CHAPTER XII

THE COURTS AND THE BUDGET

THE whole budget discussion has centered about the executive preparation of the budget proposals, and particularly about the need for executive revision of departmental estimates. The term, "departmental estimates," has been accepted without a too insistent inquisitiveness as to what should be included in the term. Should the courts be included here? A university class to whom this question was proposed was greatly surprised by it. And yet the administration of justice must be financed. Has the reader ever heard the relation of the financing of the judiciary to the budget discussed? Many persons, even those more than ordinarily informed on the budget, are surprised at the very inquiry.

If the financing of the administration of the courts presented the same budget problem as the financing of the executive departments of government, the budgetary procedure for the courts would be the same as outlined in the preceding chapters. Estimates for the judiciary would be prepared by the judges in closest touch with the problems. These estimates would be reviewed by the presiding judge (departmental estimates), or, if the court is made of distinctive parts, by the presiding judge of the highest appellate jurisdiction, and then submitted to the governor for inclusion, after

revision, in his budget. These would be submitted along with the other estimates and subjected to similar legislative procedure and action. A representative of the courts, presumably but not necessarily, the presiding justice, would have a seat on the floor for purposes of explaining the departmental estimates and supplying other needed information, but he would have no right to vote. This representative of the judiciary could be asked questions on the spot and might be subjected to the process of interpellation. The executive might veto the budget act as it relates to the judiciary, exactly as he might veto any other part of the budget act. But this procedure, while generally applicable to the courts, must be modified in detail for the courts.

JUDICIARY ESTIMATES PREPARED BY JUDICIARY

The judiciary will prepare the estimates for financing the courts for the same reason that other public officials prepare their estimates. The judges have the day-to-day experience in the courts; they have the most intimate experience in the administration of the courts. From the viewpoint of the judicial system itself, they know. The budget estimates ought to embody this knowledge and experience.

If the judicial system is made up of numerous and complicated parts, there will be need for a review within the judicial department similar to the review by the departmental chiefs — a balancing of part against part in the interest of a coördinated whole. This review would naturally be made — if at all — by the presiding judge of the highest court or perhaps by the highest court.

The preparation of the proposals by the judiciary itself will raise no serious opposition. If the legislature really wants the most intimate contact and the best expert judgment available with reference to the budget proposals for the courts, then it must rely on the judiciary. And if the legislature wants this expert and intimate information during the progress of the legislative discussion, there is no reason why a representative of the courts should not have the privilege of the floor at such a time to explain and to volunteer information, and perhaps there would go with that the correlative right of the legislature to require judicial officers to submit to the interpellation.

NO EXECUTIVE REVISION OF JUDICIARY ESTIMATES

The budget proposals for the judiciary prepared by the judiciary are transmitted to the executive to be transmitted to the legislature. Should the President or the governor transmit these without revision to the legislature?

Executive revision of departmental estimates in executive departments is given because responsibility for "faithfully executing the laws" is placed upon the executive operating through these departments. The executive is head only of the executive department of government and in "long ballot" states of only certain parts of that. The judiciary is independent of him — and designedly so — even though, as in the national government, he may have power to designate the judges subject to the approval of the senate. But after the appointment he is without power or responsibility or jurisdiction. Hence he should not have the power

to revise the estimates of the judiciary before they are submitted to the legislature unless it is the intention to give him great influence over the judiciary.

It may be urged that there is need for independent lay review of judiciary estimates. There is, but not by the executive. The lay point of view will be adequately expressed and best expressed by the legislature. That is the primary function of the legislature, not the executive.

There is, perhaps, a still more fundamental reason why the executive should not revise the judiciary estimates. And that is, there is no need or only the slightest need, if any, for such revision. The budget for the courts does not, or only rarely, raises questions of policy; the questions raised are questions of organization or of financing an existing organization. And none of these considerations require or presume or imply the need for executive review of judiciary estimates.

