# Chapter L.

## PREROGATIVES OF THE HOUSE AS RELATED TO THE EXECUTIVE.[1]


1. **Expressions of opinion on public questions. Sections 1562–1568.**
2. **Commendation or censure of the Executive. Sections 1569–1572.**
3. **Advice and requests of the Executive. Sections 1573–1585.**
4. **Titles, gifts, and presence on the floor. Sections 1586–1589.**
5. **Executive protests against action of House. Sections 1590–1592.**
6. **Statutes empowering House to direct Executive officers. Sections 1593–1594.**
7. **Power of appointment to office. Section 1595.**
8. **Inquiries into conduct of Executive. Section 1596.**


**1562. The House, either alone or in concurrence with the Senate, has by resolution expressed opinions or determinations on important public questions.—**On April 5, 1852[2] the House adopted the following resolutions:

*Resolved,* That we recognize the binding efficacy of the compromises of the Constitution, and believe it to be the intention of the people generally, as we hereby declare it to be ours individually, to abide such compromises, and to sustain the laws necessary to carry them out—the provision for the delivery of fugitive slaves and the act of the last Congress for that purpose included—and that we deprecate all further agitation of questions growing out of that provision, of the questions embraced in the acts of the last Congress known as the compromise, and of questions generally connected with the institution of slavery, as unnecessary, useless, and dangerous.

*Resolved,* That the series of acts passed during the first session of the Thirty-first Congress, known as the compromise, are regarded as a final adjustment and a permanent settlement of the question therein embraced, and should be maintained and executed as such.

**1563.** On December 17, 1860,[3] Mr. Owen Lovejoy, of Illinois, introduced the following, which was considered and agreed to by a vote of 135 yeas and no nays:

Whereas the Constitution of the United States is the supreme law of the land, and its ready and faithful observance the duty of all good and law-abiding citizens: Therefore

*Resolved,* That we deprecate the spirit of disobedience to that Constitution wherever manifested, and that we earnestly recommend the repeal of all statutes, including nullification laws so called, enacted by State legislatures, conflicting with and in violation of that sacred instrument, and the laws of Congress made in pursuance thereof; and it is the duty of the President of the United States to protect and defend the property of the United States.

---

[1] See Chapter LVII, sections 1856–1910, of Volume III for precedents as to inquiries of the Executive. Chapter LXII, sections 1981–2000, of Volume III for relations of the House to the election and inauguration of the President. Chapters LVIII to LXI, sections 1911 to 1980, for functions of the House at the electoral count. See also the preceding chapter.

[2] First session Thirty-second Congress, Journal, pp. 552–559, Globe, pp. 976–983.

[3] Second session Thirty-sixth Congress, Journal, p. 86; Globe, p. 109.

**1564.** On January 7, 1861,[1] Mr. Garnett B. Adrian, of New Jersey, offered the following resolution, which was agreed to by a vote of yeas 125, nays 56:

*Resolved,* That we fully approve of the bold and patriotic act of Major Anderson in withdrawing from Fort Moultrie to Fort Sumter, and of the determination of the President to maintain that fearless officer in his present position; and that we will support the President in all constitutional measures to enforce the laws and preserve the Union.

**1565.** On December 6, 1862,[2] the House, on motion of Mr. Justin S. Morrill, of Vermont, adopted a resolution declaratory of the duty of soldiers, citizens, and officials to unite in putting down the rebellion against the Government.

**1566.** On March 3, 1863,[3] the House and Senate adopted a series of concurrent resolutions setting forth the attitude of Congress on the subject of intervention in the then existing war by foreign nations. These resolutions do not appear in full in the Journal of the House.

**1567.** On December 5, 1865,[4] Mr. Samuel J. Randall, of Pennsylvania, offered the following resolution, which was agreed to, yeas 162, nays, 1:

*Resolved,* That, as the sense of this House, the public debt created during the late rebellion was contracted upon the faith and honor of the nation; that it is sacred and inviolate, and must and ought to be paid, principal and interest; that any attempt to repudiate or in any manner to impair or scale the said debt shall be universally discountenanced and promptly rejected by Congress if proposed.

On January 28, 1878,[5] the House passed a concurrent resolution from the Senate declaring the coin bonds of the United States payable in silver dollars of 412½ grains.

**1568.** On December 15, 1875,[6] the House, by a vote of yeas 223, nays 18, agreed to the following resolution:

*Resolved,* That in the opinion of this House the precedent established by Washington and other Presidents of the United States in retiring from the Presidential office after their second term has become, by universal concurrence, a part of our republican system of government, and that any departure from this time-honored custom would be unwise, unpatriotic, and fraught with peril to our free institutions.

**1569. While the House in some cases has bestowed praise or censure on the President or a member of his Cabinet, such action has at other times been held to be improper.—**On May 26, 1809,[7] Mr. John Randolph, of Virginia, after referring to the abandonment of the old relations of Congress and the President wherein the President made an annual speech to the Congress, and the House responded with an address, proposed the following:

*Resolved,* That the promptitude and frankness with which the President of the United States has met the overtures of the Government of Great Britain toward a restoration of harmony and a free commercial intercourse between the two nations, receives the approbation of this House.[8]

---

[1] Second session Thirty-sixth Congress, Journal, p. 152; Globe, p. 280.

[2] Third session Thirty-seventh Congress, Journal, p. 39; Globe, p. 14.

[3] Third session Thirty-seventh Congress, Journal, pp. 572, 583; Globe, p. 1541.

[4] First session Thirty-ninth Congress, Journal, p. 17; Globe, p. 10.

[5] Second session Forty-fifth Congress, Record, p. 627.

[6] First session Forty-fourth Congress, Journal, p. 66.

[7] First session Eleventh Congress, Journal, pp. 18, 34 (Gales & Seaton ed.); Annals, pp. 92, 134, 156, 164, 187, 219.

[8] This resolution of the House should be distinguished from a concurrent expression of both Houses, such as the resolution passed by House and Senate in 1809 condemning the British minister and pledging Congress to stand by the Executive in repelling insults to the nation. First session Eleventh Congress, Annals, pp. 481, 747, 1151.

A lengthy debate arose over this resolution, involving, besides the merits of the question, the question of precedent and propriety. Mr. Randolph cited two precedents in support of the propriety of the resolution. The first was a paragraph in the address to the President, adopted December 6, 1793, wherein the House expressed approbation of the President's proclamation of neutrality in the existing conflict in Europe.[1] The second precedent was that of January 7, 1803, wherein the House expressed, by a resolution, their determination to maintain rights of navigation on the Mississippi, and expressed themselves as relying with perfect confidence in the wisdom and vigilance of the Executive.[2]

It was objected that the Constitution did not include such expressions of opinion among the duties of the House; that their effect would be to constitute the House censors; that it was not wise to compliment officers whom it might be necessary to impeach, etc.

