

ding of the House of Commons, nor anything to indicate that the whole life of the House of Commons was destined to centre in the leadership of ministers. Whether the Fathers would have imitated the cabinet system had it been proposed to them as a model may be doubted. They would probably have thought that the creation of a frame of government so unified, so strong, so capable of swiftly and irresistibly accomplishing the purposes of a transitory majority as we now perceive it to be, might prove dangerous to those liberties of the several States, as well as of individual citizens, which filled the whole background of their landscape. But as the idea never presented itself, we cannot say that it was rejected, nor cite the course they took as an expression of their judgment against the system under which England and her colonies have so far prospered.

That system could not be deemed to have reached its maturity till the power of the people at large had been established by the Reform Act of 1832. For its essence resides in the delicate equipoise it creates between the three powers, the ministry, the House of Commons, and the people. The House is strong, because it can call the ministry to account for every act, and can, by refusing supplies, compel their resignation. The ministry are not defenceless, because they can dissolve Parliament, and ask the people to judge between it and them. Parliament, when it displaces a ministry, does not strike at executive authority: it merely changes its agents. The ministry, when they dissolve Parliament, do not attack Parliament as an institution: they recognize the supremacy of the body in asking the country to change the individuals who compose it. Both the House of Commons and the ministry act and move in the full view of the people, who sit as arbiters, prepared to judge in any controversy that may arise. The House is in touch with the people, because every member must watch the lights and shadows of sentiment which play over his own constituency. The ministry are in touch with the people, because they are not only themselves representatives, but are heads of a great party, sensitive to its feelings, forced to weigh the effect of every act they do upon the confidence which their party places in them. The only conjuncture which this system of "checks and balances" does not

provide for is that of a ministry supported by a parliamentary majority pursuing a policy which was not presented to the people at the last general election, and of which the bulk of the people in fact disapprove.¹ This is a real danger, yet one which can seldom last long enough to work grave mischief, for the organs of public opinion are now so potent, and the opportunities for its expression so numerous, that the anger of a popular majority, perhaps even of a very strong minority, is almost certain to alarm both the ministry and the House, and to arrest them in their course.²

The drawback to this system of exquisite equipoise is the liability of its equilibrium to be frequently disturbed, each disturbance involving either a change of government, with immense temporary inconvenience to the departments, or a general election, with immense expenditure of money and trouble in the country. It is a system whose successful working presupposes the existence of two great parties and no more, parties each strong enough to restrain the violence of the other, yet one of them steadily preponderant in any given House of Commons. Where a third, perhaps a fourth, party appears, the conditions are changed. The scales of Parliament oscillate as the weight of this detached group is thrown on one side or the other; dissolutions become more frequent, and even dissolutions may fail to restore stability. The recent history of the French Republic has shown the difficulties of working a Chamber composed of groups: nor is the same source of difficulty unknown in England.

It is worth while to compare the form which a constitutional struggle takes under the Cabinet system and under that of America.

In England, if the executive ministry displeases the House

¹ The recent leading case on this subject is that of Lord Beaconsfield's Government from 1876 till 1880.

² "The dangers arising from a party spirit in Parliament exceeding that of the nation, and of a selfishness in Parliament contradicting the true interest of the nation, are not great dangers in a country where the mind of the nation is steadily political, and where its control over its representatives is constant. A steady opposition to a formed public opinion is hardly possible in our House of Commons, so incessant is the national attention to politics, and so keen the fear in the mind of each member that he may lose his valued seat." — Walter Bagehot, *English Constitution*, p. 241. These remarks of the most acute of English political writers are even more true now than they were in 1872.

