

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.<sup>1</sup> 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;

<sup>1</sup> 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.

but such exceptions are rare.<sup>1</sup> This restriction, inconvenient as it is both to candidates, whose field of choice in seeking a constituency it narrows, and to constituencies, whom it debars from choosing persons, however eminent, who do not reside in their midst, seems to Americans so obviously reasonable that few persons, even in the best educated classes, will admit its policy to be disputable. In what are we to seek the causes of this opinion?

First. In the existence of States, originally separate political communities, still for many purposes independent, and accustomed to consider the inhabitant of another State as almost a foreigner. A New Yorker, Pennsylvanians would say, owes allegiance to New York; he cannot feel and think as a citizen of Pennsylvania, and cannot therefore properly represent Pennsylvanian interests. This sentiment has spread by a sort of sympathy, this reasoning has been applied by a sort of analogy, to the counties, the cities, the electoral districts of the State itself. State feeling has fostered local feeling; the locality deems no man a fit representative who has not by residence in its limits, and by making it his political home, the place where he exercises his civic rights, become soaked with its own local sentiment.

Secondly. Much of the interest felt in the proceedings of Congress relates to the raising and spending of money. Changes in the tariff may affect the industries of a locality; or a locality may petition for an appropriation of public funds to some local public work, the making of a harbour, or the improvement of the navigation of a river. In both cases it is thought that no one but an inhabitant can duly comprehend the needs or zealously advocate the demands of a neighbourhood.

Thirdly. Inasmuch as no high qualities of statesmanship are expected from a congressman, a district would think it a slur to be told that it ought to look beyond its own borders for a representative; and as the post is a paid one, the people feel that a good thing ought to be kept for one of themselves rather than thrown away on a stranger. It is by local politi-

<sup>1</sup> However, in 1890 one of the candidates for the fifth congressional district of Massachusetts was not a resident in that district, and was not thought to have suffered seriously on that account. Sometimes a man moves into a district in order to be chosen there.

cal work, organizing, canvassing, and haranguing, that a party is kept going: and this work must be rewarded.

A perusal of the chapter of the *Federalist*, which argues that one representative for 30,000 inhabitants will sufficiently satisfy republican needs, suggests another reflection. The writer refers to some who held a numerous representation to be a democratic institution, because it enabled every small district to make its voice heard in the national Congress. Such representation then existed in the State legislatures. Evidently the habits of the people were formed by these State legislatures, in which it was a matter of course that the people of each township or city sent one of themselves to the assembly of the State. When they came to return members to Congress, they followed the same practice. A stranger had no means of making himself known to them and would not think of offering himself. That the habits of England are different may be due, so far as the eighteenth century is concerned, to the practice of borough-mongering, under which candidates unconnected with the place were sent down by some influential person, or bought the seat from the corrupt corporation or the limited body of freemen. Thus the notion that a stranger might do well enough for a borough grew up, while in counties it remained, till 1885, a maxim that a candidate ought to own land in the county<sup>1</sup> — the old law required a freehold qualification somewhere — or ought to live in, or ought at the very least (as I once heard a candidate, whose house lay just outside the county for which he was standing, allege on his own behalf) to look into the county from his window while shaving in the morning.<sup>2</sup> The English practice might thus seem to be an exception due to special causes, and the American prac-

<sup>1</sup> The old law (9 Anne, c. 5) required all members to possess a freehold qualification somewhere. All property qualifications were abolished by statute in 1858.

<sup>2</sup> The English habit of allowing a man to stand for a place with which he is personally unconnected would doubtless be favoured by the fact that many ministers are necessarily members of the House of Commons. The inconvenience of excluding a man from the service of the nation because he could not secure his return in the place of his residence would be unendurable. No such reason exists in America, because ministers cannot be members of Congress. In France, Germany, and Italy the practice resembles that of England, *i.e.* many members sit for places where they do not reside, though a candidate residing in the place he stands for has a certain advantage.

