

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.

6. The honesty and courage of the legislative assembly in rejecting a bill, however likely to be popular, which their judgment disapproves.

7. The responsibility of some person or body of persons for the enactment of a measure, *i.e.* the fixing on the right shoulders of the praise for passing a good, the blame for passing a bad, act.

The criticisms that may be passed on American practice under the preceding heads will be made clearer by a comparison of English practice. Let us therefore first see how English bills and acts stand the tests we are to apply to the work of Congress.

In England public bills fall into two classes, — those brought in by the ministry of the day as responsible advisers of the sovereign, and those brought in by private members. In point of law and in point of form there is no difference between these classes. Practically there is all the difference in the world, because a government bill has behind it the responsibility of the ministry, and presumably the weight of the majority which keeps the ministry in office. The ministry dispose of a half or more of the working time of the House, and have therefore much greater facilities for pushing forward their bills. Nearly all the most important bills, which involve large political issues, are government bills, so that the hostile critic of a private member's bill will sometimes argue that the House ought not to permit the member to proceed with it, because it is too large for any unofficial hands. This premised, we may proceed to the seven points above mentioned.

1. In England, as the more important bills are government bills, their policy is sure to have been carefully weighed. The ministry have every motive for care, because the fortunes of a first-class bill are their own fortunes. If it is rejected, they fall. A specially difficult bill is usually framed by a committee of the cabinet, and then debated by the cabinet as a whole before it appears in Parliament. Minor bills are settled in the departments by the parliamentary head with his staff of permanent officials.

2. In England, government bills are prepared by the official government draftsmen, two eminent lawyers with several assistants, who constitute an office for this purpose. Private

members who are lawyers often draft their own bills; those who are not generally employ a barrister. The drafting of government bills has improved of late years, and the faults of form still observable in British Acts are chiefly due to amendments made hurriedly in committee of the whole House.

3. The harmony of one government bill with others of the same session is secured by the care of the official draftsmen, as well as by the fact that all emanate from one and the same ministry. No such safeguards exist in the case of private members' bills, but it is of course the duty of the ministry to watch these legislative essays, and get Parliament to strike out of any one of them whatever is inconsistent with another measure passed or intended to be passed in the same session.

4. Difficult and complicated bills which raise no political controversy are sometimes referred to a select committee, which goes through them and reports them as amended to the House. They are afterwards considered, first in committee of the Whole, and then by the House on the stage of report from committee of the Whole to the House. Such bills are now often referred to what are called Grand Committees, *i.e.* committees of at least fifty appointed in each session for the consideration of particular kinds of business, discussion in which replaces the discussion in committee of the Whole. Many bills, however, never go before select or grand committees. While measures which excite political feeling or touch any powerful interest (such as that of landowners or railroads or liquor-dealers) are exhaustively debated, others may slip through unobserved. The enormous pressure of work and the prolixity with which some kinds of business are discussed, involve the hurrying other business through with scant consideration.

5. Except in the case of discussions at unseasonable hours, the proceedings of Parliament are so far reported in the leading newspapers and commented on by them that bills, even those of private members, generally become known to those whom they may concern. There is usually a debate on the second reading, and this debate attracts notice.

6. A government bill is, by the law of its being, exposed to the hostile criticism of the Opposition, who have an interest in discrediting the ministry by disparaging their work. As respects private members' bills, it is the undoubted duty of some

minister to watch them, and to procure their amendment or rejection if he finds them faulty. This duty is discharged less faithfully than might be wished, but perhaps as well as can be expected from weak human nature, often tempted to conciliate a supporter or an "interest" by allowing a measure to go through which ought to have been stopped.

7. Responsibility for everything done in the House rests upon the ministry of the day, because they are the leaders of the majority. If they allow a private member to pass a bad bill, if they stop him when trying to pass a good bill, they are in theory no less culpable than if they pass a bad bill of their own. Accordingly, when the second reading of a measure of consequence is moved, it is the duty of some member of the ministry to rise, with as little delay as possible, and state whether the ministry support it, or oppose it, or stand neutral. Standing neutral is, so far as responsibility to the country goes, practically the same thing as supporting. The Opposition, as an organized body, are not expected to express their opinion on any bills except those of high political import. Needless to say, private members are also held strictly responsible for the votes they give, these votes being all recorded and published next morning. Of course both parties claim praise or receive blame from the country in respect of their attitude towards bills of moment, and when a session has produced few or feeble Acts the Opposition charge the Ministry with sloth or incompetence.