There is, therefore, in general no need for executive revision of the judiciary estimates. They will be sent to the executive and by him transmitted to the legislature along with the estimates for executive and other administrative departments. The New York Constitution Convention of 1915 proposed dealing with this problem similarly. But while it specifically denied the right of revision of judiciary estimates, it gave the governor a power of recommendation. The recommendation of the Convention to the people of the state reads:

"Itemized estimates of the financial needs of the legislature certified by the presiding officer of each house and of the

judiciary certified by the comptroller shall be transmitted to the governor before the fifteenth day of January next succeeding for inclusion in the budget without revision but with such recommendation as he may think proper." (New York Proposed Revised Constitution, Art. V, 1915.)

THE POWER OF THE LEGISLATURE OVER JUDICIARY ESTIMATES

The relation of the executive to the judiciary estimates is a comparatively simple problem and offers no difficulty. But the real problem of budget-making for the courts arises over the question of the specific power of the legislature over the judiciary proposals. And the specific question is: Can the legislature exercise the same power over proposals of the judiciary as over the executive proposals?

THE IMPORTANCE OF THE CONTROL OF THE JUDICIARY

To what extent there is or may be legislative control of the courts is of fundamental importance, for in our particular form of democratic government the courts are the final arbiter of our destinies. If a question arises, as recently in Illinois, regarding the appropriations to the legislative and executive departments of government, the question is finally settled by the courts — in this case by the Supreme Court of Illinois. If the question should arise as to the appropriations to the courts, the final say would *in our legal theory* be by the courts themselves. This is well illustrated in a procedure outlined by President Taft in a case where the salaries of federal judges had been denied by Congress. (See p. 285.) One can easily imagine the

courts objecting to legislative control on the ground of the independence of the judiciary based on our legal theory of the separation of powers. One could insist, in turn, on this ground that the legislative acts ought not be subject to judicial determination as to their unconstitutionality. However that may be, the judiciary is a power that is neither checked nor balanced except through the very slow process of constitutional amendment. *This is our doctrine of judicial supremacy.*

This is the usual conception. But it is conceivable that there may be limitations upon it through the legislative control of the budget of the judiciary, if there is such control.[1]

LEGISLATIVE CONTROL OF THE JUDICIARY

Legislative control of the judiciary may be partial or complete. It may be manifested in two ways that are pertinent to the present inquiry: by passing appropriations that are clearly inadequate, and by refusing to pass any appropriation at all. Both these forms of control through the budget will be discussed later.

There can be no doubt that two-thirds of the legislature or the executive and a majority of the legislature

[1] One of the amazing things in the Maryland budget constitutional amendment is the provision that the legislature may increase the judiciary estimates but may not reduce them. Though the language of the amendment itself is somewhat dubious, the report makes unmistakably clear the provision, namely: "The legislature may increase them (the estimates for the judiciary) but not reduce them." The wording of the amendment is: "*The General Assembly may amend the bill by increasing or diminishing the items therein relating to the General Assembly and by increasing the items therein relating to the Judiciary,* but except as hereinbefore specified may not alter the said bill except to strike out or reduce items therein."

have through the law-making power ways of controlling the courts. One way is through a legislative definition of the jurisdiction of the courts. This is unlimited in the case of inferior courts and limited in the case of the Supreme Court. Both the Supreme Court and the inferior courts can be controlled, too, through an increase of personnel sufficient to overbalance an unfavorable majority. This is the method suggested by Allan Benson, the Socialist candidate for President in the campaign of 1916. In order to prevent the Supreme Court from declaring unconstitutional the Socialist measures which he would propose: "I would suggest," he said, "to the Congress that it increase the court from nine to twenty, and I would nominate eleven Socialist lawyers to complete the court — and outvote the other nine." (*Every Week,* June 2, 1916.)

Do the budgetary acts offer another method of control?

