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Chapter XLIX.

PREROGATIVES OF THE HOUSE AS TO FOREIGN RELATIONS.

1. House asserts right to a voice as to foreign relations. Sections 1538–1540.
2. Recognition of new governments. Sections 1541–1547.
3. Conflicts with the Executive as to diplomatic relations. Sections 1548–1556.
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1538. In 1811 the House originated and the Senate agreed to a resolution declaring the attitude of the United States on a question of foreign policy.

Instance wherein two Members; of the House were directed to take a confidential message to the Senate.

On January 5, 1811,[1] a joint resolution was proposed, which, after amendment was on January 8, engrossed, read a third time, and passed in this form:

> Taking into view the present state of the world, the peculiar situation of Spain, and of her American provinces, and the intimate relations of the territory eastward of the River Perdido, adjoining the United States, to their security and tranquility: Therefore,
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> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the United States can not see, with indifference, any part of the Spanish provinces adjoining the said States eastward of the River Perdido pass from the hands of Spain into those of any other foreign power.

A committee of two Members of the House was appointed to carry this resolution to the Senate. Their message was received confidentially in the Senate on January 9, and on January 11 it was passed with an amendment, in which the House concurred.[2]

This resolve was enrolled and signed by the President.[3]

1539. The House has declared its "constitutional right to an authoritative voice in declaring and prescribing the foreign policy of the United States, as well in the recognition of new powers as in other mat-

[1] This occurred in the Eleventh Congress, but the injunction of secrecy not being removed until the next Congress, the record appears in the Journal (supplemental) First session Twelfth Congress, pp. 490–497 (Gales & Seaton ed.).

[2] Annals, Third session Eleventh Congress, pp. 374, 376, 377.

[3] Journal (supplemental) First session Twelfth Congress, p. 520 (Gales.& Seaton ed.). 1006

ters."—On April 4, 1864,[1] the House originated and passed by a vote of yeas 109, nays 0, a joint resolution as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress of the United States are unwilling, by silence, to leave the nations of the world under the impression that they are indifferent spectators of the deplorable events now transpiring in the Republic of Mexico; and they therefore think fit to declare that it does not accord with the policy of the United States to acknowledge a monarchical government erected on the ruins of any republican government in America under the auspices of any European power.

This resolution was in the Senate referred to the Committee on Foreign Relations, and on May 27[2] a motion to discharge the committee failed, yeas 5, nays 23. The Senate, however, sent to the State Department for documents and correspondence relating to affairs in Mexico, and on June 28[3] and 29 considered the propriety of printing them.

On May 23[4] Mr. Henry Winter Davis, of Maryland, presented the following resolution,, which was agreed to by the House:

Whereas the following announcement appeared in the Moniteur, the official journal of the French Government:

"The Emperor's government has received from that of the United States satisfactory explanations as to the sense and bearing of the resolution come to by the House of Representatives at Washington relative to Mexico. It is known, besides, that the Senate has indefinitely postponed the examination of that question, to which, in any case, the executive power would not have given its sanction."

Therefore,

Resolved, That the President be requested to communicate to this House, if not inconsistent with the public interest, any explanations given by the Government of the United States to the Government of France respecting the sense and bearing of the joint resolution relative to Mexico, which passed the House of Representatives unanimously on the 4th of April, 1864.

On May 25[5] President Lincoln transmitted the correspondence.

This correspondence[6] contained a letter from Wm. H. Seward, Secretary of State, to Wm. L. Dayton, minister to France, transmitting a copy of the resolution of the House, with this explanation:

This is a practical and purely executive question, and the decision of its constitutionality belongs not to the House of Representatives, nor even to Congress, but to the President of the United States. * * * While the President receives the declaration of the House of Representatives with the profound respect to which it is entitled, as an exposition of its sentiments upon a grave and important subject, he directs that you inform the Government of France that he does not at present contemplate any departure from the policy which this Government has hitherto pursued in regard to the war which exists between France and Mexico.

The correspondence having been referred, Mr. Davis reported from the Committee on Foreign Affairs on June 27, 1864,[7] the report beginning as follows:

The Committee on Foreign Affairs have examined the correspondence submitted by the President relative to the joint resolution on Mexican affairs with the profound respect to which it is entitled, because of the gravity of its subject and the distinguished source from which it emanated.

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[1] First session Thirty-eighth Congress, Journal, p. 464; Globe, p. 1408.

[2] Globe, pp. 2521, 2522.

[3] Globe, pp. 3339, 3359.

[4] House Journal, p. 689.

[5] House Journal, p. 701.

[6] House Executive Document No. 92, First session Thirty-eighth Congress.

[7] First session Thirty-eighth Congress, House Report No. 129.

They regret that the President should have so widely departed from the usage of constitutional governments as to make a pending resolution of so grave and delicate a character the subject of diplomatic explanations. They regret still more that the President should have thought proper to inform a foreign government of a radical and serious conflict of opinion and jurisdiction between the depositories of the legislative and executive power of the United States.

No expression of deference can make the denial of the right of Congress constitutionally to do what the House did with absolute unanimity, other than derogatory to their dignity.

They learn with surprise that in the opinion of the President the form and term of expressing the judgment of the United States on recognizing a monarchial government imposed on a neighboring republic is a "purely executive question, and the decision of it constitutionally belongs not to the House of Representatives, nor even to Congress, but to the President of the United States."

This assumption is equally novel and inadmissible. No President has ever claimed such an exclusive authority. No Congress can ever permit its expression to pass without dissent.

It is certain that the Constitution nowhere confers such authority on the President.

The precedents of recognition, sufficiently numerous in this revolutionary era, do not countenance this view; and if there be one not inconsistent with it the committee have not found it.

All questions of recognition have heretofore been debated and considered as grave questions of national policy, on which the will of the people should be expressed in Congress assembled, and the President, as the proper medium of foreign intercourse, has executed that will. If he has ever anticipated its expression, we have not found the case.

The declaration and establishment of the Spanish-American colonies first brought the question of the recognition of new governments or nations before the Government of the United States; and the precedents then set have been followed ever since, even by the present Administration.

The correspondence now before us is the first attempt to depart from that usage, and deny the nation a controlling deliberative voice in regulating its foreign policy.

The report then goes on to cite the precedents. First comes the action in the Seventeenth Congress, in 1821 and 1822, led by Mr. Henry Clay, of Kentucky, which resulted in the passage of a bill recognizing the South American governments. President Monroe invited and acquiesced in the participation of Congress in this action.

Again in 1836 the recognition of Texas was preceded by resolutions by the two branches of Congress, and President Jackson, while pointing out that it had not been settled where the power of recognizing new governments lay, expressed the opinion that no issue would arise between the legislative and executive branches, and also that it would seem to be within the spirit of the Constitution and most safe that recognition, when probably leading to war, should be exercised after a previous understanding with the body by whom alone war could be declared.[1] The independence of Texas was recognized by law.

In 1862 the independence of Haiti was recognized by a clause in an appropriation bill.

The report further discusses the attitude of the Administration of John Quincy Adams in relation to the attitude of the United States to the South American republics, and also the action of the Executive and Congress in relation to the Panama mission.

At the conclusion of its report the committee recommended a declaratory resolution.[2] which was not acted on at that time, but on December 15, 1864,[3] Mr.

[1] Message of President Jackson, December 21, 1836, Messages and Papers of the Presidents, Vol. III, p. 267.

[2] First session Thirty-eighth Congress, Journal, p. 908.

[3] Second session Thirty-eighth Congress, Journal, pp. 49, 53–57; Globe, pp. 48, 65.

