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A Study in American History

By

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Followed by a History of the Republic

Houghton, Mifflin, & Co., Boston

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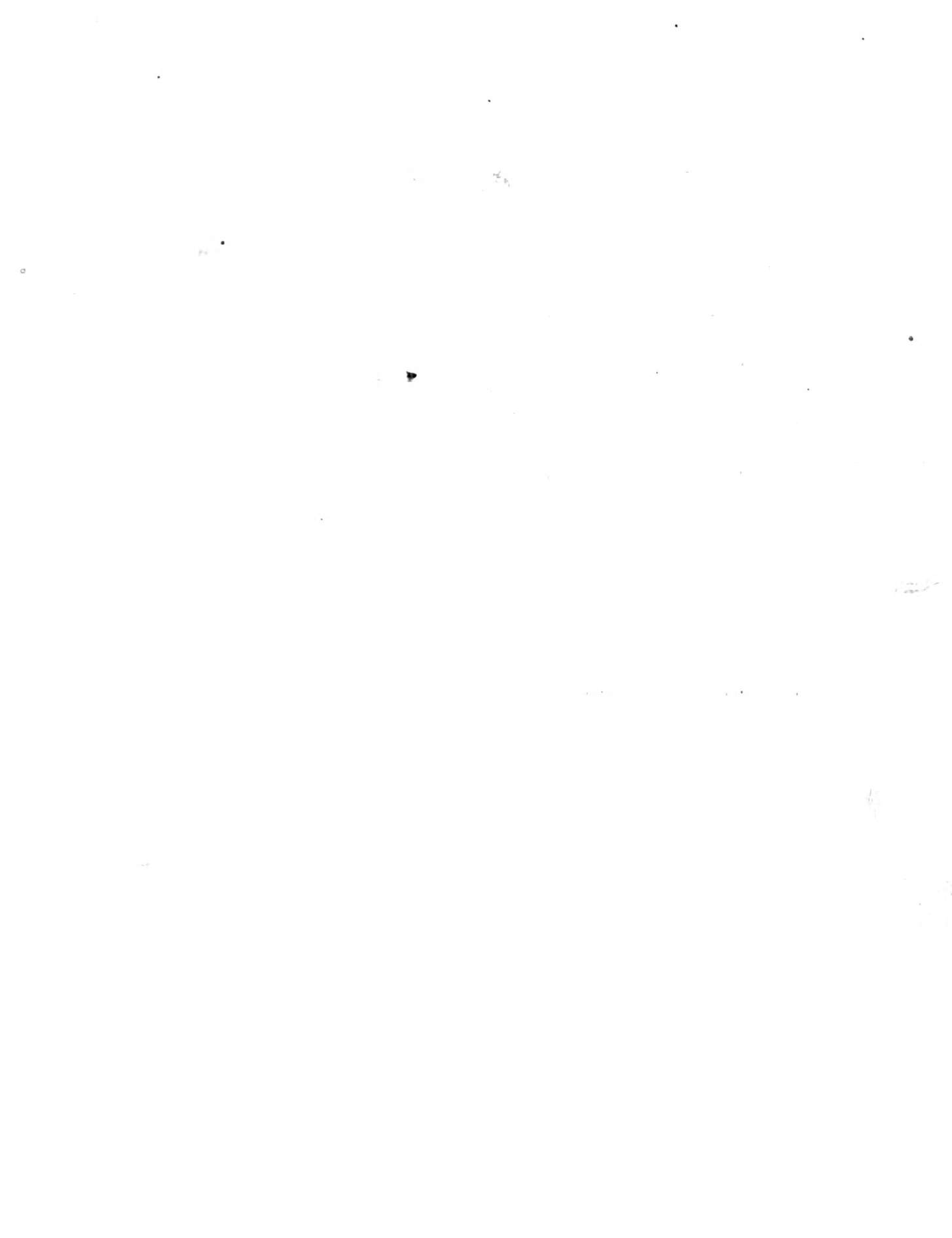
P R E F A C E.

The object of these essays is, not to exhaust critics of the government of the United States, but only to point out the most characteristic practical features of the federal system. Taking Congress as the central and predominant power of the system, their object is to illustrate everything Congressional. Everybody has seen, and critics without number have said, that our form of national government is singular, possessing a character altogether its own; but there is abundant evidence that very few have seen just wherein it differs most essentially from the other governments of the world. There have been and are other federal systems quite similar, and scarcely any legislative or administrative principle of our Constitution was young even when that Constitution was framed. It is our legislative and administrative machinery which makes our government essentially different from all other governmental systems. The most striking contrast in modern politics is, not between presidential and monarchial governments, but between Congressional and Parliamentary governments. Congressional government is Committee government; Parliamentary government is government by a responsible Cabinet Ministry. These are the two principal types which present themselves for the inspec-

tion of the modern student of the practical in politics: administration by semi-independent executive agents who obey the dictation of a legislature to which they are not responsible, and administration by executive agents who are the accelerated leaders and accountable servants of a legislature virtually supreme in all things. My chief aim in these essays has been, therefore, an adequate illustrative contrast of these two types of government, with a view to making as plain as possible the actual conditions of federal administration. In short, I offer not a commentary, but an outspoken presentation of such cardinal facts as may be sources of practical suggestion.

Baltimore, Md., Oct. 7th., 1884.

Woodrow Wilson.



I n t r o d u c t o r y .

"The laws read, but do very little way. . . . constitute government how you please, finally the greater part of it must depend upon the exercise of power, which is left at large to the prudence and uprightiness of administrators of state. Even all the use and potency of the laws depends upon them. Without them your good-will is no better than a scheme upon paper; and without their active, effective organization." - Burke.

"The great fault of political writers is their too close allegiance to the forms of the system of state which they appear to be expounding or examining. They stop short at the anatomy of institutions, and do not penetrate to the secret of their functions." - John Florio.

It would seem as if a very wayward fortune had presided over the history of the Constitution of the United States, inasmuch as that great federal charter has been alternately isolated by its friends and defended by its enemies. It came hard by its establishment in the first place, prevailing with difficulty over the strenuous forces of dissent which were hurled against it. While its adoption was under discussion, the voices of criticism were many and authoritative, the voices of opposition loud in tone and odious in volume, and the federalists finally triumphed only by dint of hard battle against foes formidable both in numbers and in skill. But the victory was comparatively astonishingly complete. Once established, the new government had only the zeal of its friends to fear. Indeed, after its organization one hears very little more of the party of opposition; they disappear so entirely from political life that one

were inclined to think, in looking back at the party history of that time, that they must have been not only conquered but converted as well. There was well-nigh universal acquiescence in the new order of things. Not everybody, indeed, professed himself a federalist, but everybody conformed to federalist principles. There were jealousies and bickerings, of course, in the 1st Congress of the Union, but no party lines, and the differences which caused the constant brawling and breaking of storms in Washington's first Cabinet were of personal rather than of political import. Hamilton and Jefferson did not draw apart because the one had been an ardent and the other only a lukewarm friend of the Constitution, so much as because they were so different in natural bent and temper that they would have been like to disagree and even to draw points wherever or however brought into contact. The one had inherited war blood and a "cold sagacity", while in the other a negative philosophy ran suitably through cool veins. They had not been meant for one another.

There was less antagonism in Congress, however, than in the Cabinet, and in none of the controversies that did arise was there shown any serious disposition to quarrel with the Constitution itself, the contention was as to the chance to be regarded to its provisions. No one threatened to withdraw his allegiance, though there soon began to be some exhibition of a disposition to confine obedience to the letter of the law.

demands, and to discountenance all attempts to do what was not plainly written in the tables of the law. It was recognized as no longer fashionable to say ought against the principles of the Constitution, but all men could not be of one mind, and political parties began to take form in antagonistic schools of constitutional construction. There straightway arose two rival sects of political pharisees, each professing a more perfect conformity and affecting greater "ceremonial cleanliness" than the other. The very day when the Constitution was adopted and when the adoption of the Constitution became, under the new division of parties, its champion, its sticklers for a strict, a rigid and literal, construction.

They were consistent enough in this, because it was quite natural that their creative fear of a strong central government should pass into a dread of the still further expansion of the power of that government by a too loose construction of its charter; but what I would emphasize here is not the motives or the policy of the conduct of parties in our early national politics, but the fact that opposition to the Constitution as a constitution, and even hostile criticism of its provisions, ceased almost immediately upon its adoption and did not continue but gave place to an indiscriminate and almost blind worship of its principles, and of that elaborate dual system of sovereignty and that complicated scheme of double administration which it established. Admiration of that crafty scheme

traversed body of law, because suddenly all the organs and criticism was stopped. From the first year down to the time of the total paralysis of the war the general scheme of the Constitution went unchallenged; nullification itself did not always wear its true garb of independent state sovereignty, but often was quarreled as a constitutional right, and the most violent parties took care to make show of at least formal deference to the worshipful fundamental law. The divine right of kings never ran a more prosperous course than did this unquestioned prerogative of the Constitution to receive universal homage. The conviction that our institutions were the best in the world, may now be the model to which all civilized states must sooner or later conform, could not be laughed out of us by foreign critics nor shaken out of us by the roughest jars of the system.

Now there is, of course, nothing in all this that is inexorable or even remarkable; anyone can see the reasons for it and the benefits of it without going far out of his way, but the point which it is interesting to note is that we of the present generation are in the first season of free, outspoken, and trained constitutional criticism. We are the first who means to hear our own countrymen ask what end the Constitution is still adapted to serve the purposes for which it was intended; the first to entertain any serious doubts about the superiority of our own institutions as compared with the practice of Europe; the first to turn the heads of the administration

achinery of the federal government and of forcing the law firms of responsibility upon Congress.

The evident explanation of this change of attitude towards the Constitution is that we have been made conscious by the rule book of the war and by subsequent developments of policy that there has been a vast alteration in the conditions of government; that the checks and balances which once obtained are no longer effective; and that we are really living under a constitution essentially different from that which we have been so long worshipping as our own peculiar and inestimable possession. In short, ^{this} ~~the~~ model government is no longer conformable with its own original pattern. While we have been shielding it from criticism it has slipped away from us. The noble charter of fundamental law given us by the Convention of 1787 is still our Constitution, but it is now our form of government rather in name than in reality, the form of the Constitution being one of nicely adjusted, ideal balances, whilst the actual form of our present government is simply a scheme of Congressional supremacy. National legislation, of course, takes force now as at first from the authority of the Constitution, but it would be easy to reckon by the score Acts of Congress which can by no means be squared with that great instrument's evident theory. We continue to think, indeed, according to long-established constitutional formulae, and it is still politically unorthodox to depart from old-time precedents in the administration of af-

fairs; but it is plain to those who look about them that most of the commonly-received opinions concerning federal constitutional balances and administrative arrangements are many years behind the actual practices of the government at Washington, and that we are further than most of us realize from the times and the policy of the framers of the Constitution. It is a common-place observation of historians that in the development of constitutions names are much more persistent than the functions upon which they were originally bestowed; that institutions constantly undergo essential alterations of character whilst retaining the names conferred upon them in their first estate: and the history of our own Constitution is but another illustration of this universal principle of institutional change. There has been a constant growth of legislative and administrative practice and a steady accretion of precedent in the management of federal affairs which have broadened the sphere and altered the functions of the government without perceptibly affecting the vocabulary of our constitutional language. Ours is, scarcely less than the British, a living and far-spread system. It does not, indeed, find its rootage so widely in the hidden soil of unwritten law; its tap-root at least is the Constitution, but the Constitution is now, like Magna Charta and the Bill of Rights, only the sap-centre of a system of government vastly larger than the stock from which it has

branched - a system some of whose forms have only very indistinct and rudimental beginnings in the simple substance of the Constitution, and which exercises many functions apparently quite foreign to the primitive properties contained in the fundamental law.

The Constitution itself is not a complete system, it takes none but the first steps in organization. It does little more than lay a foundation of principles. It provides with all possible brevity for the establishment of a government having, in several distinct branches, executive, legislative, and judicial powers. It vests executive power in a single chief magistrate, for whose election and inauguration it makes carefully definite provision, and whose privileges and prerogatives it defines with succinct clearness; it grants specifically enumerated powers of legislation to a representative Congress, outlining the organization of the two houses of that body and definitely providing for the election of its members, whose number it regulates and the conditions of whose choice it names, and it establishes a Supreme Court with ample authority of Constitutional interpretation, prescribing the manner in which its judges shall be appointed and the conditions of their official tenure. Here the Constitution's work of organization ends, and the fact that it attempts nothing more is its chief strength. For it, to go beyond elementary provisions would be to lose elasticity and adaptability. The growth of the nation and the consequent devel-

opment of the governmental system would snap, asunder a constitution which could not adapt itself to the new conditions of an advancing society. If it could not stretch itself to the measure of the times, it must be thrown off and left behind, as a by-gone device; and there can, therefore, be no question that our Constitution has proved lasting because of its simplicity. It is a corner-stone, not a complete building; or, rather, to return to the old figure, it is a root, not a perfect vine.

The chief fact, therefore, of our national history is that from this vigorous tap-root has grown a vast constitutional system, a system branching and expanding in statutes and judicial decisions, as well as in unwritten precedent; and one of the most striking facts, as it seems to me, in the history of our politics is that that system has never received complete and competent critical treatment at the hands of any, even the most acute, of our constitutional writers. They view it as it were from behind. Their thoughts are dominated, it would seem, by those incomparable papers of the Federalist which, though they were written to influence only the voters of 1788, still, with a strange, persistent longevity of power, shape the constitutional criticism of the present day, obscuring much of that development of constitutional practice which has since taken place. The Constitution in operation is manifestly a very different thing from the Constitution of the books. The obstruc-

"For we look at the living reality with wonder at the contrast
 to the paper description. We will see in the life and what
 is not in the books; and we will not find that a rough practice
 may refine parts of the literary theory."⁴ It is, therefore,
 the difficult task of one who would now write at once practice-
 ally and critically of our national government to escape from
 theories and attach himself to facts, not allowing himself to
 be confused by a knowledge of what that government was intended
 to be or led away into conjectures as to what it may one day
 become, but striving to enter its present phases and to photo-
 graph the delicate organism in all its characteristic parts ex-
 actly as it is to-day; - an undertaking all the more arduous
 and doubtful of issue because it has to be entered upon without
 guidance from writers of acknowledged authority.

The leading inquiry in the examination of any system of gov-
 ernment must, of course, concern primarily the real constitu-
 tions and the essential machinery of power. Where is always a
 centre of power; where in this system is that centre? In whose
 hands is self-sufficient authority lodged, and through what au-
 thorities does that authority speak and act? The answers one
 gets to these kindred questions from authoritative manuals of
 constitutional exposition are not satisfactory, chiefly because
 they are contradicted by self-evident facts. It is said that
 these are Mr. Bryce's words with reference to the British
 constitutional system. See his "Imperial Constitution" (1st
 American edition) p.69.

there is no single or central force in our federal system: and so there is not in the federal scheme, but only a balance of powers and a free adjustment of inter-state checks, as all the books say. How is it, however, in the practical conduct of the federal government? In that, unquestionably, the predominant and controlling force, the centre and source of ^{all} legislative and of all regulative power, is Congress. All niceties of constitutional restriction and even many broad principles of constitutional limitation have been overridden and a thoroughly-organised system of Congressional control set up which gives a very rude negative to some theories of balance and some schemes for distributed powers but which suits well with convenience and does violence to none of the principles of self-government contained in the Constitution.

This fact, however, though evident enough, is not on the surface. It does not obtrude itself upon the observation of the world. It runs through the unrecurrents of government and takes shape only in the inner channels of legislation and administration which are not open to the common view. It can be discerned best readily by comparing the "literary theory" of the Constitution with the actual machinery of legislation, especially at those points where it is directly regulated the relations of Congress with the executive departments, and with the attitude of the Congress towards the Supreme Court on these occasions, hardly not unambiguous, when legislative and judiciary

have come face to face with direct antagonists. The "antagonistic theory" is distinct enough; every American is familiar with the paper pictures of the Constitution. Most prominent in such pictures are the ideal checks and balances of the federal system, which may be found described, even in the most recent books, in terms substantially the same as those used in 1784 by John Adams in his letter to John Taylor. "Is there", says Mr. Adams, "a constitution upon reason more complicated with balances than ours? In the first place, eighteen states and some territories are balanced against the national government. - - - - - In the second place, the House of Representatives is balanced against the Senate, the Senate against the House. In the third place, the executive authority is, in some degree, balanced against the legislative. In the fourth place, the judicial power is balanced against the House, the Senate, the executive power, and the State governments. In the fifth place, the Senate is balanced against the President in all appointments to office, and in all treaties. - - - - - In the sixth place, the people hold in their hands the balance against their own representatives, by biennial - - - - - elections. In the seventh place, the legislatures of the several States are balanced against the Senate by extraordinary elections. In the eighth place, the electors are balanced against the people in the choice of the President. Here is a complicated refinement of balances

while, for any thing I recollect, is an invention of our own and peculiar to us.*

All of these balances are reckoned essential in the theory of the Constitution; but none is so quintessential as that between the national and the State governments: it is the pivotal quality of the system, indicating its principal, which is its federal, characteristic. The object of this balance of thirty-eight States "and some territories" against the powers of the federal government, as also of several of the other balances enumerated, is not, it should be observed, to prevent the invasion by the national authorities of those provinces of legislation by plain expression or implication reserved to the States, such as the regulation of municipal institutions, the punishment of ordinary crimes, the enactment of laws of inheritance and of contract, the creation and maintenance of the machinery of education, and the control of other such like matters of social economy and every-day administration, but to speak and to turn national policy on national questions, to turn Congress back from paths of dangerous encroachment on a field of doubtful grounds of jurisdiction, to keep sharp when it was like to become dim the line of the creation between State and

* Works, Vol. VI, p. 467: Letter to Mr. Taylor. The words and phrases omitted in the quotation contain Mr. Madison's considerations as to the value of the several balances, some of which he thinks of doubtful utility, and others of which he, without hesitation, pronounced altogether pernicious.

federal privilege, to readjust the weights of jurisdiction were ever either State or federal scale threatened to tip the beam. There never was any great likelihood that the national government would come to take from the States their peculiar prerogatives, but there was always a violent probability that it would march and there steal a march over the borders where territory like its own invited it to appropriation; and it was for a mutual defense of such border-land that the two governments were given the right to call a halt upon one another. It was purposed to guard not against revolution, but against unrestrained exercise of questionable powers.

The extent to which the restraining power of the States was relied upon in the days of the Convention and of the adoption of the Constitution is strikingly illustrated in several of the best known papers of the Federalist; and there is no better means of realizing the difference between the actual and the ideal Constitutions than this of placing oneself at the point of view of the public men of 1787-9. They were disgusted with the impotent and pitiable Confederation, which could do nothing but beg and deliberate; they longed to get away from the self-accused feuds of "States dissipated, discordant, unimproving"; and their hopes were centered in the establishment of a strong and lasting union, such as could secure that concert and facility of common action in which alone there could be security and unity.

They were, however, by no means sure of being able to realize their hopes, contrive how they might to bring the States together into a more perfect confederation. The late colonies had but recently become compactly organized, self-governing States and were standing somewhat stiffly apart, a group of consequential sovereignties, jealous to maintain their blood-bought prerogatives and quick to distrust any power set above them or arrogating to itself the control of their restive wills. It was not to be expected that the sturdy, self-reliant, masterful men who had won independence for their native colonies by passing through the flames of battle and through the equally fierce fires of bereavement and financial ruin would readily transfer their affection and allegiance from the new-made States which were their homes to the federal government which was to be a mere artificial creation and which could be to so man as his home government. As things looked then, it seemed idle to apprehend a too great diminution of State rights: there was every reason, on the contrary, to fear that any union that could be agreed upon would lack both vitality and the ability to hold its ground against the jealous self-assertion of the sovereign commonwealths of its membership. Hamilton but spoke the common belief of all thinking men of the time when he said "It will always be far more easy for the State governments to encroach upon the national authorities than for the national

government to encroach upon the State authorities"; and he seemed to furnish abundant support for the opinion when he added that "the proof of this proposition turns upon the greater degree of influence which the State governments, if they administer their affairs uprightly and prudently, will generally possess over the people; a circumstance which at the same time teaches us that there is an inherent and intrinsic weakness in all federal constitutions; and that too much pains cannot be taken in their organization to give them all the force that is compatible with the principles of liberty."*

Read in the light of the present day, such views constitute the most striking of all commentaries upon our constitutional history. Manifestly the powers reserved to the States were expected to serve as a very real and potent check upon the federal government; and yet we can see plainly enough now that this balance of State against national authorities has proved of all constitutional checks the least effectual. The proof of the pudding is the eating thereof; and we can nowadays detect in it none of that strong flavour of State sovereignty which its cooks thought they were giving it. It smacks, rather, of federal omnipotence, which they thought to mix in only in very small and judicious quantities. "From the nature of the case", as Judge Cooley says, "it was impossible that the powers reserved

* Federalist, No. 17.

ved to the States should constitute a restraint upon the increase of federal power, to the extent that was at first expected. The federal government was to exercise the final judge of its own authority, and the executor of its own will, and any effectual check to the gradual expansion of its jurisdiction must therefore be found in the construction put by those administering it upon the grants of the Constitution, and in their own sense of constitutional obligation. And as the true line of division between federal and State powers has from the very beginning been the subject of contention, and of constant differences of opinion, it must often happen that to advance and occupy some disputed ground will seem to the party having the power to be so a mere matter of constitutional duty.*

During the early years of the new national government there was doubtless much potency in State will, and had federal and State powers then come face to face, before Congress and the President had had time to overcome their first awkwardness and timidity and to discover the safest walks of their authority and the most effectual means of exercising their power, it is probable that State prerogatives would have prevailed. The central government, as every one remembers, did not at first show promise of a very great career. It had inherited some of the contempt which had attached to the weak Congress of the Confederation.

* Cooley's "Principles of Const. Law," p. 143.



Two of the thirteen States held aloof from the Union until they could be assured of its stability and success; many of the other States had come into it reluctantly, all with a keen sense of sacrifice; and there could not be said to be any very wide-spread or undoubting belief in its ultimate survival. The members of the first Congress, too, came together very tardily and in no very cordial or confident spirit of cooperation, and after they had assembled they were for many months painfully embarrassed how and upon what subjects to exercise their new and untried functions. The President was denied formal precedence in dignity by the governor of New York, and must himself have felt inclined to question the consequence of his official station when he found that amongst the principal questions with which he had to deal were some which concerned no greater things than petty points of etiquette and ceremonial, as, for example, whether one day in the week would be sufficient to receive visits of compliment, "and what would be said if he were sometimes to be seen at quiet tea-parties."* But this first weakness of the new government was only a transient phase in its history; and the federal authorities did not invite a direct issue with the States until they had had time to reckon their resources and to learn facility of action. Before Washington left the presidential chair the federal government had

* McMaster, "Hist. of the People of the U.S.", Vol. I, p. 564.

been thoroughly organized, and it fast gathered strength and confidence as it addressed itself year after year to the adjustment of foreign relations, to the defence of the western frontiers, and to the maintenance of domestic peace. For twenty-five years it had no chance to think of those questions of internal policy which in later days were to tempt it to stretch its constitutional jurisdiction. The establishment of the public credit; the revival of commerce and the encouragement of industry; the conduct first of a heated controversy and finally of an unequal war with England; the avoidance first of too much love and afterwards of too violent hatred of France; these and other like questions of great pith and moment gave it too much to do to leave it time to think of nice points of constitutional theory affecting its relations with the States.

But still, even in those busy times of international controversy, when the lucid light of the France Revolution outshone all others, and when men's minds were full of those ghosts of '76 which took the shape of British aggressions and could not be laid by any charm known to diplomacy, - even in those times busy about other things, there had been presentations of the unequal contest between State and federal authorities. The purchase of Louisiana had given new force and startling significance to the assertion of national sovereignty, the Alien and Sedition Laws had provoked the plain-spoken and emphatic pro-

tests of Kentucky and Virginia; and the Embargo had exasperated New England to threats of secession.

Nor were these open assumptions of questionable responsibilities on the part of the national government the most significant or unequivocal indications of an assured increase of federal power. Hamilton, as Secretary of the Treasury, had taken care at the very beginning to set the national policy in ways which would unavoidably lead to an almost indefinite expansion of the sphere of federal legislation. Sensible of its need of guidance in those matters of financial administration which evidently demanded its immediate attention, the first Congress of the Union promptly put itself under the direction of Hamilton. "It is not a little amusing", says Mr. Lodge, "to note how eagerly Congress, which had been ably and honestly struggling with the revenue, with commerce, and with a thousand details, rettered in all things by the awkwardness inherent in a legislative body, turned for relief to the new Secretary."^{*} His advice was asked and taken in almost everything, and his skill as a party leader made easy work of the more difficult paths of the new government. But no sooner had the powers of that government ^{government} begun to be exercised under his guidance than they began to grow. In his famous report on Manufactures were laid the foundations of that system of protective duties which was destined to hang all

^{*} Lodge's "Alexander Hamilton" (Am. Statesmen Series) p. 35.

the industries of the country upon the skirts of the federal power and to take every trade and craft in the land sensitive to every wind of party that might blow at Washington, and in his equally celebrated report in favour of the establishment of a national bank there was called into requisition for the first time that puissant doctrine of the "implied powers" of the Constitution, which has ever since been the chief dynamic principle in our constitutional history. "This great doctrine, embodying the principle of liberal construction, was", in the language of Mr. Lodge, "the most formidable weapon in the armory of the Constitution; and when Hamilton grasped it he knew, and his opponents felt, that here was something capable of conferring on the federal government powers of almost any extent."[§] It served first as a sanction for the charter of the United States Bank, an institution which was the central pillar of Hamilton's wonderful financial administration, and around which afterwards, as then, played so many of the high tides of party strife. But the Bank of the United States, though great, was not the greatest of the creations of that lusty and seductive doctrine. It came out, at length, with the sanction of the federal Supreme Court,[†] and continuing, as it did, in its unimpaired character as

[§] Lodge's *Life and Times of Hamilton*, p. 168.

[†] Its final and most certainly established, by *C.C. v. United States*, as seen in *McCulloch v. Maryland*, 4 Wheaton, 316.

a doctrine of legislative prerogative, by its vigorous application of constitutional growth, it quickly constituted Congress the dominant, nay the irresistible, power of the federal system, relegating some of the chief balances of the Constitution to an insignificant rôle in the literary theory of our institutions.

Its effect upon the status of the states in the federal system was several-fold. In the first place, it clearly put the constitutions of the States at a great disadvantage, inasmuch as there was in them no like principle of growth. Their static sovereignty could by no means keep pace with the nimble progress of federal influence in the new spheres thus opened up to it. The doctrine of implied powers was evidently both feasible and irresistible. It concerned the political insertion of the national legislative power and could, therefore, elude all obstacles of judicial interference; for the Supreme Court very early declared itself without authority to question the legislature's prerogative of determining the nature and extent of its own powers in the choice of means for giving effect to its constitutional prerogatives, and it has long established an accepted canon of judicial action that judges should be restrained to expose their opinions to the legislature with all eyes allowed. It was not until comparatively recent years that there had been a violation of some unmeasurable constitutional boundary, and

The following passage from William MacLay's "Sketches of Debate in the First Senate of the United States", (pp. 29-31), illustrates how clearly the results of this were forecast by sagacious men from the first: "The system laid down by these gentlemen (the Federalists) was as follows, or rather the development of the designs of a certain party: The general power to carry the Constitution into effect by a constructive interpretation, would extend to every case that Congress may deem necessary or expedient. ----- The laws of the United States will be held paramount to all State laws, claims, and even constitutions. The supreme power is with the General Government to decide in this, as in everything else, for the States have neglected to secure any umpire or mode of decision in case of difference between them. Nor is there any point in the Constitution for them to rally under. They may give an opinion, but the opinions of the General Government must prevail. ----- Any direct and open act would be termed usurpation. But whether the gradual influence and encroachments of the General Government may not gradually swallow up the State governments, is another matter."

some explicit constitutional provision. Of emergency acts upon
State as well as of emergency acts upon federal powers the fed-
eral authorities are, however, in most cases the only and in
all cases the final judges. The States are absolutely defence-
less from any effective defence of their plain property be-
cause not they but the national authorities are so intended to
interfere with legislative and executive authority. What
state powers shall be recognized in each case of contact or of
conflict. In short, one of the privileges which the States
have retained into the hands of the federal government is the
exclusive privilege of determining what they themselves shall
do. Federal courts can annul State action, but State courts
cannot arrest the growth of Congressional power. *(Insert A ...)*
But this is only the doctrinal side of the case, simply its
statement with an "if" and a "but". Its practical issue illus-
trates still more forcibly the altered and declining status of
the States in the constitutional system. One very important
issue has been to bring the power of the federal government
close to every man's door as, no less than in his own state govern-
ment, his absolute over-lord. Of course every new provision
into which Congress has been urged by the pressure of imper-
ed powers has required for its administration a greater or less
enlargement of the national establishment, with now, through
its hundred thousand officers, reaching into every part of
the land a sense of federal power, as the power of power, in

fixes the federal authority as it were in the very heart of society. That is not a foreign, but a familiar and domestic government whose officer is your next-door neighbor, whose representatives you deal with every day at the post-office and the custom-house; whose courts sit in your own State and send their marshals into your own county to arrest your own fellow-townsman or to call you yourself by writ to their witness-stands. And whose aid help respecting officials whom he knows to be backed by the authority and even by the power of the whole Nation in the performance of the duties in which he sees them every day engaged? Who does not feel that the marshal represents a greater power than the sheriff does, and that it is more dangerous to molest a mail-carrier than to knock down a police-man? This personal contact of every citizen with the federal government, a contact which makes him feel himself a citizen of a greater State than that which controls his everyday contracts and probates his father's will, does tend to fix his sense of dependent loyalty to local authorities by creating a sensible bond of allegiance to what presents itself unmistakably as the greater and more powerful power.

In post-transit is bond of allegiance does not bind him oppressively nor choke him distressingly, but in some things it is drawn rather painfully tight. At first federal post-offices are valued and federal jurisdiction unsuspectingly obeyed, and what

very few people realize the weight of a State's duties, and a few, perhaps, to judge license taxes on whiskey and tobacco, everybody eyes not so much as the federal supervisors at the polls. This is preeminently a country of frequent elections, and few States care to increase the frequency by separating elections of State from elections of National functionaries. The federal supervisor, consequently, who oversees the balloting for Congressmen practically superintends the election of State officers also: for State officers and Congressmen are usually voted for at one and the same time and place, by ballots bearing in each an entire "party ticket", and any authoritative scrutiny of these ballots after they have been cast, or any peremptory power of challenging those who offer to cast them, must operate as an interference with State as well as with federal elections. The authority of Congress to call to the attention of obnoxious federal representatives pinches when it is made to include also the supervision of those State elections which are, by no implied power even, within the sphere of federal prerogative. The supervisor represents the very highest side of federal supremacy, he belongs to the least illiberal branch of the civil-service; but his existence speaks very clearly as to prevent balance of powers, and if he is to be a full prerogative, must nullify the present system of local elections: result in depriving the self-respect of State officers of any

tion, by bringing home to them a civil sense of subordination to the powers at Washington.

A very different and more sinister side of federal predominance is to be seen in the history of the policy of internal improvements. I need not expound that policy here. It has been often enough mooted and long enough understood to need no explanation. Its practice is plain and its persistence unquestionable. But its bearings upon the status and the policies of the States are not always clearly seen or often distinctly pointed out. Its chief results, of course, have been that expansion of national functions which was necessarily involved in the application of national funds by national employees to the clearing of inland water courses and the improvement of harbours, and the establishment of the very questionable precedent of expending in favoured localities moneys raised by taxation which bears with equal incidence upon the people of all sections of the country; but these chief results by no means constitute the sum of its influence. Hardly less significant and real (for instance, are its moral effects in rendering State administrations less self-reliant and efficient, less prudent and thrifty, by accustomed them to accepting subsidies for internal improvements from the federal coffers, to tapping upon the national revenues, rather than upon their own energy and enterprise, for means of developing those resources which it

should be the special province of State administration, to be
 available and profitable. There can, I suppose, be little
 doubt that it is due to the moral influences of this policy
 that the States are now turning to the central government for
 aid in such things as education. Expecting to be helped, they
 will not help themselves. Certain it is that there is more
 than one State which, though abundantly able to pay for an ed-
 ucational system of the greatest efficiency, fails to do so and
 content itself with imperfect temporary makeshifts because
 there are immense surpluses every year in the national treasury
 which, rumour and unauthorized promises say, may be distributed
 amongst the States in aid of education. If the federal govern-
 ment were more careful to keep apart ^{every} strictly local sense
 of improvement, this culpable and demoralizing State policy
 could scarcely live. States would cease to wish because they
 would cease to hope to be stipendiaries of the government of
 the Union, and would address themselves with diligence to their
 proper duties, with much benefit both to themselves and to the
 federal system. This is not saying that the policy of internal
 improvements ^{was} either available, unconstitutional, or unwise; but
 only that it has been carried too far, and that, whether car-
 ried too far or not, it must in any case have been what it is
 now seen to be, a big weight in the federal scale of the bal-
 ance.

Still other powers of the federal government which have so grown beyond their first proportions as to have marred very seriously the symmetry of the "literary theory" of our federal system have strengthened under the shadow of the jurisdiction of Congress over commerce and the maintenance of the postal service. For instance, the Supreme Court of the United States has declared that the powers granted to Congress by the Constitution to regulate commerce and to establish post-offices and post roads "keep pace with the progress of the country and adapt themselves to new developments of times and circumstances. They extend from the horse with its rider to the stage-coach, from the sailing vessel to the steamer, from the coach and the steamer to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. They are intended for the advancement of the business to which they relate, at all times and under all circumstances. As they were entrusted to the general government for the good of the nation, it is not only the right but the duty of Congress to see to it that the intercourse between the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation." * This emphatic decision was intended to sus-

* Pensacola Tel. Co. v. West Union, 9 U.S. 11, 9. (Quoted by Judge Cooley in his Principles of Constitutional Law.)

tain the right of a telegraph company chartered by one State to run its lines along all post roads in other States, without the consent of those States, and even against their will; but it is manifest that many other corporate companies might, under the sanction of this broad opinion, claim similar privilege in despite of State resistance, and that such decisions go far towards making State powers of incorporation of little worth, as compared with federal powers of control.

Keeping pace, too, with this growth of federal activity there has been from the first a steady and unmistakable growth of nationality of sentiment. It was, of course, the weight of war which finally and decisively disarranged the balance between State and federal powers; and it is obvious that many of the most striking manifestations of the tendency towards centralization have made themselves seen since the war. But the history of the war is only a record of the triumph of the principle of national sovereignty. The war was inevitable because that principle grew apace; and the war ended as it did because that principle had become predominant. Accepted at first simply because it was imperatively necessary, the union of form and of law had become a union of sentiment and was destined to be a union of institutions. That sense of national unity and community of destiny which Hamilton had sought to foster, but which was feeble in his day of long distances and tardy inter-

communication, when the nation's pulse was as slow as the state
 coach and the post-man, had become strong enough to rule the
 continent when Webster died. The war between the States was
 the supreme and final struggle between those forces of disinte-
 gration which still remained in the blood of the body politic
 and those other forces of health, of union and amalgamation,
 which had been gradually building up that body in vigour and
 strength as the system passed from youth to maturity and as its
 constitution hardened and ripened with advancing age.

The history of that transient policy of "reconstruction" which
 followed close upon the termination of the war, is at once its
 logical result and significant commentary, contains a vivid pic-
 ture of the altered balances of the constitutional system which
 is a sort of exaggerated miniature, falling very little short
 of being a caricature, of previous constitutional tendencies
 and federal policies. The tide of federal aggression probably
 reached its highest ebb in the legislation which put into
 the power of the federal courts to punish a State judge for re-
 fusing, in the exercise of his official discretion, to impanel
 negroes in the juries of his court,* and in those statutes which
 gave the federal courts jurisdiction over offences against
 State laws by State officers.† But that tide had often run very

* 13 Stat., part 3, 330. See also McCoy v. Virginia, 100 U.S., 300.

† Sect. 5515, Rev. Stats. See Id. part 3, 331, 100 U.S., 301.

E add to first note

Equally extensive of federal powers is that "legal tender" decision (Juilliard vs. Greenman) of March 1884 which argues the existence of a right to issue an irredeemable paper currency from the Constitution's grant of other rights characteristic of sovereignty, and from the possession of a similar right by other governments. But this involves no restriction of State powers: and perhaps there ought to be offset against it that other decision (several cases, Oct. 1883) which denies constitutional sanction to the Civil Rights Act.



right, and, however fluctuating at times, has long been well-nigh irresistible by any device of constitutional State prerogative, so that Judge Cooley can say without fear of contradiction that "The effectual checks upon the encroachments of federal upon State power must be looked for, not in State power of resistance, but in the choice of representatives, Senators, and Presidents holding just constitutional views, and in a federal supreme court with competent power to restrain all departments and all officers within the limits of their just authority, so far as their acts may become the subject of judicial cognizance."¹⁰

Indeed it is quite evident that, if federal power be not altogether irresponsible, it is the federal judiciary which is the only effectual balance-wheel of the whole system. The federal judges hold in their hands the fate of State powers, and theirs is the only authority that can draw effective rein on the career of Congress. If their power, then, be not efficient, the time must soon sadly out of joint to those who hold to the "literary theory" of our Constitution. By the word of the Supreme Court "just all legislation stand or fall, so long as law is respected." But, as I have already pointed out, there is at least one large province of jurisdiction upon which, though invited, and possibly privileged, to appropriate it, the Supreme Court has, nevertheless, refused to enter, and by refusing to

* "Principles of Constitutional Law", p. 143-4.

enter which it has given over in attempt to guard one of the principal, essential, and most obvious roots to federal supremacy. It has laid out itself without authority to interfere with the political discretion of either Congress or the President, and has been in all effort to constrain these its equals, its de-jure equals to the performance of any, even the most constitutionally imperative, act.* "When, indeed, the President exceeds his authority, or usurps that which belongs to one of the other departments, his orders, commands, or warrants protect no one, and his agents become personally responsible for their acts. The check of the courts, therefore, consists in their ability to keep the Executive within the sphere of his authority by refusing to give the sanction of law to whatever he may do beyond it and by holding the agents or instruments of his unlawful action to strict accountability."† "But such punishment, inflicted not upon the chief offender but vicariously upon his agents, can come only after all the harm has been done. The courts cannot forestall the President and prevent the doing of mischief. They have no power of initiative: they must wait until the law has been broken and voluntary litigants have made up their pleadings: must wait nowadays many months, often many years, until

* Marbury v. Madison, 1 Cranch, 137.

† Cooley's "Principles", p. 157.

these precedents are made all in the regular course of ordinary governmental docket.

Besides, in ordinary times it is not for the Executive that the most dangerous encroachments are to be apprehended. The Legislature is the aggressive spirit. It is the potent power of the Government, and unless the judiciary enforces it, the courts are of comparatively little worth as balance-wheels in the system. It is the subtle, stealthy, almost imperceptible encroachments of policy, of political action, which constitute the precedents upon which additional prerogatives are generally reared: and yet these are the very encroachments with which it is hardest for the courts to deal and concerning which, accordingly, the federal courts have declared themselves unauthorized to hold any opinions. They have sought to say upon questions of policy. Congress must itself judge what measures may legitimately be used to supplement or make effectual its acknowledged jurisdiction, what are the laws "necessary and proper for carrying into execution" its own peculiar powers, and all other powers vested by the "Constitution in the Government of the United States, or in any department or officer thereof." The courts are very quick and ready, too, to discuss prerogatives of political discretion in legislative acts, and exceedingly slow to undertake to discriminate between what is and what is not a violation of the spirit of the Constitution. Congress must venturously go very far outside of the plain and unques-

tionable meaning of the Constitution, just long ago had been set against all past and precedent, just then against the very precedents of all well-established rulings and interpretation before the Supreme Court will offer it any distinct rebuke.

Then, too, the Supreme Court itself, however upright and unapproachable its members, has generally had and will undoubtedly continue to have a distinct political complexion, taken from the colour of the times during which its majority was chosen. The bench ever since John Marshall presided was, as everybody knows, staunchly and avowedly federalist in its views; but during the ten years which followed 1835 federalist justices were rapidly displaced by democrats, and the views of the Court changed accordingly. Indeed it may truthfully be said that, tracing our political history "by and large", the constitutional interpretations of the Supreme Court have changed, slowly but none the less surely, with the altered relations of power between the national parties. The federalists were upheld by a federalist judiciary; the period of democratic supremacy witnessed the triumph of democratic principles in the courts; and republican predominance has driven from the highest tribunal of the land all but one representative of democratic doctrines. It has been only during comparatively short periods of transition, when public opinion was passing from one political creed to another, that the decisions of the federalists were borne

been distinctly opposed to the principles of the ruling political party.

