

IV

THE HOUSE OF REPRESENTATIVES

THE President of the United States was intended by the makers of the Constitution to be a reformed and standardized king, after the Whig model; and Congress was meant to be a reformed and properly regulated parliament. But both President and Congress have broken from the mold and adapted themselves to circumstances, after a thoroughly American fashion, — partly because the king and Parliament which the convention of 1787 intended to copy, with modifications, had no real existence and were therefore largely theoretical, but chiefly because, even if they had existed at the moment the copy was made, they could not have been fixed in that transitional form by any law that the convention could have devised. They were sure to undergo rapid alteration in one direction or another, and each has taken its own course of change. It would be difficult now to believe that the American President and the English King, the American Congress and the English Parliament, were originally of the same model and intention if we did not clearly recollect the fact to be so.

It is the reaction of the several parts of government upon one another that gives each part its final form and character. It is useless to study any living structure of government anatomically, in its separate parts. Its character and significance come to light, as I have already several times insisted, only when we study it as an organic

whole, living and acting from day to day. Our present study must at every stage be a study of the synthesis of power in the government on the one hand, and of the people's control of the government on the other; for there can be no power which is not synthetic, which does not operate with organic unity; and there can be no constitutional government where the organs of government are not constantly under the control of public opinion. We shall get our completest understanding of the House of Representatives, therefore, if we look at it from two points of view: from the point of view of its synthesis with the other parts of the Government, and from the point of view of its relations to opinion.

If you were to ask an Englishman to describe the government of England, he would of course include the Parliament in his description. Indeed, it is likely that he would have more to say of the House of Commons than of anything else. But if you were to speak to him of 'The Government,' he would not think of the House of Commons but only of the ministers, of what we should call the administration. I can make the part played by the House of Representatives in our system clearest by contrasting it with the English House of Commons, and in order to make that contrast carry its full significance it is necessary that we should bear these two meanings of the word government in mind and never confuse them. When I said in a previous lecture that it was not necessary for the full realization of constitutional government that representative assemblies should become a part of the 'Government,' I meant, of course, a part of the administrative organ of government, the organ that is looked to for initiative, which makes choice of policy and actually controls the life of the nation

under the laws; and the significant difference between English and American political development is that in America Congress has become part of the Government, while in England Parliament has not. Parliament is still, as it was originally intended to be, the grand assize, or session, of the nation, to criticize and control the Government. It is not a council to administer it. It does not originate its own bills, except in minor matters which seem to spring out of public opinion or out of the special circumstances of particular interests, rather than out of the conduct of government. Every legislative proposition of capital importance comes to it from the ministers. The duties of the ministers are not merely executive: the ministers are the Government. They look to Parliament, not for commands what to do, but for support in their own programs, whether of legal change or of political policy.

What the House of Commons does, therefore, is not to act in any strictly originative way as the law-making body of the nation, but to make and unmake Governments, to prefer now one, and again another, committee of its leading members as its guides, not itself leading but choosing how it shall be led, insisting that the king make the leaders of its own choice the ministers of the crown. It is not the Government, but its leaders are. In the supreme act of insisting that they and no others shall be chosen by the crown for the executive posts of government it exhausts its originative force. Thereafter it follows and criticizes as of old.

Our Congress, on the contrary, does not make or unmake our Government. The people do that in their selection of a President. And because Congress cannot make or unmake the Government at its pleasure, it usually makes

it a point of pride not to be led by the Government in what it regards as its proper and exclusive sphere, the making of laws. The making of laws is a very practical matter. It is not a mere enactment of opinions into commands. At least, it should not be. Neither should it be a means of forcing the favorite reforms of some members of the legislative body upon the nation, unless there is to be some direct and easy way of holding those members responsible for the untoward results of their intended reforms, should they fail to bring about the happy changes they were meant to effect. The practical side of law is its application. The Government, therefore, is the only possible body of experts with regard to the practicability and necessity of alterations in the law, and it is certainly a noteworthy outcome of our political development that the houses should have rejected the leadership of the Government in legislation. They stand alone among the legislatures of the world in having done so. It is in this sense that I speak when I say that the American Congress has become a part of the Government, and that the English Parliament never has. Our Congress freely and habitually originates law upon every subject upon its own initiative, plays a planning and devising part in the conduct of government, and is in many ways an administrative council acting in complete independence of those who are charged with actual administration. It even resents suggestions from administrative officers as impertinent invasions of its independence. It has in a thousand particulars taken charge of the Government, without assuming the responsibility of putting its leaders in to conduct it. A sharper contrast to the development of the English House of Commons, upon which it was modeled, could hardly be

imagined. The House of Representatives has moved to the opposite pole both of theory and of action.

