

taxation. The fact that Federal revenue is raised by duties of customs and excise makes the people far less sensible of the pressure of taxation than they would be did they pay directly.

To the absence of the military and naval charges which press so heavily on European states.

To the maintenance of an exceedingly high tariff at the instance of interested persons who have obtained the public ear and can influence Congress. It is the acceptance of the policy of Protection, rather than any deliberate conviction that the debt ought to be paid off, that has caused the continuance of a tariff whose huge and constant surpluses have enabled the debt to be reduced.

Europeans, admiring and envying the rapidity with which the war debt has been reduced, have been disposed to credit the Americans with brilliant financial skill. That, however, which was really admirable in the conduct of the American people was not their judgment in selecting particular methods for raising money, but their readiness to submit during and immediately after the war to unprecedentedly heavy taxation. The interests (real or supposed) of the manufacturing classes have caused the maintenance of the tariff then imposed; nature, by giving the people a spending power which has rendered the tariff marvellously productive, has done the rest.

Under the system of congressional finance here described America wastes millions annually. But her wealth is so great, her revenue so elastic, that she is not sensible of the loss. She has the glorious privilege of youth, the privilege of committing errors without suffering from their consequences.

CHAPTER XVIII

THE RELATIONS OF THE TWO HOUSES

THE creation by the Constitution of 1789 of two chambers in the United States, in place of the one chamber which existed under the Confederation, has been usually ascribed by Europeans to mere imitation of England; and one learned writer goes so far as to suggest that if England had possessed three chambers, like the States General of France, or four, like the Diet of Sweden, a crop of three-chambered or four-chambered legislatures would, in obedience to the example of happy and successful England, have sprung up over the world. There were, however, better reasons than deference to English precedents to justify the division of Congress into two houses and no more; and so many indubitable instances of such a deference may be quoted that there is no need to hunt for others. Not to dwell upon the fact that there were two chambers in all but two¹ of the thirteen original States, the Convention of 1787 had two solid motives for fixing on this number, a motive of principle and theory, a motive of immediate expediency.

The chief advantage of dividing a legislature into two branches is that the one may check the haste and correct the mistakes of the other. This advantage is purchased at the price of some delay, and of the weakness which results from a splitting up of authority. If a legislature be constituted of three or more branches, the advantage is scarcely increased, the delay and weakness are immensely aggravated. Two chambers can be made to work together in a way almost impossible to more than two. As the proverb says, "Two's company, three's none." If there be three chambers, two are sure to intrigue and likely to combine against the third. The difficulties of

¹ Pennsylvania and Georgia; the former of which added a Senate in 1789, the latter in 1790. See *post*, Chapter XXXIX. on State Legislatures.

carrying a measure without sacrificing its unity of principle, of fixing responsibility, of securing the watchful attention of the public, serious with two chambers, become enormous with three or more.

To these considerations there was added the practical ground that the division of Congress into two houses supplied a means of settling the dispute which raged between the small and the large States. The latter contended for a representation of the States in Congress proportioned to their respective populations, the former for their equal representation as sovereign commonwealths. Both were satisfied by the plan which created two chambers in one of which the former principle, in the other of which the latter principle was recognized. The country remained a federation in respect of the Senate, it became a nation in respect of the House: there was no occasion for a third chamber.

The respective characters of the two bodies are wholly unlike those of the so-called upper and lower chambers of Europe. In Europe there is always a difference of political complexion, generally resting on a difference in personal composition. There the upper chamber represents the aristocracy of the country, or the men of wealth, or the high officials, or the influence of the Crown and Court; while the lower chamber represents the multitude. Between the Senate and the House there is no such difference. Both equally represent the people, the whole people, and nothing but the people. The individual members come from the same classes of the community; and though there are more rich men (in proportion to numbers) in the Senate than in the House, the influence of capital is not markedly greater. Both have been formed by the same social influences: and the social pretensions of a senator expire with his term of office. Both are possessed by the same ideas, governed by the same sentiments, equally conscious of their dependence on public opinion. The one has never been, like the English House of Commons, a popular pet, the other never, like the English House of Lords, a popular bugbear.