POWER OVER COURTS THROUGH INADEQUATE APPROPRIATIONS

Suppose the case of the Congress appropriating for the courts, the judges' salaries and nothing more — no provision whatever being made for stenographic clerks, reporters, messengers, custodians of buildings, books for judicial officers, rent, traveling expenses, fuel and the many other items now included in the appropriations for the courts.

In this situation the courts would be powerless except for one possibility. No question of constitutionality would be involved, and the courts would have no juris-

diction. It would seem, therefore, that a negative control of the courts is possible through the budget. There is a possibility, however, though it has not occurred as yet, of a court objecting to inadequate appropriations as being contrary to that "fundamental principle of our public law," the separation of powers.

But suppose with the usual annual or biennial appropriation systems of our states a state court should actually make such a determination of unconstitutionality, the courts are then without any appropriation whatever. And that raises another question that is discussed later.

AN EXTRAORDINARY METHOD OF FINANCING THE COURTS

Before proceeding to that question, it will be well to point out the extraordinary and amazing situation presented by certain courts in the city of Philadelphia, the judges of which are paid their salaries by the state of Pennsylvania.

There is in fact no real budget-making for these courts. When the money is needed for any of the operating expenses of the courts, the court issues a mandamus execution.

A mandamus execution, commonly known as a mandamus in Philadelphia, is an order of the court in the nature of a writ against the city treasurer to make payment from unappropriated funds or funds appropriated by councils, particularly for the payment of mandamuses. By use of this process courts order payment for stenographic services, supplies, professional services, as well as for judgments in condemnation of prop-

erty, construction of streets and sewers and the like. Does this look like a judicial regard for the "principle of public law," called the separation of powers? It does not. However, it is the exercise of another legislative function by the courts: the appropriation power of the legislature.

The extent of the use of mandamus executions may be indicated by the amounts for which they have been issued during recent years:

"MANDAMUS EXECUTIONS CERTIFIED BY LAW DEPARTMENT 1906–1915 YEAR BY YEAR

1906	$ 1 206 783 55
1907	3 107 008 64
1908	2 004 948 14
1909	2 537 087 80
1910	1 004 448 11
1911	864 935 00
1912	789 760 00
1913	1 468 925 90
1914	800 593 99
1915	837 291 88
Total	14 621 783 01

("Study of Mandamus Executions, Bureau of Municipal Research of Philadelphia, May 1916.")

Some of the purposes for which these mandamuses have been issued that are particularly interesting from the budget standpoint are given on page 276.

Mr. Robert E. Tracy, formerly of the staff of the Philadelphia Bureau of Municipal Research, who made the study (as yet unpublished) from which the facts quoted are gleaned, very aptly remarks:

"One finds, in examining mandamuses paid in various years, considerable money expended for personal service, especially in the courts themselves. There can be little criticism of money ordered out of the public treasury as the

EXHIBIT A

	Total 1906–1915	1915	1914	1913	1912	1911
Professional services.....	$64,130.46	$5,001.44	$10,368.90	$5,898.80	$4,583.41	$5,415.55
Services as county auditor..	2,056.25		254.50		252.00	272.00
Fees; steno., referees, expert witnesses.....	658,058.75	66,928.50	58,385.34	78,014.26	75,098.02	57,286.25
Special commissioners in lunacy	25,686.70	869.69	386.94	2,228.56	2,333 80	2,400.75
Printing jury lists, binding assessors, lists, etc....	8,372.99	353.24	121.75	332.50	332.50	1,613.00
Courts						
Supplies for	30,356.96					3,257.35
Salaries	34,070.57	9,104 69	21,436.18	406 00	979.99	809.65
court officials						

("Study of Mandamus Executions, Bureau of Municipal Research of Philadelphia, May, 1916.")

result of a judgment secured against the city in a suit or in consequence of a real writ of mandamus, but where courts themselves pay employees, clerks, probation officers, tipstaves, janitors, witness fees, etc., and buy supplies in addition, by such *colorable use of judicial process,* there arises the question why councils appropriate any money at all to the use of the courts. Why not finance the courts entirely by mandamus? Councils always know that they must satisfy the wishes of the courts regardless, appropriating mainly through the City Commissioners, the Prothonotary, and Clerk of Quarter Sessions. The judges themselves are paid by the commonwealth."

