

CHAPTER XV

THE COMMITTEES OF CONGRESS

THE most abiding difficulty of free government is to get large assemblies to work promptly and smoothly either for legislative or executive purposes. We perceive this difficulty in primary assemblies of thousands of citizens, like those of ancient Athens or Syracuse; we see it again in the smaller representative assemblies of modern countries. Three methods of overcoming it have been tried. One is to leave very few and comparatively simple questions to the assembly, reserving all others for a smaller and more permanent body, or for executive officers. This was the plan of the Romans, where the *comitia* (primary assemblies) were convoked only to elect magistrates and pass laws, which were short, clear, and submitted *en bloc*, without possibility of amendment, for a simple Yes or No. Another method is to organize the assemblies into well-defined parties, each recognizing and guided by one or more leaders, so that on most occasions and for most purposes the rank and file of members exert no volition of their own, but move like battalions at the word of command. This has been the English system since about the time of Queen Anne. It was originally worked by means of extensive corruption; and not till this phase was passing away did it become an object of admiration to the world. Latterly it has been reproduced in the parliaments of most modern European states and of the British colonies. The third method, which admits of being more or less combined with the second, is to divide the assembly into a number of smaller bodies to which legislative and administrative questions may be referred, either for final determination or to be reported on to the whole body. This is the system of committees, applied to some extent in England, to a larger extent in France under the names of *bureaux* and *commissions*,

and most of all in the United States. Some account of its rules and working there is essential to a comprehension of the character of Congress and of the relations of the legislative to the executive branch of the Federal Government.

When Congress first met in 1789, both Houses found themselves, as the State legislatures had theretofore been and still are, without official members and without leaders.¹ The Senate occupied itself chiefly with executive business, and appointed no standing committees until 1816. The House however had bills to discuss, plans of taxation to frame, difficult questions of expenditure, and particularly of the national debt, to consider. For want of persons whose official duty required them, like English ministers, to run the machine by drafting schemes and bringing the raw material of its work into shape, it was forced to appoint committees. At first there were few; even in 1802 we find only five. As the numbers of the House increased and more business flowed in, additional committees were appointed; and as the House became more and more occupied by large political questions, minor matters were more and more left to be settled by these select bodies. Like all legislatures, the House constantly sought to extend its vision and its grasp, and the easiest way to do this was to provide itself with new eyes and new hands in the shape of further committees. The members were not, like their contemporaries in the English House of Commons, well-to-do men, mostly idle; they were workers and desired to be occupied. It was impossible for them all to speak in the House; but all could talk in a committee. Every permanent body cannot help evolving some kind of organization. Here the choice was between creating one ruling committee which should control all business, like an English ministry, and distributing business among a number of committees, each of which should undertake a special class of subjects. The latter alternative was recommended, not only by its promising a useful division of labour, but by its recognition of republican equality. It therefore prevailed, and the present elaborate system grew slowly to maturity.

To avoid the tedious repetition of details, I have taken the

¹ The Congress of the Confederation (1781-88) had been a sort of diplomatic congress of envoys from States, and furnished few precedents available for the Congress under the new constitution.

House of Representatives and its committees for description, because the system is more fully developed there than in the Senate. But a very few words on the Senate may serve to prevent misconceptions.

There were in 1892 forty-four standing Senate committees, appointed for two years, being the period of a Congress.¹ They and their chairman are chosen not by the presiding officer but by the Senate itself, voting by ballot. Practically they are selected by caucuses of the majority and minority meeting in secret conclave, and then carried wholesale by vote in the Senate. Each consists of from two to thirteen members, the most common numbers being seven and nine, and all senators sit on more than one committee, some upon four or more. The chairman is appointed by the Senate and not by the committees themselves. There are also select committees appointed for a special purpose and lasting for one session only. Every bill introduced goes after its first and second reading (which are granted as of course) to a standing committee, which examines and amends it, and reports it back to the Senate.

