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THE POWER OF CONGRESS TO INVESTIGATE THE EXECUTIVE

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WHEN the Constitutional Convention was engaged in its momentous deliberations in Philadelphia, Montesquieu's celebrated maxim in reference to the separation of the legislative, executive and judicial branches of government [1] was the great democratic slogan. It was exemplified in principle in the constitutions of all the states, and was quoted in some as one of the eternal verities. It is not remarkable, therefore, that the maxim figured so prominently in the debates and that so much time was occupied in giving it practical effect. The only wonder is that there could have been any wide difference of opinion as to the meaning and scope of this clearly expressed doctrine.

Strange as it may seem, this very maxim was invoked against the proposed constitution reported by the Convention. Of course, the maxim, taken literally, could not have been so employed. But men are never at a loss to devise reasons for opposing measures which conflict with their interests. And so the men who opposed a Federal Union attributed to the maxim a meaning at variance with its terms and which the author could not have intended. Instead of a mere separation of the three great branches of government, they argued that the maxim required the *complete independence* of those branches. According to them, the ideal of the Gascon sage was not a government of three separate parts, but three distinct governments

[1] "When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty. . . . Again, there is no liberty, if the judiciary power be not separated from the legislative and executive." *Spirit of Laws*, Book XI, § 6.

with different powers and functions. Hence the checks against usurpations of power which had been provided as a safeguard against tyranny were assailed as dangerous to the liberty of the people. Shallow as were these contentions, the proponents of the Constitution were compelled vigorously to defend it against the charge that it violated this fundamental law.[2]

The word "independent," when used in respect of the several branches of the Federal Government, has a somewhat restricted meaning. These branches are separate and distinct and the powers of government have been appropriately distributed among them. To the extent that each draws its authority directly from the Constitution it is, in a very real sense, independent. But in a broader sense there can be no such absolute independence between them as was imagined by opponents of the Constitution. They together form one complete government and are as indispensable to each other as the three angles of a triangle. In this view, they are interdependent rather than independent. But this interdependence is inherent and is not to any considerable degree enhanced by the barriers against encroachment and abuse of power provided in the Constitution. The framers recognized that it was one thing to make an appropriate distribution of power among the several branches and quite a different thing to maintain the balance between them. It was then an accepted maxim since vindicated by experience, that power gravitates to the legislature in time of peace and to the executive in time of war. But these necessary checks did not destroy the proper independence of the several branches as integral parts of the same government or belittle the dignity of any of them.

With Congress making the laws and appropriating the funds for their execution, it is not unnatural that Congress should display a lively interest in the manner in which the laws are enforced and the moneys expended. In the discharge of its constitutional function, the Congress is entitled to have, and must receive, information as to the state of affairs in the executive departments. Article II

[2] *The Federalist*, No. XLVII.

section 3, provides that the President shall from time to time give to the Congress information of the state of the union. In the nature of the case, the power must reside in the Congress, or either house thereof, to compel the executive to furnish the necessary information on which to legislate. Moreover, the Congress is vested with the power to impeach all civil officers, and while no executive officer is accountable to either house in the way that a subordinate would be accountable to his superior, nevertheless the conduct of every executive officer is subject to the scrutiny of the House of Representatives in so far as the power to impeach necessarily implies the right to scrutinize official conduct. To the credit of the executive let it be said that there have been very few instances of reluctance on its part to furnish the Congress with information which it was legitimately entitled to receive. The conflicts have resulted, for the most part, from departures from the constitutional scheme by Congress. Of course, the temptation to overstep the mark is much greater in the legislative than in the executive branch; the eagerness of the opposition to embarrass the executive, the desire for personal notoriety, the feeling entertained by some legislators that the executive is a dependent agency of the legislature—all are contributing causes.

