

CHAPTER XXVI

GENERAL OBSERVATIONS ON THE FRAME OF NATIONAL
GOVERNMENT

THE account which has been so far given of the working of the American Government has been necessarily an account rather of its mechanism than of its spirit. Its practical character, its temper and colour, so to speak, largely depend on the party system by which it is worked, and on what may be called the political habits of the people. These will be described in later chapters. Here, however, before quitting the study of the constitutional organs of government, it is well to sum up the criticisms we have been led to make, and to add a few remarks, for which no fitting place could be found in preceding chapters, on the general features of the national government.

I. No part of the Constitution cost its framers so much time and trouble as the method of choosing the President. They saw the evils of a popular vote. They saw also the objections to placing in the hands of Congress the election of a person whose chief duty it was to hold Congress in check. The plan of having him selected by judicious persons, specially chosen by the people for that purpose, seemed to meet both difficulties, and was therefore recommended with confidence. The presidential electors have, however, turned out mere cyphers, and the President is practically chosen by the people at large. The only importance which the elaborate machinery provided in the Constitution retains, is that it prevents a simple popular vote in which the majority of the nation should prevail, and makes the issue of the election turn on the voting in certain "pivotal" States.

II. The choice of the President, by what is now practically a simultaneous popular vote, not only involves once in every

four years a tremendous expenditure of energy, time, and money, but induces of necessity a crisis which, if it happens to coincide with any passion powerfully agitating the people, may be dangerous to the commonwealth.

III. There is always a risk that the result of a presidential election may be doubtful or disputed on the ground of error, fraud, or violence. When such a case arises, the difficulty of finding an authority competent to deal with it, and likely to be trusted, is extreme. Moreover, the question may not be settled until the pre-existing executive has, by effluxion of time, ceased to have a right to the obedience of the citizens. The experience of the election of 1876 illustrates these dangers. Such a risk of interregna is incidental to all systems, monarchic or republican, which make the executive head elective, as witness the Romano-Germanic Empire of the Middle Ages, and the Papacy. But it is more serious where he is elected by the people than where, as in France or Switzerland, he is chosen by the Chambers.¹

IV. The change of the higher executive officers, and of many of the lower executive officers also, which usually takes place once in four years, gives a jerk to the machinery, and causes a discontinuity of policy, unless, of course, the President has served only one term, and is re-elected. Moreover, there is generally a loss either of responsibility or of efficiency in the executive chief magistrate during the last part of his term. An outgoing President may possibly be a reckless President, because he has little to lose by misconduct, little to hope from good conduct. He may therefore abuse his patronage, or gratify his whims with impunity. But more often he is a weak President.² He has little influence with Congress, because his patronage will soon come to an end, little hold on the people, who are already speculating on

¹ In Switzerland the Federal Council of seven are elected by the two Chambers, and then elect one of their own number to be their President, and there-with also President of the Confederation (Constit. of 1874, art. 98). In some British colonies it has been provided that, in case of the absence or death or incapacity of the Governor, the Chief Justice shall act as Governor. In India the senior member of Council acts in similar cases for the Viceroy.

² A British House of Commons in the last few months before its impending dissolution usually presents the same alternations of reckless electioneering and of a febleness which recoils from any momentous decision.

the policy of his successor. His secretary of state cannot treat boldly with foreign powers, who perceive that he has a diminished influence in the Senate, and know that the next secretary may have different views.