The Senate was, no doubt, meant to be a part of the Government. In the making of treaties with foreign governments and in the difficult and responsible business of appointments to office it was deliberately associated with the President as an administrative council, by the terms of the Constitution. But these are matters of consultation, in which it waits upon the executive. The Senate was not given the initiative in respect of them. It cannot originate treaties or make, or even suggest, appointments. It waits upon the initiative of the Government, as Parliament does, and has not departed from the original model. But in legislative matters proper its attitude is the same as the attitude of the House. House and Senate alike jealously guard their right to be their own guides in legislation, even when the laws they handle are clearly administrative in character and deal not with general matters but with the duties of the executive departments and the details of governmental business.

The development of our Congress thus affords a singular and instructive contradiction between theory and fact, which ought to interest practical politicians as much as it naturally interests historians. Congress and Parliament had the same origin. Our houses were conceived by the makers of the Constitution at a period when both Parliament and Congress were supposed to stand outside Government, its mentors and critics, holding aloof from it and yet determining its action, at any rate negatively, by what they consented to make legal or insisted upon making illegal. And yet our houses, developed under a theory of checks and balances which seemed intended to preserve that

theory of separateness, have thrust themselves into the business of governing; while Parliament, frankly developed in these later years upon the theory of drawing the several parts of government together in close synthesis, has remained separate and still waits upon the Government for action.

By natural consequence, the organization of our legislative houses is entirely unlike that of Parliament. Having made up their minds to be indeed separate from the executive, to have a distinct life and an independent initiative, and to make themselves part of the Government upon a plan of their own, they have been obliged to create a suitable organization. The House of Representatives, being the more numerous body and in the nature of the case harder to organize as an originaive and independent assembly, has effected the more thorough organization, and devotes itself to business with a precision and ease of method which the Senate has not attempted.

The House and Senate are naturally unlike. They are different both in constitution and character. They do not represent the same things. The House of Representatives is by intention the popular chamber, meant to represent the people by direct election through an extensive suffrage, while the Senate was designed to represent the states as political units, as the constituent members of the Union. The terms of membership in the two houses, moreover, are different. The two chambers were unquestionably intended to derive their authority from different sources and to speak with different voices in affairs; and however much they may have departed from their original characters in the changeful processes of our politics, they still present many sharp contrasts to one another, and

must be described as playing, not the same, but very distinct and dissimilar rôles in affairs.

Perhaps the contrast between them is in certain respects even sharper and clearer now than in the earlier days of our history, when the House was smaller and its functions simpler. The House once debated; now it does not debate. It has not the time. There would be too many debaters, and there are too many subjects of debate. It is a business body, and it must get its business done. When the late Mr. Reed once, upon a well-known occasion, thanked God that the House was not a deliberate assembly, there was no doubt a dash of half-cynical humor in the remark, such as so often gave spice and biting force to what he said, but there was the sober earnest of a serious man of affairs, too. He knew the vast mass of business the House undertook to transact: that it had made itself a great organ of direction, and that it would be impossible for it to get through its calendars if it were to attempt to discuss in open house, instead of in its committee rooms, the measures it acted upon. The Senate has retained its early rules of procedure without material alteration. It is still a place of free and prolonged debate. It will not curtail the privilege of its members to say what they please, at whatever length. But the senators are comparatively few in number; they can afford the indulgence. The House cannot. The Senate may remain individualistic, atomistic, but the House must be organic, — an efficient instrument, not a talkative assembly.

A numerous body like the House of Representatives is naturally and of course unfit for organic, creative action through debate. Debate, indeed, is not a creative process. It is critical. It does not produce; it tests. A large

assembly cannot form policies or formulate measures, and the House of Representatives is merely a large assembly, like any other public meeting in its unfitness for business. Like other public meetings, it must send committees out to formulate its resolves. It organizes itself, therefore, into committees, — not occasional committees, formed from time to time, but standing committees permanently charged with its business and given every prerogative of suggestion and explanation, in order that each piece of legislative business may be systematically attended to by a body small enough to digest and perfect it.