But, besides and above all this, the national courts are for the most part all the power of Congress. Even the Supreme Court is not beyond its control: for it is the legislative privilege to increase, whenever the legislative will so pleases, the number of the judges upon the supreme bench, to "dilute the Constitution", as Webster once put it, "by creating a court which shall construe away its provisions"; and this on one memorable occasion it did choose to do. In December, 1869, the Supreme Court decided against the constitutionality of Congress's pet Legal Tender Acts, and in the following March, a vacancy on the bench opportunely occurring, and a new justice-ship having been created to meet the emergency, the Senate gave the President to understand that no nominee unfavourable to the debated acts would be confirmed, two justices of the predominant party's way of thinking were appointed, the hostile majority of the court was outvoted, and the obnoxious decision reversed.*

The creation of additional justice-ships is not, however, the only means by which Congress can coerce and control the Supreme Court. It may forestall an adverse decision by summarily deciding the court of jurisdiction over the case in which such

* For an inside account of the whole affair, see an article entitled "The Session," *N. Am. Rev.*, Vol. CXI, pp. 43-9.

Decision was threatened, and that even were the case as to that point for only a very small part of the jurisdiction of even the Supreme Court is derived directly from the Constitution. Most of it is founded upon the Judiciary Act of 1789, which, being a mere act of Congress, may be repealed at any time that Congress chooses to repeal it. Upon this Judiciary Act, too, depend not only the powers but also the very existence of the inferior courts of the United States, the Circuit and District Courts, and their possible fate, in case of a conflict with Congress, is significantly foreshadowed in that Act of 1802 by which a Democratic Congress swept away, root and branch, the system of circuit courts which had been created in the previous year, but which was hateful to the newly-successful democrats because it had been officered with federalists in the last hours of John Adams's administration.

This balance of judiciary against legislature and executive would seem, therefore, to be another of those ideal balances which are to be found in the books rather than in the rough realities of actual practice: for manifestly the power of the courts is safe only during seasons of political peace, when parties are not aroused to passion, or tempted by the sound of irresistible majorities.

As for some of the other constitutional balances alluded to

in that passage of the letter to John Taylor which I have taken as a text, their present inefficiency is quite too plain to need proof. The constituencies may have been balanced against their representatives in Mr. Adams's day, for that was not a day of primaries and of strict caucus discipline; the legislatures of the States, too, may have been able to exercise some appreciable influence upon the action of the Senate, if those were days when policy was the predominant consideration which determined elections to the Senate, and the legislative process was not always a matter of astute management, of mere personal weight or party expediency, and the presidential electors undoubtedly did have at one time some freedom of choice in naming the chief magistrate, but before the third presidential election some of them were pledged, before Adams wrote this letter the majority of them were wont to obey the dictates of a Congressional caucus, and for the last fifty years they have simply registered the will of party conventions.

It is noteworthy that Mr. Adams, possibly because he had himself been President, describes the Executive as constituting only "in some degree" a check upon Congress, though he puts no such limitation upon the other balances of the system. Independently of experience-however-it might reasonably have been expected that the prerogatives of the President would have been

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one of the most effectual restraints upon the power of Congress. He was constituted one of the three great coordinate branches of the government; his functions were made of the highest dignity, his privileges many and substantial - so great, indeed, that it has pleased the fancy of some writers to parade them as exceeding those of the British crown -; and there can be little doubt that, had the presidential chair always been filled by men of commanding character, of acknowledged ability, and of thorough political training, it would have continued to be a seat of the highest authority and consideration, the true centre of the federal structure, the real throne of administration, and the frequent source of policies. Washington and his Cabinet commanded the ear of Congress and gave shape to its deliberations; Adams, though often crossed and thwarted, gave character to the government; and Jefferson, as President no less than as Secretary of State, was the real leader of his party. But the prestige of the presidential office has declined with the character of the Presidents. And the character of the Presidents has declined as the perfection of selfish party tactics has advanced.

It was inevitable that it should be so. After independence of choice on the part of the presidential electors had given place to the choice of presidential candidates by party conventions, it became absolutely necessary, in the eyes of political

ians, and more and more necessary as time went on, to make expediency and availability the only rules of selection. As each party, when in convention assembled, spoke only those opinions which seemed to have received the sanction of the general voice, carefully suppressing in its "platform" all unpopular political tenets and scrupulously omitting mention of every doctrine that might be looked upon as characteristic and as part of a peculiar and original programme; so, when the presidential candidate came to be chosen, it was recognized as imperatively necessary that he should have as short a political record as possible, and that he should wear a clean and irreproachable insignificance. "Gentlemen", said a distinguished American public man, "I would make an excellent President, but a very poor candidate." A decisive career which gives a man a well-understood place in public estimation constitutes a positive disability for the presidency, because candidacy must precede election, and the shoals of candidacy can be passed only by a in t boat which carries little freight and can be turned readily about to suit the intricacies of the passage.

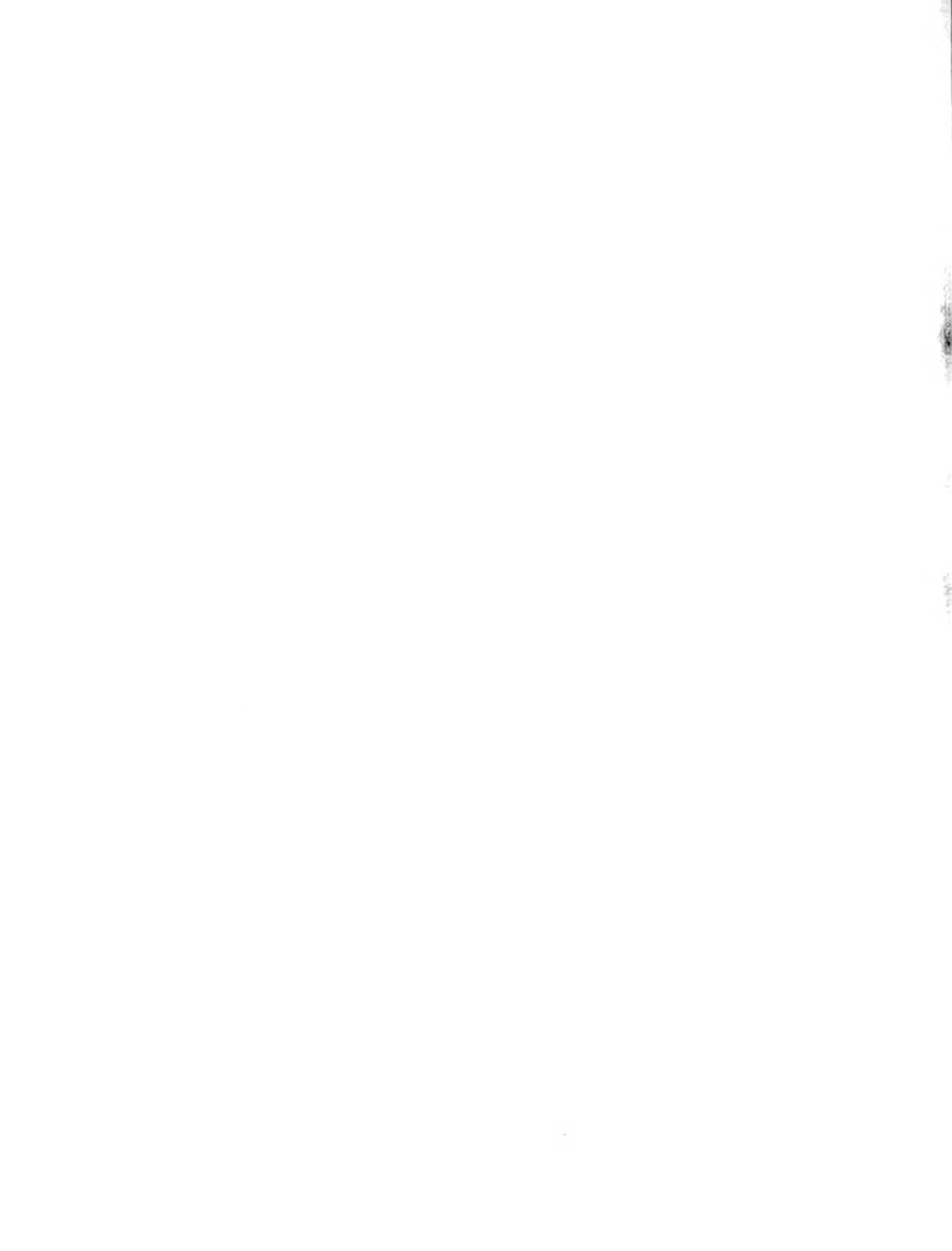
I am disposed to think, however, that the decline in the character of the Presidents is not the cause but only the accompanying manifestation of the declining prestige of the presidential office. That high office has fallen from its first estate of dignity because its power has waned; and its power has waned be-

cause the power of Congress has become predominant. The early Presidents were, as I have said, men of such a stamp that they would under any circumstances have made their influence felt, but their opportunities were exceptional. What with quarreling and fighting with England, buying Louisiana and Florida, building dykes to keep out the flood of the French Revolution, and extricating the country from ceaseless broils with the South American republics, the government was, as has been pointed out, constantly busy, during the first quarter century of its existence, with the adjustment of foreign relations; and with foreign relations, of course, the Presidents had everything to do, since theirs was the office of negotiation.

Moreover, as regards home policy also those times were not like ours. Congress was somewhat awkward in exercising its untried powers, and its machinery was new and without that fine adjustment which has since made it perfect of its kind. Not having as yet learned the art of governing itself to the best advantage, and being without that facility of legislation which it afterwards acquired, the Legislature was glad to get guidance and suggestions of policy from the Executive.

But this state of things did not last long. Congress was very quick and apt in learning what it could do and in getting into thoroughly good train to do it. It very soon threw itself onto stumbling stools which it equipped with the most

prehensive and thorough-going privileges of legislative initiative and control and set itself through a treaty to administer the government. Congress is (to adopt Mr. Baile's description of Parliament) "nothing less than a big meeting of more or less idle people. In proportion as you give it power it will inquire into everything, settle everything, meddle in everything. In an ordinary despotism, the powers of the despot are limited by his bodily capacity, and by the calls of pleasure; he is but one man; - there are but twelve hours in his day, and he is not disposed to employ more than a small part in public business; - he keeps the rest for the court, or the harem, or for society." But Congress "is a despot who has unlimited time, - who has unlimited vanity, - who has, or believes he has, unlimited comprehension, whose pleasure is in action, whose life is work." Accordingly it has entered here and there into the details of administration until it has virtually taken into its own hands all the substantial powers of government. It does not dominate over the President himself, but it makes his Secretaries its humble servants. Not that it would hesitate, upon occasion, to deal directly with the chief magistrate himself; but it has few calls to do so, because our elected Presidents live by proxy: they are the Executive in theory, but the Secretaries are the Executive in fact. At the very first session of Congress steps were taken towards parceling out executive work amongst several departments, as called for by an exten-



ciently thorough discussion of labour; and if the President of that day was not able to direct administrative details, of course the President of to-day is infinitely less able to do so and must content himself with such general supervision as he may find time to exercise. He is in all everyday concerns shielded by the responsibility of his subordinates.

It cannot It cannot be said that this change has raised the Cabinet in dignity or power; it has only altered their relations to the scheme of government. The members of the President's Cabinet have always been prominent in administration; and certainly the early Cabinets were no less strong in political influence than are the Cabinets of our own day; but they were then only the President's advisers, whereas they are now rather the President's colleagues. The President is now scarcely the Executive: he is the head of the administration: he appoints the Executive. Of course this is not a legal principle; it is only a fact. In legal theory the President can control every operation of every department of the executive branch of the Government; but in fact it is not practicable for him to do so, and a limitation of fact is as potent as a prohibition of law.

But, though the heads of the executive departments are thus no longer simply the ^{counsellors} ~~counsellors~~ of the President, he is, nevertheless in a very real sense member of the Executive, their guiding power in the conduct of affairs, instead of an ~~adviser~~ ^{adviser}, as

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steadily diminished; because while they were being dealt with, and parts of the machinery of administration, Congress was extending its own sphere of activity, was getting into the habit of investigating and managing everything. The Executive was losing and Congress gaining weight; and the station to which Cabinets finally attained was a station of diminished and diminishing power. There is no distinctive tendency in Congressional history than the tendency to subject even the details of administration to the constant supervision, and all policy to the watchful interference, of the Standing Committees.

I am inclined to think, therefore, that the enlarged powers of Congress are the fruits rather of an immensely increased efficiency of organization, and of the redoubled activity consequent upon the facility of action secured by such organization, than of any definite and persistent scheme of conscious usurpation. It is safe to say that Congress always had the desire to have a hand in every affair of federal government; but it was only by degrees that it found means and opportunity to gratify that desire, and its activity, extending its bounds wherever perfected processes of Congressional work offered favourable prospects, has been enlarged so naturally and so gradually that it has almost always seemed of normal extent until it has been except perhaps during one or two brief periods of extraordinary political disturbance, allowed to recede somewhat beyond its

acknowledged constitutional sphere.

It is only in the exercise of those functions of official formal consultation and cooperation with the President which are the peculiar offices of the Senate that the power of Congress has made itself offensive to popular conceptions of constitutional propriety, because it is only in the exercise of such functions that Congress is compelled to be overt and demonstrative in its claims of overlordship. The House of Representatives has made very few noisy demonstrations of its usurped right of ascendancy: not because it was diffident or unambitious, but because it could not intrude and enter its prerogatives quite so satisfactorily without notice; whereas the aggressive policy of the Senate has, in the acts of its "executive sessions" necessarily been overt, in spite of the closing of the doors, because when acting as the President's council in the ratification of treaties and in appointments to office its competition for power has been more formally and directly in contest with the Executive than were those cases where significant legislative acts by which, in conjunction with the House, it was habitually forced the goals of the Executive to let it to observe the will of Congress at every important turn of policy. Hence it is that to the question of precedence it appears that only the Senate has been outrageous in its encroachments upon executive privilege. It is not certain, however, that the Senate

stitutional hearing of strictly legislative character. It is not patent even to the least observant that in the matter of appointments to office, for instance, Senators have often outrun their legal right to give or withhold their assent to appointments by insisting upon being first consulted concerning nominations as well, and have thus made their constitutional assent to appointments dependent upon an unconstitutional control of nominations.

This particular usurpation has been put upon a very solid basis of law by that Tenure-of-office Act which took away from President Johnson, in an hour of party heat and passion, that independent power of removal from office with which the Constitution had invested him, but which he had used in a way that exasperated a Senate not of ^{own} his way of thinking. But this usurping power of the Senate's in the matter of the federal patronage is repugnant enough to the original intent of the Constitution, it is likely to be quite nullified by that policy of civil-service reform which has gained so firm, and so deep a footing, a footing in our national legislation; and in no event would the control of the patronage by the Senate ever be authorized the federal system more satisfactory than that which is authorized by an irresponsible exertion of that body's representative powers in regard to the federal policies of the government. More than one passage in the history of our federal gov-

nations illustrate the danger. During the whole congressional session of 1803-4, for example, the treaty-making power of the Senate was exerted in a way that made the comparative weakness of the Executive very conspicuous and was obvious of very serious results. It showed the Executive in the right, but feeble and irresolute, the Senate masterful though in the wrong. Denmark could have been asked to part with the island of St. Thomas to the United States and had at first refused all terms, not only because she cared little for the price, but also and principally because such a sale as that proposed was opposed to the political policy of the powers of Western Europe, in whose favour Denmark wished to stand; but finally, by stress of persistence and unfortunate negotiation, she had been induced to yield; a treaty had been signed and sent to the Senate; the people of St. Thomas had signified their consent to the cession by a formal vote, and the island had been actually transferred to an authorized agent of our Government, upon the faith of the act of the Danish Ministers, that our Government would not be troubled with them by entering upon an important business transaction where they were not assured of their ability to conclude. But the Senate let the treaty lie neglected in its pigeon-hole, the agent of the agent upon whom the negotiation passed, the Danish Government, at last had to resign in humiliation.

The ridiculous failure to follow a failure of the

business at that stage, extended the time and even sent over one of its most eminent ministers of state to urge the negotiation by all 'legitimate' means, but the Senate could do nothing for Lanis' feelings and could afford, it thought, to despise President Grant and Mr. Fish, and at the next session rejected the treaty and left the Lanis to repossess themselves of the island which we had concluded not to buy after all.

It was during this same session of 1863-4 that the Senate teased the Executive by throwing every possible obstacle in the way of the confirmation of the much more important treaty with Great Britain relative to the Alabama claims, thereby making for good and all one of the most satisfactory successes of our recent foreign policy;* but it is not necessary to dwell at length upon these well-known incidents of our later history, inasmuch as these are only two of innumerable instances which make it safe to say that, from whatever point we view the relations of the Executive and the Legislature, it is evident that the power of the latter has steadily increased at the expense of the prerogatives of the former, and that the balance in which the one of these great branches of government is balanced against the other is a very insufficient degree indeed. For in the exercise of its power of veto, which is of course the

* For a brilliant account of the Senatorial history of these two treaties see the article entitled 'The Warrenton' in the *Rev.*, Vol. CVIII, (1899) p. 625 et seq.

void all comparison, as to the for a table price at the, the President acts not as the Executive but as a third branch of the Legislature. As Oliver Ellsworth said at the first session of the Senate, the President is, as regards the passage of laws, but a part of Congress; and he can be an efficient, imperative member of the legislative system only in quiet times when parties are pretty evenly balanced and there are no indelible agencies to overrun obnoxious votes.

Even this rapid outline sketch of the two pictures, of the theory and of the actual practices of the Constitution, has been sufficient, therefore, to show the most crucial points of difference between the two, and to justify that careful study of Congressional government, as the real government of the Union, which I am about to undertake. The balances of the Constitution are for the most part ^{only} ideal. For all practical purposes the national government is supreme over the State governments, and Congress predominant over its so-called coordinate branches. Whereas Congress at first overshadowed neither President nor Federal Judiciary, it now on occasion rules both with despotism and with a high hand; and, whereas the State once guarded its sovereign prerogatives with jealous pride and there were not a few preferred political alternatives to the governments of the great Commonwealths to office under the new Federal Constitution, now State legislatures are now no longer

is coveted except as possible approaches to seats in Congress, and even governors of States seek election to the National Senate as a promotion, a reward for the public services that they rendered their ideal governments.

What makes it the more important to understand the present existence of national government and to study the methods of Congressional rule in a light clear and unmerciful by theory, is that there is plain evidence that the expansion of federal power is to continue, and that there exists, consequently, an evident necessity that it should be known just what to do and how to do it when the time comes for public opinion to take control of the forces which are changing the character of our Constitution. There are voices in the air which cannot be misunderstood. The times seem to favour a centralization of governmental functions such as could not have suggested itself as a possibility to the framers of the Constitution. Since they gave their work to the world the whole face of that world has changed. The Constitution was adopted when it was six days' hard travelling from New York to Boston when to cross East River was to venture a perilous voyage; when men were thankful for weekly mails; when the extent of the country's commerce was reckoned not in millions but in thousands of dollars, when the country knew few cities and had but begun manufactures, when Indians were pressing upon near frontiers, when there was no

telegraph lines and no monster corporations. Unquestionably, the pressing problems of the present instant regard the regulation of our vast systems of commerce and manufacture, the control of giant corporations, the restraint of monopolies, the perfection of fiscal arrangements, the facilitating of economic exchanges, and many other like national concerns, amongst which may possibly be numbered the question of marriage and divorce; and the greatest of these problems do not fall within even the enlarged sphere of the federal government; some of them can be embraced within its jurisdiction by no possible stretch of construction, and the majority of them only by wresting the Constitution to strange and as yet unimagined uses. Still, there is a distinct movement in favour of national control of all questions of policy which manifestly demand uniformity of treatment and power of administration such as cannot be realized by the separate, uncoordinated action of the States; and it seems probable to many that, whatever by constitutional amendment or by still further flights of construction, yet broader territory will, at no very distant day be assigned to the federal government. It becomes a matter of the utmost importance, therefore, both for those who would accept this tendency and for those who because they look upon it with allowance if not with positive favour, would let it run its course, to examine carefully the government upon which this new weight of responsibility will now

er seems likely to be east, in order that its capacity both for the work it now does and for that which it may be called upon to do may be definitely estimated.

Judge Cooley, in his admirable work on "The Principles of American Constitutional Law", after quoting Mr. Adams's enumeration of the checks and balances of the federal system, adds this comment upon Mr. Adams's concluding statement, that that system is an invention of our own: "The invention, nevertheless, was suggested by the British constitution, in which a system almost equally elaborate was then in force. In its outward forms that system still remains; but there has been for more than a century a gradual change in the direction of a concentration of legislative and executive power in the popular house of Parliament, so that the government now is sometimes said, with no great departure from the fact, to be a government by the House of Commons." But Judge Cooley does not seem to see, or, if he sees, does not emphasize the fact that our own system has been hardly less subject to "a gradual change in the direction of a concentration" of all the substantial powers of government in the hands of Congress: so that it is now, though a wide departure from the form of things, "no great departure from the fact" to describe ours as a government by the House of Commons. This fact, however, is omitted from the pages of Judge Cooley's excellent work, for no reason that I

possible of that expansion of the powers of the federal government and that crystallization of its jurisdiction have practically made obsolete the early constitutional theories, and even the modified theories which have since followed.

He has tested the mere advantage of the theoretical theories by the actual facts, and has carefully set facts to results; but he has now brought those results together into a single comprehensive view which might serve as a clear and satisfactory delineation of the Constitution of the law; not a case of any other writer of capacity examined minutely and at length that internal organization of Congress which determines its methods of legislation, which shapes its means of governing the executive departments, which contains in it the whole mechanism whereby the policy of the country is in all points directed, and which is therefore an essential branch of constitutional study. As the House of Commons is the central object of examination in every study of the English constitution, so should Congress be in every study of our own. Any one who is unfamiliar with what Congress actually does and how it does it, with all its duties and all its occupations, with all the degrees of management and resources of power as they far from a knowledge of the constitutional system under which it works; and to such one who knows these things that knowledge is very dear.

III.

THE HOUSE OF REPRESENTATIVES.

"No more vital truth was ever uttered than that 'freedom and free institutions cannot long be maintained' by a people who do not understand the nature of their own government."

Like a vast picture to conceal with figures of equal prominence and crowded with elaborate and obstructive details, our case is hard to see satisfactorily and appreciatively at a single view and from a single standpoint. Its complicated form and diversified structure confuse the vision, and conceal the system which underlies its composition. It is too complex to be understood without an effort, without a careful and systematic process of analysis. Consequently, very few people do understand it, and its doors are practically shut against the comprehension of the public at large. If Congress had a few authoritative leaders whose figures were very distinct and very conspicuous to the eye of the world, and who could represent and stand for the national legislature in the thoughts of that term; an earnest, and withal very respectable, class of persons who exist to think specifically and in concrete forms when they think at all; these persons who can take something out of men but carry little out of men, and whose analysis and criticism would be quite within the range of possible action for the majority of the nation, to follow the course of legislation without any very serious consciousness of their part. I can see that almost everybody who visits

now gives any head to the policy of Great Britain, with regard to the reform of the franchise and other more strictly legislative questions, thinks of Mr. Gladstone and his colleagues rather than of the House of Commons whose servants they are. The question is not, What will Parliament do? but, What will Mr. Gladstone do? And there is even less doubt that it is easier and more natural to look upon the legislative designs of Germany as looked up behind Bismarck's heavy brows than to think of them as dependent upon the determinations of the Reichstag, although as a matter of fact its consent is indispensable even to the plans of the imperious and domineering Chancellor.

But there is no great minister or ministry to represent the will and being of Congress in the common thought. The Speaker of the House of Representatives stands as near to leadership as anyone; but his will does not run as a formative and imperative power in legislation, much beyond the appointment of the committees who are to lead the House and do its work for it and it is, therefore, not entirely satisfactory to the public mind to trace all legislation to him. He may have a controlling hand in starting it; but he sits too still in his chair and is too evidently not on the floor of the body over which he presides to make it seem probable to the ordinary judgment that he has been immediate concern in legislation after it is once set afoot. Everybody knows that he is a stammerer and would not particular and that he likes to make a good, unbroken speech,



the legislative paths of his party; but it does not see clearly that all important measures originate with him or that he is the author of every distinct policy. And in fact he is not. He is a great party chief, but the halting circumstances of his official position as presiding officer prevent his performing the part of active leadership. He appoints the leaders of the House, but he is not himself its leader.

The leaders of the House are the chairmen of the principal Standing Committees. Indeed, to be exactly accurate, the House has as many leaders as there are subjects of legislation; for there are as many Standing Committees as there are leading classes of legislation, and in the consideration of every topic of business the House is guided by a special leader in the person of the chairman of the Standing Committee charged with the superintendence of measures of the particular class to which that topic belongs. It is this multiplicity of leaders, this many-headed leadership, which makes the organization of the House too complex to afford uninformed people and unskilled observers with any easy clue to its methods of rule. For the chairmen of the Standing Committees do not constitute a coöperative body like a ministry. They do not consult and concur in the adoption of harmonious and mutually helpful measures; there is no thought of action in concert. Each Committee goes its own way at its own pace. It is impossible to imagine any unity or method in the direct method and therefore unsystematic,

confused, and desultory action of the House, of any common purpose in the measures which its Committees from time to time recommend.

And it is not only to the unanalytic thought of the casual observer who looks at the House from the outside that its doings seem helter-skelter and without comprehensible rule; it is not at once easy to understand them when they are scrutinized in their daily headway through open session by one who is inside the House. The newly elected member, entering its doors for the first time and with no more knowledge of its rules and customs than the more intelligent of his constituents possess, ^{experiences} always ~~finds~~ great difficulty in adjusting his preconceived ideas of Congressional life to the strange and unlooked for conditions by which he finds himself surrounded after he has been sworn in and has become a part of the great legislative machine. Indeed there are generally many things connected with his career in Washington to disgust and dispirit, if not to aggrrieve, the new member. In the first place, his local reputation does not follow him to the federal capital. Possibly the members from his own State know him and receive him into full fellowship, but no one else knows him, except as an adherent of this or that party, or as a new-comer from this or that State. He finds his station insignificant and his identity indistinct. But this social humiliation would be experienced in circles in which to be a Congressman does not of itself confer distinction

because it is only to be one among many, is probably not to be compared with the chagrin and disappointment which come in company with the inevitable discovery that he is equally without weight or title to consideration in the House itself. No man, when chosen to the membership of a body possessing great power and exalted prerogatives, likes to find his activity repressed, and himself suppressed, by imperative rules and precedents which seem to have been framed for the deliberate purpose of making usefulness unattainable by individual members. Yet such the new member finds the rules and precedents of the House to be. It matters not to him, because it is not apparent on the face of things, that these rules and precedents have grown, not out of set purpose to curtail the privileges of new members as such, but out of the plain necessities of business; it remains the fact that he suffers under their curb, and it is not until "custody hath made it in him a property of easiness" that he submits to them with anything like good grace.

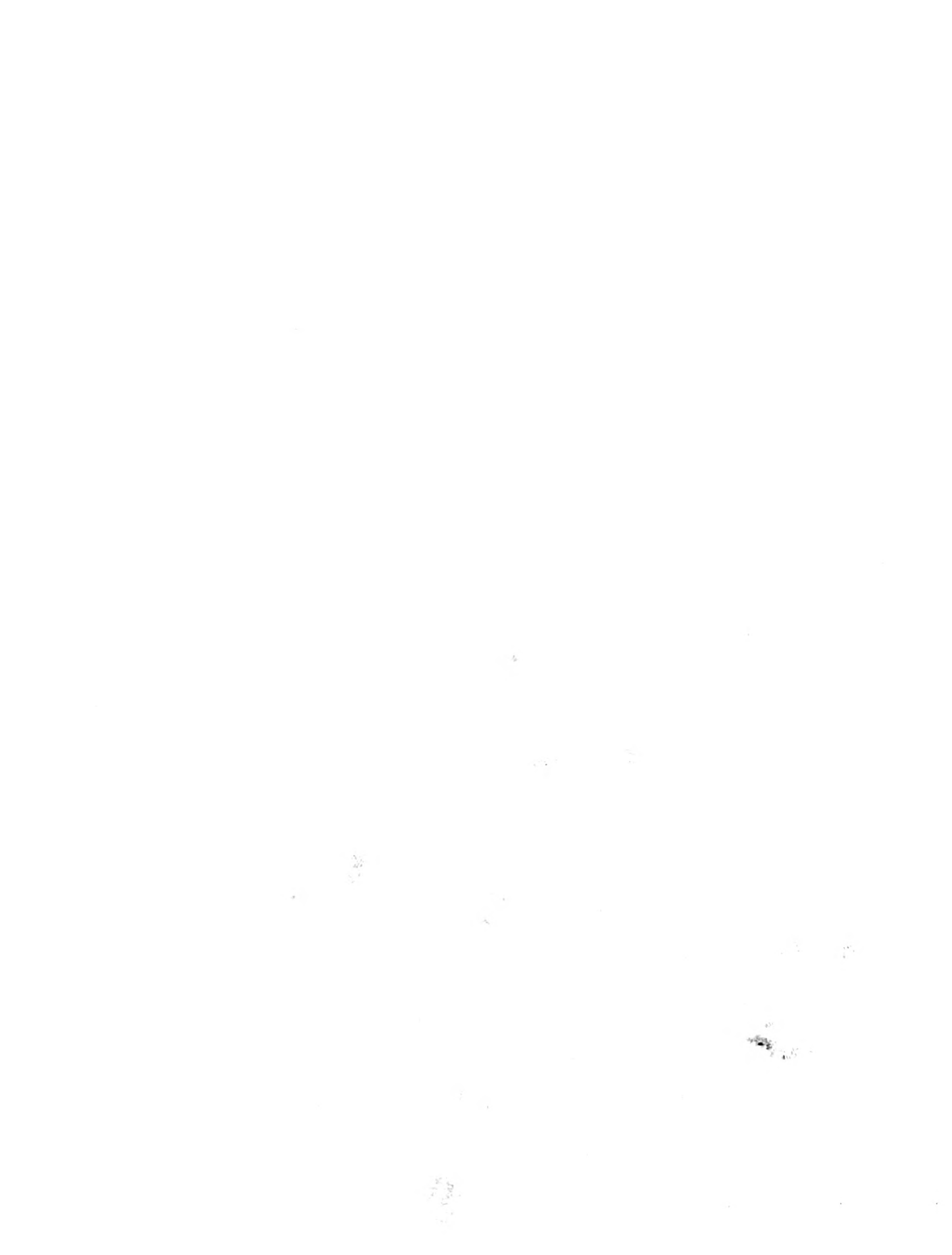
Not all new members suffer alike, of course, under this trying discipline; because it is not every new member that comes to his seat with serious purposes of honest, earnest, and dutiful work. There are numerous tricks and subterfuges, soon learned and easily used, by means of which the most idle and self-indulgent members may ^{readily} ~~easily~~ make such show of exemplary diligence as will quite satisfy, if it does not positively delight, constituents ill-informed. But the number of Congressmen who de-

liberately court usefulness and counterfeit well-doing is probably small. The great majority doubtless have a keen enough sense of their duty and a sufficiently unhesitating desire to do it; and it may safely be taken for granted that the zeal of new members is generally hot and insistent. If it be not hot to begin with, it is like to become so by reason of friction with the Rules, because such men must inevitably be chafed by the bonds^{of} restraint drawn about them by the inexorable observances of the House.

Often the new member goes to Washington as the representative of a particular line of policy, having been elected, it may be, as an advocate of free trade or as a champion of protection; and it is naturally his first care upon entering on his duties to seek immediate opportunity for the expression of his views and immediate means of giving them definite shape and thrusting them upon the attention of Congress. His disappointment is therefore very keen when he finds both opportunity and means denied him. He can introduce his bill; but that is all he can do, and he must do that at a particular time and in a particular manner. This he is likely to learn through rude experience, if he be not cautious to inquire beforehand the details of practice. He is likely to make a rash start, upon the supposition that Congress observes the ordinary rules of parliamentary practice to which he has become accustomed in the debating clubs familiar to his youth and in the mass-meetings known to his

later experience. His bill is doubtless ready for presentation early in the session, and, some day, taking advantage of a pause in the proceedings, when there seems to be no business before the House, he rises to read it and move its adoption. But he finds getting the floor an arduous and precarious undertaking. There are certain to be others who want it as well as he: and his indignation is stirred by the fact that the Speaker does not so much as turn towards him, though he must have heard his call, but recognizes someone else readily and as a matter of course. If he be obstreperous and persistent in his cries of "Mr. Speaker", he may get that great functionary's attention for a moment - only to be told, however, that he is out of order and that his bill can be introduced at that stage only by unanimous consent - immediately there are mechanically-uttered but emphatic exclamations of objection, and he is forced to sit down confused and disgusted. He has, without knowing it, obtruded himself in the way of the "regular order of business" and been run over in consequence, without being quite clear as to how the accident occurred.

Moved by the pain and discomfort of this first experience to respect, if not to fear, the Rules, the new member casts about by study or inquiry to find out, if possible, the nature and occasion of his privileges. He learns that his only safe day is Monday. On that day the roll of the States is called and members may introduce bills as their States are reached in the



call. So on Monday he essays another bout with the Rules, confident this time of being on their safe side: but mayhap indiscreetly and unluckily overconfident. For if he supposes, as he naturally will, that after his bill has been sent up to be read by the Clerk, he may say a few words in its behalf, and in that belief sets out upon his long-considered remarks, he will be knocked down by the Rules as surely as he was on the last occasion when he gained the floor for a brief moment. The rap of Mr. Speaker's gavel is sharp, immediate, and peremptory. He is curtly informed that no debate is in order: the bill can only be referred to the appropriate Committee.

This is indeed disheartening; it is his first lesson in committee government and the master's rod smarts; but the sooner he learns the prerogatives and powers of the Standing Committees the sooner will he penetrate the mysteries of the Rules and avoid the pain of further contact with their thorny side. The privileges of the Standing Committees are the beginning and the end of the Rules. Both the House of Representatives and the Senate conduct their business by what may figuratively, but not inaccurately, be called an odd device of disintegration. The House virtually both deliberates and legislates in small sections. Time would fail it to discuss all the bills brought in, for they every session number thousands; and it is to be doubted whether, even if time allowed, the ordinary processes of debate and amendment would suffice to sift the chaff from the

wheat in the bushels of bills every week piled upon the Clerk's desk. Accordingly, no futile attempt is made to do anything of the kind. The work is parcelled out, most of it to the forty-seven Standing Committees which constitute the regular organization of the House, some of it to select committees appointed for special and temporary purposes. Each of the almost numberless bills that come pouring in on Mondays is "read" a first and second time" - simply perfunctorily read, that is, ^{by its title} by the Clerk, and passed by silent assent through its first formal courses, for the purpose of bringing it to the proper stage for commitment - and referred without debate to the appropriate Standing Committee. Practically, no bill escapes commitment - save, of course, bills introduced by Committees, and a few which may now and then be crowded through under a suspension of the Rules, granted by a two-thirds vote - though the exact disposition, ^{to be made} of a bill is not always determined easily and as a matter of course. Besides the great Committee of Ways and Means and the equally great Committee of Appropriations, there are Standing Committees on Banking and Currency, on Claims, on Commerce, on the Public Lands, on Post Offices and Post Roads, on the Judiciary, on Public Expenditures, on Manufactures, on Agriculture, on Military Affairs, on Naval Affairs, on Mines and Mining, on Education and Labour, on Patents, and on a score of other branches of legislative concern; but, successful and differential as is the ^{topical} division of the subjects of legislation which is represented in

the titles of these Committees, it is not always evident to which Committee each particular bill should go. Many bills affect subjects which may be regarded as lying as properly within the jurisdiction of one as of another of the Committees: for no hard and fast lines separate the various classes of business which the Committees are commissioned to take in charge. Their jurisdictions overlap at many points, and it must frequently happen that bills are read which cover just this sort of ground. Over the enactment of such bills sharp and interesting skirmishes often take place. There is active competition for them, the ordinary, quiet routine of matter-of-course reference being interrupted by rival motions seeking to give very different directions to the disposition to be made of them. To which Committee should a bill "to fix and establish the maximum rates of fares of the Union Pacific and Central Pacific Railroads" be sent: to the Committee on Commerce or to the Committee on the Pacific Railroads? Should a bill which prohibits the mailing of certain classes of letters and circulars go to the Committee on Post Offices and Post Roads because it relates to the mails, or to the Committee on the Judiciary because it proposes to make any transgression of its prohibition a crime? What is the proper disposition of any bill which thus seems to lie within two distinct committee jurisdictions?

The fate of bills committed is generally not uncertain. As a rule a bill committed is a bill done. When it goes from

the Clerk's desk to a Committee-room, it creates a partition that bridge of signs to disjunctions of silence where it will never return. The means and time of its death are well known, but its friends never see it again. Of course no Standing Committee is privileged to take upon itself the full powers of the House. It represents and formally and decisively report a bill referred to it: its disappearance, if it disappears, must be reported to the House in the form of a recommendation that the bill "do not pass." But it is easy, and therefore common, to let the session pass without making any report at all upon bills deemed objectionable or unimportant, and to substitute for reports upon those a few bills of the Committee's own drafting: so that thousands of bills expire with the expiration of each Congress, not having been rejected, but having been simply neglected. There was not time to report upon them.

Of course it goes without the saying that the practical effect of this Committee organization of the House is to concentrate to each of the Standing Committees the entire direction of legislation upon those subjects which properly come to their consideration. As to those subjects it is entitled to the initiative and all legislative action with regard to them is under its overruling guidance. It gives scope and course to the deliberations of the House. In one respect, however, its initiative is limited. Even a Standing Committee cannot report a bill unless subject-matter has not been referred to it by the House, "by the

rules or otherwise; it can, at volunteer advice or questions upon which its advice has not been asked. But this is not a serious, not even an operative, limitation upon its functions of suggestion and leadership; for it is a very simple matter to get referred to it any subject it wishes to introduce to the attention of the House. Its chairman, or one of its leading members, frames a bill covering the point upon which the Committee wishes to suggest legislation; brings it in, in his capacity as a private member, on Monday when the bill of States is read; has it referred to his Committee; and thus secures an opportunity for the making of the desired report.

authority

It is by this imperious ~~power~~^{authority} of the Standing Committees that the new member is stayed and thwarted whenever he seeks to take an active part in the business of the House. Turn where he may, some privilege of the Committees stands in his path. The Rules are so framed as to put all business under their management; and one of the disabilities which the new member is sure to meet, albeit after many trying experiences and sobering adventures and as his first session draws towards its close, is that under their sway freedom of debate finds no place of allowance, and that his long-delayed speech must remain unspoken. For even a long Commission session is too short to afford time for a full consideration of all the reports of the forty-seven Committees, and debate upon them must be confined to what is not altogether absolute, if any consideration of the Res-

essary business is to be gotten through it before adjournment. There are some subjects to which the House must always give prompt attention: there are reports for the Committee on Printing and Elections are always in order, and there are some subjects to which careful consideration must always be accorded: therefore the Committee of Ways and Means and the Committee of Appropriations are clothed with extraordinary privileges, and revenue and supply bills may be reported and will ordinarily be considered at any time. But these four are the only specially licensed Committees. The rest must take their turns in fixed order as they are called on by the Speaker, contenting the selves with such crumbs of time as fall from the tables of the four Committees of highest precedence.

Senator Hoar, of Massachusetts, whose long Congressional experience entitles him to speak with authority, calculates that, "supposing the two sessions which make up the life of the House to last ten months", most of the Committees have at their disposal during each Congress but two hours apiece in which "to report upon, debate, and dispose of all the subjects of general legislative commitment to their charge." For of course the time is wasted. No Congress gets immediately to work upon its first assembling. It elects its officers to elect, and after that election some time must elapse before its organization is finished.

* I. an article entitled "The Conduct of Business in Congress" (No. Am. Rev., p. 121) to which I was indebted for many details of the speaker's list of text.

ally completed by the a point out of the Committees. It adjourns for holidays, too, and generally spares itself long sittings. Besides, there are many things to interrupt the call of the Committees upon which most of the business waits. That call can proceed only during the morning hours - the hours just after the reading of the Journal - on Tuesdays, Wednesdays, and Thursdays; and even then it may suffer postponement because of the unfinished business of the previous day which is entitled to first consideration. The call cannot proceed on Mondays because the morning hour of Mondays is devoted invariably to the call of the States for the introduction of bills and resolutions; nor on Fridays, for Friday is "private bill day" and is always engrossed by the Committee on Claims, or by other fathers of bills which have gone upon the "private calendar." On Saturdays the House seldom sits.

now, The reports made during these scant morning hours are ordered to be printed, for future consideration in their turn, and the bills introduced by the Committees are assigned to the proper calendars, to be taken up in order at the proper time. When a morning hour has run out the House hastens to proceed with the business on the Speaker's table.