The question whether the United States, which no doubt needed a President in 1789 to typify the then created political unity of the nation, might not now dispense with one, has never been raised in America, where the people, though dissatisfied with the method of choice, value the office because it is independent of Congress and directly responsible to the people. Americans condemn any plan under which, as lately befel in France, the legislature can drive a President from power and itself proceed to choose a new one.¹

V. The Vice-President's office is ill-conceived. His only ordinary function is to act as Chairman of the Senate, but as he does not appoint the Committees of that House, and has not even a vote (except a casting vote) in it, this function is of little moment. If, however, the President dies, or becomes incapable of acting, or is removed from office, the Vice-President succeeds to the Presidency. What is the result? The place being in itself unimportant, the choice of a candidate for it excites little interest, and is chiefly used by the party managers as a means of conciliating a section of their party. It becomes what is called "a complimentary nomination." The man elected Vice-President is therefore never a man in the front rank. But when the President dies during his term of office, which has happened to four out of the eighteen Presidents, this second-class man steps into a great place for which he was never intended. Sometimes, as in the case of Mr. Arthur, he fills the place respectably. Sometimes, as in that of Andrew Johnson, he throws the country into confusion.

He is *aut nullus aut Cæsar*.

VI. The defects in the structure and working of Congress, and in its relations to the executive, have been so fully dwelt on already that it is enough to refer summarily to them. They are —

The discontinuity of Congressional policy.

The want of adequate control over officials.

¹ The question of replacing the President by a ministerial council is very rarely discussed in America. It has recently been mooted in France.

The want of opportunities for the executive to influence the legislature.

The want of any authority charged to secure the passing of such legislation as the country needs.

The frequency of disputes between three co-ordinate powers, the President, the Senate, and the House.

The maintenance of a continuous policy is a difficulty in all popular governments. In the United States it is specially so, because —

The executive head and his ministers are necessarily (unless when a President is re-elected) changed once every four years.

One House of Congress is changed every two years.

Neither House recognizes permanent leaders.

No accord need exist between Congress and the executive.

There is no such thing as a Party in Power, in the European sense of the term, because the party to which the Executive belongs may be in a minority in one or both Houses of Congress, in which case it cannot do anything which requires fresh legislation, — may be in a minority in the Senate, in which case it can take no administrative act of importance.

There is little true leadership in political action, because the most prominent man has no recognized party authority. Congress was not elected to support him. He cannot threaten disobedient followers with a dissolution of Parliament like an English prime minister. He has not even the French president's right of dissolving the House with the consent of the Senate.

There is often no general and continuous cabinet policy, because the cabinet has no authority over Congress, may perhaps have no influence with it.

There is no general or continuous legislative policy, because the legislature, having neither recognized leaders, nor a guiding committee, acts through a large number of committees, independent of one another, and seldom able to bring their measures to maturity. What continuity exists is due to the general acceptance of a few broad maxims, such as that of non-intervention in the affairs of the Old World, and to the fact that a large nation does not frequently or lightly change its views upon leading principles. In minor matters of legis-

lation there is little settled policy, for the Houses trifle with questions, take them up in one session and drop them the next, seem insensible to the duty of completing work once begun. Neither is there any security that Congress will attend to such minor defects in the administrative system of the country as may need a statute to correct them. In Europe the daily experience of the administrative departments discloses small faults or omissions in the law which involve needless trouble to officials, needless cost to the treasury, needless injustice to classes of the people. Sometimes for their own sakes, sometimes from that desire to see things well done which is the life-breath of a good public servant, the permanent officials call the attention of their parliamentary chief, the minister, to the defective state of the law, and submit to him the draft of a bill to amend it. He brings in this bill, and if it involves no matter of political controversy (which it rarely does), he gets it passed. As an American minister has no means (except by the favour of a committee) of getting anything he proposes attended to by Congress, it is a mere chance if such amending statutes as these are introduced or pass into law.

These defects are all reducible to two. There is an excessive friction in the American system, a waste of force in the strife of various bodies and persons created to check and balance one another. There is a want of executive unity, and therefore a possible want of executive vigour. Power is so much subdivided that it is hard at a given moment to concentrate it for prompt and effective action. In fact, this happens only when a distinct majority of the people are so clearly of one mind that the several co-ordinate organs of government obey this majority, uniting their efforts to serve its will.