Finally, on June 2[3] the resolution was laid on the table, yeas 54, nays 41.

**1570.** On January 18, 1819,[4] the House, in Committee of the Whole, began consideration of a resolution reported from the Committee on Military Affairs, to whom had been referred so much of the President's message as related to the conduct of the war against the Seminole Indians by Gen. Andrew Jackson.

The resolution was as follows:

*Resolved,* That the House of Representatives of the United States disapproves the proceedings in the trial and execution of Alexander Arbuthnot and Robert C. Ambrister.

In the course of the long debate, which related chiefly to the moral and political aspects of the question, several speakers touched on the question as to the power of the House to adopt such a resolution. It was urged on the one hand that the adoption of the resolution would be to trench on the Executive authority, and on the other that the House in the St. Clair and Wilkinson cases had settled its right to investigate, and that the right to investigate involved the right to censure.

The resolution was disagreed to, 108 to 62.

**1571.** On April 30, 1862,[5] the House, by a vote of yeas 79, nays 45, agreed to the following resolution reported from the select committee appointed to investigate Government contracts:

*Resolved,* That Simon Cameron, late Secretary of War, by investing Alexander Cummings with the control of large sums of the public money and authority to purchase military supplies without restriction, without requiring from him any guarantee for the faithful performance of his duties, when the services of competent public officers were available, and by involving the Government in a vast number of contracts with persons not legitimately engaged in the business pertaining to the subject-matter of such contracts, especially in the purchase of arms for future delivery, has adopted a policy, highly injurious to the public service, and deserves the censure of the House.[6]

On December 16, 1862, the Senate, by a vote of yeas 38, nays 3, laid on the table a resolution censuring James Buchanan, recently President of the United States.[7]

---

[1] Journal, first session Third Congress, p. 13 (Gales & Seaton ed.).

[2] Journal, second session Seventh Congress, pp. 273–276 (Gales & Seaton ed.); Annals, p. 339.

[3] First session Eleventh Congress, Journal, p. 35 (Gales and Seaton ed.); Annals, p. 219.

[4] Second session Fifteenth Congress, Journal, pp. 239, 241; Annals, pp. 583, 943, 1012, 1065,1079, 1088, 1135.

[5] Second session Thirty-seventh Congress, Journal, p. 631; Globe, pp. 1848, 1888.

[6] This resolution was rescinded during a succeeding Congress.

[7] Third session Thirty-seventh Congress, Globe, pp. 101, 102.

**1572.** On July 16, 1894,[1] Mr. James B. Creary, of Kentucky, moved to suspend the rules and agree to the following resolution:

*Resolved,* That the House of Representatives indorses the prompt and vigorous efforts of the President and his Administration to suppress lawlessness, restore order, and prevent improper interference with the enforcement of the laws of the United States, and with the transportation of the mails of the United States, and with interstate commerce, and pledges the President hearty support, and deems the success that has already attended his efforts as cause for public and general congratulation.

This resolution, after debate, was agreed to, two-thirds voting in favor thereof.

**1573. The House has at times adopted resolutions requesting or advising the Executive as to matters within the sphere of his duties.—**On April 9, 1818,[2] the House, on the report of a select committee appointed to investigate the circumstances of the imprisonment of an American citizen by Spain, agreed to this resolution:

*Resolved,* That this House is satisfied that the imprisonment of Richard W. Meade is an act of cruel and unjustifiable oppression; that it is the right and duty of the Government of the United States to afford to Mr. Meade its aid and protection; and that this House will support and maintain such measures as the President may hereafter adopt to obtain the release of the said R. W. Meade from confinement, should such measures be proper and necessary.

**1574.** On February 22, 1823,[3] the House agreed to this order:

*Ordered,* That * * * the petition of Jacob and Henry Schieffelin, of New York, * * * be referred to the President of the United States; and that he be requested to afford to the petitioners, in the prosecution of their claim on the British Government, such assistance as the nature of the case may require.

**1575.** On July 5, 1832,[4] the House considered a joint resolution from the Senate providing for a joint committee to wait on the President and request him to appoint a public fast day, in order that by humiliation and prayer the Asiatic cholera might be everted. This resolution was debated at length, especially as the President had informally expressed some sentiments unfavorable to Executive action in the matter. Precedents of similar requests in 1812 and 1814 were cited. Finally, after consideration and reference to a committee, the resolution was, on July 14, laid on the table.

**1576.** On July 27, 1866,[5] the House agreed to resolutions declaring it to be the duty of the Executive Departments to proceed to the trial of Jefferson Davis.

**1577.** On July 8, 1897,[6] the Senate considered a simple resolution directing the Secretary of State to collect through the diplomatic representatives abroad information as to postal telegraph systems, etc. On July 12[7] the resolution was agreed to; and thereafter the Secretary of State obeyed the directions.

**1578.** On April 29, 1872,[8] the House by resolution advised the Executive as to the course to be pursued in the case of John Emilio Houard, alleged to be a citizen of the United States, imprisoned in Cuba.

---

[1] Second session Fifty-third Congress, Journal, p. 484; Record, p. 7544.

[2] First session Fifteenth Congress, Journal, p. 442; Annals, pp. 1699–1713.

[3] Second session Seventeenth Congress, Annals, pp. 1077–1087; Journal, p. 249.

[4] First session Twenty-second Congress, Journal, pp. 1020, 1182; Debates, pp. 3859, 3879, 3914.

[5] First session Thirty-ninth Congress, Journal, p. 1185.

[6] First session Fifty-fifth Congress, Record, p. 2452.

[7] Record, p. 2529.

[8] Second session Forty-second Congress, Journal, pp. 755, 756; Globe, p. 2818.

**1579. Instance wherein the House by resolution expressed an opinion as to the course of action which an executive officer should follow.—**On December 13, 1906,[1] the House agreed to this resolution:

*Resolved,* That it is the sense of the House of Representatives that hereafter, in printing reports, documents, or other publications authorized by law, ordered by Congress or either branch thereof, or emanating from the Executive Departments, their bureaus or branches, and independent offices of the Government, the Government Printing Office should observe and adhere to the standard of orthography prescribed in generally accepted dictionaries of the English language.

**1580. An opinion of the Attorney-General that neither House may by resolution give a construction to an existing law which would be of binding effect on an executive officer.—**On August 23, 1854,[2] Caleb Cushing, Attorney-General of the United States, submitted to the Secretary of the Interior, in relation to the claim of Isaac Bowman, an opinion. The opinion states that—

On the 20th of February, 1854, the Senate passed the following resolution, namely:

"*Resolved,* That the claim of Isaac Bowman, legal representative of Isaac Bowman, deceased, for half-pay due his father under the act of the general assembly of Virginia of May, 1779, be referred to the Secretary of the Interior for liquidation under the act of Congress of July 5, 1932, and that the Committee on Pensions be discharged from the further consideration of the case."