It is remarkable that the original English practice required the member to

tice that which is natural to a free country, where local self-government is fully developed and rooted in the habits of the people. It is from their local government that the political ideas of the American people have been formed: and they have applied to their State assemblies and their national assembly the customs which grew up in the smaller area.<sup>1</sup>

These are the best explanations I can give of a phenomenon which strikes Europeans all the more because it exists among a population more unsettled and migratory than any in the Old World. But they leave me still surprised at this strength of local feeling, a feeling not less marked in the new regions of the Far West than in the venerable commonwealths of Massachusetts and Virginia. Fierce as is the light of criticism which beats upon every part of that system, this point remains uncensured, because assumed to be part of the order of nature.

So far as the restriction to residents in a State is concerned it is intelligible. The senator was originally a sort of ambassador from his State. He is chosen by the legislature or collective authority of his State. He cannot well be a citizen of one State and represent another. Even a representative in the House from one State who lived in another might be per-

be a resident of the county or borough which returned him to Parliament. This is said to be a requirement at common law (witness the words "de comitatu tuo" in the writ for the election addressed to the sheriff); and was expressly enacted by the statute 1 Henry V. cap. 1. But already in the time of Elizabeth the requirement was not enforced; and in 1681 Lord Chief-Justice Pemberton ruled that "little regard was to be had to that ancient statute 1 Henry V. forasmuch as common practice hath been ever since to the contrary." The statute was repealed by 14 Geo. III. cap. 50. — See Anson, *Law and Custom of the Constitution*, vol. i. p. 83; Stubbs, *Constit. Hist.*, vol. iii. p. 424. Dr. Stubbs observes that the object of requiring residence in early times was to secure "that the House of Commons should be a really representative body." Mr. Hearn (*Government of England*) suggests that the requirement had to be dropped because it was hard to find country gentlemen (or indeed burgesses) possessing the legal knowledge and statesmanship which the constitutional struggles of the sixteenth and seventeenth centuries demanded.

<sup>1</sup> When President Garfield was one of the leaders of the House of Representatives it happened that his return for the district in which he resided became doubtful, owing to the strength of the Democratic party there. One of his friends (to whom I owe the anecdote), anxious to make sure that he should somehow be returned to the House, went into the adjoining district to sound the Republican voters there as to the propriety of running Mr. Garfield for their constituency. They laughed at the notion, "Why, he don't live in our deestric." I have heard of a case in which a member of Congress having after his election gone to live in a neighbouring district, was thereupon compelled by the pressure of public opinion to resign his seat.

plexed by a divided allegiance, though there are groups of States, such as those of the north-west, whose great industrial interests are substantially the same. But what reason can there be for preventing a man resident in one part of a State from representing another part, a Philadelphian, for instance, from being returned for Pittsburg, or a Bostonian for Lenox in the west of Massachusetts? In Europe it is not found that a member is less active or successful in urging the local interests of his constituency because he does not live there. He is often more successful, because more personally influential or persuasive than any resident whom the constituency could supply; and in case of a conflict of interests he always feels his efforts to be owing first to his constituents, and not to the place in which he happens to reside.

The mischief is twofold. Inferior men are returned, because there are many parts of the country which do not grow statesmen, where nobody, or at any rate nobody desiring to enter Congress, is to be found above a moderate level of political capacity. And men of marked ability and zeal are prevented from forcing their way in. Such men are produced chiefly in the great cities of the older States. There is not room enough there for nearly all of them, but no other doors to Congress are open. Boston, New York, Philadelphia, Baltimore, could furnish six or eight times as many good members as there are seats in these cities. As such men cannot enter from their place of residence, they do not enter at all, and the nation is deprived of the benefit of their services. Careers are moreover interrupted. A promising politician may lose his seat in his own district through some fluctuation of opinion, or perhaps because he has offended the local wire-pullers by too much independence. Since he cannot find a seat elsewhere he is stranded; his political life is closed, while other young men inclined to independence take warning from his fate. Changes in the State laws would not remove the evil, for the habit of choosing none but local men is rooted so deeply that it would probably long survive the abolition of a restrictive law, and it is just as strong in States where no such law exists.<sup>1</sup>

<sup>1</sup> In Maryland, a State almost divided into two parts by Chesapeake Bay, it is the invariable practice that one of the two senators should be chosen from the residents east of the bay, the other from those of the western shore.