These are some of the plainer points of the Rules. They are full of complexity, and of confusion to the uninitiated, and the confusions of practice are greater than the confusions of the Rules. For the regular order of business is constantly be-

ing interrupted by the introduction of resolutions offered "by unanimous consent", and of bills let in under a "suspension of the rules." Still, it is evident that there is one principle which runs through every stage of procedure and which is never disallowed or abrogated: the principle that the Committees shall rule without let or hindrance. And it is as a principle of extraordinary formative power. It is the mould of all legislation. In the first place, the speeding of business under the direction of the Committees determines the character and the amount of the discussion to which legislation shall be subjected. The House is conscious that time presses. It knows that, busy as it may, it will hardly get through with one-eighth of the business laid out for the session, and that to pause for lengthy debate is to allow the arrears to accumulate. Besides, most of the members are individually anxious to expedite action on every pending measure: because each member of the House is a member of one or more of the Standing Committees and is quite naturally desirous that the bills prepared by his Committees, and in which he is of course specially interested by reason of the particular attention which he has been compelled to give them, should reach a hearing and a vote as soon as possible. It must, therefore, invariably appear that the Committee holding the floor at any particular time is the Committee whose proposals the majority wish to dispose of as summarily as circumstances will allow, in order that the rest of the forty-two undisciplined

Committees to which the majority belong may gain the earlier and the fairer chance of a hearing. A reporting Committee, besides, is generally as glad to be pushed as the majority are to push it. It probably has several bills matured and wishes to see them disposed of before its brief hours of opportunity² are passed and gone.

Consequently, it is the established custom of the House to accord the floor for one hour to the member of the reporting Committee who has charge of the business under consideration, and that hour is made the chief hour of debate. The reporting committee-man seldom, if ever, uses the whole of the hour himself for his opening remarks: he uses part of it and retains control of the rest of it;— for by undisputed privilege it is his to dispose of, whether he himself be upon the floor or not. No amendment is in order during that hour, unless he consent to its presentation; and he does not, of course, yield his time indiscriminately to any one who wishes to speak. He gives way indeed, as in fairness he should, to opponents as well as to friends of the measure under his charge; but generally no one is accorded a share of his time who has not obtained his previous promise of the floor; and those who do speak must not run be-

* No Committee is entitled, when called, to occupy more than the morning hours of two successive days with the measures which it has prepared; though if its second morning hour expires while the House is actually considering one of its bills, that single measure may hold over from morning hour to morning hour until it is disposed of.

yond the number of minutes he has agreed to allow them. He keeps the course both of debate and of amendment thus carefully under his own supervision, as a good tactician, and before he finally yields the floor, at the expiration of his hour, he is sure to move the previous question. To neglect to do so would be to lose all control of the business in hand; for unless the previous question is ordered the debate may run ^{on} at will, and his Committee's chance for getting its measures through slip quite away: and that would be nothing less than his disgrace. He would be all the more blameworthy because he had but to ask for the previous question to get it. As I have said, the House is as eager to hurry business as he can be, and will consent to almost any limitation of discussion that he may demand; though, probably, if he were to throw the reins upon its neck, it would run at large from very wantonness, in search of such a driver. The previous question once ordered, all amendments are precluded and one hour remains for the summing up of this same privileged Committee-man before the final vote is taken and the bill disposed of.

These are the customs which baffle and perplex and astound the new members. In these precedents and usages, when at length he comes to understand them, the novice spies out the explanation of the fact, once so confounding and seeming inexplicable, that when he leaped to this fact to claim the floor other members who rose after him were eagerly and unfeelingly preferred

before him by the Speaker. Of course it is plain enough now that Mr. Speaker knew beforehand to whom the representative of the reporting Committee had agreed to yield the floor; and it was no use for anyone else to cry out for recognition. "Whoever wished to speak should, if possible, have made some arrangement with the Committee before the business came to a hearing, and should have taken care to notify Mr. Speaker that he was to be granted the floor for a few moments.

Unquestionably, this, besides being a very interesting, is a very novel and significant method of restricting debate and expediting legislative action: a method of very serious import and obviously fraught with far-reaching constitutional effects. The practices of debate which prevail in its legislative assembly are manifestly of the utmost importance to a self-governing people: for that legislation which is not thoroughly discussed by the legislative body is practically done in a corner. It is impossible for Congress itself to do wisely what it does so hurriedly, and the constituencies cannot understand what Congress does not itself stop to consider. The prerogatives of the Committees represent something more than a mere convenient division of labour. There is only one part of its business to which Congress as a whole attends: that part, namely, which is embraced under the phrase of subjects of general public interest. The House never accepts the proposals of the Committee of Ways and Means or of the Committee on Appropriations without the dis-

liberation, but it allows almost all of its other standing committees virtually to legislate for it. In fact, the Committees only digest the various matters introduced by individuals members and prepare it, with care and after thorough investigation, for the final consideration and action of the House; but, in reality, they dictate the course to be taken, prescribing the decisions of the House not only but measuring out according to their own wills its opportunities for debate and deliberation as well. The House sits, not for serious discussion, but to sanction the conclusions of its Committees as rapidly as possible. It legislates in its committee-rooms; not by the determination of majorities, but by the resolutions of specially-commissioned minorities: so that it is not far from a truth to say that Congress in session is Congress on public exhibition; whilst Congress in its committee-rooms is Congress at work.

Habit grows fast, even upon the unscrupulous American, and the nature of the House of Representatives has by long custom been shaped to the spirit of its Rules. Representatives have attained, by rigorous self-discipline, to the perfect stature of the law under which they live, having purged their hearts as completely as may be of all desire to do that which it is the chief object of that law to forbid by giving over a vote just after public discussion. The entire absence of the instinct of debate amongst them, and their apparent unfamiliarity with the idea of debating a proposition, is apparently, and is in fact,



trated by an incident which was quite painful and usual. The Democratic majority of the House of the forty-eighth Congress desired the immediate passage of a pension bill of extraordinary provisions, but the Republican minority displayed a boldness of front which was not to be denied. The bill was reported by the Pension Committee, late one afternoon in a thin House, that the Rules be suspended and an early day set for a consideration of the bill, the Republicans addressed themselves to determined and persistent "filibustering" to prevent action. First they refused to vote, leaving the Democrats without an acting quorum; then all night long they kept the House at roll-calling or dilatory and obstructive motions, the dreary dragging of the time being rendered less signal by the amusement of hearing the excuses of members who had tried to slip off to bed, or by the excitement of an angry dispute between the leaders of the two parties as to the responsibility for the dead-lock. Not till the return of morning brought in the delinquents to recruit the Democratic ranks did business advance a single step. Now, the noteworthy fact about this remarkable scene is, that the Democrats were not endeavoring to gain opportunity or time for debate, in order that the country might be informed of the true nature of the obnoxious bill, but were simply fighting for delay and obstruction with silent, loggish obstinacy. After the adjournment had been spent in standing out against action, the House rose and there had been "no record" for the forty-eighth Congress.



of faculty of the committee in absence of the court, and the
power to the committee to hold it in force until the committee
It would seem to appear to the committee, and the committee
power to the House of Representatives - delegates let it into
legislative but also its deliberative functions to its stand-
ing committees. The little public debate that occurs under the
stringent and urgent rules of the House is formal rather than
effective, and it is the discussions which take place in the
committees that give form to legislation. Undoubtedly these
siftings of legislative questions by the committees are of
great value in enabling the House to obtain "unfettered coun-
sel" and intelligent suggestions from authoritative sources.
All serious, purposeful, business-like inquiries of pub-
lic policy, whether it take place in Congress or only before the
committees of Congress, is of great value; and the controversies
which spring up in the committee-rooms, both amongst the commit-
tee-men, the colleagues between those who appear before the com-
mittees in a line of proposed measures, and of the committee
to all branches and definite proposals to the reports sub-
mitted to the House.

There are, however, several other circumstances which must be
taken into account of justice by the committee, and the committee
must be well informed in the knowledge of the committee
their views, and of the committee, and of the committee
ment and debate by committees in general, and in the first



ings, the proceedings of the Committees are private and their discussions unpublished. The chief, and unquestionable, object is either, object of all discussion of public business in the Parliament of public opinion; and of course, since it carries out the debates of the Committees, the action is not to be controlled by them. On the Committees are entirely free. There is a conclusive objection to the publication of the proceedings of the Committees, which is recognized as of course by all parliamentary lawyers, namely, that these proceedings are of no force till confirmed by the House. A Committee is subordinate, not to instruct the public, but to instruct and guide the House.

Indeed it is not usual for the Committees to open their sittings often to those who desire to be heard with regard to pending questions; and no one can demand a hearing as of right. On the contrary, they are privileged and accustomed to hold their sessions in absolute secrecy: it is made a breach of order for any member to allude on the floor of the House to anything that has taken place in Committee, "unless by a written report sanctioned by a majority of the Committee"; and there is no room in the regular order of business for a motion that a Committee to conduct its investigations with open doors. Nevertheless, it is only by the concession of the Committees that arguments are made before them.

When they do suffer themselves to be approached, 1833-36.



they generally state their views to others besides their fellow-Congressmen. The Committee of Commerce presents to illustrate prominent railroad officials upon the subject of the regulation of freight charges and fares, and several of interrelated persons telegraph inquiries to the chairman of the Committee of Ways and Means as to the time at which they are to be permitted to present to the Committee their views upon the revision of the tariff. The speeches made before the Committee at their open sessions are, therefore, scarcely of such a kind as would be instructive to the public, and on that account worth publishing. They are as a rule the pleas of special pleaders, the arguments of advocates. They have about them none of the spare, impartial, illuminating character of the higher order of parliamentary debate, in which men are pitted against each other as equals and urged to sharp contest and masterful strife by the implication of political principle and personal ambition, through the rivalry of parties and the competition of policies. They represent a joust between antagonistic interests, not a contest of principles. They could scarcely either inform or elevate public opinion, even if they were to obtain its heed.

For the instruction and elevation of public opinion in regard to national affairs there is needed something more than special pleas for special purposes. There is needed a wide discussion of a peculiar sort: a discussion by the representative legislative body itself, a discussion in which every feature of

each mooted point of policy shall be distinctively brought out, and every argument of significance pushed to the furthest point of insistence, by recognized leaders in that body, and, there also, a discussion upon which something - something of interest or importance, some pressing question of administration, or of law, the fate of a party or the success of a conspicuous politician - evidently depends. It is only a discussion of this sort that the public will heed: no other sort will impress it.

There could, therefore, be no more unwelcome revelation to one who has anything approaching a statesmanlike appreciation of the essential conditions of intelligent self-government than just that which must inevitably be made to everyone who candidly examines our Congressional system: namely, that, under that system, such discussion is impossible. There are, to begin with, physical and architectural reasons why business-like debate of public affairs by the House of Representatives is out of the question. To those who visit the galleries of the representative chamber during a session of the House, these reasons are as obvious as they are astonishing. It would be natural to expect that a body which meets ostensibly for consultation and deliberation, should hold its sittings in a room small enough to admit of an easy interchange of views and a ready concert of action, where its members would be brought into close, sympathetic contact; and it is nothing less than astonishing to find it spread at large through the vast space of such a chamber as

the Hall of the House of Representatives, where there are no close ranks of cooperating parties, but each member has a roomy desk and an easy revolving chair, where broad aisles spread and stretch themselves, where ample soft-carpeted areas lie about the spacious desks of the Speaker and Clerks, where deep galleries reach back from the outer limits of the wide passages which lie beyond "the bar": an immense, capacious chamber, disposing its giant dimensions freely beneath the great level lacunar ceiling through whose glass panels the full light of day pours in. The most vivid impression the visitor gets in looking over that vast hall is the impression of space. A speaker must needs have a voice like O'Connell's, the practical visitor is apt to think as he sits in the gallery, to fill even the silent spaces of that room, how much more to overcome the disorderly noises that buzz and rattle through it when the representatives are assembled: a voice clear, sonorous, dominant, like the voice of a clarion. One who speaks there with the voice and lungs of the ordinary mortal must content himself with the audience of those members in his own immediate neighbourhood whose ears he rudely assails in the event efforts to command the attention of those beyond them, and who therefore cannot escape but hear him.

It is of this magnitude of the hall of the representatives that those news telegrams so insignificant when regarded as interesting or witty speech in Congress as being heard about the speaker listeners from all parts of the House. As one of our

most notable with would say, a member must need "take a Sabbath day's journey to get within easy hearing distance of a speaker who is addressing the House from the opposite side of the hall; for besides the space there are the noises of the bell, the noises of loud talking and of the rattling of benches for the pages, making the task of the member who is speaking "very like trying to address the people in the omnibuses from the curbstone in front of the Astor House." *

But these physical limitations to debate, though serious and real, are amongst the least important, because they are amongst the least incurable. If effective and business-like public discussion were considered indispensable by Congress, or even desirable, the present chamber could readily be divided into two halls, the one a commodious reading room where the members might chat and write at ease as they now do in the House itself, and the other a smaller room suitable for debate and earnest business. This, in fact, has been several times proposed; but the House does not feel that there is any urgency about providing facilities for debate, because it sees no reason to desire an increase of speech-making, in view of the fact that, notwithstanding all the limitations now put upon discussion, its business moves much too slowly. The early Congresses had time to talk; Congresses of to-day have not. Before that time of the

*Quoted from an excellent life-like and picturesque description of the House which appeared in the N.Y. Nation for April 4, 1878.

Capitol was built in 1857, the present building was built, the House used to sit in the old chamber for a while, save for the statutory to whose enactment it is devoted, and there were speech-making went on from day to day: there Calhoun and Manly and Webster and Clay won their reputations as statesmen and orators. So earnest and interesting were the debates of those days, indeed, that the principal speeches delivered in Congress seem to have been usually printed at length in the metropolitan journals.* But the number and length of the speeches was even then very much declined, and so early as 1823 a writer in the North American Review condemns what he calls "the habit of Congressional debating" with the air of one who speaks against some abuse which everyone acknowledges to be a nuisance.† Eleven years later a contributor to the Edinburgh Review‡ declared that it had "been gravely charged upon" Mr. Samuel Cushman, then a member of the twenty-fifth Congress from New Hampshire, "that he moves the previous question. Truly", continues the essayist, "he does, and for that very service, if he has not as done anything else, he deserves a monument as a public benefactor. One man who can arrest a tedious, long-winded, factious, time-killing debate, is worth forty who can produce one speech up. It requires some moral courage, some spirit, and some talent

* No. 42, Rev., Vol. 20, p. 162.

† Id., the same article.

‡ "Quizzes at Congress," Ed. Rev., 1839.

also, to move the previous question, and to vote it, too, at precisely the same point of time."

This ardent and generous defense of Mr. Cusack against the odious accusation of moving the previous question would doubtless be exquisitely pleasing to the chairman of one of the standing Committees of the forty-eighth Congress, to whom the previous question seems one of the commonest necessities of life. But, after all, he ought not to laugh at the ingenious assent, for that was not the heyday of the Rules: they then simply served and did not tyrannize over the House. They did not then have the opportunity of empire afforded them by the scantiness of time which surries the House and the weight of business which oppresses it; and they were at a greater disadvantage in a room where orator was possible than they are in a vast chamber where the orator's voice is drowned amidst the noises of disorderly inattention. How many would-be debaters are actually thrust out of Congress and forced to resort to the printer's office, are compelled to content themselves with spreading their papers over the pages of the "Herald" instead of from their places in the House. Some people who live very far from Washington may disagree that the speeches which are spread at large in the columns of the "Congressional Record", or which their representatives send to them in pamphlet form, were actually delivered in Congress; but everyone else knows that they were not; that Congress is constantly in session, save to its members to insert in the of-

cial reports of the proceedings, and as a rule it does not
 and does not seem to read, but when it is not worse for print-
 ing at the public expense if it is better than that constituting
 the country at large should read them. It will not stand
 between a member and his constituents so long as it can in large
 measure satisfy the others without any direct expense to
 itself or any serious load upon the resources of the Treasury.
 The public printer does not object.

Edgley

But there are other reasons still more obvious than these
 why the debates of Congress cannot, under our present system,
 have that serious purpose of search into the merits of policies
 and that definite and determinate party - or, if you will, par-
 tisan - aim without which they can never be effective for the
 instruction of public opinion or the clearing of political ac-
 tion. The chief of these reasons, because the parent of all the
 rest, is that there are in Congress no authoritative leaders who
 are the recognized spokesmen of their parties. Power is not
 where concentration: it is rather deliberately and of set ^{policy} ~~the~~
~~free~~ scattered amongst many small chiefs. It is broken up, as
 it were, into forty-seven principalities, in each of which a mem-
 ber of the committee is the court-baron and its own private con-
 tributor. These petty barons, none of them not a little powerful
 but none of them with a share of the full power of supremacy that
 will exercise an almost despotic sway over the proceedings,
 and may sometimes extend to the whole of the body.

but both their mutual jealousies and their brief and restricted opportunities forbid their combining, and each is very far from the office of general leader.

I know that to solve this serious problem of distributed power and disintegrated rule seems a very excellent device whereby we are enabled to escape a dangerous "one-man power" and an untoward concentration of functions; and it is very easy to see and appreciate the considerations which make this view of Committee government so popular. It is based upon a very proper and salutary fear of irresponsible power; and those who most resolutely maintain it always fight from the position that all leadership in legislation is hard to restrain in proportion to its size and to the strength of its prerogatives, and that to divide it is to make it manageable. They aver, besides, that the less a man has to do - that is to say, the more he is confined to single departments and to definite details - the more intelligent and thorough will his work be. They like the Committees, therefore, just because they are many and weak, being quite willing to abide their being despotic within their narrow spheres.

It seems evident, however, when the question is looked at from another standpoint, that, as a matter of fact and experience, the more power is divided the more irresponsible it becomes. A mighty baron who can call half the country to arms is watched with greater jealousy and therefore restrained with more vigilant care than is ever exercised the feeble holder of a single

of solitary style. It is a man that still a confidence and content pleasure count without attracting the special your attention of the whole country-side, the other side of the world, and entire first neighbourhood without fear of let or hindrance. It is ever as the little foxes that spoil the grapes. At any rate, to the back, from illustration to the facts of the argument, it is plain enough that the petty character of the leadership of each Committee contributes towards making its legislative sure by making its duties uninteresting. The Senate almost always discusses its business with considerable thoroughness; and even the House, whether by common consent or by reason of such persistent filibustering on the part of the minority as compels the reported Committee and the majority to grant time for talk, so that as steps to debate Committee reports at length; but nobody, except, perhaps, newspaper editors, find these debates interesting reading.

Why is it that many intelligent and patriotic people throughout this country, from Virginia to California, - people who go beyond all question love their State and the Union more than they love our cousin state over sea - subscribe for the leading papers in order to devour the parliamentary debates, and yet would never think of troubling themselves to make a long proforma through a single copy of the Congressional Record? Is it because the same is aptly stated by the old-world dignity of some England with its nobility and its court, represented by the

a single desire to appear before a court
 in foreign affairs and to affect friendly relations
 with other states? Not of course not. It is because the
 debates are interesting and ours are not. In the House
 of Commons the functions and privileges of our standing
 committees are all concentrated in the hands of the Ministry, who
 have, besides, some prerogatives of leadership which our
 committees do not possess, so that they carry all responsibility
 as well as great power, and all debate wears an intense personal
 and party interest. Every important discussion is an arraignment
 of the Ministry by the Opposition, an arraignment of
 the majority by the minority; and every important vote is a party
 defeat and a party triumph. The whole conduct of the govern-
 ment turns upon what is said in the Commons: because the
 resolutions of debate often change votes, and a Ministry loses
 hold upon power as it loses hold upon the confidence of the
 Commons. This great Standing Committee goes out whenever it
 crosses the will of the majority. It is, therefore, for the
 very simple and obvious reasons that the parliamentary debates
 are read on this side of the water in preference to the con-
 gressional debates. They affect the ministers, who are very im-
 portant persons and whose names, therefore, all the civilized
 world is interested; and they determine the course of politics
 in a great empire. The session of a parliament ought to be a
 great field day on which Liberals and Conservatives put their

full forces against each other, and people have to wait for the results of the contest.

Our Congressional debates, on the contrary, have no title of this interest because they have no title of such significance and importance. The Committee reports, upon which the debates take place, are backed by neither party: they represent neither the recommendations of a small body of members belonging to both parties and are quite as likely to divide the vote of the party to which the majority of the Committee belong as they are to meet with opposition from the other side of the chamber. If they are carried, it is no party triumph; if they are lost, it is no party discomfiture. They are no more than the proposals of a mixed committee and may be rejected without political inconvenience to either party or reproach to the committee: just as they may be passed without compliment to the committee or political advantage to either side of the House. Neither party has any great stake in the controversy. The only importance that can attach to the vote must hang upon its relation to the next general election. If the report concern a question which is at the time so much in the public eye that an action upon it is likely to be marked and remembered against the side of regular action, parties are careful to vote as solidly as possible on what they conceive to be the safe side. But all other reports are disposed of without regard to either of these influences upon the fortunes of distant elections, because that influence

is remote and problematical.

In a world, the national parties do not get in Congress under the restraint of a sense of immediate responsibility. Responsibility is spread thin; and no vote or debate can gather it. It rests not so much upon parties as upon individuals; and it rests upon individuals in no such way as would make it either just or efficacious to visit upon them the iniquity of any legislative act. Looking at government from a practical and business-like, rather than from a theoretical and abstractly-ethical, point of view - treating the business of government as a business - it seems to be unquestionably and in a high degree desirable that all legislation should distinctly represent the action of parties as parties. I know that it has been proposed by enthusiastic, but not too practical, reformers to do away with parties by some legal means of governmental reconstruction accompanied and supplemented by some rehabilitative, device to be wished, of the virtues least commonly controlling in fallen human nature, but it seems to me that it would be more difficult and less desirable than these available persons suggest to conduct a government of the many by means of any other device than party organization, and that the great need is, not to get rid of parties, but to find and use some expedient by which they can be managed and made amenable from day to day to public opinion. Plainly this cannot be effected by punishing here and there a member of Congress who has voted for a flagrantly dis-

Worst appropriation bill or an obnoxious measure relating to a tariff. Unless the punishment can be extended to the party - if any such be recognizable - with which those members have voted, no advantage has been won for self-government and no triumph has been gained by public opinion. It should be desired that parties should act in distinct organizations, in accordance with avowed principles, under easily recognizable leaders, in order that the voters might be able to declare by their ballots, not only their condemnation of any past policy by withdrawing all support from the party responsible for it, but also and particularly their will as to the future administration of the government by bringing into power a party pledged to the adoption of an acceptable policy.

It is, therefore, a fact of the most serious consequence that by our system of Congressional rule no such means of controlling legislation is afforded. Outside of Congress the organization of the national parties is exceedingly well defined and tangible: no one could wish it, and few could imagine it, more so; but within Congress it is obscure and intangible. Our parties marshal their adherents with the strictest possible discipline for the purpose of carrying elections, but their discipline is very slack and indefinite in dealing with legislation. At least there is within Congress no visible, and therefore no controllable party organization. The only bond of cohesion is the caucus, which occasionally whips a party together for cooperative

action against the time for casting its vote upon some critical question. There is always a majority and a minority, indeed, but the legislation of a session does not represent the policy of either; it is simply an aggregate of the bills recommended by Committees composed of members from both sides of the House, and it is known to be usually, not the work of the majority-men upon the Committees, but compromise conclusions bearing some shade or tinge of each of the variously-coloured opinions and wishes of the committee-men of both parties.

It is plainly the representation of both parties on the Committees that makes party responsibility indistinct and organized party action almost impossible. If the Committees were composed entirely of members of the majority and were thus constituted representatives of the party in power, the whole course of Congressional proceedings would unquestionably take on a very different aspect. There would then certainly be a compact opposition to face the organized majority. Committee reports would be taken to represent the views of the party in power and instead of the scattered, unconnected opposition, without plan or leaders, which now sometimes subjects the propositions of the Committees to vexatious hindrances and delays, there would spring up debate under skilful masters of opposition who could drill their partisans for effective warfare and give shape and meaning to the purposes of the minority. Out of course there can be no such definite division of forces so long as the dif-

cient machinery of legislation is in the hands of both parties at once; so long as the parties are united and backed together in a common organization.

It may be said, therefore, that each law of the kind which come before Congress are party measures. They are, at any rate, not brought in as party measures. They are considered by select bodies of members chosen with a view to constituting an impartial board of examination for the judicial and thorough consideration of each subject of legislation, no member of one of these committees is warranted in revealing any of the disagreements of the committee-room or the proportions of the votes there taken; and no colour is meant to be given to the supposition that the reports made are intended to advance any party interest. Indeed, only a very slight examination of the measures which originate with the Committees is necessary to show that most of them are framed with a view to securing their easy passage by giving them as neutral and inoffensive a character as possible. The manifest object is to dress them to the liking of all factions.

Under such circumstances, neither the failure nor the success of any policy inaugurated by one of the Committees can fairly be charged to the account of either party. The Committees acted honestly, no doubt, and as they thought best; and there can, of course, be no assurance that, by turning away its Congressional majority from the party to which the greater number of

the committee-men belong, the Committee should be secured which would act better or differently.

The conclusion of the whole matter is, then, that public opinion cannot be instructed or elevated by the debates of Congress, not only because there are few debaters seriously understood by Congress, but principally because no one not professionally interested in the daily course of legislation cares to read what is said by the debaters when Congress has stop to talk, inasmuch as nothing depends upon the issue of the discussion. The ordinary citizen cannot be induced to pay heed to the details, or even to the main principles, of law-making unless something else more interesting than the law itself be involved in the pending decision of the law-makers. If the fortunes of a party or the power of a great political leader are staked upon the final vote, he will listen with the keenest interest to all that the principal actors may have to say, and absorb much instruction in so doing; but, if no such things hang in the balance, he will not turn from his business to listen, and if the true issues are not brought out in eager public contests which catch his ear because of their immediate personal interest, but must be sought amidst the information which can be had complete only by reading scores of newspapers, he will certainly never find them or care for them, and there is no use in printing a Record which he will not read.

I know not how better to describe our form of government.

a single phrase than by several. It is governed not by the chairman of the Standing Committees of Congress. This "disintegrated Ministry", as it figures on the floor of the House of Representatives, has many peculiarities. In the first place, it is made up of the elders of the assembly: for, by custom, seniority in Congressional service determines the bestowal of the principal chairmanships; in the second place, it is constituted of selfish and warring elements: for chairman fights against chairman for use of the time of the assembly, though the most part of the members are inferior to the chairman of Ways and Means and all are subordinate to the chairman of the Committee on Appropriations; in the third place, instead of being composed of the associated leaders of Congress, it consists of the dissociated heads of forty-eight "little legislatures" (to borrow Senator Hear's apt name for the Committees); and, in the fourth place, it is instituted by appointment from Mr. Speaker, who is, by intention, the chief judicial rather than the chief political officer of the House.

It is highly interesting to note the extraordinary power accruing to Mr. Speaker through this pregnant prerogative of appointing the Standing Committees of the House. That power is as it were the central and characteristic incident and the mainstay of our constitutional system, and one that should excite both the curiosity and the wonder of the student of institutions. The most esteemed writers upon our Constitution have failed to observe, not only that the Standing Committees are the

most essential machinery of our government system, but also that the Speaker of the House of Representatives is the most powerful functionary of that system. He so organizes and with the wide sphere of his influence that one could hardly for accurate knowledge as to the actual extent of his power. But the Speaker's power cannot be known accurately, because to do so is with the character of Mr. Speaker. All Speakers since, of late years especially, have been potent factors in legislation, but some have, by reason of greater energy or less conservatism, made more use of their opportunities than have others.

The Speaker's privilege of appointing the Standing Committees is nearly as old as Congress itself. At first the House tried the plan of balloting for its more important committees, and in April 1780, that the Speaker should appoint only those committees which should consist of not more than three members; but less than a year's experience of this method of organizing seems to have furnished satisfactory proof of its impracticability, and in January 1790 the present rule was adopted: that "All committees shall be appointed by the Speaker, unless otherwise specially directed by the House." The Rules of one House of Representatives are not, however, always the Rules of the next. No rule dies save by formal revocation. Each newly-elected House meets without rules for its government and amongst the first acts of its first session is usually the adoption of the resolution that the Rules of the predecessor



shall be its own Rules, subject, of course, to such amendments as it may, from time to time, see fit to make. Mr. Speaker's power of appointment, accordingly, always awaits the passage of the resolution; but it never waits in vain, for no cause, however foolish in other respects, has yet been foolish enough to make a fresh trial of electing its Committees. That could only do well enough for the cool and leisurely Senate, but it is not for the hasty and turbulent House.

It must always, of course, have seemed eminently desirable to all thoughtful and experienced men that Mr. Speaker should be no more than the judicial guide and moderator of the proceedings of the House, keeping apart from the heated controversies of party warfare and exercising none but an impartial influence upon the course of legislation; and probably when he was first invested with the power of appointment it was thought possible that he could exercise that great prerogative without allowing his personal views upon questions of public policy to control or even affect his choice. But it must very soon have appeared that it was too much to expect of a man who had it within his power to direct affairs that he should subvert all purposes to do so and should make all appointments with an eye to satisfying every preference but his own; and when that had become evident the rule was undoubtedly retained only because some better one could be devised. Besides, in the early years of the Constitution the Committees were not far from what they are at present.

now possess. Business did not then hurry to a foot for discussion and the House was in the habit of scrutinizing the reports of the Com. at least such were critically than it now pretends to do. It deliberated in its open sessions as well as in its private committee-rooms, and the functionary who appointed its Committees was simply the nominator of its advisers, not, as is the Speaker of to-day, the nominator of its rulers.

It is plain, therefore, that the office of Speaker of the House of Representatives is in its present estate a constitutional phenomenon of the first importance, deserving a very thorough and critical examination. If I have succeeded, in what I have already said, in making clear the extraordinary power of the Committees in directing legislation, it may now go without the saying that he who appoints these Committees is an autocrat of the first magnitude. There could be no clearer proof of the great political weight of the Speaker's high commission in this regard than the keen strife which every two years takes place over the election to the Speakership and the intense interest excited throughout the country as to the choice to be made. Of late years the newspapers have had almost as much to say about the rival candidates for that office as about the candidates for the Presidency itself, having come to look upon the selection made as a sure index of the policy to be expected in legislation.

The Speaker is of course chosen by the party which has the

the majority in the House, and it has sometimes seen the effect of sycophancy, self-seeking men of that majority to secure the elevation of some friend or tool of their own to that office, from which he can render them services of the most substantial and acceptable sort. But, although these intrigues have occasionally resulted in the election of a man of insignificant parts and doubtful character, the choice has usually fallen upon some representative party man of well-known antecedents and avowed opinions: for the House cannot, and will not willingly, put up with the intolerable inconvenience of a weak Speaker, and the majority are urged by self-respect and by all the weightiest considerations of expediency, as well as by a regard for the interests of the public business, to place one of their accredited leaders in the chair. If there be differences of opinion within the party, a choice between leaders becomes a choice between policies and assumes the greatest significance. The Speaker is expected to constitute the Committees in accordance with his own political views, and this or that candidate is preferred by his party, not at all because of any supposed superiority of knowledge of the precedents and laws of parliamentary usage, but because of his more popular opinions concerning the leading questions of the day.

Mr. Speaker, too, generally uses his powers as freely and imperatively as he is expected to use them. He usually himself acts as the legislative chief of his party, organizing the Com-

Committees in the interest of time or that policy, not so entirely in
 on the side as one who does something of which he is ashamed, but
 openly and confidently as one who does his duty. Nor does his
 official connection with the Committees cease upon their ap-
 pointment. It is his care to facilitate their control of the
 business of the House, by recognizing during the consideration
 of a report only those members with whom the reporting commit-
 tee-man has agreed to share his time, and by keeping all who ad-
 dress the House within the strictest letter of the Rules as to
 the length of their speeches, as well as by enforcing all those
 other restrictions which forbid independent action on the part
 of individual members. He must see to it that the Committees
 have their own way. In so doing he is not exercising arbitrary
 powers which circumstances and the habits of the assembly ren-
 der him safely to arrogate; he is simply enforcing the plain
 letter and satisfying the evident spirit of the Rules.

A student of Roman law and institutions, looking at the
 Rules of the House of Representatives through a glass unassus-
 toned to search out aught but antiquities, might be excused for
 claiming that he found in the customs of the House a striking
 reproduction of Roman legislative methods. The Roman assembly,
 he would remind us, could not vote and debate at the same time;
 it had no privileges of amendment, but had to adopt or reject
 a whole or reject it as a whole; and no private member had the
 right to introduce a bill, that being the exclusive prerogative

of the magistrates. But, though he might establish a parallel satisfactory to himself between the magistrates of Rome and the Committees at Washington, and between the undebatable, unamendable laws of the ancient, and the undebated, unamended laws of the modern republic, he could hardly find in the later system that compensating advantage which scholars have noted as giving to Roman legislation a clearness and technical perfection such as is to be found in none of the modern codes. Since Roman laws could not be amended in their passage, and must carry their meaning plainly to the comprehension of the commons, clear and brief drafting was cultivated as of the first necessity in drawing up measures which were first to gain popular approval and then to succeed or fail in accomplishing their ends according as they proved workable or impracticable.

No such comparison of our own with other systems can, however, find any favour in the eyes of a certain class of Americans who pride themselves upon being nothing if not patriotic, and who can consequently find no higher praise for the peculiar devices of Committee government than that they are our own invention. "An ill-favoured thing, sir, but mine own." No one will readily believe, however, that Congress-men - even those of them who belong to this pitiful class - cherish a very low regard for the discipline to which they are now daily subjected. As the accomplished librarian of Congress has declared "the general conviction may be said to exist, that, under the

great control over legislation in current business by the Speaker, and by the powerful Committee on Appropriations, combined with the rigor of the Rules of the House, there is less and less opportunity for individual members to make any influential mark in legislation. Independence and ability are required under the tyranny of the Rules, and practically the power of the popular branch of Congress is concentrated in the Speaker and a few - very few - expert parliamentarians." And of course members of Congress see this. "We have but three forces in this House", exclaimed a loose member from the Pacific coast, "the Brahmins of the Committee of Ways and Means - not the brains but the Brahmins of the House - ; the white-butto mandarins of the Appropriations Committee; the dignified oligarchy called the Committee on Rules; the Speaker of the House; and the illustrious gentleman from Indiana." Naturally all men of independent spirit chafe under the arbitrary restraints of such a system, and it would be more philosophical to conclude that they let it stand because they can devise nothing better than that they adhere to its inconsistent practices because of their admiration for it as an American invention.

However that may be, the number of those who ignore the Rules is greater than the number of those who strive to reform them. One of the most striking of the present abuses in the hasty passage of bills under a suspension of the Rules, a device "by means of which", says Senator Hoar, "a large proportion, perhaps



the majority, of the bills which pass the four and a half hours through." This practice may be very objectionable, but for following further Mr. Hoar's own words: "Every Monday afternoon, Monday, Tuesday, and at any time during the last ten days of a session, motions to suspend the rules are in order. At these times any member may move to suspend the rules and pass any proposed bill. It requires two-thirds of the members voting to adopt such a motion. Upon it no debate or amendment is in order. In this way, if two-thirds of the body agree, a bill can by a simple vote, without discussion and without change, pass through all the necessary stages, and make a law, so far as the House of Representatives can accomplish it; and in this mode hundreds of measures of vital importance receive, near the close of an exhausting session, without being debated, amended, printed, or understood, the constitutional assent of the representatives of the American people".

One very obvious comment to be made upon habits of procedure so palpably pernicious is, that nothing could be done in the House under Rules which replace individual action with general stringency. Then, too, the mills of the Constitution are ground to grind slowly, and a very quiet and easy way of getting rid of a mass of business is to let particular bills, of a generally innocent meaning, or doubtful intent, run through without a dissent. There must be some outlet, too, for the mass of matters of delayed and accumulated business which are piled up at the

the end of a session. Many more. Therefore, it is not surprising that the House at an important moment and on many a few occasions has set out a prima facie case for the action, by which, but at all events, always secured a suspension of the Purge.

To speak very plainly, it is wonderful that in this country a matter of government legislation is not often as it is in a few countries more than it actually is. The infinitely varied and various interests of fifty millions of active people would be sure enough to be organized and active, one would think, were parties efficiently organized in the pursuit of definite, steady, consistent policies and it ^{is} therefore simply amazing to find how few, outrageous and fatally foolish, how few bad or disastrous, things have been done by means of our disintegrated methods of legislation. The Committees of the House to which the principal topics of legislation are allotted number more than thirty. We are ruled by a score and a half of "little legislatures." Our legislation is conglomerate, not homogeneous. The doling of one bill to one Congress is foolish in pieces and wise in spots. They can never, except by accident, have any common features. None of the Committees are made up of strong men, the majority of them of weak men; and the weak are weak, first, to do the work. The country can get the counsel and guidance of its ablest legislators only upon one or two subjects; upon the rest it must be content with the important services of the feeble. Only a very small part of its best legislative talent is available.

the system provide for a more complete and effective control of the...
 and the... of it... together... of...
 could be... interests... in the... of...
 than... of... the... of...
 the... of... the... of...
 It might... the... of...
 one... to attempt the....

It was probably some... as... which...
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 an... is not quite....

... Committee Government, but I do not think that the
 ... the limitation of the jurisdiction of the Executive
 ... so far as possible, shown - by John Stuart Mill, who
 is too much liable to be quite as good as the
 unique as so many people would like to believe. There is, in Mr.
 Mill, a distinction between the function of a law-maker, for
 which a numerous popular assembly is really unfit, and that
 of getting good laws made, which is its proper duty and cannot
 be satisfactorily fulfilled by any other authority"; and there
 is, consequently, "need of a legislative commission, as a permanent
 part of the constitution of a free country; consisting of
 a small number of highly-trained political minds, on whom, when
 parliament has determined that a law shall be made, the task of
 making it should be devolved; parliament retaining the power of
 passing or rejecting the bill when drawn up, but not of altering
 it otherwise than by sending proposals and amendments to be dealt
 with by the commission."* It would seem, as I have said, that Com-
 mittee Government is one form of the effort, now made by all
 self-governing peoples, to set up a satisfactory legislative
 commission somewhat after this order: and it may be said to be
 as if the proposed Executive Committee was a selection of mem-
 bers to that form of the effort now typified by the legisla-
 tive functions of the British Cabinet. It is not, of course,
 to be inferred that the forty-eight representatives mentioned in the

*Autobiography, pp. 264-5.

House of Representatives always answer the purpose, and the
 House wants to get good laws made, or that one of the objects
 is arrival of the bill, and of the bill-train, and the bill
 but everybody says that to say that they fail, except of course
 in the ideal world, is a total loss to the Government.

In sum, that our Committee, composed of the ordinary people
 of the features of the British system, is made up of members of
 the Crown, the Cabinet, and a great many amongst the leaders of
 the parliamentary majority and not only as advisers of the
 sovereign, but also as the great Standing Committee of "legisla-
 tive jurisdiction" of the House of Commons, guiding its business
 and directing its general matters of legislation, I mean, of
 course, that both systems represent the same essential of
 setting apart some small body, or bodies, of legislative guides
 through whom a "bill" may get laws made. The difference
 between our device and the British is that we have a Standing
 Committee, drawn from both parties, for the consideration of each
 topic of legislation, whereas our Legislature consists of a
 single Standing Committee composed of the members of the legisla-
 ed as the leaders of the party, and in the state of the
 same at the same time as the political heads of the executive
 departments of the Government.

The British system is affected by the fact that the ef-
 fort is made in the House of Commons, and in the House of
 Representatives in the government of the country, to make the

merits a source of instability. Our ministers are elected, but are responsible to a stable majority. The majority in the Commons is not responsible to all the Cabinet. It is this feature of present organized party government, namely the responsibility for legislation is shifted upon the majority, which has been already pointed out, gives to the Minister and to the Parliament an interest altogether denied to the proceedings of Congress. All legislation is made a contest for party supremacy, and if legislation goes wrong, or the majority becomes discontented with the course of policy, there is nothing for it but that the ministers should resign and give place to the leaders of the Opposition, unless a new election should produce for them a recruited following. Under such a system party discipline is out of the question; debate is a primary necessity. It brings the representatives of the people and the ministers of the Crown face to face. The principal measures of all kinds originate with the ministers and embody the policy of the administration. Under the reports of our standing committees, which are intended to be similar to the Digests of the more sensible bills introduced by private members, the bills introduced into the House of Commons by the Cabinet are of the definite character of the government, and the fact that the Ministry is made up of the leaders of the majority and represents always the principles of the party makes the Government more anxious to be a source of stability than Congress.



that government is a device for bringing the executive and legislative branches into harmony and cooperation without uniting or confusing their functions. It is as if the Commons and the Crown deputized its leaders to act as the advisers of the Crown and the superintendents of the public business, in order that they might have the advantage of administrative knowledge and training in advising legislation and drafting bills to be submitted to Parliament. This arrangement enlists the energies in behalf of successful administration without giving the ministers any power to coerce or arbitrarily influence legislative action. Each session of the Lords and Commons becomes a grand inquest into the affairs of the empire. The two estates sit as if were in committee on the management of the public business - sit with open doors and spare themselves no fatigue in searching for every interest represented a full, fair, and impartial hearing.