of Commons, the House passes an adverse vote. The ministry have their choice to resign or dissolve Parliament. If they resign, a new ministry is appointed from the party which has proved itself strongest in the House of Commons; and co-operation being restored between the legislature and the executive, public business proceeds. If, on the other hand, the ministry dissolve Parliament, a new Parliament is sent up which, if favourable to the existing cabinet, keeps them in office, if unfavourable, dismisses them forthwith.¹ Accord is in either case restored. Should the difference arise between the House of Lords and a ministry supported by the House of Commons, and the former persist in rejecting a bill which the Commons send up, a dissolution is the usual remedy; and if the newly-elected House of Commons reasserts the view of its predecessor, the Lords, according to the now recognized constitutional practice, yield at once. Should they, however, still stand out, there remains the extreme expedient, threatened in 1832, but never yet resorted to, of a creation by the sovereign (*i.e.* the ministry) of new peers sufficient to turn the balance of votes in the Upper House. Practically the ultimate decision always rests with the people, that is to say, with the party which for the moment commands a majority of electoral votes. This method of cutting knots applies to all differences that can arise between executive and legislature. It is a swift and effective method; in this swiftness and effectiveness lie its dangers as well as its merits.

In America a dispute between the President and Congress may arise over an executive act or over a bill. If over an executive act, an appointment or a treaty, one branch of Congress, the Senate, can check the President, that is, can prevent him from doing what he wishes, but cannot make him do what they wish. If over a bill which the President has returned to Congress unsigned, the two Houses can, by a two-thirds majority, pass it over his veto, and so end the quarrel; though the carry-

¹Recent instances, dating from Mr. Disraeli's resignation in December 1868, when the results of the election of that year were ascertained, have established the usage that a ministry quits office, without waiting to be turned out, when they know that the election has given a decisive majority to the opposition. The precedent was followed in 1874, 1880, and 1886, but not in 1885 and 1892, when the "regular" Opposition had not an absolute majority, though the ministry was beaten. The usage, however, is not yet a rule of the Constitution.

ing out of the bill in its details must be left to him and his ministers, whose dislike of it may render them unwilling and therefore unsuitable agents. Should there not be a two-thirds majority, the bill drops; and however important the question may be, however essential to the country some prompt dealing with it, either in the sense desired by the majority of Congress or in that preferred by the President, nothing can be done till the current term of Congress expires. The matter is then remitted to the people. If the President has still two more years in office, the people may signify their approval of his policy by electing a House in political agreement with him, or disapprove it by re-electing a hostile House. If the election of a new President coincides with that of the new House, the people have a second means provided of expressing their judgment. They may choose not only a House of the same or an opposite complexion to the last, but a President of the same or an opposite complexion. Anyhow they can now establish accord between one House of Congress and the executive.¹ The Senate, however, may still remain opposed to the President, and may not be brought into harmony with him until a sufficient time has elapsed for the majority in it to be changed by the choice of new senators by the State legislatures. This is a slower method than that of Britain. It may fail in a crisis needing immediate action; but it escapes the danger of a hurried and perhaps irrevocable decision.

Englishmen deem it a merit in their system that the practical executive of the country is directly responsible to the House of Commons. In the United States, however, not only in the national government, but in every one of the States, the opposite doctrine prevails — that the executive should be wholly independent of the legislative branch. Americans understand that this scheme involves a loss of power and efficiency, but they believe that it makes greatly for safety in a popular gov-

¹It is of course possible that the people may elect at the same time a President belonging to one party and a House the majority whereof belongs to the other party. This happened in 1848, and again in 1876, when, however, the presidential election was disputed. It is rendered possible by the fact that the President is elected on a different plan from the House, the smaller States having relatively more weight in a presidential election, and the presidential electors being now chosen, in nearly every State, by "general ticket," not in districts.

ernment. They expect the executive and the legislature to work together as well as they can, and public opinion does usually compel a degree of co-operation and efficiency which perhaps could not be expected theoretically. It is an interesting commentary on the tendencies of democratic government, that in America reliance is coming to be placed more and more, in the nation, in the State, and in the city, upon the veto of the Executive as a protection to the community against the legislative branch. Weak Executives frequently do harm, but a strong Executive has rarely abused popular confidence. On the other hand, instances where the Executive, by the use of his veto power, has arrested mischiefs due to the action of the legislature are by no means rare. This circumstance leads some Americans to believe that the day is not far distant when in England some sort of veto power, or other constitutional safeguard, must be interposed to protect the people against a hasty decision of their representatives.

