

THE CORRELATION OF THE ORGANIZATION OF CONGRESS WITH THAT OF THE EXECUTIVE

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No misconception in respect to the organization of the state, and of the functions of the various parts of its governmental machinery, is more prevalent than that the national assembly—the parliament, the congress, the legislative chambers, as the case may be—is simply, or primarily, a body for the formulation and passage of general laws for the determination of the rights and duties of the citizen body for which it acts. The enactment of public laws of this character is undoubtedly one of its functions, and, it needs scarcely be said, an exceedingly important one. That it is not its sole function, indeed, is not the one making the largest draft upon its time, is at once apparent if the attempt is made to analyse the work really done by it.

From the governmental standpoint, the primary function of the legislature is to determine, subject to constitutional limitations, how the government, and particularly the executive branch of the government, shall be organized, what work shall be undertaken, how such work shall be performed, what sums of money shall be applied to such purposes, and how this money shall be raised and disbursed. From this standpoint, the legislature is the board of directors of the public corporation. Representing, and acting for, the citizen stockholders, it is its function to give orders to the executive and, as a correlative and necessary function, to take such action as will enable it at all times to exercise a rigid supervision and control over the latter with a view to seeing that its orders are properly and efficiently carried out.

Manifestly this function is quite distinct from that of acting as a law-making body strictly speaking. The failure on the part of the public, indeed of the legislature itself, to recognize clearly this dual role of the legislature is due, in great part, to the fact that the legislature in performing its two functions proceeds in identically the same way, makes use of the same scheme of organization, and embodies its action in the same character of document in the one case that it does in the other. It

is unfortunate that the same designation, "laws" or "statutes" is given to both classes of enactments. The two have almost nothing in common. Laws, from the juristic standpoint, have to do with rights, duties and remedies and the manner of their enforcement. They are general and permanent in character. Enactments for the purpose of giving directions to officers of the government are, for the most part, but administrative orders. The major part of them have only a temporary end in view. Of this character are the annual or biennial appropriation acts, the acts authorizing the construction of a bridge or public building, etc. Had the custom developed of giving to such acts a special designation and of segregating and publishing them separately, not only would a great convenience be subserved, but the different character of functions performed by the legislature would be made more clearly apparent.

This distinction between the two functions of the legislature—that of acting as a law-making body and that of acting as a board of directors—is important in any legislative body. It is especially so in respect to our national congress. Under our constitutional system, many of the great fields of public legislation are exclusively or predominantly within the jurisdiction of the several States. Debarred from these fields, congress has but a comparatively restricted territory within which to exercise its function as a general legislator. One has but to follow the proceedings of congress, or attempt to measure its work, as expressed in the session laws, to realize that the bulk of its activities is performed, not in the legislative field, but in that of "running the government" using that term in the most restricted sense in which it may be employed. Thus, for example, little pretense is made during the short sessions of congress to do other work than that of the passage of the regular appropriation acts.

The foregoing appears to be an indirect way of approaching the subject to which this paper relates. Not the first advance, however, can be made toward the solution of the problem here being considered until this distinctive character of the work of congress as a part of the mechanism for the day to day conduct of public affairs is clearly recognized. Efficient organization and methods of procedure can only be secured where the end sought, the work to be performed, is kept clearly in view, and a corresponding choice of devices is made. Is congress so organized and its rules of procedure so formulated? Has congress appreciated that its function as a board of directors is quite distinct from its function as a general law giver and as such requires a different organization?

We may, I think, answer both of these questions in the negative.

Congress performs its work as a directing and supervising board very inefficiently. It not only has made no attempt to organize specially with a view to the discharge of its duties in this field, but it does not even appreciate that it has here a special problem to be met. With two different functions to perform it has organized and adopted rules with only one of them in mind. We have thus here at the outset an explanation, and that a fundamental one, why congress does its governing work so poorly. It is our hope in the following pages to establish this assertion more clearly, and to suggest at least one method by which improvement may be wrought.