It is evident why public debate is the very heart of life to such a system. The Ministry's tenure of office depends upon the success of the legislation they urge. If any of their proposals are negatived by Parliament, they are bound to accept their defeat as an intimation that their administration is no longer acceptable to the party they represent and are expected to resign, or to appeal, if they prefer, to the country for its verdict, by excluding themselves from office and calling for a dissolution of Parliament and a new writ for a new election. It

is, consequently, inevitable that the Ministry should be constantly subjected to the most bitter and attacks and to the least criticisms of the Opposition, and should be ready day after day to be put to the task of vindicating their course and establishing anew their claim to the confidence of their party. To shrink from discussion would be to confess weakness; to suffer themselves to be worsted in discussion would be seriously to imperil their power. They must look to it, therefore, not only that their policy be defensible, but that it be admirably defended also.

As might be expected, then, the Ministry seldom find the task of leading the House an easy one. Their plans are kept under an unceasing fire of criticism from both sides of the House; for there are independent sharpshooters behind the ministers as well as heavy batteries in front of them; and there are many amongst their professed followers who give aid and comfort to the enemy. There come over and over again showers of stinging questions, too, from friends and foes alike - questions great and small, direct and indirect, pertinent and impertinent, concerning every detail of administration and every tenet of policy.

But, although the initiative in legislation and the general direction of the business of Parliament are the undisputed prerogatives of "the government" - as the Ministry are called - they are not, of course, all the time of the House at their disposal. During the session, certain days of each week are set apart for

the introduction and debate of bills, been the rule of the House, and, at the opening of the session, draw lots to determine the precedence of their bills or petitions on the orders of the day. If any draw, those who get last choose of time for the session near its end, and private members' days begin immediately thereafter, general measures, before their opportunity has come, and must content themselves with hoping for better fortune next year; but time is generally found for a very fair and full consideration of a large number of private members' bills, and no member is denied a chance to air his favourite opinions in the House or to try the patience of his fellow-members by annual repetitions of the same proposition. Private members generally find out by long experience, however, that they can exert a more certain influence upon legislation by pressing arguments to government schemes, and can effect more immediate and satisfactory results by keeping the Ministry constantly in mind of certain phases of public opinion, than they could hope to exert or effect by themselves introducing measures upon which their party might hesitate to unite. Living as he does under a system which makes it the Ministry's wisest policy to allow the utmost freedom of debate, each member can take as prominent a part in the proceedings of the House as his abilities, and his title to take. If he have anything which is not easily forgotten to say, he will have repeated opportunities to say it: for the speaker, though down only the floor and the benches for the sake of time,

The House of Commons as well as our House of Representatives has its committees and even its standing committees, but they are of the old-fashioned sort which merely investigate and report, not of the new American type which originate and conduct legislation. Nor are they appointed by the Speaker. They are chosen with care by a "Committee of Selection" composed of members of both parties. The Speaker is kept carefully apart from politics in all his functions, acting as the impartial, judicial president of the body. "Dignity of presence, courtliness of manner, great physical endurance, courage and impartiality of judgment, a consummate tact, and familiarity, born of life-long experience, with the written and unwritten laws of the House" - such are the qualities of the ideal Speaker. When he takes the chair he turns his back on partisan alliances and serves both parties alike with even hand. Such are the traditions of the office that its occupant feels himself as strictly bound to unbiassed judgment as is the chiefest judge of the realm; and it has become no uncommon thing for a Speaker of total ability to preside during several successive Parliaments to, whatever the party to whose suffrages he originally owed his elevation, remains in power or no. His political principles do not affect his fitness for judicial functions.

The Commons in session present an interesting picture. Constrained by their habits of debate to sit in quarters suitable for the purpose, they crowd together in a hall of somewhat cramped

of proportions. It seems a place fit for him to hunt for votes. The cushioned benches on which the members sit rise in erect series on either side of a wide central aisle which they face. At one end of this aisle is raised the speaker's chair, behind and in front of which, including the spaces of the aisle, are the desks of the wigs and gowned clerks. On the front benches nearest the speaker and to his right sit the cabinet ministers, the leaders of the government; opposite, on the front benches to the speaker's left, sit the leaders of the Opposition. Behind and to the right of the ministers gather the majority, behind and to the left of their leaders, the minority. Above the central benches and over the outer aisles of the House, beyond "the bar," hang deep galleries from which the outside world may look down upon the eager contests of the two parties which thus sit face to face with only the aisle between them. From these galleries the fortunate listener to the words of leaders whose names fill the ear of the world.

The organization of the French Assembly is in fact very similar to that of the British Commons. Its leaders are the executive officers of the government and are chosen from the ranks of the legislative majority by the President of the Republic such as English Cabinets are chosen by the monarch. They too are responsible for their policy and the acts of their administration to the Chamber which they lead. They, like their British prototypes, are the executive counterparts of

the legislative body, and upon its will to give office to
its will.

It cannot be said, however, that the proceedings of the French
Assembly were closely resembled one of the United States. In
the Hall of the Deputies there are no close benches and no face
each other and no two homogeneous parties to stand for the bus-
tary. There are parties and parties, factions and factions, cot-
eries and coteries. There are Bonapartists and legitimists,
Republicans and Classicists, stubborn reactionists and bold
radicals, stolid conservatives and vindictive destructionists.
One hears of the Centre, the Right Centre and the Left Centre,
the Right, the Left, the Extreme Right and the Extreme Left. Some
of these are, of course, mere factions, mere groups of disorganised
ables; but several of them are, on the other hand, numerous and
powerful parties upon whose mutual attractions and repulsions
depend the formation, the authority, and the duration of Cabinets.

Of course, too, there is in a body so large a great deal
of combustible material which the slightest spark of anger suffi-
ces to kindle into a sudden blaze. The Assembly would not be
French if it were not always eruptive and somewhat unpropitious.
Absolute turbulence is so profound a contagion in its assembly
that a very simple and quietive apparatus is provided
for its control. Should the Deputies lose their heads and start
up and below the Chamber, the President may put on his hat, and
by that sign, unless calm is instantly restored, the sitting is

Journal for one hour, at the expiration of which time it is to be expected that the members will present a number of motions in a regular form of bill. There are also a number of resolutions proposed in the Chamber which will have to be dealt with at first on a party level; but when an order of business has been agreed to differ from some of the practices of our own House of Representatives in form rather than in essence. In France greater freedom of speech is allowed individual members than is possible under Committee government, but recognition is not given to just any one who first gets the floor and utters the presidential officer's name, as it is in the House of Commons, where even if the ministers are accorded any right of precedence in public speaking. Those who wish to speak upon any particular question "inscribe" their names beforehand on a list in the keeping of the President, and the discussion is usually confined to those members who are "inscribed." When this list has been examined, the President takes the sense of the Chamber as to whether the debate shall be closed. The Chamber need not wait, however, to hear all the gentlemen who have put their names on the list. If "une portion notable" of at least a score of the inscribed do not think it self-sufficiently informed before the President is informed they have spoken, it may be decided that the debate be brought to an end. Of course even a "portion notable" will not be called if it come from only a few individuals, and even "une portion notable" may not interrupt a speaker with "un parti" or "un parti" and

for a while we should have had the same number of votes, but with the same party a further increase in the "blôtural" would not for the "blôtural" is not fatal: one speaks out for or against it, but none is its friend. Where it meets with serious resistance, it is expected to go through of its own weight. From the "blôtural", however, must give way if a large majority of the deputies do not wish to speak: for a minister must always be heard, and after he has spoken, moreover, there must be at least allowed one speech in reply. Neither can the "blôtural" be pronounced unless a majority of the deputies are present; and in case of doubt as to the will of the Chamber in the matter, after two votes have been taken without eliciting a full-voiced and indubitable assent, the discussion is tacitly suffered to proceed.

These rules are not quite so compulsory and inflexible as are those which sustain the government of our Standing Committee, nor do they seem quite so separate a ground for the effective government of rampant deputies: in their moments of wildest excitement; but they are somewhat more rigid than our own. At least to find under a system of ministerial responsibility, the purity of which they are regarded as directed toward a free circulation of debate. They are meant for a body of public men, its a law firm to account, a body which is often drawn together, regarding to its feet by the words of a public speaker, which is the will of the majority to stand by the law.

is now being blown about by every wind of doctrine, than in its place, that of direct and unobscured truth. It is a liquid, which does not flow from the source, where it is generated to any part of our public assembly, but from the tribune, which is a conspicuous structure erected near the desks of the President and secretaries - a high, cylindrical edifice resembling those tall, narrow, quadrilateral towers, which are still to be seen in some of the oldest of our Arabian churches. And, since deputies must gain their way to the top before they may speak, there are said to be many excellent cases for this place of advantage. Sometimes, indeed, any unseemly scuffle takes place when several deputies, all equally eager to mount the orated stand, reach its narrow steps at the same moment and contest the privilege of precedence - especially if their friends rally in numbers to their assistance.

The British House of Commons and the French Chamber, though so unlike in their elements and composition, their mode of organization, and their mode of procedure, are easily seen to be allied in constitutional significance, being made close kin by the principle of Cabinet government which they both recognize and let apply in its fullest efficacy. In both the executive and legislative are composed of the chief officers of the executive department, and constituted at once the holders of laws, and the responsible heads of administration - a link which connects the legislative and executive branches of the government. In the British

part these two systems present a strong contrast to our own. The principle underlying both, though, I should think, is that government under a monarch is a matter of responsibility to leaders, bridging legislature and executive side by side in the cabinet but each independently answerable, referring to each other, Congress with the department but not its departments, it only has direct contact by party majorities, checking party action by a complex legislative machinery of two secret and all too separate, non-ministerial Committees. The English take their parties straight, we take ours mixed.

There is another aspect, however, in which all three of these systems are alike. They are alike in their essential purpose, which is to enable a mass-meeting of representatives to superintend administration and get good laws made. Congress does not deal so directly with our executive as do the French and English parliaments with theirs, and cannot, therefore, control it quite so effectually; there is a great deal of friction amongst the many wheels of Committee Government; but in the long run Congress is quite as omnipotent as either the Chamber of Deputies or the House of Commons; and, what is more, the secretaries with functions purely legislative, or civil, or both with functions half legislative, half executive, we have one for each another of something like Mr. Hall's "Representative Government."

III

THE HISTORY OF THE FIFTEENTH CENTURY.

By the Rev. and Hon. Sir John Lubbock, Bart.

"The highest works of citizenship require three things - great power in the minister, genius to counsel and support his enlightenment in Parliament to weigh and deliberate upon his plans." - Prof. Seeley.

"When men are not acquainted with each other's principles, nor experienced in each other's talents, nor at all practiced in their mutual habits and dispositions by joint efforts of business; no personal confidence, no friendship, no common interest subsisting among them; it is evidently impossible that they can act a public part with uniformity, perseverance, or efficiency." - Burke.

"It requires", says Mr. Bagehot, "a great deal of time to have opinions", and, if one is to judge from the legislative experience of some very enlightened nations, it requires more time to have opinions about finance than about any other subject. At any rate very few nations have found time to have correct opinions about it. Governments which never consult the governed are usually content with very scrubby, short-sighted methods of taxation, with any methods, indeed, which can be made to yield the desired revenues without much trouble; and the agents of a self-governing people are quite sure to be too busy with elections and party management to have leisure to improve upon the practices of autocrats in regard to this important part of administration. And yet this subject of finance seems to be interesting enough in a way. It is one of the corner-stones of our history that, ever since long before we came westward across the ocean, we have been ready to fight about taxation than a-

about any other one thing, than about a good many of us things put together, indeed. There are several sally bloody spots in the financial history of our race. It could probably be shown, however, if one cared to take time to show it, that it is easy to get vexed about mismanagement of the finances without knowing how they might be better managed. What we do not like is that we are taxed, not that we are stupidly taxed. We do not need to be political economists to get angry about it; and when we have gotten angry about it in the past our rulers have not troubled themselves to study political economy in order to find out the best means of appeasing us. Generally they have simply shifted the burden from the shoulders of those who complained and were able to make things unpleasant, to the shoulders of those who might complain, but could not give much trouble.

Of course there are some taxes which are much more hateful than others and have on that account to be laid more discreetly. All direct taxes are heartily disliked by everyone who has to pay them, and as heartily abused, except by those who have never owned an ounce of an inch of property and have never seen a tax bill. The heart of the ordinary citizen regards them with an unkind regard. They are so stupidly enforced and perceptibly in their details. They soften their execution with not a grain of consideration. The tax-collector, consequently, is never esteemed a low-down man. His pretensions are too slight, and his powers too obnoxious. He comes to us, not with a complaint, but

with almost. His requisitions always leave our pockets lighter and our hearts heavier. We cannot for the life of us dare thinking, as we fold up his receipt and put it away, that government is much too expensive a luxury as nowadays conducted, and that that receipt is incontestable documentary proof of undeniable extortion. What we do not realize is, that life would be robbed of one of its chief satisfactions if this occasion of getting things were to be taken away.

Indirect taxes, on the other hand, offend scarcely anybody. It is one of the open secrets of finance that in almost every system of taxation the indirect overerow the direct taxes by many millions and have a knack for laying on the small resources of insignificant persons which direct taxes have never learned. They know how to coax pennies out of poor people whose names have never been on the tax-collector's books. But they are very sly and have at command a thousand successful disguises. High or complicated tariffs afford them their most frequent and abundant opportunities. Most people have very short thoughts, which do not extend beyond the immediate perception of direct vision, and so do not recognize the hand of the government in the high prices charged for all the sugar. Very few of us taste the tariff on our sugar and I suppose that even very thoughtful toppers do not perceive the means to be in their whiskey. There is little wonder that financiers have always been nervous in dealing with direct, but confident and free of mind



or laid indirect taxes.

It may, therefore, be accounted one of the circumstances which our federal government possesses over the governments of the States that it has always in ordinary times derived its entire revenue from prompt and facile indirect taxes, whilst the States have had to live upon the tardy and herculean income derivable from a direct levy. Since we have had to support two governments it has been wisely resolved to let us, as long as possible, feel the weight of only one of them - and that the one which can get at us most readily and at the same time be most easily and promptly controlled by our voters. It is a plain, convenient, and on the whole satisfactory division of domain, though the responsibility which it throws on State legislatures is more apt to pinch and prove vexatious than is that which it lays upon Congress. Mr. Gradstone, the greatest of English financiers, once playfully described direct and indirect taxes as two sisters - daughters of Necessity and Invention - "differing only as sisters may differ, - - - the one being more free and open, the other somewhat more shy, reticent, and diffident," and frankly owned that, whether from "a law of necessity or not", as a member of the House of Commons, "though it not only allowed, but even urged the duty, to pay his addresses to the King." But our Commissioners of the Inland Revenue, the members of the Committee of Ways and Means, and those by other traditions of courtship, and courtship, and courtship.

is susceptible to the whims of the "hunts and foreman" of the aristocracy. There has been no content, even if we go as far as a little way and, in the direction, to the younger.

I suppose that we can ever found the path of finance, especially and perhaps than here our national consists. If it is to be compared with those of European and English finances it is plain to see that their lines have fallen in pleasant places. From almost the very first they have had boundless resources to draw upon, and they have certainly of late days had free leave to spend limitless revenues in what extravagance they pleased. It has come to be infinitely more trouble to spend our enormous national income than to collect it. The chief embarrassments have arisen, not from deficits, but from surpluses. It is very fortunate that such has been the case; because for the best management of the finances of a nation, where revenue is scant and economy imperative, it is absolutely necessary to have financial administration in the hands of a few, highly-trained and skilful men acting subject to a very strict responsibility, and this is just what our committee system does not allow. As in other matters of legislation, so in finance we have many masters acting under a very dim and ineffectual accountability. Of course under such administration our financial policy can always be unstable and now often stays, ready for the pounce of ministerial caprice, for we have no one who is superintending the extravagance, and irresponsible, fact-

these methods of taxation and expenditure must work, I admit
 here. The only difference is that during such times taxation
 is not so sensitive to the ill effects produced by excessive
 debt. Mismanagement is not generally blamed until a great many
 people have mismanaged it by being caught by it. Wanting, how-
 ever, it is none the less interesting and important to study our
 government with a view to gauging its qualities and measuring
 accurately its capabilities for good or bad service; and the
 study can doubtless be much more dispassionately conducted be-
 fore we have been seriously hurt by foolish, unsteady adminis-
 tration than afterwards. The forces of the wind can be resist-
 ed with much more readily while they are blowing only a gale
 than after they have thrown a hurricane upon us.

The national income is controlled by one committee of the
 House and one of the Senate; the expenditures of the government
 are regulated by fifteen committees of the House and five of
 the Senate; and the currency is issued for by two committees of
 the House and one of the Senate; by all of which it appears
 that the financial administration of the country is in the
 hands of twenty-four committees of Congress - a number of
 numerous small and great functions, quite complex enough to be
 worth careful study, perhaps too complex to be studied directly
 without an aiding knowledge of some superior state of affairs
 it may be compared. Our own budget may be more or less follow-
 ed through all the vicissitudes of committee scrutiny and de-

the original features of some other system after one has tried some other but at through the simpler processes of some other system of government.

The British system is perhaps in its main features the simplest in existence. It is, besides, the pattern after which the financial systems of the chief governments of Europe have been copied, and would be very courses in a course especially so that by prefacing the study of other systems by a careful examination of the British in its present form one may start with the great advantage of knowing the characteristics of what may fairly be called the parent stock. Parliament, then, in the first place, simply controls, it does not originate, measures of financial administration. It acts through the agency and under the guidance of the ministers of the Crown. Early in each annual session "the estimates" are submitted to the Commons, which, after hearing the statements sits in Committee of the Whole House known as Committee of Supply. The estimates come before the House in truly formidable shape. Each department presents its estimates in a huge quarto volume "cramped with figures and minute entries of moneys voted for the forthcoming year." But the House itself does not have to digest this various and com-

* "The National Budget" (English Citizen, March, 1911). I want I have to say of the British system, I follow, pp. 146-149, and another volume of the same series, entitled "Central Government," pp. 26-47, contains quotations bearing from the latter.

and the course of business. The discussion is done in the first instance by the official leaders of the House. "The minister in charge of the naval and military services lay before the Committee [of Supply] their respective statements of the sums which will be required for the maintenance of those services, and somewhat later in the session a common estimate for the various civil services is submitted also." These statements are, as it were, condensed synopses of the details of the quarters and are made with the object of rendering quite clear to the House, sitting under the informal rules of Committee, the policy of the expenditures proposed and the correctness of the calculations upon which they are based. Any member may ask what pertinent questions he pleases of the minister who is making the statement, so that nothing needing elucidation may be passed by without full explanation. After the statement has been completed to the satisfaction of the Committee, a vote is taken, at the motion of the minister, upon each item of expenditure, and the duties of the Committee of Supply have been performed.

The estimates are always submitted "on the collective responsibility of the whole Cabinet." "The army and navy estimates have, as a rule, been considered and settled in Cabinet Council before being submitted to the House; and the collective responsibility of the Ministry is in that case, therefore, not technical merely, but substantial." If the estimates are rejected and rejected by the Committee, the ministers of course, 1887

They "bear of acquiescence in a refusal on the part of Parliament to sanction the expenditure which" they "have committed to the responsibility of the Crown's Treasury for the support of the Civil Government, and the maintenance of the public credit of the Empire." The votes in Committee of Supply are, therefore, vital in the history of every administration, being taken as sure indexes of the amount of confidence placed by the House in the government.

Deary

But the votes in Committee of Supply are only the first steps in Parliament's annual supervision of the public finances. They are simply the spending votes. In order to consider the means by which money is to be raised to meet the outlay sanctioned by the Committee of Supply, the House resolves itself into Committee of the Whole under the name of the Committee of Ways and Means. It is to this Committee that the Chancellor of the Exchequer submits his budget every year, on or soon before the fifth of April, the date at which the national accounts are made up, the financial year closing on the thirty-first of March. In order to prepare his budget the Chancellor must of course have a early knowledge of the estimates made for the various services. Several months, therefore, before the estimates are laid before the House in Committee of Supply the various departments are called upon by the Treasury to send in statements of the sums required to defray the expenses of the current year, and these estimates are carefully examined by the Chancellor, with

view not only to exercising his duty of keeping the public affairs within the limits of secrecy, but also to ascertaining how much revenue he will have to secure in order to meet the proper expenditure contemplated. He must balance estimated needs over against estimated resources and advise the House in Committee of Ways and Means as to the measures by which taxation is to be made to afford sufficient revenue. Accordingly he calls on the aid of the permanent heads of the revenue departments who furnish him with "their estimates of the public revenue for the ensuing year upon the hypothesis that taxation will remain unchanged.

Having with such aids made up his budget, the Chancellor goes before the Committee of Ways and Means prepared to give a clear history of the financial administration of the year just closed and to submit definite plans for adjusting the taxation and providing for the expected outlays of the year just opening. The precedents of a wise policy of long standing forbid his proposing to raise any greater revenue than is absolutely necessary for the support of the government and the maintenance of the public credit. He therefore never asks the Committee to lay taxes which promise a considerable surplus. He seeks to obtain only such an overplus of income as will secure the government against those slight errors of underestimation of probable expenses or of overestimation of probable revenue as the most prudent of administrations is liable to make. If the estimated

revenue considerably exceed the estimated expenses, he proposes such remissions of taxation as will bring the balance as near equality as prudence will permit; if the anticipated expenses run beyond the figure of the hoped-for revenue, he asks that certain new taxes be laid on that certain existing taxes be increased; if the balance between the two sides of the forecast account shows a pretty near approach to equilibrium, so the scale of revenue be but a little ^{the} heavier of the two, he contents himself with suggesting such a readjustment of existing taxes as will be likely to distribute the burden of taxation more equitably amongst the tax-paying classes or facilitate improved collections by simplifying the more complex methods of assessment and imposition.

Such is the budget statement to which the House of Commons listens in Committee of Ways and Means. This Committee may deal with the proposals of the Chancellor of the Exchequer with somewhat freer hand than the Committee of Supply may use in passing upon the estimates. The Ministry is not so stiffly insistent upon having its budget sanctioned as it is upon having its proposed expenditures approved. It is understood to pledge itself to ask for no more money than it honestly needs, but it simply advises with the House as to the best way of raising that money. It is punctiliously particular about being supplied with the funds it asks for, but not quite so exacting as to the ways and means of supply. Still, the Ministry can stand if

the budget be rejected out of hand or if its demands for the means of meeting a deficiency be met with a flat refusal, no alternative means being suggested by the Opposition. Such votes would be distinct declarations of a want of confidence in the Ministry and would of course force them to resign.

The Committee of Ways and Means, then, carries out, under the guidance of the Chancellor of the Exchequer, the resolutions of the Committee of Supply. The votes of the latter Committee, authorizing the expenditures mapped out in the estimates, are embodied in "a resolution proposed in Committee of Ways and Means for a general grant out of the Consolidated fund towards making good the supply granted to Her Majesty;" and that resolution, in order that it may be prepared for the consideration of the House of Lords and the Crown, is afterwards cast by the House into the form of a Bill, which passes through the regular stages and in due course becomes law. The proposals of the Chancellor of the Exchequer with reference to changes in taxation are in like manner embodied in resolutions in Committee of Ways and Means and subsequently, upon the report of the Committee, passed by the House in the shape of Bills. "Ways and Means Bills" generally pass the Lords without trouble. The absolute control of the Commons over the subjects of revenue and supply has been so long established that the upper House would not now dream of disputing it; and, as the power of the Lords to supply a privilege to accept or reject a money bill is a mere, unmeaning

right to amend, the peers are wont to let their bills go through without much scrutiny.

But so far I have spoken only of that part of Parliament's control of the finances which concerns the future. The "Ways and Means Bill" provides for coming expenses and a prospective revenue. Past expenses are supervised in a different way. There is a double process of audit by means of a special Audit Department of the Civil Service, which is, of course, a part of the permanent organization of the administration, having it in charge "to examine the accounts and vouchers of the entire expenditure" and a special committee nominated each year by the House "to audit the Audit Department." This committee is usually made up of the most experienced business men in the Commons, and before it "all the accounts of the completed financial year are passed in review." "Minute inquiries are occasionally made by it into the reasons why certain items of expenditure have occurred; it discuses claims for compensation, grants, and special disbursements, in addition to the ordinary outgoings of the department, mainly, to be sure, upon the information and advice of the departments themselves, but still with a certain independence of view and judgment which must be valuable."

The strictness and explicitness with which the public accounts are kept of course greatly facilitates the process of audit. The balance which is struck on the thirty-first of every March is of the most definite sort. It leaves only a few est-

tual receipts and disbursements of the completed fiscal year. At that date all unexpended credits lapse. If the expenditure of certain sums has been sanctioned by parliamentary vote, but some of the granted amounts remain unspent when April 30th arrives, they can be used only after a report by the Comptroller. There are, therefore, no universal accounts to obscure the view of the auditing authorities. Taxes and credits have to be paid definite periods, and there are ^{no} arrears or unexpended balances to confuse the book-keeping. The great advantages of such a system in the way of checking extravagances which would otherwise be possible may be seen by comparing it with the system in vogue in France, in whose national balance-sheet "arrears of taxes in one year overlap with those of other years" and "credits of justice credits new", so that it is said to be "always three or four years before the nation can know what the definitive expenditure of a given year is."

For the completion of this sketch of financial administration under the Customs it is of course necessary to add a very distinct statement of what I may call the accessibility of the financial officers of the government. They are always present to be questioned. The Treasury department is, as befits its importance, exceptionally well represented in the House. The Chancellor of the Exchequer, the working chief of the department is invariably a member of the Commons, and can be called to account by interrogation or motion with respect to all matters of

"Treasury control" - with respect, that is, to well-nigh "the whole sphere of the discipline and economy of the Executive Government": for the Treasury has wide powers of supervision over the other departments in all matters which may in any way involve an outlay of public money. "And not only does the invariable presence of the Chancellor of the Exchequer in the House of Commons make the representation of that department peculiarly direct, but, through the Secretary of the Treasury, and, with respect to certain departmental matters, through the Junior Lords, the House possesses peculiar facilities of ascertaining and expressing its opinion upon the details of Treasury administration." It has its responsible servants always before it and can obtain what glimpses it pleases into the inner workings of the departments which it wishes to control.

It is just at this point that our own system of financial administration differs most essentially from the systems of England, of the Continent, and of the British colonial possessions. Congress does not come into direct contact with the financial officers of the government. Executive and Legislature are separated by a hard and fast line which sets them apart in what was meant to be independence but has come to amount to isolation. Correspondence between them is carried on by means of written communications which like all formal writings are vague, or by means of private oral talks of officials in committee-rooms to which the whole House can not be admitted.

No one who has had occasion to come to Leeds to a trial court
 case, it is to conceal the essential truth under the apparently
 candid and all-disclosing phrases of a voluminous and porten-
 tuous report, how different those answers are from those given
 with the pen from a private office from those given in court
 with the tongue when the speaker is looking an adversary in the
 face. It is sufficiently plain, too, that resolutions which call
 upon officials to give testimony before a committee are a much
 clumsier and less efficient means of eliciting information than
 is a running fire of questions addressed to ministers who are
 always in their places in the House to reply publicly to all in-
 terrogations. It is reasonable to conclude, therefore, that the
 House of Representatives is much less intimately acquainted
 with the details of federal Treasury affairs than is such a
 body as the House of Commons with the particulars of manage-
 ment in the treasury which it oversees by direct and constant com-
 munication with the chief treasury officials.

This is the greater drawback in our system because, as a fur-
 ther result of its complete separation from the executive, Con-
 gress has to originate and perfect the budget for itself. It
 does not hear the estimates translated and explained in con-
 densed statements by skilled officials who are able at their
 business, because it is to their interest, to know thoroughly
 what they are talking about; nor does it have the benefit of
 the guidance of a trained, practical financial expert, as it has to de-

for the question of revenue. The Treasury is not acquainted with reference to problems of taxation, and policies of such kind are disposed of with no suggestions from the department beyond a summarized statement of the amounts ^{needed} to meet the regular expenses of an ordinary fiscal year.

In federal book-keeping the fiscal year closes on the thirtieth of June. Government's before that year expires, however, the estimates for the twelve months which are to ensue are made ready for the use of Congress. In the autumn the department and bureau of the public service reckons its peculiar needs for the fiscal year which is to begin on the following first of July (making explanatory notes, and here and there an interjected prayer for some unwanted expenditure, amongst the columns of figures) and sends the resulting document to the Secretary of the Treasury. These reports, including of course the estimates of the various bureaux of his own department, the Secretary has printed in a thin quarto volume of some three hundred and twenty-five pages, which, for some reason or other not quite apparent, is called a "Letter from the Secretary of the Treasury transmitting estimates of Appropriations required for the fiscal year ending June 30th., - -", and which boasts a very distinct arrangement under the heads "Civil Establishment," "Military Establishment," "Naval Establishment," "Indian Affairs," "Pensions," "Public Works, Postal Service", &c., a convenient summary of the chief items, and a complete index.

In December this "Letter" is sent, as a part of the Secretary of the Treasury's annual report to Congress, to the Speaker of the House of Representatives, immediately after the opening of that body, and is referred to the Standing Committee on Appropriations. The House itself does not hear the estimates read, it simply passes the thin quarto over to the Committee; though of course copies of it may be procured and studied by any member who chooses to scrutinize the staring pages of columned figures with the dutiful purpose of keeping an eye upon the uses made of the public revenue. Taking these estimates into consideration, the Committee on Appropriations found upon them the "general appropriation bills", which the Rules require them to report to the House "within thirty days after their appointment at every session of Congress, commencing on the first Monday in December", unless they can give satisfactory reasons in writing for not doing so. The "general appropriation bills" provide separately for legislative, executive, and judicial expenses; for sundry civil expenses, for consular and diplomatic expenses, for the Army, for the Navy, for the expenses of the Indian department; for the payment of invalid and other pensions; for the support of the Military Academy; for fortifications for the service of the Post-Office department, and for mail transportation by ocean steamers.

It was only through the efforts of a later-day spirit of vigilant economy that this practice of making the ap propriate-

tions for each of the several branches of the public service in a separate bill was established. During the early years of the Constitution very loose methods of appropriation prevailed. All the moneys for the year were granted in a single bill, entitled "An act making appropriations for the support of the Government", and there was no attempt to specify the objects for which they were to be spent. The gross sum given could be applied at the discretion of the heads of the executive departments and was always large enough to allow them freedom in the undertaking of new schemes of administration and in the making of such additions to the clerical force of the different offices as might seem convenient to those in control. It was not until 1862 that the present practice of somewhat minutely specifying the uses to be made of the funds appropriated was reached, though Congress had for many years been by slow stages approaching such a policy. The history of appropriations shows that "there has been an increasing^a tendency to limit the discretion of the executive departments and bring the details of expenditure more immediately under the annual supervision of Congress"; a tendency which has especially manifested itself since the close of the recent war between the States.⁵ In this, as in other things, the appetite for government on the part of Congress has grown with that perfection of organization which has

* See an article entitled "National Appropriations and Disappropriations" by the late President Garfield, North American Review, p. 573 et seq.

replaced the ratification of its claims for power and influence. In this matter of appropriations, our country has unquestionably resulted in a very liberal expenditure of extravagance in departmental expenditures, though Congress has often shown a "blind" order for retrenchment which has fallen little short of parody and which could not be found prior in its legislation had it had such adequate means of confidential communication with the executive departments as would have enabled it to understand their real needs and to discriminate between true economy and those scant allowances which only give birth to deficiencies and which, even under the luckiest conditions, serve only for a very brief season to create the impression which they are usually meant to beget, that the party in power is the party of thrift and honesty, seeing in former appropriations too much that was corrupt and spendthrift and desiring to turn to the good ways of wisdom and frugality.

There are some portions of the public expenditure which do not depend upon the annual gifts of Congress, but which are provided for by statutes which run without limit of date. These are what are known as the "permanent appropriations." They cover, on the one hand, such indeterminate expenses as the interest on the public debt, the amounts usually paid into the sinking fund, the outlays of refunding, the interest on the bonds issued to the Pacific Railway, and, on the other hand, such definite charges as the maintenance of the courts, the post-

of the collection of the customs revenue, and the interest on the request to the Smithsonian Institution. Their object is to substitute no in any part of the public expenditure. In 1830, in a total appropriation of about \$307,000,000, the permanent appropriations fall short of the annual amount by only about sixteen and a half millions. In later years, however, the proportion has been smaller, one of the principal items, the interest on the public debt, lessening, of course, continually less as the debt is paid off, and other items requiring less amounts, at the same time that the figures of the annual grants will rise, rather than fall.

With these permanent grants the Committee on Appropriations has, of course, nothing to do, except that estimates of the moneys to be drawn under authority of such grants are submitted to its examination in the Secretary of the Treasury's "Letter" along with the estimates for which special appropriations are asked. Upon these latter estimates the general appropriations are based. The Committee may report its bills at any stage of the House's business, provided only that it does not interfere with a measure which is spending, and these bills will be acted upon at any time, by a majority vote, by a special order of the day. Of course their consideration is the most important business of the session. The House is present before the end of July, else the departments will be left without any means of support. The chairman of the Committee on Appropriations is

for sequential, and masterful, extracts in the House. It can force it to a consideration of the business of its Committee of almost any thing, and by withdrawing his reports until the session is well advanced can crowd all other topics from the floor. For much time is spent over each of the "legislation appropriations bills." The special of money is one of the two bills that Congress invariably starts to talk about; the other being the raising of money. The talk is made always in Committee of the Whole, into which the House at once resolves itself whenever appropriations are to be considered. While members of this which may be called the House's Committee of Supply, representatives have the freest opportunity of the session for activity, for usefulness or for meddling, outside the sphere of their own Committee work. It is true that the "five-minute rule" gives each speaker in Committee of the Whole scant time for the expression of his views, and that the House can refuse to accord full freedom of debate to its other self, the Committee of the Whole, by limiting the time which it is to devote to the discussion of matters referred to it, or by providing for its discharge from the further consideration of any bill committed to it, after it shall have acted without debate on any and all bills of that kind offered; but as a rule every member has an opportunity to offer what suggestions he pleases upon questions of legislation and every course is open to him in discussing the merits and demerits of such bills, or using any phrase which it may please him to use.

House leaves pretty thoroughly, and it is an error of this kind to refer these bills before it sends it to the Senate.

But, unfortunately, the dealings of the Senate with these bills is generally regarded as worthless to the point of view of the House. The Senate has been established by precedent in the very freest possible provisions of amendment as regards these bills no less than as regards all others. The Constitution is silent as to the origination of bills appropriating money; it only says simply that "all bills for raising revenue shall originate in the House of Representatives", and that in considering these "the Senate may propose or concur with amendments as in other bills" (Art. I, Sec. VIII); but, "by a practice as old as the Government itself, the constitutional prerogative of the House has been held to apply to all the general appropriation bills", and the Senate's right to amend these has been allowed the widest conceivable scope. The upper house may add to them what it please; may go altogether outside of their original provisions and tack to them entirely new features of legislation, ^{altering} ~~altering~~ not only the amounts but even the objects of expenditure, and making out of the materials sent them by the popular chamber measures of an almost totally new character. As passed by the House of Representatives, an appropriation bill generally provides for an expenditure considerably less than that called for by the estimates; as returned from the Senate, they usually propose

* Senator Hear's article already referred to is quoted.



grants of many additional millions, having been brought by that less sensitive body up almost if not quite, to the figures of the estimates.

After passing through their ordeal of scrutiny and amendment in the Senate, the appropriation bills return with their new figures to the House. But when they return it is too late for the House to put them again in the crucible of Committee of the Whole. The session, it may be taken for granted, was well on towards its middle age before they were originally introduced by the House Committee on Appropriations; after they reached the Senate they were referred to its corresponding Committee; and the report of that Committee upon them was debated at the leisurely length characteristic of the weightier proceedings of the upper chamber: so that the last days of the session are fast approaching when they are sent down to the House with the work of the Senate's hand upon them. The House is naturally disinclined to consent to the radical alterations wrought by the Senate, but there is no time to quarrel with its colleague, unless it can make up its mind to sit through the heat of midsummer, or to throw out the bill and accept the discomforts of an extra session. If the session be the short one which ends, by constitutional requirement, on the 4th. of March, the alternative is the still more distasteful one of leaving the appropriations to be made by the next House.

The usual practice, therefore, is to adjust such differences

by means of a conference between the two houses. The House re-
 jects the Senate's amendments without hearing the reply; the
 Senate stoutly refuses to yield; a conference ensues, conducted
 by a committee of three members from each chamber; and a com-
 promise is effected, by such a compounding of disagreeing pro-
 positions as gives neither party to the quarrel the victory and
 commonly leaves the grants not a little below the amounts asked
 for by the departments. As a rule the Conference Committee con-
 sists, on the part of the House, of the chairman of its Committee
 on Appropriations, some other well-posted member of that Commit-
 tee, and a representative of the minority. Its reports are mat-
 ters of highest prerogative. They may be brought in even while
 a member is speaking. It is much better to silence a speaker
 than to delay for a single moment, at this stage of the session,
 the pressing, imperious question of the supplies for the support
 of the government. The report is, therefore, acted upon immedi-
 ately and in a mass, and is generally adopted without debate. So
 great is the haste that the report is passed upon before being
 printed and without giving anyone but the members of the Confer-
 ence Committee time to understand what it really contains. There
 is no chance of remark or amendment. It receives at once sanc-
 tion or rejection as a whole; and the chances are, of course, in
 favour of its being accepted, because to reject it would but
 force a new conference and bring fresh delays.

It is evident, therefore, that after all the strife and thour-



publishing debate and a part of committee of the House in the House, and in the private deliberations of the Senate to which the general principles are suggested, they find themselves in a very chaotic state, full of proposals and amendments to the House and the Senate alike, and utterly unworkable. It is to be expected that the members of the Conference Committee so that it would seem almost as if the generous portions of the bill conscientiously given to their consideration in their earlier stages had been simply thrown away.

The result of the under-appropriation to which Congress seems to have become addicted by long habit in dealing with the estimates, is, of course, the addition of another bill to the number of the regular annual grants. As regularly as the annual session opens there is a deficiency bill to be considered. Doubtless deficiencies frequently arise because of miscalculations or extravagance on the part of the departments; but the most serious deficiencies are those which result from the close-fistedness of the House Committee on Appropriations and the compromise resolutions which are wrung from the Senate by conference-committees. Many Members, consequently, along with the estimates for the next fiscal year, or at a later period of the session, in special communications, give estimates of deficiencies in the appropriations for the current year, and the apparent economies of the grants of the present session have to be offset in the gifts of the next. It is as

if Congress had designally established the plan of making semi-annual appropriations. At each session it grants part of the money to be spent after the first of July following and such sums as are needed to supplement the expenditures previously authorized to be made after the first of July preceding. It doles out their allowances in instalments to its wards, the departments.

It is usual for the Appropriations Committees of both Houses when preparing the annual bills, to take the testimony of the directing officers of the departments as to the actual needs of the public service in regard to all the principal items of expenditure. Having no place upon the floor of the House, and being, in consequence, shut out from making complete public statements concerning the estimates, the heads of the several executive departments are forced to confine themselves to private communications with the House and Senate Committees. Appearing before these Committees in person or addressing them more formally in writing, they explain and urge the appropriations asked in the "Letter" containing the estimates. Their written communications, though addressed only to the chairman of one of the Committees, frequently reach the House itself, being read in open session by some member of the Committee in order to justify or interpret the items of appropriation proposed in a pending bill. Not infrequently the head of a department exerts himself to secure desired supplies by dint of negotiation with individual

members of the Committee and by repeated and insistent appeals to their chairman.

Only a very small part of the relations between the Committees and the departments is a matter of rule. Each time that the estimates come under consideration the Committees must specially seek, or the departments newly volunteer, information and advice. It would seem, however, that it is now less usual for the Committees to ask than for the Secretaries to offer counsel and suggestion. In the early years of the government it was apparently not uncommon for the chairmen of spending committees to seek out departmental officials in order to get necessary enlightenment concerning the mysteries of the estimates, though it was often easier to ask for than to get the information wanted. An amusing example of the difficulties which then beset a committee-man in search of such knowledge is to be found in the private correspondence of John Randolph of Roanoke. Until 1865 the House Committee of Ways and Means, which is one of the oldest of the Standing Committees, had charge of the appropriations; it was, therefore, Mr. Randolph's duty, when chairman of that Committee in 1807, to look into the estimates, and he thus recounts, in an interesting and exceedingly characteristic letter to his intimate friend and correspondent, Nicholson, the pitiful experience which he had had in performing that duty: "I called some time since at the Navy office to ask an explanation of certain items of the estimate for this year. The Sec-

secretary called upon his chief clerk, who knew very little more of the business than his master. I propounded a question to the head of the department; he turned to the clerk like a boy who cannot say his lesson, and with imploring countenance beseeches aid; the clerk with much assurance gabbled out some commonplace jargon, which I could not take for stirring, an explanation was required, and both were dumb. This pantomime was repeated at every item, until, disgusted, and ashamed for the degraded situation of the principal, I took leave without pursuing the subject, seeing that my object could not be attained. There was not one single question relating to the department that the Secretary could answer."