There were in the fifty-second Congress (May 1892) fifty standing committees of the House, *i.e.* committees appointed under standing regulations, and therefore regularly formed at the beginning of every Congress. Each committee consists of from three to sixteen members, eleven and thirteen being the commonest numbers. Every member of the House is placed on some one committee, not many on more than one. Besides these, select committees, seldom exceeding ten, on particular subjects of current interest are appointed from time to time. A complete list of the committees will be found at the end of this chapter. The most important standing committees are the following:— Ways and means; appropriations; elections; banking and currency; accounts; rivers and harbours; judiciary (including changes in private law as well as in courts of justice); railways and canals; foreign affairs; naval affairs; military affairs; public lands; agriculture; claims; and the several committees on the expenditures of the various departments of the administration (war, navy, etc.).

¹ Although the Senate is a permanent body, its proceedings are for some purposes regulated with reference to the re-election every two years of the House; as in England the peers are summoned afresh at the beginning of each Parliament.

The members of every standing committee are nominated by the Speaker at the beginning of each Congress, and sit through its two sessions; those of a select committee also by the Speaker, after the committee has been ordered by the House. (Senate committees sometimes sit during the recess.) The member first named is chairman.

To some one of these standing committees each and every bill is referred. Its second as well as its first reading is granted as of course, and without debate, since there would be no time to discuss the immense number of bills presented. When read a second time it is referred under the general rules to a committee; but doubts often arise as to which is the appropriate committee, because a bill may deal with a subject common to two or more jurisdictions, or include topics some of which belong to one jurisdiction, others to another. The disputes which may in such cases arise between several committees lead to keen debates and divisions, because the fate of the measure may depend on which of two possible paths it is made to take, since the one may bring it before a tribunal of friends, the other before a tribunal of enemies. Such disputes are determined by the vote of the House itself.

Not having been discussed, much less affirmed in principle, by the House, a bill comes before its committee with no presumption in its favour, but rather as a shivering ghost stands before Minos in the nether world. It is one of many, and for the most a sad fate is reserved. The committee may take evidence regarding it, may hear its friends and its opponents. They usually do hear the member who has introduced it, since it seldom happens that he has himself a seat on the committee. Members who are interested approach the committee and state their case there, not in the House, because they know that the House will have neither time nor inclination to listen. The committee can amend the bill as they please, and although they cannot formally extinguish it, they can practically do so by reporting adversely, or by delaying to report it till late in the session, or by not reporting it at all.

In one or other of these ways nineteen-twentieths of the bills introduced meet their death, a death which the majority doubtless deserve, and the prospect of which tends to make members reckless as regards both the form and the substance

of their proposals. A motion may be made in the House that the committee do report forthwith, and the House can of course restore the bill, when reported, to its original form. But these expedients rarely succeed, for few are the measures which excite sufficient interest to induce an impatient and over-burdened assembly to take additional work upon its own shoulders or to overrule the decision of a committee.

The deliberations of committees are usually secret. Evidence is frequently taken with open doors, but the newspapers do not report it, unless the matter excite public interest; and even the decisions arrived at are often noticed in the briefest way. It is out of order to canvass the proceedings of a committee in the House until they have been formally reported to it; and the report submitted does not usually state how the members have voted, or contain more than a very curt outline of what has passed. No member speaking in the House is entitled to reveal anything further.

A committee have technically no right to initiate a bill, but as they can either transform one referred to them, or, if none has been referred which touches the subject they seek to deal with, can procure one to be brought in and referred to them, their command of their own province is unbounded. Hence the character of all the measures that may be passed or even considered by the House upon a particular branch of legislation depends on the composition of the committee concerned with that branch. Some committees, such as those on naval and military affairs, and those on the expenditure of the several departments, deal with administration rather than legislation. They have power to summon the officials of the departments before them, and to interrogate them as to their methods and conduct. Authority they have none, for officials are responsible only to their chief, the President; but the power of questioning is sufficient to check if not to guide the action of a department, since imperative statutes may follow, and the department, sometimes desiring legislation and always desiring money, has strong motives for keeping on good terms with those who control legislation and the purse. It is through these committees chiefly that the executive and legislative branches of government touch one another. Yet the contact, although the most important thing in a government,

is the thing which the nation least notices, and has the scantiest means of watching.