One can hardly conceive of federal or state courts assuming such power, but the facts are given as to what has actually occurred in one of our great municipalities. The process by which it was done may be noted briefly for that, too, is instructive:

"Mandamus executions are based largely on section 6 of the act of April 15, 1834, P. L. 537, providing for the execution of judgments against a county and, in Monoghan v. City of Philadelphia, 28 Pa. 207, this section was held to apply as well to a city like Philadelphia which is coterminous with a county. Although the Bullitt Bill, commonly known as the city charter, of June 1, 1885, Art. VIII, Sec 3, par. 4, provided for taking care of judgments against the treasury, without funds to pay them, out of the next tax levy, this paragraph was held to be unconstitutional in Betz v. Philadelphia, 4 Pa. C. C. 481 (1886), on the ground that judgment creditors in Philadelphia county would be at a disadvantage as compared with those in other counties and consequently the law of 1834 still applies."

The power is thus based on (1) the declaration by the courts of one act to be unconstitutional, and (2) judicial legislation to extend the provisions of an act

limited to counties and county business to city and city business because a city happened to be coterminous with a county.

The extraordinary and exceptional character of this Philadelphia situation is, of course, not decisive. It ought not to be forgotten, however, on that account, but kept in mind as a possibility — however remote — and in any case, as a rather striking way of financing the courts. Presumably the Councils of the city of Philadelphia are acquiescent. To what extent this is due to the judicial buttressing of the power by the courts themselves is a question difficult of determination and upon which no reliable information is available. At any rate, there is no conflict of courts and legislature. The legislature does not appropriate the money, and the courts continue to mandamus, though such procedure is contrary to sound public policy.

LEGISLATIVE CONTROL OF EXISTENCE OF COURTS

The problem of control over the courts' existence through control of its budget, that is, through refusal to appropriate funds, is in the national government, a problem of the ability of the Congress to refuse to vote the salary of the judges. It will be shown why this is so.

Congress creates an "inferior court." It wishes to abolish it. Taking away its jurisdiction may be a legal way of abolishing the court, but it does not in our legal theory abolish the judges. The result of such action is to leave federal judges roaming about free and disembodied, with life tenure and an annual salary

that cannot be reduced. In other words, the problem of legislative control through the budget remains. Let us see how the thing actually works out.

THE ABOLITION OF THE COMMERCE COURT

The Commerce Court was created in 1910 though it did not get under way until April, 1911. It was given jurisdiction over interstate commerce cases. General dissatisfaction followed its decisions, and numerous reversals by the Supreme Court sealed its fate. But what could Congress do? Could it abolish it? It did by tying on a rider to an appropriation bill. Representative Fitzgerald puts the case well:

> "We abolished the Court of Commerce in the Appropriation Bill. I was somewhat instrumental in doing that. I was in favor of it. I thought it should be abolished. There was a great difference of opinion. The President was very strongly in favor of retaining it, and yet there was a two-thirds vote of the two Houses in favor of abolishing that court. Of course, if a bill could do it and come before the Congress, it could have passed over the President's veto. But the only way to accomplish it was to incorporate it in the appropriation bill. Whether it is a desirable thing to do or not, apart from that, under the Anglo-Saxon theory of government, the representatives of the people should be in a position to compel an executive by the coercion exercised by the refusal to grant necessary supplies to conduct the government, to acquiesce in legislation that two-thirds of the two Houses would say is particularly desirable." ("Budget Systems," p. 315.)