While some bid England borrow from her daughter, other Americans conceive that the separation of the legislature from the executive has been carried too far in the United States, and suggest that it would be an improvement if the ministers of the President were permitted to appear in both Houses of Congress to answer questions, perhaps even to join in debate. I have no space to discuss the merits of this proposal, which no doubt derives support from the "particularistic" tendencies of Congress, in which there is no group of persons bound, like a British ministry, to maintain the interests of the country as a whole. But I must observe that it might lead to changes more extensive than its advocates seem to contemplate. The more the President's ministers come into contact with Congress, the more difficult will it be to maintain the independence of Congress which he and they now possess. When not long ago the Norwegian Stor Thing forced the King of Sweden and Norway to consent to his ministers appearing in that legislature, the king, perceiving the import of the concession, resolved to choose in future ministers in accord with the party holding a majority in the Stor Thing. It is hard to say, when one begins to make alterations in an old house, how far one will be led on in rebuilding, and I doubt whether this change in the present American system, possibly in itself desirable, might

not be found to involve a reconstruction large enough to put a new face upon several parts of that system.

In the history of the United States there have been four serious conflicts between the legislature and the executive. The first was that between President Jackson and Congress. It ended in Jackson's favour, for he got his way; but he prevailed because during the time when both Houses were against him, his opponents had not a two-thirds majority. In the latter part of the struggle the (re-elected) House was with him; and before he had quitted office his friends obtained a majority in the always-changing Senate. But his success was not so much the success of the executive office as of a particular President popular with the masses. The second contest, which was between President Tyler and both Houses of Congress, was a drawn battle, because the majority in the Houses fell short of two-thirds. In the third, between President Johnson and Congress, Congress prevailed; the enemies of the President having, owing to the disfranchisement of most Southern States, an overpowering majority in both Houses, and by that majority carrying over his veto a series of Acts so peremptory that even his reluctance to obey them could not destroy, though it sometimes marred, their efficiency. In the fourth case, referred to in a previous chapter, the victory remained with the President, because the Congressional majority against him was slender. But a presidential victory is usually a negative victory. It consists not in his getting what he wants, but in his preventing Congress from getting what it wants.¹ The practical result of the American arrangements thus comes to be that when one party possesses a large majority in Congress it can overpower the President, taking from him all but a few strictly reserved functions, such as those of pardoning, of making promotions in the army and navy, and of negotiating (not of concluding treaties, for these require the assent of the Senate) with foreign states. Where parties are pretty equally divided, *i.e.* when the majority is one way in the Senate, the other way in the House, or when there is only a small majority against

¹ In the famous case of President Jackson's removal of the government deposits of money from the United States Bank, the President did accomplish his object. But this was a very exceptional case, being one which had remained within the executive discretion of the President, since no statute had happened to provide for it.

the President in both Houses, the President is in so far free that new fetters cannot be laid upon him; but he must move under those which previous legislation has imposed, and can take no step for which new legislation is needed.

It is another and a remarkable consequence of the absence of cabinet government in America, that there is also no party government in the European sense. Party government in France, Italy, and England means, that one set of men, united, or professing to be united, by holding one set of opinions, have obtained control of the whole machinery of government, and are working it in conformity with those opinions. Their majority in the country is represented by a majority in the legislature, and to this majority the ministry of necessity belongs. The ministry is the supreme committee of the party, and controls all the foreign as well as domestic affairs of the nation, because the majority is deemed to be the nation. It is otherwise in America. Men do, no doubt, talk of one party as being "in power," meaning thereby the party to which the then President belongs. But they do so because that party enjoys the spoils of office, in which to so many politicians the value of power consists. They do so also because in the early days the party which prevailed in the legislative usually prevailed also in the executive department, and because the presidential election was, and still is, the main struggle which proclaimed the predominance of one or other party.¹

But the Americans, when they speak of the Administration party as the party in power, have, in borrowing an English phrase, applied it to utterly different facts. Their "party in power" need have no "power" beyond that of securing places for its adherents. It may be in a minority in one House of Congress, in which event it accomplishes nothing, but can at most merely arrest adverse legislation, or in a small minority in both Houses of Congress, in which event it must submit to see many things done which it dislikes. And if its enemies control the Senate, even its executive arm is paralyzed.