The scrutiny to which the administrative committees subject the departments is so close and constant as to occupy much of the time of the officials and seriously interfere with their duties. Not only are they often summoned to give evidence: they are required to furnish minute reports on matters which a member of Congress could ascertain for himself. Nevertheless the House committees are not certain to detect abuses or peculation, for special committees of the Senate have repeatedly unearthed dark doings which had passed unsuspected the ordeal of a House investigation. After a bill has been debated and amended by the committee it is reported back to the House, and is taken up when that committee is called in its order. One hour is allowed to the member whom his fellow committeemen have appointed to report. He seldom uses the whole of this hour, but allots part of it to other members, opponents as well as friends, and usually concludes by moving the previous question. This precludes subsequent amendments and leaves only an hour before the vote is taken. As on an average each committee (excluding the two or three great ones) has only two hours out of the whole ten months of Congress allotted to it to present and have discussed all its bills, it is plain that few measures can be considered, and each but shortly, in the House. The best chance of pressing one through is under the rule which permits the suspension of standing orders by a two-thirds majority during the last six days of the session.

What are the results of this system?

It destroys the unity of the House as a legislative body. Since the practical work of shaping legislation is done in the committees, the interest of members centres there, and they care less about the proceedings of the whole body. It is as a committee-man that a member does his real work. In fact the House has become not so much a legislative assembly as a huge panel from which committees are selected.

It prevents the capacity of the best members from being brought to bear upon any one piece of legislation, however important. The men of most ability and experience are chosen to be chairmen of the committees, or to sit on the two or three

greatest. For other committees there remains only the rank and file of the House, a rank and file half of which is new at the beginning of each Congress. Hence every committee (except the aforesaid two or three) is composed of ordinary persons, and it is impossible, save by creating a special select committee, to get together what would be called in England "a strong committee," *i.e.* one where half or more of the members are exceptionally capable. The defect is not supplied by discussion in the House, for there is no time for such discussion.

It cramps debate. Every foreign observer has remarked how little real debate, in the European sense, takes place in the House of Representatives. The very habit of debate, the expectation of debate, the idea that debate is needed, have vanished, except as regards questions of revenue and expenditure, because the centre of gravity has shifted from the House to the committees.

It lessens the cohesion and harmony of legislation. Each committee goes on its own way with its own bills just as though it were legislating for one planet and the other committees for others. Hence a want of policy and method in congressional action. The advance is haphazard; the parts have little relation to one another or to the whole.

It gives facilities for the exercise of underhand and even corrupt influence. In a small committee the voice of each member is well worth securing, and may be secured with little danger of a public scandal. The press cannot, even when the doors of committee rooms stand open, report the proceedings of fifty bodies; the eye of the nation cannot follow and mark what goes on within them; while the subsequent proceedings in the House are too hurried to permit a ripping up there of suspicious bargains struck in the purlieus of the Capitol, and fulfilled by votes given in a committee. I do not think that corruption, in its grosser forms, is rife at Washington. It appears chiefly in the milder form of reciprocal jobbing or (as it is called) "log-rolling." But the arrangements of the committee system have produced and sustain the class of professional "lobbyists," men, and women too, who make it their business to "see" members and procure, by persuasion, importunity, or the use of inducements, the passing of bills, public as well as private, which involve gain to their promoters.

It reduces responsibility. In England, if a bad Act is passed or a good bill rejected, the blame falls primarily upon the ministry in power whose command of the majority would have enabled them to defeat it, next upon the party which supported the ministry, then upon the individual members who are officially recorded to have "backed" it and voted for it in the House. The fact that a select committee recommended it — and comparatively few bills pass through a select committee — would not be held to excuse the default of the ministry and the majority. But in the United States the ministry cannot be blamed, for the cabinet officers do not sit in Congress; the House cannot be blamed because it has only followed the decision of its committee; the committee may be an obscure body, whose members are too insignificant to be worth blaming. The chairman is possibly a man of note, but the people have no leisure to watch fifty chairmen: they know Congress and Congress only; they cannot follow the acts of those to whom Congress chooses to delegate its functions. No discredit attaches to the dominant party, because they could not control the acts of the eleven men in the committee room. Thus public displeasure rarely finds a victim, and everybody concerned is relieved from the wholesome dread of damaging himself and his party by negligence, perversity, or dishonesty. Only when a scandal has arisen so serious as to demand investigation is the responsibility of the member to his constituents and the country brought duly home.