Under our scheme of government, not only is a clear distinction made between the functions of authorizing, directing, financing and supervising, on the one hand, and executing, on the other, but a separate organ is provided for the performance of each. Though thus clearly distinguished, the two have a common end—the conduct of the practical operations of government. Having such a common end, it is imperative that the two organs for the performance of these functions, though separate, should nevertheless be deemed to be integral and intimately related parts of one piece of mechanism. To this end it is essential that the two, both as regards their organization and their rules of procedure, should be based upon or follow the same principles. If they do not, they will not articulate. Instead of constituting integrated or smoothly geared parts of one mechanism, they will be but disconnected pieces of machinery, each working not only independently of the other, but often at cross purposes. That under such a condition of affairs loss of efficiency, if not constant friction, will be the result is inevitable.

Unfortunately this primary condition for efficiency has been utterly ignored in our national government. In organizing for the performance of its function of running the governmental machine, congress has disregarded almost wholly the organization that it has provided for the executive. To the latter it has given a scheme of organization corresponding in a rough way to the categories of work to be done. The executive has been first divided into fourteen primary units: the ten departments, state, treasury, war, justice, post office, navy, interior, agriculture, commerce, and labor, and the four so-called independent establishments; civil service commission, interstate commission, Smithsonian Institution, and isthmian canal commission.¹ Each of these departments and estab-

¹ The government printing office and the library of congress, though independent of the departments, are properly parts of the legislative branch of the government since they are under the direct control of congress.

lishments has been further subdivided into bureaus and these in turn into a succession of subordinate units. This successive subdivision of the executive branch of the government is supposed to correspond to a logical subdivision of the field to be covered. Whether it, in fact, represents the most advantageous apportionment of work to be done, or grouping of services, is another question which we hope to consider at another time. The only point which it is desired to bring out is that here is a perfectly definite classification and distribution of work. A particular department is made responsible for a particular class of work, and within such departments are bureaus and divisions carrying the principle of specialization and location of authority still further.

This scheme of organization, as has been said, has been wholly ignored by congress in itself organizing for the performance of its share of the work. Taking the house of representatives for example, we may distinguish three classes of committees: the committees on general legislation, the committee on appropriations and the committees on expenditures in the several departments. Under this scheme, as operated, one committee has responsibility for the enacting of new legislation; that is, of directing what work shall be undertaken, what character of organization shall be provided, what shall be the provision in the way of plant, equipment and personnel that shall be employed, etc. Another committee has responsibility for determining the amount of money that each year shall be available for doing this work. A third committee attempts in a spasmodic and ineffectual way to examine into the manner in which this money is spent. Even this crude theory of organization is not consistently carried out. In some cases the same committee has charge of matters of general legislation and appropriations; in others one committee has charge of the first and another that of the second. Notwithstanding general rules to the contrary, matters of general legislation are often handled by the committee on appropriations.

This failure on the part of congress so to organize itself for the consideration in detail of administrative matters and the establishment of effective working relations between it and the executive establishments is regrettable enough where matters of general legislation affecting the work of such services are concerned. It is nothing short of disastrous where the matter to be acted upon is that of making provision for the support of such services. Here, if anywhere, it would seem that the policy would be pursued of entrusting to some one committee, or subcommittee, the task of studying in detail the operations of a service as revealed in its official reports, of calling before it the officers of such service for the

purpose of eliciting further information and explanations, of scrutinizing the estimates submitted by such officers, and, on the basis of such examination, preparing an appropriation bill embodying its conclusions regarding the financial provision that should be made for such service for the ensuing year.

Nothing like this, however, is done. The entire operations and needs of a service, except possibly in a few isolated cases, are never considered at one time or by the same set of persons. For purposes of appropriations, congress has made the thoroughly irrational and vicious distinction between the bureaus proper at Washington and the field services or establishments that it is the function of these bureaus to maintain and operate. Appropriations for the first, the bureaus proper, are considered by one subcommittee of the committee on appropriations, and embodied in one appropriation bill, known as the legislative, executive and judicial appropriation bill, and those for the second, the field establishments, by another subcommittee and embodied in another appropriation bill known as the sundry civil appropriation bill. In addition to this, other committees may be considering other bills containing provisions vitally affecting the financial needs of such service.