For each important subject of legislation there is a standing committee. There is, for example, a Committee on Appropriations, a Committee on Ways and Means, that is, on the sources and objects of taxation, a Committee on Banking and Currency, a Committee on Commerce, a Committee on Manufactures, a Committee on Agriculture, a Committee on Railways and Canals, a Committee on Rivers and Harbors, a Committee on the Merchant Marine and Fisheries, a Committee on the Judiciary, a Committee on Foreign Affairs, a Committee on Public Lands, a Committee on Land Claims, a Committee on War Claims, a Committee on Post Offices and Post Roads, a Committee on Military Affairs, a Committee on Naval Affairs, a Committee on Indian Affairs, a Committee on Education, a Committee on Labor, — the business likely to be brought to the attention of the House being thoroughly, indeed somewhat minutely, classified and the committees being some fifty-seven in number.

Every bill introduced must be sent to a committee. It would probably be impossible to think of any legitimate subject for legislation upon which a bill could be drawn

up for whose consideration no standing committee has been provided. If a new subject should turn up, the House would no doubt presently create a new committee. The thousands of bills annually introduced are promptly distributed, therefore; go almost automatically to the several committees; and as automatically, it must be added, disappear. The measures reported to the House are measures which the committees formulate. They may find some member's bill suitable and acceptable, and report it substantially unchanged, or they may pull it about and alter it, or they may throw it aside altogether and frame a measure of their own, or they may do nothing, make no report at all. Few bills ever see the light again after being referred to a committee. The business of the House is what the committees choose to make it. What the House of Commons depends upon its committee, the Government, to do, the House depends upon its fifty-seven committees to do. The private member's bill has a little better chance, indeed, of being debated in the Commons than in the House of Representatives. The House of Commons does usually set aside one day a week for the consideration of private members' bills, when the Government is not pressed for time and does not insist upon using every day itself; and those members who are fortunate enough to draw first places in the makeup of the calendars for those days may have the pleasure of getting their proposals debated and voted upon. But in the House of Representatives there is only the very slender chance of getting the rules suspended, an irregularity which the businesslike chamber has grown very shy of permitting.

The very complexity and bulk of all this machinery is

itself burdensome to the House. There are now more than half as many committees in the House as there are members in the Senate. It cannot itself choose so many committees; it cannot even follow so many. It therefore intrusts every appointment to the Speaker, and, when its business gets entangled amongst the multitude of committees and reports, follows a steering committee, which it calls the Committee on Rules. And the power of appointing the committees, which the House has conferred upon its Speaker, makes him the almost autocratic master of its actions.

In all legislative bodies except ours the presiding officer has only the powers and functions of a chairman. He is separate from parties and is looked to to be punctiliously impartial. He moderates and gives order to the course of debate, and is expected to administer without personal or party bias the accepted rules of its procedure. For political guidance all other representative assemblies depend on the Government, not upon committees which their presiding officer has created. But the processes of our parliamentary development have made the Speaker of our great House of Representatives and the Speakers of our State Legislatures party leaders in whom centres the control of all that they do. So far as the House of Representatives and its share in the public business is concerned, the Speaker is undisputed party leader.

Every one of the committees of the House the Speaker appoints. He not only allows himself to make them up with a view to the kind of legislation he wishes to see enacted; he is expected to make them up with such a view, — is expected to make them up as a party leader would. He is, it is true, a good deal hampered in the

exercise of a free choice in their makeup by certain well-established understandings and precedents, of whose breach the older members of the House at any rate would be very jealous. Seniority of service has to be respected in assigning places on the more important committees, and the succession to certain of the chief chairmanships is well understood to go by definite rules of individual precedence and personal consideration. But it is always possible for the Speaker to determine the majority of his appointments in such a way as to give him that direct and continuing control of the actions of the House which he is now expected to exercise as the party leader of the majority. Even his own personal views upon particular public questions he does not hesitate to enforce in his appointments, so that the very majority he represents may be prevented from having an opportunity to vote upon measures it is known to desire because he has made up the committees which would report upon them in accordance with his own preferences in the matter. What the committees do not report the House cannot vote upon. Every bill that is introduced is assigned to a committee picked out by the Speaker's order, if there be any doubt about its character or reference. It is the Speaker's decision, also, that assigns the reports of the committees to the several calendars upon which the business of the House is allotted its time for consideration, and he may often choose whether the place allotted them shall be favorable or unfavorable, shall make it likely or unlikely that they will be reached at all.