Davis again reported the resolution from the Committee on Foreign Affairs, in form as follows:

Resolved, That Congress has a constitutional right to an authoritative voice in declaring and prescribing the foreign policy of the United States as well in the recognition of new powers as in other matters; and it is the constitutional duty of the President to respect that policy, not less in diplomatic negotiations than in the use of the national force when authorized by law; and the propriety of any declaration of foreign policy by Congress is sufficiently proved by the vote which pronounces it; and such proposition, while pending and undetermined, is not a fit topic of diplomatic explanation with any foreign power. * * *

Mr. John F. Farnsworth, of Illinois, moved that the resolution lie on the table, and that motion was agreed to, yeas 69, nays 63. Mr. Davis at once asked to be relieved of his position as chairman of the Committee on Foreign Affairs, and on this request a debate arose as to the purport of the resolution. He said that at the last session the House had passed a resolution declaratory of the policy of the Government with reference to the republics of America. The resolution had not passed the Senate. Soon after the House acted the Secretary of State had virtually apologized to the French Government for the action of the House and had impeached the authority of Congress to interfere in the foreign affairs of the Government.

On December 19 Mr. Davis presented the resolution again, and after modifying it by using the words "Executive Departments" instead of "President" the subject was brought to a vote by a motion to lay the resolution on the table. This resolution was disagreed to, yeas 50, nays 73. The first branch of the resolution down to and including the words "authorized by law" was then agreed to, yeas 119, nays 8. The remainder was agreed to, yeas 68, nays 59.

1540. The joint resolution of 1898 declaring the intervention of the United States to remedy conditions existing in the island of Cuba originated in the House.—In April, 1898,[1] the House originated a joint resolution which, after amendment by the Senate, was passed in this form and approved by the President on April 20, 1898: [1]

Whereas the abhorrent conditions which have existed for more than three years in the island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of a United States battle ship, with two hundred and sixty-six of its officers and crew, while on a friendly visit in the harbor of Habana, and can not longer be endured, as has been set forth by the President of the United States in his message to Congress of April 11, 1898, upon which the action of Congress was invited: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, First. That the people of the island of Cuba are, and of right ought to be, free and independent.

Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

Fourth. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination, when that is accomplished to leave the government and control of the island to its people.

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[1] Second session Fifty-fifth Congress, Journal, pp. 451, 452.

[2] 30 Stat. L., P. 738.

1541. The House has usually had a voice in the recognition of the independence of a foreign nation, when such recognition has affected relations with another power.—On April 4, 1820,[1] in Committee of the Whole, House on the state of the Union, Mr. Henry Clay, of Kentucky (the Speaker), submitted this resolution:[2]

Resolved, That it is expedient to provide by law a suitable outfit and salary for such minister or ministers as the President, by and with the advice and consent of the Senate, may send to any of the Governments of South America which have established and are maintaining their independence of Spain.

On May 10[3] the resolution was debated in Committee of the Whole, and agreed to by the House, yeas 80, nays 75.

1542.—On February 9, 1821,[4] during the consideration of the general appropriation bill, Mr. Henry Clay, of Kentucky, offered in the House the following amendment:

For an outfit and one year's salary to such minister as the President, by and with the advice and consent of the Senate, may send to any Government of South America which has established and is maintaining its independency of Spain a sum not exceeding eighteen thousand dollars.

This proposed amendment had been offered in Committee of the Whole on February 6, and after long debate had been decided in the negative, 77 to 73. It was debated again in the House when Mr. Clay offered it to the bill as reported. It was urged that a similar measure the last session had not resulted in any action of the Executive, and that in this case also the money, if appropriated, would lie idly in the Treasury. It was objected also that the amendment was improper as tending to embarrass the Executive. The vote being taken, the amendment was disagreed to, yeas 79, nays 86.

On February 10 Mr. Clay offered in the House this resolution:

Resolved, That the House of Representatives participates with the people of the United States in the deep interest which they feel for the success of the Spanish provinces of South America, which are struggling to establish their liberty and independence; and that it will give its constitutional support to the President of the United States whenever he may deem it expedient to recognize the sovereignty and independence of any of the said provinces.

The propriety of this resolution was debated at length. It was opposed as an improper interference on the part of the House in Executive functions, and the last clause was criticized as conceding to the Executive alone a power which belonged rather to him in conjunction with Congress.

The two clauses of the resolution were divided for the vote, and the first was agreed to, yeas 134, nays 12. The second was agreed to, yeas 87, nays 68. The whole resolution was then agreed to.

Mr. Clay and Mr. Allen were appointed a committee to present the resolution to the President.

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[1] First session Sixteenth Congress, Annals, p. 1781.

[2] In these earlier days matters of legislation were often originated in Committee of the Whole House on the state of the Union. Such is not the modern usage.

[3] Annals, pp. 2223–2229; Journal, p. 513 (Gales & Seaton ed.).

[4] Second session Sixteenth Congress, Journal, pp. 210, 213–215 (Gales & Seaton ed.); Annals, pp. 1042–1055, 1071–1077, 1081–1092.

On February 19 Mr. Clay reported "that the committee had, according to order, presented the resolution to the President; that the President assured the committee that, in common with the people of the United States and the House of Representatives, he felt great interest in the success of the provinces of Spanish America which are struggling to establish their freedom and independence; and that he would take the resolution into deliberate consideration, with the most perfect respect for the distinguished body from which it had emanated."

1543. On March 28, 1822,[1] the House, with 1 negative vote, agreed to the following resolutions:

Resolved, That the House of Representatives concur in the opinion expressed by the President, in his message of the 8th of March, 1822, that the American provinces of Spain, which have declared their independence, and are in the enjoyment of it, ought to be recognized by the United States as independent nations.

Resolved, That the Committee on Ways and Means be instructed to report a bill appropriating a sum, not exceeding $100,000, to enable the President of the United States to give due effect to such recognition.

1544. On July 4, 1836,[2] the Committee on Foreign Affairs reported the following resolutions:

Resolved, That the independence of Texas ought to be acknowledged by the United States whenever satisfactory information shall be received that it has in successful operation a civil government capable of performing the duties and fulfilling the obligations of an independent power.

Resolved, That the House of Representatives perceive with satisfaction that the President of the United States has adopted measures to ascertain the political, military, and civil condition of Texas.

The resolutions were agreed to by the House, the former, yeas 128, nays 20; the latter, yeas 113, nays 22.

1545. Arguments in the Senate that the power of recognizing foreign governments is vested in the President.—On December 18, 1903,[3] in the Senate, Mr. John T. Morgan, of Alabama, proposed the following resolutions, which were a subject of debate rather than action in the Senate:

Resolved, That neither the President, nor the President and the Senate as the treaty-making power of the United States, has the lawful power to wage or declare war against any foreign power without the consent of Congress, when such country is at peace with the United States, and when its diplomatic relations with the United States are unbroken, and when its diplomatic representatives are recognized by the President as the representatives of a friendly power. And the consent of the Senate, as a part of the treaty-making power, to a war waged by the President against such a nation, under such circumstances, can not confer upon him such lawful authority under the Constitution of the United States, or under the laws of nations, or under the neutrality law of the United States.

2. That a state of war exists between Colombia as an organization in the Colombian Department of Panama that claims to have accomplished the secession of Panama from Colombia and to have established its independence and sovereignty through the recognition of the President of the United States and of some European and Asiatic states; and that claims also to have established a republic under the flag and the name and title of the Republic of Panama. And Colombia refuses to recognize the validity of the act of secession and the independence or the sovereignty of any government so organized on the Isthmus of Panarna, and is engaged in military and naval operations to assert and enforce her claim of the supreme right of government in and over the territory described in her laws and constitution as the Department of Panama.

