The more fully responsibility for appointments can be concentrated upon him, and the fewer the secret influences to which he is exposed, the better will his appointments be. On the other hand, it must be admitted that the participation of the Senate causes in practice less friction and delay than might have been expected from a dual control. The appointments to the cabinet offices are confirmed as a matter of course. Those of diplomatic officers are seldom rejected. "Little tiffs" are frequent when the senatorial majority is in opposition to the executive, but the machinery, if it does not work smoothly, works well enough to carry on the ordinary business of the country, though a European observer, surprised that a democratic country allows such important business to be transacted with closed doors, is inclined to agree with the view lately advanced in the Senate that nominations ought to be discussed publicly rather than in secret executive session.

The judicial function of the Senate is to sit as a High Court for the trial of persons impeached by the House of Representatives. The senators "are on oath or affirmation," and a vote of two-thirds of those present is needed for a conviction. Of the process, as affecting the President, I have spoken in Chapter V. It is applicable to other officials. Besides President Johnson, six persons in all have been impeached, viz.:—

Four Federal judges, of whom two were acquitted, and two convicted, one for violence and drunkenness, the other for having joined the Secessionists of 1861. Impeachment is the only means by which a Federal judge can be got rid of.

One senator, who was acquitted for want of jurisdiction, the Senate deciding that a senatorship is not a "civil office" within the meaning of Art. iii. § 4 of the Constitution.

One minister, a secretary of war, who resigned before the impeachment was actually preferred, and escaped on the ground that being a private person he was not impeachable.

Rarely as this method of proceeding has been employed, it could not be dispensed with; and it is better that the Senate should try cases in which a political element is usually present, than that the impartiality of the Supreme court should be exposed to the criticism it would have to bear, did political questions come before it. Many senators are or have been lawyers of eminence, so that so far as legal knowledge goes they are competent members of a court.

CHAPTER XII

THE SENATE: ITS WORKING AND INFLUENCE

THE Americans consider the Senate one of the successes of their Constitution, a worthy monument of the wisdom and foresight of its founders. Foreign observers have repeated this praise, and have perhaps, in their less perfect knowledge, sounded it even more loudly.

The aims with which the Senate was created, the purposes it was to fulfil, are set forth, under the form of answers to objections, in five letters (lxi.–lxv.), all by Alexander Hamilton, in the *Federalist*.[1] These aims were the five following:—

To conciliate the spirit of independence in the several States, by giving each, however small, equal representation with every other, however large, in one branch of the national government.

To create a council qualified, by its moderate size and the experience of its members, to advise and check the President in the exercise of his powers of appointing to office and concluding treaties.

To restrain the impetuosity and fickleness of the popular House, and so guard against the effects of gusts of passion or sudden changes of opinion in the people.

To provide a body of men whose greater experience, longer term of membership, and comparative independence of popular election, would make them an element of stability in the government of the nation, enabling it to maintain its character in the eyes of foreign States, and to preserve a continuity of policy at home and abroad.

To establish a Court proper for the trial of impeachments, a remedy deemed necessary to prevent abuse of power by the executive.

[1] See also Hamilton's speeches in the New York Convention.—Elliot's *Debates*, ii. p. 301 *sqq*.

All of these five objects have been more or less perfectly attained; and the Senate has acquired a position in the government which Hamilton scarcely ventured to hope for. In 1788 he wrote: "Against the force of the immediate representatives of the people nothing will be able to maintain even the constitutional authority of the Senate, but such a display of enlightened policy, and attachment to the public good, as will divide with the House of Representatives the affections and support of the entire body of the people themselves."

It may be doubted whether the Senate has excelled the House in attachment to the public good; but it has certainly shown greater capacity for managing the public business, and has won the respect, if not the affections, of the people, by its sustained intellectual power.

