Chapter 7

The Origins of Congressional Oversight

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INTRODUCTION[1]

Apart from legislative power, the function of parliamentary control is one of the most important prerogatives of contemporary legislative branches. In the case of the United States national legislature, the US Congress, oversight "enables . . . to assess whether federal agencies and departments are administering programs in an effective, efficient, and economical manner and to gather information that inform legislation."[2] The renewed interest in this congressional duty observed recently might be attributed to the series of high-profile investigations conducted by the US Congress in the past few years. The two impeachment procedures of Donald Trump, three US House committees seeking Trump's financial records, or activities of the Select Committee to Investigate the January 6 Attack on the United States Capitol might be the most prominent, but by no means exhaust the list of congressional investigations conducted in the Trump Era. Yet their magnitude ensures they will constitute significant case studies for the future students of congressional oversight. Members of the US Congress paying close attention to presidential conduct and potential excesses of executive authority, are not limited to recent years in their inquiries. The Teapot Dome Scandal, Truman Committee, Watergate, Church Committee, Iran-Contras affair, Bill Clinton's impeachment, the 9/11 Commission, the Hurricane Katrina inquiry, or the BP oil spill investigation are only a few examples of

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[2] Ben Wilhelm et al., *Congressional Oversight Manual*, CRS Report 2021, no. RL30240, 2.

Maciej Turek, "The Origins of Congressional Oversight." In *Enlightenment Traditions and the Legal and Political System of the United States of America*, edited by Michał Urbańczyk, Kamil Gaweł, and Fatma Mejri, 131–44. Poznań: Adam Mickiewicz University Press, 2024. © Maciej Turek 2024. DOI: 10.14746/amup.9788323242543.8.

fulfilling congressional oversight functions. But questions periodically arise regarding the authority of congressional oversight, the boundaries of the investigations, and how the president and the whole executive branch apparatus should approach them. While for casual observers of American politics congressional inquiries into specific issues are justified, others, presidents and numerous lawmakers included, find these investigations to be nothing else but political theatre, aimed at weakening the administration, while promoting the most prominent individuals involved in investigating. And with the hundred and eighteenth US House of Representatives proudly announcing its intention to hold the Biden administration accountable in a variety of policy areas, it is worth taking a closer look at how congressional oversight emerged.

Therefore, this chapter aims to study the origins of this authority, which, as almost everything that is part of the American system of government, is the legacy not only of the Founding Fathers but also English laws and colonial times. Every student of US politics is familiar with that rare but most dramatic step of the congressional oversight that is the impeachment process. It shall be noted that impeachment will not be analyzed in this chapter, as this very issue is covered eloquently somewhere else in this volume. Nevertheless, this part aims at addressing some of the questions related to congressional oversight, namely what events led to the development of the investigative function of the US Congress? What were the sources of its authority? How did the executive branch react to the oversight-related activities of the federal legislature? While it might seem that mechanisms and procedures developed more than two hundred years ago are long forgotten, a remarkable number of patterns created during the very first act of congressional oversight are familiar to observers of political processes in modern-day America.

AMERICAN FOUNDING AND THE CONGRESSIONAL OVERSIGHT

For the Founders, creating some sort of controlling mechanism of the executive branch was deemed a necessity. In his famous political pamphlet, *The Common Sense*, Thomas Paine devoted one of the chapters to describing the mischiefs of monarchy.[3] More importantly, one finds to major part of America's founding document, The Declaration of Independence, to be a description of the harms and injuries that the colonies suffered from the actions of King George III. What the colonists criticized most was the lack of representation in the British parliament, as well as the fact that the institution's legislation made life in the colonies harder. The Sugar

[3] Ian Shapiro and Jane E. Calvert, eds., *Selected Writings of Thomas Paine* (New Haven: Yale University Press, 2014), 12–19.

Act, Currency Act, Quartering Acts, Stamp Act, Townshend Acts, or Tea Act were, in fact, all actions undertaken by the parliament. But it was widely believed, and for a good reason, that the monarch dominating the representative assembly bore greater responsibility for the passing of this legislation than the members of parliament individually or collectively. There was thus a widespread belief that the head of state, if not properly checked by the people's representatives, would sooner or later rush to hurt the citizens.