The rules and usages I have described constitute valuable aids to legislation, and the quality of English and Scottish legislation, take it all and all, is good; that is to say, the statutes are such as public opinion (whether rightly or wrongly) demands, and are well drawn for the purposes they aim at.

Let us now apply the same test to the legislation of Congress. What follows refers primarily to the House, but is largely true of the Senate, because in the Senate also the committees play an important part.

In neither House of Congress are there any government bills. All measures are brought in by private members because all members are private. The nearest approach to the government bill of England is one brought in by a leading member of the majority in pursuance of a resolution taken in

the congressional caucus of that majority. This seldom happens. One must therefore compare the ordinary congressional bill with the English private member's bill rather than with a government measure, and expect to find it marked by the faults that mark the former class. The second difference is that whereas in England the criticism and amendment of a bill takes place in committee of the Whole, in the House of Representatives it takes place in a small committee of sixteen members or less, usually of eleven. In the Senate also the committees do most of the work, but the committee of the Whole occasionally debates a bill pretty fully.

Premising these dissimilarities, I go to the seven points before mentioned.

1. The excellence of the substance of a bill introduced in Congress depends entirely on the wisdom and care of its introducer. He may, if self-distrustful, take counsel with his political allies respecting it. But there is no security for its representing any opinion or knowledge but his own. It may affect the management of an executive department, but the introducing member does not command departmental information, and will, if the bill passes, have nothing to do with the carrying out of its provisions. On the other hand, the officials of the government cannot submit bills; and if they find a congressman willing to do so for them, must leave the advocacy and conduct of the measure entirely in his hands.

2. The drafting of a measure depends on the pains taken and skill exerted by its author. Senate bills are usually well drafted because many senators are experienced lawyers: House bills are often crude and obscure. There does not exist either among the executive departments or in connection with Congress, any legal office charged with the duty of preparing bills, or of seeing that the form in which they pass is technically satisfactory.

3. The only security for the consistency of the various measures of the same session is to be found in the fact that those which affect the same matter ought to be referred to the same committee. However, it often happens that there are two or more committees whose spheres of jurisdiction overlap, so that of two bills handling cognate matters, one may go to Committee A and the other to Committee B. Should different

views of policy prevail in these two bodies, they may report to the House bills containing mutually repugnant provisions. There is nothing except unusual vigilance on the part of some member interested, to prevent both bills from passing. That mischief from this cause is not serious arises from the fact that out of the multitude of bills introduced, few are reported and still fewer become law.

4. The function of a committee of either House of Congress extends not merely to the sifting and amending of the bills referred to it, but to practically re-drawing them, if the committee desires any legislation, or rejecting them by omitting to report them till near the end of the session if it thinks no legislation needed. Every committee is in fact a small bureau of legislation for the matters lying within its jurisdiction. It has for this purpose the advantage of time, of the right to take evidence, and of the fact that some of its members have been selected from their knowledge of or interest in the topics it has to deal with. On the other hand, it suffers from the non-publication of its debates, and from the tendency of all small and secret bodies to intrigues and compromises, compromises in which general principles of policy are sacrificed to personal feeling or selfish interest. Bills which go in black or white come out gray. They may lose all their distinctive colour; or they may be turned into a medley of scarcely consistent provisions. The member who has introduced a bill may not have a seat on the committee, and may therefore be unable to protect his offspring. Other members of the House, masters of the subject but not members of the committee, can only be heard as witnesses. Although therefore there are full opportunities for the discussion of the bill by the committee, it often emerges in an unsatisfactory form, or is quietly suppressed, because there is no impetus of the general opinion of the House or the public to push it through. When the bill comes back to the House the chairman or other reporting member of the committee generally moves the previous question, after which no amendment can be offered. Debate ceases and the bill is promptly passed or lost. In the Senate there is a better chance of discussion, for the Senate, having more time and fewer speakers, can review to some real purpose the findings of its committees.

5. As there is no debate on the introduction or on the second reading of a bill, the public is not necessarily apprised of the measures which are before Congress. An important measure is of course watched by the newspapers and so becomes known: minor measures go unnoticed.

