

CHAPTER IX

THE CABINET

THERE is in the government of the United States no such thing as a Cabinet in the English sense of the term. But I use the term, not only because it is current in America to describe the chief ministers of the President, but also because it calls attention to the remarkable difference which exists between the great officers of State in America and the similar officers in the free countries of Europe.

Almost the only reference in the Constitution to the ministers of the President is that contained in the power given him to "require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices." All these departments have been created by Acts of Congress. Washington began in 1789 with four only, at the head of whom were the following four officials:—

Secretary of State.
Secretary of the Treasury.
Secretary of War.
Attorney-General.

In 1798 there was added a Secretary of the Navy, in 1829 a Postmaster-General,¹ in 1849 a Secretary of the Interior, and in 1888 a Secretary of Agriculture.

These eight now make up what is called the Cabinet.² Each

¹ The postmaster-general had been previously deemed a subordinate in the Treasury department, although the office was organized by Act of Congress in 1794; he has been held to belong to the cabinet since Jackson in 1829 invited him to cabinet meetings.

² There is also an Inter-state Commerce Commission, with large powers over railways, created in February 1887 by Act of Congress; a Labour Bureau erected into a department in 1888; a Fish Commission created in 1870; and a Civil Service Commission created in 1883.

receives a salary of \$8000 (£1600). All are appointed by the President, subject to the consent of the Senate (which is practically never refused), and may be removed by the President alone. Nothing marks them off from any other officials who might be placed in charge of a department, except that they are summoned by the President to his private council.

None of them can vote in Congress, Art. xi. § 6 of the Constitution providing that "no person holding any office under the United States shall be a member of either House during his continuance in office."

This restriction was intended to prevent the President not merely from winning over individual members of Congress by the allurements of office, but also from making his ministers agents in corrupting or unduly influencing the representatives of the people, as George III. and his ministers corrupted the English Parliament. There is a passage in the *Federalist* (Letter xl.) which speaks of "Great Britain, where so great a proportion of the members are elected by so small a proportion of the people, where the electors are so corrupted by the representatives, and the representatives so corrupted by the Crown." The Fathers of the Constitution were so resolved to avert this latter form of corruption that they included in their instrument the provision just mentioned. Its wisdom has sometimes been questioned. But it deserves to be noticed that the Constitution contains nothing to prevent ministers from being present in either House of Congress and addressing it,¹ as the ministers of the King of Italy or of the French President may do in either chamber of Italy or France.² It is absolutely silent on the subject of communications between officials (other than the President) and the representatives of the people.

The President has the amplest range of choice for his ministers. He usually forms an entirely new cabinet when he enters office, even if he belongs to the same party as his pre-

¹ In February 1881 a committee of eight senators unanimously reported in favour of a plan to give seats (of course without the right to vote) in both Houses of Congress to cabinet ministers, they to attend on alternate days in the Senate and in the House. The committee recommended that the necessary modification in the rules should be made, adding that they had no doubt of the constitutionality of the proposal. Nothing has so far been done to carry out this report.

² The Italian ministers usually are members of one or other House. Of course they cannot vote except in the House to which they have been chosen.

ecessor. He may take, he sometimes does take, men who not only have never sat in Congress, but have not figured in politics at all, who may never have sat in a State legislature nor held the humblest office.¹ Generally of course the persons chosen have already made for themselves a position of at least local importance. Often they are those to whom the new President owes his election, or to whose influence with the party he looks for support in his policy. Sometimes they have been his most prominent competitors for the party nominations. Thus Mr. Lincoln in 1860 appointed Mr. Seward and Mr. Chase to be his secretary of state and secretary of the treasury respectively, they being the two men who had come next after him in the selection by the Republican party of a presidential candidate.