What is perhaps stranger, the two branches of Congress have not exhibited that contrast of feeling and policy which might be expected from the different methods by which they are chosen. In the House the large States are predominant: ten

out of forty-four (less than one-fourth) return an absolute majority of the 332 representatives. In the Senate these same ten States have only twenty members out of eighty-eight, less than a fourth of the whole. In other words, these ten States are more than sixteen times as powerful in the House as they are in the Senate. But as the House has never been the organ of the large States, nor prone to act in their interest, so neither has the Senate been the stronghold of the small States, for American politics have never turned upon an antagonism between these two sets of commonwealths. Questions relating to States' rights and the greater or less extension of the powers of the national government have played a leading part in the history of the Union. But although small States might be supposed to be specially zealous for States' rights, the tendency to uphold them has been no stronger in the Senate than in the House. In one phase of the slavery struggle the Senate happened to be under the control of the slaveholders while the House was not; and then of course the Senate championed the sovereignty of the States. But this attitude was purely accidental, and disappeared with its transitory cause.

The real differences between the two bodies are due to the smaller size of the Senate, and the consequent greater facilities for debate, to the somewhat superior capacity of its members, to the habits which its executive functions form in individual senators, and have formed in the whole body.

In Europe, where the question as to the utility of second chambers is actively canvassed, two objections are made to them, one that they deplete the first or popular chamber of able men, the other that they induce deadlocks and consequent stoppage of the wheels of government. On both arguments light may be expected from American experience.

Although the Senate does draw off from the House many of its ablest men, it is not clear, paradoxical as the observation may appear, that the House would be much the better for retaining those men. The faults of the House are mainly due, not to want of talent among individuals, but to its defective methods, and especially to the absence of leadership. These are faults which the addition of twenty or thirty able men would not cure. Some of the committees would be stronger, and so far the work would be better done. But the House as

a whole would not (assuming its rules and usages to remain what they are now) be distinctly a greater power in the country. On the other hand, the merits of the Senate are largely due to the fact that it trains to higher efficiency the ability which it has drawn from the House, and gives that ability a sphere in which it can develop with better results. Were the Senate and the House thrown into one, the country would suffer more, I think much more, by losing the Senate than it would gain by improving the House, for the united body would have the qualities of the House and not those of the Senate.

Collisions between the two Houses are frequent. Each is jealous and combative. Each is prone to alter the bills that come from the other; and the Senate in particular knocks about remorselessly those favourite children of the House, the appropriation bills. The fact that one House has passed a bill goes but a little way in inducing the other to pass it; the Senate would reject twenty House bills as readily as one. Deadlocks, however, disagreements over serious issues which stop the machinery of administration, are not common. They rarely cause excitement or alarm outside Washington, because the country, remembering previous instances, feels sure they will be adjusted, and knows that either House would yield were it unmistakably condemned by public opinion. The executive government goes on undisturbed, and the worst that can happen is the loss of a bill which may be passed four months later. Even as between the two bodies there is no great bitterness in these conflicts, because the causes of quarrel do not lie deep. Sometimes it is self-esteem that is involved, the sensitive self-esteem of an assembly. Sometimes one or other House is playing for a party advantage. That intensity which in the similar contests of Europe arises from class feeling is absent, because there is no class distinction between the two American chambers. Thus the country seems to be watching a fencing match rather than a *combat à outrance*.

I dwell upon this substantial identity of character in the Senate and the House because it explains the fact, surprising to a European, that two perfectly co-ordinate authorities, neither of which has any more right than its rival to claim to speak for the whole nation, manage to get along together. Their quarrels are professional and personal rather than conflicts of

adverse principles. The two bodies are not hostile elements in the nation, striving for supremacy, but servants of the same master, whose word of rebuke will quiet them.