The *Federalist* did not think it necessary to state, nor have Americans generally realized, that this masterpiece of the Constitution-makers was in fact a happy accident. No one in the Convention of 1787 set out with the idea of such a Senate as ultimately emerged from their deliberations. It grew up under the hands of the Convention, as the result of the necessity for reconciling the conflicting demands of the large and the small States. The concession of equal representation in the Senate induced the small States to accept the principle of representation according to population in the House of Representatives; and a series of compromises between the advocates of popular power, as embodied in the House, and those of monarchical power, as embodied in the President, led to the allotment of attributes and functions which have made the Senate what it is. When the work which they had almost unconsciously perfected was finished, the leaders of the Convention perceived its excellence, and defended it by arguments in which we feel the note of sincere conviction. Yet the conception they formed of it differed from the reality which has been evolved. Although they had created it as a branch of the legislature, they thought of it as being first and foremost a body with executive functions. And this, at first, it was. The traditions of the old Congress of the Confederation, in which the delegates of the States voted by States, the still earlier traditions of the executive councils, which advised the governors of the colonies while still subject to the British

Crown, clung about the Senate and affected the minds of the senators. It was a small body, originally of twenty-six, even in 1810 of thirty-four members only, a body not ill fitted for executive work. Its members, regarding themselves as a sort of congress of ambassadors from their respective States, were accustomed to refer for advice and instructions each to his State legislature. So late as 1828, a senator after arguing strongly against a measure declared that he would nevertheless vote for it, because he believed his State to be in its favour.[1] For the first five years of its existence, the Senate sat with closed doors, occupying itself chiefly with the confidential business of appointments and treaties, and conferring in private with the ministers of the President. Not till 1816 did it create, in imitation of the House, those Standing Committees which the experience of the House had shown to be, in bodies where the executive ministers do not sit, the necessary organs for dealing with legislative business. Its present character as a legislative body, not less active and powerful than the other branch of Congress, is the result of a long process of evolution, a process possible (as will be more fully explained hereafter) even under the rigid Constitution of the United States, because the language of the sections which define the competence of the Senate is wide and general. But in gaining legislative authority, it has not lost its executive functions, although those which relate to treaties are largely exercised on the advice of the standing Committee on Foreign Relations. And as respects these executive functions it stands alone in the world. No European state, no British colony, entrusts to an elective assembly that direct participation in executive business which the Senate enjoys.

What is meant by saying that the Senate has proved a success?

It has succeeded by effecting that chief object of the Fathers of the Constitution, the creation of a centre of gravity in the government, an authority able to correct and check on the one hand the "democratic recklessness" of the House, on the

[1] A similar statement was made in 1883 by a senator from Arkansas in justifying his vote for a bill he disapproved. But the fact that from early days downwards the two senators from a State might (and did) vote against one another shows that the true view of the senator is that he represents the people and not the government of his State.

other the "monarchical ambition" of the President. Placed between the two, it is necessarily the rival and often the opponent of both. The House can accomplish nothing without its concurrence. The President can be checkmated by its resistance. These are, so to speak, negative or prohibitive successes. It has achieved less in the way of positive work, whether of initiating good legislation or of improving the measures which the House sends it. But the whole scheme of the American Constitution tends to put stability above activity, to sacrifice the productive energies of the bodies it creates to their power of resisting changes in the general fabric of the government. The Senate has succeeded in making itself eminent and respected. It has drawn the best talent of the nation, so far as that talent flows to politics, into its body, has established an intellectual supremacy, has furnished a vantage ground from which men of ability may speak with authority to their fellow-citizens.

To what causes are these successes to be ascribed? Hamilton assumed that the Senate would be weaker than the House of Representatives, because it would not so directly spring from, speak for, be looked to by, the people. This was a natural view, especially as the analogy between the position of the Senate towards the House of Representatives in America, and that of the House of Lords towards the House of Commons in Great Britain, an analogy constantly present to the men of 1787, seemed to suggest that the larger and more popular chamber must dwarf and overpower the smaller one. But the Senate has proved no less strong, and more intellectually influential, than its sister House of Congress. The analogy was unsound, because the British House of Lords is hereditary and the Senate representative. In these days no hereditary assembly, be its members ever so able, ever so wealthy, ever so socially powerful, can speak with the authority which belongs to those who speak for the people. Mirabeau's famous words in the Salle des Menus at Versailles, "We are here by the will of the people, and nothing but bayonets shall send us hence," express the whole current of modern feeling. Now the Senate, albeit not chosen by direct popular election, does represent the people; and what it may lose through not standing in immediate contact with the masses,