II. Every senator and representative receives a salary at present fixed at \$5000 (£1000) per annum, besides an allowance (called mileage) of 20 cents (10d.) per mile for travelling expenses to and from Washington, and \$125 (£25) for stationery. The salary is looked upon as a matter of course. It was not introduced for the sake of enabling working men to be returned as members, but on the general theory that all public work ought to be paid for.<sup>1</sup> The reasons for it are stronger than in England or France, because the distance to Washington from most parts of the United States is so great, and the attendance required there so continuous, that a man cannot attend to his profession or business while sitting in Congress. If he loses his livelihood in serving the community, the community ought to compensate him, not to add that the class of persons whose private means put them above the need of a lucrative calling, or of compensation for interrupting it, is comparatively small even now, and hardly existed when the Constitution was framed. Cynics defend the payment of congressmen on another ground, viz. that "they would steal worse if they didn't get it," and would make politics, as Napoleon made war, support itself. Be the thing bad or good, it is at any rate necessary, so that no one talks of abolishing it. For that reason its existence furnishes no argument for its introduction into a small country with a large leisured and wealthy class. In fact, the conditions of European countries are so different from those of America that one must not cite American experience either for or against the remuneration of legislative work. I do not believe that the practice works ill by preventing good men from entering politics, for they feel no more delicacy in accepting their \$5000 than an English duke does in drawing his salary as a secretary of state. It may strengthen the tendency of members to regard themselves as mere delegates, but that tendency has other and deeper roots. It contributes to keep up a class of professional politicians, for the salary, though small in comparison with the incomes earned by successful merchants or lawyers, is a prize to men of the class whence professional politicians mostly

<sup>1</sup> Benjamin Franklin argued strongly in the Convention of 1787 against this theory, but found little support. See his remarkable speech in Mr. John Bigelow's *Life of Franklin*, vol. iii. p. 389.

come. But those European writers who describe it as the formative cause of that class are mistaken. That class would have existed had members not been paid, would continue to exist if payment were withdrawn. On the other hand, the benefit which Europeans look for from the payment of legislators, viz. the introduction of a large number of representative working men, has hitherto been little desired and nowise secured. Few such persons appear as candidates in America; and until recently the working class has not deemed itself, nor acted as, a distinct body with special interests.<sup>1</sup>

In 1873 Congress passed an act increasing many official salaries, and among others those of senators and representatives, which it raised from \$5000 to \$7500 (£1500). All the increases were to take effect for the future only, except that of congressional salaries, which was made retroactive. This unblushing appropriation by Congress of nearly \$200,000 to themselves roused so much indignation that the act, save as to the salaries of the President and Federal judges, was repealed by the next Congress. It is known as the "back-pay grab."

III. A congressman's tenure of his place is usually short. Senators are sometimes returned for two, three, or even four successive terms by the legislatures of their States, although it may befall even the best of them to be thrown out by a change in the balance of parties, or by the intrigues of an opponent. But a member of the House can seldom feel safe in the saddle. If he is so eminent as to be necessary to his party, or if he maintains intimate relations with the leading local wire-pullers of his district, he may in the eastern and middle, and still more in the southern States, hold his ground for three or four Congresses, *i.e.* for six or eight years. Few do more than this. In the West a member is fortunate if he does even this. Out there a seat is regarded as a good thing which ought to go round. It has a salary. It sends a man, free of expense, for two winters and springs to Washington and lets him see something of the fine world there, where he rubs shoulders with ambassadors from Europe. Local leaders cast sheep's eyes at

<sup>1</sup> In Victoria (Australia), members of the popular house receive a salary of £300 a year; and payment is the rule in the British self-governing colonies. In France and some at least of the German states (though not in the Reichstag) representatives are paid. In Italy they receive no salary, but a free pass over the railroads.