However, one might look for the sources of the legislative oversight of the federal executive branch, yet such an activity would prove fruitless. Historian Arthur M. Schlesinger Jr. noted that upon America's founding "it was not considered necessary to make an explicit grant of such authority. The power to make laws implied the power to see whether they were faithfully executed. The right to secure needed information had long been deemed by both the British Parliament and the colonial assemblies as a necessary and appropriate attribute of the power to legislate."[4] The investigative practices of the British Parliament date back to the second half of the sixteenth century. From when it was first introduced in 1571, until the settlement of the British colonies in North America, the authority only grew. These powers included not only calling witnesses to give testimony but also equipping the legislative branch with the right to punish for contempt, which was reportedly used frequently and with cruelty. Fining or even imprisoning witnesses who did not comply with requests for providing documents or appearing in person was common in Britain. The policy jurisdiction was initially limited to military matters. But soon it started also including such issues as "the Poor Laws, prison administration, the operations of the East India Company, the sending of children out of the country for instruction in Catholicism, and the revision of the laws pertaining to bankruptcy."[5] It clearly showed that the powers were broad and those areas that at any moment might become the subject of an investigation were virtually unlimited. Moreover, as the colonies modeled their forms of government on British examples, the "representative assemblies . . . came to utilize the power of investigation because they assumed that inasmuch as the power was customary of the legislative process in the Parliament, its adoption and exercise was just as proper in the Colonies."[6] Therefore, the inhabitants of the lands that later became the United States, and more importantly, the lawmakers who were members of colonial representative bodies, were quite acquainted with the assemblies serving as the necessary check upon executive officers.

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[4] Arthur M. Schlesinger Jr., "Introduction to Previous Edition," in *Congress Investigates: A Critical and Documentary History*, eds. Roger A. Bruns, David L. Hostetter, and Raymond W. Smock (New York: Facts on File, 2011), xxi.

[5] Telford Taylor, *Grand Inquest: The Story of Congressional Investigations* (New York: Simon and Schuster, 1955), 8.

[6] Marshall E. Dimock, *Congressional Investigating Committees* (Baltimore Johns University Press, 1929), 53.

If this authority was taken for granted, it might explain "the lack of constitutional text about congressional investigative power."[7] But what is also worth noting is how infrequently the issue of regular legislative oversight was mentioned during the Constitutional Convention. At one point, while discussing congressional organization, George Mason remarked that the federal lawmakers would be "not only legislators but they possess inquisitorial power. They must meet frequently to inspect the Conduct of public offices."[8] But otherwise, issues related to congressional control of the executive seem to have been debated only in the context of impeachment procedures.[9] The Founders thus created a vacuum that in later years was the frequent subject of federal court judgments. But before these were passed, there must have been a precedent that would create a dispute worth petitioning to the court. While nothing of that sort occurred during the first congressional inquiry, it did demonstrate that oversight was an area with many potential constitutional loopholes just waiting to be filled by political practice.

ST. CLAIR DEFEAT

The American Constitution is a document written in rather general if not vague language. It thus took several years to see how the federal government would operate under the rules that the Constitution established. As the investigative powers are not explicitly stated, but implied, it took an investigation to see how the oversight authority would operate in the real world. One of the issues that the First Congress considered is barely mentioned as an example of oversight or investigation, as the "review of Robert Morris record as Superintendent of Finance during the period of the Continental Congress"[10] was of a rather historical nature, and not concerning contemporary legislative-executive relations. The first activity to be considered in the literature as a congressional investigation occurred in 1792. The inquiry was in the area of the military, as its subject was the American troops under the command of Major General Arthur St. Clair having been defeated in combat by the Native Americans. The inquiry was of some importance, as it would set the example of congressional-presidential relations for decades to come. President Washington was well aware that acting as the first chief executive, his actions would be carefully studied not only by his successors but also by members of the congressional

[7] Michael W. McConnell, *The President Who Would Not Be King. Executive Power under the Constitution* (Princeton and Oxford: Princeton University Press, 2020), 135.

[8] Max Farrand, *The Records of the Federal Convention of 1787* (New Haven: Yale University Press, 1966), 2: 206.

[9] McConnell, *The President Who Would Not Be King. Executive Power under the Constitution*, 133–36.

[10] Louis Fisher, *The Law of Executive Branch: Presidential Power* (New York: Oxford University Press, 2014), 209.

and judicial branches. As he confessed to James Madison shortly after assuming the presidency, "As the first at everything, in our situation will serve to establish a precedent, it is devoutly wished on my part that these precedents be fixed on true principles."[11] And so he acted in the St. Clair case.

Arthur St. Clair was the governor of the Northwest Territory, the vast expanse of land that forms today's states of Ohio, Indiana, Illinois, and Michigan, or what is now called the Midwest. Throughout the history of North America, these territories were inhabited by Indian tribes, many of whom were the allies of the British. But when the American Revolutionary War was concluded with the Treaty of Paris, "Britain, without consulting or even mentioning its Indian allies, ceded to the United States all territories south of the Great Lakes, east of the Mississippi and north of Florida."[12] In legal terms, the extensive territories were open to American settlers, particularly after "the Constitution affirmed congressional authority over Indian affairs in the commerce clause."[13] For the Indians, though, American settlers were nothing but intruders, willing to not only capture their lands but also to make a profit out of them. Thus, after the American Revolution succeeded, Indians were famous for raiding white properties throughout the newly created United States. These incursions often ended in violent encounters involving militias on the part of the Americans. While treaties with Indians were concluded in other parts of the country, "neither the treaties nor militia pacified the warriors . . . in the Northwest Territory"[14] in the 1790s. Therefore, acting on advice from the Secretary of War, General Henry Knox, President Washington appointed Governor St. Clair a general of the American army and summoned him to make sure Indians would not disturb Americans willing to inhabit the areas, nor the US government, which was interested in westward expansion. In the summer of 1791, St. Clair led an army of around 1,500 men,[15] whose task was to "construct a series of forts that would become bases of operation against Indian Tribes that were attacking American settlers on the Ohio frontier."[16] The construction was to be built north of Fort Washington, today's Cincinnati, where St. Clair's army would march. After one such march in November, the troops built a camp near the river of Wabash. But early in the morning, the Americans were attacked by the tribes of Shawnee, Delaware, and Miami, in what

