a master of both professions—have been likened to actors whose talents are displayed publicly on the proscenium of the courtroom or in the well of the legislative chamber. This peculiar mixture of law, politics and literature shaped Davis into the “cultivated” Senator whose passing Hoar mourned.

Hoar and Davis were Republicans; they were leaders of their state political parties; Hoar was older by twelve years; Hoar arrived in the Senate in 1877, Davis in 1887. They had much in common, but they had their differences, as Hoar acknowledged:

I have served with him here nearly fourteen years. I have agreed with him and I have differed from him in regard to matters of great pith and moment which deeply stirred the feelings of the people, as they did mine, and doubtless did his own.

Their greatest disagreement, quite fresh in Hoar’s mind, though he does not mention it, was over territorial expansion as a result of the recent war with Spain. While Hoar voted in favor of a resolution authorizing the president to use military forces to end hostilities in Cuba, he adamantly opposed taking the Philippine Islands and other

⁷ Senator Lodge made this point in his eulogy: “In its highest expression literature is the greatest art of which the human race has shown itself capable....It must exist for its own sake and be its own self-sufficient excuse for being. This was the literature which Senator Davis knew and rejoiced in and admired. This is what he read so widely in all languages, especially his own. This was what he loved purely for its own sake.” Lodge, *supra* note 1, at 43-44.

Spanish colonies. In his memoirs, Hoar repeated his reasons for opposing U.S. annexation of the Philippines:

The war that followed [The Treaty of Paris] crushed the Republic that the Philippine people had set up for themselves, deprived them of their independence, and established there, by American power, a Government in which the people have no part, against their will. No man, I think, will seriously question that that action was contrary to the Declaration of Independence, the fundamental principles declared in many State constitutions, the principles avowed by the founders of the Republic and by our statesmen of all parties down to a time long after the death of Lincoln.

....

[O]ur dealing with the Philippine people is a violation of the principles to which our people adhered from 1776 to 1893. If the maintenance of slavery were inconsistent with them, it was admitted that in that particular w were violating them, or were unable from circumstances to carry the into effect. Mr. Jefferson thought so himself.⁸

In contrast, Davis was a fervent advocate of U. S. expansion and absorption of Spain's colonies.⁹ In 1891, he began serving on the Foreign Relations Committee, a natural spot as he had an interest in

⁸ Hoar, *supra* note 2, at 304-5.

⁹ A recent historian divides the "agitators" for Cuban independence into an "unusual coalition of five diverse segments," the fourth being a group of politicians centered in the Senate, among whom was Cushman Davis. Richard E. Hamilton, *1 President McKinley, War and Empire* 112-113 (New York: Transaction Pub., 2006).

international law;¹⁰ and in May, 1897, he became Chairman, a position that gave him prominence and potential power.

On August 12, 1898, a preliminary treaty concluded the Spanish-American War. The United States was granted Puerto Rico and Guam; Spain agreed to leave Cuba; and the question of the Philippines was left to be resolved by a peace conference to be held in Paris. McKinley appointed a five-member Peace Commission to represent the United States: Secretary of State Rufus Day,¹¹ Whitelaw Reid, editor of the *New York Tribune*, and Senators Davis, William P. Frye, a Republican from Maine and George Gray a Democrat from Delaware, all members of the Senate Foreign Relations Committee. As historian Ivan Musicant bluntly put it, "Chairman Cushman K. Davis of Minnesota and William P. Frye of Maine were both fire-eating Republican jingoes as regards large-policy expansionism."¹²

Reid became the leader of the expansionist faction of the commissioners.¹³ While Davis was open initially to annexing only a few

¹⁰ In October, 1897, Davis delivered a series of four lectures at the University of Minnesota which were published as an 80 page pamphlet, *Lectures on International Law by Cushman K. Davis Before the Faculty and Students of the University of Minnesota* (n.p. October, 1897). These lectures were enlarged, revised and published posthumously with an introduction by Senator Lodge, as *A Treatise on International Law including Diplomacy* (St. Paul: Keefe-Davidson Law Book Co., 1901)(Reprint, Fred R. Rothman & Co., 1982).

¹¹ Day had succeeded John Sherman as Secretary of State on April 28, 1898, and would in turn be replaced by John Hay on September 30th of that year. Day later served on the Supreme Court from 1903 to 1922.

¹² Ivan Musicant, *Empire by Default: The Spanish-American War and the Dawn of the American Century* 598 (New York: Henry Holt & Co., 1998).