Moreover, it has come about that by means of his prerogative of 'recognition' the Speaker is permitted to control debate to a very extraordinary degree. It is common

parliamentary practice that no one can address an assembly until "recognized," that is, accorded the floor, by the presiding officer. The House of Representatives, feeling always pressed for time, even with regard to the consideration of the reports of its standing committees, which are numerous and amazingly active, restricts debate upon those reports within very narrow limits, and generally allots the greater part of the brief time allowed to any one report to the chairman of the reporting committee. Other members may get a few minutes of time allowed them by previous arrangement with the committee's chairman, and a list of those who are thus to be given an opportunity to speak generally lies on the Speaker's desk. These members the Speaker will "recognize," but no others, though they spring to their feet under his very nose in the open space in front of the seats, — unless, indeed, they have seen him beforehand and got his permission. No member who has not previously arranged the matter, either with the chairman of the committee or with the Speaker, need rise or seek to catch the Speaker's eye. And in the intervals of calendar business no one whose intention the Speaker has not been apprised of, unless indeed it be the leader on the floor of the one party or the other, may expect to be accorded the floor to make a motion. The Speaker may, if he choose, determine what proposals he will permit the House to hear.

The Committee on Rules has of recent years had a very singular and significant development of functions. Originally its duty was a very simple one: that of reporting to the House at the opening of each of its biennial sessions, when a new House assembles and a new organization is effected, the body of standing rules under which it was to

act; for the House goes through the form of readopting its whole body of rules each time it reorganizes after fresh congressional elections. From session to session the rules were modified, now in one particular, again in another, on the recommendation of the committee; and any change in the rules at any time proposed is still referred to it for consideration and report. But now the committee is looked to, besides, for such temporary orders and programs of procedure as will enable the House to disentangle its business and get at the measures which the country expects it to dispose of or the needs of the Government make it necessary that it should not neglect. The party majority is well aware that, if it would keep its credit with the constituencies, it must not allow the miscellany of committee reports on its crowded calendars to stand in the way of matters which it is pledged to act upon. It looks to the Committee on Rules to sweep aside the ordinary routine of procedure whenever necessary, and bring in a schedule of action which will enable it to get at the main things it is interested in, or at any rate the things the party leaders think it most expedient it should dispose of. The committee has thus become a very important part of party machinery. It consists of five members, the Speaker himself, two other representatives of the majority, and two representatives of the minority. The majority members of course control its action; the representation of the minority is hardly more than formal; and the two members of the majority associated with the Speaker upon it are usually trusted lieutenants upon whom he can count for loyal support of his leadership. One self-confident Speaker smilingly described the committee as consisting of the Speaker and two assistants, — a pleasant way of

saying that the committee was his instrument to govern the House. His direct control of the Committee on Rules rounds out his powers as autocrat of the popular chamber.

And yet the word autocrat has really no place in our political vocabulary, if we are to use words of reality and not words of extravagance. The extraordinary power of the Speaker is not personal. He is in no proper sense of the word an autocrat. He is the instrument, as well as the leader, of the majority in controlling the processes of the House. He is obeyed because the majority chooses to be governed thus. The rules are of its own making, and it can unmake them when it pleases. It can override the Speaker's decisions, too, and correct its presiding officer as every other assembly can. It has simply found it most convenient to put itself in the Speaker's hands, its object being efficiency, not debate.

And yet it is also an exaggeration to say that House bills go through as the committees propose practically without debate. Some measures it is clearly in the interest of the party no less than of the public to discuss with some fullness. Many financial measures in particular are debated with a good deal of thoroughness, and most matters that have already attracted public attention. Not everything is left to the operation of the rules, the chances of the calendar, and the dictation of the Speaker and his two assistants. The Committee on Rules may be counted on to arrange for debates upon important bills as well as for putting unimportant bills out of the way.

And standing over all is the party caucus, the outside conference of the members of the majority, to whose conclusions the Speaker himself is subject, and to which members can appeal whenever they think the Speaker too irre-

sponsible, too arbitrary, too masterful, too little heedful of the opinions prevalent on the floor among the rank and file. The caucus is an established and much respected piece of party machinery, and what the party has not the organization to decide on the floor of the assembly itself it decides in this conference outside the House. Members who do not wish to be bound by decisions of the caucus can refuse to attend it; but that is a very serious breach of party discipline and may get the men who venture upon it the unpleasant reputation of disloyalty. Members who wish to maintain their standing in the party are expected to attend; and those who attend are expected to abide by the decisions of the conference. It is a thorough-going means of maintaining party unity. Caucuses are free conferences, where a man may say what he pleases; but they are held behind closed doors, and it is usually made a matter of honorable punctilio not to speak outside of the dissensions their debates may have disclosed.