the seat, and make more or less open bargains between themselves as to the order in which they shall enjoy it. So far from its being a reason for re-electing a man that he has been a member already, it is a reason for passing him by, and giving somebody else a turn. Rotation in office, dear to the Democrats of Jefferson's school a century ago, still charms the less educated, who see in it a recognition of equality, and have no sense of the value of special knowledge or training. They like it for the same reason that the democrats of Athens liked the choice of magistrates by lot. It is a recognition and application of equality. An ambitious congressman is therefore forced to think day and night of his re-nomination, and to secure it not only by procuring, if he can, grants from the Federal treasury for local purposes, and places for the relatives and friends of the local wire-pullers who control the nominating conventions, but also by sedulously "nursing" the constituency during the vacations. No habit could more effectually discourage noble ambition or check the growth of a class of accomplished statesmen. There are few walks of life in which experience counts for more than it does in parliamentary politics. It is an education in itself, an education in which the quick-witted western American would make rapid progress were he suffered to remain long enough at Washington. At present he is not suffered, for nearly one half of each successive house consists of new men, while the old members are too much harassed by the trouble of procuring their re-election to have time or motive for the serious study of political problems. This is what comes of the doctrine that a member ought to be absolutely dependent on his constituents, and of the notion that politics is neither a science, nor an art, nor even an occupation, like farming or store-keeping, in which one learns by experience, but a thing that comes by nature, and for which one man of common sense is as fit as another.

IV. The last-mentioned evil is aggravated by the short duration of a Congress. Short as it seems, the two years' term was warmly opposed, when the Constitution was framed, as being too long.<sup>1</sup> The constitutions of the several States,

<sup>1</sup> In the Massachusetts Convention of 1788, when this question was being discussed, "General Thomson then broke out into the following pathetic apostrophe, 'O my country, never give up your annual elections: young men, never give up your jewel.' He apologized for his zeal." — Elliot's *Debates*, vol. ii. p. 16.

framed when they shook off the supremacy of the British Crown, all fixed one year, except the ultra-democratic Connecticut and Rhode Island, where under the colonial charters a legislature met every six months, and South Carolina, which had fixed two years. So essential to republicanism was this principle deemed, that the maxim "where annual elections end tyranny begins" had passed into a proverb; and the authors of the *Federalist* were obliged to argue that the limited authority of Congress, watched by the executive on one side, and the State legislatures on the other, would prevent so long a period as two years from proving dangerous to liberty, while it was needed in order to enable the members to master the laws and understand the conditions of different parts of the Union. At present the two years' term is justified on the ground that it furnishes a proper check on the President by interposing an election in the middle of his term. One is also told that these frequent elections are necessary to keep up popular interest in current politics, nor do some fail to hint that the temptations to jobbing would overcome the virtue of members who had a longer term before them. Where American opinion is unanimous, it would be presumptuous for a stranger to dissent. Yet the remark may be permitted that the dangers originally feared have proved chimerical. There is no country whose representatives are more dependent on popular opinion, more ready to trim their sails to the least breath of it. The public acts, the votes, and speeches of a member from Oregon or Texas can be more closely watched by his constituents than those of a Virginian member could be watched in 1789.<sup>1</sup> And as the frequency of elections involves inexperienced members, the efficiency of Congress suffers.

V. The numbers of the two American houses seem small to a European when compared on the one hand with the population of the country, on the other with the practice of European states. The Senate has 88 members against the British House of Lords with about 550, and the French Senate with 300. The House has (election of 1892) 356 against the British House of Commons with 670, and the French and Italian Chambers with 584 and 508 respectively.

<sup>1</sup> Of course his conduct in committee is rarely known, but I doubt whether the shortness of the term makes him more scrupulous.