¹³ Julius Pratt, *Expansionists of 1898: The Acquisition of Hawaii and the Spanish Islands* 332 (Gloucester, Mass.: Peter Smith, 1959)(1936)("Thus three of the five commissioners were trustworthy expansionists. Their leader was Reid, if we may credit his later account."). This was not surprising because Reid was an in-

of the islands, in the end he was as intransigent as Reid—he wanted the entire Philippine Islands for the U. S. ¹⁴ Professor Barbara Stuhler contends that “Senator Davis proved to be a hard-nosed negotiator, who played a major part in the settlements which were made in Paris,” adding that he was “credited with being one of the two strongest and most effective men in the group.”¹⁵ In Musicant’s detailed account of the negotiations with the Spanish diplomats, however, Reid and Day predominate, while Davis barely makes an appearance.¹⁶ In any event, it was William McKinley who made the final decisions.

On December 10, 1898, the Treaty of Paris was signed. Spain

fluent member of what Richard Hofstadter called “the little imperialist elite” that beat the war drums for U. S. expansion:

The dynamic element in the movement for imperialism was a small group of politicians, intellectuals, and publicists, including Senator Henry Cabot Lodge, Theodore Roosevelt, John Hay, Senator Albert J. Beveridge, Whitelaw Reid, editor of *The New York Tribune*, Albert Shaw, editor of the *Review of Reviews*, Walter Hines Page, editor of the *Atlantic Monthly*, and Henry and Brooks Adams.

Richard Hofstadter, “Manifest Destiny and the Philippines,” in *America in Crisis: Fourteen Crucial Episodes in American History* 173, 183, 184 n.1. (Daniel Aaron, ed., Alfred A. Knopf, 1952). Richard Hamilton agrees that each of these men was influential but provides a far more nuanced view of the differences among them, especially regarding Cuba. Hamilton, *supra* note 9, at 112-114.

¹⁴ Pratt, *supra* note 13, at 322, 337, 339 n.78; Musicant, *supra* note 12, at 621 (“Senator Cushman K. Davis, the most hard-line of the American team, demanded the entirety of the Philippines, Puerto Rico, and Guam, along with Cuban independence, all without compensation to Spain.”).

¹⁵ Barbara Stuhler, *Ten Men of Minnesota and American Foreign Policy, 1898-1968* 26-7 (St. Paul: Minnesota Historical Society Press, 1973)(citing sources).

¹⁶ Musicant, *supra* note 12, at 604-627.

relinquished Cuba and ceded Puerto Rico, Guam and all of the Philippines to the U. S. It then came before the Senate for ratification. Hoar's biographer describes the dramatic vote in the Senate:

At four o'clock on 6 February 1899 the Senate voted to confirm the Treaty of Paris, by a vote of 57 to 27, one vote in excess of the required two thirds. The majority was composed of 42 Republicans, 10 Democrats, 3 Populists, and 2 Silver "Independents." A shift of two votes would have defeated the treaty—at least for that session of Congress—and students of the Philippine debate have long argued the question of responsibility for the victory of the expansionists in the United States Senate.¹⁷

Hoar placed the responsibility for the ratification of the treaty upon Williams Jennings Bryan, who supposedly influenced several wavering Democrats.¹⁸ Senator Henry Cabot Lodge claimed credit for himself.¹⁹ To Richard E. Welch, Jr., Hoar's biographer, victory was

¹⁷ Richard Welch, Jr., *George Frisbie Hoar and the Half-Breed Republicans* 243 (Cambridge: Harvard University Press, 1972).

¹⁸ Hoar, *supra* note 2, at 322. ("Seventeen of the followers of Mr. Bryan voted for the Treaty....Mr. Bryan in the height of the contest came to Washington for the express purpose of urging upon his followers that it was best to support the Treaty, end the War, and let the question of what should be done with our conquest be settled in the coming campaign."). Bryan's biographer disagrees, and credits Lodge with convincing the "doubtfuls" to vote for the treaty. Paolo E. Coletta, *William Jennings Bryan: Political Evangelist, 1860-1908* 235-36 (Lincoln: University of Nebraska Press, 1964).