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[1] First session Seventeenth Congress, Journal, p. 407; Annals, p. 1382.

[2] First session Twenty-fourth Congress, Journal, pp. 1218–1220; Debates, p. 4621.

[3] Second session Fifty-eighth Congress, Record, p. 361.

3. That, if Colombia is not prevented by some powerful foreign nation, she is manifestly able to maintain her present effort to repress the said secession organization and to restore her sovereignty over said Department of Panama. And the President of the United States having entered into treaty relations with the persons who claim to have seceded from Colombia and assert the powers of supreme government in and over the territory included in such Department of Panama, and having made agreements with the secessionists relating to the right and privilege of constructing and owning in perpetuity a ship canal across the Isthmus of Panama, all based on the following stipulation, namely:

"The United States guarantees and will maintain the independence of the Republic of Panama."

Said stipulation is in effect a declaration of war with Colombia, and is not within the limits of any power conferred upon the President by act of Congress or the Constitution, or by the laws of nations.

4. That the President has no lawful right or power, without the consent of Congress, and under the conditions that exist in Panama, to use the military and naval forces of the United States to prevent Colombia from enforcing her claim to the proper exercise of her sovereignty and to execute her laws in the Department of Panama by any form of coercion that is consistent with the laws of nations and is not in conflict with any right of the United States.

5. That the Senate repeats its resolution of 1889, in the following words:

"Resolved, etc., That the Government of the United States will look with serious concern and disapproval upon any connection of any European government with the construction or control of any ship canal across the Isthmus of Darien or across Central America, and must regard any such connection or control as injurious to the just rights and interests of the United States and as a menace to their welfare.

"SEC. 2. That the President be, and he is hereby, requested to communicate this expression of the views of the Government of the United States to the governments of the countries of Europe."

6. That the United States, in the Revised Statutes, has defined neutrality and the penalties for its violation as follows:

"SEC. 5286. Every person who, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or prepares the means for any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be deemed guilty of high misdemeanor, and shall be fined not exceeding $3,000 and imprisoned not more than three years."

The intervention by the President, with armed forces of the United States, and without the authority of Congress, to prevent the exercise of military or civil authority by Colombia, with whom we are at peace, for the assertion or exercise of her sovereignty and the enforcement of her constitution and laws over the Department of Panama is contrary to said law of neutrality enacted by the Congress of the United States, and is contrary to the laws of nations.

On December 19[1] this resolution was debated by Mr. Edmund W. Pettus, of Alabama.

On January 4, 1904,[2] the resolution was generally debated, among others by Mr. Louis E. McComas, of Maryland, who said:

Mr. President, I emphatically take that position which has so often been taken by this Government from its earliest history. Our Supreme Court looks alone to the Executive for the recognition of all new governments. That is true in the judicature of all the great nations; but in a republic like our tripartite division of power it is the essential thing that the Executive should have the power of recognition; that the courts should follow the Executive, and that Congress at intervals in session should follow the Executive. I answer with great confidence that it is a question for the Executive, and the President properly put it in the conclusion of his admirable message when he said:

"In conclusion, let me repeat that the question actually before this Government is not that of the recognition of Panama as an independent republic. That is already an accomplished fact. The question, and the only question, is whether or not we shall build an isthmian canal."

The question whether or not a de facto government be recognized by our Government and enter into relations with it is a question for the Executive. The question of the recognition of a de facto government likely to endure is an Executive question pure and simple, and is necessarily exclusively

[1] Record, pp. 399–402.

[2] Record, pp. 425–441.

an Executive question, and as much so in our country as in other countries where the same rule also obtains.

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Story and John Randolph Tucker well state the reasons why the President is properly vested with the power to determine whether the representatives of an insurgent power shall be recognized. He can do nothing more than to give official recognition, but that official recognition, in case of a dismemberment by revolution, is binding upon the courts, and the President will have to answer for the wisdom of the decision. Mr. Tucker well states the strong reasons why this power in the President must be exclusive of any like power in the Senate.

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Mr. President, I said that the new Republic of Panama is the child of a revolution, as is our Government and that of every government on this hemisphere to the south of us. It is idle, therefore, to criticise the promptness of our recognition of that Government by the United States. A document I have here, but will not read, contains the long roll of the recognitions by this Government of other governments from its foundation until a recent date. It is a long roll of prompt and speedy recognitions, and it shows what might be expected, that the United States has been swift, wherever it safely could, to recognize in this world a new republic.

Mr. Fish, our Secretary of State, telegraphed our minister, Mr. Washburn, to recognize the French Republic, not waiting until the provinces had been heard from, but as soon as Gambetta and his friends had proclaimed it in the Hotel de Ville in Paris. So earnest were we that, although that Government was disputed and war to crush it followed, bloody and monumental in its cruelty, three telegrams bad gone from our Secretary of State under President Grant, recognizing the Republic when war against the Republic was impending by the Commune in Paris.

Mr. Blaine telegraphed Mr. Adams, now an honored Member of the other House, then our minister at Brazil, on the second day of the existence of the Republic of Brazil, to recognize that Republic.

On January 5,[1] Mr. Henry Cabot Lodge, of Massachusetts, gave an exhaustive review of the precedents of the State Department as to the recognition of new governments:

My proposition now is as to the recognition of a state and government. That I hold to be an Executive function. The precedents are uniform to a most extraordinary degree. The position has been held by every Secretary of State, I think, without exception; it has been held by the Supreme Court in the cases I have read that the Executive recognition is the only recognition admitted by the courts, and I do not think it is possible to go beyond that. If I was guilty of an inconsistency with that doctrine when I voted for the resolution that the Cubans are and of right ought to be free and independent, I plead guilty, and do not think it is a matter of much consequence. I do not think it was a recognition of any state or government. So that I do not precisely see that it touches my argument the least in the world or is in the least inconsistent with the doctrine laid down by all the authorities.

The other method of recognition in the Constitution is by the clause which gives the President the right to nominate ambassadors, ministers, and consuls. Recognition has almost invariably occurred in what Mr. John Quincy Adams pointed out to be the best and most proper way—the reception of a minister from the state seeking independence—but the power of the President to nominate a minister where no such office bad been created by Congress and which, therefore, implies his ability to recognize in that way, has been established beyond a doubt.

I have heard the right of the President to nominate a minister to Panama questioned because no such office had been created by Congress, and I thought it would not be amiss to call the attention of the Senate to the practice in that respect.

On December 22, 1791, President Washington sent a message to the Senate nominating Gouveneur Morris, Thomas Pinckney, and William Short as ministers to Paris, London, and The Hague, respectively. There were no provisions of law for any such officers.

Various motions declaring that there was no need for these missions were debated and were rejected, and the nominations of Morris and Pinckney were confirmed.

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[1] Record, pp. 459–469.

A similar motion was made that there was no occasion for a minister to The Hague, and that was postponed until the following Monday, when it was taken up and defeated, and immediately after the nomination of a minister to The Hague was confirmed.

On the 16th of April, 1794, Washington nominated John Jay as envoy extraordinary to Great Britain. Mr. Pinckney was minister plenipotentiary, but he was not envoy extraordinary, which office did not exist.

President Washington therefore nominated Mr. Jay to an office which had no existence. He was confirmed by the Senate. On the 6th of February, 1799, John Adams nominated Rufus King minister to Russia. No such office existed. He said in the nominating message that it was to open relations with Russia. No action was taken, and the Russian mission was not established until 1809, 1 think, when Mr. John Quincy Adams was sent.