1. The earliest assertions of inquisitorial power took the form of resolutions calling on the executive for the production of papers or for information. In 1796 the House of Representatives requested President Washington to lay before it certain papers relating to the negotiation of the treaty with the King of Great Britain. The President refused the request, pointing out that the assent of the House is not necessary to the validity of a treaty, and that the treaty exhibited in itself all the objects requiring legislative provision. "As it is essential to the due administration of the government," he wrote, "that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office * * * forbids a compliance with your request." [3] In 1825, the House of Representa-

[3] 1 *Messages and Papers of the Presidents*, 194.

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tives requested that President Monroe transmit certain documents relating to the conduct of certain officers of the Navy. The documents were refused on the ground that it was due the individuals under criticism, and to the character of the government, that they be not censured without just cause, which could not be ascertained until after a thorough and impartial investigation.[4] The President's grounds would have been less clear had the accused individuals been civil officers subject to impeachment. In 1833, the Senate requested President Jackson to communicate to that body a copy of a paper alleged to have been read by him to the heads of the executive departments relating to the removal of deposits of the public funds from the Bank of the United States. Here was a clear case of meddling by a body which did not even possess the power to initiate impeachments. One can picture the temper of the irascible Jackson as he penned the following reply:

> "The executive is a coordinate and independent branch of the government equally with the Senate, and I have yet to learn under what constitutional authority that branch of the legislature has a right to require of me an account of any communication, either verbally or in writing, made to the heads of departments acting as a Cabinet Council. As well might I be required to detail to the Senate the free and private conversations I have held with those officers on any subject relating to their duties and my own.
>
> "Feeling my responsibility to the American people, I am willing upon all occasions to explain to them the grounds of my conduct, and I am willing upon all proper occasions to give to either branch of the legislature any information in my possession that can be useful in the appropriate duties confided to them.
>
> "Knowing the constitutional rights of the Senate, I shall be the last man under any circumstances to interfere with them. Knowing those of the executive, I shall at all times endeavor to maintain them agreeably to the provisions of the Constitution and to the solemn oath I have taken to support and defend it.

[4] 2 *Messages and Papers*, 278.

> "I am constrained, therefore, by a proper sense of my own self-respect and of the rights secured by the Constitution to the executive branch of the government, to decline a compliance with your request.[5]

Nothing daunted, the Senate in 1834 and again in 1835 called on Jackson for certain documents relating to persons who were in nomination before that body. To both of these requests Jackson replied that while he did not concede the right of the Senate to make them, he preferred to submit the documents rather than to expose the persons concerned to improper and injurious imputations.[6] Flushed by these successes, the Senate finally adopted a resolution calling on Jackson to communicate copies of the charges, if any, which might have been made to him against a former surveyor-general who had been removed from office. Here the President was again on firm ground, and he let go with both barrels. "It is now my solemn conviction," he said, "that I ought no longer, from any motive nor in any degree, to yield to these unconstitutional demands. Their continued repetition imposes on me, as the representative and trustee of the American people, the painful but imperious duty of resisting to the utmost any further encroachment on the rights of the executive." In support of his position, he pointed out that the President, in such cases, possesses the exclusive power of removal from office, and under the sanction of his oath and his liability to impeachment, he is bound to exercise it whenever the public welfare shall require. Abuse of the power from corrupt motives, or otherwise, exposes the President to the same responsibilities. "But," thundered the answer, "on no principle known to our institutions can he be required to account for the manner in which he discharges this portion of his public duties, save only in the mode and under the forms prescribed by the Constitution."[7]

President Tyler had the same experience with the House that Jackson had had with the Senate. While a

[5] 3 *Messages and Papers*, 86.
[6] 3 *Messages and Papers*, 53; *id.*, 127.
[7] 3 *Messages and Papers*, 132.

