

Relations with Congress

Congress Held in Respect

LET ME BEGIN my discussion of Congressional relations and functions by saying that I have great respect both for Congress and for the legislative function. I have tried throughout this book to emphasize the fundamental importance of politics as the safeguard of the people's liberties. It is the means by which the people are enabled to determine the course of their government and make it continually respond to their needs. It is inconceivable that the political process could work adequately if it were confined exclusively to a direct influence on the executive branch. As I see it, the correct view of our government would accept the functions of the legislature and the executive as complementary rather than emphasize their role as parts of a structural system of checks and balances. Overemphasis on the idea of checks and balances and minimization of political considerations should be equally obsolete. The realm of the political has expanded greatly and must expand still more if democracy is to keep abreast of the conditions under which it must live in the middle of the twentieth century.

Congress is enormously important as a political agency of the people. Differences between Congress and the executive departments grow in part out of an imperfect governmental structure, in part out of complexity, in part out of carelessness, and in part out of differences in functions. The greater complexity of popular interests and concerns today and the consequently greater complexity of government are reflected in increasingly more complex relations between the two branches. Government finds its tasks more complex and difficult today because society finds its problems more complex and difficult. The Congress is no more immune from the consequences of this fact than the executive. One of its results has been to make communication and understanding between the two branches less easy than it used to be.

Many members of Congress believe that persons in the departments are contemptuous of the Congress and of the Senators and Representatives who compose it. While in some few particulars and with a very few specific individuals there may be something to such a belief, I have never seen an individual in any of the executive departments who actually had a general feeling of that kind. In some specific matters they may feel that some individual members of Congress do not sufficiently understand the nature of big administration or that others are too exclusively or too narrowly political, but this feeling is far from contempt. The general attitude in the departments is definitely one of respect for Congress, of dependence on Congress, and of belief in the central importance of the law-making function.

If members could overhear the constant references to Congress in administrative discussions, they would be surprised and complimented. "Congress determined this"; "the attitude on the Hill is against that"; "Congress wouldn't consent to that"—these and like statements are as common as daily breath in the departments. Career officials have this sentiment of sensitivity to Congressional attitudes in a high degree. Departmental executives especially charged with responsibility for relationships with Congressional committees find in that responsibility their great resource in policing administration and in enforcing governmental standards.

The attitude members of Congress encounter in the departments that makes them uneasy is really an attitude of fear. To the departments the power of Congress is immense and clear. The rank and file in the departments are exceedingly timid before Senators and Representatives, and the higher-ups range from extremely careful to cautious. These conditions make effective communication difficult. It is not that persons in the departments are unwilling to communicate fully or wish to cover things up. It is basic doctrine, invoked daily and never questioned, that everything done must be so done as to be ready for Congressional review. I have never seen a departmental situation in which the prospect of a really thorough investigation by Congress was not welcomed with a sense of relief. Usually the feeling is: "While Senator X or Congressman Soandso will be awfully hard and mean, the Committee as a group will get the complete story.

They will find that as a whole we did a pretty fair job, and they'll act accordingly."

Communication between Branches Defective

It is because of the difficulty of telling a whole involved, technical story in each particular interchange and the fear of the power of Congressmen who consequently react to scant information that personnel in the executive branch may at times seem to be lacking in candor in giving information. Many persons in the departments feel themselves to be inept in such interchanges. Nor are they confident of what their more remote superiors will do in the face of particular kinds of influences. In many cases, therefore, communication is poor because it is between different levels of power. In the eyes of the bureaucrat, the advantage lies entirely with the Congressman.

Another factor accounting for poor communication is that most discussions necessarily relate to rather precise administrative questions and not to issues of policy or program. If members of Congress and bureaucrats could confer now and then when the Congressmen were not trying to get the administrators to do specific things being demanded by constituents, or trying to dig up something for the sake of personal publicity, they would find an extraordinary measure of common ground, common purpose, and mutual respect. In almost every instance where members of Congress and persons in the departments become *generally* acquainted, real respect and friendship develop. But when the member is under pressure from his constituents and is forced to ask for something which often he knows is not in order and which other times, if there were opportunity, he could often be made to see as at least dubious administratively, his reaction is almost certain to be an unsatisfied and angry resentment against bureaucrats.