The most dignified place in the cabinet is that of the Secretary of State. It is the great prize often bestowed on the man to whom the President is chiefly indebted for his election, or at any rate on one of the leaders of the party. In early days, it was regarded as the stepping-stone to the presidency. Jefferson, Madison, Monroe, and J. Q. Adams had all served as secretaries to preceding presidents. The conduct of foreign affairs is the chief duty of the State department: its head has therefore a larger stage to play on than any other minister, and more chances of fame. His personal importance is all the greater because the President is usually so much absorbed by questions of patronage as to be forced to leave the secretary to his own devices. Hence the foreign policy of the administration is practically that of the secretary, except so far as the latter is controlled by the Senate. The State department has also the charge of the great seal of the United States, keeps the archives, publishes the statutes, and of course instructs and controls the diplomatic and consular services. It is often said of the President that he is ruled, or as the Americans express it, "run," by his secretary; but naturally this happens only when the secretary is the stronger man, and in the same way it has been said of Presidents before now that they were, like sultans, ruled by their wives, or by their boon companions.

The Secretary of the Treasury is minister of finance. His

¹ Only two members of Mr. Harrison's cabinet, formed in 1889, had ever sat in Congress.

function was of the utmost importance at the beginning of the government, when a national system of finance had to be built up and the Federal Government rescued from its grave embarrassments. Hamilton, who then held the office, effected both; and the work of Gallatin, who served under Jefferson, was scarcely less important. During the War of Secession, it became again powerful, owing to the enormous loans contracted and the quantities of paper money issued, and it remains so now, because it has the management (so far as Congress permits) of the currency and the national debt. The secretary has, however, by no means the same range of action as a finance minister in European countries, for as he is excluded from Congress, although he regularly reports to it, he has nothing directly to do with the imposition of taxes, and very little with the appropriation of revenue to the various burdens of the State.¹

The Secretary of the Interior is far from being the omnipresent power which a minister of the interior is in France or Italy, or even a Home Secretary in England, since nearly all the functions which these officials discharge belong in America to the State governments or to the organs of local government. He is chiefly occupied in the management of the public lands, still of immense value, despite the lavish grants made to railway companies, and with the conduct of Indian affairs, a troublesome and unsatisfactory department, which has always been a reproach to the United States, and will apparently continue so till the Indians themselves disappear or become civilized. Patents and pensions, the latter a source of great expense and abuse, also belong to his province, as do the national census and the geological survey.

The duties of the Secretaries of War, of the Navy, of Agriculture, and of the Postmaster-General may be gathered from their names. But the Attorney-General is sufficiently different from his English prototype to need a word of explanation. He is not only public prosecutor and standing counsel for the United States, but also to some extent what is called on the European continent a minister of justice. He has a general

¹ See *post*, Chapter XVII (Congressional Finance), where it will be shown that the chairmen of the committees of Ways and Means and of Appropriations are practically additional ministers of finance.

oversight—it can hardly be described as a control—of the Federal judicial departments, and especially of the prosecuting officers called district attorneys, and executive court officers, called United States marshals. He is the legal adviser of the President in those delicate questions, necessarily frequent under the Constitution of the United States, which arise as to the limits of the executive power and the relations of Federal to State authority, and generally in all legal matters. His opinions are frequently published officially, as a justification of the President's conduct, and an indication of the view which the executive takes of its legal position and duties in a pending matter.¹ The attorney-general is always a lawyer of eminence, but not necessarily in the front rank of the profession, for political considerations have much to do with determining the President's choice.²

It will be observed that from this list of ministerial offices several are wanting which exist in Europe. Thus there is no colonial minister, because no colonies; no minister of education, because that department of business belongs to the several States;³ no minister of public worship, because the United States Government has nothing to do with any particular form of religion; no minister of commerce, because the activity of the Federal Government in that direction, although increasing, is still limited; no minister of public works, because grants made for this purpose come direct from Congress without the intervention of the executive, and are applied as Congress directs.⁴ Much of the work which in Europe would devolve on members of the administration falls in America to

¹ Another variance from the practice of England, where the opinions of the law officers of the Crown are always treated as confidential.