It is to be hoped that the Secretaries of to-day are somewhat better versed in the affairs of their departments than was respectable Robert Smith, or, at any rate, that they have chief clerks who can furnish inquiring chairmen with something better than commonplace jargon which no shrewd man can take for stirring information; and it is altogether probable that such a scene as the one just described would nowadays be quite impossible. The book-keeping of later years has been very much stricter and more thorough than it was in the infancy of the departments; the estimates are much more thoroughly differentiated and itemized; and a minute division of labour in each department amongst a numerous clerical force makes it comparatively easy for the chief executive officers to acquaint them-

* Adams's "John Randolph" (American Statesman series), pp. 210, 211

selves quickly and accurately with the details of all instructions. They do not wait, therefore, as a general thing, to be sought out and questioned by the Committees, but restrict themselves to get at the ears of the committee-men, and especially to secure, if possible, the influence of the chairmen, in the interest of adequate appropriations.

These irregular and generally informal communications between the Appropriations Committees and the heads of the departments, taking the form sometimes of ^{privately} pleas addressed by the Secretaries to individual members of the Committees and again of careful letters which find their way into the reports laid before Congress, stand in our system in the place of the annual financial statements which are in British practice made by the ministers to Parliament under circumstances which constitute very full and satisfactory public explanations and the freest replies to all pertinent questions invariable features of the supervision of the finances by the Commons. Our ministers make their statements to both Houses indirectly and piece-meal, through the medium of the Committees. They are mere witnesses, and are in no definite way responsible for the annual appropriations. Their secure four-year tenure of office is not at all affected by the treatment the estimates receive at the hands of Congress. To see our Cabinet officers resign because appropriations had been refused for the full amount asked for in the Secretary of the Treasury's "Letter" would be as novel in our eyes

as would be, in the view of our English cousins, the right of a Ministry of the Crown remaining in office under similar circumstances. Indeed, were our Cabinets to state their positions upon the fortunes of the estimates submitted to Congress, we should probably suffer the tiresome inconvenience of yearly resignations; for even when the heads of the departments tax all their energies and bring into requisition all their arts of persuasion to secure ample grants from the Com. Affairs, the House Committee cuts down the sums as usual, the Senate Committee adds to them as before, and the Conference Committee strikes a deficient compromise balance according to time-honoured custom.

There is in the House another appropriations committee besides the Committee on Appropriations. This is the Committee on Rivers and Harbours created in December 1833 by the forty-eighth Congress, as a spare in the too- great preference then then enjoyed by the Committee on Commerce. The Committee on Rivers and Harbours represents, of course, the lately-acquired permanency of the policy of internal improvements. Until 1870 that policy had had a very precarious existence. Strangely tame all tolerance by the severely constitutional Presidents of the earlier days, it could not venture to be included only in separate appropriations which offered an easy prey to the waterful veto; but struck in the undivided bunch of items of the general grants, safe under the cover of considerable neighbour items. The veto has never been allowed to strike

out single features in the acts admitted to the executive eye and even such men as Madison and Monroe, stiff and earnest as they were in the assertion of their conscientious opinions and in the performance of what they conceived to be their constitutional duty, and much as they disapproved of stretching the Constitution to such uses as national and to local and inland improvements, were fain to let an occasional gift of money for such purposes pass unforbidden rather than throw out the general appropriation bill to which it was tacked. Still, Congress did not make very frequent or very flagrant use of this trust, and schemes of internal improvement came altogether to a standstill when faced by President Jackson's imperious disfavor. It was for many years the settled practice of Congress to grant the States upon the seaboard leave to lay duties at their ports for the improvement of the harbours, and itself to undertake the expense of no public works save those upon territory actually owned by the United States. But in later years the relaxation of presidential opposition and the admission of new States lying altogether away from the sea and, therefore, quite unable to pay the tariffs which were building up the harbours of their eastern neighbours without any recompensing advantage to themselves who had no harbours, revived the plans which ten years before had rebuffed and appropriations from the national coffers began freely to be made for the opening of the great water highways and the perfecting of the sea-gates of commerce.

The inland States were silenced, because satisfied, by a share of the benefits of national aid, which, being no longer indirect, was not confined to the sanctioning of State tariffs which none but the seaboard commonwealths could benefit by but which consumers everywhere had to pay.

The greatest increase in appropriations of this class took place just after 1870. Since that date they have occupied a very prominent place in legislation, running from some twelve millions in the session of 1873-4 up and down through various figures to eighteen millions seven hundred thousand in the session of 1882-'3, constituting during that decade the chief business of the Committee on Commerce, and finally having a special Standing Committee created for their superintendence. They have thus culminated with the culmination of the protective tariff, and the so-called "American system" of protective tariffs and internal improvements has thus at last attained to its perfect work. The same prerogatives are accorded this new appropriations Committee which have been secured to the greater Committee which deals with the estimates. Its reports may be made at any time when a member is not speaking and stand in all respects upon the same footing as the bills proposing the annual grants. It is a special spending committee, with its own key to the Treasury.

But the appropriation Committees of the two Houses, though, strictly speaking, the only committees of supply, have their work

increase in supply of water for the purpose of obtaining water for
 irrigation and also for the purpose of obtaining water for
 domestic purposes. It is the duty of the Government to provide water for the
 Committee on Appropriations has to provide for the purpose of the
 Committee on Pensions is consistent with the provisions of the
 law for the purpose of the law. There is no doubt that the Government has to
 build the new works called for by the report of the Committee
 on Water Affairs and to meet the expenses for the same. The
 and reforms recommended by the Committee on Public Affairs.
 There are immediate financial in the budget year.

It is principally in connection with appropriations that
 what has come to be known in our political circles as "log-rolling"
 takes place. Of course the chief cause of this is the
 the private case of the Committee on Rivers and Harbours, and
 the passage of its highest element, the House of Representatives
 of the River and Harbour Bill. "Log-rolling" is a term
 of favour. Representatives who are very anxious to secure a grant
 for the erection of a small water source in their district, and of

* On one occasion the House passed twenty-seven bills in one sitting. The Senate, on its part, passed only two bills, but they were all passed in about ten minutes. It is possible for public buildings in different States, for example, the State of Ohio, to contribute to the same project. The first bill was one for the purpose of providing 1,300,000 water for the purpose of irrigation. It went through the Senate in a matter of a few days, full of little changes, and finally passed by a vote of 11,000. The second bill, in degree, the same, but for the purpose of providing for the purpose of the Committee on the subject of the same, and the full of the same, and the bill was signed by the President. The bill was signed by the President.

representative B. is equally solicitous about his plans for pouring his money into the hands of the contractors of his own constituency, whilst representative C. comes from a seaport town whose modest harbour is neglected because of the trade around his access to its mouth, and representative D. has been blamed for not assisting himself more in the interest of success of his movement afoot amongst the enterprising citizens of his native place: so it is perfectly feasible for these gentlemen to put their heads together and confirm a mutual understanding that each will vote in Committee of the Whole for the grants desired by the others in consideration of the promise that they will cry "aye" when his item comes on to be considered. It is not out of the question to gain the favouring ear of the reporting Committee and a great deal of tinkering can be done with the bill after it has come into the hands of the House. Lobbying and log-rolling go hand in hand.

So much for estimates and appropriations. All questions of revenue are in their first stages in the hands of the House Committee of Ways and Means, and in their last, in charge of the Senate Committee on Finance. The name of the House Committee is evidently borrowed from the language of the British Parliament and the English Committee of Ways and Means is, however, the Commons itself sitting in Committee of the Whole to consider the statement and proposals of the Chancellor of the Exchequer, whilst ours is a Standing Committee of the House composed of eleven

members of the committee with the exception of one member, the chairman, to the raising of the revenue and to providing the necessary means for the support of the Government. We have, in England, a parliamentary process, but our own proposals of the bill were introduced into commission. The chairman of the committee figures as our minister of finance, but he really, of course, is responsible to the commission of eleven or so which he presides.

All reports of the Treasury department are referred to the Committee of Ways and Means, which also, like the Committee on Appropriations, from time to time holds other more direct communications with the officers of revenue bureaux. The annual reports of the Secretary of the Treasury are generally quite full of minute information upon the points most immediately connected with the proper duties of the Committee. They are excellent with regard to the collection and disbursement of the revenues, with regard to the condition of the public debt, and with regard to the operation of all laws governing the financial policy of the departments. They are, in one aspect, the great year-end balance sheets, exhibiting the receipts and expenditures of the Government, its liabilities and its credits; and, in another aspect, general views of the state of industry and of the financial machinery of the country, summarizing the information available by the Bureau of Statistics with reference to the condition of the manufactures and of domestic trade as well as with regard to the plight of the currency and of the national funds.

are, of course, quite distinct from the "Letters" of the Secretary of the Treasury, which contain the estimates and go, not to the Committee of Ways and Means, but to the Committee on Appropriations,

Though the duties of the Committee of Ways and Means in supervising the management of the revenues of the country are quite closely analogous to those of the British Chancellor of the Exchequer, the lines of policy in which they walk are very widely separated from those ~~in~~ which he feels bound to follow. As I have said, the object which he holds constantly in view is to keep the annual balances as nearly as possible at an equilibrium. He plans to raise only just enough revenue to satisfy the grants made in Committee of Supply and leave a modest surplus to cover possible errors in the estimates and probable fluctuations in the returns from taxation. Our Committee of Ways and Means, on the other hand, follow a very different policy. The revenues which they control are raised for a double object. They represent not only the income of the government but also a carefully erected commercial policy to which the income of the government has for many years been incidental. They are intended to foster the manufactures of the country as well as to defray the expenses of federal administration. Were the maintenance of the government and the support of the public credit the chief objects of our national policy of taxation, it would undoubtedly be cast in a very different pattern. During

a greater part of the life-time of the present government, the principal feature of that policy has been a complex system of duties on imports, troublesome and expensive of collection, it nevertheless yielding, together with the license taxes of the internal revenue which later years have seen added to it, immense surpluses which no extravagances of the spending committees could exhaust. Duties few, small, and comparatively inexpensive of collection would afford abundant revenues for the efficient conduct of the government, besides comporting much more evidently with economy in financial administration. Of course, if vast revenues pour in over the barriers of an exacting and exorbitant tariff, ample sufficient revenues would flow in through the easy conduits of moderate and simple duties. The object of our financial policy, however, has not been to equalize receipts and expenditures, but to foster the industries of the country. The Committee of Ways and Means, therefore, do not concern themselves directly with regulating the income of the government - they know that that, in every probable event, will be more than sufficient - but with protecting the interests of the manufacturers as affected by the regulation of the tariff. The resources of the government are made incidental to the industrial investments of private citizens.

This evidently constitutes a very capital difference between the functions of the Chancellor of the Exchequer and those of our Committee of Ways and Means. In the policy of the

for or the right of the Government is another matter, but the
 the the care of the Legislature of the country is to be taken,
 and the end of duty. In the case of France, it is not only
 these represent ignorant or improper management on the part of
 the ministers and a succession of them is sure to result in
 at first office, to the lasting disgrace of the Government of
 the country; but to the mind of Congress, that supplies are indica-
 tive of certain in particular. They indicate of course abun-
 dant returns from the duties, but the chief concern is, not whether
 the duties are fruitful, but whether they render the trade pro-
 perous. Commercial interests are the essential consideration:
 excess of income is a matter of comparative indifference. The
 points of view, characteristic of the two systems are thus quite
 opposite: the Committee of Ways and Means subordinates its
 house-keeping duties to its much wider, extra-governmental busi-
 ness; the Chancellor of the Exchequer subordinates everything
 to the needs of the Administration.

This is exactly the reverse of the case in the Government, in
 the practice of the House, of questions of supply or of questions
 of revenue. It is imperative to grant money for the support of
 the Government, but questions of revenue are to be postponed
 until without inconvenience. The two things do not necessarily
 go hand in hand, as they do in the Commons. The reports of the
 Committee of Ways and Means are matters of government, and are
 regarded as the reports of the Committee on Supply and Finance, and the

ly no means said to equal either of them. The jurisdiction of the House and case law is passed, when the House is in session with the usual facts, the House is in session and it is not without any adjustments of that kind, but the committee is to be made, because the House is not in session. The first instance with reference to the House was the report of the committee out of their session. If it were the function of the committee of Ways and Means, as it is of the Counselor of the Emperor, to adjust the revenue to the expenditures, their reports would be an essential part of the business of the House. It is the reports of the Committee on Appropriations, but their proposals, occupying, as they do, a very different relation, may go to the wall just as the proposals of the other committees do at the demand of the chairman of the great spending Committee. The figures of the annual profits do not run year along to the sum of the annual receipts to be made, but all dependent on bills which concern the latter.

It would seem that the supervision exercised by Congress over expenditures is more thorough than that which is exercised by the Council in England. In 1844 the House created a Standing Committee on Public Expenditures, but it was not to "to examine into the state of the several public departments and particularly into the laws and regulations of each, and to report what are the means of saving the public money, and also to report from time to time on the state of the



vision of the new system as a whole, and the fact that the
 one of the departments in which the committee had been organized
 but that the committee had not yet reported on its work for
 the year. It was not, therefore, abolished at the end of the year, and
 instead, eight of the committees of the House of Representatives
 were re-organized, to which were added the IBC's committee, and
 IBC's committee. There is thus a separate Committee for the
 audit of the accounts of each of the executive departments, besides
 which the original single Committee on Public Expenditures
 stands charged with such duties as may have been left it in the
 general distribution.* The duties of these eight Committees are
 specified with great minuteness in the Rules. They are "to ex-
 amine into the state of the accounts and expenditures connected
 with the several departments of the respective departments, and
 report to the House, whether the same are or are not satisfied
 with the discharge of the respective departments and sufficient
 vouchers, establishing their justness both as to the

* Long since, there occurred a re-organization of committees, which
 gives up of course, no matter how useful that the original
 subtraction of duties. Thus there is not only the Committee on
 Committee on Public Expenditures, but the Committee on Public
 Affairs also, which is a part of the Committee on Public
 Affairs and Manufactures, but plenty to do, to wit, the
 creation of a distinct Committee on Commerce and Manufactures,
 and the new, to wit, the Committee on Agriculture and
 Indian Affairs, the duties assigned to it in the Rules. It would
 to be seen, whether the Committee on Commerce and Manufactures
 eclipsed because of the shift of its duties to the new
 Committee on Public Expenditures.



character and amount; what is such money to be used for; how and out of funds appropriated therefor, and what are all the things to be done; and in conformity with appropriate laws; and whatever else, of what, provisions are necessary to be adopted, to provide more perfectly for the proper application of the public moneys, and to secure the government from demands and claims in their character or extent in their amount." Besides exercising these functions of careful audit, they are, moreover, required to "report from time to time" any plans for retirement that may appear advisable in the interests of economy or any measures that may be necessary to secure greater efficiency or to ensure stricter accountability to Congress in the management of the departments; to ferret out all abuses that may have their appearance; and to see to it that no department has useless offices in its bureaux, or over or under-paid officers on its rolls.

But, though these Committees are so many and so excellently armed with powers, indications are not wanting that some things run at large in the departments that they, with all their eyes, are able to detect. The Senate, though it has no standing permanent committees, has several ad hoc special committees dealing that out altogether beyond the approval of the standing House Committees; and even these do not occasionally supply a special effort, bringing to light transactions which would otherwise have been unearthed in the ordinary routine course of their usual procedure.

It was a select committee of the Senate which, during the sessions of the forty-seventh Congress, discovered that the "contingent fund" of the Treasury Department had been spent in repairs on the Secretary's private residence, for expensive dinners spread before the Secretary's political friends, for a table for the decoration of the Secretary's private parlor, for bouquets for the gratification of the Secretary's dearest allies, for carpets never delivered, "ices" never used, and services never rendered; although these were secrets of which the honest faces of the vouchers submitted with the accounts gave not a hint.

It is hard to see how there could have been anything satisfactory or conclusive in the annual supervision of the public accounts during any but the latest years of this system of committee audit. Before 1870 our national book-keeping was such like that still in vogue in France. Credits once granted ran on without period until they were exhausted. There were always unexpended balances to confuse the accounts; and when the figures of the original grants had been on a too generous scale - as was often the case - these balances accumulated for year to year in immense surpluses, sometimes of many millions, of whose

* See the report of this committee, which was under the leadership of Senator Windes.

An illustration of what the House Committee might be expected to do may be seen in the operations of the investigating committee of the expenses of the notorious "Wier Route Traffic" made by the forty-eighth Congress's Committee on Expenditures in the Department of Justice.

for all sorts of arbitrary and unprincipled efforts, and for all sorts of arbitrary and unprincipled. In 1870 the law was partially corrected by a law which limited the regulations to a period of two years and laid the responsibility of the Treasury on the \$172,000,000 of unproductive capital which had by that time been amassed in the various departments, but it was not till 1874 that such a rule of a permanent and accountable was established as would have intelligently aided the Committee possibly by a proper circumscription of the time for which credits could be drawn upon without a resort.

Such is a general view, I. brief and without technical detail, of the chief features of our financial system, of the demands of Congress with the questions of capital, production, and supply. The contrast which this system offers to the old-world systems, of which the British is the most advanced type, is obviously a very striking one. The one is the very opposite of the other. On the one hand is a financial policy conducted by a compact co-operative ministry under the direction of a representative council, and, on the other hand, a financial policy directed by the representative body itself with only nominal aid from the executive. In our practice, in other words, the committees are the ministers, and the titular ministers only substantial elements. There is no conventional respect of the

* See Gen. Garfield's report on the Finance Committee, 42nd Congress, 1st Session, Vol. 4, p. 33.

ance, between the several sections of the government, that
 though their several duties are entirely separate, they are
 slightly mutually dependent. This feature of legislative
 leadership, as I have already pointed out, forms a part of our
 legislation; but it is a feature of our more serious conse-
 quence in financial administration than in the direction of
 other concerns of government. There can be no doubt that, if it
 were not for the fact that our revenues are not regulated with
 any immediate reference to the expenditures of the government,
 this method of spending according to the suggestions of one
 body and taxing in obedience to the suggestions of another en-
 tirely distinct would very quickly bring us into distress: it
 would unquestionably break down under any attempt to treat ex-
 pense and expenditure as mutually adjustable parts of a single,
 uniform, self-consistent system. They can be so treated only
 when they are under the management of a single body; only when
 all financial arrangements are based upon separate prepared by
 a few men of trained minds and accordant principles who can act
 with easy agreement and with perfect confidence in one another.
 When taxation is regarded only as a source of revenue and the
 chief object of financial management is the prohibition of out-
 lays by increase, the credit and debit sides of the account must
 come under a single eye to be properly administered, at the least,
 those officers who raise the money must see and be guided by
 the books of those who spend it.

It can not, therefore, be reasonably regarded as a matter of surprise that our financial policy has been not only inconsistent or incoherent, without progressive continuity. The only evidences of design to be discerned in it appear in those few elementary features which were impressed upon it in the first days of the government, when Congress deputed upon our then an Hamilton and Gallatin for guidance in putting the finances into shape. As far as it has any identifiable characteristics or any traceable heredity, it is the handiwork of the sagacious men who first presided over the Treasury department. Since it has been altogether in the hands of Congressional Committees it has so waywardly shifted from one rôle to another and has with such erratic facility changed its principles of action and its modes of speech to suit the temper and tastes of the times, that one who studies it hardly becomes acquainted with it in one decade before he finds that that was a season quite apart from and unlike both those which went before and those which succeeded. At almost every session Congress has made some effort, more or less determined, towards changing the revenue system in some essential portion; and that system has never escaped radical alteration for ten years together. Had revenue been graduated by the comparatively steady standard of the expenditures, it must have been kept stable and unchangeable; but depending, as it has done, on a much-debated and consistently frustrating industrial policy, it has been regulated in accordance with a scheme which has pursued

sed through various phases as there have been vicissitudes and vagaries in the fortunes of commerce and the tactics of parties.

It is the more remarkable because upon all fiscal questions Congress acts with considerable deliberation and care. Financial legislation, usually, if not always, occupies by far the most prominent place in the business of each session. Though other questions are often disposed of at odd moments, in haste and without thought, questions of revenue and supply are always given full measure of debate. The House of Representatives, under authority of the Rule before referred to, which enables it, as it were, to project the previous question into Committee of the Whole, by providing for the discharge of that Committee from the further consideration of any bill that is in its hands, or that may be about to be referred to it, after all amendments "pending and that may be offered" shall have been acted upon without debate, seldom hesitates, when any ordinary business is to be considered, to forbid to the proceedings of Committee of the Whole all freedom of discussion and, consequently, almost all discretion as to the action to be taken; but this muzzle is seldom put upon the mouth of the Committee when appropriation or tariff bills are to be considered, unless the discussion in Committee wanders off into fields quite apart from the proper matter of the measure in hand, in which case the House interposes to check the irrelevant talk. Appropriation bills have, however, as I have shown, a much higher privilege than have bills affect-

ing the tariff, and statutes are not written in a way that the
 can of the Committee of Ways and Means, and of the
 the time of the House in the House of Representatives, and
 the Committee to the extent of the House of Representatives
 important bills reported by the Committee of Ways and Means af-
 ter the most careful and laborious deliberation. His sugges-
 tions are never disputed in such a context for consideration, as
 when a subject and a revenue bill, have so far the subjects to
 not under our system necessarily go and in such. Ways and
 Means bills may and should be acted upon, but such bills should
 be.

It should be recalled in this connection, however, that, as
 as Congress talks about fiscal questions, whether or not it is
 to be by the committee of Ways and Means, its talk is of
 little heed by the big world outside its walls. The nota-
 verty fact to which it is already called attention, that
 the rest thereof related in Congress fail to awake any con-
 ine or active interest in the minds of the people, as had the
 out striking illustrations in the course of our financial re-
 isation: for, though the discussion is a subject of the
 Congress upon financial questions, we have seen the time
 treated, and go to great lengths to discuss the
 of the House of Representatives, and the public mind, and
 instance to see the public mind, and the public mind, and
 public mind. The Congress of 1873, for example, passed a bill

denetized, had been before the country many years, and it had been
 identified, but it had been true with all the editorial and Committee of
 Congress, time and again printed and discussed in one way or
 another, and having finally gained acceptance apparently by
 sheer persistence and importunity. The Resumption Act of 1875,
 too, had had a like career of repeated considerations by Commit-
 tees, repeated printings, and a full discussion by Congress; and
 yet when the "Great Silver Bill" of 1873 was on its way through
 the halls of legislation some of the most prominent newspapers of
 the country declared with confidence that the Resumption Act
 had been passed inconsiderately and in haste, almost secretly
 indeed; and several members of Congress had previously explained
 that the denonetization scheme of 1873 had been pushed sur-
 reptitiously through the courses of its passage, Congress itself
 been tricked into accepting it, doing it scarcely knew what.

This indifference of the country to what is said in Congress
 pointing, as it obviously does, to the fact that, though the Com-
 mittees lead in legislation, they lead without concert or re-
 sponsibility and lead nobody in particular, that is, no concert
 and organized party force which can be made accountable for its
 policy, has also a further significance with regard to the op-
 portunities and capacities of the constitution. The doubt
 and confusion of thought which must necessarily exist in the
 minds of the vast majority of voters as to the best way of ex-
 erting their will in forwarding the attack of the constitution

whose organization is so loose, and whose acts are so arbitrary and haphazard, and in which responsibility is spread so thin, through its statutes, lies into the hands of local politicians who are more visible and tangible than are the members of Congress, and whose conduct, though it is a profound distrust of Congress, is not a wide national sentiment to be measured before any standard of procedure laid at elections or any program or an entirely good education. Constituent can watch and understand a few "old" leaders who display plain purposes and act upon them with promptness, but they cannot watch or understand forty odd "Stalin" Committees each of which goes its own way in doing what it pleases without any special regard to the pledges of either of the parties from which its members are drawn. In short, we lack in our political life the conditions most essential for the formation of an active and effective public opinion. "The characteristics of a nation capable of public opinion," says Mr. Bagshot, "most sagacious of political critics," is that - - - parties will be organized; in each there will be a leader, in each there will be some locked up to, and many who look up to them; the opinion of the party will be formed and suggested by the few, it will be criticized and accepted by the many. It is not that sort of party organization which we have now. Our leaders are titular leaders at the polls, and the persons of doubtful and nominal credit in the convolutions of cabinet and legislative

* Essays on Democracy by Parker.



last few years, were to trust for guidance in the various points of legislation, or to look for suggestions of opinion. What, what group of men, can speak for the Republican party, or for the Democratic party? What our best educated and influential politicians say anything about future legislation no one supposes that they are speaking for their party, as those who have authority they are known to speak only for the nation and their small immediate following of colleagues and friends.

The present relations between Congress and public opinion remind us of that time, in the reign of George III, when the bulk of the English people found itself powerless to control the course of English government, when the Government was "directed" from "that general mass of national sentiment on which a government can alone safely ground itself." Then it was that English public opinion, "robbed as it was of all practical power, and thus stripped of the feeling of responsibility which the consciousness of power carries with it," became ignorant and indifferent to the general progress of the age, but at the same time - - - - - hostile to Government because it was Government, loyal to the Crown, hostile to Parliament. For the first and last time - - - - - Parliament was unpopular, and its opponents secure of popularity.* Congress can only ever be directed from the "general mass of national sentiment" simply because there is no other way to the control of it.

* Green's "History of the English People," Vol. III, pp. 11-12.

national sentiment is a reality to be respected. It is not the duty of the government to ignore it. The government should be guided by it in all its actions. It should be the duty of all sorts of men, the high and the low, the rich and the poor, to support the government, to respect its authority, to obey its laws, and to contribute to its success. The government should be guided by it in all its actions. It should be the duty of all sorts of men, the high and the low, the rich and the poor, to support the government, to respect its authority, to obey its laws, and to contribute to its success.

The voter, however, feels that he wants of Congress a government that is justified by the people of the people of industry, lobbyists to turn legislators to their own uses, a handful of enormous subsidies, a handful of political favors, a handful of consideration by preference, a handful of appointments of men to office made in the interest of dishonest ends: what is left

alleged or may be alleged to be a violation of the public trust, or
 interest in the public trust of Congress, for the reason that it
 doubt that the power of the individual legislators, past, present,
 or not altogether, in the facility afforded them by the committee
 system. He must, in the nature of things, have a certain amount
 favourable opportunities for a considerable time to-day, in-
 paring committees. It would be more desirable to have a
 subcommittee in the broad field of the whole House, but in the mem-
 bership of a Committee he finds manageable numbers. If he can
 gain the ear of the Committee, or of any influential portion of
 it, he has practically gained the ear of the House itself: if
 his plans once get footing in a Committee report, they may escape
 criticism altogether, and it will, in any case, be very dif-
 ficult to dislodge them. This accessibility of the Committee
 by outsiders gives to illegitimate influences every opportunity
 at all points of legislation, but the Committees are affected by it
 so often, or so unfortunately as that the Committees have con-
 trol the public moneys. They are naturally the ones whose fa-
 vour is oftenest and most important, as well as most indis-
 cussibly sought, and no description of our system of public ex-
 propriation, or supply would be complete without mention of the
 manufacturers who cultivate the favour of the Committee of Ways
 and Means, of the interested parties who work the Committee of
 the Committee of Finance and Accounts, and of the various inter-
 ests and influential persons who court the Committee of the House

tions.

My last point of criticism is a technical one, one of formal administration. I shall borrow from a very well known article of Congressional Budgets and a similar article in one of the best of American journals: "So long as the inside of the national account is managed by one set of hands, and the outside by another set, but sets working separately and in secret, without any public responsibility, and without any interaction on the part of the executive official who is nominally responsible, so long as these sets, being composed largely of new men every two years, give no attention to business except when Congress is in session, and thus spend in preparing plans the whole time which ought to be spent in public discussion of plans already prepared, so that an immense budget is rushed through without discussion in a week or ten days - just so long the finances will go from bad to worse, no matter by what name you call the party in power. No other nation on earth attempts such a thing, nor could attempt it without soon coming to grief, our condition thus far consisting in an enormous increase, with practically no drain for military expenditures." * My question here is whether a very vital point of criticism. Congress could do it better working, in sections, not parallel lines, instead of so far as it self to a ^{for a numerous assembly,} what is specifically the ^{more useful} proper function of debating and resolving upon and effecting for the

* "C. B.", in N.Y. Nation, Nov. 20th, 1932.

consideration by a commission of inquiry, or in political practice and in legislative habit, a case of life is not free from its own, though it is not upon its will. Hence, in other words, is another finger pointing to Mr. Hume's question, "is it the best" legislative commission". Our Commission fall short of being the best form of commission not only in being too numerous but also in being integral parts of the body which they lead, having no life apart from it. Probably the best working commission would be one which should make plans for government independently of the representative body and in immediate contact with the practical affairs of administration, but which should in all cases look to that body for the sanctioning of these plans and should be immediately responsible to it for their success when put into operation.

Maclean

IX

UNITED STATES SENATE

"This a Senate, a Senate of dignity, of firm of mind, of moral honor and personal integrity, and of absolute independence. We need no other, we need no other legislators. This is a hall for virtuous conversation and discussion, not a arena for the exhibition of acrobatics." -- Daniel Webster.

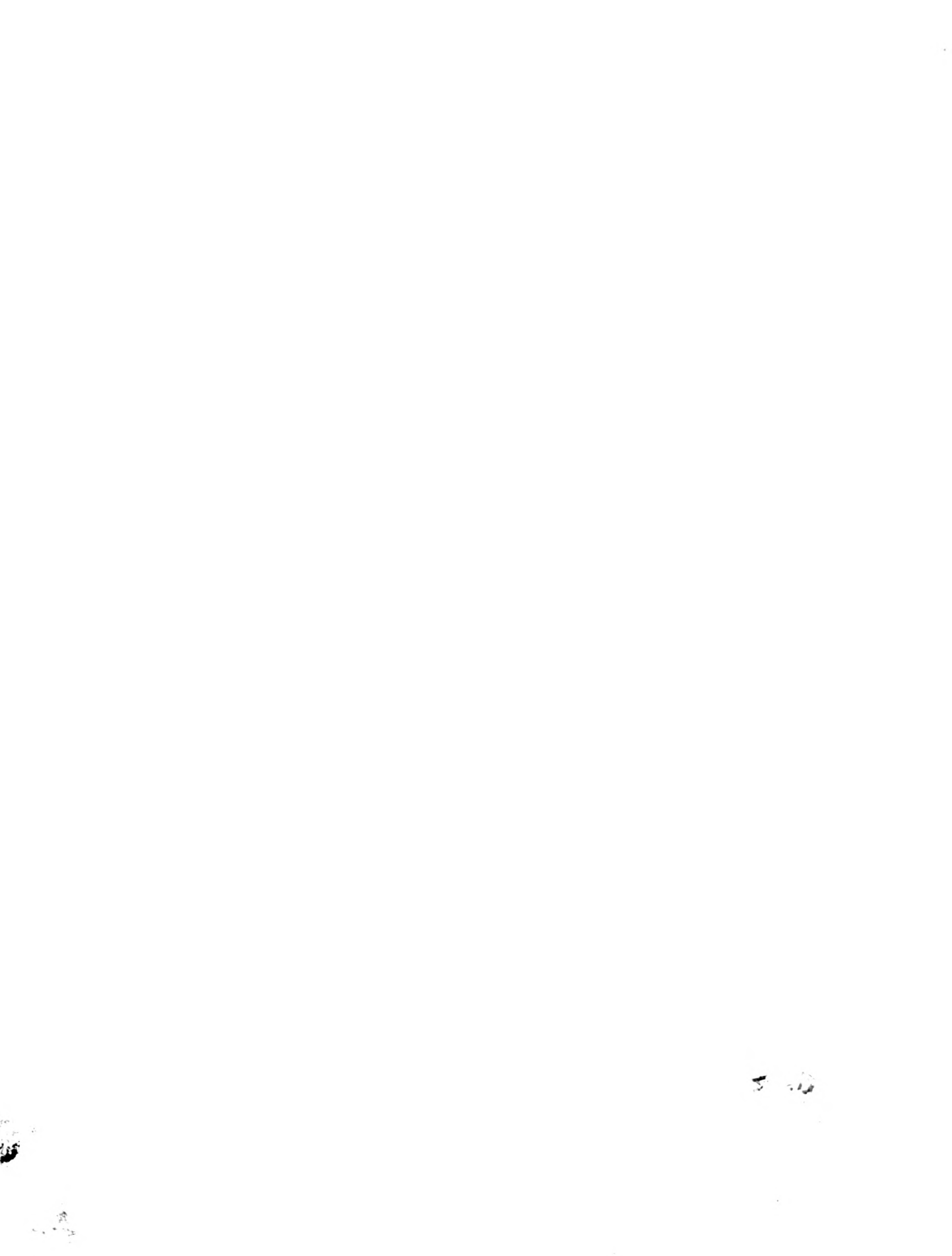
The Senate of the United States has been justly praised and unduly disparaged, according to the disposition and temper of its various critics. In the eyes of some it has a stateliness of character, an eagerness of prerogative, and, for the most part, a wisdom of practice and a nobility of deliberation which possesses, whilst in the estimation of others it is low, whatever it may have been formerly, but a somewhat select company of leisured "bosses", in a show of patriotism the few men of character and high purpose are confined to its membership find little that is encouraging and nothing that is congenial. How, of course, neither of these extreme opinions so true as they are to the historical truth, nor can that truth be obtained by a judicious mixture of the two or ingredients. The truth is, in fact, as we have seen, that it is something quite as surprising as profitable. The Senate is just what the mode of its election and the conditions of public life in this country make it. Its members are drawn from the ranks of active politicians in accordance with a method of selection to which the State legislatures are commonly subject,

and it is preferable to have a... that our state... could, it is... better than... court affairs...

It may be usual to suppose that the Senate might... the constitution intended at... the federal system... that because its... or that because... away... is in fact, of course, not... are a part, of the public service, and if the... of that service... corner, the Senate itself will be... separate... It must be... time... can... better than... and if... failed talent...

thing, it safe to say, there is no doubt that the Constitution is as good as could be devised, the only one in the world that could be devised for the circumstances. It is not the most perfect product of our politics, whatever that may be, but it is the best.

In order to understand and appreciate the Constitution, one must know the conditions of public life in this country. What are these conditions? Well, in the first place, they are not what they were in the early years of the federal government; they are not what they were even twenty years ago; for all that, as in other things, the war between the States is a distinct period and opens another. Between the great constitutional statesmen of the revolutionary days and the reconstruction politicians of the 'sixties there came into public place and legislative influence a great race of constitutional lawyers. The questions which faced our statesmen while the Constitution was a-making were in the broadest sense questions of politics; but the questions which dominated our public life after the federal government had been successfully set up, were questions of legal interpretation such as only lawyers could propose and discuss. Matters of policy, all doubts of legislation, even all difficulties of diplomacy were now treated as legal questions of constitutional construction. There is only one real affair of public life which was not being regarded as a question of constitutional interpretation.



testing-rooms of one or another of the contending schools of constitutional interpretation. Constitutional questions were not the tidbits, questions of administrative policy selected from the politics, of politics.

The Republicans under Jefferson drew their nourishment from constitutional belief no less than did the Federalists, the Whigs and Democrats of a later day live on what was essentially the same diet, though it was served in slightly different forms; and the parties of to-day are the selves of all to go to these books of the golden time whenever they desire strength to fortify them against their present debility. The great questions attending the admission of new States to the Union and the annexation of foreign territory, as well as all the controversies which arose in the train of the contest over slavery and the reserved powers of the States, were of the Constitution constitutional, and what other questions were then litigating -- save those which found root in the great charter's implied powers, about which there was such constant noise of debate? It will be remembered that even few publicists opposed internal improvements, for instance, on the ground that they were unwise or un-called for. No one who took a statesmanlike view of the matter could fail to see that the opening up of the great interior of the country, the construction of roads, the cutting of canals, or any public work which might facilitate inter-state commerce

by making interference with the free importation of the most
 easy and rapid, was sanctioned by the people. It was, in its
 as being in conformity with the principles of justice, in its
 spirit and universal in its benefits. The Court was not to do
 what it would be best and most profitable to do, but to do what
 it would be lawful to do; and the chief opponents of some of
 internal improvement based their dissent upon a careful interpreta-
 tion of the language of the Constitution. Without its plain ap-
 proval they would not move, even if they had to stand still all
 their days.

It was, too, with many professions of this spirit that the tariff
 was dealt with. It ran suddenly to the front as a militant
 party question in 1833, not as if a great free-trade movement
 had been set afoot which was to anticipate the vision of Cobden
 and Bright, but as an issue between federal taxation and the
 constitutional privileges of the States. The agricultural
 States were being, as they thought, very cruelly trodden down under
 the iron heel of that protectionist policy to which the
 throne and the sword consented, and they fetched their
 hope of escape from the Constitution. The federal government
 unquestionably possessed, to the full, and that in direct front
 of the fundamental law, the right to impose duties on imports;
 but did that right carry with it the privilege of raising dis-

terminating duties for other purposes; the fact of a ruling on the
 tribute revenue? Could the Constitution have been so interpreted that
 Carolina might be taxed to maintain the manufactures of New Eng-
 land?

Close upon the heels of the great tariff question of that
 time came the stupendous contest over the right of secession,
 and the abolition of slavery; and again in this contest, as in
 all that had gone before, the party which was being harried
 sought refuge in the Constitution. This too was, in its first
 stages at least, a lawyer's question. It eventually slipped out
 of all lawyerly control and was given over to be settled by the
 stern and savage processes of war, but it stayed with the con-
 stitutional lawyers as long as it could, and would have stayed
 with them to the end had it not itself been bigger than the Con-
 stitution and mixed with such interests and such passions as
 were beyond the control of legislatures or of law-courts.

Such examples of the character which political questions have
 hitherto borne in this country are sufficient to convince the
 readers of our history of what have been the chief features of
 our politics, and may serve without further explanation to il-
 lustrate the political wastage of the country. It is a fact that
 such a course of politics would affect statesmanship and political
 leadership. While the question affects the temper and practice

tion of the Constitution were the chief and most important questions pressing for settlement, and the men of the highest and great lawyers were, accordingly, forth-coming in support of the Federal. In a land where, ever since the Revolution, had been established the establishment of a judiciary, and the great lawyers were a more plentiful product than great administrators, unless there be some extraordinary means for the encouragement of all indistinct talents. We were, accordingly, always had plenty of excellent lawyers, though we have often had to do without even tolerable administrators, and seem destined to endure the inconvenience of hereafter doing without any constructive statesmen at all. The constitutional issues of former times were so big and so urgent that they brought great advocates into the field, despite all the tendencies there were in our system towards depriving leadership of all price of authority. In the presence of questions affecting the very structure and powers of the federal government, parties had to rally with definite purpose and espouse a distinct cause, and when the maintenance or overthrow of slavery had ceased to be a question of constitutional right and had become a matter of contention between sentiment and vested rights, between interest and passionate feeling, there was no course but to resort to contest between the scrupulous and the energetic of former full leaders.

The three stages of national growth and development in
between the States were each of them, each of a distinct
class of political leaders. In the period of construction there
were great architects and statesmen, in the period of con-
stitutional interpretation there were, at a distance from the
people, great political seamen who pondered and expounded the
letter of the law, and, nearer the people, great constitutional
advocates who cast the doctrines of the school into action,
and in the period of abolitionist agitation there were great
masters of feeling and leaders of public opinion. The publis-
tists of the second period kept scarce of the slavery question,
as I have said, as long as they could, and gave place with bitter
reluctance to the anti-slavery orators and presbyterian mis-
sionaries who were to talk the war-feeling into a frame. But it
was of course inevitable that the new movement should have its
leaders. It was essentially revolutionary in its aims and
its designs, and so quite out of the reach of those practical
of action were and possessed the power, of the older school of
politicians. It came to change, not to improve, the con-
stitution. Its readers were, not men of science, but men of
passion and of faith. It was a moral, not a political, im-
pulsive movement of a kind, not of the kind of a party meas-
ure. And, like every important course, it had its inevitable

readers whose eyes it had cast upon the "old world" and the
 ties of the people set apart among themselves, and the
 ease of statistical work. The war was the work, the work of the
 anthropologists, and the reconstruction was the work of the
 were the basic strokes of the case, an unbroken line of the
 crusade, full of old feeling but not of steady or far-sighted
 judgment.

The anti-slavery movement called forth leaders who, from the
 very nature of their calling, were more picturesque than any
 had figured on the national stage since the late days of the
 revolution had gone off the boards, but it was no better
 in leading parts than had been the downy-haired leaders who
 headed it. When the constitution of a self-governing people is
 being consciously moulded by the rapid formation of precedent
 during the earliest periods of its existence, there are sure to
 be antagonistic beliefs distinct and strong and likely enough
 to take shape in the creeds of energetic parties, each the
 the greatest advocates of its cherished principles. The result
 of our constitutional development, however, was to find a
 race of statesmen at the front of national affairs as men who
 directed the moral policy of the country; and to find in their
 place to men brave to encounter the struggle of a new world
 and fit to solve the doubts of a new set of events.