On the 29th day of May, 1813, Mr. Madison nominated a, minister to Sweden to open diplomatic relations with that country. No such office had been created by Congress.

John Adams sent in the names of Ellsworth and Patrick Henry to be commissioners to France in conjunction with William Vans Murray. No such offices existed.

On the 11th of January, 1803, Jefferson nominated Livingston to negotiate with France, and Charles Pinckney to negotiate with Spain in conjunction with Monroe. No such offices existed.

Of course, Mr. President, with the extension of our diplomatic service cases of nominating to offices for which there is no appropriation have practically disappeared, but the cases which I have cited—of Washington, John Adams, and Madison—show that the men most familiar with the Constitution in its early days conceived that they had an entire right to nominate a minister to a country where there was no provision for a mission made by Congress and that the Senate in all instances confirmed those nominations just as if an appropriation had been made, thereby recognizing the right of the President. It is a method by which recognition could be extended. It is a method which, in practice, has not been used at all lately for that purpose, because very naturally the reception of the minister or ambassador of the state seeking recognition has been the obvious way to meet it.

Mr. President, I have tried to lay down the general international law; I have tried to show the general practice of the Government of the United States and the precedents which we have had in regard to it. Having shown, as I believe, that all the authorities hold that recognition is an Executive function which can not be invaded or diminished by the legislative body; that whatever dangers it may carry, the Constitution has placed it in Executive hands, I now come to the exercise of that right in the present case of Panama. The right of the President to recognize being demonstrated by law and precedent, I wish to inquire whether that undoubted right has been properly exercised in this particular case.

1546. In 1825 the House, after long debate, made an unconditional appropriation for the expenses of the ministers to the Panama Congress.

Discussion as to the right of the House to withhold an appropriation to pay the expenses of diplomatic agents appointed by the Executive.

In 1825 the House, after long discussion, declined to make a declaration of policy or give express approval of a diplomatic service instituted by the President.

Discussion of the prerogatives of the House in relation to treaties, commercial and otherwise.

On December 6, 1825,[1] in his annual message to Congress President John Quincy Adams referred to the independence of the South American Republics, and said:

Among the measures which have been suggested to them by the new relations with one another, resulting from the recent changes in their condition, is that of assembling at the Isthmus of Panama a congress, at which each of them shall be represented, to deliberate upon objects important to the welfare of all. The Republics of Colombia, of Mexico, and of Central America have already deputed plenipotentiaries to such a meeting, and they have invited the United States to be also represented there by

[1] First session Nineteenth Congress, Journal, p. 13.

their ministers. The invitation has been accepted, and ministers on the part of the United States will be commissioned to attend at those deliberations and to take part in them so far as may be compatible from that neutrality from which it is neither our intention nor the desire of other American States that we should depart.

The House having adopted a resolution inquiring of the President in regard to the character and objects of the proposed mission, on March 17, 1826,[1] the President transmitted to the House a lengthy explanation, at the conclusion of which he said:

The concurrence of the House to the measure, by the appropriations necessary for carrying it into effect, is alike subject to its free determination and indispensable to the fulfillment of the intention. * * * With this unrestricted exposition of the motives by which I have been governed in this transaction, as well as of the objects to be discussed and of the ends, if possible, to be attained by our representation at the proposed congress, I submit the propriety of an appropriation to the candid consideration and enlightened patriotism of the Legislature.

By a message transmitted the same day the President also submitted the propriety of making an appropriation for carrying into effect the appointment of the mission.

The former message was committed to the Committee on Foreign Affairs and the latter to the Committee on Ways and Means.

On March 25[2] both committees reported. The Committee on Ways and Means reported a bill making an appropriation for the mission. The Committee on Foreign Affairs reported the following resolution:

Resolved, That, in the opinion of this House, it is expedient to appropriate the funds necessary to enable the President of the United States to send ministers to the congress of Panama.

Both reports were committed to Committees of the Whole House on the state of the Union.

The consideration of the resolution reported from the Committee on Foreign Affairs began on April 3,[3] when Mr. Louis McLane, of Delaware, offered an amendment expressing the sense of the House as to what the ministers ought and ought not to do. In the progress of the debate, which lasted until April 20, Mr. McLane, at the suggestion of various Members, modified his amendment until it reached this final form,[4] which it was proposed to add to the resolution reported by the committee:

The House, however, in expressing this opinion do not intend to sanction any departure from the settled policy of this Government; that in extending our commercial relations with foreign nations we should have with them as little political connection as possible, and that we should preserve peace, commerce, and friendship with all nations and form entangling alliances with none. It is therefore the opinion of this House that the Government of the United States ought not to be represented at the congress of Panama except in a diplomatic character, nor ought they to form any alliance, offensive or defensive, or negotiate respecting such an alliance with all or any of the Spanish-American Republics, nor ought they to become parties with them, or either of them, to any joint declaration for the purpose of preventing the interference of any of the European powers with their independence or form of government or to any compact for the purpose of preventing colonization upon the continent of America, but that the people of the United States should be left free to act in any crisis in such a manner as their feelings of friendship toward these Republics and as their own honor and policy may at the time dictate.

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[1] Journal, pp. 359, 360.

[2] Journal, p. 378; Debates, pp. 1764, 1765.

[3] Journal, p. 411; Debates, p 2009.

[4] For the various modifications see Debates, pp. 2009, 2011, 2059, 2304, 2369, 2410, 2453, 2457; also Journal, pp. 451, 452.

The debate, which was protracted until April 21,[1] centered to a large extent around the question of the House's constitutional powers, and related, first, to the propriety of the amendment and, second, to the right of the House to refuse the appropriation.

There was a diversity of opinion as to whether or not the President, by the language of his message, had invited the House to decide as to the propriety of the mission.

Those who argued in favor of the amendment contended that it did not amount to an instruction to diplomatic agents, but was a proper expression of opinion by the House. The House had always exercised the right of expressing its opinion on great questions, either foreign or domestic, and such expressions were never thought to be improper interferences with the Executive.[2] It was recalled that in the early days of the Government, when the President made an annual speech to Congress instead of sending a message, opinions on all questions of moment were expressed in the addresses which the House adopted in reply to the President. Since the abandonment of that practice Congress had spoken generally by the acts recorded on the statute book; but on extraordinary occasions, in accordance with the usages of the British Commons as exemplified recently by the resolution beseeching the King to negotiate for the suppression of the slave trade, the House had considered and often adopted resolutions expressive of opinions.[3] Thus, there were the two resolutions of Mr. Clay relating to the opening of diplomatic relations with the South American republics; Mr. Trimble's resolution relating to the same general subject; the resolution recommending negotiations for the suppression of the slave trade, which brought the President and Senate into collision, causing the President to come to the House for instructions which the Committee on Foreign Affairs did not favor; Mr. Webster's resolution at the last session relating to diplomatic relations with Greece, and the request that the President open negotiations for the cession of Abaco. It was also urged that the power of the House to appropriate for the expenses of the mission carried with it the right to impose conditions.

In opposition to the amendment, it was observed that, while the House had an undoubted right to express its general opinion in regard to questions of foreign policy, in this case it was proposed to decide what should be discussed by particular ministers already appointed. If such instructions might be furnished by the House in this case, they might be furnished in all, thus usurping the prerogative of the Executive.[4] Such action would infringe on the treaty-making power, and was not in harmony with the precedent of 1796. Moreover, independent of the constitutional objection, the House was too numerous a body to interpose in foreign negotiations, which required secrecy and despatch.[5] The assertion that the House might qualify its appropriation with conditions overlooked the fundamental fact that the House had no gifts of its own to give, but was rather the steward over a

[1] Debates, pp. 2009–2098, 2135–2509.