In general, the level of ability and quality among members of Congress is high. They are persons of patriotism and intelligence. In personal traits they differ perhaps as widely as any other group of 531 individuals—though they may and probably do have some common attributes because of their common interest and common experience in politics. Persons who will regularly submit themselves to popular franchise must have certain qualities not found among

more retiring people. One of the difficulties in the relationship between Congress and the executive departments lies in the fact that unfortunate experiences with a few members of Congress naturally cause administrative officials to shy away from all unnecessary contact with "the Hill." I recall at least two Congressmen who had so violent a disregard for the humanity of administrative personnel as to warrant anyone in trying to avoid an encounter with them. There are too frequently—although by no means regularly—instances in Congressional committees of individual members, in temper or in partisan heat, grievously insulting government employees called before them. Such abuse of power damages relationships for guilty and innocent members alike. It stems largely from lack of acquaintance and poor previous communication, from the fact that even business of common concern cannot always be easily and quickly mastered. It arises also from a cross-examining technique in which many members of Congress are expert. Such expertness on the part of an opposition member keen to embarrass the Administration can make a committee appearance a terrible ordeal. And persons in the departments, though they may be familiar enough with pressure groups, often fail fully to appreciate the situation in which Congressmen are placed by the pressures on them from their constituents. Where there is real acquaintance, the bureaucrats invariably develop an improved understanding of Congressional perspective and find some ways for making pressures on Congressmen more tolerable. On the other hand, Congressmen do not adequately appreciate that the bureaucrats actually do function in their own field in a way basically political and that responsible bureaucrats are more broadly—that is, more nationally—exposed politically than members of Congress, even though they function in a way different from Congressmen. The lot of Congress would be intolerable if it were otherwise.

Rayburn's Incisive View of Congress

Just as there is need for improvement in governmental administration, so there is need for improvement in the functioning of Congress. Fundamental to any such program of improvement, however, is a clearer conception of the role of the Congress itself in American government. Several years ago Speaker Sam Rayburn discussed this

subject in a way that deserves to live in our literature of government. His address, delivered at Dallas, Texas, December 10, 1941, is worth quoting at some length:

“Even for our most gifted lawmakers the problems of government are not as simple as they were a hundred and fifty years ago. It is not as easy as it once was for the Congress to meet both the demands for adequate discussion of the nation’s needs and the demands for the necessary legislative action to meet those needs. The ability of the Congress to meet these insistent demands is the test of the ability of our democracy to survive. Out of its own experience and within the broad contour of the Constitution the Congress is evolving the means necessary to meet that test.

“For some years, gradually and experimentally, the Congress has been wisely delimiting the field of effective legislative action. It has been confining itself more and more to laying down definite standards of legislative policy and leaving the detailed application of these standards to administrative agencies with technically equipped staffs. This procedure gives promise of improving rather than impairing both the character of the legislative debate and the quality of the legislative product. It enables the Congress to debate broad matters of policy without being lost in a mass of technical detail. It enables the Congress to know and understand the nature of the legislation upon which it votes. And it does not take from the Congress the power to amend or supplement legislation of this character at any time that it finds that legislation is not being applied and enforced in accordance with Congress’ own understanding of its declared policy.

“Far from undermining the constitutional authority of the Congress, delegation of authority to administrative agencies is one of the surest safeguards. It is a procedure which conserves the vital powers of the Congress for vital matters. It removes rather than creates the danger of dictatorship by providing the means of making democracy work under the complex conditions of modern life. I am proud to have taken an active part in the creation of many of those commissions and boards. I might name the Federal Trade Commission, the Federal Power Commission, the Tariff Board, the Securities and Exchange Commission, the Federal Communications Commission, and the Federal Reserve Board.

“The Interstate Commerce Commission is an agency of the Congress. The Interstate Commerce Commission does not perform any act that the Congress has not the power and the authority to perform itself. Members of Congress are too busy with other duties, among them fixing great legislative policies, to take the time to go into finer technicalities of a

rate structure or granting the right to a railroad to issue new securities, whether in the form of stocks or bonds. Congress therefore delegated this authority to a commission of eleven men with trained experts to work out the details for them. The same might be truly said of every board and every other commission formed in the government.

“The passage of these acts was not the abdication of Congress of its authority, but a delegation of that authority to its creature.