¹ The history of the Republic divides itself in the mind of most Americans into a succession of Presidents and Administrations, just as old-fashioned historians divided the history of England by the reigns of kings, a tolerable way of reckoning in the days of Edward the Third and Richard the Second, when the personal gifts of the sovereign were a chief factor in affairs, but absurd in the days of George the Fourth and William the Fourth.

Though party feeling has generally been stronger in America than in England, and even now covers a larger proportion of the voters, and enforces a stricter discipline, party government is distinctly weaker.

Those who lament the violence of European factions may fancy America an Elysium where legislation is just and reasonable, because free from bias, where pure and enlarged views of national interest override the selfish designs of politicians. It would be nearer the truth to say that the absence of party control operates chiefly to make laws less consistent, and to prevent extended schemes of policy from being framed, because the chance of giving continuous effect to them is small. The natural history of the party system, and of the methods whereby it is worked, belongs to a later part of this book. The system is complete, the methods are elaborate, but the Constitution opposes obstacles unknown in France or England to the complete control by a party of the whole government of the country.

We are now in a position to sum up the practical results of the scheme which purports to separate Congress from the executive, instead of uniting them as they are united under a cabinet government. I say "purports to separate," because it is plain that the separation, significant as it is, is less complete than current language imports, or than the Fathers of the Constitution would seem to have intended. The necessary coherence of the two powers baffled them. These results are five:—

The President and his ministers have no initiative in Congress, little influence over Congress, except what they can exert upon individual members, through the bestowal of patronage.

Congress has, together with unlimited powers of inquiry, imperfect powers of control over the administrative departments.

The nation does not always know how or where to fix responsibility for misfeasance or neglect. The person and bodies concerned in making and executing the laws are so related to one another that each can generally shift the burden of blame on some one else, and no one acts under the full sense of direct accountability.

There is a loss of force by friction — *i.e.* part of the energy, force, and time of the men and bodies that make up the government is dissipated in struggles with one another. This belongs to all free governments, because all free governments rely upon checks. But the more checks, the more friction.

There is a risk that executive vigour and promptitude may be found wanting at critical moments.

We may include these defects in one general expression. There is in the American government, considered as a whole, a want of unity. Its branches are unconnected; their efforts are not directed to one aim, do not produce one harmonious result. The sailors, the helmsman, the engineer, do not seem to have one purpose or obey one will, so that instead of making steady way the vessel may pursue a devious or zigzag course, and sometimes merely turn round and round in the water. The more closely any one watches from year to year the history of free governments, and himself swims in the deep-eddying time current, the more does he feel that current's force, so that human foresight and purpose seem to count for little, and ministers and parliaments to be swept along they know not whither by some overmastering fate or overruling providence. But this feeling is stronger in America than in Europe, because in America such powers as exist act with little concert and resign themselves to a conscious impotence. Clouds arise, blot out the sun overhead, and burst in a tempest; the tempest passes, and leaves the blue above bright as before, but at the same moment other clouds are already beginning to peer over the horizon. Parties are formed and dissolved, compromises are settled and assailed and violated, wars break out and are fought through and forgotten, new problems begin to show themselves, and the civil powers, Presidents, and Cabinets, and State governments, and Houses of Congress, seem to have as little to do with all these changes, as little ability to foresee or avert or resist them, as the farmer, who sees approaching the tornado which will uproot his crop, has power to stay its devastating course.

A President can do little, for he does not lead either Congress or the nation. Congress cannot guide or stimulate the President, nor replace him by a man fitter for the emergency. The

Cabinet neither receive a policy from Congress nor give one to it. Each power in the state goes its own way, or wastes precious moments in discussing which way it shall go, and that which comes to pass seems to be a result not of the action of the legal organs of the state, but of some larger force which at one time uses their discord as its means, at another neglects them altogether. This at least is the impression which the history of the greatest problem and greatest struggle that America has seen, the struggle of the slaveholders against the Free Soil and Union party, culminating in the war of the rebellion, makes upon one who looking back on its events sees them all as parts of one drama. Inevitable the struggle may have been; and in its later stages passion had grown so hot, and the claims of the slaveholders so extravagant, that possibly under no scheme of government — so some high American authorities hold — could a peaceful solution have been looked for. Yet it must be remembered that the carefully devised machinery of the Constitution did little to solve that problem or avert that struggle, while the system of divided and balanced and limited powers, giving every advantage to those who stood by the existing law, and placing the rights of the States behind the bulwarks of an almost unalterable instrument, may have tended to aggravate the spirit of uncompromising resistance. The nation asserted itself at last, but not till the resources which the Constitution provided for the attainment of a peaceful solution had irretrievably failed.