[2] Arguments of Messrs. Jaines Buchamam, of Pennsylvania, John Forsyth, of Georgia, and others, Debates, pp. 2012, 2059, 2170, 2171, 2305.

[3] Arguments of Messrs. John Forsyth, of Georgia, Joseph Hemphill, of Pennsylvania, and others, Debates, pp. 2226, 2306.

[4] Argument of Mr. Daniel 'Webster, of Massachusetts, Debates, pp. 2254–2258.

[5] Argument of Mr. Silas Wood, of New York, Debates, pp. 2049–2051.

trust fund.[1] Furthermore, the House should not give instructions which it could not enforce. If it should be admitted that the President was bound to obey the House, he must also be bound to obey the Senate. And suppose the Senate and House should give incompatible instructions? The House had not been wont to express itself on matters of diplomacy in other than general terms, and it would be noted that the resolutions of Mr. Clay in regard to the South American Republics were much more guarded than that now before the House.[2]

As to the right of the House to refuse the appropriation there were also two opinions. It was maintained on the one side that the House, in matters relating to diplomatic intercourse and treaties, was not held simply to carry out the will of the President and the Senate by consenting to the appropriation of the necessary money. A refusal to appropriate would be justified by the Constitution and the precedents, and might afford a salutary check on the action of the President and the Senate. A treaty requiring the aid of Congress to carry it into effect did not become the supreme law of the land until it had the sanction of Congress. And it was the right and duty of the House, in such a case, to deliberate, and withhold the legislation, if necessary. If the House was merely to register the edicts of other branches of the Government the President and Senate might send ministers to every petty principality and negotiate and ratify treaties of the utmost importance, without the House being able to express its will. The power of the President and the Senate to make laws by means of treaties would be indefinite, and might even involve the country in war. It was true that the Constitution was mandatory as to the duty of Congress to pay the compensation of the President and the courts, but it was not equally mandatory as to the payment of the compensation of ministers.[3] It was pointed out that the precedent of 1796 related to a treaty already made. There was a difference between appropriating to carry out a promise made by a minister and appropriating to send a minister to make a promise. In the present case the question was as to the Diplomatic Corps, and the authorization of a new and important policy. The agents to be sent to Panama were not ministers as known to the law of nations and contemplated by the Constitution. Surely the House might be consulted in a case like this, and might express its opinion by withholding the appropriation.[4] The treaty making and legislative powers were inseparably blended. Besides the examples already given of declarations by the House as to matters belonging to the treaty making power, there was the law of March 3, 1815, proposing to foreign nations a repeal of discriminating impost and tonnage duties. This was a declaration of legislative will on a subject within the treaty-making power.[5] Again, in 1798, Congress, by law, abrogated the treaties of 1778 with France.

Those, who argued that the appropriation should be made called attention to the fact that public ministers were created, not by statute, but by the law of nations,

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[1] Mr. Webster.

[2] Arguments of Mr. Alexander Thomson, of Pennsylvania, and others, Debates, pp. 2278, 2338–2340, 2378.

[3] Argument of Mr. James K. Polk, of Tennessee, Debates, pp. 2474–2486.

[4] Arguments of Messrs. George McDuffie, of South Carolina, and John Forsyth, of Georgia, Debates, pp. 2491–2494, 2506.

[5] Argument of Mr. Samuel D. Ingham, of Pennsylvania, Debates, pp. 2349–2354.

and were recognized by the Constitution as existing. They were appointed by the President and the Senate. Acts of Congress limited their salaries, but did no more. By voting the salaries the House simply empowered another branch of the Government to discharge its own duties. In so voting the House had no responsibility for the conduct of the negotiations. To refuse the appropriation would be to prevent the action of the Government according to constitutional plan. Of course, the House could break up a mission by withholding salaries, as it could break up a court but the House should not, and could not, share Executive duty.[1] The House was morally bound to vote the salaries of ministers duly created by the President and the Senate. The obligation was as strong as it was to carry into effect a treaty. The power to create the minister was contained in the same clause that provided for treaties. The House might not prejudge the determination of the President and Senate in regard to those officers. Their salaries might not be withheld any more than the House might withhold the salaries of the President and Supreme Court. If the salaries were withheld the ministers would be legally appointed and their acts would be valid. Of course the House had the physical power to take such action, and there might be an extreme case where they would be impelled by duty to do it.[2] Thus, if the Army should entertain projects injurious to the country, Congress might, to defeat its objects, withhold its pay. But such extreme suppositions could hardly be admitted in argument. In the case of treaties containing stipulations requiring the exercise of powers vested in the House, such as the regulation of commerce, the House might act as it saw fit. But treaties not touching subjects committed to the discretion of the House should be treated, so far as appropriations to carry them into effect was concerned, as mandatory on the House.[3] It was even contended, further, that the House had no authority whatever in regard to treaties, which might be negotiated and ratified without the knowledge of the House, and that the House, in appropriating to carry out the stipulations, was not justified in weighing the propriety of the expenditure by the principles governing ordinary appropriations. What the House could do and what it should do were of course different matters. It might, by refusing all appropriations, bring the Government to a standstill. But to admit that the power to appropriate carried with it the right to direct diplomatic affairs would be to establish a principle that would concentrate in the House the whole powers of the Government.[4]

On April 20[5] the question was taken on agreeing to the amendment proposed by Mr. McLane, and it was agreed to, yeas 99, nays 94.

On April 21,[6] on the question of agreeing to the resolution as amended, there were yeas 54, nays 143.

The same day the House began the consideration of the bill making appropriation for the mission to Panama, and on Mr. George MeDuffie's motion to strike out the enacting clause, so as to defeat the bill, there were 61 yeas and 133 nays. On

[1] Argument of Mr. Webster, Debates, pp. 2254–2258.

[2] Argument of Mr. Buchanan, Debates, pp. 2170, 2171.

[3] Argument of Mr. Edward Livingston, of Louisiana, Debates, pp. 2195–2198.

[4] Arguments of Messrs. Richard A. Buckner, of Kentucky, and Thompson, Debates, pp. 2087–2090, 2338—2340.

[5] Journal, p. 452; Debates, p. 2457.

[6] Journal, p 457; Debates, p. 2490.

April 22 the bill passed the House, yeas 134, nays 60.[1] This bill (H. R. 180) became a law.[2]

1547. On December 16, 1852[3] Mr. James Hamilton. of South Carolina, offered this resolution:

Resolved, That the President of the United States be requested to transmit to this House copies of all such documents or parts of correspondence (not incompatible with the public interest to be communicated) relating to an invitation which has been extended to the Government of this country "by the Republics of Columbia, of Mexico, and of Central America to join in the deliberations of a Congress to be held at the Isthmus of Panama" and which induced him to signify "that ministers on the part of the United States will be commissioned to join in those deliberations."

On January 31, 1826,[4] when this resolution was considered, Air. Churchill C. Cambreleng, of New York, suggested that on so important a question the House should be put in possession of all the facts, and therefore asked Mr. Hamilton to strike out the words "Not incompatible with the public interest to be communicated." Mr. Hamilton made the modification of the resolution, but Mr. Daniel Webster, of Massachusetts, immediately moved that they be inserted. He said, in support of his motion, that in all such calls it was customary in the first instance to limit the call, and he believed it unprecedented to call at once on the President for all the information in his hands on a given subject, without leaving it discretionary with him to withhold such part as the public good might require him to withhold. If the reply should not be satisfactory, the residue might be supplied later in a confidential communication.