it gains in representing such ancient and powerful commonwealths as the States. A senator from New York or Pennsylvania speaks for, and is responsible to, millions of men. No wonder he has an authority beyond that of the long-descended nobles of Prussia, or the peers of Britain whose possessions stretch over whole counties.

This is the first reason for the strength of the Senate, as compared with the upper chambers of other countries. It is built on a wide and solid foundation of choice by the people and consequent responsibility to them. A second cause is to be found in its small size. A small body educates its members better than a large one, because each member has more to do, sooner masters the business not only of his committee but of the whole body, feels a livelier sense of the significance of his own action in bringing about collective action. There is less disposition to abuse the freedom of debate. Party spirit may be as intense as in great assemblies, yet it is mitigated by the wish to keep on friendly terms with those whom, however much you may dislike them, you have constantly to meet, and by the feeling of a common interest in sustaining the authority of the body. A senator soon gets to know each of his colleagues — they were originally only twenty-five — and what each of them thinks of him; he becomes sensitive to their opinion; he is less inclined to pose before them, however he may pose before the public. Thus the Senate formed, in its childhood, better habits in discussing and transacting its business than would have been formed by a large assembly; and these habits its maturer age retains. Its comparative permanence has also worked for good. Six years, which seem a short term in Europe, are in America a long term when compared with the two years for which the House of Representatives and the Assemblies of nearly all the States are elected, long also when compared with the swiftness of change in American politics. A senator has the opportunity of thoroughly learning his work, and of proving that he has learnt it. He becomes slightly more independent of his constituency, which in America, where politicians catch at every passing breeze of opinion, is a clear gain. He is relieved a little, though only a little, of the duty of going on the stump in his State, and maintaining his influence among local politicians there.

The smallness and the permanence of the Senate have however another important influence on its character. They contribute to one main cause of its success, the superior intellectual quality of its members. Every European who has described it, has dwelt upon the capacity of those who compose it, and most have followed Tocqueville in attributing this capacity to the method of double election. The choice of senators by the State legislature is supposed (but I think erroneously) to have proved a better means than direct choice by the people of discovering and selecting the fittest men. I have already remarked that the legislatures now do little more than register and formally complete a choice already made by the party managers, and perhaps ratified in the party convention, and am inclined to believe that direct popular election would work better. But apart from this recent development, and reviewing the whole hundred years' history of the Senate, the true explanation of its capacity is to be found in the superior attraction which it has for the ablest and most ambitious men. A senator has more power than a member of the House, more dignity, a longer term of service, a more independent position. Hence every Federal politician aims at a senatorship, and looks on the place of Representative as a stepping-stone to what may fairly be called an Upper House, because it is the House to which Representatives seek to mount. It is no more surprising that the average capacity of the Senate should surpass that of the House, than that the average cabinet minister of Europe should be abler than the average member of the legislature.

What is more, the Senate so trains its members as to improve their political efficiency. Several years of service in a small body, with important and delicate executive work, are worth twice as many years of jostling in the crowd of representatives at the other end of the Capitol. If the Senate does not find the man who enters it already superior to the average of Federal politicians, it makes him superior. But natural selection, as has been said, usually seats upon its benches the best ability of the country that has flowed into political life, and would do so no less were the election in form a direct one by the people at the polls.