¹⁹ According to Lodge's biographer:

Lodge claimed credit for carrying the day, along with Senator Aldrich and a few others. "It took some 'hard fighting, which does not appear on the surface,'" he told Theodore Roosevelt. "We were down in the engine room and do not get flowers, but we did make

due to the skill of President McKinley:

The degree of Bryan's responsibility must remain conjecture. More certain is the fact that the man most responsible for the passage of McKinley's treaty was McKinley himself. Aldrich and Lodge might have thought they engineered the victory, but the instruments they used so skillfully were furnished by the President. The contribution of McKinley, however, lies not so much in the patronage he distributed as in the persuasion he exerted. Undoubtedly there was some purchasing of votes—Senator George Gray was rewarded for his compliance by a seat on a United States Circuit Court and two of the last three converts, Democratic Senator Samuel McEnery and John Lowndes McLaurin, were subsequently given wide patronage powers by a Republican president in states of Louisiana and South Carolina—but more senators were out-manuevered than were corrupted. By appointing three senators to the Peace Commission, McKinley had assured a favorable vote

the ship move." The Massachusetts Senator was vague about the kind of fuel used by the black gang of this particular "ship," but Democratic Senator Gray, the peace commissioner who had strongly opposed taking the Philippines, was with the majority at the showdown, and shortly thereafter received a federal judgeship from the hand of the Republican McKinley, and at least one other Democrat reported being offered a large bribe for a "ye" vote.

John A. Garraty, *Henry Cabot Lodge: A Biography* 201-2 (New York: Alfred A. Knopf, 1953)(citing sources). According to Margaret Leech, the senator who was offered a bribe was Henry Heitfeld a Democrat-Populist from Idaho. *In the Days of McKinley* 357 (New York: Harper & Bros., 1959)(citing sources).

from the Foreign Relations Committee and made more difficult the task of those who would reject the treaty. By seizing the initiative and proclaiming the sovereignty of the United States over the entire Philippine archipelago, in executive orders of 21 December and 5 January, he had made sure that the only option offered the Senate was to accept the treaty or lower the flag. In his tours about the country, moreover, McKinley had not been content just to keep his ear to the ground. He had helped inspire popular sentiment in behalf of expansion and so in behalf of a favorable vote in the Senate.²⁰

Regardless of who deserves the credit, there is someone missing in these accounts—Cushman Kellogg Davis. Not one attributes passage of the treaty, even in a small way, to him even though he had served on the Peace Commission, and was both Chairman of the Senate Foreign Relations Committee and a floor manager of the treaty. Curiously, for a successful lawyer, he seems not to have been an effective negotiator in the Senate. Unlike Lodge, who excelled in backroom logrolling, Davis had little talent or even interest in bringing wavering colleagues to his side by arguments or offers of patronage. Hoar was puzzled by Davis's inflexibility and aloofness:

He never debated. He rarely answered other men's arguments, never with warmth or heat. But he was exceedingly tenacious of his own opinion. He was, in the things he stood for, as unyielding as flint and true as steel. But his flint or steel never struck out a spark by

²⁰ Welch, *supra* note 17, at 244-245.

collision with any other. He spoke very rarely in debate in general; only when his official place on his committee, or something which concerned his own constituents especially, made speaking absolutely imperative. Then he gave his opinion as a judge gives it, or as a delegate to some great international council might be supposed to give it; responsible for it himself, but undertaking no responsibility for other men's opinion or conduct; never assuming that it was his duty or within his power to convert, or change, or instruct them, still less to chastise them. Whether that way be the best way for usefulness in a deliberative body, especially in a legislative body of a great popular government, I will not undertake now to say. Certainly it is not the common way here or elsewhere. It is very rare indeed, that any man possessing the great literary and oratorical power of Mr. Davis, especially a man to whom nobody ever thought of imputing timidity or undue desire to enjoy public favor, or want of absolute confidence in his own opinions, will be found to refrain from employing these qualities to persuade or convince other men.

In her account of the run-up in early 1899 to the final vote on the treaty, Margaret Leech confirmed Hoar's assessment of these aspects of Davis's personality:

Cushman K. Davis, who was in charge of the treaty, gave notice on January 19 of his intention to hurry things along in executive session. A Republican thunderer and the best of good fellows, the big senator from Minnesota was not gifted as a manager. All his energy seemed to be devoted to standing firm and refusing to bargain on

independence for the Philippines. Reports leaked from the Senate delegation from the opposition that he would not consent to a vote until he was sure of ratification. Informed that there were sufficient votes to prevent, he asked for the names and was handed a list of thirty-six. A day of inactivity followed, with rumblings of an extra session. The next day, according to the news stories, [Senator Arthur Pue] Gorman arose to taunt the treaty with their desire to avoid delay, assuring them that he agreed, that a vote might be reached within ten days. Vest joined in, urging Davis to name the day and hour—*they* were not holding up the treaty. “Let us vote now,” said Nelson Aldrich, entering the chamber on an audacious line. But Davis hung back from setting a time on the plea of consulting the other members of the Foreign Relations Committee. Though the correspondents had none of this at first hand, the accurate trend of their information was established by that high-toned gossip, Mr. Henry Adams, also dependent on hearsay, but in the distinguished confidence of Secretary Hay and Senator Lodge. Adams wrote that “the crowd” was “furious because Cush Davis let himself be bluffed in the Senate by an impudent assertion that the opposition had thirty-six votes...” He had “lost reputation as a leader by his waste of very precious time,” and had also blundered in failing to force the opposition “to take the position and the responsibility of prolonging a state of war.”