Mr. Webster's motion was then agreed to without division, and debate on the resolution was resumed, involving both the general policy of the proposed mission and the propriety of calling for information on a subject in trusted by the Constitution to another department of the Government. On February 2, at the suggestion of Messrs. George McDuffie, of South Carolina, and William C. Rives, of Virginia, the House adopted an amendment adding to the resolution these words:

And, further, to communicate to this House all the information in possession of the Executive Department relative to the objects which the republics of the south propose to accomplish by the Congress of Panama and the powers proposed to be given to the commissioners or ministers of the United States to that Congress and the objects to which they are to be directed.[5]

Mr. Webster, who had commented upon the amendment as proposing an unusual interference with Executive power, recalled President Washington's refusal to furnish information pertaining to the treaty making power, and, objecting to a call without the discretionary clause, proposed to strike out all after the word "resolved" and insert the following:

That the President of the United States be requested to cause to be laid before this House so much of the correspondence between the Government of the United States and the new States of America, or their ministers, respecting the proposed congress, or meeting of diplomatic agents at Panama, and of such

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[1] Journal, pp. 459, 462; Debates, pp. 2507, 2514.

[2] On March 3, 1829, the President communicated to both House and Senate, as a matter of public interest, the instructions furnished to the ministers of the United States to the Panama Congress; Journal, second session Twentieth Congress, pp. 386, 387.

[3] First session Nineteenth Congress, Journal, p. 63; Debates, p. 817.

[4] Journal, p. 210; Debates, pp. 1208–1213.

[5] Journal, pp. 214–215; Debates, pp. 1241–1254.

information respecting the general character of that expected congress, as may be in his possession, as may, in his opinion, be communicated without prejudice to the public interest; and, also, to inform the House, as far as, in his opinion, the public interest may allow, in regard to what objects the agents of the United States are expected to take part in the deliberations of that congress.

Mr. Webster's motion was agreed to, whereupon Mr. Samuel D. Ingham, of Pennsylvania, moved to recommit the resolution as amended by the substitute with instructions to strike out the words "so far as, in his opinion, the public interest may allow."

This motion gave rise to a lengthy debate as to the relations of the House and the Executive.[1] Mr. Ingham said that the adoption of the motion to amend would be a distinct indication to the Executive that the House wanted all the information that it could get, the great interests of the nation demanding this. No disrespect to any other branch of the Government was intended. It had been a long practice of the House to insert a qualifying clause in calls upon the President for information, but in this case the whole should be asked for. To do less would be to carry too far the doctrine of confidence in public functionaries.

Mr. Thomas R. Mitchell, of South Carolina, while admitting that the House had no right to demand the information of the President, yet thought the House should request it, and that in case he should refuse it the House might decline to appropriate for the mission. Mr. John Forsyth, of Georgia, contended, on the other hand, that when the House requested information of the President the word "request" was used from courtesy and did not imply that the House had no right to demand information or that the President had a right to refuse it. Whenever, in the exercise of its constitutional authority, the House called upon the President for information, it had the right to demand it and the power to compel its production. President Washington had based his refusal of the call of the House, not on the ground of want of authority on the part of the House to demand, but because the demand was not made with a view to the exercise of any of the constitutional powers of the House. It would be strange if the House which could impeach those giving and receiving instructions, could not compel the production of them. The House might demand any information it might constitutionally want, and, in case of refusal, take the information by ordinary process of the Sergeant-at-Arms. In the usual calls for diplomatic information the qualifying clauses were inserted because the information was of such a nature that its publication might be injurious to the public interest, and also because the House might not be able to make any constitutional use of the information. But in this case the qualifying clause which it was proposed to strike out was in the second part of the resolution, which referred to our objects in going to Panama. Mr. George McDuffie, of South Carolina, elaborated this point still further. In calls for correspondence between this Government and foreign powers the qualification was invariably made that disclosure should be conditioned on the President's judgment. But here was a different and an unprecedented case. If the mission was to be sent it would be by the act of the Congress and not of the Executive. He denied the power of the President to send agents to a tilting tourney where they might involve the United States in war.

[1] Debates, pp. 1262–1302.

Against the proposed motion Mr. Henry R. Storrs, of New York, urged that the comity which should ever characterize the relations of the House and the Executive had settled long ago that respectful form which every call for information from that coequal department had always assumed. While not denying that a state of things might occur in which the House might be justified in demanding information, such a case did not exist at the present time, and there was no precedent for such a call.

Mr. Daniel Webster, of Massachusetts, urged that the words should remain because they were in accordance with the usual and, he believed, the invariable practice. It would imply a most extraordinary want of confidence in the Executive to strike out those words allowing him discretion. A qualification was as proper to one part of the resolution as to the other. If this were the case of an ordinary mission to Europe, would it be deemed constitutional for the House to ask the President to disclose without reserve all the objects of the mission? No one would pretend that it would. In the present case it seemed equally undesirable to call for unqualified publicity.

Mr. Peleg Sprague, of Maine, went still further, and held that the President was as independent in his sphere as the House in theirs, and that, in the conscientious performance of his duty, he might feel it necessary to withhold information called for by the House in unqualified terms.

Mr. Ingham's motion was decided in the negative, yeas 71, nays 98.[1]

The House then agreed to the resolution, as amended by Mr. Webster's substitute, yeas 125, nays 40.[2]

On March 17[3] the message of the President in response to the resolution was communicated to the House.

1548. While not questioning the right of the House to decline to appropriate for a diplomatic office, President Grant protested against its assumption that it might give directions as to that service.—On August 15, 1876,[4] President Grant sent the following message to the House:

> In announcing as I do that I have attached my signature of official approval to the "act making appropriations for the consular and diplomatic service of the Government for the year ending June 30, 1877, and for other purposes," it is my duty to call attention to a provision in the act directing that notice be sent to certain of the diplomatic and consular officers of the Government "to close their offices."
>
> In the literal sense of this direction it would be an invasion of the constitutional prerogatives and duty of the Executive.
>
> By the Constitution the President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls," etc.
>
> It is within the power of Congress to grant or withhold appropriation of money for the payment of salaries and expenses of the foreign representatives of the Government.
>
> In the early days of the Government a sum in gross was appropriated, leaving it to the Executive to determine the grade of the offices and the countries to which they should be sent.

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[1] Journal, p. 217; Debates, p. 1301.

[2] Journal, p. 218; Debates, p. 1301.

[3] Journal, p. 349; Debates, p. 1683.

[4] First session Forty-fourth Congress, Journal, 99, 500, 1501; Record, pp. 5684–5685.

Latterly, for very many years, specific sums have been appropriated for designated missions or employments, and, as a rule, the omission by Congress to make an appropriation for any, specific port had heretofore been accepted as an indication of the wish on the part of Congress, which the Executive branch of the Government respected and complied with.

In calling attention to the passage which I have indicated, I assume that the intention of the provision is only to exercise the constitutional prerogative of Congress over the expenditures of the Government and to fix a time at which the compensation of certain diplomatic and consular officers shall cease, and not to invade the constitutional rights of the Executive, which I should be compelled to resist; and my present object is not to discuss or dispute the wisdom of failing to appropriate for several offices, but to guard against the construction that might possibly be placed on the language used as implying a right in the legislative branch to direct the closing or discontinuing of any of the diplomatic or consular offices of the Government.

The message was debated at some length, and in the course of the discussion reference was made to the precedent in the case of Mr. Harvey, whom President Johnson appointed minister to Portugal. The Congress declined for a time to appropriate for his salary, but later did so. The message was referred to the Committee on Appropriations, no action on the part of the House being contemplated.