The prime defect of this system is that, with possibly a few rare exceptions, no attempt has been made definitely to locate responsibility in any one committee for the conduct of affairs in any particular department or subdivision of the administrative service. In practically no case is there a committee so constituted that it feels that to it belongs the whole task and responsibility of familiarizing itself with the conditions, operations and needs of a particular service or class of services; nor has any committee any reason for seeking to establish the permanent, intimate relations with the head of a service which is essential if cordial coöperation between the directing and the executing authorities is to be secured.

The result is that at no time are the operations and needs of a service studied as a whole either by a committee of congress or by congress as a body. The several committees having in hand matters pertaining to the work or financial needs of a service may have quite different ideas regarding the policy that should be pursued in respect to the extension, curtailment or modification of the activities of such service. There is no member to whom congress is entitled to look for explanations and advice regarding the action that should be taken by it in respect to a particular service. With responsibility distributed as it is, there is no member to whom responsibility can be attributed. The present system is thus doubly defective: defective in not securing proper working relations

between congress and the executive, and defective in failing to locate definitely that responsibility which pertains to congress itself.

The reason for the failure on the part of the houses of congress to make their committee organization correspond to that of the administrative branch and of the work to be done is not difficult to find. Congress still looks upon itself as primarily, if not almost exclusively, a law-making body. In organizing for the performance of its work it has had this function alone in mind. Its committees are preëminently committees for general legislation. Even where it has been compelled to create a special committee to handle matters of current appropriations it has shown no appreciation of the necessity for making the organization of this committee correspond to the administrative machine to be financed. There has, in a word, been an utter failure to attempt, much less to carry into execution, a scheme of organization that will correlate or articulate with that of the administrative machine to be run.

The fact that the two parts of the governmental machine do not articulate and work in harmony is only too well known. The most unfortunate feature of this condition of affairs is, however, that this situation is accepted as a necessary consequence of our theory of government with its distribution of governmental powers. The attitude of most students is that the only remedy is to abandon this theory and adopt, in whole or in part, that of a union of powers as exemplified in the government of Great Britain. It is with this attitude that the writer wishes to take issue. It may be that we cannot secure that perfect correlation of directing and executing powers that is secured in Great Britain through the concentration of legislative and executive functions in the same hands. It is his belief, however, that we can go a long way towards securing an equally harmonious relation between the two authorities provided that we are willing deliberately to put forth our efforts in this direction. It is with this object in view that he has attempted in the following pages to outline at least one method by which, in his opinion, this desirable end can be secured.

Briefly, the action here proposed is that congress shall definitely recognize its function as a board of directors and shall organize a committee system with the performance of that function directly in mind. To this end, each of the houses of congress should provide for a system of committees paralleling and corresponding to the system of organization that it has given to the executive. This committee scheme, in a word, should be based on organization units instead of topics of legislation. The adoption of this plan will mean that there will be in each house of con-

gress a committee having direct charge of, and responsibility for, each service of the administrative branch. Authority and responsibility, in the first instance at least, will not only be as definitely located in congress as in the executive but will be located according to the same scheme or principle. It will thus mean the establishment of a system under which direct, personal relations may be obtained between the authorizing and the executing authorities that is now almost wholly lacking. At the present time there is no one person in congress to whom the head of a service is entitled to go as needs arise for joint action on the part of the two branches of government. There can be little reason to doubt that, under the proposed arrangement, close personal relation would be established between the head of each service and the chairman of the corresponding committee in congress. The former would take up with the latter the needs of his service, the changes required in respect to legislation affecting his service, the financial needs of the latter, etc. This he would do by informal conference as well as through more formal communications. The latter would, in turn, call upon the former for his assistance and advice in respect to propositions advanced and referred to his committee for action. Thus, notwithstanding the separation of powers, inherent in our system, means would be provided for bringing the two into far more effective and harmonious relations than are at present possible.

The foregoing is but a statement of the general character of the committee system which, it is believed, should be provided. To put this system in operation a number of difficulties have to be met. Among these much the most important is that of distinguishing, and separately providing for, the handling of matters of general legislation and of appropriations. The necessity for making this distinction gives rise, at the present time, to probably more difficulty in working out a proper system of congressional procedure than any other matter. Not the least advantage of the proposed plan is that it will go far towards meeting this difficulty.