And on the 1st of July, 1854, the House adopted a resolution, reported by the Committee on Revolutionary Claims, in the following words, namely:

"*Resolved,* That the petition in the case of Isaac Bowman be referred to the Secretary of the Interior for liquidation under the act of July 5, 1832, and that this committee be discharged from its further consideration."

Whereupon the question of law submitted to me for consideration is, whether, on the supposition that the Secretary on a reexamination of the case maintains his original opinion and believes the claim not to be allowable under the provisions of the said act on the evidence presented, is he bound to consider these two resolutions, or either of them, as mandatory on him, and as compelling him to liquidate the claim against his judgment of the right of the case?

It is impossible for me to conceive of any other than a negative answer to this question.

When an act of Congress commands a head of Department to do a particular thing, and the thing to be done is ministerial in its nature—as to pay so much money to A. B.—then the head of Department is bound in law to do the thing, and may be compelled by mandamus of the circuit court. (Kendal *v.* United States, 12 Peters, 610.)

The same doctrine applies to a joint resolution, properly enacted, which differs from an act of Congress only in form.

But if the tenor of the law be not mandatory of a mere ministerial act to be done, then the head of Department acts according to his discretion, in subordination always to his constitutional and legal relation to the President of the United States. (Decatur *v.* Paulding, 14 Peters, 497.)

The reason of this must be apparent to the least reflection.

The act of a head of Department is, in effect, an act of the President. Now, the Constitution provides for coordinate powers acting in different and respective spheres of cooperation. The executive power is vested in the President whilst all legislative powers are vested in Congress. It is for Congress to pass laws, but it can not pass any law which, in effect, coerces the discretion of the President, except with his approbation, unless by concurrent vote of two-thirds of both Houses, upon his previous refusal to sign a bill. And the Constitution expressly provides that orders and resolutions, and other votes of the two Houses, in order to have the effect of law, shall, in like manner, be presented to the President for his approval, and if not approved by him shall become law only by subsequent concurrence in vote of two-thirds of the Senate and House of Representatives.

---

[1] Second session Fifty-ninth Congress, Record, pp. 369, 370.

[2] Vol. 6, Opinions of the Attorneys-General, p. 680.

If, then, the President approves a law which imperatively commands a thing to be done, ministerially, by a head of Department, his approbation of the law, or its passage after a veto, gives constitutionality to what would otherwise be the usurpation of executive power on the part of Congress.

In a word, the authority of each head of Department is a parcel of the executive power of the President. To coerce the head of Department is to coerce the President. This can be accomplished in no other way than by a law, constitutional in its nature, enacted in accordance with the forms of the Constitution.

Of course, no separate resolution of either House can coerce a head of Department unless in some particular in which a law, duly enacted, has subjected him to the direct action of each; and in such case it is to be intended that, by approving the law, the President has consented to the exercise of such coerciveness on the part of either House.

For instance, the act of September 2, 1789, (1 Stat. L., p. 66), renders it the duty of the Secretary of the Treasury to "make report and give information to either branch of the legislature, in person or writing, as he may be required, respecting all matters referred to him by the Senate or House of Representatives, or (and) which shall appertain to his office." And in practice the same duty is imposed on other heads of Department. But, except where otherwise provided by law, every such communication of a head of Department to either House must be understood to be made with the assent express or implied, of the President. Suppose, for example, the House of Representatives should, by vote, assume to require the Secretary of State to communicate to it a copy of a draft of a treaty under negotiation, or his instructions to some diplomatic agent of the Government; still, it is clear, he could not do this except with permission of the President.

On the same principle, and with stronger reason, it is not in the power of a separate resolution of either House to command or to control the executive action of a head of Department—that is, of the President—in the construction and execution of a general law of the land.

It does not help the case, constitutionally speaking, if there should happen to be a resolution of the same substance, or even of the same identical words, passed by each House; for such separate resolutions have not the form nor the responsibilities of enactment, according to the rules of the two Houses, nor do they possess the conditions of a law according to the Constitution.

Therefore, even if the two resolutions in Bowman's case were mandatory in their terms, which they are not, yet they have not the constitutional requisites of any authority, either mandatory or directory, over the action of the Secretary.

Indeed, it seems little better than a mere truism to say that a separate resolution of either House of Congress is not a law.

Whenever a general act is passed, like that for the payment of half-pay to certain officers of the Virginia line, that is to say, a law embracing a defined class of cases, and assigning to a head of Department the executive duty of ascertaining the particular cases of the class, and applying the law to them, in such case the terms of the law constitute a rule for his government. It is incumbent on him, as on every other citizen, to obey the law. To obey it, in him, is to execute it according to its provisions, as conscientiously construed by him in his best judgment, or if he doubt, then as he may be advised by the Attorney-General. To do otherwise—that is, on the one hand to refuse to apply the law to cases to which it is justly applicable, or on the other to apply it to cases to which it is not justly applicable, is to disobey, not to obey—to violate, not to execute—the constitutional will of the legislative department of the Government.

It may happen that a claim shall rise which, according to the plain terms of the law, is not within its provisions, or which is not proved by the evidence which the law prescribes, and so is rejected by the Secretary. In such a case the claimant can apply to Congress, and that body may pass a private law for the relief of the party, dispensing with its own conditions of applicability, or its prescribed rules of evidence. But no such dispensing power resides in the Secretary.

Or the Secretary, in the exercise of his lawful discretion in construing such a general act of Congress, may adopt a construction of it which is deemed erroneous by the two Houses of Congress. In that case they will pass a declaratory act, which, being approved by the President or repassed after his refusal to approve it, constitutes a new law for the government of the Secretary.

But the Constitution has not given to either branch of the Legislature the power, by separate resolution of its own, to construe, judicially, a general law or to apply it executively to a given case. And its resolutions have obligatory force only so far as regards itself or things dependent on its own separate constitutional power.

Any other view of the subject would result in the absurd conclusion that a separate resolution of either House could repeal or modify an act of Congress. For, as the Supreme Court well say, in one of the cases before cited, a head of Department "must exercise his judgment in expounding the acts and resolutions of Congress under which he is from time to time required to act." That exposition of the law, conscientiously made by him, and with the aid of the law officer of the Government, is the law of the case. If the question be one of judicial resort, the exposition of the statute by the Supreme Court will constitute the law. But if it be a mere executive question, then the exposition of the particular Secretary, or of the Attorney-General, is just as much the law, and, as such, binding on the conscience of the head of Department as any other part of the statute, which may happen to be of unquestionable import, and so not to require exposition. In fine, it becomes the law—that is, the authorized construction of the legal intendment of the act of Congress. That ascertained legal intendment of a statute can not be authoritatively changed by a separate resolution of either or of both Houses, but only by a new act of Congress.