1549. An authorization of diplomatic relations with a foreign nation originated in the House in 1882.—On July 15, 1882,[1] the Committee on Foreign Affairs reported the bill (H. R. 6743) authorizing the Secretary of State to take the necessary measures for the establishment of diplomatic relations with Persia, and making appropriations for that purpose.

This bill passed the House and Senate and became a law.

1550. Congratulations of the House on the adoption of a republican form of government by Brazil.—On February 13, 1890,[2] the House passed the joint resolution of the Senate (S. R. 54) providing:

Resolved, etc., That the United States of America congratulate the people of Brazil in their just and peaceful assumption of the powers, duties, and responsibilities of self-government, based upon the free consent of the governed, and in their recent adoption of a republican form of government.

This resolution was signed by the President.

On March 2, 1891,[3] Mr. Robert R. Hitt, of Illinois, chairman of the Committee on Foreign Affairs, laid before the House resolutions of the Brazilian Congress thanking the people of the United States for their message of congratulation sent by Congress upon the establishment of a republican form of government in Brazil.

These resolutions were transmitted to Mr. Hitt, as chairman of the Foreign Affairs Committee, by the Secretary of State.

They were read and ordered entered on the Journal.

1551. The House has expressed its interest in the establishment of constitutional government in other lands.—On March 10, 1792,[4] the House agreed to a resolution expressing the interest of the House in the adoption of a constitution by France, and requesting the President of the United States, in his reply to the notification from the French King, to express the sincere interest of the House.

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[1] First session Forty-seventh Congress, Journal, pp. 1803, 1847; House Report No. 1648.

[2] First session Fifty-first Congress, Journal, p. 219; Record, p. 1282.

[3] Second session Fifty-first Congress, Journal, p. 339; Record, p. 3685.

[4] First session First Congress, Annals, pp. 456, 457.

A special committee was appointed to wait on the President with this resolution.

On April 10, 1848,[1] the House passed the joint resolution from the Senate tendering by Congress the congratulations of the American to the French people.

This resolution was signed by the President on April 15.

1552. Congratulations of the House at the appearance of a new nation.—On May 20, 1902,[1] Mr. Robert R. Hitt, of Illinois, by unanimous consent presented the following resolution, which was agreed to by the House:

Resolved by the House of Representatives of the United States of America, That this House views with satisfaction, and expresses congratulation at, the appearance this day of the Cuban Republic among the nations of the world.

1553. The House has, by resolutions, extended its sympathy to foreign peoples desirous of greater liberty.—On March 27, 1867,[2] Mr. Nathaniel P. Banks, of Massachusetts, from the Committee on Foreign Affairs, reported the following resolution, which, after debate, was agreed to by the House:

Resolved, That the House extend its sympathy to the people of Ireland and of Canada in all their just efforts to maintain the independence of states, to elevate the people, and to extend and perpetuate the principles of liberty.

1554. On December 18, 1871,[2] the House, on motion of Mr. George F. Hoar, of Massachusetts, agreed to the following by a vote of yeas 182, nays 0:

Resolved, That while this House deems the conduct of foreign governments to be beyond its jurisdiction, it deeply sympathizes with all efforts to establish self-government and republican institutions, and with the families and friends of all persons who have lost their lives either in the field or on the scaffold or elsewhere in the cause of civil liberty.

1555. On December 20, 1876,[1] the Speaker stated that he was informed that there was in the city a gentleman who bore to the people of this country from the Irish nation congratulations to our people on this centennial year.

Thereupon Mr. William S. Holman, of Indiana, by unanimous consent, submitted the following preamble and resolution, which were agreed to:

Whereas it has been announced to this House by the Speaker that Mr. John O'Connor Power, M. P., has been deputed to present to the people of the United States congratulations of the Irish nation on the centenary of American independence: Therefore,

Be it resolved, That the subject of his mission be referred for consideration to the Committee on Foreign Affairs, with instructions to report what action should, in their opinion, be taken in the premises.

On March 3 Mr. Bernard G. Caulfield, of Illinois, submitted a preamble and resolution reciting the deeds of citizens of Irish descent in the establishment of this Republic, and accepting on behalf of the people of the United States the congratulations of the people of Ireland. This resolution, in the form of a simple resolution of the House, was offered by unanimous consent and agreed to.

1556. Resolutions originating in the House and making an exchange of compliments with certain republics were disapproved by President

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[1] First session Thirtieth Congress, Journal, pp. 669, 694.

[2] First session Fifty-seventh Congress, Journal, p. 726; Record, p. 5697.

[3] First session Fortieth Congress, Journal, p. 125; Globe, p. 392.

[4] Second session Forty-second Congress, Journal, p. 91; Globe, p. 200.

[5] Second session Forty-fourth Congress, Journal, pp. 114, 115, 675, 676; Record, pp. 321, 2237.

Grant as infringing on Executive prerogative.—On January 30, 1877,[1] the Speaker laid before the House a message received from the President[2] of the United States, returning with his objections the joint resolutions of the House (H. Res. 171) in reference to the congratulations from the Republic of Pretoria, South Africa, and (H. Res. 172) relating to congratulations from the Argentine Republic. In the veto message the President says:

Sympathizing as I do in the spirit of courtesy and friendly recognition which has prompted the passage of these resolutions,[3] I can not escape the conviction that their adoption has inadvertently involved the exercise of a power which infringes upon the constitutional rights of the Executive.

The usage of governments generally confines their correspondence and interchange of opinion and of sentiments of congratulation as well as of discussion to one certain established agency. To allow correspondence or interchange between states to be conducted by or with more than one such agency would necessarily lead to confusion, and possibly to contradictory presentation of views and to international complications.

The Constitution of the United States, following the established usage of nations, has indicated the President as the agent to represent the national sovereignty in its intercourse with foreign powers, and to receive all official communications from them. It gives him the power, by and with the advice and consent of the Senate, to make treaties and to appoint ambassadors and other public ministers; it intrusts to him solely "to receive ambassadors and other public ministers," thus vesting in him the origination of negotiations and the reception and conduct of all correspondence with foreign states, making him, in the language of one of the most eminent writers on constitutional law, "the constitutional organ of communication with foreign states."

No copy of the addresses which it is proposed to acknowledge is furnished. I have no knowledge of their tone, language, or purport. From the tenor of the two joint resolutions it is to be inferred that these communications are probably purely congratulatory. Friendly and kindly intentioned as they may be, the presentation by a foreign state of any communication to a branch of the Government not contemplated by the Constitution for the reception of communications from foreign states might, if allowed to pass without notice, become a precedent for the address by foreigners or by foreign states of communications of a different nature and with wicked designs.

If Congress can direct the correspondence of the Secretary of State with foreign governments, a case very different from that now under consideration might arise, when that officer might be directed to present to the same foreign government entirely different and antagonistic views or statements.

By the act of Congress establishing what is now the Department of State, then known as the Department of Foreign Affairs, the Secretary is to "perform and execute such duties as shall from time to time be enjoined or intrusted to him by the President of the United States, agreeable to the Constitution, relative to correspondence, commissions, or instructions to or with public ministers or consuls from the United States, or to negotiations with public ministers from foreign states or princes, or to memorials or other applications from foreign public ministers or other foreigners, or to such other matters respecting foreign affairs as the President of the United States shall assign to said Department, and, furthermore, that the said principal officer (the Secretary of State) shall conduct the business of the said Department in such manner as the President of the United States shall from time to time order or instruct."

This law, which remains substantially unchanged, confirms the view that the whole correspondence of the Government with and from foreign states is intrusted to the President; that the Secretary of State conducts such correspondence exclusively under the orders and instructions of the President, and that no communication or correspondence from foreigners or from a foreign state can properly be

[1] Second session Forty-fourth Congress, Journal, p. 328; Record, p. 1112.