It is thus that the House has made itself "efficient." Its ideal is the transaction of business. It is as much afraid of becoming a talking shop as Mr. Carlyle could have wished it to be. If it must talk, it talks in sections, in its committee rooms, not in public on the floor of the chamber itself. The committee rooms are private. No one has the right to enter them except by express permission of the committees themselves. Not infrequently committees do hold formal public hearings with regard to certain bills, inviting all whose interests are affected to be represented and present their views either for or against the proposed legislation. But such hearings are recognized as exceptional, not of right, and as a rule the public hears nothing of the arguments which have induced any committee to

make its particular recommendations to the House. The formal explanations of the chairman of a committee, made upon the floor of the House, contain few of the elements of contested opinion which undoubtedly showed themselves plainly enough in the private conferences of the committee.

For each committee is a miniature House. The minority is accorded representation upon it in proportion to its numerical strength in the House. In every committee, therefore, there are men representing both party views, and it sometimes happens that the arguments of the minority members are very influential in shaping reports made upon measures concerning which no sharp party lines have been drawn. With regard to matters upon which the majority is known to have taken a definite position before the constituencies the majority members of a committee will of course insist upon having their own way. They are apt to be in frequent consultation with the Speaker about them. But with regard to measures on which no party issue has been made up they are willing on occasion to give a good deal of weight to the opinions of their minority colleagues. There is a very easy and amicable relation between majority and minority in the committees, and it will often happen that in committees which have to deal with highly technical matters, like manufactures or banking or naval construction or the regulation of judicial procedure, or with matters involved in precedent and to be understood only in the light of somewhat extended and intimate experience, like foreign affairs, members of the minority of long service in the House and of long familiarity with the subject-matter under discussion will in fact in no small degree guide and dominate the committees to which they have been assigned. Business is more like

business, because less formal and less touched with party feeling, in the committee rooms than on the floor of the House.

The minority has its own party organization like that of the majority: its formally chosen leader for the floor, its caucus to secure common counsel. It is, indeed, usually less thoroughly disciplined than the majority, because it is in opposition, not in power, and can afford to allow its members freer play in choosing what they shall individually do and say. But its organization suffices to draw its forces together for common action when any matter of real party significance comes to the surface and the country expects it to put itself on record; and it is ready, at very short notice, to turn itself into an organization as complete and powerful as that of the majority, should the elections favor it and its leader become Speaker.

All lines of analysis come back to the Speaker, whether you speak of the organization or of the action and political power of the House. Such an organization, so systematized and so concentrated, has of course made the House of Representatives one of the most powerful pieces of our whole governmental machinery, and its Speaker, in whom its power is centered and summed up, has come to be regarded as the greatest figure in our complex system, next to the President himself. The whole powerful machinery of the great popular chamber is at his disposal, and all the country knows how effectually he can use it. Whatever may be the influence and importance of the Senate, its energies are not centered in any one man. There is no senator who sums up in himself the power of a great organ of government. The leaders of the Senate deal in all counsel with the other chamber with regard to legislative

business with this single leader, this impersonation of the House. So do also the President and the members of the cabinet. As national leader of his party, the President must reckon always with the guide and master of the House, without whose approval and consent it is practically impossible to get any legislative measure adopted. Measures which are to prosper must have his countenance and support. Members of the cabinet must study his views and purposes, if they are to obtain the appropriations they desire or to see measures brought to a happy and successful issue which they deem necessary to the administration of their departments. One might sum up the active elements of our government as consisting of the President, with all his sweep of powers; the Speaker of the House, with all that he represents as spokesman of the party majority in the popular chamber, with its singularly effective machinery at his disposal; and the talkative, debating Senate, guided no doubt by a few influential and trusted members, but a council, not an organization.

The House of Commons makes and unmakes governments. The House of Representatives makes and un-makes Speakers. As the originative capacity of the House of Commons is exhausted when it has produced a ministry, so the originative force of the House of Representatives is exhausted when it has made a Speaker. Neither does anything else, as a whole. For the rest, they follow and criticize: follow fifty-seven committees or one committee; criticize the Speaker and his committees or the ministers who have risen to a place of rule. A numerous assembly cannot do more.