The conclusive test of the whole doctrine is to inquire whether the Supreme Court of the United States would adjudge that the report of a committee, or a resolution of either House, has the effect of repealing, modifying, or conclusively construing an act of Congress. It is perfectly clear that they would not. (Albridge *v.* Williams, 3 Howard, 9.)

It does not appear, in the case of Bowman, why the obvious and usual course of proposing a law for his relief was not followed, provided the two Houses of Congress would, on full consideration of his claim, in the established legislative forms, have sanctioned the view of it, which is implied by the passage of these resolutions in connection with the reports of the Committees on Revolutionary Clams and on Pensions in the case.

The Attorney-General then goes on to refer to an opinion of the Attorney-General of March 27, 1849, in the case of Churchill Gibbs, wherein the Attorney-General gives the opinion that a proper deference to the legislative branch of the Government demanded that the executive department should heed a resolution wherein the Congress had given a construction of the existing law. Mr. Cushing then proceeded with his argument in relation to this question, and says:

Most assuredly it can not be sound constitutional doctrine that a declaratory resolution of either House, construing a general law, is obligatory against the judgment of the Executive, and that it is the duty of the Executive to yield its judgment in all such cases to the mere opinion of the Senate or of the House of Representatives. Such an assumption is contrary, as I have shown, to the plain letter and clear spirit of the Constitution.

If it be said that, although a head of department be not absolutely bound in law to yield up his own judgment, yet that, in the language of the opinion under consideration, it is his duty so to do, out of deference to both or either of the Houses, or to prevent the public reproach of disagreement between the legislative and executive branches of the Government, or for any other possible consideration of mere expediency, I reply that the whole weight of the argument of expediency is the other way; for the adoption of such a rule would inevitably tend to the disorganization of the Government.

In the first place, the President is not bound to yield up his own judgment, even to the most unequivocally expressed opinion of the two Houses, in the form of a bill passed through all the solemnities of constitutional enactment. But if the hypothesis under consideration be maintainable, a separate resolution of either House will constrain the Executive, when a bill, solemnly passed to be enacted, would not. Of course, this idea would afford easy means of striking the veto power and the rights of minorities out of the Constitution, and conferring on a bare majority of the two Houses that legislative omnipotence which it was one of the great objects of the Constitution to guard against and avoid.

According to the letter of the Constitution, resolutions of the two Houses, even a joint resolution, when submitted to the President and disapproved by him, do not acquire the force of law until passed anew by a concurrent vote of two-thirds of each House. On the present hypothesis, the better way would be not to present the resolution to the President at all, and then to call on him to accept it as law, with closed eyes, and, however against law he may know it to be, yet to execute it out of deference to the assumed opinion of Congress.

In the second place, the hypothesis puts an end to all the forms of legislative scrutiny on the part of Congress. A declaratory law, especially if it involve the expenditure of the public treasure, has forms of legislation to go through to insure due consideration. All these time-honored means of securing right legislation will pass into desuetude if the simple acceptance of a resolution, reported by a committee, is to be received as a constitutional enactment, obligatory on all concerned, including the Executive.

In this way, instead of the revenues of the Government being subject only to the disposition of Congress in the form of a law constitutionally enacted, they will be transferred to the control of an accidental majority, expressing its will by a resolution, passed, it may be, out of time, and under circumstances in which a law duly and truly representing the will of Congress could not have passed. And thus, all those checks and guards against the inconsiderate appropriation of the public treasure, so carefully devised by the founders of the Government, will be struck out of the Constitution.

Where is the doctrine to stop? Will a declaratory resolution of one House constitute a law, or must both Houses concur? Will one resolution suffice? Or must there be several successive ones, cumulative one upon the other? And what is to be done if opposing resolutions be passed by the two Houses?

And by what intelligible ground of constitutional distinction is the Executive to obey, out of deference, and against his judgment, a separate resolution of either House on the subject of private claims, and not on any other business of the Government? All general laws are a rule comprehending particulars more or less numerous. The construction of a law is, in part, the consideration of what particulars are included within the rule; and the execution of the law is the application of that rule to the particulars of ascertained inclusion. If, by separate resolution of either House, a pension law or half-pay law may be construed with conclusive legal effect, so may any other law within the whole scope of the legislation of the United States.

Nay, instead of assuming it as a general rule of duty that the Executive is to obey, as of course, out of deference, and against his better judgment, a separate declaratory resolution of either House, we should assume the contrary as a rule; because such a resolution is, on its face, an attempt to coerce the conscience of the Executive by extra-constitutional means; and because, if the resolution were expressive of the true will of Congress, it may be presumed that it would have been passed into a law according to the Constitution. I can not readily conceive of any innovation so dangerous to good legislation, and so well calculated to defeat the will of Congress itself, as the setting up of a hasty vote or order of either House accepting the report of a committee, and adopted out of time perhaps, to have the force of law. Wherefore, it is most respectfully urged that, in the interest of the legislative department of the Government, not less than that of the executive, the doctrine supposed is wholly inadmissible, even regarded in the light of expediency.

But, after all, is not our first duty that of humble submission to the Constitution? Of what avail are arguments of expediency against the positive injunctions of the Constitution? How can the consideration of "deference" to any human power, or of possible liability to "reproach," justify, in a head of department, the deliberate infringement of the Constitution? There is but one safe guide for any of us, and that is the Constitution, and the laws under it duly enacted by Congress.

A mere vote of either or of both Houses of Congress, declaring its opinion of the proper construction of a general law, has, be it repeated, in itself, no constitutional force or obligation as law. It is opinion merely, and to be dealt with as such, receiving more or less of deference, like other mere opinions, according to the circumstances.

**1581. In cases where its investigations have suggested the culpability of executive officers, the House has by resolution submitted advice or request to the Executive.—**On March 27, 1867,[1] Mr. Calvin T. Hulburd, of New York, from the Committee on Public Expenditures, reported the following:

Whereas Congress having determined to adjourn, there is not sufficient time prior thereto for the Committee on Public Expenditures to conclude its investigation of the administration of the New York custom-house by Henry A. Smythe, in the manner indicated by the House, although the committee having given Mr. Smythe two hearings, he has expressed himself content therewith, unless the committee desires to prosecute the investigation further; and whereas in the opinion of the committee there is

[1] First session Fortieth Congress, Journal, p. 126; Globe, pp. 255, 282, 394.

abundant affirmative testimony in the possession of the House of Henry A. Smythe's unfitness to hold the office of collector; therefore

*Resolved,* That it is the sense of this House that Henry A. Smythe should be removed from the office of collector of the port of New York, and that a copy of this resolution and the testimony be transmitted to the President of the United States.