VII. The relations of the people to the legislature are in every free country so much the most refined and delicate, as well as so much the most important part of the whole scheme and doctrine of government, that we must not expect to find perfection anywhere. But comparing America with Great Britain from 1832 to 1885 (for it is still too soon to judge the condition of things created by the Reform Acts of that year), the working of the representative system in America seems somewhat inferior.

There are four essentials to the excellence of a representative system:—

That the representatives shall be chosen from among the best men of the country, and, if possible, from its natural leaders.

That they shall be strictly and palpably responsible to their constituents for their speeches and votes.

That they shall have courage enough to resist a momentary impulse of their constituents which they think mischievous, *i.e.* shall be representatives rather than mere delegates.

That they individually, and the Chamber they form, shall have a reflex action on the people, *i.e.* that while they derive authority from the people, they shall also give the people the benefit of the experience they acquire in the Chamber, as well as of the superior knowledge and capacity they may be presumed to possess.

Americans hold, and no doubt correctly, that of these four requisites, the first, third, and fourth are not attained in their country. Congressmen are not chosen from among the best citizens. They mostly deem themselves mere delegates. They do not pretend to lead the people, being indeed seldom specially qualified to do so.

That the second requisite, responsibility, is not fully realized seems surprising in a democratic country, and indeed almost inconsistent with that conception of the representative as a delegate, which is supposed, perhaps erroneously, to be characteristic of democracies. Still the fact is there. One cause, already explained, is to be found in the committee system. Another is the want of organized leadership in Congress. In Europe, a member's responsibility takes the form of his being bound to support the leader of his party on all important divisions. In America, this obligation attaches only when the party has "gone into caucus," and there resolved upon its course. Not having the right to direct, the leader cannot be held responsible for the action of the rank and file. As a third cause we may note the fact that owing to the restricted competence of Congress many of the questions which chiefly interest the voter do not come before Congress at all, so that its proceedings are not followed with that close

and keen attention which the debates and divisions of European Chambers excite.

In general the reciprocal action and reaction between the electors and Congress, what is commonly called the "touch" of the people with their agents, is not sufficiently close, quick, and delicate. Representatives ought to give light and leading to the people, just as the people give stimulus and momentum to their representatives. This incidental merit of the parliamentary system is among its greatest merits. But in America the action of the voter fails to tell upon Congress. He votes for a candidate of his own party, but he does not convey to that candidate an impulse towards the carrying of particular measures, because the candidate when in Congress will be practically unable to promote those measures, unless he happens to be placed on the committee to which they are referred. Hence the citizen, when he casts his ballot, can seldom feel that he is advancing any measure or policy, except the vague and general policy indicated in his party platform. He is voting for a party, but he does not know what the party will do, and for a man, but a man whom chance may deprive of the opportunity of advocating the measures he cares most for.

Conversely, Congress does not guide and illuminate its constituents. It is amorphous, and has little initiative. It does not focus the light of the nation, does not warm its imagination, does not dramatize principles in the deeds and characters of men.¹ This happens because, in ordinary times, it lacks great leaders, and the most obvious cause why it lacks them, is its disconnection from the executive. As it is often devoid of such men, so neither does the country habitually come to it to look for them. In the old days, neither Hamilton, nor Jefferson, nor John Adams, in our own time, neither Stanton, nor Grant, nor Tilden, nor Cleveland ever sat in Congress. Lincoln sat for two years only, and owed little of his subsequent eminence to his career there.

¹ As an illustration of the want of the dramatic element in Congress, I may mention that some at least of the parliamentary debating societies in the American colleges (colleges for women included) take for their model not either House of Congress but the British House of Commons, the students conducting their debates under the names of prominent members of that assembly. They say that they do this because Congress has no Ministry and no leaders of the Opposition.