“The growing demands made upon the legislative branch of government make a responsible national leadership and national direction increasingly vital. That leadership and direction must be intimately informed through the administrative organs of government of the multitudinous problems with which modern government must deal and with which no individual unaided by a large and co-ordinated organization with a highly trained and efficient personnel can hope to deal. Legislation does not spring full grown from the head of Zeus. Legislative ideas may come from an individual legislator acutely aware of his constituents' needs; they may come from some unknown administrator keenly conscious of his own bureau's inability to meet legitimate demands made upon it. But a legislative program requires technical competence to insure that its objective is effectively accomplished. A great national legislature cannot safely rely upon the technical assistance and advice which private interests, sometimes selfishly and sometimes unselfishly, are willing to provide.

“In nearly all democratic countries other than our own, national leadership is vested in a cabinet of ministers composed of the leaders of the majority party in the legislature or of the leaders of a coalition of parties or groups able to command the support of a majority of the members of the legislature. These ministers become the responsible heads of the great administrative departments of government, whose staffs are at their command in helping to devise and shape their national legislative program.

“Under our Constitution, executive leadership is vested in a President, elected by the people and responsible to the people. He is not only charged with the faithful execution of the laws, but under the Constitution it is his duty from time to time to give the Congress information of the state of the Union and to recommend to their consideration such measures as he shall judge necessary and expedient. The President is not a member of the Congress, but he has power to veto legislation and prevent it from becoming law unless passed over his veto by a two-thirds vote of both Houses.

“There has been much dispute as to the relative merits of our form of

government as compared with the parliamentary or cabinet system. I think that the two systems differ less in their practical operations than has commonly been supposed. It is sometimes said that the cabinet system give the parliament more power than does our own constitutional system give the Congress. It is true that under the cabinet form of government the parliament can at any time cause a change of administration by a vote of no confidence. But that very fact exercises an enormous restraint over the parliament and makes party discipline much more strict than with us. In practical operation the individual Senator or Representative in Congress has much more scope to express and make his individual point of view felt, and that scope is limited much more by self-imposed rules of seniority than by any principle of party responsibility.

“It is not too much to say that our form of government works best when a majority in the Congress is sympathetic toward the leadership of the President. As a direct representative of all the people, he symbolizes the hopes and aspirations of a nation; as the successful party candidate for the nation’s highest office he is the leader of his party. The President thus carries a mandate not only from the majority of his party but from the majority of the electorate. A President, under our system of government, can escape the responsibility of leadership only by incapacity and lack of personal force. President Wilson was often quoted as saying: ‘I am the responsible leader of the party in power.’

“But no President has been able effectively to draw together the divergent forces and conflicting interests represented in the Congress without assuming and asserting vigorously the power of his office. The President has no legal authority to compel the Congress to accept his leadership. But unlike a member of the Congress, he owes no special loyalty to any one state or to any one district; he is elected to represent the nation as a whole. Grover Cleveland stated: ‘In the scheme of our national government the Presidency is pre-eminently the people’s office.’

“The President therefore is in a position to exert great moral influence upon the Congress to see that the action of the Congress is responsive to the desires of the nation as a whole, and that the national interests are not obscured by local or group interests and are not frustrated by a combination of these interests contrary to the general good.

“If the President should lose touch with the people and with the national needs, the Congress is obviously in a position to refuse to go along; it is difficult, however, for the Congress itself to supplant, rather than merely act as a check upon, the leadership of the Chief Executive. After Lincoln’s death a Vice President succeeded Lincoln who could not in the same

measure speak for the country as a whole; and at least partly because of that fact, the Congress tried to assume the role of national leadership. The results, as we know, were disastrous for the whole country. The ignoble treatment of the South during this period still has its effect upon the national economy. North as well as South suffered from the moral bankruptcy of the democratic process."

Some Unsolved Problems

Perhaps the Speaker touched too lightly on the contrast between the parliamentary system, as in Britain, and our system. My own judgment is that our government is very much more immediately dependent on Congress than Britain's government is immediately dependent on Parliament. In both countries the legislative bodies are a special means of popular control which I feel to have the most thoroughgoing importance. But in this country Congress expects, and the people expect it, to do vastly more in the way of policy *initiation* and precise administrative control than is expected of the British Parliament. Parliament, in effect, has a veto power rather than the other way around. The British government more clearly and directly than ours "does that to which a sufficient minority does not sufficiently object." Yet the popular control is very real; both "the government" and Parliament are acutely sensitive to tides of popular opinion.

