



## CHAPTER XX

### THE RELATIONS OF CONGRESS TO THE PRESIDENT<sup>1</sup>

So far as they are legislative bodies, the House and the Senate have similar powers and stand in the same relation to the executive.<sup>2</sup> We may therefore discuss them together, or rather the reader may assume that whatever is said of the House as a legislature applies to the Senate.<sup>3</sup>

Although the Constitution forbids any Federal official to be a member of either the House or the Senate, there is nothing in it to prevent officials from speaking there; as indeed there is nothing to prevent either House from assigning places and the right to speak to any one whom it chooses. In the early days Washington came down and delivered his opening speech. Occasionally he remained in the Senate during a debate, and even expressed his opinion there. When Hamilton, the first secretary of the treasury, prepared his famous report on the national finances, he asked the House whether they would hear him speak it, or would receive it in writing. They chose the latter course, and the precedent then set has been followed by subsequent ministers,<sup>4</sup> while that set in 1801 by President

<sup>1</sup> The relations of the various organs of government to one another in the United States are so interesting and so unlike those which exist in most European countries, that I have found it necessary to describe them with some minuteness, and from several points of view. In this chapter an account is given of the actual working relations of the President and Congress; in the next chapter the general theory of the respective functions of the executive and legislative departments is examined, and the American view of the nature of these functions explained; while in Chapter XXV. the American system as a whole is compared with the so-called "cabinet system" of Britain and her colonies.

<sup>2</sup> The House has the exclusive initiative in revenue bills; but this privilege does not affect what follows.

<sup>3</sup> The executive functions of the Senate have been discussed in Chapter XI.

<sup>4</sup> A committee of the Senate reported in favour of giving the right of speech to ministers (see note to Chapter IX. *ante*); and this was provided in the

Jefferson when he transmitted his message in writing instead of delivering a speech, has been similarly respected by all his successors. Thus neither House now hears a member of the executive; and when a minister appears before a committee, he appears only as a witness to answer questions, not to state and argue his own case. There is therefore little direct intercourse between Congress and the administration, and no sense of interdependence and community of action such as exists in other parliamentary countries.<sup>1</sup> Be it remembered also that a minister may never have sat in Congress, and may therefore be ignorant of its temper and habits. Six members of Mr. Cleveland's cabinet, in 1888, had never had a seat in either House. The President himself, although he has been voted into office by his party, is not necessarily its leader, nor even one among its most prominent leaders. Hence he does not sway the councils and guide the policy of those members of Congress who belong to his own side. No duty lies on Congress to take up a subject to which he has called attention as needing legislation; and the suggestions which he makes, year after year, are in fact frequently neglected, even when his party has a majority in both Houses, or when the subject lies outside party lines.

The President and his cabinet have no recognized spokesman in either House. A particular senator or representative may be in confidential communication with them, and be the instrument through whom they seek to act; but he would probably disavow rather than claim the position of an exponent of ministerial wishes. The President can of course influence mem-

Constitution of the Southern Confederacy (see note to Chapter XXVI. at the end of this volume). The President may of course come into the Senate, though he does not deliver speeches to it. He does not go into the House of Representatives. Nor has any English king entered the House of Commons, except Charles I. in 1642, on the occasion of his attempt to seize the five members, when, says the *Journal*, "His Majesty came into the House and took Mr. Speaker's chair: 'Gentlemen, I am sorry to have this occasion to come unto you.'" The results did not encourage his successors to repeat the visit. But Charles II. was sometimes present during debates in the House of Lords, and even exhorted the Lords to be more orderly; Anne sometimes appeared; and there would not, it is conceived, be anything to prevent the Sovereign from being present now.

<sup>1</sup> The House some years ago passed a bill for transferring Indian affairs from the Secretary of the Interior to the Secretary of War without consulting either official.

bers of Congress through patronage. He may give places to them or their friends; he may approve or veto bills in which they are interested; his ministers may allot lucrative contracts to their nominees. This power is considerable, but covert, for the knowledge that it was being used might damage the member in public estimation and expose the executive to imputations. The consequence of cutting off open relations has been to encourage secret influence, which may no doubt be used for legitimate purposes, but which, being exerted in darkness, is seldom above suspicion. When the President or a minister is attacked in Congress, it is not the duty of any one there to justify his conduct. The accused official may send a written defence or may induce a member to state his case; but this method lacks the advantages of the European parliamentary system, under which the person assailed repels in debate the various charges, showing himself not afraid to answer fresh questions and grapple with new points. Thus by its exclusion from Congress the executive is deprived of the power of leading and guiding the legislature and of justifying in debate its administrative acts.