In producing a single committee and securing for it the right to conduct the government, the House of Commons

has, it must be admitted, done a more effective thing than the House of Representatives has done in producing an omnipotent Speaker and fifty-seven committees, and has obtained for itself much greater power. There is reason to believe that the House of Representatives sometimes finds its numerous committees a burden, and certainly they do not all serve it equally well. The average membership of its standing committees is twelve, so that the total number of committee places to be filled is six hundred and eighty-five. The total membership of the House is only three hundred and fifty-seven. There are, therefore, about two committee places for every member of the House. The appointments are not equally distributed, but every member is given some place. New members and members little thought of can be disposed of on committees which have little or nothing to do or whose work is light and formal: for the House keeps many committees on its list for which it has ceased to have any real or important use; but with any sort of equitable distribution of the Speaker's appointments it must always happen that many committees with very important work to do are made up of men of only average capacity and little experience in public affairs. The real leaders and masters of business are few and are soon disposed of by assignment to the two or three chief committees; and to assign a man to a committee is practically to silence him with regard to every matter of legislation except those referred to his committee. A Speaker must have a particularly clear vision of what the most important questions to come before that particular congress are, to be able to distribute the best men at his disposal in the best way and give the House effective service where it will most need it. The membership of

most committees must be drawn from the rank and file. The House can use its best men for only a few things, and must make shift for the rest with the mediocre.

Standing alone, therefore, and undertaking to be sufficient unto itself in respect of everything it is authorized by the Constitution to handle, the House of Representatives is a much less powerful and influential body than it would have been, could it have had the luck of the House of Commons and got control of the Government itself. Independence in any organization is isolation; and isolation is weakness. You have no controlling authority; you have only the right to sell your favors, to exchange concession for concession, to come to an agreement by some compromise of views. You can never have more than a piece of your own way. It is, of course, a more important and influential thing to superintend a Government with supreme authority, as the House of Commons does, than to stand separate in a complex organization, play only an individual part, be only a piece of a balanced mechanism, as the House of Representatives is. It is an interesting conclusion in political dynamics that a body which stands jealously apart and avoids partnership of any intimate sort in the conduct of affairs, declines an opportunity to rule and gets only an opportunity to bargain. If it is strong enough to rule, partnership will bring it supremacy; if it is not strong enough to rule, it can make little out of compromises and bargains. It is hardly to be expected that, as the affairs of the nation grow more complex and interesting and difficult and require nicer adjustments of governmental power for their management, the House of Representatives will remain content with its present splendid isolation.

We are in love with efficiency and, as a practical nation,

greatly admire the complete and thorough organization of the House, its preference for action and its impatience of talk: but if every part of our political machinery is to be organized for "business," where are counsel and criticism to come in? We never stood more in need of them than we do now. If our present representative assemblies are to be for action, we must let them go over in our thoughts to become outlying, detached parts of the executive, and must invent other assemblies for discussion. For public business cannot be transacted in a truly constitutional spirit without searching and constant discussion, unless we are mistaken in our analysis of constitutional government as government which is conducted in accordance with a clear understanding between those who administer it and those who obey it,—an understanding not only established by fundamental law, by charters and constitutions, but also accommodated to each day and generation by the criticisms and behests of representative assemblies whose business shall not be the actual discharge of governmental functions, but the maintenance of that nice balance between opinion and power which is of the very essence of the whole matter.

There is discussion and discussion. I suppose that we have come to think debate less necessary in our legislative assemblies than it may once have been because we have allowed ourselves to fancy that the action of government was sufficiently discussed and nicely enough squared with opinion by the news columns and editorials of our newspapers. But even if the chief newspapers were not owned by special interests; even if their utterances really spoke the general opinion of the communities in which they are printed, as very few of them now do, their discussion of

affairs would not be of the kind that is necessary for the maintenance of constitutional government. There are many things to be said about the newspapers which will make this at once evident. For one thing, few men outside the big cities read more than one newspaper. Few men, therefore, ever get put before them in the newspapers they read more than one side of any question; and they generally decide for themselves beforehand which side that shall be, by their choice of a newspaper. But far more important than that is the little recognized fact that no number of separate discussions of a question, no matter how assembled, no matter from how many different points of view, from how many different papers or different sections of the country, constitute such a comparison of views as a responsible representative assembly can institute in its debates.

Discussions which are to lead to action must be combined, compounded, made up out of many elements, or else out of a few, by a process which can be thorough and trustworthy only when these several elements are, so to say, brought personally face to face, as living, contending forces embodied in men authorized to be the spokesmen of voters and speaking with a constant sense of being held responsible for what they say. Common counsel is not jumbled counsel. There is often common counsel in the committee rooms of the House, but there is never common counsel on the floor of the House itself. It goes without saying that the combined acts of a session are not a product of common counsel. They have been produced by a thousand agencies, not threshed out by one, and they have not been threshed out in the presence of the country, but behind closed doors.