VIII. The independence of the judiciary, due to its holding for life, has been a conspicuous merit of the Federal system, as compared with the popular election and short terms of judges, in most of the States. Yet even the Federal judiciary is not secure from the attacks of the two other powers, if combined. For the legislature may by statute increase the number of Federal justices, increase it to any extent, since the Constitution leaves the number undetermined, and the President may appoint persons whom he knows to be actuated by a particular political bias, perhaps even prepared to decide specific questions in a particular sense. Thus he and Congress together may obtain such a judicial determination of any constitutional question as they join in desiring, even although that question has been heretofore differently decided by the Supreme court. The only safeguard is in the disapproval of the people.

It is worth remarking that the points in which the American frame of national government has proved least successful are those which are most distinctly artificial, *i.e.* those which are not the natural outgrowth of old institutions and well-formed habits, but devices consciously introduced to attain specific ends.¹ The election of the President and Vice-President by electors appointed *ad hoc* is such a device. The functions of the judiciary do not belong to this category; they are the natural outgrowth of common law doctrines and of the previous history of the colonies and States; all that is novel in them, for it can hardly be called artificial, is the creation of Courts co-extensive with the sphere of the national government.

All the main features of American government may be

¹ See Chapter IV. *ante*, and Note thereto.

This may seem to be another way of saying that nature, *i.e.* historical development, is wiser than the wisest men. Yet it must be remembered that what we call historical development is really the result of a great many small expedients invented by men during many generations for curing the particular evils in their government which from time to time had to be cured. The moral therefore is that a succession of small improvements, each made conformably to existing conditions and habits, is more likely to succeed than a large scheme, made all at once in what may be called the spirit of conscious experiment. The Federal Constitution has been generally supposed in Europe to have been such a scheme, and its success has encouraged other countries to attempt similar bold and large experiments. This is an error. The Constitution of the United States is almost as truly the matured result of long and gradual historical development as the English Constitution itself.

deduced from two principles. One is the sovereignty of the people, which expresses itself in the fact that the supreme law — the Constitution — is the direct utterance of their will, that they alone can amend it, that it prevails against every other law, that whatever powers it does not delegate are deemed to be reserved to it, that every power in the State draws its authority, whether directly, like the House of Representatives, or in the second degree, like the President and the Senate, or in the third degree, like the Federal judiciary, from the people, and is legally responsible to the people, and not to any one of the other powers.

The second principle, itself a consequence of this first one, is the distrust of the various organs and agents of government. The States are carefully safeguarded against aggression by the central government. So are the individual citizens. Each organ of government, the executive, the legislature, the judiciary, is made a jealous observer and restrainer of the others. Since the people, being too numerous, cannot directly manage their affairs, but must commit them to agents, they have resolved to prevent abuses by trusting each agent as little as possible, and subjecting him to the oversight of other agents, who will harass and check him if he attempts to overstep his instructions.

Some one has said that the American Government and Constitution are based on the theology of Calvin and the philosophy of Hobbes. This at least is true, that there is a hearty Puritanism in the view of human nature which pervades the instrument of 1787. It is the work of men who believed in original sin, and were resolved to leave open for transgressors no door which they could possibly shut.¹ Compare this spirit with the enthusiastic optimism of the Frenchmen of 1789. It is not merely a difference of race temperaments; it is a difference of fundamental ideas.

With the spirit of Puritanism there is blent a double portion of the spirit of legalism. Not only is there no reliance on ethical forces to help the government to work: there is an elaborate machinery of law to preserve the equilibrium of each of its organs. The aim of the Constitution seems to be not so much to attain great common ends by securing a good govern-

¹ "That power might be abused," says Marshall in his *Life of Washington*, "was deemed a conclusive reason why it should not be conferred."

ment as to avert the evils which will flow, not merely from a bad government, but from any government strong enough to threaten the pre-existing communities or the individual citizen.

