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= Congressional Usurpation.=

Ellsworth H. Mish, '09.

The insurpation of power by the Government is occuring to-day in times of Leace. So gruetly 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 frome to forget the real usurf er in the Dursuit of an imaginary one. This country has nevid suffered from Executive

isurpation, except fossibly in andrew Jackson's admin istration. But it has suffered frequently and . seriously from Congress. ional usurbation. The Conway Cabal organized by Congress against Wash inglow constitutes the dark est blot on our Revolu-Lionary history. How Congress wested the superinlendence of military affairs in a Board of War, how it attempt ed to force Washington into military provenents against his better judgment, how

his enemies in Congress bried to ruin his regulation, and force his relirement from the army, all these have been told by every writer of our Revolutionary history. In Civil War times the Satient Lincoln, endearoring 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 Lower thus conferred, the President dismissed for the good of the service a certain body of neglo soldiers. Jumediately the Senate rose up in anger and began a long investigation to determine whether The dismissal was for the good of the service. The Grober remedy had already been taken, namely, an af-Seal to the courils. The Senate had as little authority to interfere as a lown meeting in Maine would have had. But mark you, a step in the advance of Congressional usurpa

again the Constitution explicitby Leclares that the President shall take care that the laws be faithfully executed." Only recently the President and his attorney- General decided that the surchase of the Tennessee Coal Co. by The U. S. Steel Corpor alion was not a violation of the anti-Trust Law. The Senate Jeanne forward, and demanded of the atlorney- General why he had not prosecuited the Steel Conforation. It would be just as proper for the President to ask the Clerk of the Senale why a certain bill had not been Jassed. If The Senale desires

information, it may apply to The President himself, notto his subordinate. It has been said that this Lower has new er before been grestioned. 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 " forwer, by and with the advice and consent of The Senate, to make Treaties." Bil the Senale us longer confirms trealies. It reconstructs Thesh. It refuses its advice and consent to any treaties in the making

of which it has not been frevious ously consulted. It allows no treaty to pass without modification. So trabitual has this become that The trealy-making has been Gractically transfered from The Executive to the Legislalive branch of the Government. The Third slep is taken in Congressional usurpation. The right to make judicial and administrative af. Sointments in the Federal Government is another Lower delegated to the Executive, which is being gradually usurped by Congress. anthority to veto these

appointments was given to the Seriale as a safeguard. But how does the appointlive sower work practically to-day? The Senale has assumed complete control. It has reached the Soint where it dictales appointments to the President, and then ralifies its own appointees. The constaril exercising of Senatorial Sower of velo upon Executive as Soilitments has become to Lirnly fixed that it constituted nothing short of usurpation. V I for the fourth time we are brought facelo face with

Congressional usur pation in the couldn't of our naval affairs. That Congress should determine how large a navy we should have is gruite fro per. But when it comes to deciding The type of ships to be built, The sumber of guns they should carry, and all The other lechnical details of construction, it was certainly not the intention of the founders of This Government to have These Things settled by a committee of Live hinhdred miscellaneous civilians, But strange to

say this is the exact manner in which our maval vessels are constructed to-day. Ho other Soverments on the face of the earth builds but tleships in such a fashion. Ship-building is not a Legiolative function, but Congressional usurfation has made it so. Finally we do not doubt The Constitutional Lower of Congress to pass regulations in degard to the Secret Service to Determine in the First Slace whether the President shall have at his

disposal any delective folice; to decide what appropriations shall be made for them; and to deternine to what defartment they shall be attached. But if this Lower is to be exercised as it has been under Inr. Tawneys leadership, it is a Tractreal usur fation by Congress of Executive functions. The lime has now come for an awakening. The american seofle must be brought face to face with The plain facts, the opposition press has been citing example after example of socalled Executive usurpation.

dix definite specifications have been shown of usurpation by Congress. But mark the vital difference between the two cases. all the functions usurp ed by Congress have been delegaled by the Constitution to the Executive, while not a single justance has been shown where The President has exerused a sower delegated by The Constitution to leither Congress or the courts. It is not diff Sicult, Therefore, to determine the real usurper. Congressional usur sation has advanced to such a stage that it

must be checked. Such Jamers of absorption and bold aggression carried go on, if we are to preserve our Democratic form of Dovernment. He, as citizens of This great Republic, we upon whom rests the honor and inlegrily of this great nation, we are the one of to act; we the ones to carefully study the situation, to suggest a solution for the Froblem, and to al least. sauction every swing of The Big Stick Twhich is for the advancement of This movement. The fesple of this country are to

be congrabulated upon hav. ing took in the Presidential Chair a man who has so vigorously and successfully called their attention to This Congressional usur Jalion, and who had so evidently resolved to hand over to his successor his high office with its Constitutional Lowers and prerogatives unimpaired by Besidenlial timidily, indifference or inaction. FINIS. Ellsworth H. Mich, '09 \$KE. Phi Kappa Sigma House, Carlisle, Pa May 17 th, 1909.

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

Congressional Usurpation Ellsworth H. Mish '09

The usurpation of power by the government is occurring today 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 in the pursuit of an imaginary one. This country has never suffered from Executive

usurpation, except possibly in Andrew Jackson's Administration. But if 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 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 again 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 constituted 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 construction, it was certainly not the intention of the founders of this government to have these things settled by a committee of five hundred 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 battleships in such a fashion. Ship-building is not a Legislative function, but Congressional usurpation has made it so.

Finally we do not doubt the Constitutional power of Congress to pass regulations in regard to the Secret Service; to determine in the first place whether the President shall have at his

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. Tawney'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 differences 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.

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