From the purely administrative or business standpoint, the logical system would seem to be that of each service making known what legislation it needs for the successful prosecution of its work in all respects during the ensuing year. In a growing service this means, in many cases, that it will want, not only funds to carry on its operations as in the past, but new offices, new stations, additions to its plant, a readjustment of salaries, and often a more or less radical reorganization of its administrative system, or authorization to undertake new lines of work not sanc-

tioned by existing law. Whether or not these demands are met materially affects the appropriations desired. It would seem therefore that the first thing that congress would have to decide, in respect to any service, would be whether any and what changes in existing law affecting the operations of such service it was prepared to authorize. Only after it had reached a decision in respect to such matters would it be in a position to determine the funds that would be required to carry out the scheme of work and organization decided upon.

From the legislative viewpoint, however, this scheme of considering matters of new legislation and of providing for the support of the government as already authorized by law presents serious objections. Any new legislation may present questions of general policy concerning which radical differences of opinion may exist in congress. If propositions of this character are embodied in the general appropriation bills discussion will center around them and the passage of any bill at all may be endangered. At best the individual member is often placed in the position where he will have to support a measure to which he is strongly opposed or contribute by his vote to stopping the wheels of government through the refusal of supplies essential for its operation. Furthermore, even though a majority for the bill is secured, the President is put in the position where he can only exercise his constitutional prerogative of disapproving of legislation to which he is opposed by vetoing the supply acts required for the due conduct of government.

This situation of affairs presented itself in an acute form at the 1911-12 session of congress, due to the fact that the committee on appropriations of the house reported certain appropriation bills containing new legislation of a radical character. Among other things, these bills provided for a reorganization of the war department in certain important particulars, the change in the term of enlistments in the army, the abolition of the court of commerce and a change of law regarding the tenure of office of civil employees at Washington. Notwithstanding the bitter opposition of many members, the appropriation bills containing these provisions were forced through the two houses and presented to President Taft. To prevent their enactment into law the President was forced to veto the bills in their entirety, with the result that the operations of the government were only continued, pending a final adjustment of the difficulty, through the passage of joint resolutions continuing in force existing appropriation acts. Though rarely reaching the acute stage that they did during this session, these difficulties are always present and give rise to more or less trouble. Any system of committee organization must take

account of these conflicting considerations, and a procedure must be provided that will, if possible, harmonize them.

How does the system advocated propose to meet this difficulty? It does so in the following way. It proposes that the committees as above described shall be strictly committees of general legislation corresponding to the committees now possessed by the two houses. In addition to these committees, it proposes that there shall be in each house a single committee on appropriations to which alone shall be granted authority to report bills carrying an appropriation. Entire responsibility for the voting of funds will thus be concentrated, in the first instance, in this committee. The establishment of such a committee has frequently been advocated both inside and outside of congress. The distinctive feature of the present proposal is that this committee shall be composed, with the exception possibly of the chairman, exclusively of persons holding the chairmanships of the general legislation committees, or such of them as are most intimately concerned with the operations of government. It will thus, with the exception of the chairman, be composed wholly of ex-officio members.

In the next place it is proposed, as an essential feature of the scheme, that this committee should organize itself into subcommittees and divisions of subcommittees corresponding closely, or with fair approximation, to the system of general committees and the organization of the executive branch of the government. There should thus be a subcommittee for congress itself, one for the judiciary, and one for each of the executive departments and independent establishments. Each of these subcommittees should then be further subdivided into divisions corresponding to the several bureaus or services included within the branch of the administration over which the subcommittee has jurisdiction. The result of this scheme of organization would be to reproduce within the committee on appropriations a hierarchy of committees corresponding at all essential points with that of the executive.