It lowers the interest of the nation in the proceedings of Congress.¹ Except in exciting times, when large questions have to be settled, the bulk of real business is done not in the great hall of the House but in this labyrinth of committee rooms and the lobbies that surround them. What takes place

¹ "The doubt and confusion of thought which must necessarily exist in the minds of the vast majority of voters as to the best way of exerting their will in influencing the action of an assembly whose organization is so complex, whose acts are apparently so haphazard, and in which responsibility is spread so thin, throws constituencies into the hands of local politicians who are more visible and tangible than are the leaders of Congress, and generates the while a profound distrust of Congress as a body whose actions cannot be reckoned beforehand by any standard of promises made at elections or any programmes announced by conventions." — Woodrow Wilson, *Congressional Government*, a thoughtful book from which I have derived much help in this and the two following chapters.

in view of the audience is little more than a sanction, formal indeed but hurried and often heedless, of decisions procured behind the scenes, whose mode and motives remain undisclosed. Hence people cease to watch Congress with that sharp eye which every principal ought to keep fixed on his agent. Acts pass unnoticed, whose results are in a few months discovered to be so grave that the newspapers ask how it happened that they were allowed to pass.

The country of course suffers from the want of the light and leading on public affairs which debates in Congress ought to supply. But this is more fairly chargeable to defects of the House which the committees are designed to mitigate than to the committees themselves. The time which the committee work leaves for the sittings of the House is long enough to permit due discussion did better arrangements exist for conducting it.

It throws power into the hands of the chairmen of committees, especially, of course, of those which deal with finance and with great material interests. They become practically a second set of ministers, before whom the departments tremble, and who, though they can neither appoint nor dismiss a postmaster or a tide-waiter, can by legislation determine the policy of the branch of administration which they oversee. This power is not necessarily accompanied by responsibility, because it is largely exercised in secret.

It enables the House to deal with a far greater number of measures and subjects than could otherwise be overtaken; and has the advantage of enabling evidence to be taken by those whose duty it is to re-shape or amend a bill. It replaces the system of interrogating ministers in the House which prevails in most European chambers; and enables the working of the administrative departments to be minutely scrutinized.

It sets the members of the House to work for which their previous training has fitted them much better than for either legislating or debating "in the grand style." They are shrewd, keen men of business, apt for talk in committee, less apt for wide views of policy and elevated discourse in an assembly. The committees are therefore good working bodies, but bodies which confirm congressmen in the intellectual habits they bring with them instead of raising them to the higher platform of national questions and interests.

Summing up, we may say that under this system the House despatches a vast amount of work and does the negative part of it, the killing off of worthless bills, in a thorough way. Were the committees abolished and no other organization substituted, the work could not be done. But much of it, including most of the private bills, ought not to come before Congress at all; and the more important part of what remains, viz. public legislation, is dealt with by methods which secure neither the pressing forward of the measures most needed, nor the due debate of those that are pressed forward.

Why, if these mischiefs exist, is the system of committee legislation maintained?

It is maintained because none better has been, or, as most people think, can be devised. "We have," say the Americans, "three hundred and fifty-six members in the House, most of them eager to speak, nearly all of them giving constant attendance. The bills brought in are so numerous that in our two sessions, one of seven or eight months, the other of three months, not one-twentieth could be fairly discussed on second reading or in committee of the Whole. If even this twentieth were discussed, no time would remain for supervision of the departments of State. That supervision itself must, since it involves the taking of evidence, be conducted through committees. In England one large and strong committee, viz. the ministry of the day, undertakes all the more important business, and watches even the bills of private members. Your House of Commons could not work for a single sitting without such a committee, as is proved by the fact that when you are left for a little without a ministry, the House adjourns. We cannot have such a committee, because no office-holder sits in Congress. Neither can we organize the House under leaders, because prominent men have among us little authority, since they are unconnected with the executive, and derive no title from the people.¹

¹ In England the prime minister and the leader of the Opposition (often an ex-prime minister) have been recognized as leaders not only by the candidates who at the last preceding general election have declared their willingness to support one or other, but also by the rank and file of their respective parties. These leaders have thus a sort of right to the allegiance of their followers, though a right which they may forfeit. In America no candidate pledges himself to support a particular congressional leader. It would be thought unbecoming in him to do so. His allegiance is to the party, and his constituents do not expect him to support any given person, however eminent.