6. The general good-nature of Americans, and the tendency of members of their legislatures to oblige one another by doing reciprocal good turns, dispose people to let any bill go through which does not injure the interest of a party or of a person. Such good-nature counts for less in a committee, because a committee has its own views and gives effect to them. But in the House there are few views, though much impatience. The House has no time to weigh the merits of a bill reported back to it. Members have never heard it debated. They know no more of what passed in the committee than the report tells them. If the measure is palpably opposed to their party tenets, the majority will reject it: if no party question arises they usually adopt the view of the committee.

7. What has been said already will have shown that except as regards bills of great importance, or directly involving party issues, there can be little effective responsibility for legislation. The member who brings in a bill is not responsible, because the committee generally alters his bill. The committee is little observed and the details of what passed within the four walls of its room are not published. The great parties in the House are but faintly responsible, because their leaders are not bound to express an opinion, and a vote taken on a non-partisan bill is seldom a strict party vote. Individual members are no doubt responsible, and a member who votes against a popular measure, one for instance favoured by the working men, will suffer for it.¹ But the responsibility of individuals, most of them insignificant, half of them destined to vanish, like snow-flakes in a river, at the next election, gives little security to the people.

The best defence that can be advanced for this system is that it has been naturally evolved as a means of avoiding worse

¹ The member who has taken this course is the worse off, because he rarely has an opportunity of explaining by a speech in the House his reason for his vote, and is therefore liable to the imputation of having been "got at" by capitalists.

mischiefs. It is really a plan for legislating by a number of commissions. Each commission, receiving suggestions in the shape of bills, taking evidence upon them, and sifting them in debate, frames its measures and lays them before the House in a shape which seems designed to make amendment in details needless, while leaving the general policy to be accepted or rejected by a simple vote of the whole body. In this last respect the plan may be compared with that of the Romans during the Republic, whose general assembly of the people approved or disapproved of a bill as a whole, without power of amendment, a plan which had the advantage of making laws clear and simple. At Rome, however, bills could be proposed only by a magistrate upon his official responsibility; they were therefore comparatively few and sure to be carefully drawn. The members of American legislative commissions have no special training, no official experience, little praise or blame to look for, and no means of securing that the overburdened House will ever come to a vote on their proposals. There is no more agreement between the views of one commission and another than what may result from the fact that the majority in both belongs to the same party.

Add to the conditions above described the fact that the House in its few months of life has not time to deal with one-twentieth of the many thousand bills which are thrown upon it, that it therefore drops the enormous majority unconsidered, though some of the best may be in this majority, and passes most of those which it does pass by a suspension of the rules which leaves everything to a single vote,¹ and the marvel comes to be, not that legislation is faulty, but that an intensely practical people tolerates such defective machinery. Some reasons may be suggested tending to explain this phenomenon.

Legislation is a difficult business in all free countries, and perhaps more difficult the more free the country is, because the discordant voices are more numerous and less under control. America has sometimes sacrificed practical convenience to her dislike to authority.

The Americans surpass all other nations in their power of making the best of bad conditions, getting the largest results

¹ This can be done by a two-thirds vote during the last six days of a session and on the first and third Mondays of each month.

out of scanty materials or rough methods. Many things in that country work better than they ought to work, so to speak, or could work in any other country, because the people are shrewdly alert in minimizing such mischiefs as arise from their own haste or heedlessness, and because they have a great capacity for self-help.

Aware that they possess this gift, the Americans are content to leave their political machinery unreformed. Persons who propose comprehensive reforms are suspected as theorists and crotchety-mongers. The national inventiveness, active in the spheres of mechanics and money-making, spends little of its force on the details of governmental methods.

The want of legislation on topics where legislation is needed breeds fewer evils than would follow in countries like England or France where Parliament is the only law-making body. The powers of Congress are limited to comparatively few subjects: its failures do not touch the general well-being of the people, nor the healthy administration of the ordinary law.

The faults of bills passed by the House are often cured by the Senate, where discussion is more leisurely and thorough. The committee system produces in that body also some of the same flabbiness and colourlessness in bills passed. But the blunders, whether in substance or of form, of the one chamber are frequently corrected by the other, and many bad bills fail owing to a division of opinion between the Houses.

The President's veto kills off some vicious measures. He does not trouble himself about defects of form; but where a bill seems to him opposed to sound policy, it is his constitutional duty to disapprove it, and to throw on Congress the responsibility of passing it "over his veto" by a two-thirds vote. A good President accepts this responsibility.