The abolition of the Commerce Court is a clear case of the power of Congress over the existence of a court. The Congress would not appropriate money for the next year, made up deficiencies for the then current

year, and provided specifically for the abolition of the court. The Congress did not abolish the judges, however. It provided:

"Nothing herein contained shall be deemed to affect the tenure of any of the judges now acting as circuit judges by appointment under the terms of said act; but such judges shall continue to act under assignment, as in the said act provided, as judges of the district courts and circuit courts of appeal; and in the event of and on the death, resignation, or removal from office of any of such judges, his office is hereby abolished and no successor to him shall be appointed." (Statutes 1913, Sess. I, Ch. 32.)

But this does not mean that in the Congress there was no sentiment or belief that Congress had no power over the judges, too. The Senate amendment provided:

"So much of the act of 1910 creating the Commerce Court and so much of section 9 of the general judiciary act of 1911 with reference to the Commerce Court which provides for five additional Circuit court judgeships are hereby repealed, together with so much of said acts as authorized the President to appoint five additional Circuit judges, and the number of Circuit judges is hereby reduced to twenty-nine." (Chicago *Daily Tribune,* June 13, 1912.)

And the Senate vote on this amendment was 29 to 22. The amendment was included in the bill as it went to conference, but in the Conference Committee the conferees accepted the House amendment on the judgeships (quoted above) and the Senate amendment on the disposition of the cases before the Commerce Court. And consequently the Commerce Courts

judges were assigned to positions in the district courts and circuit courts of appeal, and because of this compromise on the measure the question of the power of the Congress over the judges was not determined.

But suppose such a provision had been included in the law as it passed as an explanation of Congressional failure to appropriate. What would then be the procedure?

WHAT HAPPENED IN 1802

The situation suggested in the last paragraph has occurred just once in our history, in 1802. The Judiciary Act of 1801, which provided for a "more convenient organization of the courts," created the circuit court judgeships. In accordance with law, judges were duly appointed by Adams among his last official acts. In 1802 the Congress, with Jefferson's approval, repealed the act — and the judges.

The procedure that was then followed will surprise those familiar with the present position of the courts. The judges memorialized Congress for a remedy for the infringement of rights secured to them by the Constitution, and the language of the memorial is no less striking than the presentation of the memorial. Because of its importance and because of its inaccessibility, it may be well to set down here the language of the memorial in full:

"By an act of Congress passed on the thirteenth day of February, in the year of our Lord one thousand and eight hundred and one, entitled 'An act to provide for the more convenient organization of the courts of the United States,'

certain judicial offices were created and courts established, called circuit courts of the United States.

"In virtue of appointments made under the Constitution of the United States, the undersigned became vested with the offices so created, and received commissions authorizing them to hold the same, with the emoluments thereunto appertaining, during their good behavior.

"During the last session an act of Congress passed by which the above mentioned law was declared to be repealed; since which no law has been made for assigning to your memorialists the execution of any judicial functions, nor has any provision been made for the payment of their stipulated compensation.

"Under these circumstances, and finding it expressly declared in the Constitution of the United States, that 'The judges both of the supreme and inferior courts shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office,' the undersigned, after the most deliberate consideration, are compelled to represent it as their opinion that the rights secured to them by the Constitution, as members of the Judicial Department, have been impaired.

"With these sincere convictions and influenced by a sense of public duty, they most respectfully request of Congress to review the existing laws with respect to the offices in question, and to define the duties to be performed by the undersigned, by such provisions as shall be consistent with the Constitution and the convenient administration of justice.

"The right of the undersigned to their compensations, they sincerely believe to be secured by the Constitution, notwithstanding any modification of the judicial department, which in the opinion of Congress, public convenience may recommend. This right, however, involving a personal interest, will be cheerfully submitted to judicial examination and decision in *such manner as the wisdom and impartiality of Congress may prescribe.*

"That judges should not be deprived of their offices or

compensations without misbehavior appears to the undersigned to be among the *first and best established principles in the American Constitution;* and in the various reforms they have undergone, it has been preserved and guarded with increased solicitude.