² The Solicitor-General is a sort of assistant to the attorney, and not (as in England) a colleague.

³ There was established by Acts of 1867 and 1869 a Bureau of Education, attached to the department of the Interior, but its function is only to collect and diffuse information on educational subjects. This it does with assiduity and success.

⁴ Money voted for river and harbour improvements is voted in sums appropriated to each particular piece of work. The work is supervised by officers of the Engineer corps of the United States army, under the general direction of the War department. Public buildings are erected under the direction of an official called the supervising architect, who is attached to the Treasury department. The signal service weather bureau is a branch of the War department, the coast survey of the Navy department.

committees of Congress, especially to committees of the House of Representatives. This happens particularly as regards taxation, public works, and the management of the Territories, for each of which matters there exists a committee in both Houses. A cabinet minister formerly took precedence of the senators, but they have now established their claim to walk before him on public occasions. The point is naturally of more importance as regards the wives of the claimants than as regards the claimants themselves.

The respective positions of the President and his ministers are, as has been already explained, the reverse of those which exist in the constitutional monarchies of Europe. There the sovereign is irresponsible and the minister responsible for the acts which he does in the sovereign's name. In America the President is responsible because the minister is nothing more than his servant, bound to obey him, and independent of Congress. The minister's acts are therefore legally the acts of the President. Nevertheless the minister is also responsible and liable to impeachment for offences committed in the discharge of his duties. The question whether he is, as in England, impeachable for giving bad advice to the head of the State has never arisen, but upon the general theory of the Constitution it would rather seem that he is not, unless of course his bad counsel should amount to a conspiracy with the President to commit an impeachable offence. In France the responsibility of the President's ministers does not in theory exclude the responsibility of the President himself, although practically it makes a great difference, because he, like the English Crown, acts through ministers supported by a majority in the Chamber.

So much for the ministers taken separately. It remains to consider how an American Administration works as a whole, this being in Europe the most peculiar and significant feature of the parliamentary or so-called "cabinet" system.

In America the Administration does not work as a whole. It is not a whole. It is a group of persons, each individually dependent on and answerable to the President, but with no joint policy, no collective responsibility.¹

¹ In America people usually speak of the President and his ministers as the "administration," not as the "government," apparently because he and they

When the Constitution was established, and George Washington chosen first President under it, it was intended that the President should be outside and above party, and the method of choosing him by electors was contrived with this very view. Washington belonged to no party, nor indeed, though diverging tendencies were already manifest, had parties yet begun to exist. There was therefore no reason why he should not select his ministers from all sections of opinion. As he was responsible to the nation and not to a majority in Congress, he was not bound to choose persons who agreed with the majority in Congress. As he, and not the ministry, was responsible for executive acts done, he had to consider, not the opinions or affiliations of his servants, but their capacity and integrity only. Washington chose as secretary of state Thomas Jefferson, already famous as the chief draftsman of the Declaration of Independence, and as attorney-general another Virginian, Edmund Randolph, both men of extreme democratic leanings, disposed to restrict the action of the Federal Government within narrow limits. For secretary of the treasury he selected Alexander Hamilton of New York, and for secretary of war Henry Knox of Massachusetts. Hamilton was by far the ablest man among those who soon came to form the Federalist party, the party which called for a strong executive, and desired to subordinate the States to the central authority. He soon became recognized as its leader. Knox was of the same way of thinking. Dissensions presently arose between Jefferson and Hamilton, ending in open hostility, but Washington retained them both as ministers till Jefferson retired in 1794 and Hamilton in 1795. The second President, John Adams, kept on the ministers of his predecessors, being in accord with their opinions, for they and he belonged to the now full-grown Federalist party. But before he quitted office he had quarrelled with most of them, having taken important steps without their knowledge and against their wishes. Jefferson, the third President, was a thorough-going party leader, who naturally chose his ministers from his own political adherents. As

are not deemed to govern in the European sense. The latter expression is not very old in England. Thirty years ago people usually said "the Ministry" when they now say "the Government." In France and Germany Ministry is the term used, while *Gouvernement* and *Regierung* denote the executive *qua* executive.

all subsequent Presidents have been seated by one or other party, all have felt bound to appoint a party cabinet. Their party expects it; and they prefer to be surrounded and advised by their own friends.