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more temperate man than Jackson, he was no less rigid in his insistence on the executive prerogative. In 1842, the House passed a resolution requesting the President and the heads of the several departments to communicate to that body the names of such members, if any, of the 26th and 27th Congresses as have been applicants for office, with the details relating to such applications. The request was refused on the ground that, as the appointing power is solely vested in the executive, the House could have no legitimate concern therein.[8] During the next year, the House called on President Tyler to communicate the several reports made to the War Department by Lieut. Col. Hitchcock relative to the affairs of the Cherokee Indians. After a lengthy discussion of the matter, the President, from a desire to avoid even the appearance of a desire to suppress the facts, and to prevent an exaggerated estimate of the importance of the information from the mere fact of its being withheld, transmitted the same. He pointed out, however, that his action was purely gratuitous, and he based his right to refuse compliance on the ground of unconstitutional interference with executive discretion rather than upon the ground of exclusive jurisdiction, which, in this instance, did not obtain. He said:

> Nor can it be a sound position that all papers, documents and information of every description which may happen by any means to come into the possession of the President or of the heads of the departments must necessarily be subject to the call of the House of Representatives merely because they relate to a subject of the deliberations of the House, although that subject may be within the sphere of its legitimate powers. * * * The executive departments and the citizens of this country have their rights and duties as well as the House of Representatives, and the maxim that the rights of one person or body are to be so exercised as not to impair those of others is applicable in its fullest extent to this question.[9]

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[8] 4 *Messages and Papers*, 105.
[9] 4 *Messages and Papers*, 220.

A request of the House, preferred in 1843, for information as to the instructions issued Captain Jones of the Navy, who was charged with having made a warlike invasion of the territories of the Mexican Republic, met with a similar response from President Tyler.[10]

A request by the Senate for information from President Polk as to what steps had been taken by his predecessor in execution of the resolution of Congress looking to the annexation of Texas, was resisted on the ground that to divulge the information would interfere with proceedings pursuant to the resolution and hence would be incompatible with the public interest.[11] In 1846, the House requested of President Polk that he cause to be furnished to that body an account of all payments made on President's certificates from the fund appropriated for the contingent expenses of foreign intercourse during the incumbency of Daniel Webster as Secretary of State. The right of the House to this information was denied in an elaborate reply in which the confidential nature of the expenditures was emphasized and the position taken that the House had not the right to demand the information except in a formal proceeding for impeachment, when its power would be plenary. "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 their body and every facility in the power of the executive be afforded to enable them to prosecute the investigation." [12]

A remarkable assertion of legislative control of the executive departments occurred in the first Cleveland administration. The President's party having been so long out of power, there was some haste to make places for the deserving faithful. This irritated the Senate, the com-

[10] 4 *Messages and Papers*, 227.
[11] 4 *Messages and Papers*, 383.
[12] 4 *Messages and Papers*, 434.

plexion of which remained unchanged, and the heads of departments were bombarded with demands for the reasons for the removal of various officeholders. In 1886, the Senate adopted a resolution directing the Attorney General to transmit to it all papers in the Department of Justice "in relation to the management and conduct of the office of district attorney of the United States for the southern district of Alabama." In his reply, the Attorney General stated that "the President of the United States directs me to say * * * it is not considered that the public interests will be promoted by a compliance with said resolution." Objection was taken in the Senate to the statement in the Attorney General's reply that it was made by direction of the President. This, it was thought, implied that the Attorney General is the servant of the President, and is to give or withhold documents in his office according to the will of the executive. The majority report of the committee appointed to consider the matter took this narrow view of the question:

> The important question then is, whether it is within the constitutional competence of either House of Congress to have access to the official papers and documents in the various public offices of the United States created by laws enacted by themselves.

And on the recommendation of the majority of the committee, the Senate passed a resolution which, among other things, expressed its condemnation of the refusal of the Attorney General, under any circumstances, to send to the Senate copies of the papers called for by its resolution, as in violation of his official duty and subversive of the fundamental principles of the government and of the good administration thereof.