Next as to the power of Congress over the executive. Either House of Congress, or both Houses jointly, can pass resolutions calling on the President or his ministers to take certain steps, or disapproving steps they have already taken. The President need not obey such resolutions, need not even notice them. They do not shorten his term or limit his discretion.<sup>1</sup> Moreover, if the resolution be one censuring the act of a minister, the President does not escape responsibility by throwing over the minister, because the law makes him, and not his servant or adviser, responsible.

Either House of Congress can direct a committee to summon and examine a minister, who, though he might legally refuse to attend, never does refuse. The committee, when it has got him, can do nothing more than question him. He may evade their questions, may put them off the scent by dexterous con-

<sup>1</sup> In England a resolution of the House of Commons alone is treated as imperative in matters lying within the discretion of the executive, but then the House of Commons has the power of dismissing the Government if its wishes are disregarded. There have even been instances of late years in which the executive has ceased to put in force the provisions of an unrepealed statute, because the House of Commons has expressed its disapproval of that statute.

cealments. He may with impunity tell them that he means to take his own course. To his own master, the President, he standeth or falleth.

Congress may refuse to the President the legislation he requests, and thus, by mortifying and embarrassing him, may seek to compel his compliance with its wishes. It is only a timid President, or a President greatly bent on accomplishing some end for which legislation is needed, who will be moved by such tactics.

Congress can pass bills requiring the President or any minister to do or abstain from doing certain acts of a kind hitherto left to his free will and judgment, may, in fact, endeavour to tie down the officials by prescribing certain conduct for them in great detail. The President will presumably veto such bills, as contrary to sound administrative policy. If, however, he signs them, or if Congress passes them over his veto, the further question may arise whether they are within the constitutional powers of Congress, or are invalid as unduly trenching on the discretion which the Constitution leaves to the executive chief magistrate. If he (or a minister), alleging them to be unconstitutional, disobeys them, the only means of deciding whether he is right is by getting the point before the Supreme Court as an issue of law in some legal proceeding. This cannot always be done. If it is done, and the court decide against the President, then if he still refuses to obey, nothing remains but to impeach him.

Impeachment, of which an account has already been given, is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy it is unfit for ordinary use. It is like a hundred-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at. Or to vary the simile, impeachment is what physicians call a heroic medicine, an extreme remedy, proper to be applied against an official guilty of political crimes, but ill adapted for the punishment of small transgressions. Although the one President (Andrew Johnson) against whom it has been used had for two years constantly, and with great intemperance of language, so defied and resisted Congress that the whole machinery of government had been severely strained, yet the Senate did not convict him, because no single offence

had been clearly made out. Thus impeachment does not tend to secure, and indeed was never meant to secure, the co-operation of the executive with Congress.

It accordingly appears that Congress cannot compel the dismissal of any official. It may investigate his conduct by a committee and so try to drive him to resign. It may request the President to dismiss him, but if his master stands by him and he sticks to his place, nothing more can be done. He may of course be impeached, but one does not impeach for mere incompetence or laxity, as one does not use steam hammers to crack nuts. Thus we arrive at the result that while Congress may examine the servants of the public to any extent, may censure them, may lay down rules for their guidance, it cannot get rid of them. It is as if the directors of a company were forced to go on employing a manager whom they had ceased to trust, because it was not they but the shareholders who had appointed him.

There remains the power which in free countries has been long regarded as the citadel of parliamentary supremacy, the power of the purse. The Constitution keeps the President far from this citadel, granting to Congress the sole right of raising money and appropriating it to the service of the state. Its management of national finance is significantly illustrative of the plan which separates the legislative from the executive. In this supremely important matter, the administration, instead of proposing and supervising, instead of securing that each department gets the money that it needs, that no money goes where it is not needed, that revenue is procured in the least troublesome and expensive way, that an exact yearly balance is struck, that the policy of expenditure is self-consistent and reasonably permanent from year to year, is by its exclusion from Congress deprived of influence on the one hand, of responsibility on the other. The office of Finance Minister is put into commission, and divided between the chairmen of several unconnected committees of both Houses. A mass of business which specially needs the knowledge, skill, and economical conscience of a responsible ministry, is left to committees which are powerful but not responsible, and to Houses whose nominal responsibility is in practice sadly weakened by their want of appropriate methods and organization.