So far, an American cabinet resembles a British one. It is composed exclusively of members of one party. But now mark the differences. The parliamentary system of England and of those countries which like Belgium, Italy, and the self-governing British colonies, have more or less modelled themselves upon England, rests on four principles.

The head of the executive is irresponsible. Responsibility attaches to the cabinet, *i.e.* to the body of ministers who advise him, so that if he errs, it is through their fault; they suffer and he escapes. The ministers cannot allege, as a defence for any act of theirs, the command of the Crown. If the Crown gives them an order of which they disapprove, they ought to resign.

The ministers sit in the legislature, practically forming in England, as has been observed by the most acute of English constitutional writers, a committee of the legislature, chosen by the majority for the time being.

The ministers are accountable to the legislature, and must resign office¹ as soon as they lose its confidence.

The ministers are jointly as well as severally liable for their acts: *i.e.* the blame of an act done by any of them falls on the whole cabinet, unless one of them chooses to take it entirely on himself and retire from office. Their responsibility is collective.

None of these principles holds true in America. The President is personally responsible for his acts, not indeed to Congress, but to the people, by whom he is chosen. No means exist of enforcing this responsibility, except by impeachment, but as his power lasts for four years only, and is much restricted, this is no serious evil. He cannot avoid responsibility by alleging the advice of his ministers, for he need not follow it, and they are bound to obey him or retire. The ministers do not sit in Congress. They are not accountable to it, but to

¹ In England and some other countries (*e.g.* the self-governing British colonies) they have the alternative of dissolving Parliament, subject to a somewhat undefined, but not wholly extinct, right of the Crown or the Governor to refuse a dissolution in certain cases.

the President, their master. It may request their attendance before a committee, as it may require the attendance of any other witness, but they have no opportunity of expounding and justifying to Congress as a whole their own, or rather their master's, policy. Hence an adverse vote of Congress does not affect their or his position. If they propose to take a step which requires money, and Congress refuses the requisite appropriation, the step cannot be taken. But a dozen votes of censure will neither compel them to resign nor oblige the President to pause in any line of conduct which is within his constitutional rights. This, however strange it may seem to a European, is a necessary consequence of the fact that the President, and by consequence his cabinet, do not derive their authority from Congress. Suppose (as befel in 1878-9) a Republican President, with a Democratic majority in both Houses of Congress. The President, unless of course he is convinced that the nation has changed its mind since it elected him, is morally bound to follow out the policy which he professed as a candidate, and which the majority of the nation must be held in electing him to have approved. That policy is, however, opposed to the views of the present majority of Congress. They are right to check him as far as they can. He is right to follow out his own views and principles in spite of them so far as the Constitution and the funds at his disposal permit. A deadlock may follow. But deadlocks may happen under any system, except that of an omnipotent sovereign, be he a man or an assembly, the risk of deadlocks being indeed the price which a nation pays for the safeguard of constitutional checks.

In this state of things one cannot properly talk of the cabinet apart from the President. An American administration resembles not so much the cabinets of England and France as the group of ministers who surround the Czar or the Sultan, or who executed the bidding of a Roman emperor like Constantine or Justinian. Such ministers are severally responsible to their master, and are severally called in to counsel him, but they have not necessarily any relations with one another, nor any duty of collective action. So while the President commits each department to the minister whom the law provides, and may if he chooses leave it altogether to that minister, the ex-

ecutive acts done are his own acts, by which the country will judge him; and still more is his policy as a whole his own policy, and not the policy of his ministers taken together.¹ The ministers meet in council, but have comparatively little to settle when they meet, since they have no parliamentary tactics to contrive, no bills to prepare, few problems of foreign policy to discuss. They are not a government, as Europeans understand the term; they are a group of heads of departments, whose chief, though he usually consults them separately, often finds it useful to bring together in one room for a talk about politics, or to settle some administrative question which lies on the borderland between the provinces of two ministers. A significant illustration of the contrast between the English and American systems may be found in the fact that whereas an English king has never (since Queen Anne's time) sat in his own cabinet, because if he did he would be deemed accountable for its decisions, an American President always does, because he is accountable, and really needs advice to help him, not to shield him.²