Since the war, however, we have seen a first stage of national life and are perplexed at finding ourselves in a new order of statemanship to suit the altered conditions of government. The period of federal construction, its long period of questions of constitutional interpretation, are no longer regarded as of pressing urgency, the war has been fought, even the embers of its issues being now almost extinguished, and we are left to that unexciting but none the less capitally important business of everyday peaceful development and judicious administration to whose execution every nation in its civil life has to address itself with what sagacity, energy, and preference it can command. It cannot be said that these new duties have as yet raised up any men eminently fit for their fulfillment. We have had no great administrators since the opening of this newest stage, and there is as yet no visible sign that any such will soon arise. The forms of government in this country have always been unfavourable to the easy elevation of talent to a station of paramount authority; and those forms in their present crystallization are more unfavourable to a more toleration of the leadership of the few, whilst the positions now most prominent in politics are not of such a nature as to compel skilled and trustworthy men to come into the field, as did the constitutional issues and disputes which agitated

of other days. The great object of the Constitution was to prevent the sort to enlist feeling or arouse antipathy.

It is, therefore, very unfortunate that our system of internalism can create recognized leadership in our political life. There is no office set apart for the great part leaders in our government. The powers of the Speaker, of the House of Representatives are too cramped and scanty, the privileges of the chairmanships of the chief standing committees are too limited in scope, the Presidency is too silent and inactive, too little like a presidency and too much like a superintendency. If there be any one man to whom a whole party or a great national majority looks for guiding counsel, he must lead without office, as Daniel Webster did, or in spite of his office, as Jefferson and Jackson did. There must be secret law in the times or in the questions which are abroad to trust great allocutors or great masters of purpose into a non-official leadership which is theirs because they represent in the greatest actions of their lives some principle of essential and wider, loved or hated, or because they possess in their untrammelled power of eloquent speech the ability to give voice to some great public theme. There must be a voice that is uttered with more authority than the tremors of government or force and with more authority of its own imaginative voice constitutes its own power to lead.

of the nation, through which it is possible to get the results out of the official state, and so on. It is not a matter of reason of an individual, it is a matter of the state, and our real leaders are those who are in the state. The state is the work of Mr. Webster and the other great leaders.

In a country where there is a free press of opinion, a free press, a Congress or a Parliament, a country where the state is representative, the only real leaders in the state are the affairs must be legislative leadership -- assemblage in the public meeting which decides everything. The leaders, if there are any, must be those who suggest the opinions and direct the action of the representative body. We have in this country, therefore, no real leadership: because a man is allowed to direct the course of Congress, and there is no way of getting the country save through Congress which is supreme. There is a great Committee like the Committee of Ways and Means standing dead at the sources of a great force and directing it by an organization that stands at the source, and it will not with its history, but there are no principles of order in which we can have no other kind of order. It is not a matter of real order, it is a matter of the state, and it is not other important affairs of the state, and it is not a matter of children, and as a result, there is no real leadership.

and the governmental system, is the responsibility of the government. He is, as he faces war, the only one who will know there are many other ways, some almost as good as the one he has chosen, like himself, by faces which he does not kindle or terrify.

In a word, we have no supreme executive authority, like the great "Minister" of the Crown" of the sea, in whose hands rest the general management of legislation; and we have, consequently, no great prizes of leadership such as are calculated to stimulate men of strong talents to great and conspicuous public service. The Committee system is, as I have already pointed out, the exact opposite of this. It makes all the prizes of leadership small and now and gathers power into a few hands. It cannot be denied that this is in ordinary times and in the a sense of stirring themes a great drawback, inasmuch as it makes legislative service unattractive to minds of the highest order, to whom the offer of really great place and power at the head of the governing assembly, the supreme council of the nation, would be of all things most attractive. If the President were competitive -- if it could be won by distinguished Congressional service -- we can doubt that there would be a notable influx of talents into Congress and a significant elevation of tone and betterment of method in its proceedings; and yet the President is very far from being equal to a first-rate general.

There is, I know, one distinctive feature of a certain type of leadership which makes it seem to some not altogether desirable, though it scarcely constitutes an objection as to the leadership at all seem preferable. It is the leadership of orators: it is the ascendancy of those who are famous for speaking. In the eyes of those who do not regard it as a leadership of artful dialecticians, the success of France of 1871, the victory of rushing declaration -- government, not by the advice of statesmanlike counsellors, but by the wagging of ready tongues. Macaulay pointed out ^{with} ~~that~~ is accustomed force of statement just the fact which haunts those who hold to such objections. The power of speaking, he said, which is so much prized by politicians in a popular government, "may exist in the highest degree without judgment, without fortitude, without skill in reading the characters of men or the signs of the times, without any knowledge of the principles of legislation or of political economy, and without any skill in diplomacy or in the administration of war. Nay, it may well happen that those very intellectual qualities which give peculiar energy to the speeches of a public man may be incompatible with the qualities which would fit him to meet a pressing emergency with promptitude and firmness. It was thus with Charles Fox. It was thus with Windham. It was a privilege to listen to the speech of Fox

ed and ingenious orators. But in comparison with the world
 he found inferior in all the qualities of a ruler to those of
 as Oliver Cromwell, who took no nonsense, or who never talked
 who did not talk at all."

Nevertheless, it is to be observed that neither John Jay nor
 Townshend rose to places of almost confidence in the world,
 when they served and when they shared in the attributes
 powers of speech, and that Cromwell would have been an inferior
 rule anything but an autocratic commonwealth as would have been
 William the Silent to be anything but a lute government. The
 people really had no voice in Cromwell's government. It was
 absolute. He would have been as much out of place in a repre-
 sentative government as a bull in a china shop. We would not
 have a Bismarck if we could.

Every species of government has the defects of its own quali-
 ties. Representative government is government by address, by
 discussion, by persuasion, and a great mischief is that the
 ulation is often misled by deceitful pleas and flayed by unwise
 counsels. But if one were to make a selection from a list of
 examples than Macaulay permitted himself, it would be easy to
 multiply the instances of ruling orators of the first order who
 added to their gifts of eloquence conspicuous results in the
 administration of affairs. At any rate, there is no doubt that

popular assemblies have often seen, like Napoleon, direct influence with judgment, foresight, and steadfastness of purpose, like Val-pole, amazingly quick in "reading the characters of men and the signs of the times"; like Canning, masterful in ordering the con-quests and the policies of the world; like Burke, learned in the profoundest principles of statecraft, like Canning, direct in diplomacy; like Pitt, safe in times of revolution, like Peel, sagacious in finance; or, like Gladstone, skilled in every branch of political knowledge and equal to any strain of emergency.

It is natural that orators should be the leaders of a self-governing people. Men may be clever and engaging speakers, such as are to be found, doubtless, at half the bars of the country, without being equipped even tolerably for any of the high duties of the statesman; but men can scarcely be orators without that force of character, that readiness of resource, that clearness of vision, that grasp of interest, that courage of con-viction, that earnestness of purpose, and that instinct and cap-acity for leadership which are the eight horses that draw the triumphal chariot of every leader and ruler of free men. We could not object to being ruled again by such men as Henry W. Otis and Sam. Adams: but they were products of revolution. They were inspired by the great crises of the time; and the govern-ment which they set up has left us without any ordinary, peace-

for means of training them into the most qualified. We should like to have more like the , but the present condition of our nation is too high a price to pay for them. Some less pungent diet is to be desired for the purpose of giving health to our legislative service. There ought to be some quiet, effusive tonic, some mild stimulant, such as the certain prospect of winning highest and most honourable office, to infuse the best talent of the nation into our public life.

These, then, are the conditions of public life which make the House of Representatives what it is, a disintegrated mass of jarring elements, and the Senate what it is, a small, select, and leisurely House of Representatives. Or perhaps it would be nearer the whole truth to say that these are the circumstances and this the frame of government of which the two Houses form a part. Were the Senate not supplied principally by promotions from the House -- if it had, that is, a membership made up of men specially trained for its peculiar duties -- it would probably be much more effective than it is in fulfilling the great function of instructive and businesslike debate of public questions for its duties are enough unlike those of the House to be entitled peculiar. Men who have acquired all their habits in the matter of dealing with legislative measures in the House of Representatives, where committee work is everything, and public dis-

cussion remain, but "talking to the country", find the Senate
 still mere declaimers when they get into the Senate, where a
 previous question utters its intercepting voice from the tongue
 of tyrannical countenance, and where, consequently, talk
 is free to all.* Only superior talents and superior fortune
 possess could enable a Representative of long training to
 change his spots upon entering the Senate. Most men will not
 fit more than one sphere in life: and after they are well
 stretched or compressed to the measure of that one they will
 rattle about loosely or stick too tight in any other into which
 they may be thrust. Still, more or less adjustment to a sphere
 in every case. If a new Senator kneels a cut too loosely at
 amidst the free spaces of the rules of that august body, he will
 assuredly have some of his biggest corners kneecap off and his an-
 gularities thus made smooth; if he stick fast amongst the
 dignified courtesies and punctilious observances of the upper
 chamber, he will, if he stick long enough, finally wear down
 to such a size, by jostling, as to attain some notion of com-
 less satisfactory.

But it must be said, on the other hand, that even if the Sen-
 ate were made up of something better than selections from the

* An attempt was once made to bring the previous question into
 the practices of the Senate, but it failed of success, and
 that imperative form of cutting off all further discussion
 fortunately never found a place there.

house, it would result in a great deal of confusion in the way of public efficiency to our water management. For it has these same called defects of organization which the house. Its functions also, like those of the house are segregated in the prerogatives of numerous committees.* In this regard Congress is all of a piece. There is in the Senate no more opportunity than exists in the House for gaining such recognized party leadership as would be likely to enlarge a man by giving him a sense of power and to steady and sober him by filling him with a grave sense of responsibility. So far as its organization controls it, the Senate, notwithstanding the one or two special excellencies which are at times temperate and often more rational than the House, is in fact which marks it as of a different nature. Its procedure is the most of the characteristic features of Committee rule.^{*} Its con-

*As regards all financial measures indeed Committee organization is specially thorough. In the Senate "All bills relating to general appropriation shall be reported from the Committee of the Senate, proposing resolutions of appropriation, and, before they are offered, be referred to the Committee on Appropriations, and all general appropriation bills shall be referred to said Committee; and in like manner amendments to bills relating to appropriations for rivers and harbors shall be referred to the Committee to which such bills shall be referred." Senate Rule 30.

*The twentieth-ninth Standing Committee of the Senate, however, chosen by ballot, not appointed by the President, who is an appointee, not a senator, of the President.

crisis are a great deal more than the other side, and another set, and in the end it will be found that the course quite effective in its end, as in the case of the other side, depriving it of that leadership which it would otherwise have had from an impartial, distinct, and a relative position, because it concentrates party responsibility, attracts the best talents, and fixes public interest.

Some Senators are, indeed, seen to be of larger stature and built of stouter stuff than the ordinary members, and it is not uncommon for individual members to become conspicuous figures in every great event in the Senate's deliberations. The public now and again picks out here and there a Senator who seems to act and to speak with that air of statesmanship and who unmistakably merits the confidence of his colleagues and of people. But such a man, however eminent, is never more than a Senator. No one is the Senator. No one can speak for his party as well as for himself, no one exercises the special trust of acknowledged leadership. The Senate is merely a body of individual critics, representing that sort of diversified types of a society or a state which are concerned with the weight of every criticism uttered in its deliberations, and upon the weight of the critic and utterer it, deriving little if any addition to its specific quality from connection with the

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making in the latter neither makes nor offers occasion for a return to the plans formed in the former: because the plans are made before the speeches are uttered. This is self-control of the debates of the House, but even the speeches made in the Senate, free, full, and earnest as they seem, are made, so to speak, after the fact -- not to determine the act, but to air the opinions of the body.

Still, it must be regarded as no inconsiderable addition to the usefulness of the Senate that it enjoys a much greater freedom of discussion than the House can allow itself. It permits itself a good deal of talk in public about what it is doing,^x and it commonly talks a great deal of sense. It is strong enough to make it safe to allow individual freedom to its members and to have, at the same time, such order and sense of proportion in its proceedings as is characteristic of such bodies, like boards of college trustees or of commercial directors, who feel that their main object is business, not speech-making, and so say all that is necessary without ranting and to what they are called upon to do without any of driving themselves with energy or style. Such rules, they say, to feel, are meant only for his use, that is, for the use of self-control. Of course the Senate talks a great deal more like a board of directors would, because the members are not so

is popularly constituted to give Senators no right of representation, but like speakers of a soft water, poured in their fellow-citizens' ears, would be unnecessary, if not injudicious and out of taste, in the Senate's hearing, if not a more sound best in the ears of the people, for a speaker there is intended, if delivered there. Speeches in the name of the Senate in the name of the Senate's business will generally be more effective for campaign uses at home than any speech could be which should run in the name of the proper topics of the struggle. There is an air of doing one's duty, by his party in speaking party platitudes or uttering party defenses on the floor of the Senate or of the House.

Of course, however, there is less temptation to such speech-making in the Senate than in the House. The House knows the terrible possibilities of this sort in store for it, were it to give perfect freedom of debate to its three hundred and twenty-five members in these days when frequent mails and telegrams and tongues of tele-rapay bring every constituency within earshot of Washington; and it therefore seeks to confine and limit the discussion it indulges in to the few committees, especially in charge of the business of each session. But the Senate is small and of settled habits, and has no such means to trouble it. It can afford to indulge in any sort of speech-making.

tion. No Senator is allowed to speak for more than one hour of the session and the procedure is so arranged that every Senator is given an opportunity to be heard. It is not to be supposed that the House can be expected to do this and that it is a privilege granted to the upper chamber.

and there can be no question that the debates held at this place every session in the Senate are of a very high order of excellence. The average of the ability displayed in its discussions not infrequently rises quite to the level of those controversies of the past which we are wont to call great because they furnished occasion to men like Webster and Sumner and Clay whom we cannot now quite meet in respect of intellect and of eloquence. If the debates of the present are scattered amongst the innumerable folios of the Record, it is not because they do not contain utterances worthy to be made and to go into currency, but because they do not deal with questions of great moment or of national existence such as run through all the particular debates, or because our system so arranged and so conducted, the particular rule in legislation as to leave not the great interests to the public eye dependent upon the decisions of either the House or Senate. What is it in our system, dependent as it is totally in the order of the world and in fact in the world, that tests about contemporary legislation? How do we know the value

that it will be possible to have a certain amount of control over the
said when the facts are laid out, and, for the purpose of the
is voted after a certain amount of time has elapsed.

Still, though, it is not possible, for the purpose of the
are of great value in strengthening and strengthening the
come up from the House. The fact that a certain amount of
and undisturbed discussion and its stages, so that the
surgical force of procedure in legislative and in its
with very considerable success its high functions are carried
of revision.

When this has been claimed and admitted, however, it still
remains to be considered what is the sense and of a system
strengthened by steady, or weakened by competition, as a
representative government like our own. The utility and
efficiency of a bicameral system has never, I believe, been seriously
questioned in this country, but Mr. Bagehot's description of
the House of Lords as a contemptible and a waste of time and
money has done much to affect the opinion of the public
in regard to the House of Lords without having any effect
in regard to the House of Commons. Mr. Bagehot, who is
our own day Mr. Bagehot, was not in any way competent to
speak on this matter. Mr. Bagehot, who was never a member of the
to the practical advantages of a two-chamber system, and
need having its own independent life. He failed to
commend the House of Lords in the fact that it is not, as a
rule, a waste of time and money.

would have it, co-ordinate and co-equal with the House of Commons but merely "a revising and amending house, not a part of the Commons save in a casual or exceptional case" and that in effect "Bills on which the House of Commons is not yet brought in earnest, -- upon which the nation is not yet called." * He points out the fact that the House of Lords has never in modern times been, as a House, co-equal in power with the House of Commons. Before the Reform Bill of 1832, the peers were all-powerful in legislation; not, however, because they were members of the House of Lords but because they nominated most of the members of the House of Commons. Since the disturbing reform they have been thrown back upon the functions in which they never were strong, the functions of a deliberative assembly. These are the facts which seem to Mr. Duguit to have made it possible for legislation to make any and satisfactory progress under a system where there is provided for fatal dead-locks between the two branches of the supreme legislature.

In his view "the evil of two co-equal houses of distinct natures is obvious." "Most constitutions," he declares, "have admitted this blunder. The two most remarkable European constitutions in the world commit it. In both the American and Swiss Constitutions the Upper House is co-equal with the

* These quotations from Duguit are taken from the first part of the fifth chapter of his "Political Constitution."

the second, it could produce the nucleus of impoliment -- a
 lead-lock, if it liked; if it does not do so, it is owing, not to
 the goodness of the new constitution, but to the dissimilarity
 of the members of the Chamber. In both these constitutions
 this dangerous division is defended by a peculiar doctrine.....
 It is said that there must be in a Federal Government
 some institution, some authority, some body possessing a veto
 in which the separate States comprising the Confederation are
 all equal. I confess this doctrine has to me no self-evidence,
 and it is assumed, but not proved. The State of Delaware is
 not equal in power or influence to the State of New York, and
 you cannot make it so by giving it an equal veto in an Upper
 Chamber. The history of such an institution is indeed most
 natural. A little State will like, and must like, to see some
 token, some memorial mark of its old independence preserved in
 the Constitution by which that independence is extinguished.
 But it is one thing for an institution to be natural, and an-
 other for it to be expedient. If indeed it be that a Federal
 Government compels the exercise of an Upper Chamber of equal-
 tive and co-ordinate authority, it is one more illustration to
 the many other inherent defects of that kind of government. It
 may be necessary to have the bias, but it is a bias, just
 as much."

It will be in the interest of the people to be informed
thoroughly with any other side to a question. In the case of the
in viewing that field of politics, especially in the case of the
supreme, the philosophical analysis, the study of the
Constitution; and it must be apparent to anyone who reads the
passage I have just now quoted that Mr. Bryce was very wrong
and truly even when he looks across sea at institutions which
were foreign to his own, and of training, and that it is more to
say that he did not see all in this instance, and that that was
consequently in error concerning the true nature of our federal
legislative system. His error, nevertheless, appeared, not when
we look only at the facts which he held up to view, but when we
look at other facts which he ignored. It is true that the ex-
istence of two co-equal Houses is an evil when faced to the exis-
tence of distinct not men, as was the case under the Victorian
Constitution to which Mr. Bryce refers by way of illustration
example. Under that Constitution all legislative business was
sometimes to be seen quite suspended because of the enormous
difference of opinion between the Upper House and the Lower House
and the rival work-people of the colony and the Lower House
was represented the lesser work-people, and the Upper House
people was were not work-people, but the work-people of the
other words, was a distinct evil, and the same could be said

for that it is a part of the system of the British Constitution, which is a more or less complete system of representative government.

The second part of the system, which is the legislative system, is a complete system, and for that reason it is more cumbersome than the British, for our Senate is elected by the House of Lords. It can not only question and state the judgment of the Commons but it always sits perfectly independent upon its own judgment and is by the very nature of its position at the end of the longest chapter of the British Constitution, it is quite as free to set its own face against the Government, and quite as sure to have its acts registered, and there is safety and ease in the fact that the Senate never surrenders its resistance to the House to that point at which resistance must stop all progress of legislation; because there is really a "latent unity" between the Senate and the House which makes continued antagonism between the two bodies impossible - certainly in the ordinary course of affairs. The Senate and the House are of different origin, but virtually of the same structure. The Senate is elected for life, the House is elected for a term of years, and is subject to a transient process of renewal, but it is no less subject to the same principle of accountability to the people, and its conduct is controlled by the same

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the numerous times that the House of Representatives has
 and otherwise in that, that the House of Representatives
 represents all the interests, but all the interests of the
 commercial world. It represents the interests of the
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with the residue which in its proper function, and in its position as a representative of state sovereignty, and of eminent dignity, securing for it real and substantial effect, because popular demands, are to be met, and its authoritative suggestions, are to be given, and its feelings and conclusions of the State legislatures, and of the Senate's only immediate constituents. The Senate does not quarrel with the House, but it does not, so to say, fear so from it. It at least has a chance to be the express voice of those judgments of the nation which are slower and more temperate than its feelings.

This it is which makes the Senate "the most powerful and efficient second chamber that exists", and to it is what constitutes its function, one of the effectual checks, one of the real balances of our system; though it is said to seem insignificant in the literal terms of the Constitution, and the checks of State and federal authorities, of executive prerogatives upon legislative power, and of cabinet and presidential and Congress, and the sort of that in fact, and from the first and almost always, and the Senate's virtues are made to figure in the history of the country, and the virtues, from the very beginning of the Republic, of such a

* These are the words of Lord Rosebery -- tests and from the oldest and most celebrated second chamber to the last

an original political Morality-play.

It should, however, be accounted a delirious fancy to attribute the Senate's usefulness that it is called upon to exert in the course of itself for more than four years at a time. In order that its life may be perpetual, one-third of its members is renewed or changed every two years, each third taking its turn at change or renewal in regular succession; and this device has, of course, an appreciably weakening effect on the legislative sinews of the Senate. Because the Senate mixes the parties in the composition of its Committees just as the House does; and these Committees must, consequently, be subjected to a re-formation whenever the biennial Senatorial elections bring in new men, freshly promoted from the House or from gubernatorial chairs. Places must be found for them at once in the regular organization which busies itself in the committee-rooms. As 18 years is not the term of the Senate, but only of each Senator. reckoning from any year in which one-third of the Senate is re-elected, the term of the majority,-- that detail is not affected by the election,-- is an average of ten-four and two-thirds of which it has to live. There is never, therefore, more than two-thirds of the Senate are more than four years of appointed service before they are to be re-elected. It is, of course, materially affected by the election,-- it is assuredly in order to carry out any other size of organization.

When it has been so decided, the House, the Senate, or the House of the Grand Electors, about the same time, about in its deliberations, are affected, not directly by the people, but indirectly and more or less by the mass of the public opinion through the legislatures of the States.

In estimating the value of the Senate, therefore, as a branch of the national legislature, we should offset the committee organization with its denial of leadership, which disintegrates the Senate and that liability to the influence of new elements which may at any time interrupt the continuity and break the purpose of the Senate, against the merits of close and open debate which clear its mind, and to some extent the 'win' of the public, with regard to the nation's business, draw power towards making legislation definite and consistent, and against those great objections to its efficiency which result from its observation of 'slow and steady' forms of procedure, from the mediate election which gives it independence, and from its being a national and august cause for existence.

When we turn to consider the Senate in its relation with the Executive, we see it no longer as a body of members, but as a consultative executive council, and just here there must be noted an interesting difference between the relation of the

Senate with the President and its relation to the departments, which are in constant touch with the President. It deals directly with the President in relation to appointments and upon treaties. It goes into "executive agreement" to handle without giving the acts of the chief executive in dealings with the departments, and the states and, also, in the case of the House, can, indirectly, through the executive, function as the only unit superior to the departments. Its will is the supreme law in the offices of the departments and yet it orders policy by no direct word to the departments. It does not consult and negotiate with the President, their titular head. Its subordinate agencies, the committees, are not the recognized constitutional superiors of Secretary A. or Comptroller B.; but these officials ^{are} employed by a finger or plan more than a pointer detail without looking to it that they render strict obedience to the wishes of these outside, uncommissional, and irresponsible, but none the less authoritative and imperative, masters.

This feature of the Senate's power over the executive has not, however, been found elsewhere. In the United States a power peculiar to the Senate, this overriding of the departments, but one which it possesses in the name of the people of England to the same extent as the President of the United States.

the attributes of a republic, and that the executive position is not to be filled by the common law, but by a special officer, who is to be appointed by the people. If general tyranny over the departments grows out of this, it is not to be met presently upon looking at our present government from the standpoint of the Executive.

The greatest element in the privilege of the Senate,-- the greatest in dignity, at least, if not in effect,-- is the interest of the country,-- is its right to a ruling power in the ratification of treaties with foreign powers. It is also entitled to this privilege, for the purpose of securing a weight that has not in many instances in the Executive. The balance supposed to exist between the powers of Congress and the constitutional prerogatives of the President, but I do not think it proper to discuss the Executive powers with regard to the possible that there should be any real consent from either the President and the Senate upon these business, and that consequently, the Executive power is not really in the hands of the probable outcome of the Executive. I do not think that the Editor who mentioned the Executive power in the Executive branch of my concerns, and I do not think that the Executive power is in the hands of the Executive. I do not think that the Executive power is in the hands of the Executive. I do not think that the Executive power is in the hands of the Executive.

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bring about the appearance of a new course of action. It is the refusal to ratify the new promises or to support the new agreements that is the great threat of the Department of State.

The machinery of consultation between the Senate and the President is of course the Committee on Relations with the Senate. It sends treaties to its Standing Committee on Foreign Relations, which ponders the President's message as best it may, the treaty and sets itself to understand the situation in the light of all the information available. If the President wishes to have a satisfactory mode of communication with the Senate than formal message-writing, his only door of approach is to his Committee on Foreign Relations. The Secretary of State may confer with its chairman or with its more influential members. But such a mode of conference is manifestly much less than a voice in the deliberations of the Senate itself,-- much less than what must be body face to face in free consultation and equal debate. It is almost as distinct from dealing with a foreign power as would be negotiations preceding the proposed treaty. It cannot be expected the Senate to take the part of an adviser.

* There seems to be a general tendency to extend the traditional letter practice. In 1912 the Senate sought to remove the ordinary custom, in accordance with which the President sends formal messages in person, by requesting the attendance of the President to consult upon foreign affairs, but Mr. Wilson declined.

Still, treaties are not made in a few minutes, and the
 occasional business may create in different circumstances a
 of responsibility and dispose the attention of the Senate to
 dispassionate and fair. The ratification of treaties is
 much more serious matter than the consideration of bills, and
 which every session constitutes so constant a diversion from
 the more prolix business of legislation. It is in dealing
 with nominations, however, that there is the most friction in
 the contact between the President and, in effect, the Senate.
 One of the most noteworthy instances of this is reported to have
 which have arisen out of these relations was the case of Mr. John
 C. Frye, at the time Collector for the port of New York, and, in
 in 1869, President Grant nominated him Minister to the Court of St.
 Petersburg. The nomination, as looking towards an appointment
 to diplomatic service, was referred to the Department of Foreign
 Relations, of which Mr. Charles Sumner was then Secretary. The
 Committee reported the nomination, but Sumner's great influence
 once at his back and was himself called beyond the walls of the
 arts of the Senate. He assembled the Senate in the morning
 support in the Senate as to a vote was given for the nomination
 manager, not himself giving the report, but for the purpose
 blocking all other appointments and finally for the purpose of
 the Senate after other appointments, because of some of the

* North American Review, Vol. 104, p. 63.

Clyde himself is forgotten, but no discussion of the conditions of that situation can fail to say that, even if it of the lesson which his case teaches, because, as usual, it is no means an isolated one. There have been a great many others as bad; and we could have no assurance that these might not in the future be hundreds more, and not recent precedents in the direction of a radical reform of the civil service. Legal to make nominations represent, not the personal preference of the President or the intrigues of other people, but objects, to be strated worth which the Senate is likely to feel forced to accept without question, when the reform reaches the highest grades of the service.

In discussing the Senate's connection with the civil service and the abuses surrounding that connection, one is, therefore, discussing a phase of Congressional government which promises soon to become obsolete. A consummation devoutly to be wished!-- and yet such a phase it seems to reflect qualities of a feature very conspicuous and very characteristic, and in a sense very entertaining. There are not many of these in the proceedings of Congress which the people are to observe with any diligence, and it must be confessed that a similar condition in the Senate will refer to the fact that there are many of them that at the country without and talked about with some interest.

use and interest. "It is not the country that is the problem," he had said in it. When, on the contrary, the country is the problem because he could not do what he wished in the collection of the part of New York, the country rubbed its eyes; and the same superior politician should re-orient the nation. The notion of that unconstitutional control of nomination was regarded as "the courtesy of the Senate", the Senate, indeed, did its business with real zest and enthusiasm over the whole affair. In genuine glass, it was a fight worth seeing. It would have been too bad to miss it.

Before the sentiment of reform had been established, it seemed it, this abuse of the constitution, particularly in the matter of nominations had acquired such proportions as to seem to cover the ugliest deformity in our politics. It looked as if it were beating at once the weakest and the most tried and steady point of our federal system. If there were to be a break, would it not be there, where ~~there~~ was the severest wear and tear? The evil practices were all too ineradicable because they had arisen in the heart of the system. The "break" was complete, as in the case of the "break" to maintain the constitution of the country without any other reason of consequence. It was, in fact, a "break" in the process of federalism, as in the case of the "break" in the

discuss his opinion with the Senate and the President. On his own part, he will not take any part in the matter. It is the majority in the Senate that will refer the matter to the persons named in the bill, and to offer suggestions to the State. There will be a complete job done by the Senate and the President himself was always quite out of the way, hearing only of results, of final votes.

All through the direct language of the bill, the President there runs this characteristic spirit of independence and dictatorial. The President may give the Senate a general assurance, but he can never deal with it in any kind of detail. He has no real presence in the Senate. His power can not extend beyond the most general suggestion. The Senate will do as it pleases. He can never desire to see the President possessed of authority to challenge the independence of the Senate, to treat with freedom, and without any kind of public officers without any kind of responsibility which is owed to the people, but which is certainly an unfortunate feature of the present system of Congress government. It is not, but it is a feature of the system with the right to remove the President. It is not, but it is other branches of the Government which was intended to be con-

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THE EXECUTIVE.

"Every political constitution in which different bodies share the supreme power is only enabled to exist by the forbearance of those among whom this power is distributed."-- Ld. John Russell.

"Simplicity and logical neatness are not the good to be aimed at in politics, but freedom and order, with props against the pressure of time, and arbitrary will, and sudden crises."-- Theo. Woolsey.

"Nothing, indeed, will appear more certain, on any tolerable consideration of this matter, than that every sort of government ought to have its administration correspondent to its legislature."-- Burke.

It is at once curious and instructive to note how we have been forced into practically amending the Constitution without constitutionally amending it. The legal processes of constitutional change are so slow and cumbersome that we have been constrained to adopt a serviceable framework of fictions which enables us easily to preserve the forms without labouriously obeying the spirit of the Constitution,-- which will stretch as the nation grows. It would seem that no impulse short of the impulse of self-preservation, no force less than the force of revolution, can nowadays be expected to move the cumbrous machinery of formal amendment erected in Article Five. That must be a tremendous movement of opinion which can sway two-thirds of each House of Congress and the people of three-fourths of the States. Mr. Bagehot has pointed out that one consequence of the existence of this next to immovable machinery "is that the

most obvious evils cannot be quickly remedied", and "that a clumsy working and a curious technicality mark the politics of a rough-and-ready people. The practical arguments and legal disquisitions in America", continues he, "are often like those of trustees carrying out a misdrawn will,-- the sense of what they mean is good, but it can never be worked out fully or defended simply, so hampered is it by the old words of an old testament." But much the greater consequence is that we have resorted, almost unconscious of the political significance of what we did, to extra-constitutional means of modifying the federal system where it has proved to be too refined by balances of divided authority to suit practical uses,-- to be out of square with the main principle of its foundation: namely, government by the people through their representatives in Congress.

Our method of choosing Presidents is a notable illustration of these remarks. The difference between the actual and the constitutional modes is the difference between an ideal non-partisan choice and a choice made under party whips: the difference between a choice made by independent, unpledged electors acting apart in the States and a choice made by a national party convention. Our Executive, no less than the English and French Executives, is selected by a representative, deliberative body, though in England and France the election is con-

trolled by a permanent legislative chamber and here by a transient assembly chosen for the purpose and dying with the execution of that purpose. In England the whole Cabinet is practically elective. The French Chambers formally elect the President, the titular head of the government, and the President regards only the will of the Assembly in appointing the Prime Minister, who is the energetic head of the government, and who, in his turn, surrounds himself with colleagues who have the confidence of the legislature. And the French have but copied the English constitution, which makes the executive Ministry the representatives of the party majority in the Commons. With us, on the other hand, the President is elected by one representative body, which has nothing to do with him after his election, and the Cabinet must be approved by another representative body which has nothing directly to do with them after their appointment.

Of course I do not mean that the choice of a national convention is literally election. The convention only nominates a candidate. But that candidate is the only man for whom the electors of his party can vote; and so the expression of the preference of the convention of the dominant party is practically equivalent to election, and might as well be called election by any one who is writing of broad facts and not of fine distinctions. The sovereign in England picks out the man who is to be

Prime Minister, but he must pick where the Commons point, and so it is simpler, as well as perfectly true, to say that the Commons elect the Prime Minister. My agent does not select the particular horse I instruct him to buy. This is just the plain fact, that the electors are the agents of the national conventions: and this fact constitutes more than an amendment of that original plan which would have had all the electors to be what the first electors actually were, trustworthy men given carte blanche to vote for whom they pleased, casting their ballots in thirteen State capitals in the hope that they would happen upon a majority agreement.

It is worth while, too, to notice another peculiarity of this elective system. There is a thorough-going minority representation in the assemblies which govern our elections. Across the ocean a Liberal Prime Minister is selected by the representatives only of those Liberals who live in Liberal constituencies: those who live elsewhere in a helpless minority, in a Conservative district, having of course no voice in the selection. A Conservative Premier, in like manner, owes nothing to those Conservatives who were unable to return a member to Parliament. So far as he is concerned, they count for Liberals since their representative in the Commons is a Liberal. The Parliaments which select our Presidents, on the contrary, are,

each of them, all of a kind. No State district can have so few Republicans in it as not to be entitled to a representative in the national Republican convention equal to that of the most unambiguously Republican district in the country: and a Republican State is accorded as full a representation in a Democratic convention as is the most Democratic of her sister States.

We had to pass through several stages of development before the present system of election by convention was reached. At the first two presidential elections the electors were left free to vote as their consciences and the Constitution bade them: for the Constitution bade them vote ^{to} as they deemed best, and it did not require much discretion to vote for General Washington. But when General Washington was out of the race and new parties began to dispute the field with the Federalists, party managers could not help feeling anxious about the votes of the electors and some of those named to choose the second President were, accordingly, pledged beforehand to vote thus and so. After the third presidential election there began to be Congressional oversight of the matter. From 1800 to 1824 there was an unbroken succession of caucuses of the Republican members of Congress to direct the action of the party electors, and nomination by caucus died only when the Republican party became virtually the only party worth reckoning with,-- the on-

ly party for whom nomination was worth while,-- and then public opinion began to cry out against such secret direction of the monopoly. In 1796 the Federalist Congressmen had held an informal caucus to ascertain their minds as to the approaching election: but after that they refrained from further experiment in the same direction and contented themselves with now and then a sort of convention, until they had no party to convene. In 1828 there was a sort of dropping fire of nominations from State legislatures: and in 1832 sat the first of the great national nominating conventions.

There was, therefore, one form of Congressional Government which did not succeed. It was a very logical mode of party government, that of nominating the chief magistrate by Congressional caucus, but it was not an open enough way. The French chamber does not select premiers by shutting up the members of its majority in caucus. Neither does the House of Commons. Their selection is made by long and open trial, in debate and in business management, of the men in whom they discover most tact for leading and most skill for planning, as well as most power for ruling. They do not say, by vote, give us M. Ferry, give us Mr. Gladstone; but Her Majesty knows as well as her subjects know that Mr. Gladstone is the only man whom the Liberal majority will obey; and President Grevy perceives that M.

Ferry is the only man whom the Chambers can be made to follow. Each has elected himself by winning the first place in his party. The election has openly progressed for years, and is quite different from the private vote of a caucus about an outsider who is to sit, not in Congress, but in the executive mansion: who is not their man but the people's.

Nor would nominations by State legislatures answer any rational purpose. Of course every State had, or thought she had, which is much the same thing, some citizen worthy to become President; and it would have been confusion worse confounded to have had as many candidates as there might be States. So universal a competition between "favourite sons" would have thrown the election into the House of Representatives so regularly as to replace the nominating caucus by an electing caucus.

The virtual election of the Cabinet, the real executive, or at least the Prime Minister, the real head of the executive, by the Commons in England furnishes us with a contrast rather than with a parallel to the election of our premier, the head of our executive, by a deliberative, representative body, because of the difference of function and of tenure between our Presidents and English Prime Ministers. William Pitt was elected to rule the House of Commons, John Adams, to hold a constitutional balance against the Houses of Congress. The one was the leader of

the legislature, the other, so to say, the colleague of the legislature. Besides, the Commons can not only make but also unmake Ministries: whilst conventions can do nothing but bind their parties by nomination, and nothing short of a well-nigh impossible impeachment can unmake a President, except four successions of the seasons. As has been very happily said by a shrewd commentator on our system, it is essentially astronomical. A President's usefulness is measured, not by efficiency, but by calendar months. It is reckoned that if he be good at all he will be good for four years. A Prime Minister must keep himself in favour with the majority, a President need only keep alive.

Once the functions of a presidential elector were very august. He was to speak for the people; they were to accept his judgment as theirs. He was to be as eminent in the qualities which win trust as was the greatest of the Imperial Electors in the power which inspires fear. But now he is merely a registering machine,-- a sort of bell-punch to the hand of his party convention. It gives the pressure and he rings. It is, therefore, patent to everyone that that portion of the Constitution which prescribes his functions is as though it were not. A very simple and natural process of party organization, taking form first in Congressional caucuses and later in nominating

conventions, has radically altered a Constitution which declare that it can be amended only by the concurrence of two-thirds of Congress and three-fourths of the States. The sagacious men of the constitutional convention of 1787 certainly expected their work to be altered, but can hardly have expected it to be changed in so informal a manner.

The conditions which determine the choice of a nominating convention which names a President are radically different from the conditions which facilitate the choice of a representative chamber which selects for itself a Prime Minister. "Among the great purposes of a national parliament are these two", says Mr. Parton,* "first to train men for practical statesmanship; and secondly to exhibit them to the country, so that, when men of ability are wanted, they can be found without anxious search and perilous trial." In those governments which are administered by an executive committee of the legislative body not only this training but also this exhibition is constant and complete. The career which leads to Cabinet office is a career of self-exhibition. The self-revelation is made in debate, and so is made to the nation at large as well as to the Ministry of the day who are looking out for able recruits and to the Commons whose ear is quick to tell a voice which it will consent to hear, a knowledge which it will pause to heed. But in governments like

*Atlantic Monthly, Vol. 25, p. 143.

our own, in which legislative and executive services are altogether dissociated, this training is incomplete and this exhibition almost entirely wanting. A nominating convention does not look over the rolls of Congress to pick a man to suit its purpose: and if it did it could not find him, because Congress is not a school for the preparation of administrators, and the convention is supposed to be searching, not for an experienced committeeman, but for a tried statesman. The proper test for its application is not the test by which Congressmen are assayed. They make laws, but they do not have to order the execution of the laws they make. They have a great deal of experience in directing but none at all in being directed. Their care is to pass bills, not to keep them in running order after they have become statutes. They ^{spend} ~~pass~~ their lives without having anything to do directly with administration, though administration is dependent upon the measures which they enact.

Presidential

A convention, therefore, when it nominates a man who is, or has been, a member of Congress, does not nominate him because of his Congressional experience, but because it is thought that he has other abilities which were not called out in Congress. Andrew Jackson had been a member of Congress, but he was chosen President because he had won the battle of New Orleans and had driven the Indians from Florida. It was thought that his mili-

tary genius evinced executive genius. The men whose fame rests altogether upon laurels won in Congress have seldom been more successful than Webster and Henry Clay in their candidacy for the chief magistracy. Washington was a soldier, Jefferson not but a sorry figure in debate; Monroe was a diplomatist, it required diligent inquiry to find out what many of our Presidents had been before they became candidates; and eminency in legislative service has always been at best but an uncertain road to official preferment.

Of late years a tendency is observable which seems to be making the gubernatorial chairs of the greater States the nearest offices to the Presidency: and it cannot but be allowed that there is much that is rational in the tendency. The governorship of a State is very like a smaller Presidency: or, rather, the Presidency is very like a big governorship. Training in the duties of the one fits for the duties of the other. This is the only avenue of subordinate place through which the highest place can be naturally reached. Under the Cabinet governments abroad a still more natural line of promotion is arranged. The Ministry is a legislative Ministry and draws its life from the legislature, where strong talents always secure executive place. A long career in Parliament is, at least, a long contact with practical statesmanship, and at best a long schooling

in the duties of the practical statesman. But with us there is no such intimate relationship between legislative and executive service. From experience in State administration to trial in the larger sphere of federal administration is the only natural order of promotion. We ought, therefore, to hail the recognition of this fact as in keeping with the general plan of the federal Constitution. The business of the President, occasionally great, is usually not much above routine. Most of the time it is mere administration, mere obedience of directions from the masters of policy, the Standing Committees. Except in so far as his power of veto constitutes him a part of the legislature, the President might, not inconveniently, be a permanent officer: the first official of a carefully-graded and impartially regulated civil service system, through whose sure series of merit-promotions the youngest clerk might rise even to the chief magistracy.* He is part of the official rather than of the political machinery of the government and his duties call rather for training than for constructive genius. If there can be found in the official systems of the States a lower grade of service in which men may be advantageously drilled for presidential functions, so much the better. The States will have better governors, the Union better Presidents, and

* Something like this has been actually proposed by Mr. Albert Stickney in his interesting and incisive essay, "A True Republic

there will have been supplied one of the most serious needs ~~of~~ left unsupplied by the Constitution,-- the need for a proper school in which to rear federal administrators.