Most of the leading men of the last sixty years have sat in the Senate, and in it were delivered most of the famous speeches which illumine, though too rarely, the wearisome debates over State rights and slavery from 1825 till 1860. One of these debates, that in the beginning of 1830, which called forth Daniel Webster's majestic defence of the Constitution, was long called *par excellence* "the great debate in the Senate."[1]

Of the 76 senators who sat in the forty-eighth Congress (1883–85) 31 had sat in the other House of Congress, and 49 had served in State legislatures.[2] In the fifty-second Congress (1891–93) out of 88 senators, 34 had sat in the House of Representatives, and 50 in State legislatures. Many had been judges or State governors; many had sat in State conventions. Nearly all had held some public function. A man must have had considerable experience of affairs, and of human nature in its less engaging aspects, before he enters this august conclave. But experience is not all gain. Practice makes perfect in evil-doing no less than in well-doing. The habits of local politics and of work in the House of Representatives by which the senators have been trained, while they develop shrewdness and quickness in all characters, tell injuriously on characters of the meaner sort, leaving men's views narrow, and giving them a taste as well as a talent for intrigue.

The chamber in which the Senate meets is rectangular, but the part occupied by the seats is semicircular in form, the Vice-President of the United States, who acts as presiding officer, having his chair on a marble dais, slightly raised, in the centre of the chord, with the senators all turned towards him as they sit in curving rows, each in an arm-chair, with a desk in front of it. The floor is about as large as the whole superficial area of the British House of Commons, but as there are great galleries on all four sides, running back over the

[1] In those days the Senate sat in that smaller chamber which is now occupied by the Supreme Federal Court.

[2] I cannot be sure of the absolute actual accuracy of these figures, which I have compiled from the *Congressional Directory*, because some senators do not set forth the whole of their political career. The proportion of senators who have previously been members of the House of Representatives was larger among the senators from the older States both in 1884 and in 1892 than it is in the West.

lobbies, the upper part of the chamber and its total air-space much exceeds that of the English house. One of these galleries is appropriated to the President of the United States; the others to ladies, diplomatic representatives, the press, and the public. Behind the senatorial chairs and desks there is an open space into which strangers can be brought by the senators, who sit and talk on the sofas there placed. Members of foreign legislatures are allowed access to this outer "floor of the Senate." There is, especially when the galleries are empty, a slight echo in the room, which obliges most speakers to strain their voices. Two or three pictures on the walls somewhat relieve the cold tone of the chamber, with its marble platform and sides unpierced by windows, for the light enters through glass compartments in the ceiling.

A senator always addresses the Chair "Mr. President," and refers to other senators by their States, "The senator from Ohio," "The senator from Tennessee." When two senators rise at the same moment, the Chair calls on one, indicating him by his State, "The senator from Minnesota has the floor."[1] Senators of the Democratic party apparently always have sat on the right of the chair, Republican senators on the left; but, as already explained, the parties do not face one another. The impression which the place makes on a visitor is one of business-like gravity, a gravity which though plain is dignified. It has the air not so much of a popular assembly as of a diplomatic congress. The English House of Lords, with its fretted roof and windows rich with the figures of departed kings, its majestic throne, its Lord Chancellor in his wig on the woolsack, its benches of lawn-sleeved bishops, its bar where the Commons throng at a great debate, is not only more gorgeous and picturesque in externals, but appeals far more powerfully to the historical imagination, for it seems to carry the middle ages down into the modern world. The Senate is modern, severe, and practical. So, too, few debates in the Senate rise to the level of the

[1] A late President of the Senate was in the habit of distinguishing the two senators from the State of Arkansas, by calling on one as the senator for "Arkansas" (pronounced as written, with accent on the penult), and the other as the senator for "Arkansaw," with the second syllable short. As Europeans often ask which is the correct pronunciation, I may say that both are in common use. But the legislature of Arkansas has lately by a "joint resolution" declared "Arkansas" to be right.

best debates in the English chamber. But the Senate seldom wears that air of listless vacuity and superannuated indolence which the House of Lords presents on all but a few nights of every session. The faces are keen and forcible, as of men who have learned to know the world, and have much to do in it; the place seems consecrated to great affairs.

