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**Title:** "Congressional Usurpation," by Ellsworth H. Mish

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== Congressional Usurpation. ==

Ellsworth H. Misk, '09.

The usurpation of power by the Government is occurring to-day in times of peace. So quietly is this change being brought about that men are becoming accustomed to it, and are not moved as they were in Reconstruction days. Congress and its organs have been crying so long and so loud about Executive usurpation that we are prone to forget the real usurper in the pursuit of an imaginary one. This country has never suffered from Executive

usurpation, except possibly in Andrew Jackson's Administration. But it has suffered frequently and seriously from Congressional usurpation.

The Conway Cabal organized by Congress against Washington constitutes the darkest blot on our Revolutionary history. How Congress vested the superintendence of military affairs in a Board of War, how it attempted to force Washington into military movements against his better judgment, how

his enemies in Congress tried to ruin his reputation, and force his retirement from the army, all these have been told by every writer of our Revolutionary History. In Civil War times we find Congress involving the patient Lincoln, endeavoring to dictate his actions, creating a Committee on the Conduct of the War, and committing acts which history has failed to justify. Let us now take a glance at the more recent controversies.

The Constitution makes the President Commander in-

Chief of the Army. In exercising the power thus conferred, the President dismissed for the good of the service a certain body of negro soldiers. Immediately the Senate rose up in anger and began a long investigation to determine whether the dismissal was for the good of the service. The proper remedy had already been taken, namely, an appeal to the courts. The Senate had as little authority to interfere as a town meeting in Maine would have had. But mark you, a step in the advance of Congressional usurpa-

tion.

Again the Constitution explicitly declares that "the President shall take care that the laws be faithfully executed." Only recently the President and his Attorney-General decided that the purchase of the Tennessee Coal Co. by the U. S. Steel Corporation was not a violation of the Anti-Trust Law. The Senate <sup>again</sup> came forward, and demanded of the Attorney-General why he had not prosecuted the Steel Corporation. It would be just as proper for the President to ask the Clerk of the Senate why a certain bill had not been passed. If the Senate desires

information, it may apply to the President himself, not to his subordinate. It has been said that this power has never before been questioned.

Then it is high time it was questioned, if we are to check the progress of Congressional usurpation.

The Constitution also gives to the President "power, by and with the advice and consent of the Senate, to make Treaties". But the Senate no longer confirms treaties. It reconstructs them. It refuses its advice and consent to any treaties in the making



of which it has not been previously consulted. It allows no treaty to pass without modification. So habitual has this become that the treaty-making has been practically transferred from the Executive to the Legislative branch of the Government. The third step is taken in Congressional usurpation.

The right to make judicial and administrative appointments in the Federal Government is another power delegated to the Executive, which is being gradually usurped by Congress. Authority to veto these

appointments was given to the Senate as a safeguard. But how does the appointive power work practically to-day? The Senate has assumed complete control. It has reached the point where it dictates appointments to the President, and then ratifies its own appointees. The constant exercising of Senatorial power of veto upon Executive appointments has become so firmly fixed that it constitutes nothing short of usurpation. ↙

For the fourth time we are brought face to face with

Congressional usurpation in the  
conduct of our naval affairs.  
That Congress should determine  
how large a navy we should  
have is quite proper. But  
when it comes to deciding  
the type of ships to be built,  
the number of guns they  
should carry, and all the  
other technical details of con-  
struction, it was certainly  
not the intention of the found-  
ers of this Government to  
have these things settled by  
a committee of five hun-  
dred miscellaneous  
civilians. But strange to

say this is the exact manner  
in which our naval vessels  
are constructed to-day. No  
other Governments on the  
face of the earth builds bat-  
tleships in such a fashion.  
Ship-building is not a Legis-  
lative function; but Con-  
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Finally we do not doubt  
the Constitutional power of  
Congress to pass regulations  
in regard to the Secret Ser-  
vice; to determine in the  
first place whether the  
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disposal any detective police; to decide what appropriations shall be made for them; and to determine to what department they shall be attached. But if this power is to be exercised as it has been under Mr. Tammey's leadership, it is a practical usurpation by Congress of Executive functions.

The time has now come for an awakening. The American people must be brought face to face with the plain facts. The opposition press has been citing example after example of so-called Executive usurpation.

Six definite specifications have been shown of usurpation by Congress. But mark the vital difference between the two cases. All the functions usurped by Congress have been delegated by the Constitution to the Executive, while not a single instance has been shown where the President has exercised a power delegated by the Constitution to either Congress or the courts. It is not difficult, therefore, to determine the real usurper. Congressional usurpation has advanced to such a stage that it

must be checked. Such powers of absorption and bold aggression cannot go on, if we are to preserve our Democratic form of Government. We, as citizens of this great Republic, we, upon whom rests the honor and integrity of this great nation, we are the ones to act; we, the ones to carefully study the situation, to suggest a solution for the problem, and to at least sanction every swing of the Big Stick, which is for the advancement of this movement. The people of this country are to

be congratulated upon having had in the Presidential Chair a man who has so vigorously and successfully called their attention to this Congressional usurpation, and who had so evidently resolved to hand over to his successor his high office with its Constitutional powers and prerogatives unimpaired by Presidential timidity, indifference or inaction.

FINIS.

Ellsworth H. Mish, '09 ΦΚΣ.

Phi Kappa Sigma House, Carlisle, Pa  
May 17<sup>th</sup>, 1909.



.,Commencement Oration of Ellsworth H. Mish of 1909  
Transcribed by Timothy Flaherty, February 2015  
Edited by Daniel Duchaine, October 2017

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