Davis changed his tune after meeting with his committee.

The Senate unanimously agreed to his proposal to vote on the treaty and all amendments on Monday, February 6.²¹

While the Treaty of Paris was ratified, the most that can be said of Davis is that he participated in the process.²²

Toward the end of his eulogy, Hoar envisioned what might have been in store for his friend had he lived:

There are other things his country had hoped for him. She had hoped a longer and higher service, perhaps the highest service of all.

The “highest service of all” was the presidency. In 1896, Davis made a feeble bid for the Republican nomination, but his efforts fizzled out

²¹ Leech, *supra* note 19, at 355-56 (citations omitted). Almost certainly, Leech got the word “thunderer” from Thomas Beer. See Beer, *supra* note 3, at 209.

²² We do not know how Davis celebrated victory, but we do know how Hoar suffered defeat. As recounted by Margaret Leech:

On the morning after the Senate voted, when Lodge waited on the President, he found that he had been preceded by his colleague, Senator Hoar. Lodge was struck dumb on the threshold of the Cabinet Room at the sight of the party renegade, seated at McKinley’s side with a beam on his Pickwickian face. John Hay, just coming in, stood staring, too. “Only a few hours before,” as Henry Adams had it, “in the full belief that his vote was going to defeat and ruin the administration, Hoar had voted against the treaty, and there he was, slobbering the President with assurances of his admiration, pressing on him a visit to Massachusetts, and distilling over him the oil of his sanctimony.”

Leech, *supra* note 19, at 358 (citations omitted).

quickly.²³ Under pressure from local party officials, he released his delegates even before the Minnesota state party convention, thereby permitting them to vote for McKinley at the national convention in St. Louis. His presidential ambitions were whetted by warm press comments about a “law and order” address he delivered in the Senate in July, 1894, accusing the Pullman strikers of fomenting a second civil war.²⁴ But the enthusiasm generated by that demagogic speech did not last long. Davis’s strengths as a lawyer became political weaknesses. His law firm won an important court case for its major client, James J. Hill, when much of the country feared the growth of monopolies and the concentration of wealth.²⁵ Moreover, his closest political advisors were Minnesotans, including his partners, Frank B. Kellogg and Cordenio A. Severance, and none of them had the money, political shrewdness and organizational talents of Mark Hanna.

Years later, there was talk that he again might be a presidential contender, and this is what Hoar alluded to in his memorial address. But his friend Theodore Roosevelt barred the way.

²³ See generally, Kent Kreuter & Gretchen Kreuter, “The Presidency or Nothing: Cushman K. Davis and the Campaign of 1896,” 41 *Minnesota History* 301 (Fall 1969).

²⁴ The best account of the speech and its aftermath is Kent Kreuter & Gretchen Kreuter, “The Lure of Law and Order: Cushman K. Davis and the Pullman Strike,” 51 *Mid-America* 194 (July 1969).

²⁵ *Pearsall v. Great Northern Ry.*, 73 F. Rep. 933 (C. C. 1895), *rev'd* 161 U. S. 646 (1896). Davis, Kellogg & Severance represented the Great Northern before the circuit court and the Supreme Court. Davis was not one of the trial lawyers, but he is named as counsel for the railroad before the Supreme Court. It is not known who argued the appeal.

Davis was the first of several political figures from this state that have been mentioned as a presidential candidate or have actively sought that office. John A. Johnson, Floyd B. Olson, Harold Stassen, Hubert Humphrey, Eugene McCarthy and Walter Mondale all followed in Davis's footsteps.