The spirit of 1776, as it speaks to us from the Declaration of Independence and the glowing periods of Patrick Henry, was largely a revolutionary spirit, revolutionary in its faith in abstract principles, revolutionary also in its determination to carry through a tremendous political change in respect of grievances which the calm judgment of history does not deem intolerable, and which might probably have been redressed by less trenchant methods. But the spirit of 1787 was an English spirit, and therefore a conservative spirit, tinged, no doubt, by the hatred to tyranny developed in the revolutionary struggle, tinged also, by the nascent dislike to inequality, but in the main an English spirit, which desired to walk in the old paths of precedent, which thought of government as a means of maintaining order and securing to every one his rights, rather than as a great ideal power, capable of guiding and developing a nation's life. And thus, though the Constitution of 1789 represented a great advance on the still oligarchic system of contemporary England, it was yet, if we regard simply its legal provisions, the least democratic of democracies. Had the points which it left undetermined, as for instance the qualifications of congressional electors, been dealt with in an aristocratic spirit, had the legislation of Congress and of the several States taken an aristocratic turn, it might have grown into an aristocratic system. The democratic character which it now possesses is largely the result of subsequent events, which have changed the conditions under which it had to work, and have delivered its development into the hands of that passion for equality which has become a powerful factor in the modern world everywhere.

He who should desire to draw an indictment against the American scheme of government might make it a long one, and might for every count in it cite high American authority and adduce evidence from American history. Yet a European reader would greatly err were he to conclude that this scheme of government is a failure, or is, indeed, for the purposes of the country, inferior to the political system of any of the great nations of the Old World.

All governments are faulty; and an equally minute analysis of the constitution of England, or France, or Germany would disclose mischiefs as serious, relatively to the problems with which those states have to deal, as those we have noted in the American system. To any one familiar with the practical working of free governments it is a standing wonder that they work at all. The first impulse of mankind is to follow and obey; servitude rather than freedom is their natural state. With freedom, when it emerges among the more progressive races, there come dissension and faction; and it takes many centuries to form those habits of compromise, that love of order, and that respect for public opinion which make democracy tolerable. What keeps a free government going is the good sense and patriotism of the people, or of the guiding class, embodied in usages and traditions which it is hard to describe, but which find, in moments of difficulty, remedies for the inevitable faults of the system. Now, this good sense and that power of subordinating sectional to national interests which we call patriotism, exist in higher measure in America than in any of the great states of Europe. And the United States, more than any other country, are governed by public opinion, that is to say, by the general sentiment of the mass of the nation, which all the organs of the national government and of the State governments look to and obey.¹

A philosopher from Jupiter or Saturn who should examine the constitution of England or that of America would probably pronounce that such a body of complicated devices, full of opportunities for conflict and deadlock, could not work at all. Many of those who examined the American Constitution when it was launched did point to a multitude of difficulties, and confidently predicted its failure. Still more confidently did the European enemies of free government declare in the crisis of the War of Secession that "the republican bubble had burst." Some of these censures were well grounded, though there were also defects which had escaped criticism, and were first disclosed by experience. But the Constitution has lived on in spite of all defects, and seems stronger now than at any previous epoch.

¹ The nature of public opinion and the way in which it governs are discussed in Part IV.

Every constitution, like every man, has "the defects of its good qualities." If a nation desires perfect stability it must put up with a certain slowness and cumbrousness; it must face the possibility of a want of action where action is called for. If, on the other hand, it seeks to obtain executive speed and vigour by a complete concentration of power, it must run the risk that power will be abused and irrevocable steps too hastily taken. "The liberty-loving people of every country," says Judge Cooley,¹ "take courage from American freedom, and find augury of better days for themselves from American prosperity. But America is not so much an example in her liberty as in the covenanted and enduring securities which are intended to prevent liberty degenerating into licence, and to establish a feeling of trust and repose under a beneficent government, whose excellence, so obvious in its freedom, is still more conspicuous in its careful provision for permanence and stability." Those faults on which I have laid stress, the waste of power by friction, the want of unity and vigour in the conduct of affairs by executive and legislature, are the price which the Americans pay for the autonomy of their States, and for the permanence of the equilibrium among the various branches of their government. They pay this price willingly, because these defects are far less dangerous to the body politic than they would be in a European country. Take for instance the shortcomings of Congress as a legislative authority. Every European country is surrounded by difficulties which legislation must deal with, and that promptly. But in America, where those relics of mediæval privilege and injustice that still cumber most parts of the Old World either never existed, or were long ago abolished, where all the conditions of material prosperity exist in ample measure, and the development of material resources occupies men's minds, where nearly all social reforms lie within the sphere of State action, — in America there is less need and less desire than in Europe for a perennial stream of federal legislation. People are contented if things go on fairly well as they are. Political philosophers, or philanthropists, perceive not a few improvements which federal statutes might effect, but the mass of the nation does not complain, and the wise see Congress so often on the