When this course of action was proposed on March 21, it caused some debate as to the power of the House to proceed in this way. It was urged that the House might impeach, but that the appointment and removal of subordinate officers was an Executive function.

The resolution and preamble were agreed to, yeas 68, nays 38.

**1582.** On March 24,1870,[2] Mr. John A. Logan, of Illinois, from the Committee on Military Affairs, reported the following:

Whereas it is in evidence before the Committee on Military Affairs of this House, as well as admitted by Commander John H. Upshur, of the Navy, that he paid the sum of $1,300 to one M.D. Landon, with a view of having said money used in procuring the appointment of his son to the Naval Academy at Annapolis: Therefore,

*Be it resolved,* That a copy of said evidence be transmitted to the Secretary of the Navy, and that he be directed to convene a court-martial for the purpose of putting said Commander Upshur on trial for conduct unbecoming an officer.

After debate, and on motion of Mr. Logan, the word "requested" was inserted in the place of "directed," as being more appropriate.

Mr. James A. Garfield, of Ohio, then raised the question that it was not becoming for the House to appear as prosecutor in one of the Executive Departments, and therefore moved to amend the resolution so that it should request the convening of a court of inquiry instead of a court-martial. This amendment was disagreed to, yeas 71, nays 109.

The preamble and resolution were then agreed to as amended.

**1583.** On March 24, 1870,[2] Mr. John A. Logan, of Illinois, from the Committee on Military Affairs, reported the following:

Whereas the testimony presented to the House of Representatives on the 16th instant, as taken by the Committee on Military Affairs in the case of R. R. Butler, clearly shows that Gen. A. Schoepf, one of the examiners in the Patent Office, was engaged in lending himself as a medium through which money should pass for corrupt purposes: Therefore,

*Resolved,* That the evidence in said case be placed in the hands of the Secretary of the Interior, and that he be requested at once to remove said Schoepf from the position of examiner of patents, as an improper person to have or hold so responsible a position under the Government.

Mr. Horace Maynard, of Tennessee, proposed an amendment to request the Secretary to institute an inquiry, instead of removing General Schoepf.

The amendment was disagreed to, and the resolution was then agreed to.

**1584.** On January 6, 1873,[3] the House agreed to a resolution requesting the President to cause the employment of two attorneys to prosecute suit against the Crédit Mobilier.

---

[1] Second session Forty-first Congress, Journal, p. 521; Globe, p. 2191.

[2] Second session Forty-first Congress, Journal, p. 523; Globe, p. 2194.

[3] Third session Forty-second Congress, Journal, pp. 125–128; Globe, p. 359.

**1585. In 1842 the House, after discussion, abandoned a proposition to pass on the authority of the President to appoint commissions of investigation without the sanction of law.—**On May 4, 1842,[4] the House proceeded to the consideration of the message from the President of the United States of the 30th of April, ultimo, transmitting reports of the commissioners appointed to examine into the affairs of the New York custom-house. The question recurred on the motion of Mr. Henry A. Wise of Virginia, that the said message, with all the documents which accompany the same, be printed.

Mr. Joseph R. Underwood, of Kentucky, moved to amend the same by adding as follows:

but, in printing the message and accompanying documents, this House does not intend to approve or sanction the institution of this commission, it being the opinion of this House that the President has no rightful authority to appoint and commission officers to investigate abuses, or to procure information for the President to act upon, and to compensate such officers at public expense, without authority expressly given by law.

This amendment was debated on May 5 and May 9, and again on June 8, the constitutional aspects of the question being considered. On the latter date, by a division of the question, a vote was taken first on agreeing to this portion of the proposed amendment:

but, in printing the message and accompanying documents, the House does not intend to approve or sanction the institution of this commission.

This portion was agreed to, yeas 86, nays 83.

Thereupon Mr. John Quincy Adams, of Massachusetts, saying that it was time to get rid of the question, since the House had undertaken to decide on the constitutional powers of the Executive, moved that the whole subject be laid on the table.

This motion was agreed to, yeas 96, nays 76.

**1586. The House has decided that a Vice-President succeeding to the Presidency should be called "the President" without qualification.—**On May 31, 1841,[2] at the organization of the House, Mr. Henry A. Wise, of Virginia, offered the customary resolution authorizing the appointment of a committee to join a similar committee on the part of the Senate "to wait on the President of the United States, and inform him that quorums of the two Houses have assembled," etc.

Mr. John McKeon, of New York, moved to amend by inserting before the word "President" the words "Vice-President, now exercising the duties of."

After a discussion of the constitutional provisions relating to the death of a President, and the duties of the Vice-President, the proposed amendment was decided in the negative without division, and the resolution as originally presented was agreed to.[3]

---

[1] Second session Twenty-seventh Congress, Journal, pp. 784, 796, 930–932; Globe, pp. 476–478, 481, 482, 600.

[2] First session Twenty-sixth Congress, Journal, p. 19; Globe, pp. 3, 4.

[3] Vice-President Tyler had succeeded President Harrison, who had died before the assembling of this Congress, which had been called together by his proclamation. This was the first time that a Vice-President had succeeded to the office.

**1587. The proposition to have the heads of the Executive Departments occupy seats on the Floor and participate in proceedings.—**On April 6, 1864, Mr. George H. Pendleton, of Ohio, from a select committee[1] submitted a report[2] on the bill (H. R. 214) to provide that the heads of the Executive Departments might occupy seats on the floor of the House of Representatives.[3] The committee entertained no doubt of the power of Congress to pass the bill. Members of the Cabinet would not become Members of the House any more than the contestant for a seat, who was sometimes admitted to argue in his own behalf, or the delegate from a Territory, who was admitted to debate, but not to vote, by virtue of a statute. The law of 1787, organizing the Treasury Department, provided that the Secretary of the Treasury—

> shall make report and give information to either branch of the legislature, either in person or in writing (as he may be required), respecting all matters which may be referred to him by the Senate or House of Representatives, or which shall appertain to his office.

The report cites the fact that on July 22, 1789, the Secretary of Foreign Affairs, Mr. Jefferson, attended agreeably to order, and made the necessary explanations.[4] On August 22, 1789, the President of the United States came into the Senate chamber, attended by General Knox, Secretary of War, and laid before the Senate a statement of facts.[5] Other instances in the first Congress are cited by the committee.

The committee proposed certain amendments to the rules to allow for carrying out the provisions of the bill, which provided that Cabinet officers might have seats on the floor with right to participate in debate relating to their Departments, and that they should attend at certain stated times to give replies to questions.