Hoar delivered a classic nineteenth century funerary address. That style can be better appreciated when it is compared to a description of Davis's last days written by Thomas Beer in 1929:

Cushman Davis was dying all this while. When they told him that Mr. Hanna had started for a tour in South Dakota he said, "Captain Ahab is after his White Whale!" Mr. Hanna did not understand the allusion to *Moby Dick* and it had to be explained to him that a man named Herman Melville had written a tale of a crazy captain who chased a whale which once had hurt him. Oh? That reminded him. In 1896 some bookish person asked if he wasn't related to that Herman Melville, on account of his brother's name, and he had answered, "What the hell kind of job does Melville want?" Melville was dead, was he? That was why the bookish person laughed so. The Senator laughed, then talked on about Cushman Davis, and his eyes filled with tears. . . . Davis died. The newspapers forgot his speech against laissez faire in 1886 and twaddled about his books and a quarrel of his second wife with another legislator's lady in Washington. The man who had written twenty thousand letters to secure a law regulating capital's powers, who had done all he could to give the West its war in 1898 and then all he could to give imperialism its place among American pol-

icies, now vanished, and is nothing but a footnote in the memoirs of Theodore Roosevelt.²⁶

The following tribute to Cushman Kellogg Davis was published as chapter 18 of the second of the two volume autobiography of Senator George Frisbie Hoar of Massachusetts: *Autobiography of Seventy Years*, published in 1903 by Charles Scribner's Sons. Most of it had been delivered by the senator on January 12, 1901, in the Senate. Though reformatted, it is complete. Page breaks have been added. Hoar's spelling, emphasis and punctuation are not changed.

Biographical sketches of Senators Hoar and Davis follow Hoar's eulogy. They are taken from the online *Biographical Directory of the United States Congress*. The photographs of the two men are posted with the prior permission of the U. S. Senate Historical Office. ■

²⁶ Beer, *supra* note 3, at 232-3.

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AUTOBIOGRAPHY

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GEORGE F. HOAR

WITH PORTRATS

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CHAPTER XVII.

CUSHMAN KELLOGG DAVIS.

I reprint here a paper read before the American Antiquarian Society shortly after Mr. Davis's death.

Cushman Kellogg Davis was born at Henderson, Jefferson County, New York, June 16, 1838, and died at St. Paul, Minnesota, November 27, 1900. On his mother's side he was descended from Robert Cushman and Mary Allerton, the last survivor of the company which came over in the Mayflower. He was graduated at the University of Michigan in 1857, and admitted to the Bar shortly before the breaking out of the Civil War. He enlisted at the beginning of the War and served as First Lieutenant of Company B, Eighth Wisconsin Regiment, until 1864, when he was compelled by physical infirmity to resign his commission. He was an excellent soldier. He sustained an injury to one of his eyes, which caused him much pain through life, until a few years before his death he lost the sight of that eye altogether.

After his return from the war, he began the practice of the law anew, in which he gained great distinction. For many years, and until his death, he was the acknowledged leader of the Bar of his State. He was a member of the State Legislature of Minnesota in 1867, United States District Attorney from 1868 till 1873, and Governor of the State in 1874 and 1875. He was one of the Regents of the State University of

Minnesota from 1892 to 1898. In 1887 he was elected United States Senator, and reelected in 1893 and 1899. He held the office of Senator until his death. He was Chairman of the Committee on Foreign Relations from March, 1897, till his death. He was one of the Commissioners who negotiated the Treaty of Paris with Spain. [194]

He was a great lover of books, of which he had a costly collection. He knew Shakespeare very thoroughly, and was the author of a book called "The Law of Shakespeare."

He was also a zealous and thorough student of the career of Napoleon, whose civic and military career he greatly admired. His mind was a marvellous storehouse of literary gems which were unknown to most scholars, but rewarded his diligent search and loving study of his books.

Many good stories are told by his companions of the Bar and in public life of his apt quotations. It is said that he once defended a Judge in an impeachment case. The point involved was the power of the court to punish for contempt, and Davis quoted in support of his position the splendid and well-known lines of Henry the Fourth, in the famous scene where the Chief Justice punishes the Prince of Wales for contempt of the judicial office and authority. For this anecdote, the writer is indebted to Senator Lodge. In the Senate, during the Hawaiian debate, he quoted this passage from Juvenal:

Sed quo cecidit sub crimine; quisnam
Delator? quibus judiciis; quo teste probavit?
Nil horum; verbosa et grandis epistola venit
A Capreis. Bene habet; nul plus interrogo.

He then proceeded:

“My friend from Massachusetts (Mr. Hoar) requests me to translate that. He does not need it, of course. But another Senator (Mr. Washburn) suggests that some of the rest of us do. I will not attempt to give a literal translation, but I will give an accurate paraphrase, which will show its application ‘Into what crime has he fallen? By what informer has he been accused? What judge has passed upon him? What witness has testified against him? Not one or any of these. A verbose and turgid message has come over from Capri. That settles it. I will interrogate no further.’ ”

The most ardent admirers of the then President, Mr. Cleveland, could not help joining in the laugh. [195]

Mr. Davis took great delight in his descent from the early settlers of Plymouth, and valued exceedingly the good will of the people of Massachusetts. The members of the Society who were fortunate enough to meet him will not forget their delight in his pleasant companionship, when he visited Massachusetts a few years ago to attend our meeting and contribute a paper to our Proceedings. He had hoped to repeat the visit.