"On this basis the Constitution of the United States has laid the foundation of the Judicial Department and expressed its meaning in terms equally plain and peremptory.

"This being the deliberate and solemn opinion of the undersigned, the duty of their stations require that they should declare it to the legislative body. They regret the necessity which compels them to make the representation, and they confide that it will be attributed to a conviction that they ought not voluntarily surrender rights and authorities entrusted to their protection, not to their personal advantage, but for the benefit of the community." (Annals of Cong. of the 2d Sess., Jan. 27, 1803, pp. 30–31.)

This memorial was presented to the Senate January 27, 1803. It was referred to a committee of three, including Senator Ross who presented it. The Senate Committee reported that the question involved the constitution of the court, was therefore not cognizable by the Senate and reported the following resolution:

"Resolved, That the President of the United States be requested to cause an information, in the nature of a quo warranto, to be filed by the Attorney General against Richard Bassett, one of the said petitioners for the purpose of deciding judicially on their claims." (Ibid, pp. 51–52.)

The resolution was defeated by a vote of 15 to 13.

The petition had also been presented to the House and was referred to a committee. The Committee presented a resolution stating that the petition ought not to be granted and that the petitioners be allowed to

withdraw it. The Committee resolution was passed by a vote of 61 to 37. The petition was withdrawn.

In this connection it must be recalled that the courts had not as yet assumed with certainty their power to declare acts of Congress unconstitutional. The decision in the Madison v. Marbury case was handed down in February, 1803, wherein the Supreme Court asserted its right to declare acts of Congress unconstitutional. And the historian, Henry Adams, says that the suspension of the term of the Supreme Court for a year was to prevent any interference with the new arrangement.

The incident of 1802 is now perhaps only of historical interest, though it was used by the United States Senate as a precedent for its action in amending the general appropriation bill abolishing the Commerce Court judgeships. The intrenched position of the courts now is in striking contrast to the evidently precarious position of the courts in 1802. The prospect of any judge submitting in 1917 a memorial similar to the one of 1802 is unthinkable.

THE NEED FOR A SUPPORTING PUBLIC OPINION

It is not inconceivable, however, that a national or a state legislature might take action similar to that of 1802 or of the United States Senate in 1912. A flagrant use of the power to declare laws unconstitutional, as for example when the New York State Court of Appeals declared in the Ives case that the workmen's compensation law of that state was unconstitutional, or a series of such acts might, through the momentum of public opinion, force a legislature into such action.

But it ought to be made unmistakably clear, however, that no legislature would take such action unless it was supported by an overwhelming public sentiment. This was notably true in the case of the Commerce Court. Public sentiment was decidedly against the Court. The Court died with hardly a mourner — and the public gave only a sigh of relief. And yet on the other hand it is probably just as true that any attempt by a legislature to tamper with the courts for merely partisan ends or for other petty ends would arouse a public protest that would have to be heeded. Practically, therefore, Congress can exercise such power only when it is backed up by a very definite public opinion — and this despite the fact that the action from a strictly legal point of view may be unconstitutional.

FAILURE TO APPROPRIATE SALARLES OF JUDGES

Suppose Congress should at some time pass with reference to the judges of any federal court, including the Supreme Court, a law embodying the Senate amendment abolishing the Commerce Court judgeships. In this particular there is no difference between judges of the Supreme Court and judges of the inferior courts: all have the same protection, practical life tenure and a salary that cannot be diminished during their terms of office.