[2] Ulysses S. Grant.

[3] The resolutions were introduced December 15 (Journal, p. 82; Record, pp. 227, 228), and it appears from the debate that the congratulations came from the congress of sister republics, and the resolutions were intended to return the congratulations of the American Congress.

addressed to any branch or Department of the Government except that to which such correspondence has been committed by the Constitution and the laws.

I therefore feel it my duty to return the joint resolutions without my approval to the House of Representatives, in which they originated.

In addition to the reasons, already stated for withholding my constitutional approval from these resolutions is the fact that no information is furnished as to the terms or purport of the communications to which acknowledgments are desired, no copy of the communications accompanies the resolutions, nor is the name even of the officer or of the body to whom an acknowledgment could be addressed given; it is not known whether these congratulatory addresses proceed from the head of the state or from legislative bodies; and as regards the resolution relating to the republic of Pretoria, I can not learn that any state or government of that name exists.

U. S. GRANT.

Washington, January 26, 1877.

The veto message was referred to the Committee on Foreign Affairs, and was not reported therefrom.

1557. The House has expressed its regret at attempts on the lives of foreign rulers.—On June 25, 1894,[1] a message from the President communicated to the House the intelligence of the death by assassination of President Carnot, of France. Thereupon Mr. James B. McCreary, of Kentucky, offered the following resolutions, which were agreed to by the House:

Resolved, That the House of Representatives of the United States of America, has heard with profound sorrow of the assassination of President Carnot, and tenders the people of France sincere sympathy in their national bereavement.

That the President of the United States be requested to communicate this expression of sorrow to the Government of the Republic of France and to Madame Carnot; and that, as a further mark of respect to the memory of the President of the French Republic, the House of Representatives do now adjourn.

On June 27 the Speaker laid before the House a cable dispatch from the Government of France to the Speaker acknowledging the action of the House. This dispatch appears in full in the Journal, although no order in regard to it was made.[2] On July 25 the Speaker laid before the House a communication from the Secretary of State transmitting more formal expressions of gratitude from the Government of France. These also appear in full in the Journal without special order.[3]

1558. On May 4, 1866,[4] the House, on motion of Mr. Thaddeus Stevens, of Pennsylvania, passed a joint resolution expressing deep regret at the attempt on the life of the "Emperor of Russia by an enemy of emancipation." This joint resolution was passed by the Senate and signed by the President.

1559. The Senate expressed its disapproval of the attempt to destroy the English Parliament houses.—On January 26, 1885,[5] the Senate, by resolution expressed its indignation and profound sorrow at the attempt to destroy the English Parliament Houses.

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[1] Second session Fifty-third Congress, Record, p. 6800.

[2] Journal, p. 452; Record, p. 6897.

[3] Journal, p. 508; Record, p. 7853.

[4] See joint resolution (H. Res. 133), first session Thirty-ninth Congress, Globe, pp. 2394, 2443; Journal, p. 1367.

[5] Second session Forty-eighth Congress, Record, p. 996.

1560. The Congress, by joint resolution, expressed its abhorrence of massacres reported in a foreign nation.—On June 22, 1906,[6] the House considered and passed Senate Joint Resolution No. 68, as follows:

Resolved, etc., That the people of the United States are horrified by the report of the massacre of Hebrews in Russia on account of their race and religion, and that those bereaved thereby have the hearty sympathy of the people of this country.

This joint resolution was approved by the President.[2]

1561. In 1846 President Polk, for reasons of public policy, declined to inform the House as to expenditures from the secret or contingent fund of the State Department.—On April 9, 1846,[8] the House agreed to the following:

Resolved, That the President of the United States be requested to cause to be furnished to this House an account of all payments made on President's certificates from the funds appropriated by law, through the agency of the State Department, for the contingent expenses of foreign intercourse since the 4th of March, 1841, until the retirement of Daniel Webster from the Department of State, with copies of all entries, receipts, letters, vouchers, memorandums, or other evidence of such payments, to whom paid, for what, and particularly all concerning the Northwestern boundary, dispute with Great Britain; also copies of whatever communications were made from the Secretary of State during the last session of the Twenty-seventh Congress, particularly February, 1843, to Mr. Cushing and Mr. Adams, members of the committee of this House on Foreign Affairs, of the wish of the President of the United States to institute a special mission to Great Britain; also copies of all letters on the books of the Department of State to any officer of the United States, or any person in New York, concerning Alexander McLeod: *Provided,* That no document or matter is requested to be furnished by the foregoing resolution which, in the opinion of the President, would improperly involve the citizen or subject of any foreign power.

On April 20, in a message to the House, President Polk declined to give the desired information in regard to the contingent fund, explaining the nature of that fund under the laws and the impropriety of making public the information asked. In the course of the message the President said:

It may be alleged that the power of impeachment belongs to the House of Representatives, and that with a view to the exercise of this power that House has the right to investigate the conduct of all public officers under the Government. This is cheerfully admitted. In such a case the safety of the Republic would be the supreme law, and the power of the House, in the pursuit of this object, would penetrate into the most secret recesses of the Executive Departments. It could command the attendance of any and every agent of the Government, and compel them to present all papers, public or private, official or unofficial, and to testify on oath to all facts within their knowledge. But, even in a case of that kind, they would adopt all wise precautions to prevent the exposure of all such matters the publication of which might injuriously affect the public interests, except so far as this might be necessary to accomplish the great ends of public justice. If the House of Representatives, as the grand inquest of the nation, should, at any time, have reason to believe that there has been malversation in office, by an improper use or application of the public money by a public officer, and should think proper to institute an inquiry into the matter, all the archives and papers of the Executive Departments, public or private, would be subject to the inspection and control of a committee of that body, and every facility in the power of the Executive be afforded to enable them to prosecute the investigation.

The experience of every nation on earth has demonstrated that emergencies may arise in which it becomes absolutely necessary for the public safety or the public good, to make expenditures, the very object of which would be defeated by publicity. Some governments have very large amounts at

[1] First session Fifty-ninth Congress, Record, p. 9004.

[2] 34 Stat. L., p. 835.

[3] First session Twenty-ninth Congress, Journal, pp. 653, 654, 693; Globe, pp. 643, 698.

their disposal and have made vastly greater expenditures than the small amounts which have from time to time been accounted for on President's certificates. In no nation is the application of such sums ever made public. In time of war, or impending danger, the situation of the country may make it necessary to employ individuals for the purpose of obtaining information or rendering other important services who could never be prevailed upon to act if they entertained the least apprehension that their names, or their agency, would in any contingency be divulged. So it may often become necessary to incur an expenditure for an object highly useful to the country; for example, the conclusion of a treaty with a barbarian power, whose customs require on such occasions the use of presents; but this object might be altogether defeated by the intrigues of other powers if our purposes were to be made known by the exhibition of the original papers and vouchers to the accounting officers of the Treasury. It would be easy to specify other cases which may occur in the history of a great nation in its intercourse with other nations wherein it might become absolutely necessary to incur expenditures for objects which could never be accomplished if it were suspected in advance that the items of expenditure, and the agencies employed, would be made public.

Actuated undoubtedly by considerations of this kind, Congress provided such a fund, coeval with the organization of the Government, and subsequently enacted the law of 1810 as the permanent law of the land. While this law exists in full force I feel bound by a high sense of public policy and duty to observe its provisions and the uniform practice of my predecessors under it.

With great respect for the House of Representatives, and an anxious desire to conform to their wishes, I am constrained to come to this conclusion.