I prefer, instead of undertaking to complete this imperfect sketch by a new portraiture of my honored friend, to add what I said in the Senate, when the loss of Mr. Davis was still recent:—

“Mr. PRESIDENT: There is no Senator who would not be glad to lay a wreath of honor and affection on the monument of Cushman K. Davis. That, however, is more especially the right of his colleague and his successor and the members of the great Committee where he won so much of his fame. I ought to say but a few words.

“The Senate, as its name implies, has been from the beginning, with few exceptions, an assembly of old men. In the course of nature many of its members die in office. That has been true of thirty-eight Senators since I came to the Capitol. Others, a yet larger number, die soon after they leave office. Of the men with whom I have served in this Chamber fifty-eight more are now dead, making in all ninety-six, enough and to spare to organize another Senate elsewhere. To that number has been added every Vice-President but two. Upon those who have died in office eulogies have been pronounced in this Chamber and in the House. The speakers have obeyed the rule demanded by the decencies of funeral occasions—*nil de mortuis nisi bonum*—if not the command born of a tenderer pity for human frailty—*jam parce sepulto*. But in general, with scarcely an exception, the portraitures have been true and faithful. They prove that the people of the American States, speaking through their legislative assemblies, are not likely to select men to represent them in this august assembly who are lacking in high qualities either of intellect or of character. [196]

However that may be, it is surely true of Mr. Davis that whatever has been or will be said of him to-day, or was said of him when the news of his death first shocked the country, is just what would have been said when he was alive by any man who knew him. I have served with him here nearly fourteen years. I have agreed with him and I have differed from him in regard to matters of great pith and moment which deeply stirred the feelings of the people, as they did mine, and doubtless did his own. I never heard any man speak of him but with respect and kindness.

“Of course, Mr. President, in this great century which is just over, when our Republic—this infant Hercules—has been growing from its cradle to its still youthful manhood, the greatest place for a live man

has been that of a soldier in time of war and that of a statesman in time of peace. Cushman K. Davis was both. He did a man's full duty in both. No man values more than I do the function of the man of letters. No man reveres more than I do the man of genius who in a loving and reverent way writes the history of a great people, or the poet from whose lyre comes the inspiration which induces heroic action in war and peace. But I do not admit that the title of the historian or that of the poet to the gratitude and affection of mankind is greater than that of the soldier who saves nations, or that of the statesman who creates or preserves them, or who makes them great. I have no patience when I read that famous speech of Gladstone, he and Tennyson being together on a journey, when he modestly puts Mr. Tennyson's title to the gratitude of mankind far above his own. Gladstone, then Prime Minister, declared that Tennyson would be remembered long after he was forgotten. That may be true. But whether a man be remembered or whether he be forgotten; whether his work be appreciated or not whether his work be known or unknown at the time it is accomplished, is not the test of its greatness or its value to mankind. The man who keeps this moral being, or helps to keep this moral being we call a State in the paths of justice and righteousness and happiness, the direct effect of whose action is felt in the comfort and happiness and moral life of millions upon millions [197] of human lives, who opens and constructs great highways of commerce, who makes schools and universities not only possible but plenty, who brings to pass great policies that allure men from misery, and poverty, and oppression, and serfdom in one world, to free, contented, happy, prosperous homes in another, is a great benefactor to mankind, whether his work be accomplished with sounding of trumpets, or stamping of feet, or clapping of hands, or the roar and tumult of popular applause, or whether it be done in the silence of some committee room, and no man know it but by its results.

“I am not ready to admit that even Shakespeare worked on a higher plane, or was a greater power on earth, than King Alfred or George Washington, even if it be that he will survive them both in the memory of man. The name of every man but one who fought with Leonidas at Thermopylæ is forgotten. But is Æschylus greater than Leonidas, or Miltiades, or Themostocles? This literature of Athens preserves to immortality the fame of its great authors. But it was Solon, and Pericles, and Miltiades that created and saved and made great the city, without which the poets could not have existed. Mr. Tennyson himself came nearer the truth than his friend, Mr. Gladstone, when he said:

He
That, through the channels of the state,
Conveys the people’s wish, is great;
His name is pure; his fame is free.