How far, then, does the power of the purse enable Congress to control the President? Much less than in European countries. Congress may check any particular scheme which the President favours by refusing supplies for it. If he were to engage in military operations — he cannot under the Constitution “declare war” for that belongs to Congress — the House might paralyze him by declining to vote the requisite army appropriations. If he were to repeat the splendid audacity of Jefferson by purchasing a new territory, they could withhold the purchase money. But if, keeping within the limits of his constitutional functions, he takes a different course from that they recommend, if for instance he should refuse, at their repeated requests, to demand the liberation of American citizens pining in foreign dungeons, or to suppress disorders in a State whose government had requested Federal intervention, they would have to look on. To withhold the ordinary supplies, and thereby stop the machine of government, would injure the country and themselves far more than the President. They would, to use a common expression, be cutting off their nose to spite their face. They could not lawfully refuse to vote his salary, for that is guaranteed to him by the Constitution. They could not, except by a successful impeachment, turn him out of the White House or deprive him of his title to the obedience of all Federal officials.

Accordingly, when Congress has endeavoured to coerce the President by the use of its money powers, the case being one in which it could not attack him by ordinary legislation (either because such legislation would be unconstitutional, or for want of a two-thirds majority), it has proceeded not by refusing appropriations altogether, as the British House of Commons would do in like circumstances, but by attaching what is called a “rider” to an appropriation bill. Many years ago the House formed, and soon began to indulge freely in, the habit of inserting in bills appropriating money to the purposes of the public service, provisions relating to quite different matters, which there was not time to push through in the ordinary way. In 1867 Congress used this device against President Johnson, with whom it was then at open war, by attaching to an army appropriation bill a clause which virtually deprived the President of the command of the

army, entrusting its management to the general highest in command (General Grant). The President yielded, knowing that if he refused the bill would be carried over his veto by a two-thirds vote; and a usage already mischievous was confirmed. In 1879, the majority in Congress attempted to overcome, by the same weapon, the resistance of President Hayes to certain measures affecting the South which they desired to pass. They tacked these measures to three appropriation bills, army, legislative, and judiciary. The minority in both houses fought hard against the riders, but were beaten. The President vetoed all three bills, and Congress was obliged to pass them without the riders. Next session the struggle recommenced in the same form, and the President, by rejecting the money bills, again compelled Congress to drop the tacked provisions. This victory, which was of course due to the fact that the dominant party in Congress could not command a two-thirds majority, was deemed to have settled the question as between the executive and the legislature, and may have permanently discouraged the latter from recurring to the same tactics.

President Hayes in his veto messages argued strongly against the whole practice of tacking other matters to money bills; and a rule of the House now declares that an appropriation bill shall not carry any new legislation. It has certainly caused great abuses, and is forbidden by the constitutions of many States. Recently the President has urged upon Congress the desirability of so amending the Federal Constitution as to enable him, as a State governor is by some recent State constitutions allowed to do, to veto single items in an appropriation bill without rejecting the whole bill. Such an amendment is desired by enlightened men, because it would enable the executive to do its duty by the country in defeating the petty jobs now smuggled into these bills, without losing the supplies necessary for the public service which the bills provide. Small as the change seems, its adoption would cure one of the defects due to the absence of ministers from Congress, and save the nation millions of dollars a year, by diminishing wasteful expenditure on local purposes. But the process of amending the Constitution is so troublesome that even a change which involves no party issues may remain unadopted long after the best opinion has become unanimous in its favour.

## CHAPTER XXI

### THE LEGISLATURE AND THE EXECUTIVE

THE fundamental characteristic of the American National Government is its separation of the legislative, executive, and judicial departments. This separation is the merit which the Philadelphia Convention chiefly sought to attain, and which the Americans have been wont to regard as most completely secured by their Constitution. In Europe, as well as in America, men are accustomed to talk of legislation and administration as distinct. But a consideration of their nature will show that it is not easy to separate these two departments in theory by analysis, and still less easy to keep them apart in practice. We may begin by examining their relations in the internal affairs of a nation, reserving foreign policy for a later part of the discussion.

People commonly think of the Legislature as the body which lays down general rules of law, which prescribes, for instance, that at a man's death his children shall succeed equally to his property, or that a convicted thief shall be punished with imprisonment, or that a manufacturer may register his trade mark. They think of the Executive as consisting of the persons who do certain acts under those rules, who lock up convicts, register trade marks, carry letters, raise and pay a police and an army. In finance the Legislature imposes a tax, the Executive gathers it, and places it in the treasury or in a bank, subject to legislative orders; the Legislature votes money by a statute, appropriating it to a specific purpose; the Executive draws it from the treasury or bank, and applies it to that purpose, perhaps in paying the army, perhaps in building a bridge.

The executive is, in civilized countries, itself the creature of the law, deriving therefrom its existence as well as its author-