The President replied in a communication to the Senate, dated March 1, 1886,[13] in which, after lengthy discussion, he justified the withholding of the papers on the ground that they were really the private papers of the President which he could at any time have withdrawn from the files of the Department of Justice. But Grover Cleveland was too good a lawyer to allow to go unchallenged the assertion

[13] 8 *Messages and Papers*, 375.

hat because the executive departments were created by ongress the latter has any supervisory power over them. he whole question is treated with great ability, and his iews are summarized in the following choice example of olitical repartee:

> I do not suppose that "the public offices of the United States" are regulated or controlled in their relations to either House of Congress by the fact that they were "created by laws enacted by themselves." It must be that these instrumentalities were created for the benefit of the people and to answer the general purposes of government under the Constitution and the laws, and that they are unencumbered by any lien in favor of either branch of Congress growing out of their construction, and unembarrassed by any obligation to the Senate as the price of their creation.[14]

(2) The foregoing instances are valuable as showing the ompleteness and accuracy with which the Presidents have lefined the respective powers and prerogatives of the egislature and the executive in resisting the unwarranted ncroachments of the former. But these resolutions are ot "self-executing" as the phrase goes, they have no sanction beyond the great consideration due the dignity of the ody adopting them, and no matter how mandatory their erms, are addressed to the discretion of the executive. What are the powers of Congress, or either house thereof, o compel the attendance of witnesses or the production of locuments and to inflict punishment for contumacy?

This question was first considered by the Supreme ourt in 1821 in the case of *Anderson* v. *Dunn*.[15] Anderon sued Dunn for false imprisonment, and Dunn justified nder a warrant of the House of Representatives directed o him as sergeant-at-arms of that body. The warrant ecited that Anderson had been found by the House guilty of a breach of the privileges of the House, and of high contempt of the dignity and authority of the same."

[14] On the point that the executive departments are integral parts of the executive, and that the official act of the head of such a department is in legal contemplation the act of the President, see *Wilcox* v. *McConel*, 13 Pet. 498, 513; *The Confiscation Cases*, 20 Wall. 92, 109; *Wolsey* v. *Chapman*, 101 U. S. 755, 769.

[15] 6 Wheat. 204.

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Anderson's "high contempt" consisted in attempting to bribe a congressman, although that fact did not appear in the warrant or in the pleadings. The warrant directed the sergeant-at-arms to bring him before the House when, by its order, he was reprimanded by the speaker. The defense of the sergeant-at-arms rested on the broad ground that the House, having found the plaintiff guilty of a contempt, and the speaker, under the order of the House, having issued a warrant for his arrest, that alone was sufficient authority for the defendant to take him into custody.

The court considered the issue simply to be "whether the House of Representatives can take cognizance of contempts committed against themselves under any circumstances." No such power is given by the Constitution, except when the contempts are committed by members. But the question was resolved in the affirmative upon the doctrine of implied powers. How, otherwise, could the House protect itself from molestation in the discharge of its duties? As regards the power to punish for such contempts, it was held that the House necessarily possessed "the least possible power adequate to the end proposed, which is the power of imprisonment." As regards the duration of such imprisonment, it was said that the existence of the power that imprisons is indispensable to its continuance; and although the legislative power is perpetual, the legislative body ceases to exist on the moment of its adjournment or periodical dissolution. It was held, therefore, that imprisonment must terminate with adjournment. But the significant and dangerous thing decided was that the House has a general power of punishing for contempt, and that a judgment of contempt once pronounced is binding on the courts and precludes any inquiry as to whether the House exceeded its power.