In operating this scheme, the proposal is that all estimates for the government be referred to this single committee on appropriations. On their receipt they would be immediately split up, the estimates for each branch of the service being referred to the subcommittee having the affairs of that branch in charge. This subcommittee would in like manner apportion the work among its subdivisions. It will be the duty of each such division of a subcommittee to undertake the detailed work of familiarizing itself with the history, organization, activities and needs of the service or services assigned to it, of examining the reports and es-

timates submitted by the heads of such services, of holding hearings for the development of such further information as may be desired, and of embodying its conclusions in the first draft of an appropriation bill. This draft should then be submitted to the subcommittee of which it is a part for consideration by it sitting as a whole. The subcommittee will thus bring together the parts elaborated by its divisions, make such changes in them as it may deem fit in order to harmonize the conclusions or make the outcome conform to such general policy as it may see fit to adopt, and report its draft to the full committee on appropriations.

The committee on appropriations would thus in due course receive drafts of bills covering all branches of the government in such a form that it could consider not only each draft on its merits, but all drafts in their relations to each other and to the general state of the finances of the nation. It is taken for granted that each of the divisions of the subcommittees, and the subcommittees themselves, would submit with their drafts reports setting out clearly just what changes they had made over existing legislation, with statements giving their reasons for proposing such departures, and a report of the testimony taken or documents received by them as aids to them in reaching a conclusion.

We have, however, yet to show how, under this scheme, the conflicting considerations represented by the desirability of having matters of new legislation made the subject of special bills and yet be considered in connection with requests for appropriations. This is secured by the suggestion that the membership of the committee on appropriations consist wholly of the chairmen of the committees on general legislation, or such of them as handle matters affecting in any direct way the operations of the government. In making up the composition of the subcommittees and their subdivisions it is proposed that the chairman of a committee of general legislation having in charge certain matters would be the chairman of the subcommittee of the committee on appropriations having in charge the affairs of the service or services whose operations fall within the same field. Thus the chairman of the subcommittee on the bureau of navigation and the steamboat inspection service would be the member having the chairmanship of the legislative committee on navigation. Suppose now as the result of occurrences such as the *Titanic* disaster, the chiefs of the bureaus of navigation and the steamboat inspection service and their official superior, the secretary of commerce, become convinced that the government should do much more than it has done in the past for the ensuring that due precautions are taken for safety at sea. To do this both new legislation and additional appropriations for the ensuing year will be

required. The undertaking of this work may also render desirable a thorough reorganization of the service or services entrusted with the work. It is evident that under the committee system outlined the initiative in respect to the responsibility for getting both matters before congress for action will fall to the same individual, viz., the member who is chairman of the subcommittee of the committee on appropriations on the bureau of navigation and the steamboat inspection service. Through him the advisability of enacting the new legislation can be immediately taken up by the committee on navigation and, if approved, a bill reported for this purpose. As chairman of the subcommittee on appropriations the estimates of the two services can be framed according to the decision reached by the committee on navigation and the probability of its decision being supported by congress. As the appropriation bills are usually passed at the end of the session, opportunity will be afforded to change provisions in the appropriation bills so as to make them conform to legislation actually had. If necessary resort can be had to supplementary appropriation acts.

We have now completed the task to which we addressed ourselves. That there may be no misunderstanding regarding the exact character of the proposal here made we desire, notwithstanding the repetition involved, to recapitulate what to us seems its essential features. Briefly the situation is this. In the government, as in all undertakings, the two functions of authorizing, directing, financing and supervising, on the one hand, and of executing, on the other, may be clearly distinguished. In private undertakings the performance of the first is entrusted to a board of directors, that of the second to an executive or administrative staff. In a government the first is assigned to the legislature, the second to the executive. Both functions are but parts of one process having a common end in view. If efficiency is to be secured it is imperative that the authorities exercising these functions shall be so organized, and their rules of procedure so formulated, that complete harmony in their working relations may be obtained. We have here the primary essential to an efficient administration of affairs. So fundamental is it, that it may almost be said that no real approach towards securing efficiency can be made until this primary condition has been met. In all the effort now being put forth to improve governmental conditions first consideration should therefore be given to this problem. With a satisfactory solution to it, other reforms will follow with comparative ease.