In these modern times there may be much virtue for this country in a development somewhat more in the parliamentary direction. The late Senator Robinson of Arkansas while majority leader of the Senate once proposed to a group of government technicians that they make a thorough study of our national legislature and indicated a belief that it might be worth considering to make the Congressional function mainly a questioning, influencing, and vetoing function. The Reorganization Act of that time furnishes a good example of Congressional action by means of legislative veto and indicates that such a change could be accomplished without formal Constitutional amendment. This would put our government in a position somewhere between its present status and that of the British government. Congress would retain the right to initiate, but use it less and less frequently. This system might be actually the best of the three possibilities.

A discussion of the relationship between the two branches written from the Congressional viewpoint would not be complete without more detailed presentation of the inadequacies existing in the departments. This discussion, written from the administrative viewpoint, similarly would not be complete without some further mention of Congressional attitudes and practices that offend the administrators' sensibilities. Aside from the tendency for Congress, in legislation, to stipulate standards and procedures more precisely than implied in Speaker Rayburn's philosophy—a tendency which has its justification but which now needs more and more to be questioned—these elements of difficulty relate almost wholly to the functioning of individuals in Congress, not to the functioning of Congress as a whole.

They begin, and perhaps they end, with efforts of individuals to exert special influence and to determine specific actions within the administrative field. Yet it would be utterly wrong not to have some differences in the influence exercised—even in administration—by individual members of Congress. Legislation is not simply a matter of counting noses. Here, also, noises count, too. The Vice President, the Speaker, and the majority leaders need special prerogatives and influence to support their greater responsibilities. To a lesser extent the same is true of committee chairmen. In general, however, the four named officials exercise their influence somewhat more properly and effectively than do committee chairmen. I think that this is attributable to the fact not only that they have greater responsibilities but that they acquire these responsibilities through election rather than through seniority. The seniority method of assigning chairmanships seems to me one of the worst of our governmental customs. If chairmen were freely elected by their Houses, or perhaps by their committees, I am sure they would be more responsible to the committees and to Congress. And they would tend to become *national* politicians rather than to remain spokesmen for their states or sections as so many do now.

But the worst abuses—in the eyes of administrators—are not those of committee chairmen as such but of a few individuals who, whatever their capacity, will try to dictate just as much as they can and will go to almost any length to force their demands for a specific

action in which they are much interested. Single individuals can often determine the precise wording or precise amounts in appropriation bills or other legislation. Some members use this ability as a threat to force a desired action or as a means of applying punishment when the action is not taken. And there are other devices and stratagems available to the same end. So it is that a few individuals force unsuitable persons into government jobs, or make it impossible for a particular employee to be discharged, or prevent the closing of a particular field office, or compel an office to be located at a place other than the one most generally desirable.

We do not want to press this generalization too far. The fact is simply this: in some instances, and sometimes very bitterly and hatefully, individual members of Congress degrade their calling and forsake their proper, high level of policy for particular and selfish purposes. It is only fair, however, to acknowledge that the pull of their constituents on them downward toward a lower level of calculation is terrific, and that most of the time the vast majority resist this pull with great courage and with great consideration for administrators as well as for the general welfare.

Beyond these points of direct concern to administrators there are two important general points that should be of public concern. One of these is the feeling of members of Congress of their individual lack of power. The other is their collective concern about the power of their Houses and of Congress.

A feeling of frustration and weakness is almost universal and generally inevitable in a big organization. The necessity to produce an "organized product," already stressed, means that usually no individual can feel much sense of accomplishment through his participation in the process. Laboring men and women working for the government find their situations not markedly different from the situations of similar workers in industry. For statisticians, accountants, scientists, and other specialists the same is true, but for substantive program workers and executives the sense of individual achievement falls as the size of organization and the complexity of its work increase. This applies particularly to government because of its size, scope, and political character. The theoretical power vested in high officials appears to be much greater from below and from outside

than it seems to be at the place where it is exercised. This extends to the Presidential office itself; any man in that office is much more aware of his lack of power than he is of the possession or exercise of power. And this executive situation is reflected in the Congress. Any member is one of 531, is a member of only one of two different Houses of just one branch of the government. The reconciliation of the views of the members of one House necessarily leaves each individual feeling rather futile most of the time. Reconciliation of the views of the two Houses aggravates the feeling. Reconciliation with "administrative and technical considerations" presented by the departments and with the national-leadership function of the President in a process hemmed in by popular sentiments leaves the individual member little sense of worth or achievement.