It may sound a very subtle matter, but it is in fact intensely practical, and is worth looking into. It is because we do not look into it or understand it, though it lies at the very heart of our whole practice of government, that we sometimes allow ourselves to assume that the "initiative" and the "referendum," now so much talked of and so imperfectly understood, are a more thorough means of getting at public opinion than the processes of our representative assemblies. Many a radical program may get what will seem to be almost general approval if you listen only to those who know that they will not have to handle the perilous matter of action and to those who have merely formed an independent, that is, an isolated opinion, and have not entered into common counsel; but you will seldom find a deliberative assembly acting half so radically as its several members professed themselves ready to act before they came together into one place and talked the matter over and contrived statutes. It is not that they lose heart or prove unfaithful to the promises made on the stump. They have really for the first time laid their minds alongside other minds of different views, of different experience, of different prepossessions. They have seen the men with whom they differ, face to face, and have come to understand how honestly and with what force of genuine character and disinterested conviction, or with what convincing array of practical arguments opposite views may be held. They have learned more than any one man could beforehand have known. Common counsel is not aggregate counsel. It is not a sum in addition, counting heads. It is compounded out of many views in actual contact; is a living thing made out of the vital substance of many minds, many personalities, many experiences; and it can be made

up only by the vital contacts of actual conference, only in face to face debate, only by word of mouth and the direct clash of mind with mind.

No doubt, as I have said, there is oftentimes genuine common counsel in the committee rooms of the House of Representatives; but the committee rooms are private and are so many that it would only confuse the nation to publish debates out of the whole body of them. One could not make his way through a Congressional Record like that. And yet the actual Congressional Record is disappointing, because it seems to lack reality. The speeches it contains too often seem the mere speeches of parade; merely the formal dress array of arguments, so conned and formalized as not to seem like vital discussion at all, but only like things meant to have their effect by way of party justification or to make impressive reading for distant constituencies. In brief, the debate is not real ^{mouth to mouth} ~~hand to hand~~ debate at all; and the people, finding things done they do not just know why or how in their legislative assemblies, indulge suspicions which deeply disturb them and make them unjust critics of the whole representative system. The process of legislation is not open and frank and obvious enough. Too much is hidden away in committee rooms. And anything hidden is suspected, no matter how honest it may be. The machinery of action is too complex to be easily understood. There are more excuses for suspecting covert influences than chances to comprehend what really takes place, — most of it in fact excellent, honest, practical, efficient enough.

It is very difficult for public opinion to judge such a body as the House of Representatives justly, because it is very difficult for it to judge it intelligently. If it cannot under-

stand it, it will certainly be dissatisfied with it. Moreover, it is very difficult for a body which compounds its legislation by so miscellaneous a process as that of committees to bring itself into effective coöperation with the other parts of the government, — and synthesis, not antagonism, is the whole art of government, the whole art of power. I cannot imagine power as a thing negative, and not positive.

The matter is perfectly illustrated by the relations between the House and the Senate. They are not, it must be said, upon terms of very intimate and cordial coöperation. There is a subtle jealousy and antagonism between them, due to their desire to maintain their separateness and independence inviolate and be each a power to itself. When they come to a sharp difference of opinion upon any subject of legislation which really interests the people the advantage is sometimes with the one, sometimes with the other. The Senate has the advantage of being a public council, not a mere congeries of committees, and of setting forth its reasons in thorough debate; the House has the advantage of being regarded as the more truly representative chamber and of being more directly in touch with the general sentiment of the country. The House has also the advantage of being under thorough discipline and standing ready to do what it is told to do promptly when it becomes necessary to manœuvre for position in such a contest of wills. But what happens at last is proof of nothing, however the contest may end: it does not prove the popular sympathy of the House, if it win, nor the better counsel of the Senate, if it win. A conference committee is appointed by each house towards the very end of the session, the two committees meet and fight the differences

of the houses out while business is hurrying to adjournment and a recess; and just as the session closes the two bodies hastily pass, without debate, a conference report which is a mere patchwork of compromises; or else reject the compromise and let the whole matter fall. There is no common leadership even when the majorities of the two houses are of the same political party. It is at best a haphazard method of compounding legislation, liable to suffer many singular accidents, and impossible for a busy people to understand when they occasionally look on with unwonted attention.

