

The Role of Congress

DURING ITS PERIOD OF DECADENCE, IN WORLD WAR II the Department of State, in official pronouncements, began habitually to refer to the federal Republic which it serves as a "democracy".

The adoption of this practice was not without guile. "Democracy", like "liberty", is one of those beautiful, inspiring, yet misty words that command popular support without requiring any particular official commitment. Words that convey different meanings to different people can be most useful to politicians. As Lincoln dryly said, at the most bitter period of the Civil War: "We all declare for liberty; but in using the same word we do not all mean the same thing." The Communists have certainly been helpful in showing us that lip service to "democracy" is wholly compatible with the grossest form of governmental tyranny.

Actually, the United States is far from being a democracy, in the accurate meaning of a political system in which the will of the majority can always force the minority to conform. The Bill of Rights gives the individual citizen certain privileges of which he cannot be deprived even by unanimous vote of Congress. The Constitution also gives the President a wholly undemocratic power of veto. On the border line of Constitutionality

it was demonstrated, in Korea, that a President can in practice commit the country to large-scale war, and send conscripts overseas to fight it, without asking the consent of the elected representatives of the people. Mr. Truman's dictatorial decision in this case was not for that reason necessarily unwise, nor unjustified. But it was certainly undemocratic.

Since the foreign policy of any government requires definitive agreements with other governments it cannot, from its very nature, be democratic in the sense of responding instantaneously to the always variable will of the electorate. That does not mean that foreign policy must tend to develop executive tyranny. It does mean that foreign policy can always be—and history confirms the fact—a potent weapon in the arsenal of tyrants.

Against that ever possible development the people must be continuously on guard, and never, more so than when a Foreign Minister assures them that his particular policies are "democratic". Clever, those policies may be, or stupid; extravagant or economical, courageous or cowardly, ethical or opportunistic. But democratic they can never be, either in general or under our Constitution in particular.

2.

HERE IS POSED one of the most difficult problems of political science: the reconciliation of the necessarily arbitrary conduct of foreign policy with the equally essential maintenance of popular government.

That problem was provisionally solved for the United States by certain special applications of that same system of checks and balances which has enabled us to handle our domestic problems, on the whole, surpassingly well. The solution, however, is not guaranteed to work automatically. It demands perhaps as much scientific "know-how" in the political field as the successful operation of jet planes requires in the realm of mechanics.

The method by which the foreign policy of this Republic can be strong without becoming tyrannical is embodied in the Constitution of the United States. And, fortunately, the theory behind this procedure is clearly set forth in a section of the famous *Federalist* papers (Nos. 69 to 77 inclusive) which are available in practically every public library in this country and should be, one would think, required reading at least for college students.

All of this section of *The Federalist* was written by Alexander Hamilton, who was the leading advocate of executive control of foreign policy during the deliberations of the Constitutional Convention. There were many who thought at the time that the Constitution gave far too much power over foreign policy to the President,

and for that very reason Hamilton was chosen to defend his formula in the appeal for ratification by the states, which is what the *Federalist* papers were. In spite of the brilliant and compelling logic of Hamilton's presentation, his success was narrow. The legislature of New York, his own state, approved the Constitution only by the close margin of 30 votes to 27.

Alexander Hamilton, whose political argument was always forthright and honest, of course never claimed that American foreign policy would or could be "democratic". Explaining why the House of Representatives is not allowed to share in the treaty-making power, he says:

" . . . The fluctuating and, taking its future increase into the account, the multitudinous composition of that body, forbid us to expect in it those qualities which are essential to the proper execution of such a trust. Accurate and comprehensive knowledge of foreign politics; a steady and systematic adherence to the same views; a nice and uniform sensibility to national character; decision, *secrecy*, and despatch, are incompatible with the genius of a body so variable and so numerous."¹

Hamilton indeed frequently and vigorously attacks the whole theory of unbridled political democracy, as contrasted with the qualified principles actually adopted for this Republic. The following passage is only one of many examples that could be cited:

" . . . The republican principle demands that the deliberate sense of the community should govern the conduct of those to whom they intrust the management of their affairs; but

¹ *The Federalist*, No. 75.

it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests. It is a just observation, that the people commonly *intend* the PUBLIC GOOD. This often applies to their very errors. But their good sense would despise the adulator who should pretend that they always *reason right* about the *means* of promoting it.”²

Nevertheless, even Alexander Hamilton, the foe of democracy and apostle of centralization, fully agreed that Congress, as the representative organ, should always check and balance the control of foreign policy by the President and his appointed Secretary of State—as that official later came to be known. In No. 69 of the *Federalist* papers, which preceded the quotations cited above, he gives a detailed comparison of the control over foreign policy under the British and the (then) proposed American Constitution. “The king of Great Britain”, he points out, “is the sole and absolute representative of the nation in all foreign transactions. He can of his own accord make treaties of peace, commerce, alliance, and of every other description.”

Then, later in the same article, Hamilton concludes that “. . . there is no comparison between the intended power of the President and the actual power of the British sovereign. The one can perform alone what the other can do only with the concurrence of a branch of the legislature.”

² *Ibid.*, No. 71.

3.

OBVIOUSLY, therefore, the framers of the Constitution intended to give to Congress, and especially to the Senate, a large measure of control in the field of foreign policy. That is clear from the debates in the Constitutional Convention of 1787. It is clear from the explicit stipulations of the Constitution as it emerged from those debates and stands today. It is clear from the argument in the *Federalist* papers. Indeed the case for carefully supervising executive power in foreign policy has seldom been put more forcibly than by Hamilton in No. 75 of these, which aptly says:

“The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States.”

During World War II an “exalted opinion of human virtue” did unwisely place at “the sole disposal” of one President a power over foreign policy that neither the framers of the Constitution, nor he himself, expected to be unchecked. Although the British had in the meantime taken this power from their king, Americans illogically gave to this President authority that had been deemed insufferable by their forebears when concentrated in George III. For this the bipartisan foreign policy, en-

couraging acquiescence in every executive action, clearly bears much blame.

The Constitution was in several vital respects a matter of rather hazy compromise. Issues that could not be resolved were left, by mutual consent of Federalists and anti-Federalists, to the arbitrament of the future. One such unresolved issue was the right of a state to secede from the Union. It took a civil war to settle that disagreement over the binding force of federation. Also left indeterminate was the issue of whether the President or Congress, in any showdown, has final authority in the direction of foreign policy. The very nature of a balanced system implies some uncertainty on questions of that sort.

The issue of secession, focussed by the practice of slavery in the South, was between the central government and the rebellious states. The issue of the ultimate responsibility for foreign policy is of a different character, within the central government.

On the one hand, our organic law gives the Congress alone power to "regulate commerce with foreign nations", to "define and punish offences against the law of nations", to "declare war", to "raise and support armies", to "provide and maintain a navy", to "make rules for the government and regulation of the land and naval forces".

On the other hand, the Constitution says explicitly: "The President shall be Commander-in-Chief of the Army and Navy of the United States."

In between there is the power given to the President to appoint ambassadors, subject to Senatorial "advice and consent", and the power to make treaties, provided in

the latter case that "two-thirds of the Senators present concur".

Underlying this division of power is the fact that Congress can impeach the President, although he cannot ever dissolve Congress. Together with its control over executive expenditure this shows that the intent of the Constitution is to maintain a continuous critical supervision of foreign policy in the hands of Congress.

We must recall, however, that the Constitutional Convention was confronting one serious political problem that no longer exists. It sought to restrict the power of the Executive, a control that is perennially necessary for freedom. But the Convention had also to deprive the separate states of powers exercised by them to the verge of anarchy, prior to the writing of the Constitution. This purpose is demonstrated by the now superfluous Constitutional limitations on the right of the states to impose duties, make treaties or "engage in war".