The Americans, however, doubt whether both their Houses have not already become too large. They began with 26 in the Senate, 65 in the House, numbers then censured as too small, but which worked well, and gave less encouragement to idle talk and vain display than the crowded halls of to-day. The inclination of wise men is to stop further increase when the number of 400 has been reached, for they perceive that the House already suffers from disorganization, and fear that a much larger one would prove unmanageable.<sup>1</sup>

VI. American congressmen are more assiduous in their attendance than the members of most European legislatures. The great majority not only remain steadily at Washington through the session, but are usually to be found in the Capitol, often in their Chamber itself, while a sitting lasts. There is therefore comparatively little trouble in making the quorum of one half,<sup>2</sup> except when the minority endeavours to prevent

<sup>1</sup> There is force in the following observations which I copy from the 54th and 57th numbers of the *Federalist*:—"A certain number at least seems necessary to secure the benefits of free consultation and discussion, and to guard against too easy a combination for improper purposes; as on the other hand, the number ought to be kept within a certain limit in order to avoid the confusion and intemperance of a multitude. In all very numerous assemblies, of whatever characters composed, passion never fails to wrest the sceptre from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob. . . . In all legislative assemblies, the greater the number comprising them may be, the fewer will be the men who will in fact direct their proceedings. The larger the number, the greater will be the proportion of members of limited information and of weak capacities. Now it is precisely on characters of this description that the eloquence and address of the few are known to act with all their force. In the ancient republics where the whole body of the people assembled in person, a single orator, or an artful statesman, was generally seen to rule with as complete a sway as if a sceptre had been placed in his single hand. On the same principle the more multitudinous a representative assembly may be rendered, the more it will partake of the infirmities incident to collective meetings of the people. Ignorance will be the dupe of cunning, and passion the slave of sophistry and declamation. The people can never err more than in supposing that by multiplying their representatives beyond a certain limit they strengthen the barrier against the government of a few. Experience will for ever admonish them that, on the contrary, after securing a certain number for the purposes of safety, of local information, and of diffusing sympathy with the whole society, they will counteract their own views by every addition to their representatives."

It is true that the House of Commons with 670 members has not been found unmanageable. The number present, however, rarely exceeds 450; and there is sitting accommodation on the floor for only 360.

<sup>2</sup> Though sometimes the serjeant-at-arms is sent round Washington with a carriage to fetch members down from their residences to the Capitol.

its being made, whereas in England the House of Lords, whose quorum is three, has seldom thirty peers present, and the House of Commons often finds a difficulty, especially during the dinner hour, in securing its modest quorum of forty.<sup>1</sup> This requirement of a high quorum, which is prescribed in the Constitution, has doubtless helped to secure a good attendance. Other causes are the distance from Washington of the residences of most members, so that it is not worth while to take the journey home for a short sojourn, and the fact that very few attempt to carry on any regular business or profession while the session lasts. Those who are lawyers, or merchants, or manufacturers, leave their work to partners; but many are politicians and nothing else. In Washington, a city without commerce or manufactures, political or semi-political intrigue is the only gainful occupation possible; for the Supreme Court practice employs only a few leading barristers. The more democratic a country is, so much the more regular is the attendance, so much closer the attention to the requests of constituents which a member is expected to render.<sup>2</sup> Apart from that painful duty of finding places for constituents which consumes so much of a congressman's time, his duties are not heavier than those of a member of the English Parliament who desires to keep abreast of current questions. The sittings are neither so long nor so late as those of the House of Commons; the questions that come up not so multifarious, the blue books to be read less numerous, the correspondence (except about places) less troublesome. The position of senator is more onerous than that of a member of the House, not only because his whole State, and not merely a district, has a direct claim upon him, but also because, as one of a smaller body, he incurs a larger individual responsibility, and sits upon two or more committees instead of on one only.

VII. The want of opportunities for distinction in Congress is one of the causes which make a political career unattractive to

<sup>1</sup> Oliver Cromwell's House of 360 members, including 30 from Scotland and 30 from Ireland, had a quorum of 60.

<sup>2</sup> Before the Reform Bill of 1832 there were rarely more than 200 members present in the House of Commons, and it usually sat for two or three hours only in each day. One of the members for Hampshire, about 1820, sat for thirteen years, being in perfect health, and was only thrice in the House. Nor was this deemed a very singular case.