This ruling stood as the law of the land for almost sixty years, including the most critical times in our history. It is remarkable that during the dark days when passions ran high there was no instance of serious abuse by either house of the unlimited power conceded to it. But in 1880, a case came to the Supreme Court which indicated the

dangerous possibilities of such unrestrained power, and the court wisely modified its former ruling.[16] The House of Representatives had appointed a special committee to investigate a real estate pool in the District of Columbia. This pool, it was charged, was indebted to Jay Cooke & Company, debtors of the United States, who were insolvent and undergoing bankruptcy. The committee was directed to ascertain and report all the facts and was authorized to send for persons and papers. Kilbourne was summoned as a witness, but refused to testify, and under authority of a resolution was placed under arrest by Thompson, the sergeant-at-arms. He thereafter brought his action against Thompson, the Speaker of the House, and the members of the special committee for false imprisonment.

The Supreme Court, rejecting and overruling the reasoning in the opinion in *Anderson* v. *Dunn*, held that Congress had no power to examine into the private affairs of the real estate pool, and that the refusal of the witness to testify before the committee did not constitute a contempt of the House, and that there was no ground for the infliction of punishment upon him at its insistence, and that the sergeant-at-arms was not protected from liability by the order of the House directing him to place Kilbourne under arrest.[17] The lengthy and learned opinion of Mr. Justice Miller holds that neither House of Congress has any general power to punish for contempt. The powers exercised by the House of Commons present no analogy, since those powers rest upon principles peculiar to that body and not upon any general rule applicable to all legislative bodies. The powers of Congress must be sought in some express grant in the Constitution, or be found necessary to carry into effect such powers as are there expressed. The power to punish for contempts can not, therefore, exist in a case where the House, attempting to exercise it, invokes its aid in a matter to which its authority does not extend.

The learned Justice admonished the Congress that the Constitution divides the powers of government into three

[16] *Kilbourne* v. *Thompson*, 103 U. S., 168.

[17] The other defendants having taken no part in the matter beyond participating in the proceedings on the floor of the House, they were discharged in view of the provision of the Constitution that "for any speech or debate in either House, the members shall not be questioned in any other place."

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departments, and that it is essential to the successful working out of the system that the lines separating those departments shall be clearly defined and closely followed. The subject matter of the investigation, he declared, was judicial not legislative. It was then pending in the proper court. There was, therefore, no power in Congress, or in either House thereof, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, to investigate the affairs of that partnership, and consequently no authority to compel a witness to testify on the subject.

In 1857 Congress enacted a law making it a misdemeanor for any person to fail or refuse to give testimony or produce papers before either House, or any committee of either House, when duly summoned.[18] The act provided that in the event of contumacy on the part of any such witness, the President of the Senate, or the Speaker of the House, as the case may be, shall certify the fact under the seal of the Senate or House to the United States Attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action. While the Tariff Act of 1894 was under consideration in the Senate, certain amendments were offered to the sugar schedule the adoption or rejection of which would materially affect the value of the stock of the American Sugar Refining Company. Certain newspapers charged that members of the Senate were yielding to corrupt influences in the consideration of the legislation. The Senate thereupon adopted a resolution reciting in its preamble that the integrity of the Senate had been questioned in a manner calculated to destroy public confidence in the body, and in such respects as might subject the members to censure or expulsion, and providing in its body for the appointment of a committee to investigate the stated charges. The committee called one Chapman, a broker, and questioned him with reference to his dealings with senators. He declined to answer the questions and was indicted under the Act of 1857 and was taken in custody by the marshal of the District of Columbia.

Chapman then filed an original petition for a writ of

[18] Revised Statutes, S. 102-104.

abeas corpus in the Supreme Court of the United States, etting up the alleged unconstitutionality of the act.[19] His principal contention was that the reference therein to "any" matter under inquiry rendered the act fatally defective because too broad and unlimited in its extent. But the court held that the statute must be given a sensible construction to avoid absurdity and that the word "any" must be held to refer to "matters within the jurisdiction of the two Houses of Congress, before them for consideration and proper for their action, to questions pertinent thereto, and to facts or papers bearing thereon." In that case, there was no serious question as to the power of the Senate to prosecute the inquiry for the reason that, by the Constitution, the Senate is authorized to "determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." The court also held that the enactment of the statute did not constitute an unlawful delegation of constitutional powers and did not impair the power of the House in a proper case to punish for contempt. Moreover, it was indicated that under certain circumstances proceedings for contempt and for contumacy under the statute might both be pursued since in that case the same act would be an offense against both jurisdictions, the two being *diverso intuitu* and capable of standing together.