¹ Address to the South Carolina Bar Association, December 1836.

point of committing mischievous errors that they do not deplore the barrenness of session after session.

Every European state has to fear not only the rivalry but the aggression of its neighbours. Even Britain, so long safe in her insular home, has lost some of her security by the growth of steam navies, and has in her Indian and colonial possessions given pledges to Fortune all over the globe. She, like the Powers of the European Continent, must maintain her system of government in full efficiency for war as well as for peace, and cannot afford to let her armaments decline, her finances become disordered, the vigour of her executive authority be impaired, sources of internal discord continue to prey upon her vitals. But America lives in a world of her own, *ipsa suis pollens opibus, nihil indiga nostri*. Safe from attack, safe even from menace, she hears from afar the warring cries of European races and faiths, as the gods of Epicurus listened to the murmurs of the unhappy earth spread out beneath their golden dwellings,

“Sejuncta a rebus nostris semotaque longe.”

Had Canada or Mexico grown to be a great power, had France not sold Louisiana, or had England, rooted on the American continent, become a military despotism, the United States could not indulge the easy optimism which makes them tolerate the faults of their government. As it is, that which might prove to a European state a mortal disease is here nothing worse than a teasing ailment. Since the War of Secession ended, no serious danger has arisen either from within or from without to alarm transatlantic statesmen. Social convulsions from within, war-like assaults from without, seem now as unlikely to try the fabric of the American Constitution, as an earthquake to rend the walls of the Capitol. This is why the Americans submit, not merely patiently but hopefully, to the defects of their government. The vessel may not be any better built, or found, or rigged than are those which carry the fortunes of the great nations of Europe. She is certainly not better navigated. But for the present at least—it may not always be so—she sails upon a summer sea.

It must never be forgotten that the main object which the framers of the Constitution set before themselves has been

achieved. When Siéyès was asked what he had done during the Reign of Terror, he answered, “I lived.” The Constitution as a whole has stood and stands unshaken. The scales of power have continued to hang fairly even. The President has not corrupted and enslaved Congress: Congress has not paralyzed and cowed the President. The legislative may have gained somewhat on the executive department; yet were George Washington to return to earth, he might be as great and useful a President as he was a century ago. Neither the legislature nor the executive has for a moment threatened the liberties of the people. The States have not broken up the Union, and the Union has not absorbed the States. No wonder that the Americans are proud of an instrument under which this great result has been attained, which has passed unscathed through the furnace of civil war, which has been found capable of embracing a body of commonwealths more than three times as numerous, and with twenty-fold the population of the original States, which has cultivated the political intelligence of the masses to a point reached in no other country, which has fostered and been found compatible with a larger measure of local self-government than has existed elsewhere. Nor is it the least of its merits to have made itself beloved. Objections may be taken to particular features, and these objections point, as most American thinkers are agreed, to practical improvements which would preserve the excellences and remove some of the inconveniences. But reverence for the Constitution has become so potent a conservative influence, that no proposal of fundamental change seems likely to be entertained. And this reverence is itself one of the most wholesome and hopeful elements in the character of the American people.