As might be expected from the small number of the audience, as well as from its character, discussions in the Senate are apt to be sensible and practical. Speeches are shorter and less fervid than those made in the House of Representatives, for the larger an assembly the more prone is it to declamation. The least useful debates are those on show-days, when a series of set discourses are delivered on some prominent question. Each senator brings down and fires off in the air, a carefully-prepared oration, which may have little bearing on what has gone before. In fact the speeches are made not to convince the assembly, — no one dreams of that, — but to keep a man's opinions before the public and sustain his fame. The question at issue is sure to have been already settled, either in a committee or in a "caucus" of the party which commands the majority, so that these long and sonorous harangues are mere rhetorical thunder addressed to the nation outside.

The Senate now contains many men of great wealth. Some, an increasing number, are senators because they are rich; a few are rich because they are senators; while in the remaining cases the same talents which have won success in law or commerce have brought their possessor to the top in politics also. The great majority are or have been lawyers; some regularly practise before the Supreme Court. Complaints are occasionally levelled against the aristocratic tendencies which wealth is supposed to have bred, and sarcastic references are made to the sumptuous residences which senators have built on the new avenues of Washington. While admitting that there is more sympathy for the capitalist class among these rich men than there would be in a Senate of poor men, I must add that the Senate is far from being a class body like the upper houses of England or Prussia or Spain or Denmark. It is substantially representative, by its composition as well as by legal delegation, of all parts of American society; it is far too

dependent, and far too sensible that it is dependent, upon public opinion, to dream of legislating in the interest of the rich. The senators, however, indulge some social pretensions. They are the nearest approach to an official aristocracy that has yet been seen in America. They and their wives are allowed precedence at private entertainments, as well as on public occasions, over members of the House, and of course over private citizens. Jefferson might turn in his grave if he knew of such an attempt to introduce European distinctions of rank into his democracy; yet as the office is temporary, and the rank vanishes with the office, these pretensions are harmless; it is only the universal social equality of the country that makes them noteworthy. Apart from such petty advantages, the position of a senator, who can count on re-election, is the most desirable in the political world of America. It gives as much power and influence as a man need desire. It secures for him the ear of the public. It is more permanent than the presidency or a cabinet office, requires less labour, involves less vexation, though still great vexation, by importunate office-seekers.

European writers on America have been too much inclined to idealize the Senate. Admiring its structure and function, they have assumed that the actors must be worthy of their parts. They have been encouraged in this tendency by the language of many Americans. As the Romans were never tired of repeating that the ambassador of Pyrrhus had called the Roman senate an assembly of kings, so Americans of refinement, who are ashamed of the turbulent House of Representatives, have been wont to talk of the Senate as a sort of Olympian dwelling-place of statesmen and sages. It is nothing of the kind. It is a company of shrewd and vigorous men who have fought their way to the front by the ordinary methods of American politics, and on many of whom the battle has left its stains. There are abundant opportunities for intrigue in the Senate, because its most important business is done in the secrecy of committee rooms or of executive session; and many senators are intriguers. There are opportunities for misusing senatorial powers. Scandals have sometimes arisen from the practice of employing as counsel before the Supreme Court, senators whose influence has contributed to the appointment

or confirmation of the judges.[1] There are opportunities for corruption and blackmailing, of which unscrupulous men are well known to take advantage. Such men are fortunately few; but considering how demoralized are the legislatures of a few States, their presence must be looked for; and the rest of the Senate, however it may blush for them, is obliged to work with them and to treat them as equals. The contagion of political vice is nowhere so swiftly potent as in legislative bodies, because you cannot taboo a man who has got a vote. You may loathe him personally, but he is the people's choice. He has a right to share in the government of the country; you are grateful to him when he saves you on a critical division; you discover that "he is not such a bad fellow when one knows him"; people remark that he gives good dinners, or has an agreeable wife; and so it goes on till falsehood and knavery are covered under the cloak of party loyalty.