Not wholly dissimilar was the course of events in the first years of the French Revolution. The Constitution framed by the National Assembly in 1791 so limited the functions and authority of each power in the state that no one person, no one body, was capable of leading either the nation or the legislature, or of framing and maintaining a constructive policy. Things were left to take their own course. The boat drifted to the rapids, and the rapids hurried her over the precipice.¹

This want of unity is painfully felt in a crisis. When a sudden crisis comes upon a free state, the executive needs two

¹ This Constitution of 1791 was framed under the same idea of the need for separating the executive and legislative departments which prevailed at Philadelphia in 1787. For want of a legitimate supreme power, power at last fell into the hands of the Committee of Public Safety, and afterwards of the Directory.

things, a large command of money and powers in excess of those allowed at ordinary times. Under the European system the duty of meeting such a crisis is felt to devolve as much on the representative Chamber as on the ministers who are its agents. The Chamber is therefore at once appealed to for supplies, and for such legislation as the occasion demands. When these have been given, the ministry moves on with the weight of the people behind it; and as it is accustomed to work at all times with the Chamber, and the Chamber with it, the piston plays smoothly and quickly in the cylinder. In America the President has at ordinary times little to do with Congress, while Congress is unaccustomed to deal with executive questions. Its machinery, and especially the absence of ministerial leaders and consequent want of organization, unfit it for promptly confronting practical troubles. It is apt to be sparing of supplies, and of that confidence which doubles the value of supplies. Jealousies of the executive, which are proper in quiet times and natural towards those with whom Congress has little direct intercourse, may now be perilous, yet how is Congress to trust persons not members of its own body nor directly amenable to its control? When dangers thicken the only device may be the Roman one of a temporary dictatorship. Something like this happened in the War of Secession, for the powers then conferred upon President Lincoln, or exercised without Congressional censure by him, were almost as much in excess of those enjoyed under the ordinary law as the authority of a Roman dictator exceeded that of a Roman consul.¹ Fortunately the habits of legality, which lie deep in the American as they did in the Roman people, reasserted themselves after the war was over, as they were wont to do at Rome in her earlier and better days. When the squall had passed the ship righted, and she has pursued her subsequent course on as even a keel as before.

The defects of the tools are the glory of the workman. The more completely self-acting is the machine, the smaller is the intelligence needed to work it; the more liable it is to derangement, so much greater must be the skill and care applied by one who tends it. The English Constitution,

¹ For Lincoln's argument respecting his use of extraordinary powers, see note to Chapter XXXIV. *post*.

which we admire as a masterpiece of delicate equipages and complicated mechanism, would anywhere but in England be full of difficulties and dangers. It stands and prospers in virtue of the traditions that still live among English statesmen and the reverence that has ruled English citizens. It works by a body of understandings which no writer can formulate, and of habits which centuries have been needed to instil. So the American people have a practical aptitude for politics, a clearness of vision and capacity for self-control never equalled by any other nation. In 1861 they brushed aside their darling legalities, allowed the executive to exert novel powers, passed lightly laws whose constitutionality remains doubtful, raised an enormous army, and contracted a prodigious debt. Romans could not have been more energetic in their sense of civic duty, nor more trustful to their magistrates. When the emergency had passed away the torrent which had overspread the plain fell back at once into its safe and well-worn channel. The reign of legality returned; and only four years after the power of the executive had reached its highest point in the hands of President Lincoln, it was reduced to its lowest point in those of President Johnson. Such a people can work any Constitution. The danger for them is that this reliance on their skill and their star may make them heedless of the faults of their political machinery, slow to devise improvements which are best applied in quiet times.