The committee agreed that Congress would, by such an arrangement, be better informed as to measures of legislation, and that the influence of the Executive Departments upon legislation would be open and authorized instead of secret and unauthorized. The example of other nations and the authority of Justice Story's Commentaries were cited in support of this view.[6]

The bill was not acted on, but was debated at considerable length.[7]

**1588. Presents to the President or other officers were formerly placed at the disposal of Congress.—**On January 6, 1834,[8] President Jackson, by message to the House of Representatives, communicated an extract of a letter from R. J. Leib, consul of the United States at Tangier, by which it appeared that Mr. Leib had received a present of a lion and two horses from the Emperor of Morocco, which he held as belonging to the United States. In this connection also the Presi-

---

[1] Mr. Pendleton's associates, on this committee were Messrs. Thaddeus Stevens, of Pennsylvania; Justin S. Morrill, of Vermont; Robert Mallory, of Kentucky; John A. Kasson, of Iowa; James G. Blaine, of Maine, and John Ganson, of New York.

[2] First session Thirty-eighth Congress, House Report No. 43.

[3] For text of this bill, see p. 8 of Report.

[4] Annals, First Congress, vol. 1, p. 51.

[5] Annals, First Congress, vol. 1, p. 66.

[6] Second session Thirty-eighth Congress, Journal, pp. 149, 152, 177; Globe, pp. 419–424, 437–448.

[7] It appears from the record of debates (Annals, first session Fifth Congress, p. 458) that the Secretary of State was present at the secret session of the House when the message relating to Senator William Blount was considered, and that he gave an opinion to the House relating to the pending question.

[8] First session Twenty-third Congress, Journal, pp. 165, 373; Debates, p. 2317.

dent called attention to the fact that the number of articles presented to United States officials and deposited in the Department of State had become a source of inconvenience.

The message was referred to the Committee on Foreign Affairs, and on March 4 that committee made a report [1] and was discharged from further consideration of the subject.

The subject was revived at the next session, and on December 18, 1834,[2] the Committee on Foreign Affairs made a report accompanying a joint resolution (H. Res. No. 13), which became a law.

**1589.** On January 19, 1830,[3] President Andrew Jackson transmitted a message directed to both the House and Senate, which contained this paragraph:

> The accompanying gold medal, commemorative of the delivery of the Liberator President of the Republic of Colombia from the daggers of assassins, on the night of the 25th of September last, has been offered for my acceptance by that Government. The respect which I entertain, as well for the character of the Liberator President as for the people and Government over which he presides, renders this mark of their regard most gratifying to my feelings; but I am prevented from complying with their wishes by the provision of our Constitution forbidding the acceptance of presents from a foreign state by officers of the United States; and it is, therefore, placed at the disposal of Congress.

The message was referred to the Committee on Foreign Affairs, and on February 9 [4] they reported this resolution, which was agreed to by the House:

> *Resolved,* That the medal recently offered to the acceptance of the President of the United States by the President Liberator of Colombia be deposited by the clerk in the Department of State.[5]

**1590. A formal protest by the President against certain proceedings of the House was declared a breach of privilege.—**On August 30, 1842 [6] a motion was made by Mr. John M. Botts, of Virginia, that the rules in relation to the order of business be suspended, and that the written communication from the President of the United States, received this day, be now read. This motion passed in the affirmative, two-thirds voting therefor, and the communication from the President of the United States was then read.[7] Thereupon Mr. Botts moved

---

[1] Report No. 302, first session Twenty-third Congress. The committee reviewed generally the subjects of presents to officials.

[2] Second session Twenty-third Congress, Journal, pp. 107, 387; Debates, pp. 762, 830.

[3] First session Twenty-first Congress, Journal, p. 187.

[4] Journal, p. 274.

[5] In their report the committee say that this action is taken in accordance with the precedents in similar cases. Report No. 170, first session Twenty-first Congress. See also House Report No. 107, second session Twenty-first Congress. In the late usage Congress is asked to consent that the officer to whom the gift is sent may accept it; and acts by joint resolution.

[6] Second session Twenty-seventh Congress, Journal, p. 1459; Globe, pp. 894, 973, 974.

[7] This message may be found on page 190, Vol. IV of Richardson's Messages and Papers. These resolutions, except No. 4 (which was not agreed to), were copied from the resolutions adopted by the Senate in 1834. That year that body had adopted certain resolutions condemning the course of President Jackson in the removal of the deposits from the bank of the United States to the State banks. Against this President Jackson sent a protest.

August 9 President Tyler had returned to the House with his objections House bill No. 472, "to provide revenue from imports," etc. This was referred to a special committee, of which Mr. John Quincy Adams was chairman. This committee made a report severely criticizing the message. It was against this report that the President sent his protest.

the following resolutions, which were all agreed to except the fourth, which was disagreed to:

1. *Resolved,* That while this House is, and ever will be, ready to receive from the President all such messages and communications as the Constitution and laws and the usual course of public business authorize him to transmit to it, yet it can not recognize any right in him to make a formal protest against votes and proceedings of this House, declaring such votes and proceedings to be illegal and unconstitutional, and requesting the House to enter such protest on its Journal.

2. *Resolved,* That the aforesaid protest is a breach of the privileges of this House, and that it be not entered on the Journal.

3. *Resolved,* That the President of the United States has no right to send a protest to this House any of its proceedings.

4. *Resolved,* That the Clerk of this House be directed to return the message and protest to its author.

**1591. President Jackson. having sent to the Senate a protest against its censure of his acts, the Senate declared the protest a breach of privilege and refused it entry on the Journal.—**On April 17, 1834,[3] President Jackson sent to the Senate his protest against the resolution which the Senate, on March 28, had agreed to, in these words:

*Resolved,* That the President, in the late executive proceedings in relation to the public revenue, has assumed upon himself authority and power not conferred by the Constitution and laws, but in derogation of both.

This protest was debated until May 7,[2] when these resolutions were agreed to, yeas 27, nays 16.

*Resolved,* That the protest communicated to the Senate on the 17th instant, by the President of the United States, asserts powers as belonging to the President, which are inconsistent with the just authority of the two Houses of Congress, and inconsistent with the Constitution of the United States.

*Resolved,* That while the Senate is, and ever will be, ready to receive from the President all such messages and communications as the Constitution and laws and the usual course of business authorize him to transmit to it, yet it can not recognize any right in him to make a formal protest against votes and proceedings of the Senate, declaring such votes and proceeding to be illegal and unconstitutional, and requesting the Senate to enter such protest on its journals.

*Resolved,* That the aforesaid protest is a breach of the privileges of the Senate, and that it be not entered on the Journal.

*Resolved,* That that President of the United States has no right to send a protest to the Senate against any of its proceedings.

**1592. A protest by the minister of a foreign power against proposed action of the House was held to be an invasion of privilege.—**On August 5, 1841,[3] Mr. John Quincy Adams, of Massachusetts, called the attention of the House to a communication from the minister of France to the Secretary of the Treasury, which accompanied the message of the President of the United States of the preceding day, and observed that he considered the fact of a foreign functionary addressing an official communication to any officer of this Government, except the head of the Department of State, a breach of official decorum; and the further fact of the remonstrance of such functionary against the passage of any measure pending

[1] First session Twenty-third Congress, Debates, p. 1317.