“There have been soldiers whose courage saved the day in great decisive battles when the fate of nations hung in the scale, yet whose most enduring monument was the column of smoke which rose when their death shot was fired. There have been statesmen whose influence decided the issue when the country was at the parting of the ways, of whose service history takes no heed. The great Ohio Territory, now six imperial States, was twice saved to freedom by the almost unnoticed action of a single man. With all respect for the man of letters, we are not yet quite ready to admit that the trumpeter is better than the soldier, or the painter greater than the lion. [198]

There is no need of many words to sum up the life and character of Cushman Davis. His life was in the daylight. Minnesota knew him. His country knew him and loved him. He was a good soldier in his youth, and a great Senator in his maturer manhood. What can be said

more or what can be said better, to sum up the life of an American citizen. He offered his life for his country when life was all before him. His State and his country rewarded him with their highest honor. The great orator and philosopher of Rome declared in his youth, and repeated in his age, that death could not come prematurely to a man who had been Consul. This man surely might be accounted ready to die. He had discharged honorably life's highest duty, and his cup of honor and of glory was full.

“We are thinking to-day of something more than a public sorrow. We are mourning the loss of a close and delightful companionship, a companionship which lightened public care and gave infinite pleasure to private intercourse. If he had never held office, if his name had never been heard even beyond the boundaries of a single municipality, he would have been almost anywhere a favorite and foremost citizen. He was, in the first place, always a gentleman; and a true gentleman always gives tone to any company in which he is found, whether it be among the rulers of States or the humblest gathering of friendly neighbors. Lord Erskine said on a great occasion:

“ ‘It is impossible to define in terms the proper feelings of a gentleman; but their existence has supported this country for many ages, and she might perish if they were lost.’

“Certainly our friend had this quality. He was everywhere a gentleman. He met every occasion in life with a simple and quiet courtesy. There was not much of deference in it. There was no yielding or supplication or timidity in it. I do not think he ever asked favors, though no man was more willing to grant them. But there is something more than this in the temper of which I am speaking. The man who possesses it gives unconsciously to himself or to his

associates tone to every circle, as I just said, in which he is found. So, wherever he was, his manner of behavior [199] prevailed, whatever might have happened to the same men if they had been left alone.

“Senator Davis was a man who kept well his own counsel. He was a man to whom it was safe for other men to trust their counsel. His conversation, to which it was always a delight to listen, had no gossip in it. Still less had it ever anything of ill nature or sarcasm. He liked to share with a friend the pleasure he took in finding some flower or gem of literature which, for long ages till he found it in some out-of-the-way nook, had—

Blushed unseen,
And wasted its sweetness on the desert air.

“He had what Jeremy Taylor calls ‘the great endearment of prudent and temperate speech.’

“His conversation was sparkling and witty and full of variety, but no spark from him was ever a cinder in the eye of his friend.

“He had a learning rare among public men, and, for its variety, rare, I think, among scholars. He would bring out bits of history, full of interest and instruction, from the most obscure sources, in common conversation. He was an excellent Latin scholar. He had read and mastered Tacitus, and a man who has mastered Tacitus has had the best gymnastic training of the intellect, both in vigor and style, which the resources of all literature can supply.

“One secret of his great popularity with his companions here—a popularity I think unexcelled, indeed, I incline to think unequalled by that of any other man with whom I have served—is that to which the late Justice Morrill owed so much. He never debated. He rarely

answered other men's arguments, never with warmth or heat. But he was exceedingly tenacious of his own opinion. He was, in the things he stood for, as unyielding as flint and true as steel. But his flint or steel never struck out a spark by collision with any other. He spoke very rarely in debate in general; only when his official place on his committee, or something which concerned his own constituents especially, made speaking absolutely imperative. Then he gave his opinion [200] as a judge gives it, or as a delegate to some great international council might be supposed to give it; responsible for it himself, but undertaking no responsibility for other men's opinion or conduct; never assuming that it was his duty or within his power to convert, or change, or instruct them, still less to chastise them. Whether that way be the best way for usefulness in a deliberative body, especially in a legislative body of a great popular government, I will not undertake now to say. Certainly it is not the common way here or elsewhere. It is very rare indeed, that any man possessing the great literary and oratorical power of Mr. Davis, especially a man to whom nobody ever thought of imputing timidity or undue desire to enjoy public favor, or want of absolute confidence in his own opinions, will be found to refrain from employing these qualities to persuade or convince other men.

"He had a rare and exquisite gift which, if he had been a man of letters and not a man engaged in a strenuous public life, would have brought him great fame. Once in a while he said something in private, and more rarely, though once or twice, in a public speech, which reminded you of the delicate touch of Hawthorne. His likening President Cleveland and Mr. Blount, looking upon the late royalty of the Sandwich Islands with so much seriousness, to Don Quixote and Sancho Panza taking in great earnest the spectacle of a theatrical representation at a country fair and eager to rescue the distressed

damsel, was one of the most exquisite felicities of the literature of the Senate.