Administration is something that men must learn, not something to skill in which they are born. Americans take to business of all kinds more naturally than any other nation ever did and the executive duties of government constitute just an exalted kind of business:-- but even Americans are not Presidents in their cradles. One cannot have too much preparatory training and experience who is to fill so high a magistracy. It is difficult to perceive, therefore, upon what safe ground of reason are built the opinions of those persons who regard short terms of service as sacredly and peculiarly republican in principle. If republicanism is founded upon good sense, nothing so far removed from good sense can be part and parcel of it. Efficiency is the only just foundation for confidence in a public officer under republican institutions no less than under monarchs: and short terms which cut off the efficient as surely and inexorably as the inefficient are quite as repugnant to republican as to monarchical rules of wisdom. Unhappily, however this is not American doctrine. A President is dismissed almost as soon as he has learned the duties of his office, and a man who has served a dozen terms in Congress is a curiosity. We

are too apt to think both the work of legislation and the work of administration easy enough to be done ~~easily~~^{readily}, with or without preparation, by any man of discretion and character. No one imagines that the dry-goods or the hardware trade, or even the cobbler's craft, can be successfully conducted except by those who have worked through a labourious and unremunerative apprenticeship and who have devoted their lives to perfecting themselves as tradesmen or as ~~makers~~^{menders} of shoes. But legislation is esteemed a thing which may be taken up with success by any shrewd man of middle age, which a lawyer may now and again advantageously combine with his practice, or of which any intelligent youth may easily catch the knack; and administration is regarded as something which an old soldier, an ex-diplomatist, or a popular politician may be trusted to take to by instinct. No man of tolerable talents need despair of having been born a presidential candidate.

These must be pronounced very extraordinary conclusions for an eminently practical people to have accepted: and it must be received as an awakening of good sense that there is nowadays a decided inclination manifested on the part of the nation to supply training-schools for the Presidency in like manner offices such as the governorships of the greater States. For the sort of Presidents need^{-ed} under the present arrangement of our federal

government it is best to choose amongst the ablest and most experienced State governors.

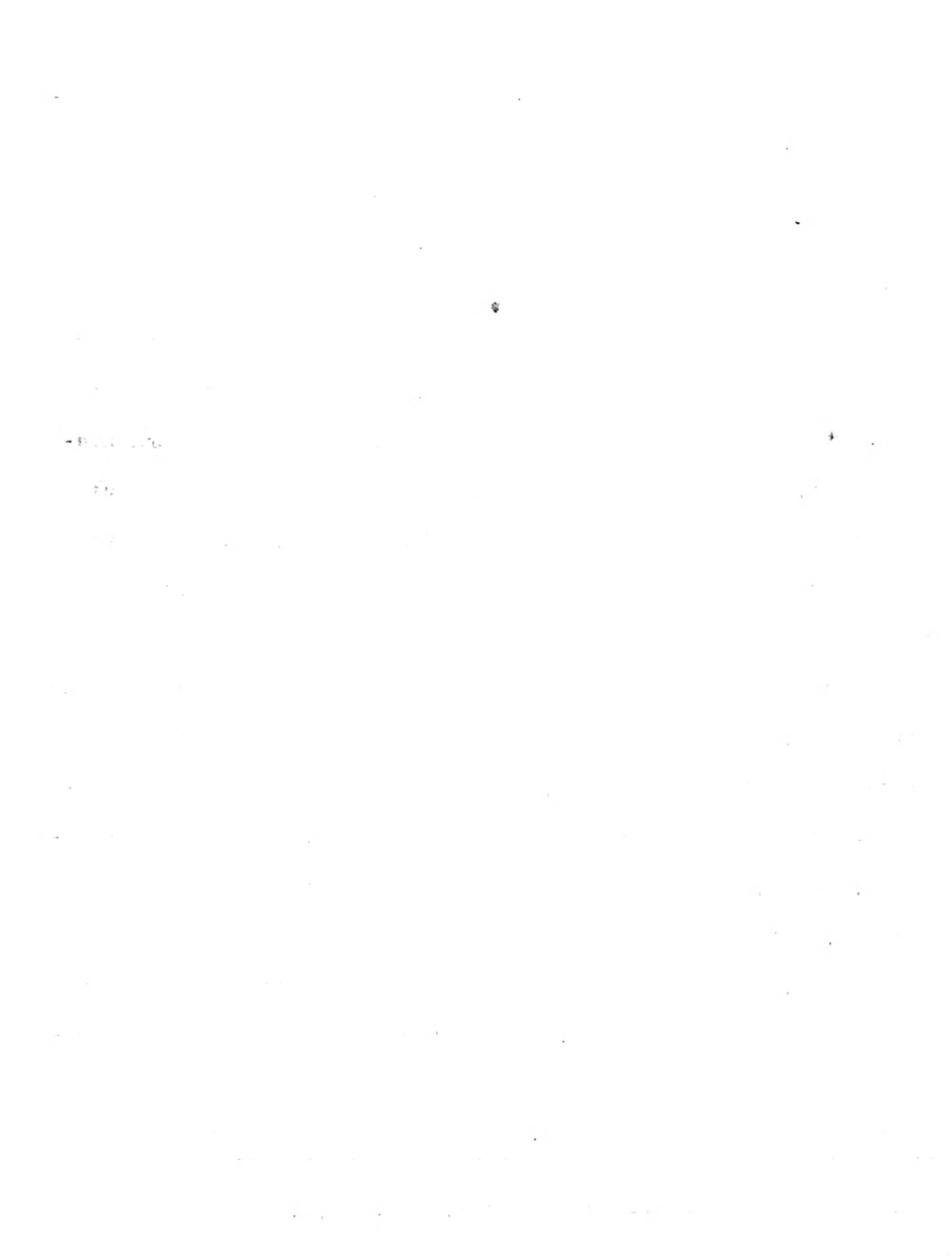
So much for nomination and election. But, after election: what then? The President is not all of the Executive. He cannot get along without the men whom he appoints, with and by the consent and advice of the Senate; and they are really integral parts of that branch of the government which he titularly contains in his one single person. The characters and training of the Secretaries are of almost as much importance as his own gifts and antecedents: so that his appointment and the Senate's confirmation must be added to the machinery of nomination by convention and election by automatic electors before the whole process of making up a working executive has been noted. The early Congresses seem to have regarded the Attorney General and the four Secretaries* who constituted the first Cabinets as something more than the President's lieutenants. Before the republican reaction which followed the supremacy of the Federalists, the heads of the departments appeared in person before the Houses to impart desired information and to make what suggestions they might have to venture, just as the President attended in person to read his "address". They were always recognized units in the system, never mere ciphers to the presi-

 * State, Treasury, War, Navy.

dential figure which led them. Their wills counted as independent wills.

The limits of this independence ~~of will~~^{will} seem, however, never to have been very clearly defined. Whether or not the President was to take the advice of his appointees and colleagues appears to have depended always upon the character and temper of the President. Here, for example, is what was reported in 1862. "We pretend to no State secrets", said the New York Evening Post,* "but we have been told, upon what we deem good authority, that no such thing as a combined, unitary, deliberative administration exists; that the President's brave willingness to take all responsibility has quite neutralized the idea of a joint responsibility; and that orders of the highest importance are issued, and movement^s commanded, which Cabinet officers learn of as other people do, or, what is worse, which the Cabinet officers disapprove and protest against. Each Cabinet officer, again, controls his own department pretty much as he pleases, without consultation with the President or with his coadjutors, and often in the face of determinations which have been reached by the others." A picture this which forcibly reminds one of a certain imperious Prime Minister in his last days created Earl of Chatham. These reports may have been true

* As quoted in Macmillans Magazine, Vol.VII, p.67.



or they may have been mere rumours: but they depict a perfectly possible state of affairs. There is no influence except the ascendancy or tact of the President himself to keep a Cabinet in harmony and to dispose it to cooperation: so that it would be very difficult to lay down any rules as to what elements really constitute an Executive. These elements can be determined exactly of only one ^{Administration} ~~Executive~~ of at a time, and that only after it has closed and some one who knows its secrets has come forward to tell them. We think of Mr. Lincoln rather than of his Secretaries when we look back to the policy of the war-time; but we think of Mr. Hamilton rather than of President Washington when we look back to the policy of the first administration. Daniel Webster was bigger than President Fill^{more}, and President Jackson was bigger than Mr. Secretary Van Buren. It depends for the most part upon the character and training, the previous station, of the Cabinet officers whether or not they act as governing factors in administration, just as it depends upon the President's talents and preparatory schooling whether or not he is a mere figure-head. A weak President may prove himself wiser than the convention which nominated him by overshadowing himself with a Cabinet of notables.

From the necessity of the case, however, the President cannot often be really supreme in matters of administration, ex-

cept as the Speaker of the House of Representatives is supreme in legislation, as appointer of those who are supreme in its several departments. The President is no greater than his prerogative of veto makes him; he is, in other words, powerful rather as a branch of the legislature than as the titular head of the Executive. Almost all distinctively executive functions are specifically bestowed upon the heads of the departments. No President, however earnest and industrious, can keep the Navy in a state of creditable efficiency if he have a corrupt or incapable Secretary in the Navy Department; he cannot prevent the army from suffering the damage of demoralization if the Secretary of War is without either ability, experience, or conscience; there will be corrupt jobs in the Department of Justice, do what he will ^{to} correct the methods of a deceived or deceitful Attorney General; he cannot secure even-handed equity for the Indian tribes if the Secretary of the Interior chooses to thwart him; and the Secretary of State may do as much mischief behind his back as can the Secretary of the Treasury. He might master the details and so control the administration of some one of the departments, but he can scarcely oversee them all with any degree of strictness. His knowledge of what they have done or are doing comes, of course, from the Secretaries themselves, and his annual messages to Congress are in large part but a re-

capitulation of the chief contents of the detailed reports of which the heads of the departments themselves submit at the same time to the Houses.

It is easy, however, to exaggerate the power of the Cabinet. After all has been said, it is evident that they differ from the permanent officials only in not being permanent. Their tenure of office is made to depend upon the supposition that their functions are political rather than simply ministerial, independent rather than merely instrumental. They are made party representatives because of the fiction that they direct policy. In reality the First Comptroller of the Treasury has almost, if not quite, as much weight in directing departmental business as has the Secretary of the Treasury himself, and it would practically be quite as useful to have his office, which is in intention permanent, vacated by every change of administration as to have that rule with regard to the office of his official chief. The permanent organization, the clerical forces, of the departments have in the Secretaries a sort of sliding top: though it would probably be just as convenient in practice to have this lid permanent as to have it movable. That the Secretaries are not in fact the directors of the executive policy of the government, I have shown in pointing out the thorough-going supervision of even the details of administration

which it is the disposition of the standing Committees of Congress to exercise. In the actual control of affairs no one can do very much without gaining the ears of the Committees. The heads of the departments could, of course, act much more wisely in many matters than the Committees can, because they have an intimacy with the workings and the wants of those departments which no Committee can possibly possess. But Committees prefer to govern in the dark rather than not to govern at all, and the Secretaries, as a matter of fact, find themselves bound in all things larger than routine details by laws which have been made for them and which they have no legitimate means of modifying.

Of course the Secretaries are in the leading-strings of statutes: and all their duties look towards a strict ^{obedience to} ~~service of~~ Congress. Congress made them and can unmake them. It is to Congress that they must render account for the conduct of administration. The head of each department must every year make a detailed report of the expenditures of the department and a minute account of the facilities of work and the division of functions in the department, naming each clerk of its force. The chief duties of one Cabinet officer will serve to illustrate the chief duties of his colleagues. It is the duty of the Secretary of the Treasury* "to prepare plans for the improvement

* I quote from an excellent handbook, "The United States Government", by Lam, here.

and management of the revenue and for the support of the public credit; to prescribe forms of keeping and rendering all public accounts; to grant all warrants for moneys to be paid from the Treasury in pursuance of appropriations made by Congress, to report to the Senate or House in person or in writing information required by them pertaining to his office, and to perform all duties relating to finance that he shall be directed to perform." "He is required to report to Congress annually, on the first Monday in June, the results of the information compiled by the Bureau of Statistics, showing the condition of manufactures, domestic trade, currency, and banks in the several States and Territories." "He prescribes regulations for the killing in Alaska Territory and adjacent waters of minks, martens, sable, and other fur-bearing animals." "And he must lay before Congress each session the reports of the Auditors, showing the applications of the appropriations made for the War and Navy Departments, and also abstracts and tabulated forms showing separate accounts of the moneys received from internal duties."

Of course it is of the utmost importance that a Secretary who has within his choice some of the minor plans for the management of the revenue and for the maintenance of the public credit should be carefully chosen from amongst men skilled in

financial administration and experienced in business relations, but it is no more necessary that the man selected for such responsible duties should be an active politician, called to preside over his department only so long as the President who appointed him continues to hold office and to like him, than it is to have a strictly political officer to fulfil his other duty, of prescribing game laws for Alaska and Alaskan waters. Fur-bearing animals can have no connection with political parties: except, perhaps, as "spoils." Indeed it is a positive disadvantage that Mr. Secretary should be chosen upon such a principle. He cannot have the knowledge, and must therefore lack the efficiency, of a permanent official separated from the partisan conflicts of politics and advanced to the highest office of his department by a regular series of promotions won by long service. The general policy of the government in matters of finance, everything that affects the greater operations of the Treasury, depends upon legislation and is altogether in the hands of the Committees of Ways and Means and of Finance, so that it is entirely apart from good sense to make an essentially political office out of the post of that officer who controls only administrative details.

And this remark would seem to apply with still greater force to the offices of the other Secretaries. They have even

less energetic scope than the Secretary of the Treasury has. There must under any system be considerable power in the hands of the officer who handles and ^{disposes} ~~disposes~~ vast revenues, even though he handle an ^{disposal} ~~disposal~~ ^{disposal} ~~disposal~~ than as directed by his employers. Money in its goings to and fro takes various wares by the way, so to speak. It cannot move in great quantities without moving a large part of the commercial world with it. Management even of financial details may be made instrumental in turning the money-markets upside down. The Secretary of the Treasury is, therefore, less a mere chief clerk than are his colleagues; and if his duties are not properly political theirs certainly are not.

In view of this peculiarity of the Secretaries, in being appointed as partisans and endowed as mere officials, it is interesting to enquire what and whom they represent. They are clearly meant to represent the political party to which they belong; but it very often happens that it is impossible for them to do so. They must sometimes obey the opposite party. It is our habit to speak of the party to which the President is known to adhere and which has control of appointments to the offices of the civil service as "the party in power"; but it is very evident that control of the executive machinery is not all or even a very large part of power in a country ruled as ours is. In

so far as the President is an executive officer he is the servant of Congress: and the members of the cabinet, being confined to executive functions, are altogether the servants of Congress. The President, however, besides being titular head of the executive service, is to the extent of his veto a third branch of the legislature, and the party which he represents is in power in the same sense that it would be in power if it had on its side a majority of the members of either of the other two branches of Congress. If the House and Senate are of one party and the President and his ministers of the opposite, the President's party can hardly be said to be in power beyond the hindering and thwarting faculty of the veto. The Democrats were in power during the sessions of the twenty-fifth Congress because they had a majority in the Senate as well as Andrew Jackson in the White House; but later Presidents have had both House and Senate against them.*

* "In America the President cannot prevent any law from being passed, nor can he evade the obligation of enforcing it. His sincere and zealous cooperation is no doubt useful, but it is not indispensable, in the carrying on of public affairs. All his important acts are directly or indirectly submitted to the legislature, and of his own free authority he can do but little. It is therefore his weakness, and not his power, which enables him to remain in opposition to Congress. In Europe harmony must reign between the Crown and the other branches of the legislature, because a collision between them may prove serious, in America, this harmony is not indispensable, because such a collision is impossible." -- De Toqueville, I, p. 124.

It is this constant possibility of party diversity between the Executive and Congress which so much complicates our system of party government. The history of administrations is not necessarily the history of parties. Presidential elections may turn the scale of party ascendancy one way, and the intermediate Congressional elections may quite reverse the balance. A strong party administration, by which the energy of the state is concentrated in the hands of a single, well-recognized political organization which is by reason of its power saddled with all responsibility, may sometimes be possible, but it is just often be impossible. We are thus shut out in part from real party government such as we desired, and such as it is unquestionably desirable, to set up in every system like ours. Party government can exist only when the absolute control of administration, the appointment of its officers as well as the direction of its means and policy, is given immediately into the hands of that branch of the government whose power is paramount the representative body. Roger Sherman, whose perception was amongst the keenest and whose sagacity was amongst the surest and whose outspokenness in the great convention of 1787, was very bold and ~~therefore~~ in declaring this fact and in proposing to give it candid recognition. Perceiving very clearly the omnipotence which must inevitably belong to a national Congress such as the convention

was about to create, he avowed that "he considered the executive magistracy as nothing more than an institution for carrying the will of the legislature into effect; that the person or persons [who should constitute the Executive] ought to be appointed by, and accountable to, the legislature only, which was the depository of the supreme will of the society". Indeed, the Executive was in his view so entirely the servant of the legislative will that he saw good reason to think that the legislature should judge of the number of persons of which the executive should be composed: and there seem to have been others in the convention who went along with him in substantial agreement as to these matters. It would seem to have been only a desire for the creation of as many as possible of those balances of power which now decorate the "literary theory" of the constitution which they made that prevented a universal acquiescence in these views.

The anomaly which has resulted is seen most clearly in the party relations of the President and his Cabinet. The President is a partisan, -- is elected ^{because he is} ~~as~~ a partisan, -- and yet he not infrequently negatives the legislation passed by the party whom he represents: and it may be said to be nowadays a very rare thing to find a Cabinet made up of truly representative party men. They are the men of his party whom the President

likes, but not necessarily or always the men whom that party relishes. So low, indeed, has the reputation of some of our later Cabinets fallen, even in the eyes of men of their own political connection, that writers in the best of public prints feel at full liberty to speak of their members with open contempt. "When Mr. ----- was made Secretary of the Navy", laughs the New York Nation, "no one doubted that he would treat the Department as 'spoils,' and consequently nobody has been his appointee. He is one of the statesman who can hardly conceive of a branch of the public Administration having no spoils in it. And that this separation of the Cabinet from real party influence, and from the party leadership which would seem properly to belong to its official station, is a natural result of our constitutional scheme is made patent in the fact that the Cabinet has advanced in party insignificance as the system has grown older. The connection between the early Cabinets and the early Congresses was very like the relations between leaders and their party. Both Hamilton and Gallatin led rather than obeyed the Houses: and it was many years before the suggestions of heads of departments ceased to be such of respectful and acquiescent consideration from the legislative Committees. But as the Committees gained facility and power the leadership of the Cabinet lost ground. Congress took control of the general

tant so soon as ever it got control of itself, and no secretary of to-day can claim by virtue of his office recognition as a party authority. Congress looks upon advice offered to it by anybody but its own members as gratuitous impertinence.

At the same time it is quite evident that the means which Congress has of controlling the departments and of exercising the searching oversight at which it aims are limited and ineffective. Its intercourse with the President is restricted to the executive messages and its intercourse with the departments has no easier channels than private consultations between executive officials and the Committees, informal interviews of the ministers with individual members of Congress, and the written correspondence which the Cabinet officers from time to time address to the presiding officers of the two Houses, at stated intervals or in response to formal resolutions of inquiry. Congress stands almost helplessly outside of the departmental life, the special, irksome, ungracious investigations which it from time to time institutes in its spasmodic endeavours to dispel or confirm suspicions of malfeasance or of wanton corruption. It not afford it more than a glimpse of the inside of a small province of federal administration. Hostile or designing officials can always hold it at arm's length by dextrous evasions and concealments. It can violently disturb, but it cannot often fath-

om the waters of the sea in which the bigger fish of the civil service swim and feed. Its drag-net stirs without cleansing the bottom. Unless it have at the head of the departments capable, fearless men altogether in its confidence and entirely in sympathy with its designs, it is clearly helpless to do more than fright those officials whose consciences are their accusers.

And it is easy to see how the commands as well as the questions of Congress may be evaded, if not directly disobeyed, by the executive agents. Its Committees may command, but they cannot superintend the execution of their commands. The Secretaries, though not free enough to have any independent policy of their own, are free enough to be very poor, because very unmanageable, servants. Once installed, their hold upon their offices does not depend upon the will of Congress. If they please the President and keep upon living terms with their colleagues, they need not seriously regard the displeasure of the Houses, unless, indeed, by actual crime, they rashly put themselves in the way of its judicial wrath. If their folly be not too overt and extravagant, their authority may continue theirs till the earth has four times made her annual journey round the sun. They may make daily blunders in administration, and repeated mistakes in business, may thwart the plans of Congress

in a hundred small, vexatious ways, and yet all the while snap their fingers at its dissatisfaction or displeasure. They are denied the gratification of possessing real power, but they have the satisfaction of being secure in a petty independence which gives them a chance to be tricky and scheming. There are ways and ways of obeying: and if Congress be not pleased, why need they care? Congress did not give them their places, and cannot easily take them away.

Still, it remains true that all the big affairs of the departments are conducted in obedience to the direction of the Standing Committees. The President nominates, and with legislative approval, appoints to the more important offices of the government, and the members of the Cabinet have the privilege of advising him as to matters in most of which he has no power of final action without the concurrence of the Senate: but the gist of all policy is decided by legislative, not by executive, will. It can be no great satisfaction to any man to possess the barren privilege of suggesting the best means of managing the every-day routine business of the several bureaus so long as the larger plans which that business is meant to advance are made for him by others who are set over him. If one is commanded to go to this place or to that place, and must go will he will he, it can be but small solace to him that he is left free

to determine whether he will ride or walk in going the journey. The only serious questions are whether or not this so great an real control exerted by Congress can be exercised efficiently and with sufficient responsibility to those whom Congress represents, and whether good government is promoted by the arrangement.

No one, I take it for granted, is disposed to disallow the principle that the representatives of the people are the proper ultimate authority in all matters of government: and that administration is merely the clerical part of government. Legislation is the originating force. It determines what shall be done; and the President, if he cannot or will not stay legislation by the use of his extraordinary power as a branch of the legislature, is plainly bound in duty to render unquestioning obedience to Congress. And, if it be his duty to obey, still more is obedience the bounden duty of his subordinates. The Power of making laws is in its very nature and essence the power of directing, and that power is given to Congress. The principle is without drawback, and is inseparably of a piece with all Anglo-Saxon usage: the difficulty, if there be any, must lie in the choice of means whereby to energize the principle. The natural means would seem to be the right on the part of the representative body to have all the executive servants of its

will under its close and constant supervision and to hold them to a strict accountability:-- in other words to have the privilege of dismissing them whenever their services became unsatisfactory. This is the matter-of-course privilege of every other master; and if Congress does not possess it, its mastery is hampered without being denied. The executive officials are its servants all the same; the only difference is that if they prove negligent or incapable or deceitful servants, Congress must rest content with the best that can be got out of them until its chief administrative agent, the President, chooses to appoint better. It cannot make them docile, though it may compel them to be obedient in all greater matters. In authority of rule Congress is made master, but in means of rule it is made mere magistrate. It commands with absolute lordship, but it can discipline for disobedience only by slow and formal judicial process.

Upon Machiavelli's declaration that "nothing is more important to the stability of the state, than that facility should be given by its constitution for the accusation of those who are supposed to have committed any public wrong", a writer in the Westminster Review makes this thoughtful comment: "The benefit of such a provision is two-fold. First, the salutary fear of the probable coming of a lay of account will restrain the

evil practices of some bad men and self-seekers; secondly, the legal outlet of accusation gives vent to peccant humours in the body politic, which, if checked and driven inward, would work to the utter ruin of the constitution----- the distinction is lost between accusation and calumny."* And of course it was these benefits which our federal Constitution was meant to secure by means of its machinery of impeachment.. No servant of the State, not even the President himself, was to be beyond the reach of accusation by the House of Representatives and trial by the Senate. But the processes of impeachment, like those of amendment, are ponderous and difficult to handle. It requires something like passion to set them a-going: and nothing short of the grossest offences against the plain law of the land will suffice to give them speed and effectiveness. Indignation so great as to overerow party interest may secure a conviction: nothing less can. Indeed, judging by our past experiences, impeachment may be said to be little more than an empty menace. The House of Representatives is a tardy grand-jury and the Senate an uncertain court.

Besides, great crimes such as might speed even impeachment are not ordinary things in the loosest public service. An open eyed public opinion can generally give them effective check. That which usually and every day clogs and hampers good govern-

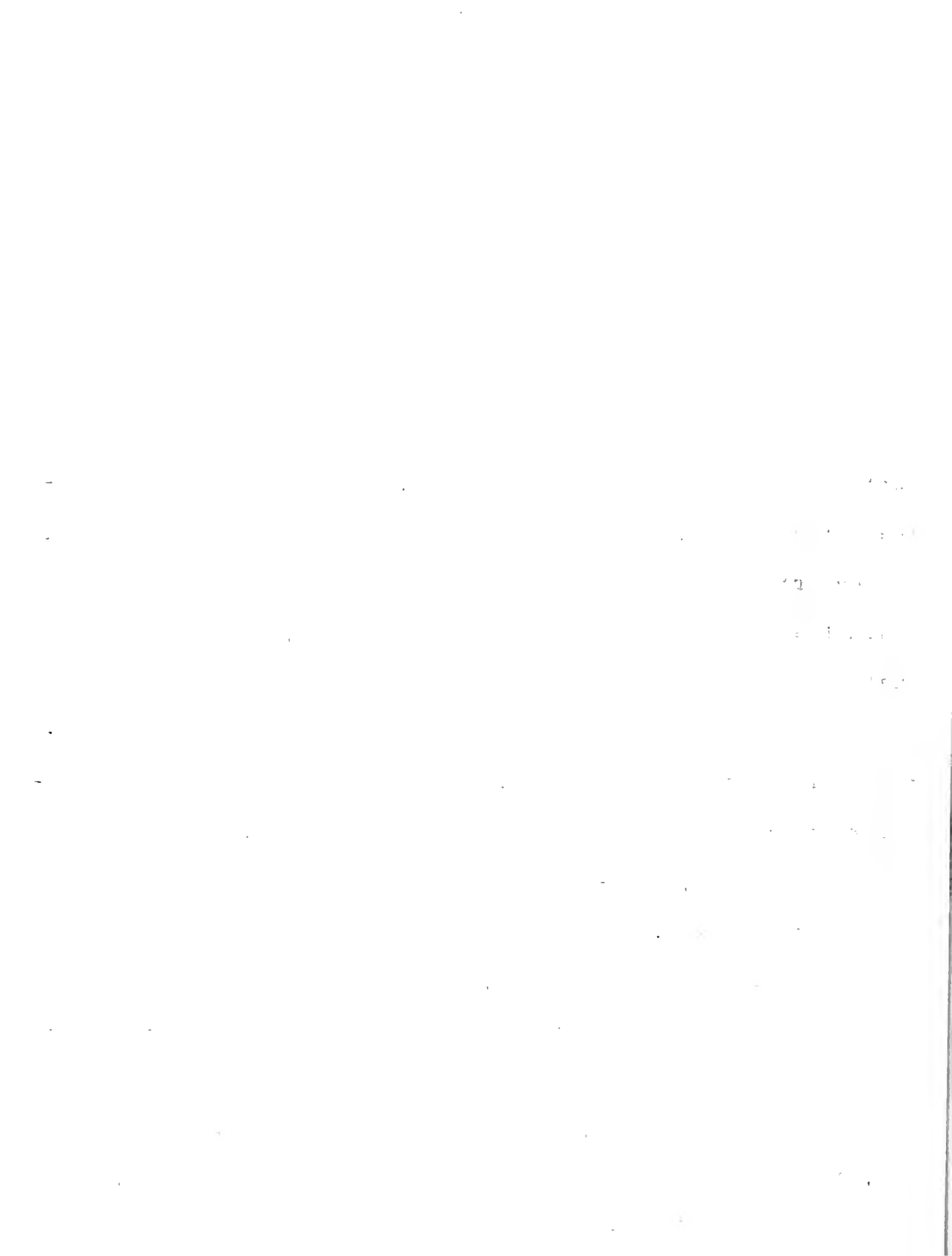
* Westminster Review, Vol.66,p.193.

ment is folly or incapacity on the part of the ministers of State. Even more necessary, therefore, than a power clothed with authority to accuse, try, and punish for public crime is some ultimate authority whose privilege it shall be to dismiss for inefficiency. Impeachment is aimed altogether above the head of business management. A merchant would not think it fair, even if it were lawful, to shoot a clerk who could not learn the business. Dismissal is quite as effective for his purposes, and more merciful to the clerk. The crying inconvenience of our system is, therefore, that the constitutional authority whose prerogative it is to direct policy and oversee administration has fewer facilities for getting its work ^{well} done than has the humblest citizen for obtaining satisfactory aid in his own undertakings. The authority most interested in appointments and dismissals in the civil service has little to do with the one and less to do with the other. The President appoints with the sanction of the Senate, and cannot dismiss his advisers without legislative consent^{*}; yet the ministers in reality serve, not the President, but Congress: and Congress can neither appoint nor dismiss. In other words, the President must in both acts take the initiative, though he is not the real master; and Congress, which is the real master, has in

* Tenure of Office Act, already discussed.

these vital matters only a consultative voice, which it may utter, through its upper chamber, only when its opinion is asked. I should regard my business as a hopeless undertaking if my chief agent had to be appointed by a third party and, besides being himself put beyond my power of control, were charged with the choice and discipline of all his subordinates, subject not to my directions but simply to my acquiescence!

The relations existing between Congress and the departments must be fatally demoralizing to both. There is and can be between them nothing like confidential and thorough cooperation. The departments may be excused for that attitude of hostility which they sometimes assume towards Congress, because it is quite human for the servant to fear and deceive the master whom he does not regard as his friend, but suspects of being a distrustful spy of his movements. Congress cannot control the officers of the executive without disgracing them. Its only whip is investigation, semi-judicial ^{examination} ~~investigation~~ into corners suspected to be dirty. It must draw the public eye by openly avowing a suspicion of malfeasance, and must then magnify and intensify the scandal by setting its committees to cross-examine scared subordinates and sulky ministers. And after all is over and the murder out, probably nothing is done. The offenders, if any one has offended, generally remain in office, shamed before the world and ruined in the estimation of all honest



people, but still knowing that the public will not forget them. They unlearn the process if you cannot receive it?

Then, too, the departments frequently complain of the incessant exactions made upon them by Congress. They grumble that they are kept busy in satisfying its curiosity and in meeting the demands of its uneasy activity. The clerks have ordinarily as much as they can do in keeping afoot the usual routine business of their departments: but Congress is continually calling upon them for information which must be labouriously collected from all sorts of sources, remote and inaccessible. A great speech in the Senate may cost them hours of anxious toil: for the Senator who makes it is quite likely beforehand to introduce a resolution calling upon one of the Secretaries for full statistics with reference to this, that, or the other topic upon which he desires to speak. If it be finance, he must have comparative tables of taxation; if it be commerce or the tariff, he cannot dispense with any of the minutest figures of the Treasury accounts; whatever be his theme, he cannot lay his foundations more surely than upon official information, and the Senate is usually unhesitatingly ready with an easy assent to the resolution which puts the whole clerical force of the administration at his service. And of course the House too asks in-

numerable questions which patient clerks and protesting Secretaries must answer to the last and most minute particular. This is what the departmental officials testily call the tyranny of Congress, and no impartial third person can reasonably forbid them the use of the word.

I know of few things harder to state clearly and within reasonable compass than just how the nation keeps control of policy in spite of these hide-and-seek vagaries of authority. Indeed it is doubtful if it does keep control through all the roundabout paths which legislative and executive responsibility are permitted to take. It must follow Congress somewhat blindly: Congress is known to obey without altogether understanding its Committees: and the Committees must consign the execution of their plans to officials who have opportunities not a few to hoodwink them. At the end of these blind processes is it probable that the ultimate authority, the people, is quite clear in its mind as to what has been done or what may be done another time? Take, for example, financial policy,-- a very fair example because, as I have shown, the legislative stages of financial policy are more talked about than any other Congressional business,-- though for that reason an extreme example. If, after appropriations and adjustments of taxation have been tardily and in much tribulation of scheming and argument agreed

^{by}
 upon the House, the imperative suggestions and stubborn insis-
 tence of the Senate confuse matters till hardly the Conference
 Committees themselves know clearly what the outcome of the dis-
 agreements has been; and, if when these compromise measures are
 launched as laws the method of their execution is beyond the
 view of the Houses, in the semi-privacy of the departments, how
 is the comprehension,-- not to speak of the will,-- of the peo-
 ple to keep any sort of hold upon the course of affairs? There
 are no screws of responsibility which they can turn upon the
 consciences or upon the official thumbs of the Congressional
 Committees principally concerned. Congressional Committees are
 nothing to the nation: they are only pieces of the interior
 mechanism of Congress. To Congress they stand or fall. And,
 since Congress itself can scarcely be sure of having its own
 way with them, the constituencies are manifestly unlikely to be
 able to govern them. As for the departments, the people can
 hardly do more in drilling them to unquestioning obedience and
^d
 vocile efficiency than Congress can. Congress is, and must be,
[^]
 in these matters the nation's eyes and voice. If it cannot see
 what goes wrong and cannot get itself heeded when it commands,
 the nation likewise is both blind and dumb.

This, plainly put, is the practical result of the piecing
 of authority, the cutting of it up into small bits, which is

contrived in our constitutional system. Each branch of the government is fitted out with a small section of responsibility whose limited opportunities afford to the conscience of each many easy escapes. Every suspected culprit may shift the responsibility upon his fellows. Is Congress rated for corrupt or imperfect or foolish legislation. It may urge that it has to follow hastily its Committees or do nothing at all but talk; how can it help it if a stupid Committee leads it unawares into unjust or fatuous enterprises? Does administration blunder and run itself into all sorts of straits? The Secretaries hasten to plead the unreasonable or unwise commands of Congress, and Congress falls to blaming the Secretaries. The Secretaries aver that the whole mischief might have been avoided if they had only been allowed to suggest the proper measures; and the men who framed the existing measures in their turn avow their despair of good government so long as they must entrust all their plans to the bungling incompetence of men who are appointed by and responsible to somebody else. How is the school-master, the nation, to know which boy needs the whipping?

Moreover, it is impossible to deny that this division of authority and concealment of responsibility are calculated to subject the government to a very distressing paralysis in moments of emergency. There are few, if any, important steps

that can be taken by any one branch of the government without the consent or cooperation of some other branch. Congress must act through the President and his Cabinet; the President and his Cabinet must wait upon the will of Congress. There is no one, supreme, ultimate head,-- whether magistrate or representative body,-- which can decide at once and with conclusive authority what shall be done at those times when some decision there must be, and that immediately. Of course this lack is of a sort to be felt at all times, in seasons of tranquil rounds of business as well as at periods of sharp crisis: but in times of sudden exigency it might prove fatal,-- fatal either in breaking down the system or in failing to meet the emergency.* Policy cannot be either prompt or straightforward when it must serve many masters. It must either equivocate, or hesitate, or fail altogether. It may set out with clear purpose from Congress but get waylaid or maimed by the Executive.

If there be one principle clearer than another, it is this, that in any business, whether of government or of mere merchandizing, somebody must be trusted, in order that when things go wrong it may be quite plain who should be punished. In order

* These 'ifs' are abundantly supported by the executive acts of the war-time. The Constitution had then to stand aside that President Lincoln be as prompt as the seeming necessities of the time.

to drive trade at the speed and with the success you desire, you must confide without suspicion in your chief clerk, giving him the power to ruin you, because you thereby furnish him with a motive for serving you. His reputation, his own honour or disgrace, all his own commercial prospects hang upon your success. And human nature is much the same in government as in the dry-goods trade. Power and strict accountability for its use are the essential constituents of good government. A sense of highest responsibility, a dignifying and elevating sense of being trusted, together with a consciousness of being in an official station so conspicuous that no faithful discharge of duty can go unacknowledged and unrewarded, and no breach of trust undiscovered and unpunished,-- these are the influences, the only influences, which foster practical, energetic, and trustworthy statesmanship. The best rulers are always those to whom great power is entrusted in such a manner as to make them feel that they will surely be abundantly honoured and recompensed for a just and patriotic use of it, and to make them know that nothing can shield them from full retribution for every abuse of it.

It is, therefore, manifestly a radical defect in our federal system that it parcels out power and confuses responsibil-

ity as it does. The main purpose of the convention of 1787 seems to have been to accomplish this grievous mistake. The "literary theory" of checks and balances is simply a consistent account of what our constitution-makers tried to do; and those checks and balances have proved mischievous just to the extent to which they have succeeded in establishing themselves as realities. It is quite safe to say that were it possible to call together again the members of that wonderful Convention to view the work of their hands in the light of the century that has tested it, they would be the first to admit that the only fruit of dividing power had been to make it irresponsible. It is just this that has made civil-service reform tarry in this country and that makes it still almost doubtful of issue. We are in just the case that England was in before she achieved the reform for which we are striving. The date of the reform in England is no less significant than the fact. It was not accomplished until a distinct responsibility of the Ministers of the Crown to one, and to only one, master had been established beyond all uncertainty. This is the most striking and suggestive lesson to be gathered from Mr. Eaton's interesting and valuable history of Civil Service in Great Britain. The reform was originated in 1353 by the Cabinet of Lord Aberdeen. It sprang from the suggestion of the appointing officers and was

carried through in the face of opposition from the House of Commons, because, paradoxically enough, the Ministry had at last come to feel their responsibility to the Commons, or rather to the nation whom the Commons represented.

^hThose great improvements which have been made in the public service of the British empire since the days of Walpole and Newcastle have gone hand in hand with the perfecting of the system now known as responsible Cabinet government. That system was slow in coming to perfection. It was not till long after Walpole's day that unity of responsibility on the part of the Cabinet,-- and that singleness of responsibility which made them look only to the Commons for authority,-- came to be recognized as an established constitutional principle. "As a consequence of the earlier practice of constructing Cabinets of men of different political views, it followed that the members of such Cabinets did not and could not regard their responsibility to Parliament as one and indivisible. The resignation of an important member, or even of the Prime Minister, was not regarded as necessitating the simultaneous retirement of his colleagues. Even so late as the fall of Sir Robert Walpole, fifty years after the Revolution Settlement (and itself the first instance of resignation in deference to a hostile parliamentary vote) we find the King requesting Walpole's successor, Pulteney,

'not to distress the Government by making too many changes in the midst of a session'; and Pulteney replying that he would be satisfied, provided 'the main forts of the Government', or, in other words, the principal offices of State, were placed in his hands. It was not till the displacement of Lord North's Ministry by that of Lord Rockingham in 1782 that a whole administration, with the exception of the Lord Chancellor, was changed by a vote of want of confidence passed in the House of Commons. Thenceforth, however, the resignation of the head of a Government in deference to an adverse vote of the popular chamber has invariably been accompanied by the resignation of all his colleagues.* But, even after the establishment of that precedent, it was still many years before Cabinets were free to please none but the Commons,-- free to follow their own policies without authoritative suggestion from the sovereign. Until the death of the fourth George they were made to feel that they owed a double allegiance: to the Commons and to the king. The composition of Ministries still depended largely on the royal whim, and their actions were hampered by the necessity of steering a careful middle course between the displeasure of Parliament and the ill will of His Majesty. The present century had run far on towards the reign of Victoria before they were free

* "Central Government" (Eng. Citizen Series), H.D. Traill, p. 20.

to pay undivided obedience to the representatives of the people. When once they had become responsible to the Commons alone, however, and almost as soon as they were assured of their new position as the servants of the nation, they were prompted to even hazardous efforts for the reform of the civil service. They were conscious that the entire weight and responsibility of government rested upon their shoulders, and, as men regardful of the interests of the party which they represented, jealous for the preservation of their own fair names, and anxious, consequently, for the promotion of wise rule, they were naturally and of course the first to advocate a better system of appointment to that service whose chiefs they were recognized to be. They were prompt to declare that it was the "duty of the executive to provide for the efficient and harmonious working of the civil service", and that they could not "transfer that duty to any other body far less competent than themselves without infringing a great and important constitutional principle, already too often infringed, to the great detriment of the public service." They therefore determined themselves to inaugurate the merit system without waiting for the assent of Parliament, by simply surrendering their power of appointment in the various departments to a non-partisan examining board, trusting to the power of public opinion to induce Parliament, after the

thing had been done, to vote sufficient money to put the scheme into successful operation. And they did not reckon without their host. Reluctant as the members of the House of Commons were to resign that control of the national patronage which they had from time immemorial been accustomed to exercise by means of various crooked indirections, and which it had been their pleasure and their power to possess, they had not the face to avow their suspicious unwillingness in answer to the honourable call of a trusted Ministry who were supported in their demand by all that was honest in public sentiment, and the world was afforded the gratifying but unwonted spectacle of party leaders sacrificing to the cause of good government, freely and altogether of their own accord, the "spoils" of office so long dear to the party and to the assembly which they represented and served.