What can be done in that situation? The question was put to Ex-President Taft who vetoed the first effort to abolish the Commerce Court. He says in a private letter:

"The judges of the Commerce Court were Circuit Judges,

and so defined in the Act, with power and jurisdiction to sit in the Circuit Courts and in the Commerce Court. Congress could not, therefore, remove them by legislative act. They were Judges appointed for life by virtue of a constitutional provision, and Congress could not diminish their salaries. This gave them the right to go into the Court of Claims and sue under the jurisdiction of the Court of Claims to recover judgment against the United States for their salaries, which would accrue to them as judges under the law, and which Congress could not diminish. The statute giving them jurisdiction in the Court of Commerce was not repealed by failing to appropriate their salaries. Their duties and powers under the statute and the constitution remain unaffected." (Personal letter from President Taft, Aug. 25, 1915.)

HYPOTHETICAL, PERHAPS MYTHICAL

The problem in Mr. Taft's "solution" of the case is the collection of the judgment of the Court of Claims. It may safely be assumed that the judges would take the Taftian view. The judgment (or perhaps a mandamus) is presented to the Treasurer of the United States. No money has been appropriated by Congress for the purpose. The Treasurer refuses on the constitutional ground that "no money shall be drawn from the Treasury but in consequence of appropriation made by law." (Section 9, U. S. Constitution.) Nor is the mandamus or judgment any stronger if it is sustained by the judicial reasoning of some of the state courts: that where the constitution provides definitely for a salary, there is no need for a legislative appropriation. (4 Md. 189; 4 Neb. 216; 9 Mont. 370; 10 Mont. 497.) But against this is presented Senator Williams' statement of the situation:

"In no event can money in the Treasury become 'income

for public use'; that is, be available for the Executive for use or become available for 'the payment of national expenses,' except by force of appropriation. These phrases are right, and money not made available by appropriation 'for public use' or 'for the payment of national expenses' (including the courts) is not Government revenue. It is simply money lying inert in the Treasury. It belongs to the people, of course, but it can not be constitutionally used by 'the Government.'" ("The Supply Bills," by John S. Williams, 62d cong., 2d Sess., July, 1912.)

The Supreme Court of the United States, in a leading case as far back as 1850, has taken a position contrary to the opinion of the state courts quoted above. In a decision in that year it said:

"No officer of the government can pay a debt due by the United States without an appropriation of Congress, and without an appropriation a claim cannot be paid by the Treasury, whether the claim is by verdict or judgment." Reeside v. Walker (1850), 11 Hav. 272, 291, 13 L. Ed. 693. (From Annotations.)

Nor has the subsequent creation of the Court of Claims affected the matter. The judgments of the Court of Claims are reported to the Congress for such action as it sees fit. Claims before Congress and executive departments are referred to the Court of Claims for findings and opinions. So all the judgments of the Court of Claims are without practical effect until appropriations are made by Congress. And consequently the situation remains unaffected by judgments of the Court of Claims.

The situation created by a refusal of Congress to appropriate salaries for federal judges results prac-

tically in a conflict of two constitutional provisions: on the one hand, the provision

> "No money shall be drawn from the Treasury, but in consequence of appropriations made by law." (U. S. Const., Art. I, sec. 7.)

and on the other hand, the provision

> "The Judges, both of the supreme and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." (U. S. Const., Art. III, sec. 1.)

The legal solution would seem to be with the courts, the practical solution with Congress.

SUMMARY

Estimates for financing the courts are submitted by the judiciary to the executive, who transmits them without revision to the legislature along with the executive proposals. For the same reasons that members of the executive departments are given the opportunity to explain and defend the executive's proposals, during the legislative consideration of the budget, so similarly, a member of the judiciary will have the privilege of the floor without the right to vote to explain and defend the estimates for the courts. Ordinarily the estimates of the judiciary present merely routine matters and no question arises. But, if, as in the case of the Commerce Court, or as in the case of the circuit judges in 1802, Congress wishes to abolish courts and judges, serious constitutional questions arise, and the extent of the

legislative "control of the purse strings," so far as the courts are concerned, is problematic — perhaps slight. At any rate, whatever power Congress may exercise in the way of control or abolition would always need the support of a strong insistent public opinion.