The most interesting and instructive case on the subject is that of *Marshall* v. *Gordon*, decided in 1917.[20] Marshall was the United States attorney of the Southern District of New York and had conducted a grand jury proceeding resulting in the indictment of a member of Congress. The member charged on the floor of the House that Marshall was guilty of many acts of misfeasance and nonfeasance. At his behest, a resolution was adopted directing the Judiciary Committee to inquire and report concerning the charges in so far as they constituted impeachable offenses. A subcommittee proceeded to New York to take testimony. The grand jury was considering certain charges against the member not included in the indictment already returned.

[19] *In re Chapman*, 166 U. S. 661.
[20] 243 U. S. 521.

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In a daily newspaper, an article appeared charging that the writer was informed that the subcommittee was endeavoring rather to frustrate the action of the grand jury than to investigate the conduct of the district attorney. An effort was made to extort from the writer the name of his informant. The district attorney thereupon addressed to the chairman of the subcommittee a letter avowing that he was the informant referred to in the article, averring that the charges were true, and repeating them with amplifications and embellishments. The letter was what might be termed a "scorcher."

The Judiciary Committee reported to the House and a select committee was appointed to consider the subject. The district attorney was called before this committee, but was wholly unrepentent. He reasserted the charges made in the letter, averred that they were justified by the circumstances and stated that under the same circumstances they would be made again. Thereupon the select committee reported a resolution reciting that the letter in question tended to bring the House into public contempt and ridicule and that by reason thereof Marshall was guilty of a contempt of the House. Upon the adoption of the resolution, a warrant was issued to Gordon, the sergeant-at-arms, and its execution in New York was followed by an application for discharge on *habeas corpus.*

Chief Justice White, in one of the masterly opinions for which his memory will ever be revered, held that the power of Congress to punish for contempt does not extend to cases of this kind. He pointed out that the constitutions of Maryland and Massachusetts, in force at the time of the adoption of the Federal Constitution, expressly conferred on the respective legislatures power to punish for contempts only in so far as such power was essential to their self-preservation. The silence of the Federal Constitution on the subject indicates that a like power only is to be implied; that the limitations on the power expressly conferred on the state legislatures apply also to the powers impliedly conferred by the Constitution on the Federal Congress. This power of self-preservation clearly does not extend to the infliction of punishment *as such.* It is a

power to prevent acts which in and of themselves interfere with or obstruct the discharge of the legislative duty and to compel the doing of those things which are essential to the performance of the legislative function. This does not mean, however, that the authority ceases when the act complained of has been committed. It includes the right to determine how far, from the nature and character of the act, there is necessity for repression to prevent immediate recurrence. The act complained of in the particular case clearly did not fall within the power of the House to punish. The record disclosed that the contempt was deemed to result, not from any obstruction to the performance of the legislative duty, but from the mere writing of the letter. Marshall was accordingly discharged from custody.

The high purpose of the Chief Justice to bring into harmonious relation the apparently conflicting powers of the legislature and the judiciary, his exalted patriotism and divine sense of justice all appear in the following eloquent passage:

> "The conclusions which we have stated bring about a concordant operation of all the powers of the legislative and judicial departments of the Government, express or implied, as contemplated by the Constitution. And as this is considered, the reverent thought may not be repressed that the result is due to the wise foresight of the fathers manifested in state constitutions even before the adoption of the Constitution of the United States by which they substituted for the intermingling of the legislative and judicial power to deal with contempt as it existed in the House of Commons a system permitting the dealing with that subject in such a way as to prevent the obstruction of the legislative powers granted and secure their free exertion and yet at the same time not substantially interfere with the great guarantees and limitations concerning the exertion of the power to criminally punish—a beneficent result which additionally arises from the golden silence by which the framers of the Constitu-

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thoroughly aroused by vast accumulations of wealth ...

tion left the subject to be controlled by the implication of authority resulting from the powers granted."