It must, however, be also remembered that in such countries as England, France, and Italy, the popular chamber stands in very close relation with the executive government, which it has virtually installed and which it supports. A conflict between the two chambers in such countries is therefore a conflict to which the executive is a party, involving issues which may be of the extremest urgency; and this naturally intensifies the struggle. For the House of Lords in England or the Senate in Italy to resist a demand for legislation made by the ministry, who are responsible for the defence and peace of the country, and backed by the representative House, is a more serious matter than almost any collision between the Senate and the House can be in America.¹

The United States is the only great country in the world in which the two Houses are really equal and co-ordinate. Such a system could hardly work, and therefore could not last, if the executive were the creature of either or of both, nor unless both were in close touch with the sovereign people.

When each chamber persists in its own view, the regular proceeding is to appoint a committee of conference, consisting of three members of the Senate and three of the House. These six meet in secret, and generally settle matters by a compromise, which enables each side to retire with honour. When appropriations are involved, a sum intermediate between the smaller one which the House proposes to grant and the larger one desired by the Senate is adopted. If no compromise can be arranged, the conflict continues till one side yields or it ends by an adjournment, which of course involves the failure of the measure disagreed upon. The House at one time tried to coerce the Senate into submission by adding "riders," as they are called, to appropriation bills, *i.e.* annexing or "tacking" (to use the English expression) pieces of general legislation to bills granting sums of money. This puts the Senate in the

¹ Of course a case may be imagined in which the President should ask for legislation, as Lincoln did during the war, and one House of Congress should grant, the other refuse, the Acts demanded. But such cases are less likely to occur in America than in Europe under the Cabinet system.

dilemma of either accepting the unwelcome rider, or rejecting the whole bill, and thereby withholding from the executive the funds it needs. This happened in 1855 and 1856. However, the Senate stood firm, and the House gave way. The device had previously been attempted (in 1849) by the Senate in tacking a pro-slavery provision to an appropriation bill which it was returning to the House, and it was revived by both Houses against President Andrew Johnson in 1867.

In a contest the Senate usually, though not invariably, gets the better of the House. It is smaller, and can therefore more easily keep its majority together; its members are more experienced; and it has the great advantage of being permanent, whereas the House is a transient body. The Senate can hold out, because if it does not get its way at once against the House, it may do so when a new House comes up to Washington. The House cannot afford to wait, because the hour of its own dissolution is at hand. Besides, while the House does not know the Senate from inside, the Senate, many of whose members have sat in the House, knows all the "ins and outs" of its rival, can gauge its strength and play upon its weakness.

CHAPTER XIX

GENERAL OBSERVATIONS ON CONGRESS

AFTER this inquiry into the composition and working of each branch of Congress, it remains for me to make some observations which apply to both Houses, and which may tend to indicate the features that distinguish them from the representative assemblies of the Old World. The European reader must bear in mind three points which, in following the details of the last few chapters, he may have forgotten. The first is that Congress is not like the Parliaments of England, France, and Italy, a sovereign assembly, but is subject to the Constitution, which only the people can change. The second is, that it neither appoints nor dismisses the executive government, which springs directly from popular election. The third is, that its sphere of legislative action is limited by the existence of forty-four governments in the several States, whose authority is just as well based as its own, and cannot be curtailed by it.

I. The choice of members of Congress is locally limited by law and by custom. Under the Constitution every representative and every senator must when elected be an inhabitant of the State whence he is elected. Moreover, State law has in many and custom practically in all States, established that a representative must be resident in the congressional district which elects him.¹ The only exceptions to this practice occur in large cities where occasionally a man is chosen who lives in a different district of the city from that which returns him;

¹ The best legal authorities hold that a provision of this kind is invalid, because State law has no power to narrow the qualifications for a Federal representative prescribed by the Constitution of the United States. And Congress would probably so hold if the question arose in a case brought before it as to a disputed election. So far as I have been able to ascertain, the point has never arisen for determination.