The originally sovereign states were willing to cede these powers to a representative Congress, especially to a Senate that emphasized the equality of the states by giving equal representation to all of them, whether large or small. But in 1787 the states would never have agreed to give to the President and his appointees authority in the field of foreign relations that they were reluctant to surrender even to a representative Congress. Today the most Constitutionally-minded citizen must admit both that some of the reasons for circumscribing Presidential power over foreign policy no longer exist and that, in dealing with a foe as unscrupulous as Soviet Russia, new reasons

for giving a well-qualified executive more freedom of action in this field have developed.

4.

EVERY EXECUTIVE is naturally assertive. So it is not surprising that the President has always taken the lead in extending centralized power, and consequently in diminishing the sovereignty of the states. And in this centripetal evolution the President—regardless of his political affiliation—has always tended to arrogate to himself a direction of foreign policy that goes beyond the letter of the Constitution.

Theoretically, the issue is one that should be settled by the courts, as an arm of our Government independent of both the Legislature and the Executive, and indeed authorized to judge between them. That effort has been made, but unsuccessfully because of the overlap in the power of the President as Commander-in-Chief and the power of Congress to declare war. It is impossible to rule judicially that the President may declare war. It is equally impossible to rule judicially that the President as Commander-in-Chief must not take steps that actually make war inevitable.

So, from the beginning, there has been an ill-defined area—a judicial no man's land—where the President may lawfully exercise powers leading directly to that state of war which Congress alone is empowered to declare. That anomalous situation underlies all of the acrimonious con-

troversty aroused by the Korean War. And it is timely to recall that the issue arises periodically in our national history. Indeed continuity of the problem is well illustrated by the first occasion on which it created bitter partisan feeling.

In 1793, Great Britain went to war to restrain the aggressive intent of revolutionary France, then controlled by an atheistic and imperialistic regime described by contemporaries in much the same phraseology that is applied to Soviet Russia today. President Washington promptly issued a proclamation of neutrality as between France and Britain. Since we then had an alliance with France, his Constitutional right to do so was immediately assailed.

Alexander Hamilton, writing under the pseudonym of "Pacificus", ably defended Washington. In a series of widely circulated articles Hamilton asserted that it is an executive function to determine the obligation of treaties. He went on to argue that regardless of the wording of the Constitution the conduct of foreign affairs must by its very nature be concentrated in the President's hands.

Thomas Jefferson, then Secretary of State, was appalled by what he called "these heresies". Jefferson wrote to James Madison: "For God's sake, take up your pen . . . and cut him [Hamilton] to pieces in the face of the public."

Madison proceeded to do so. Under the pen-name of "Helvidius" he vehemently assailed "the extraordinary doctrine that the powers of making war and treaties are in their nature executive." That, said Madison stingingly, is British political theory, is absolutely un-American, and

is upheld only "by foreigners and degenerate citizens among us".

Thus there was precedent for the fervor, as well as the character, of the debate that broke out during the Eighty-second Congress, brought closer to climax by the Senate inquiry into the dismissal of General MacArthur. The infant Republic survived the acrimony then; it is not injured by similar acerbities today. For it is a sign of strength, not weakness, that the discussion of this fundamental issue flares out perennially. The Constitution left it to posterity to decide, from time to time, just where the Presidential prerogative in foreign policy ends. The problem neither should nor can be settled once and for all, by any arbitrary formula.

Whenever the President loses effective control of Congress, and especially if that happens in a time of crisis, the issues between Pacificus and Helvidius—between Hamilton and Madison—will be redebated, and resolved according to the needs of the day. That this should be happening again is proof that our faith in representative government was not shaken by the unfortunate bipartisan interlude.

5.

THE TERMINATION of a soporific "bipartisanism", the realization that politics cannot stop at the water's edge unless policies also stop there, was the essential prereq-

uisite for the establishment of an intelligent and effective foreign policy. There is no field of human endeavor, from the vocal exercises of young ladies to the reasoning of Supreme Court Justices, which should be immune from honest and expert criticism. Those who resent such criticism simply prove themselves unaware of a fundamental condition of progress. There can be no improvement, but only deterioration, in foreign policy or any other undertaking, if criticism is regarded as objectionable *per se*.