Such complications and subdivisions of machinery in the active and originative organs of the government result in its being in a very real sense leaderless. In the last lecture I spoke of the President as leader of his party and of the nation; but, though he clearly exercises such leadership, and exercises it with great effectiveness when he has the personal force for any originative rôle at all, he cannot be said to be the guide and leader of the Government as a whole. Our Government consists in part, as I have explained, of the House and Senate. It is in that respect contrasted with all other governments. And in each part of our subdivided Government there is a distinct arrangement with regard to leadership. The Senate submits to the guidance of a small group of senators, very jealous of the independence of the body they control. The House is under the command of its Speaker. The executive is in the hands of the President, whom the houses regard, when thinking of their own powers, as an outsider, and whose advice they are apt to look upon as the advice of a rival rather than of a colleague.

I suppose that when matters of legislation are under dis-

cussion the country is apt to think of the Speaker as the chief figure in Washington rather than the President,— at any rate in all ordinary seasons and under all ordinary Presidents. And yet, because he has the ear of the whole nation and is undoubtedly its chosen spokesman and representative, the President may place the House at a great disadvantage if he choose to appeal to the nation. It is this that makes the great difference between the Speaker and the President, whose figures you might come to regard as very nearly equal if you looked no farther than Washington city itself. The Speaker of the House is not in the habit of appealing to the nation. He would feel himself ridiculous if he did. It would probably make an unpleasant impression were the executive officer of one of the houses of Congress, himself merely the representative of a single constituency, to turn to the nation by some open appeal of speech or argument to decide between him and the President. It is a point of good taste with him, as well as of good politics, to say little, say that little in enigmatic phrases, and confine himself to his proper rôle of management. But the President may turn to the country when he will, with whatever arguments, whatever disclosures of plan, whatever explanations he pleases. Everybody will read what he says, particularly if there be any smack of contest in the air, while few will read what is said in the House where no one speaks for the whole body or for the nation; and if the nation happens to agree with the President, if he can win it to his view, the leadership is his whether the houses relish it or not. They are at a disadvantage and will probably have to yield.

The true significance of the matter, for any student of government who wishes to understand the life rather than

the mere theory of what he studies, is that the greatest power lies with that part of the government which is in most direct communication with the nation itself, — as one would naturally expect under any constitutional system. The light this evident fact throws upon the House of Representatives is this: that it has greatly weakened itself as an organ of public opinion by yielding to the need it has felt itself under to play the rôle of an independent part of the government. In its effort to make itself an instrument of business, to perform its function of legislation without assistance or suggestion, to formulate its own bills, digest its own measures, originate its own policies, it has in effect silenced itself. The nation does not look to it for counsel; does not expect to understand its own affairs any better because of anything said or anything done in the House; has come to regard it as what it is, a piece of effective law-making machinery, but not a deliberative assembly in whose debates it may expect to find public questions clarified, disputed matters settled. The House seems to have missed what its average capacity and its undoubted integrity entitle it to, the chief privilege of giving counsel to the nation, the right to be its principal spokesman in affairs.

It is thus always a vital synthesis of parts that eludes us as we examine our constitutional system with its singular Newtonian equipoise of parts. But it is a study of persons and of forces of opinion, as in any other government. It is the actual temper and disposition of the two diverse chambers with which he deals that the President must study if he is to bring his party, as well as the opinion of the nation, to any program or measure of his own. The Senate and House must study one another and

play a very difficult game of accommodation to maintain any workable agreement or coöperation in legislation. They are of different tempers and traditions; they are jealous of each other and yet are constrained to agree. No man can lay down any rule as to what will happen amidst so many and so powerful forces, which must coöperate and yet are independent of one another. Time and circumstance and wise management alone can secure union and energy among them. There is but one common solvent. The law of their union is public opinion. That and that alone can draw them together. That part of the government, therefore, which has the most direct access to opinion has the best chance of leadership and mastery; and at present that part is the President.

Each part of the government loses force and prestige in proportion as it ceases to give, and to give publicly, conclusive reasons for what it is doing and for what it is declining to do. The country in the long run is more interested to know that the right thing has been done and that it has been done wisely than to know merely that something has been done, hastily devised though well intended. There are seasons, it is true, when opinion, unduly excited, prefers action to counsel, but those are exceptional seasons among peoples trained to the thoughtfulness and self-control of constitutional action. Open counsel is of the essence of power, if the country's confidence is to be retained for any length of time. The most serious comment, therefore, upon the development of the House of Representatives is that in making itself an active part of the Government and falling into the silence of an effective, businesslike board of directors, it has forfeited the much higher office of gathering the common counsel of the nation and wielding the

tremendous, the governing and sovereign, power of criticism. Criticism can make and unmake governments, but the conferences of committee rooms cannot. If the House must originate its own business and must be independent in action, it cannot be the voice of the nation.