[2] Debates, p. 1712.

[3] First session Twenty-seventh Congress, Journal, p. 320; Globe, p. 298;.

before this House as a breach of the privileges of this House. He therefore moved, as a matter of privilege, the following resolution:

*Resolved,* That the President of the United States be requested to inform this House by what authority the minister from France addressed a communication to the Secretary of the Treasury, remonstrating against the passage of a bill now pending before Congress.

Mr. Hopkins L. Turney, of Tennessee, objected to the reception of the resolution as a question of privilege, contending that the privileges of the House were not involved in the subject-matter of the correspondence referred to in the resolution.

The Speaker[1] decided against the objection taken by Mr. Turney, and that the rights, privileges, and dignity of the House were involved in the subject-matter touched upon in the resolution.

Mr. Turney having appealed, both the appeal and the resolution were laid on the table.

**1593. Congress, by concurrent resolution, directs executive officers, to make investigations in river and harbor matters.—**On February 1, 1906,[2] the following resolution was received from the Senate by message, and was on the same day referred to the Committee on Rivers and Harbors:

*Resolved by the Senate (the House of Representatives concurring),* That the Secretary of War be, and he is hereby, authorized and directed to inquire into the advisability of establishing a harbor of refuge by the construction of a breakwater on the island of Nantucket, Massachusetts, at or near the westerly side of Great Point, for the purpose of providing better protection for commerce and the lessening of the perils of navigation to coastwise traffic in the adjacent waters.

On February 2,[3] also, the following resolution was agreed to in the Senate and transmitted to the House:

*Resolved by the Senate (the House of Representatives concurring),* That the Secretary of War be, and he is hereby, authorized and directed to cause an examination and survey to be made with a view to providing a harbor suitable for the largest boats at a point opposite or near the following-described land: Sections Nos. 33 and 34, township 37, range 8 west, Lake County, Ind.

The act of March 3, 1905,[4] provides:

That after the regular or formal reports made as required by law on any examination, survey, project, or work under way or proposed, are submitted no supplemental or additional report or estimate shall be made unless ordered by a concurrent resolution of Congress.

**1594. A law confers on either House of Congress the power to direct by simple resolution that the Secretary of Commerce and Labor make certain investigations.—**The act of February 14, 1903.[5] "to establish the Department of Commerce and Labor," provides that the Secretary of Commerce and Labor shall "from time to time make such special investigations and reports as he may be required to do by the President, or by either House of Congress, or which he himself may deem necessary and urgent."

The same act gives the Commissioner of Corporations, an officer under the Secretary of Commerce and Labor, the power to compel testimony and the production of papers.

---

[1] John White, of Kentucky, Speaker.

[2] First session Fifty-ninth Congress, Record, p. 1913.

[3] Record, p. 1977.

[4] 33 Stat. L., p. 1147.

[5] 32 Stat. L., p. 829.

Acting under the provisions of this act—

On March 7, 1904,[1] the House agreed to this resolution:[2]

*Resolved,* That the Secretary of Commerce and Labor be, and he is hereby, requested to investigate the causes of the low prices of beef cattle in the United States since July 1, 1903, and the alleged large margins between the prices of beef cattle and the selling prices of fresh beef, and whether the said conditions have resulted in whole or in part from any contract, combination in the form of trust or otherwise, or conspiracy in restraint of commerce, etc.

**1595. The power of appointment to office belongs to the President, and Congress, by law, may not declare one an officer who is not such in fact.—** By a message dated September 30, 1890,[3] President Benjamin Harrison returned to the House of Representatives, without his approval, the joint resolution (H. J. Res. No. 39) declaring the retirement of Capt. Charles B. Shivers, of the United States Army, legal and valid, and that he is entitled as such officer to his pay. The President says:

It is undoubtedly competent for Congress by an act or joint resolution to authorize the President, by and with the advice of the Senate, to appoint Captain Shivers to be a captain in the Army of the United States and to place him upon the retired list. It is also perfectly competent, by suitable legislation, for Congress to give to this officer the pay of this grade during the interval of time when he was improperly carried upon the Army lists. But the joint resolution, which I herewith return, does not attempt to deal with the case in that way. It undertakes to declare that the retirement of Captain Shivers was legal and valid, and that he always has been and is entitled to his pay as such officer. I do not think this is a competent method of giving the relief intended.

The message states the facts to be that Captain Shivers was summarily dismissed from the Army by order of the President on July 15, 1863. On August 11, 1863, an order was issued revoking this order of dismissal and restoring Captain Shivers to duty as an officer of the Army. On December 30, 1864, Captain Shivers, by proper order, was placed on the retired list of the Army. The Supreme Court (114 U. S., 619) had decided that the President had the authority to so separate an officer from the service; and that having been thus separated he could not be restored except by nomination to the Senate and confirmation thereby. The Attorney-General therefore gave an opinion that Captain Shivers was not an officer on the retired list of the Army.

This message was referred to the Committee on Military Affairs and was not acted on further.

**1596. The House of Representatives having appointed a committee to inquire into the conduct of the President of the United States, and the President having protested, the House insisted on the right so to do.**

**The power of inquiry as related to the power of impeachment.**

**Instance wherein the appointment of the mover of an investigation as chairman of the committee caused debate.**

On March 5, 1860,[4] on motion of Mr. John Covode, of Pennsylvania, and by a

[1] Second session Fifty-eighth Congress, Record, p. 2958.

[2] Without the authority of act of Congress as given, a direction to an executive officer to make an investigation would be made, not by simple resolution of the House, but by joint resolution, which is a law. See instance, 34 Stat. L., p. 823.

[3] First session Fifty-first Congress, Journal, p. 116.

[4] First session Thirty-sixth Congress, Journal, pp. 450, 484; Globe, pp. 997, 998.

vote of 117 yeas to 45 nays, the rules were suspended and the following resolution was agreed to:

*Resolved,* That a committee of five Members be appointed by the Speaker for the purpose of investigating whether the President of the United States, or any other officer of the Government, has, by money, patronage, or other improper means, sought to influence the action of Congress, or any committee thereof, for or against the passage of any law appertaining to the rights of any State or Territory; and also to inquire into and investigate whether any officer or officers of the Government have, by combination or otherwise, prevented and defeated, or attempted to prevent or defeat, the execution of any law or laws now on the statute books; and whether the President has failed or refused to compel the execution of any law thereof, etc.

There was also a further resolution relating to the investigation of the use of money in elections and abuses in certain public offices.

The Speaker appointed as the committee Messrs. Covode, Abraham B. Olin (of New York), Warren Winslow (of North Carolina), Charles R. Train (of Massachusetts), and James C. Robinson (of Illinois).