In this country the course of the reform was quite the reverse. Neither the Executive nor Congress began it. The call for it came imperatively from the people; it was a formulated demand of public opinion made upon Congress, and it had to be made again and again, each time with more determined emphasis, before Congress heeded. It worked its way up from the convictions of the many to the purposes of the few. Amongst the chief difficulties that have stood in its way, and which still block its perfect realization, is that peculiarity of structure

which I have just now pointed out as intrinsic in the scheme of divided power which runs through the Constitution. One of ^{the} conditions precedent to any real, and lasting, reform of the civil service in a country whose public service is moulded by the conditions of self-government, is the drawing of a sharp line of distinction between those offices which are political and those which are non-political. The strictest rules of business discipline, of merit-tenure and earned promotion, must rule every office whose incumbent has naught to do with choosing between policies; but no rules except the choice of parties can or should make and unmake, reward or punish, those officers whose privilege it is to fix upon the political purposes which administration shall be made to serve. These latter are not many under any form of government. There are said to be but fifty such at most in the civil service of Great Britain; but these fifty go in or out as the balance of power shifts from party to party. In the case of our own civil service it would, I take it, be extremely hard to determine where the line should be drawn. In all the higher grades this particular distinction is quite obscured. A doubt exists as to the Cabinet itself. Are the Secretaries political or non-political officers? It would seem that they are exclusively neither. They are at least semi-political. They are, on the one hand, merely the

servants of Congress, and yet, on the other hand, they have enough freedom of discretion to mar and colour, if not to choose political ends. They can wreck plans, if they cannot make them. Should they be made permanent officials because they are mere Secretaries; or should their tenure depend upon the fortunes of parties because they have many chances to render party services? And if the one rule or the other is to be applied to them, to how many and to which of their chief subordinates is it to be extended? If they are not properly or necessarily party men, let them pass the examinations and run the gauntlet of the usual tests of efficiency,-- let errand-boys work up to Secretaryships; but if not, let their responsibility to their party be made strict and determinate. That is the cardinal point of practicable civil service reform.

This doubt as to the exact status in the system of the chief ministers of state is a most striking commentary on the system itself. Its complete self is logical and simple. But its complete self exists only in theory. Its real self offers a surprise and presents a mystery at every change of view. The practical observer who seeks for facts and actual conditions of organization is often sorely puzzled to come at the real method of government. Pitfalls await him on every side. If constitutional lawyers of straitlaced consciences filled Congress and

officered the departments, every clause of the Constitution would be accorded a formal obedience and it would be as easy to know beforehand just what the government will be like inside to-morrow as it is now to know what it was like outside yesterday. But neither the knowledge nor the consciences of politicians keep them very close to the Constitution: and it is with politicians that we have to deal nowadays in studying the government. Every government is largely what the men are who constitute it. If the character or opinions of legislators and administrators change from time to time, the nature of the government changes with them: and as both their characters and their opinions do change very often it is very hard to make a picture of the government which can be said to have been perfectly faithful yesterday and can be confidently expected to be exactly accurate to-morrow. Add to these embarrassments, which may be called the embarrassments of human nature, other embarrassments such as our system affords, the embarrassments of subtle legal distinctions, a fine theoretical plan made in delicate hair-lines, requirements of law which can hardly be met and can easily and naturally be evaded or disregarded, and you have in full the conception of the difficulties which attend a practical exposition of the real facts of federal administration. It is not impossible to point out what the Executive was intended to be,

what is has sometimes been, or what it might be; nor is it forbidden the diligent to discover the main conditions which would fit to the forms of Congressional supremacy, but more than this is not to be expected.

C O N C L U S I O N .

 "Political philosophy must analyze political history; it must distinguish what is due to the excellence of the people, and what to the excellence of the laws; it must carefully calculate the exact effect of each part of the constitution, though thus it may destroy many an idol of the multitude, and detect the secret of utility where but few imagined it to lie." -- Bagehot.

Congress always makes what haste it can to legislate. It is the ⁱprime object of its rules to expedite law-making. Its customs are fruits of its characteristic diligence in enactment. Be the matters small or great, frivolous or grave, which busy it, its aim is to have laws always a-making. Its temper is strenuously legislative. That it cannot regulate all the questions to which its attention is weekly invited is its misfortune, not its fault, is due to the human limitation of its faculties, not to any narrow circumscription of its desires. If its Committee machinery is inadequate to the task of bringing to action more than one out of every hundred of the bills introduced, it is not because the quick clearance of the docket is not the motive of its organic life. If legislation, therefore, were the only or the chief object for which it should live, it would not be possible to withhold admiration from those clever hurrying rules and those inexorable customs which

seek to facilitate it. Nothing but a doubt as to whether or not Congress should confine itself to law-making can challenge with a question the utility of its organization as a facile statute-devising machine.

The political philosopher of these days of self-government has, however, something more than a doubt with which to gainsay the usefulness of a sovereign representative body which confines itself to legislation to the exclusion of all other functions. Buckle declared, indeed, that the chief use and value of legislation nowadays lay in its opportunity and power to remedy the mistakes of the legislation of the past; that it was beneficent only when it carried healing in its wings; that repeal was more blessed than enactment. And it is certainly true that the greater part of the labour of legislation consists in carrying the loads recklessly or bravely shouldered in times gone by, when the animal which is now a bull was only a calf, and in completing, if they may be completed, the tasks once undertaken in the shape of unambitious schemes which at the outset looked innocent enough. Having got his foot into it, the legislator finds it difficult, if not impossible, to get it out again. "The modern industrial organization, including banks, corporations, joint-stock companies, financial devices, national debts, paper currency, national systems of taxation, is

largely the creation of legislation (not in its historical origin, but in the mode of its existence and in its authority) and is largely regulated by legislation. Capital is the breath of life to this organization, and every day, as the organization becomes more complex and delicate, the folly of assailing capital or credit becomes greater. At the same time it is evident that the task of the legislator to embrace in his view the whole system, to adjust his rules so that the play of the civil institutions shall not alter the play of the economic forces, requires more training and more acumen. Furthermore, the greater the complication and delicacy of the industrial system, the great^{-er} the chances for cupidity when backed by craft, and the task of the legislator to meet and defeat the attempts of this cupidity is one of constantly increasing difficulty.*

Legislation unquestionably generates legislation. Every statute may be said to have a long lineage of statutes behind it: and whether that lineage be honourable or of ill repute is as much a question as to each individual statute as it can be with regard to the ancestry of each individual legislator. Ev-

* Prof. Sumner's Andrew Jackson (Am. Statesmen Series), p. 226. "Finally", adds Mr. S., "the methods and machinery of democratic republican self-government, -- caucuses, primaries, committees, and conventions, -- lend themselves perhaps more easily than any other methods and machinery to the uses of selfish cliques which seek political influence for interested purposes."

ery statute in its turn has a numerous progeny and only time and opportunity can decide whether its offspring will bring it honour or shame. Once begin the dance of legislation, and you must struggle through its mazes as best you can to its breathless end,-- if any end there be.

It is not surprising, therefore, that the enacting, revising, tinkering, repealing of laws should engross the attention and engage the entire energy of such a body as Congress. It is, however, easy to see how it might be better employed; or at least how it might add others to this overshadowing function to the infinite advantage of the government. Quite as important as legislation is vigilant oversight of administration; and even more important than legislation is the instruction and guidance in political affairs which the people might receive from a body which kept all national concerns suffused in a broad daylight of discussion. There is no similar legislature in existence which is so shut up to the one business of law-making as is our Congress. As I have said, it in a way superintends administration by the exercise of semi-judicial powers of investigation, whose limitations and insufficiency are manifest. But other national legislatures command administration and verify their name of 'parliaments' by talking official acts into notoriety. Our extra-constitutional party conventions, short-

lived and poor in power as they are, constitute our only machinery for that sort of control of the executive which consists in the award of personal ^{re-}awards and punishments. This is the cardinal fact which differentiates Congress from the Chamber of Deputies and from Parliament, and which puts it beyond the reach of those eminently useful functions whose exercise would so raise it in usefulness and in dignity.

An effective representative body, gifted with the power to rule, ought, it would seem, not only to speak the will of the nation, which Congress does, but also to lead it to its conclusions, to utter the voice of its opinions, and to serve as its eyes in superintending all matters of government,-- which Congress does not do. The discussions which take place in Congress are aimed at random. They now and again strike rather sharply the tender spots in this, that, or the other measure; but, as I have said, no two measures consciously join in purpose or agree in character, and so debate must wander as widely as the subjects of debate. Since there is little coherency about the legislation agreed upon, there can be little coherency about the debates. There is no one policy to be attacked or defended, but only a score or two of separate bills. To attend to such discussions is uninteresting; to be instructed by them is impossible. There is some scandal and discomfort, but in-

finite advantage, in having every affair of administration subjected to the test of constant examination on the part of the assembly which represents the nation. The chief use of such inquisition is, not the direction of those affairs in a way with which the country will be satisfied (though that itself is of course all-important), but the enlightenment of the people, which is always its sure consequence. Very few men are unequal to a danger which they see and understand: all men quail before a threatening which is dark and unintelligible -- and suspect what is done behind a screen. If the people could have, through Congress, daily knowledge of all the more important transactions of the governmental offices, an insight into all that now seems withheld and private, their confidence in the Executive, now so often shaken, would, I think, be very soon established. Because dishonesty can lurk under the privacies now vouchsafed our administrative agents, much that is upright and pure suffers unjust suspicion. Discoveries of guilt in a bureau cloud with doubts the trustworthiness of a department. As nothing is open enough for the quick and easy detection of peculation or fraud, so nothing is open enough for the due vindication and acknowledgement of honesty. The isolation and privacy which shield the one from discovery cheat the other of reward.

Inquisitiveness is never so forward, enterprising, and ir-

repressible as in a popular assembly which is given leave to ask questions and is afforded ready and abundant means of getting its questions answered. No cross-examination is more searching than that to which a Minister of the Crown is subjected by the all-curious Commons. "Sir Robert Peel once asked to have a number of questions carefully written down which they asked him one day in succession in the House of Commons. They seemed a list of everything that could occur in the British empire or to the brain of a member of Parliament."* If one considered only the wear and tear upon ministers of State which the plague of constant interrogation must inflict, he could wish that their lives, if useful, might be spared this blight of unending explanation; but no one can overestimate the immense advantage of a facility so unlimited for knowing all that is going on in the places where authority lives. The conscience of every member of the representative body is at the service of the nation. All that he feels bound to know he can find out: and what he finds out goes to the ears of the country. The question is his, the answer the nation's. And the inquisitiveness of such bodies as Congress is the best conceivable source of information. Congress is the only body which has the proper motive for inquiry, and it is the only body which has the power

* Bagehot, Essay on Sir Robert Peel, p.24.

to act effectively upon the knowledge which its inquiries secure. The Press is merely curious or merely partisan. The people are scattered and unorganized. But Congress is as it were the corporate people: the mouthpiece of its will. It is a sovereign delegation which could ask questions with dignity, because with authority and with power to act.

Congress is fast becoming the governing body of the nation, and yet the only power which it possesses in perfection is the power which is but a part of government, the power of legislation. Legislation is but the oil of government. It is that which lubricates its channels and speeds its wheels: that which lessens the friction and so eases the movement. Or perhaps I shall be admitted to have hit upon a closer and apter analogy if I say that legislation is like a foreman set over the forces of government. It issues the orders which others obey. It directs, it admonishes, but it does not do the actual heavy work of government. A good foreman does, it is true, himself take a hand in the work which he guides: and so I suppose our legislation must be likened to a poor foreman because it stands altogether apart from that work which it is set to see well done. Members of Congress ought not to be censured too severely, however, when they fail to check evil courses on the part of the Executive. They have been denied the means of doing so promptly.

ly and with effect. Whatever intention the framers of the original promises of constitution-making in 1787, their result was to give us, not government by discussion, which is the only tolerable sort of a government for a people which tries to do its own governing, but only legislation by discussion, which is no more than a small part of government by discussion. What is quite as indispensable as the debate of problems of legislation is the debate of all matters of administration. It is even more important to know how the house is being built than to know how the plans of the architect were conceived and how his specifications were calculated. It is better to have skilful work,-- stout walls, reliable arches, unbending rafters, and windows sure to "expel the winter's flaw",-- than a drawing on paper which is the admiration of all the practical artists in the country. The discipline of an army depends quite as much upon the temper of the troops as upon the orders of the day.

It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is be-

ing served; and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ^Lignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function. The argument is not only that discussed and interrogated administration is the only pure and efficient administration, but, more than that, that the only really self-governing people is that people which discusses and interrogates its administration. The talk on the part of Congress which we sometimes justly condemn is the profitless squabble of words over frivolous bills or selfish party issues. It would be hard to conceive of there being too much talk about the practical concerns and processes of government. Such talk it is which, when earnestly and purposefully conducted, clears the public mind and shapes the demands of public opinion.

Congress could not be too diligent about such talking: whereas it may easily be too diligent in legislation. It often overdoes that business. It already sends to its Committees bills too many by the thousand to be given even a hasty thought: but its immense Committee facilities and the absence of all other duties but that of legislation make it omnivorous in its appetite for new subjects for consideration. It is greedy to have

a taste of every possible dish that may be put upon its table, as an "extra" to the constitutional bill of fare. This disposition on its part is the more notable because there is certainly less need for it to hurry and overwork itself at law-making than exists in the case of most other great national legislatures. It is not State and national legislature combined, as are the Commons of England and the Chambers of France. Like the Reichstag of our cousin Germans, it is restricted to subjects of imperial scope. Its thoughts are ~~meant~~^{meant} to be kept for national interests. Its time is spared the waste of attention to local affairs. It is even forbidden the vast domain of the laws of property, of commercial dealing, and of ordinary crime. And even in the matter of caring for national interests the way has from the first been made plain and easy for it. There are no clogging feudal institutions to embarrass it. There is no long-continued practice of legal or of royal tyranny for it to cure,-- no clearing away of old débris of any sort to delay it in its exercise of a commonsense dominion over a thoroughly modern and progressive nation. It is easy to believe that its legislative purposes might be most fortunately clarified and simplified were it to square them by a conscientious attention to the paramount and controlling duty of understanding, discussing, and directing administration.

If the people's authorized representatives do not take upon themselves this duty, and by identifying themselves with the actual work of government stand between it and ~~the~~ irresponsible, half-informed criticism, to what harassments is the Executive not exposed? Led and checked by Congress, the prudent and fearless, because anonymous, ~~and~~ ^{and} ~~ad~~ ^{ad} ~~versions~~ ^{adversions} of the Press, now so often premature and inconsiderate, might be disciplined into serviceable capacity to interpret and judge. Its energy and sagacity might be tempered by discretion, and strengthened by knowledge. One of our chief constitutional difficulties is that, in opportunities for informing and guiding public opinion, the freedom of the Press is greater than the freedom of Congress. It is as if newspapers, instead of the board of directors, were the sources of information for the stockholders of a corporation. We look into correspondents' letters instead of into the Congressional Record to find out what is a-doing and a-planning in the departments. Congress is altogether excluded from the arrangement by which the Press declares what the Executive is and conventions of the national parties decide what the Executive shall be. Editors are self-constituted our guides, and caucus delegates our government directors.

Since all this curious scattering of functions and contrivance of frail, extra-constitutional machinery of government is

the result of that entire separation of the legislative and executive branches of the system which is with us so characteristically and essentially constitutional, it is exceedingly interesting to enquire and important to understand how that separation came to be insisted upon in the making of the Constitution. Alexander Hamilton has in our own times, as well as before, been "severely reproached with having said that the British government was the 'best model in existence'." In 1787 this was a mere truism. However much the men of that day differed they were all agreed in despising and distrusting a priori constitutions and ideally perfect governments, fresh from the brains of visionary enthusiasts, such as sprang up rankly in the soil of the French revolution. The convention of 1787 was composed of very able men of the English-speaking race. They took the system of government with which they had been familiar, improved it, adapted it to the circumstances with which they had to deal, and put it into successful operation. Hamilton's plan, then, like the others, was on the British model, and it did not differ essentially in details from that finally adopted.⁸⁸ It is needful; however, to remember in this connection what has already been alluded to, that when that convention was copying the English constitution that constitution was in a stage of

* H.C.Lodge's Alexander Hamilton (Am. Statesmen Series) pp.60-61.

transition and had by no means fully developed the features which are now recognized as most characteristic of it. Mr. Lodge is quite right in saying that the convention, in adapting, improved upon the English constitution with which its members were familiar,-- the constitution of George III and Lord North: the constitution which had failed to crush Bute. It could hardly be said with equal confidence, however, that our system as then made was an improvement upon that scheme of responsible Cabinet government which challenges the admiration of the world to-day, though it was quite plainly a marked advance upon a Parliament of royal nominees and pensionaries and a secret Cabinet of "king's friends". The English constitution of that day had a great many features which did not invite republican imitation. It was suspected, if not known, that the Ministers who sat in Parliament were little more than the tools of a Ministry of royal favourites who were kept out of sight behind the strictest confidences of the court. It was notorious that the subservient Parliaments of the day represented the estates and the money of the peers and the influence of the king rather than the intelligence and purpose of the nation. The whole "form and pressure" of the time illustrated only too forcibly Lord Bute's sinister suggestion, that ^{the} "forms of a free and the ends of an arbitrary government are things not altogether incompati-

ble." It was, therefore, perfectly natural that the warnings to be so easily drawn from the sight of a despotic monarch binding the usages and privileges of self-government to the service of his own intemperate purposes should be given grave heed by Americans, who were the very persons who had suffered most from the existing abuses. It was something more than natural that the convention of 1787 should desire to erect a Congress which would not be subservient and an Executive which could not be despotic. And it was equally to have been expected that they should regard an absolute separation of these two great branches of the system ^{as} the only effectual means for the accomplishment of that much desired end. It was impossible that they could believe that Executive and legislature could be brought into close relations of cooperation and mutual confidence without being tempted, nay, even bidden, to collude. How could either maintain its independence of action unless each were to have the guarantee of the Constitution that its own domain should be absolutely safe from invasion, its own prerogatives absolutely free from challenge? "They shrank from placing sovereign power anywhere. They feared that it would generate tyranny; George III had been a tyrant to them, and come what might, they would not make a George III."* They would con-

 * Bagehot, "Eng. Const.", p. 293.

quer, by dividing, the power they so much feared to see in any single hand.

"The English constitution, in a word," says our most astute English critic, "is ~~framed~~^{framed} on the principle of choosing a single sovereign authority, and making it good: the American, upon the principle of having many sovereign authorities, and hoping that their multitude may atone for their inferiority. The Americans now extol their institutions, and so defraud themselves of their due praise. But if they had not a genius for politics; if they had not a moderation in action singularly curious where superficial speech is so violent; if they had not a regard for law, such as no great people have ever evinced, and infinitely surpassing ours,-- the multiplicity of authorities in the American Constitution would long ago have brought it to a bad end. Sensible shareholders, I have heard a shrewd attorney say, can work any deed of settlement; and so the men of Massachusetts could, I believe, work any constitution."* It is not necessary to assent to Mr. Bagehot's strictures: but it is not possible to deny the clear-sighted justice of this criticism. In order to be fair to the memory of our great constitution-makers, however, it is necessary to remember that when they sat in convention in Philadelphia the English constitution, which they cop-

* Bagehot, "Eng. Const.", p. 296.

ied, was not the simple system which was before Mr. Bagehot's eyes when he wrote. Its single sovereign authority was not then a twice-reformed House of Commons truly representative of the nation and readily obeyed by a responsible Ministry. The sovereignty was at see-saw between the throne and the Parliament, — and the throne-end of the beam was generally uppermost. Our device, of separated, individualized powers, was very much better than a nominal sovereignty of the Commons which was suffered to be overridden by force, fraud, or craft, by the real sovereignty of the king. The English constitution was at that time in reality much worse than our own; and, if it is now superior, it is so because its growth has not been hindered or destroyed by the too tight ligaments of a written fundamental law.

The natural, the inevitable, tendency of every system of self-government like our own and the British is to exalt the representative body, the people's parliament, to a position of absolute supremacy. That tendency has, I think, been quite as marked in our own constitutional history as in that of any other country, though its power has been to some extent neutralized, and its progress in great part stayed, by those denials of that supremacy which we respect because they are written in our law. The political law written in our hearts is here at vari-

ance with that which the Constitution sought to establish. A written constitution may and often will be violated in both letter and spirit by a people of energetic ^{political talents} ~~habits~~ and a keen instinct for progressive practical development: but so long as they adhere to the forms of such a constitution, so long as the machinery of government supplied by it is the only machinery which the legal and moral sense of such a people permits it to use, its political development must be in many directions narrowly restricted because of an insuperable lack of open or adequate channels. Our Constitution, like every other constitution which puts the authority to make laws and the duty of controlling the public expenditure into the hands of a popular assembly, practically sets that assembly to rule the affairs of the nation as supreme overlord. But, by separating it entirely from its executive agencies, it deprives it of the opportunity and means for making its authority complete and convenient. The constitutional machinery is left of such a pattern that other forces less than that of Congress may cross and compete with Congress, though they are too small to overcome or long offset it; and the result is simply an unpleasant, wearing friction which, with other adjustments, more felicitous and equally safe, might readily be avoided.

Original Congress, consequently, is still lingering and chafing un-

der just such embarrassments as made the English Commons a nuisance both to themselves and to everybody else immediately after the Revolution Settlement had given them their first surpromise of supremacy. The parallel is startlingly exact. "In outer seeming the Revolution of 1688 had only transferred the sovereignty over England from James to William and Mary. In actual fact it had given a powerful and decisive impulse to the great constitutional progress which was transferring the sovereignty from the King to the House of Commons. From the moment when its sole right to tax the nation was established by the Bill of Rights, and when its own resolve settled the practice of granting none but annual supplies to the Crown, the House of Commons became the supreme power in the State.-----

--- But though the constitutional change was complete the machinery of government was far from having adapted itself to the new conditions of political life which such a change brought about. However powerful the will of the Commons might be it had no means of bringing its will directly to bear on the control of public affairs. The Ministers who had charge of them were not its servants, but the servants of the Crown; It was from the King that ^{they} looked for direction, and to the King that they held themselves responsible. By impeachment or more indirect means the Commons could force a King to remove a Minister who

contradicted their will; but they had no constitutional power to replace the fallen statesman by a Minister who would carry out their will.

"The result was the growth of a temper in the Lower House which drove William and his Ministers to despair. It became as corrupt, as jealous of power, as fickle in its resolves and factious in its spirit as bodies always become whose consciousness of the possession of power is untempered by a corresponding consciousness of the practical difficulties or the moral responsibilities of the power which they possess. It grumbled ----- and it blamed the Crown and its Ministers for all at which it grumbled. But it was hard to find out what policy or measures it would have preferred. Its mood changed, as William bitterly complained, with every hour. ----- The Houses were in fact without the guidance of recognized leaders, without adequate information, and destitute of that organization out of which alone a definite policy can come."*

The cure for this state of things which Sunderland had the sagacity to suggest, and William the wisdom to apply, was the mediation between king and Commons of a Cabinet representative of the majority of the popular chamber,-- a first but long and decisive step towards responsible Cabinet government. Whether

* Green, "Hist. of the Eng. People," (Harpers' ed.) IV, pp. 58, 59.

a similar remedy would be possible or desirable in our own case it is altogether aside from my present purpose to inquire. I am pointing out facts,-- diagnosing, not prescribing remedies. My only point just now is, that no one can help being struck by the closeness of the likeness between the incipient distempers of the first Parliaments of William and Mary and the developed disorders now so plainly discernible in the constitution of Congress. Though honest and diligent, it is meddling and inefficient: and it is meddling and inefficient for exactly the same reasons that made it natural that the post-Revolutionary Parliaments should exhibit like clumsiness and like temper: namely, because it is "without the guidance of recognized leaders, without adequate information, and destitute of that organization out of which alone a definite policy can come."

The dangers of this serious imperfection in our governmental machinery have not been clearly demonstrated in our experience hitherto; but now their delayed fulfilment seems to be close at hand. The plain tendency is towards a centralization of all the greater powers of government in the hands of the federal authorities and towards the practical confirmation of those prerogatives of supreme overlordship which Congress has been gradually arrogating to itself. The central government is constantly becoming stronger and more active: and Congress is es-

establishing itself as the one sovereign authority in that government. In constitutional theory and in the broader features of past practice, ours has been what Mr. Bagehot has called a "composite" government. Besides State and federal authorities to dispute as to sovereignty, there have been within the federal system itself rival and irreconcilable powers. But gradually the strong are overcoming the weak. If the signs of the times are to be credited, we are fast approaching an adjustment of sovereignty quite as "simple" as need be. Congress is not only to retain the authority it already possesses, but is to be brought again and again face to face with still greater demands upon its energy, its wisdom, and its conscience, is to have ever-widening duties and responsibilities thrust upon it, without being granted a moment's opportunity to look back from the plow to which it has set its hands.

and influence

The sphere of national administration and national legislation are widening rapidly. Our populations are growing at such a rate that one's reckoning staggers at counting the possible millions that may have a home and a work on this continent ere fifty more years ^{have} filled their short span. The East will not always be the centre of national life. The South is fast accumulating wealth, and will faster recover influence. The West has already achieved a greatness which no man can gainsay, and has in store a power of future growth which no man can es-

timate. Whether these sections are to be harmonious or dissentient depends almost entirely upon the methods and policy of the federal government. If that government be not careful to keep within its own proper sphere and prudent to square its policy by rules of national welfare, sectional lines must and will be known; citizens of one part of the country may look with jealousy and even with hatred upon their fellow-citizens of another part; and faction must tear and dissension distract a country which Providence would bless, but which man may curse. The government of a country so vast and various must be strong, prompt, wieldy, and efficient. Its strength must consist in the certainty and uniformity of its purposes, in its accord with national sentiment, in its unhesitating action, and in its honest aims. It must be steadied and approved by open administration diligently obedient to the more permanent judgments of public opinion; and its only active agency, its representative chambers, must be equipped with something besides abundant powers of legislation.

As at present constituted, the federal government lacks strength because its powers are divided; lacks promptness because its authorities are multiplied; lacks wieldiness because its processes are roundabout; lacks efficiency because its responsibility is indistinct and its action without competent di-

reaction. It is a government in which every officer may talk about every other officer's duty without having to render strict account for not doing his own, and in which the masters are held in check and offered contradiction by the servants. Mr. Lowell has called it "government by defamation". Talk is not sobered by any necessity imposed upon those who utter it to suit their actions to their words. There is no day of reckoning for words spoken. The speakers of a Congressional majority may, without risk of incurring ridicule or discredit, condemn what their own Committees are doing; and the spokesmen of a minority may urge what contrary courses they please with a well-grounded assurance that what they say will be forgotten before they can be called upon to put it into practice. Nobody stands sponsor for the policy of the government. A dozen men originate it; a dozen compromises twist and alter it; a dozen officers whose names are scarcely known outside of Washington put it into execution.

This is the defect to which, it will be observed, I am constantly ^{coming} returning; to which I ^{turn} return again and again because every examination of the system, at whatsoever point begun, leads inevitably to it as ^{to} a central secret. It is the defect which interprets all the rest, because it is their common product. It is exemplified in the extraordinary fact that the ut-

utterances of the Press have greater weight and are accorded greater credit, though the Press speaks entirely without authority, than the utterances of Congress, though Congress possesses all authority. The gossip of the street is listened to rather than the words of the law-makers. The editor directs public opinion, the Congressman obeys it. When a presidential election is at hand, indeed, the words of the political orator gain temporary heed. He is recognized as an authority in the arena, as a professional critic competent to discuss the good and bad points and to forecast the fortunes of the contestants. There is something definite in hand, and he is known to have studied all its bearings. He is one of the managers, or is thought to be well acquainted with the management. He speaks "from the card". But let him talk, not about candidates, but about measures or about the policy of the government, and his observations sink at once to the level of a mere individual expression of opinion, to which his political occupations seem to add very little weight. It is universally recognized that he speaks without authority,-- about things which his vote may help to settle, but about which several hundred other men have votes quite as influential as his own. Legislation is not a thing to be known beforehand. It depends upon the conclusions of sundry Standing Committees. It is an aggregate, not a simple, produc-

tion. It is impossible to tell how many persons' opinions and influences have entered into its composition. It is even impracticable to determine from this year's law-making what next year's will be like.

Speaking, therefore, without authority, the political orator speaks to little purpose when he speaks about legislation. The papers do not report him carefully; and their editorials seldom take any colour from his arguments. The Press, being anonymous and representing a large force of inquisitive news-hunters, is much more powerful than he chiefly because it is impersonal and seems to represent a wider and more thorough range of information. At the worst, it can easily compete with any ordinary individual. Its individual opinion is quite sure to be esteemed as worthy of attention as any other individual opinion. And, besides, it is almost everywhere strong enough to deny currency to the speeches of individuals whom it does not care to report. It goes to its audience; the orator must depend upon his audience coming to him. It can be heard at every fireside; the orator can be heard only on the platform or the hustings. There is no imperative demand on the part of the reading public in this country that the newspapers should report political speeches in full. On the contrary, most readers would be disgusted at finding their favourite columns so filled

up. By giving even a notice of more than an item's length to such a speech, an editor runs the risk of being denounced as dull. And I believe that the position of the American Press is in this regard quite singular. The English newspapers are so far from being thus independent and self-sufficient powers, ~~in~~ — a law unto themselves, — in the politics of the empire that they are constrained to do homage to the political orator whether they will or no. Conservative editors must spread^o before their readers verbatim reports not only of the speeches of the leaders of their own party but also of the principal speeches of the leading Liberal orators: and Liberal journals have no choice but to print every syllable of the more important public utterances of the Conservative leaders. The nation insists upon knowing what its public men have to say, even when it is not so well said as the newspapers which report them could have said it.

There are only two things which can give any man a right to expect that when he speaks the whole country will listen: namely, genius and authority. Probably no one will ever contend that Sir Stafford Northcote was an orator, or even a good speaker. But by proof of unblemished character, and by assiduous, conscientious, and able public service he rose to be the recognized leader of his party in the House of Commons: and it

is simply because he speaks as one having authority,— and not as the scribes of the Press,—that he is as sure of a heedful hearing as is Mr. Gladstone, who adds genius and noble oratory to the authority of established leadership. The leaders of English public life have something besides weight of character, prestige of personal service and experience, and authority of individual opinion to exalt them above the anonymous Press. They have definite authority and power in the actual control of government. They are directly commissioned to control the policy of the administration. They stand before the country, in Parliament and out of it, as the responsible chiefs of their parties. It is their business to lead those parties, and it is the matter-of-course custom of the constituencies to visit upon the parties the punishment due for the mistakes made by these chiefs. They are at once the servants and the scapegoats of their parties.

P 223 It is these well-established privileges and responsibilities of theirs which make their utterances considered worth hearing,— nay, necessary to be heard and pondered. Their public speeches are their parties' platforms. What the leader promises his party stands ready to do, should it be entrusted with office. This certainty of audience and of credit gives spice to what such leaders have to say and lends elevation to

the tone of all their public utterances. They for the most part avoid buncombe, which would be difficult to translate into Acts of Parliament. It is easy to see how great an advantage their station and influence give them over our own public men. We have no such responsible party leadership on this side the sea: we are very shy about conferring much authority on anybody and the consequence is that it requires something very like genius to secure for anyone of our statesmen a universally-recognized right to be heard, and to create an ever-active desire to hear him whenever he talks, not about candidates, but about measures. An extraordinary gift of eloquence, such as not every generation may hope to see, will always hold, because it will always captivate the attention of the people. But genius and eloquence are too rare to be depended upon for the instruction and guidance of the masses; and since our politicians lack the credit of authority and responsibility, they must give place except at election-time, to the Press which is everywhere, generally well-informed, and always talking. It is necessarily "government by declamation" and editorial-writing.

It is probably also this lack of leadership which gives to our national parties their curious conglomerate character. It would seem to be scarcely an exaggeration to say that they are homogeneous only in name. Neither of the two principal parties

is of one mind with itself. Each tolerates all sorts of difference of creed and variety of aim within its own ranks. Each pretends to the same purposes and permits among its partisans the same contradictions to those purposes. They are grouped around no legislative leaders whose capacity has been tested and to whose opinions they loyally adhere. They are like armies without officers, engaged upon a campaign which has no great cause at its back. Their names and traditions, not their hopes and policy, keep them together.

It is to this fact, as well as to short terms which allow little time for differences to come to a head, that the easy agreement of Congressional majorities should be attributed. In other like assemblies the harmony of majorities is constantly liable to disturbance. Ministers lose their following and find their friends falling away in the midst of a session. But not so in Congress. There, although the majority is frequently simply conglomerate, made up of factions not a few, and bearing in its elements every seed of discord, the harmony of party voting seldom, if ever, suffers an interruption. So far as outsiders can see, legislation generally flows placidly on, and the majority easily has its own way, acting with a sort of matter-of-course unanimity, with no suspicion of individual freedom of action. Whatever revolts may be threatened or accom-

plished in the ranks of the party outside the House at the polls its power is never broken inside the House. This is doubtless due in part to the fact that there is no freedom of debate in the House; but there can be no question that it is principally due to the fact that debate is without aim, just because legislation is without consistency. Legislation is conglomerate. The absence of any concert of action amongst the Committees leaves legislation with scarcely any trace of determinate party courses. No two schemes pull together. If there is a coincidence of principle between several bills of the same session, it is generally accidental: and the confusion of policy which prevents intelligent cooperation also, of course, prevents intelligent differences and divisions. There is never a transfer of power from one party to the other during a session because such a transfer would mean almost nothing. The majority remains of one mind so long as a Congress lives because its mind is very vaguely ascertained and its power of planning a split consequently very limited. It has no common mind, and if it had, has not the machinery for changing it. It is led by a score or two of Committees whose composition must remain the same to the end: and who are too numerous, as well as too disconnected, to fight against. It stays on one side because it hardly knows where the boundaries of that side are or how to



cross them.

Moreover, there is a certain well-known piece of Congressional machinery long ago invented and applied for the special purpose of keeping both majority and minority compact. The legislative caucus has almost as important a part in our system as ~~have~~ ^{have} the Standing Committees, and deserves as close study as they. Its functions are much more easily understood in all their bearings than those of the Committees, however, because they are much simpler. The caucus is meant as an antidote to the Committees. It is designed to supply the cohesive principle which the multiplicity and mutual independence of the Committees so powerfully tend to destroy. Having no Prime Minister to confer with about the policy of the government, as they see members of Parliament doing, our Congressmen confer with each other in caucus. Rather than imprudently expose to the world the differences of opinion threatened or developed among its members, each party hastens to remove disrupting debate from the floor of Congress, where the speakers might too hastily commit themselves to insubordination, to quiet conferences behind closed doors, where frightened scruples may be reassured and every disagreement healed with a salve of compromise or subdued with the whip of political expediency. The caucus is the drilling-ground of the party. There its discipline is re-

newed and strengthened, its uniformity of step and gesture regained. The voting and speaking in the House are generally merely the movements of a sort of dress parade, for which the exercises of the caucus are designed to prepare. It is easy to see how difficult it would be for the party to keep its head amidst the confused cross-movements of the Committees without thus now and again pulling itself together in caucus, where it can ask itself its own mind and pledge itself anew to eternal agreement.

The credit of inventing this device is probably due to the Democrats. They appear to have used it so early as the second session of the eighth Congress. Speaking of that session, a reliable authority says: "During ^{this} ~~the~~ session of Congress there was far less of free and independent discussion on the measures proposed by ^{the} friends of the administration than had been previously practiced in both branches of the national legislature. It appeared that on the most important subjects, the course adopted by the majority was the effect of ~~the~~ caucus arrangement, or, in other words, had been previously agreed upon at meetings of the Democratic members held in private. Thus the legislation of ^{the} ~~the~~ was constantly swayed by a party following ^{feelings and} pledges rather than according to sound reason or personal conviction."* The censure

* Statesman's Manual, I: p. ~~330~~. 244.

implied in this last sentence may have seemed righteous at the time when such caucus pledges were in disfavour as new-fangled shackles, but it would hardly be accepted as just by the intensely practical politicians of to-day. They would probably prefer to put it thus: That the silvern speech spent in caucus secure^s the golden silence maintained on the floor of Congress, making each party rich in concord and happy in cooperation.

The fact that makes this defence of the caucus not altogether conclusive is that it is shielded from all responsibility by its sneaking privacy. It has great power without any balancing weight of accountability. Probably its debates would constitute interesting and instructive reading for the public, were they published; but they never get out except in rumours often rehearsed and as often amended. They are, one may take it for granted, much more candid and go much nearer the political heart of the questions discussed than anything that is ever said openly in Congress to the reporters' gallery. They approach matters without masks and handle them without gloves. It might hurt, but it would enlighten, us to hear them. As it is, however, there is unhappily no ground for denying their power to override sound reason and personal conviction. The caucus cannot always silence or subdue a large and influential minority of dissentients, but its whip seldom fails to reduce indiv-

individual malcontents and mutineers into submission. There is no place in Congressional jousts for the free lance. The man who disobeys his party caucus is understood to disavow his party allegiance altogether and to assume that dangerous neutrality which is so apt to degenerate into mere caprice and which is almost sure to destroy his influence by bringing him under the suspicion of being unreliable,— a suspicion always conclusively damning in practical life. Any individual, or any minority of weak numbers or small influence, who has the temerity to neglect the decisions of the caucus is sure, if the offence be often repeated, or even once committed upon an important issue, to be read out of the party, almost without chance of reinstatement. And everyone knows that nothing can be accomplished in politics by mere disagreement. The only privilege such recalcitrants gain is the privilege of disagreement: they are forever shut out from the privilege of confidential cooperation. They have chosen the helplessness of a faction.

It must be admitted, however, that, unfortunate as the necessity is for the existence of such powers as those of the caucus, that necessity actually exists and cannot be neglected. Against the fatal action of so many elements of disintegration it would seem to be imperatively needful that some energetic element of cohesion should be provided. It is doubtful whether

in any other nation, with a sadder inheritance of political instinct, parties could long successfully resist the centrifugal forces of the Committee system with only the varying attraction of the caucus to detain them. The wonder is that, despite the forcible and unnatural divorcement of legislation and administration and the consequent distraction of legislation from all attention to anything like an intelligent planning and superintendence of policy, we are not cursed with as many factions as now almost hopelessly confuse French politics. That we have had, and continue to have, only two national parties of national importance or real power is fortunate rather than natural. Their names stand for a fact, but scarcely for a reason.

An intelligent observer of our politics* has declared that there is in the United States "a class, including thousands and tens of thousands of the best men in the country, who think it possible to enjoy the fruits of good government without working for them." Everyone who has seen beyond the outside of our American life must recognize the truth of this: to explain it is to state the sum of all the most valid criticisms of Congressional government. Public opinion has no easy vehicle for its judgments, no quick channels for its action. Nothing about the system is direct and simple. Authority is perplexingly subdi-

*Mr. Dale, of Birmingham.

vided and distributed, and responsibility has to be hunted down in out-of-the-way corners. So that the sum of the whole matter is that the means of working for the fruits of good government are not readily to be found. The average citizen may be excused for esteeming government at best but a haphazard affair, upon which his vote and all of his influence can have but little effect. How is his choice of a representative in Congress to affect the policy of the country as regards the questions in which he is most interested, if the man for whom he votes has no chance of getting on the Standing Committee which has virtual charge of those questions? How is it to make any difference who is chosen President? Has the President any very great authority in matters of vital policy? It seems almost a thing of despair to get any assurance that any vote he may cast will even in an infinitesimal degree affect the essential courses of administration. There are so many cooks mixing their ingredients in the national broth that it seems hopeless, this thing of changing one cook at a time.

The charm of our constitutional ideal has now been long enough wound up to enable sober men who do not believe in political witchcraft to judge what it has accomplished and is likely still to accomplish without further winding. The Constitution

is not honoured by blind worship. The more open-eyed we become as a nation to its defects and the prompter we grow in applying with the unhesitating courage of conviction all thoroughly-tested or well-considered expedients necessary to make self-government among us a straightforward thing of simple method, single, unstinted power, and clear responsibility, ^{the} ~~we~~ nearer will we approach to the sound sense and practical genius of the great and honourable statesmen of 1787. And the first step towards emancipation from the timidity and false pride which have led us to seek to thrive despite the defects of our national system rather than seem to deny its perfection is a fearless criticism of that system. When we shall have examined all its parts without sentiment and gauged all its functions by the standards of practical commonsense, we shall have established anew our right to the claim of political sagacity; and it will remain only to act intelligently upon what our opened eyes have seen in order to prove again the justice of our claim to political genius.

T H E E N D.