As respects ability, the Senate cannot be profitably compared with the English House of Lords, because that assembly consists of some fifteen eminent and as many ordinary men attending regularly, with a multitude of undistinguished persons who rarely appear, and take no share in the deliberations. Setting the Senate beside the House of Commons, the average natural capacity of its eighty-eight members is not above that of the eighty-eight best men in the English House. There is more variety of talent in the latter, and a greater breadth of culture. On the other hand, the Senate excels in legal knowledge as well as in practical shrewdness. The House of Commons contains more men who could give a good address on a literary or historical subject; the Senate, together with some eminent lawyers, has more who could either deliver a rousing popular harangue or manage the business of a great trading company, these being the forms of capacity commonest among congressional politicians. An acute American observer says (writing in 1885):

"The Senate is just what the mode of its election and the conditions of public life in this country make it. Its members are chosen from the ranks of active politicians, in accordance with a law of natural selection to which

[1] In 1886, a bill was brought in forbidding members of either House of Congress to appear in the Federal courts as counsel for any railroad company or other corporation which might, in respect of its having received land grants, be affected by Federal legislation.

the State legislatures are commonly obedient; and it is probable that it contains, consequently, the best men that our system calls into politics. If these best men are not good, it is because our system of government fails to attract better men by its prizes, not because the country affords or could afford no finer material. The Senate is in fact, of course, nothing more than a part, though a considerable part, of the public service; and if the general conditions of that service be such as to starve statesmen and foster demagogues, the Senate itself will be full of the latter kind, simply because there are no others available."[1]

This judgment is severe, but not unjust. Whether the senators of to-day are inferior in ability and integrity to those of fifty, thirty, twenty years ago, is not easy to determine. But it must be admitted, however regretfully, that they are less independent, less respected by the people, less influential with the people, than were their predecessors; and their wealth, which has made them fear the reproach of wanting popular sympathies, may count for something in this decline.

The place which the Senate holds in the constitutional system of America cannot be fully appreciated till the remaining parts of that system have been described. This much, however, may be claimed for it, that it has been and is still, though perhaps less than formerly, a steadying and moderating power. One cannot say in the language of European politics that it has represented aristocratic principles, or anti-popular principles, or even conservative principles. Each of the great historic parties has in turn commanded a majority in it, and the difference between their strength has during the last decade been but slight. On none of the great issues that have divided the nation has the Senate been, for any long period, decidedly opposed to the other House of Congress. It showed no more capacity than the House for grappling with the problems of slavery extension. It was scarcely less ready than the House to strain the Constitution by supporting Lincoln in the exercise of the so-called war powers, or subsequently by cutting down presidential authority in the struggle between Congress and Andrew Johnson, though it refused to convict him when impeached by the House. All the fluctuations of public opinion tell upon it, nor does it venture, any more than the House, to confront a popular impulse, because it is, equally with the House, subject to the control of the great parties,

[1] Woodrow Wilson, *Congressional Government*, p. 194.

which seek to use while they obey the dominant sentiment of the hour.

But the fluctuations of opinion tell on it less energetically than on the House of Representatives. They reach it more slowly and gradually, owing to the system which renews it by one-third every second year, so that it sometimes happens that before the tide has risen to the top of the flood in the Senate it has already begun to ebb in the country. The Senate has been a stouter bulwark against agitation, not merely because a majority of the senators have always four years of membership before them, within which period public feeling may change, but also because the senators have been individually stronger men than the representatives. They are less democratic, not in opinion, but in temper, because they are more self-confident, because they have more to lose, because experience has taught them how fleeting a thing popular sentiment is, and how useful a thing continuity in policy is. The Senate has therefore usually kept its head better than the House of Representatives. It has expressed more adequately the judgment, as contrasted with the emotion, of the nation. In this sense it does constitute a "check and balance" in the Federal government. Of the three great functions which the Fathers of the Constitution meant it to perform, the first, that of securing the rights of the smaller States, is no longer important; while the second, that of advising or controlling the Executive in appointments as well as in treaties, has given rise to evils almost commensurate with its benefits. But the third duty is still discharged, for "the propensity of a single and numerous assembly to yield to the impulse of sudden and violent passions" is frequently, though not invariably, restrained.