In Great Britain this problem has been perfectly met through the

union of the two functions in the same hands, though, be it remarked, the two functions themselves are kept far more distinct than they are in this country. Under our form of government such a solution is impossible. The problem as it presents itself to us is, therefore, that of so organizing the two authorities to which the two functions are entrusted that, notwithstanding such separation, they will work in close coöperation with each other.

The first point that this paper has attempted to make is that no real effort has been made, either by congress or by students of our constitutional system, to work out this problem from this point of view. Discussion has largely centered around the comparative merits of the system of united and distributed powers. So far as the writer has information he knows of no serious attempt to take our system as it is and perfect it from this point of view. Certainly congress itself has shown little or no appreciation of the fact that in acting as the board of directors for the government it has a function quite distinct from its function as a general lawmaker, and calling for quite a different organization. The primary consideration urged, therefore, is that this distinction should be recognized, and that congress should deliberately apply itself to the task of specially organizing for the performance of this function.

The second point made is that in seeking to do its duty in this field it should unequivocally accept the principle that its organization for this work should follow, and conform to, that of the executive. Only as it does so will it be possible to make the two systems articulate. Only as such articulation is secured will it be possible to make the two systems work in harmony and coöperation with each other. This means, in practice, that each house of congress shall have a system of committees corresponding with approximate closeness to the system of organization of the government. If this is done, not only will responsibility and authority be definitely located, but the two systems will touch at all points thus permitting of close coöperative relations throughout.

Especially is it imperative that entire responsibility for appropriating funds for the support of the government shall be concentrated in a single committee and that this committee shall have an internal organization corresponding to that of the executive to be financed. It is through the examination of estimates and the voting of supplies that congress has the real opportunity of passing upon the manner in which the executive has discharged its duties, of gaining detailed knowledge of the needs of the several services, and of intelligently making provision for the future. It is impossible to perform this duty properly unless the work is distrib-

uted among subcommittees in some way. The only effective way in which this distribution can be made is by making it correspond to the distribution of duties in the executive. In this way can centralization of responsibility be secured and provision be made for authorities within congress which can maintain intimate relations with corresponding authorities in the executive branch.

Finally, the proposition is advanced that this central committee on appropriations should be composed of the chairmen of the general legislation committees. This is necessary in order to secure the complete centralization of responsibility and authority in respect to particular services and lines of work that is essential to efficiency. The one point aimed at is that there shall be within congress the same distribution of duties that obtains in the executive, that there shall be all along the line a correspondence between the two branches of the government, and consequently two officials, one in congress and the other in the executive, occupying correlative positions in respect to the work to be done. With this secured, the basis will at least be laid for an harmonious day-to-day coöperation between the two which is impossible under present organization conditions.

AN ANALYSIS OF PRESENT METHODS OF CONGRESSIONAL LEGISLATION

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It is well known that the organization, functions and mode of operation of political institutions as set forth in articles of constitutions, statutes, legislative manuals, etc., frequently differ widely from what they are in fact. This is particularly true of legislative bodies. A good deal has been written on our form of congressional government by committees, outlining the main features of organization and procedure, but detailed operation is not shown. In order to throw some light on the latter I have undertaken an intensive study of the actual proceedings on bills, other than debate on the floor of both houses, to cover the whole period of the life of one congress, the sixty-second. The immediate purpose was to ascertain what developments of the law library service at the capitol would be most serviceable to its congressional public in connection with pending legislation, particularly in view of the probable provision of a bill drafting and legislative reference service in the near future. As, however, such a service, if established, would have to be adapted to the present methods of congressional legislation and to the actual needs of the various committees as well as of individual members, the results of this investigation may also be useful when the plan of organization is formulated in detail. The conditions in congress differ so markedly from those which obtain in the state legislatures that any plan for expert assistance in the improvement of federal statute law must be worked out *de novo*. The experience of the state bureaus is most suggestive but hardly conclusive as to the scheme to be adopted here.

Three methods of analyzing the work of the congressional committees have been used:

1. Beginning with the introduction of bills and resolutions, we are following them by means of the numerical indexes of the *Congressional Record* through committee to the end of the various stages they finally reached, separating the general, local, special, private and personal and classifying them by subject, taking a census of them to show quanti-