On March 29, 1860,[1] a message was received from the President of the United State's in which he protested against the resolution, saying:

The House of Representatives possess no power under the Constitution over the first or accusatory portion of the resolution, except as an impeaching body; while over the last, in common with the Senate, their authority as a legislative body is fully and cheerfully admitted.

It is solely in reference to the first or impeaching power that I propose to make a few observations. Except in this single case, the Constitution has invested the House of Representatives with no power, no jurisdiction, no supremacy whatever over the President. In all other respects he is quite as independent of them as they are of him. As a coordinate branch of the Government, he is their equal. Indeed, he is the only direct representative on earth of the people of all and each of the sovereign States. To them, and to them alone, is he responsible while acting within the sphere of his constitutional duty, and not in any manner to the House of Representatives. * * *

The people have not confined the President to the exercise of executive duties. They have also conferred upon him a large measure of legislative discretion. No bill can become a law without his approval, as representing the people of the United States, unless it shall paw after his veto by a majority of two-thirds of both Houses. In his legislative capacity, he might, in common with the Senate and the House, institute an inquiry to ascertain any facts which ought to influence his judgment in approving or vetoing any bill.

This participation in the performance of legislative duties between the coordinate branches of the Government ought to inspire the conduct of all of them, in their relations toward each other, with mutual forbearance and respect. At least each has a right to demand justice from the other. The cause of complaint is, that the constitutional rights and immunities of the executive have been violated in the person of the President.

The President further protested that the resolution involved the preliminary proceedings of impeachment, and contended that, as in the case of Judge Peck[3] and in succeeding impeachments, the accusations should be set forth definitely and specifically, and should be considered by the Committee on the Judiciary, which had always been considered the appropriate committee, according to proper forms. But the House of Representatives, by making John Covode chairman of the select committee had made the accuser the judge. Also the House, by adopting the resolution, had indorsed vague charges against the Executive, without permitting

[1] First session Thirty-sixth Congress. Journal, p. 618; Globe, pp. 1434–1440; House Report No. 394, p. 33.

[2] See section 2364 of Vol. III of this work. James Buchanan was President,

[3] See section 2364 of Vol. III of this work.

inquiry to be made as to specific charges. Thus the President was denied the privileges which the Constitution granted to the humblest citizen. He also contended that the proceeding tended to aggrandize the legislative department at the expense of the executive.

After debate the message was referred to the Committee on the Judiciary. This committee reported [1] on April 9, 1860. This committee consisted of Messrs. John Hickman, of Pennsylvania; John A. Bingham, of Ohio; George S. Houston, of Alabama; Miles Taylor, of Louisiana; Thomas A. B. Nelson, of Tennessee; William Kellogg, of Illinois; John H. Reynolds, of New York; Christopher Robinson, of Rhode Island, and Albert G. Porter, of Indiana.

The report, to which Messrs. Houston and Taylor dissented, recommends the adoption of this resolution:

*Resolved,* That the House dissents from the doctrines of the special message of the President of the United States of March 28, 1860;

That the extent of power contemplated in the adoption of the resolutions of inquiry of March 5, 1860, is necessary to the proper discharge of the constitutional duties devolved upon Congress;

That judicial determinations, the opinions of former Presidents, and uniform usage sanction its exercise; and,

That to abandon it would leave the executive department of the Government without supervision or responsibility, and would be likely to lead to a concentration of power in the hands of the President, dangerous to the rights of a free people.

In support of these resolutions the report of the committee contends:

The President of the 'United States, under the Constitution, possesses neither privilege nor immunity beyond the humblest citizen, and is less favored in this respect than Senators and Representatives in Congress. Article 1, section 6, reads: "They (the Senators and Representatives) shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same." No such exemption is made in behalf of the Executive or any other officer of Government. The conduct of the President is always subject to the constitutional supervision and judgment of Congress; while he, on the contrary, has no such power over either branch of that body. He is left, under the law, without shield or protection of any kind, except such as is borne by all. He is as amenable for all his acts after inauguration as before. He can make no plea which is denied to any other citizen, and is subject to the same scrutiny, trial, and punishment, with the proceedings, hazards, and penalties of impeachment superadded. The President and the citizen stand upon equality of rights. The distinction between them arises from an inequality of duties. Wherever the conduct of the latter is open to inquiry and charge, that of the former is not the less so. The President affirms, with seeming seriousness, in comparing himself with the House of Representatives, that, "as a coordinate branch of the Government, he is their equal." This is denied in emphatic terms. He is "coordinate," but not coequal. He is "coordinate," for he "holds the same rank;" but he is not coequal, for his immunities and powers are less. The Members of the House may claim a, privilege, whether right or wrong, which he can not, and the executive or law executing power must always be inferior to the legislative or law-making power. The latter is omnipotent within the limits of the Constitution; the former is subject not only to the Constitution, but to the determinations of the latter also. To repeat the point: The President is not, in any respect, superior to the citizen, merely because he is bound to discharge more numerous duties; and he is not coequal with that branch of Government which helps to impose and define those duties. The fact that he holds a limited veto over the legislation of Congress can not affect the soundness of the views here briefly presented. His claim to "legislative capacity," in other words, to possess legislative power, will scarcely be conceded in view of Article I, section 1, of the Constitution, declaring that, "All legislative powers herein (therein) granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

[1] House Report No. 394, first session Thirty-sixth Congress.

The committee then go on to discuss the President's assumption that the resolution charged him with the commission of high crimes and misdemeanors. They deny that it was a charge. It was a mere inquiry, as the language of the resolution would show. But even if the charges were, proper for impeachment, the House might proceed in any way it might consider proper, either according to the precedent of the case of Judge Peck, or according to other forms.

The committee drew a distinction between this case and the protest of President Jackson against the Senate resolution of March 28, 1834, wherein the President was censured. The resolutions of the House in this case did not propose censure, but merely an inquiry.

The appointment of the Member moving the resolution as chairman of the committee was in accordance with "a practice in legislation coextensive with our national existence."

The propriety of inquiry into the acts of the Executive had been admitted by Presidents Jackson and Polk, and the

> necessity for the full and unrestricted exercise of the power in question is so overruling as to prevent its surrender: (1) With a view to impeachment; (2) for the purpose of legislation; (3) to protect the privileges of Congress.

The committee replied to the statement that the legislative power would be aggrandized unduly, by pointing out that the fears of the fathers that the Executive would be unduly aggrandized, were more likely to be realized.

On June 8 the resolution of the committee was agreed to,[1] yeas 87, nays 40.[2]

---

[1] Journal, p. 1041; Globe, pp. 2774–2776.

[2] On June 25 a second message of protest was received from the President and was referred to a select committee, Journal, p. 1218.