3. The conclusions to be drawn from the foregoing precedents and authorities may be thus summarized:

Neither Congress as a whole nor either House thereof is vested with any general supervisory power over the President. In the consideration of this matter the head of an executive department may be regarded as an *alter ego* of the chief executive. The inquisitorial powers of Congress are strictly limited to subjects in regard to which it has a constitutional function to perform. Naturally, the enactment of legislation is the principal business of Congress. In the discharge of that duty Congress is entitled to receive any information in the possession of the executive bearing upon a particular measure. But Congress may not push its demands to a point which would interfere with the performance by the executive of its constitutional duties. The executive is justified, therefore, in resisting any demand when it is believed that compliance therewith would be incompatible with the public interest. The decision of the executive in such a case must necessarily be final. The question would not be justiciable and the infliction of punishment by one coordinate branch upon the other would be wholly repugnant to the constitutional scheme. The executive, no less than Congress, is accountable directly to the people, and ultimate decision in such matters must rest with the electorate.

The case of a subordinate officer of the executive whose contumacy did not have the support of the President would be different. The failure or refusal of such an officer to testify in regard to any subject within the constitutional competence of Congress would call for punishment. Such punishment might be inflicted by the outraged body as for violation of its privilege, or the matter might be referred to the district attorney for presentation to a grand jury. If treated as a contempt, imprisonment may not continue after recalcitrancy has ceased and can never extend beyond adjournment. Review of such conviction may be had on *habeas corpus* and release effected if it appears that the House in question has exceeded its constitutional authority.

Notwithstanding the broad wording of the statute, a witness may not be prosecuted for contumacy unless committed in the course of an inquiry which the particular body is authorized to conduct.

In the exercise of the power of impeachment the inquisitorial powers of Congress are not limited in the same degree. And in this connection a distinction is to be noted between the powers of the House and Senate. The House is vested with the sole power of impeachment, which is comparable with the presentment of a grand jury. The Senate is the trial body. The House, as the grand inquest of the nation, must have access to all information which will enable it to discharge its high function. The President, or any civil or judicial officer of the United States being charged with an impeachable offense, it is the right and duty of the House fully to investigate. Such investigation may be, and generally is, conducted by a duly authorized committee. The right of an accused officer to refuse information on the ground of incompatibility with the public interest is necessarily narrow. Only in a very clear case could such a claim be allowed; and here, it would seem, the House would be the judge. But such an investigation clearly must be in aid of the impeachment power; at least, the charges under investigation must be of an impeachable nature. Mere disapproval of the policies or acts of the executive will not support the investigation. For acts and policies not impeachable the executive is accountable otherwise than to Congress. Whether a resolution authorizing an investigation must expressly state that the proceeding is one looking to impeachment is an open question.

The Senate not being vested with the power of impeachment clearly is not authorized to investigate the conduct of executive officers. However violently the Senate may disagree with the acts and policies of the executive branch; however urgently the Senate may feel called upon to expose alleged delinquencies and malversations, the fact remains that its province does not extend to those subjects. Though founded upon the plainest principles, the proposition may seem startling, since the prosecution of such inquiries has

long been a popular pastime of the upper House. It sometimes happens that the issue is obscured and color of authority is lent to such proceedings by the claim that the ultimate object is the enactment of remedial legislation; but the real purpose, to exert an unwarranted control over affairs in the executive branch, more often appears. While such inquiries often lead to beneficent results, and the advocates thereof may contend that the end justifies the means, they nevertheless constitute a departure from the constitutional system and must be deprecated by all who are devoted to the orderly processes of government.