The so-called cabinet is unknown to the statutes as well as to the Constitution of the United States. So is the English cabinet unknown to the law of England. But then the English cabinet is a part, is, in fact, a committee, though no doubt an informal committee, of a body as old as Parliament itself, the Privy Council, or Curia Regis. Of the ancient institutions of England which reappear in the Constitution of the United States, the Privy Council is not one.³ It may have seemed to the Convention of 1787 to be already obsolete. Even in England it was then already a belated survival from an earlier order of things, and now it lives on only in its committees, three of which, the Board of Trade, the Education department,

¹ Lincoln decided on his emancipation proclamation without consulting his cabinet, although he read the draft of it to them for criticism.

² Another illustration of the contrast may be found in the fact that when the head of a department is absent from Washington the under secretary of the department is often asked to replace him in the cabinet council.

³ A privy council however appears in the original Constitution of Delaware; and there were in many States councils for advising the Governor. When James Wilson was proposing that the executive should consist of a single person, he was asked whether this person was to have a council, and answered that he desired "to have no council which oftener serves to cover than to prevent malpractices." Elliot's *Debates*, v. 151. So Randolph argued that councillors would impair the President's responsibility. (See *post*, Chapter XLI.)

and the Agricultural department, serve as branches of the administration, one, the Judicial Committee, is a law court, and one, the Cabinet, is the virtual executive of the nation. The framers of the American Constitution saw its unsuitability to their conditions. It was nominated, while with them a council must have been elective. Its only effect would have been to control the President, but for domestic administration control is scarcely needed, because the President has only to execute the laws, while in foreign affairs and appointments the Senate controls him already. A third body, over and above the two Houses of Congress, was in fact superfluous. The Senate may appear in some points to resemble the English Privy Council of the seventeenth century, because it advises the executive; but there is all the difference in the world between being advised by those whom you have yourself chosen and those whom election by others forces upon you. So it happens that the relations of the Senate and the President are seldom cordial, much less confidential, even when he and the majority of the Senate belong to the same party, because the Senate and the President are rival powers jealous of one another.

CHAPTER X

THE SENATE

THE National Legislature of the United States, called Congress, consists of two bodies, sufficiently dissimilar in composition, powers, and character to require a separate description.

The Senate consists of two persons from each State, who must be inhabitants of that State, and at least thirty years of age. They are elected by the legislature of their State for six years, and are re-eligible. One-third retire every two years, so that the whole body is renewed in a period of six years, the old members being thus at any given moment twice as numerous as the new members elected within the last two years. As there are now forty-four States, the number of senators, originally twenty-six, is now eighty-eight. This great and unforeseen augmentation must be borne in mind when considering the purposes for which the Senate was created, for some of which a small body is fitter than a large one. As there remain only four Territories¹ which can be formed into States, the number of senators will not (unless, indeed, existing States are divided, or more than one State created out of some of the Territories) rise beyond ninety-six. This is of course much below the present nominal strength of the English House of Lords² (about 550), and below that of the French Senate (300), and the Prussian Herrenhaus (432). No senator can hold any office under the United States. The Vice-President of the Union is *ex officio* president of the Senate, but has no vote, except a casting vote when the numbers are equally

¹ I reckon in neither the Indian territory, which lies west of Arkansas, nor Alaska, because the former is not likely within the near future, nor the latter for a long time to come, to contain a civilized population such as would entitle either of them to be formed into States.

² At the accession of George III. the House of Lords numbered only 174 members.