From a social standpoint this very condition is desirable. No one should feel very powerful in his individual person and situation. All concerned should contribute to a process of determination rather than to make determinations. Yet the problem for individuals is real and important. It is a widespread problem, familiar in terms of assembly-line factory workers but never much considered in terms of government legislators and executives. There seems to be no remedy except fuller understanding of the process on the part of the public and officials alike and some resulting transference of valuation to the *process*.

The price of the present situation is a premium on individual performance to get attention, and a discount on organizational performance to get agreement on action.

This problem of the individual is, like the second, one of most fundamental importance: a striving for Congressional power that takes the form of both constant and spasmodic conflict with the executive. It is a conflict to be viewed in part as wholly separate from conflicts over policy, although it contributes to the latter. The question of prerogative and power influences many votes in ways unrelated to substantive issues. The net of a situation in which votes are influenced first by considerations of individual attention and power and next by considerations of Congressional prerogative, added to a condition distinguished by sparring for position by the two parties, makes the total process more a contest between forces, often irrelevant to the

policy questions, and less a process of arriving at agreement for action on the merits of the cases.

A number of candid members of Congress have admitted in private to voting in pique over inattention to them as individuals on the part of the President. Cases where votes have been more determined by concern about Congressional prerogatives than by intrinsic policy differences are by no means infrequent. The Senate vote on the League of Nations is a vivid example where personal pique, Senatorial pique, opposition-party considerations, and simple isolationist opposition combined to determine a course of action contrary to the course popularly desired at the time. A similar vote reflecting only isolationist opposition would have been an entirely different matter.

One may feel that the League vote reflected a failure on the part of President Wilson in that he did not take Senator Lodge and one or two other Senators with him to France to negotiate the treaty. But the problem is by no means so simple. Lodge might well have used his participation to arm himself for even more telling attack. Even if participation had mollified him to the extent of winning his support, Senators not selected might have been all the more offended. No group of Senators short of two thirds of the entire body could bind the Senate, they certainly would not agree, and the very thought of sixty-five negotiators for a single country is so utterly absurd anyhow as not to warrant the suggestion.

This situation poses a general governmental problem of most compelling importance. It is a problem that stems from the separation of powers, which handicaps governmental unity and puts high barriers in the way of agreement on courses of action.

In our society the greatest power rests with the people. It is an ultimate power. Because the people have that power they can, when they clearly know what they want, require the government to do anything they choose, and keep the government from doing anything they oppose. The people cannot and should not make most specific decisions. The government provides machinery for making these specific decisions. But the ability of the people always to influence both legislation and administration, and their ultimate power to make specific decisions, are the essentials to the conduct of democratic government.

The continuing importance of Congress in an ever more complex society does not depend upon its becoming more expert in more and more fields. That is both impossible and undesirable. (Department, agency, and bureau heads should be chosen less and less for technical expertness and more and more for generalist qualities. Members of Congress must operate on a still higher level.) Nor can the end of Congressional expertness be achieved by setting up great staffs—small staffs would not suffice—of technicians to serve the Congress. That would establish a serious and wasteful duplication. It would add to existing governmental disunity the doctrinaire and competitive differences of different bodies of technicians. The absence of experts is not a principal governmental difficulty. Congress and its committees can and should have better-paid and somewhat larger staffs, but these staffs should be designed strictly to serve the special Congressional function. Congress also can make much better use of technicians in the departments, as Congressman Clarence Cannon has pointed out in a notable speech. But that is not the paramount need. Members of Congress are not elected as experts or to become experts in technical fields. They can and should be experts in politics.

The fundamental importance of Congress is that it peculiarly partakes of the popular function. Protection of its true importance requires increasingly that Congress treat its power more as an ultimate power and less as a devising and minutely, directly controlling power. Existing disesteem of Congress arises from efforts on the part of Congress to be responsible for things concerning which it cannot really be responsible and from a consequent failure to deal adequately with the development of general policy. The word "development" here is used in considered contrast with "formulation." The power of Congress—as distinguished from its influence—will be greater when it is used less frequently. Its greatest importance is as a *reserved* power.

There is no room to doubt that Congress has, and will continue to have, much vaster and more fundamental powers than the whole executive branch. Its pre-eminent and priceless function is to be the reservoir of penultimate control, convertible into the channel by which the ultimate popular power may be brought to bear in an orderly and prompt fashion.