But while the belated restoration of the critical faculty is undeniably healthy, it does not automatically indicate the lines that future foreign policy should follow. It is essential, but not sufficient, to bring foreign policy back into politics. There must also be re-establishment of those underlying principles that alone give politics something more than superficial significance.

The federal nature of the American union itself dictates the fundamental character of American politics. The Constitution divides power between the central government and those of the states, and then in turn separates power in each government, both general and local, into executive, legislative and judicial departments. Under this elaborate system of checks and balances there is, and must be, a continuous struggle between those who seek to centralize governmental power and those who try to keep it diffused.

This clash between "the centrifugal and centripetal tendencies", between Federalists and anti-Federalists, was long since noted by Viscount Bryce as the origin of the di-

vision between American political parties.³ It will continue to divide them, regardless of changes in party name or position, as long as the United States remains a federal republic. When there is no party opposing centralization of power, that in itself will be a sign that the Republic has ceased to exist, in fact if not in name.

Obviously an active and aggressive foreign policy implies centralization of power. It implies not merely concentration of power in the central government, which alone deals with foreign policy. It also implies concentration of power in the executive arm of the central government, which naturally prefers to conduct its relations with other governments unhampered by judicial questioning, parliamentary obstruction, or public criticism.

The advocate of an aggressive foreign policy is therefore likely to be an advocate of centralization. For he cannot consistently urge that the Administration be untrammelled in its conduct of foreign relations yet subject to strict Constitutional checks and balances in its control over domestic activities. Conversely, the advocate of a limited foreign policy cannot consistently urge that the Executive should be given power to override local government in social issues, such as FEPC or Federal control of education. One may support either the expansion or the limitation of Presidential power. To advocate both simultaneously is perilously close to double talk.

From the very nature of this Republic it follows that there will always be—as long as the Republic endures—two schools of thought in foreign policy. Isolationist and

³ James Bryce: *The American Commonwealth* (New York: The Macmillan Company; 1897), Vol. II, pp. 5-6.

Interventionist would be very good names for them, except that both words have acquired derogatory overtones. But whatever the descriptive titles, the underlying cleavage will remain, and grow sharp whenever the issues involved become vital to the hearts and minds and pockets of our citizens.

None who really believes in this Republic would hope or want to see this political cleavage eliminated, for the pulsation of the two forces is as necessary to national vigor as the inhalation and exhalation in breathing. And that simile itself suggests that a rhythm can be established—that there is an area of concord in which all men of good will, be they isolationist or interventionist, may agree; the more readily in a time of obvious national peril.

6.

DURING the decade of the nineteen-forties, however, the Congress of the United States virtually abdicated its function in the field of foreign policy. From the signing of the Atlantic Charter, on August 12, 1941, to the commitment of American military forces to war in Korea, on June 27, 1950, the Administration on many occasions neither consulted nor informed the Congress in regard to actions that were, in many cases, of the most vital consequence to the national welfare. This was not political rhythm, but slavish legislative acquiescence in a budding executive tyranny.

It is no mere coincidence that this same decade, in which the rule was arbitrary executive direction of foreign policy, proved the most disastrous in the entire diplomatic history of the Republic. At the close of the forties the United States by official admission possessed far less security than at their opening, in spite of the enormous sacrifices made in winning smashing victories over Japan, Germany, Italy and the smaller Axis powers. Responsibility for this deterioration could not be evaded by those administrative officers who for ten years had exercised practically unquestioned control over foreign policy.