Neither can we create a ruling committee of the majority, because this would be disliked as an undemocratic and tyrannical institution. Hence our only course is to divide the unwieldy multitude into small bodies capable of dealing with particular subjects. Each of them is no doubt powerful in its own sphere, but that sphere is so small that no grave harm can result. The Acts passed may not be the best possible; the legislation of the year may resemble a patchwork quilt, where each piece is different in colour and texture from the rest. But as we do not need much legislation, and as nearly the whole field of ordinary private law lies outside the province of Congress, the mischief is slighter than you Europeans expect. If we made legislation easier, we might have too much of it; and in trying to give it the more definite character you suggest, we might make it too bold and sweeping. Be our present system bad or good, it is the only system possible under our Constitution, and the fact that it was not directly created by that instrument, but has been evolved by the experience of a hundred years, shows how strong must be the tendencies whose natural working has produced it."

NOTE TO CHAPTER XV.

LIST OF STANDING AND SELECT COMMITTEES of the House in the Fifty-second Congress, First Session. (Corrected to May 7, 1892.)

On Ways and Means; Appropriations; Judiciary; Banking and Currency; Coinage, Weights and Measures; Commerce; Rivers and Harbours; Merchant Marine and Fisheries; Agriculture; Elections; Foreign Affairs; Military Affairs; Naval Affairs; Post Office and Post Roads; Public Lands; Indian Affairs; Territories; Railways and Canals; Manufactures; Mines and Mining; Public Buildings and Grounds; Pacific Railroads; Levees and Improvements of the Mississippi River; Education; Labour; Militia; Patents; Invalid Pensions; Pensions; Claims; War Claims; Private Land Claims; District of Columbia; Revision of the Laws; Expenditures in the State Department; Do., Treasury Department; Do., War Department; Do., Navy Department; Do., Post Office Department; Do., Interior Department; Do., Department of Justice; Do., Agriculture; Do., Public Buildings; Rules; Accounts; Mileage; Library; Printing; Enrolled Bills: Select Committees — Reform in the Civil Service; Election of President and Vice-President; Eleventh Census; Ventilation and Acoustics; Alcoholic Liquor Traffic; Irrigation of Arid Lands; Immigration and Naturalization; Columbian Exposition; Investigation of the Management of the Pension Office; Investigation of Tax Assessments in the District of Columbia.

CHAPTER XVI

CONGRESSIONAL LEGISLATION

LEGISLATION is more specifically and exclusively the business of Congress than it is the business of governing parliaments such as those of England, France, and Italy. We must therefore, in order to judge of the excellence of Congress as a working machine, examine the quality of the legislation which it turns out.

Acts of Congress are of two kinds, public and private. Passing by private acts for the present, though they occupy a large part of congressional time,¹ let us consider public acts. These are of two kinds, those which deal with the law or its administration, and those which deal with finance, that is to say, provide for the raising and application of revenue. I devote this chapter to the former class, and the next to the latter.

There are many points of view from which one may regard the work of legislation. I suggest a few only, in respect of which the excellence of the work may be tested; and propose to ask: What security do the legislative methods and habits of Congress offer for the attainment of the following desirable objects? viz.:—

1. The excellence of the substance of a bill, *i.e.* its tendency to improve the law and promote the public welfare.
2. The excellence of the form of a bill, *i.e.* its arrangement and the scientific precision of its language.
3. The harmony and consistency of an act with the other acts of the same session.
4. The due examination and sifting in debate of a bill.
5. The publicity of a bill, *i.e.* the bringing it to the knowledge of the country at large, so that public opinion may be fully expressed regarding it.

¹ Some remarks on private bills will be found in Note A to this chapter at the end of this volume.