“He had great pride in his ancestry, and was a great lover of the history of New England and Plymouth, from which they came, though he never gave himself airs on account of it. He was a descendant of Robert Cushman, the preacher of the Pilgrims, whose service was in a thousand ways of such value to the little colony at Plymouth. Yet it had never happened to him to visit the scenes with which the feet of his ancestors had been so familiar, until a few years ago he did me the honor to be my guest in Massachusetts, and spent a few days visiting her historic places. He gazed upon Boston and Plymouth and Concord rever- [201]-ently as ever Moslem gazed upon Mecca or the feet of palmer stood by the holy sepulchre. That week to him was crowded with a delight with which few other hours in his life could compare. I had hoped that it might be my fortune and his that he might visit Massachusetts again, that her people might gather in her cities to do him honor, and might learn to know him better, and might listen to the sincere eloquence of his voice. But it was ordered otherwise.

“There are other things his country had hoped for him. She had hoped a longer and higher service, perhaps the highest service of all. But the inexorable shaft has stricken him down in the full vigor of a yet strenuous manhood. The great transactions had borne so large a part still remain incomplete and their event is still uncertain.

“There is a painting which a great Italian left unfinished. The work was taken up a disciple. The finished picture bears this inscription: ‘What Titian left unfinished, Palma reverently completed, and dedicated to God.’ So may our beloved Republic find always, when

one servant leaves his work unfinished, another who will take it up and dedicate it to the country and to God.”

APPENDIX A

HOAR, George Frisbie, (1826 - 1904)

Senate Years of Service: 1877-1904

Party: Republican



HOAR, George Frisbie, (grandson of Roger Sherman, son of Samuel Hoar, brother of Ebenezer Rockwood Hoar, father of Rockwood Hoar, and uncle of Sherman Hoar), a Representative and a Senator from Massachusetts; born in Concord, Mass., August 29, 1826; attended Concord Academy; graduated from Harvard University in 1846 and from the Harvard Law School in 1849; admitted to the bar in 1849 and commenced practice in Worcester, Mass.; elected to the State house of representatives in 1852; elected to the State senate in 1857; elected as a Republican to the Forty-first and to the three succeeding Congresses (March 4, 1869-March 3, 1877); was not a candidate for renomination in 1876; one of the managers appointed by the House of

Representatives in 1876 to conduct the impeachment proceedings against William W. Belknap; appointed a member of the Electoral Commission created by act of Congress to decide the contests in various States in the presidential election of 1876; elected as a Republican to the United States Senate in 1877; reelected in 1883, 1889, 1895, and 1901 and served from March 4, 1877, until his death in Worcester, Mass., September 30, 1904; chairman, Committee on Privileges and Elections (Forty-seventh through Fifty-second Congresses), Committee on the Judiciary (Fifty-second Congress, Fifty-fourth through Fifty-eighth Congresses), Committee on the Library (Fifty-second Congress); overseer of Harvard University 1874-1880 and from 1896 until his death; Regent of the Smithsonian for many years; interment in Sleepy Hollow Cemetery, Concord, Mass.

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APPENDIX B

DAVIS, Cushman Kellogg, (1838 - 1900)

Senate Years of Service: 1887-1900

Party: Republican



DAVIS, Cushman Kellogg, a Senator from Minnesota; born in Henderson, Jefferson County, N.Y., June 16, 1838; moved with his parents to Waukesha, Wis.; attended the public schools, Carroll College in Waukesha; graduated from the University of Michigan at Ann Arbor in 1857; studied law; admitted to the bar in 1859 and commenced practice in Waukesha; during the Civil War served as first lieutenant in the Twenty-eighth Regiment, Wisconsin Volunteer Infantry, in 1861 and 1862; assistant adjutant general 1862-1864; moved to St. Paul, Minn., in 1865; member, State house of representatives 1867; United States district attorney 1868-1873; Governor of Minnesota 1874-1875; elected as a Republican to the United States Senate in 1886; reelected in 1892 and again in 1898, and served from March 4, 1887, until his death on November 27, 1900; chairman, Committee on Pensions (Fiftieth through Fifty-second Congresses), Committee on Territories (Fifty-fourth Congress), Committee on Foreign Relations (Fifty-fifth and Fifty-sixth Congresses); member of the commission which met in Paris, France, in September 1898 to arrange terms of peace after the war between the United States and Spain; died in St. Paul, Minn.; interment in Arlington National Cemetery, Arlington, Va.

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