The first step in the rebuilding of an intelligent foreign policy, out of the ruins everywhere apparent, was restoration of the abandoned critical function. During the forties by far the greater part of the American press had confined itself to fulsome praise of every administrative action in this field, no matter how shortsighted and senseless. A typical illustration was the comment of *Time Magazine* on the first reports of the Yalta Conference: "all doubts about the Big Three's ability to cooperate in peace as well as in war seem now to have been swept away".⁴

In spite of the war psychology, a few journalists and editors conscientiously endeavored to inform the American public of the coming disillusionment, which State Department propaganda could delay but could not possibly avert. As an illustration, the present writer, on February 21, 1945, said of Yalta in *Human Events*, a paper

⁴ Quoted in Byrnes, *op. cit.*, p. 45.

under his own control, with a circulation of 4000 as against a million or more for *Time*:

“The Russian system of federated and satellite Soviet States is unlikely to stop its westward expansion with Poland, or its eastward development at the borders of Inner Mongolia. With the capture of Budapest the outward push from Asia gathers a momentum unparalleled since the Turks stormed up the Danube in the Sixteenth Century. But the Mohammedan conquests had no such physical power behind them, and no such fertile soil ahead, as has Russia today.”

The steady extension and consolidation of Russian strength in central and southeastern Europe, and even more the subsequent conquest of China by Communism, sharply awakened more and more Americans to what was actually happening. But State Department lullabies and a barrage of pro-Communist propaganda from Leftist writers served dangerously to delay the inevitable revulsion. Communist influence in the Department of State apparently reached its peak early in 1946, when the Kremlin was seeking to consolidate the enormous gains so sweepingly yielded to it by President Roosevelt's personal diplomacy.

It would be a mistake to think that the attempted Communist manipulation was confined to the Far Eastern division of the department, although undoubtedly very influential there. An almost equally powerful effort was made to undermine General Franco's strongly anti-Communist regime in Spain, which first Secretary Marshall and then Secretary Acheson publicly denounced as “Fascist”.

On March 4, 1946, when James F. Byrnes was Secretary of State, that department issued to the press a carefully selected compilation of "representative documents" obtained from the archives of the defeated Axis powers. The evident purpose in publicizing these documents was to persuade the American people that Spain had intended "to enter the war on the side of Germany and Italy". There was then, in the possession of the Department of State, as much or more documentation indicating that Franco sought primarily to preserve the same neutrality that President Roosevelt had at first indorsed for the United States. But that part of the documentation was held back.

By July, 1951, the picture had changed so completely that Admiral Forrest P. Sherman, one of the Joint Chiefs of Staff, was dispatched to Madrid to urge the same "Fascist Franco" to form a military alliance with the United States.

The issue as to these negotiations, unconcluded at Admiral Sherman's untimely death in Europe, is not whether the State Department's first policy of withdrawing recognition from Franco, and its subsequent policy of making an ally of him, was wise or unwise. What seems beyond dispute is the necessity of more outspoken examination and continuous analysis of a foreign policy that can so quickly and completely reverse itself.

The bipartisan foreign policy served only to prevent such helpful consideration at a time when it could have saved lives and honor, money and prestige. And it seems something of a miracle that, due to the heroic efforts of a minority, public opinion did eventually rise in its wrath

against the tendentious stream of official and unofficial indorsement of the Communist Party line. As late as the end of 1949, Anna Louise Strong could conclude her book entitled *The Chinese Conquer China* by asking rhetorically:

“Is it possible, then, for the chiefs of American monopoly capital, leading the reactionary forces of the world, to destroy this new China? It is not.”

It is quite possible, however, that without the revelations of Communist influence in the Department of State, first disclosed in the conviction of Alger Hiss for perjury, the Republic would have been undermined as completely as was China itself. To the Un-American Activities Committee of the House of Representatives goes much of the credit for revealing the Communist infiltration in time. The Republic was certainly not saved either by the Department of State, or by the press.

On August 16, 1948, when Representative (now Senator) Richard M. Nixon first concluded that Hiss was lying, a long step towards the reassertion of Congressional control in foreign policy was taken. Since then, and especially since the elections of November 7, 1950, there has been a steady tendency for Congress fully to re-establish its Constitutional prerogative in this field. Senator Robert A. Taft has been especially forceful in emphasizing that the issue here is nothing less than the survival of this Republic.