[11] Mark J. Rozell, "George Washington and the Origins of Executive Privilege," in *George Washington and the Origins of the American Presidency*, eds. Mark J. Rozell, William D. Pederson, and Frank J. William (Westport: Praeger, 2000), 146.

[12] Colin G. Calloway, *The Victory with No Name: The Native American Defeat of the First American Army* (New York: Oxford University Press, 2015), 17.

[13] Calloway, *The Victory with No Name: the Native American Defeat of the First American Army*, 25.

[14] George C. Chalou, "General St. Clair's Defeat, 1792–1793," in *Congress Investigates: A Critical and Documentary History*, eds. Roger A. Bruns, David L. Hostetter, and Raymond W. Smock (New York: Facts on File, 2011), 3.

[15] Taylor, *Grand Inquest: The Story of Congressional Investigations*, 17.

[16] Douglas L. Kriner and Eric Schickler, *Investigating the President. Congressional Checks on Presidential Power* (Princeton, Oxford: Princeton University Press, 2016), 9.

proved to be "the biggest victory Native Americans ever won and proportionately the biggest military disaster the United States ever suffered."[17] But for the American government, "more than 650 soldiers . . . killed and 271 more wounded"[18] by the Indians was not only a major embarrassment but also a significant concern about the quality of the army and its ability to defend the new nation. If "the warriors of the Ohio country had destroyed the US Army,"[19] what if American troops would have been facing a regular and well-equipped armed forces of a much stronger opponent?

Shortly after the news of the failure of General St. Clair's expedition reached the American capital, Congress decided to step in. However, the calls for explanations of the defeat that originated in early February 1792 were not resolved until the end of March. And even then, possibly because it was the first-ever congressional inquiry into executive actions, US House members were quite unsure of how to proceed. Some congressmen wanted President Washington to conduct an investigation; others believed it was a duty of the House, as "the impeachment powers rested with the House . . . so did the investigative power."[20] Distinct voices argued that Congress should not undertake any investigations into the executive, as it was not only troubling from a separation of powers perspective but also had the potential to embarrass Washington. Finally, Representative Hugh Williamson of North Carolina suggested forming a special committee to investigate the Wabash defeat, an idea also encouraged by James Madison, at that time a House member representing Virginia. The notion was taken up by Thomas Fitzsimons of Pennsylvania,[21] who promoted and built a coalition around creating a select committee "to inquire relative to such objects as come properly under the cognizance of this House, particularly respecting the expenditures of public money."[22] The committee was thus instituted, consisting of seven members with Fitzsimons as chairman, with the authority of Congress to invite members of the executive branch to give testimony and demand any documents that might have been useful.

The creation of the committee was also welcomed by General St. Clair himself. As his actions had been widely condemned, he was interested in clearing his name. Also, St. Clair had been in a similar position before. As a commander during the American Revolutionary War, one of his missions was defending Fort Ticonderoga, today located near the border of the states of New York and Vermont. But in the summer of 1777, vastly outnumbered by the British, St. Clair decided to withdraw his garrison and the fort was captured by the opposing army. The decision was widely criticized, as it opened the way for the commander of British forces, Lieutenant Gen-

[17] Calloway, *The Victory with No Name: The Native American Defeat of the First American Army*, 5.
[18] Kriner and Schickler, *Investigating the President. Congressional Checks on Presidential Power*, 9.
[19] Chalou, "General St. Clair's Defeat, 1792–1793," 7.
[20] Chalou, "General St. Clair's Defeat, 1792–1793," 8.
[21] Annals of Congress, House of Representatives, Second Congress, First Session, 490–94.
[22] Taylor, *Grand Inquest: The Story of Congressional Investigations*, 22.

eral John Burgoyne, to Saratoga, where his troops were eventually defeated. Seeking to clear his name, St. Clair was exonerated by the court-martial, which allowed many Americans to view him as a viable commander. While he did not seek to continue his military career, his name was rather known and allowed him to act as a member of the Pennsylvania Council of Censors as well as a delegate to the Confederation Congress, where in 1787 he also served as its one-year-term president. But after the Wabash defeat, St. Clair seemed to relive his nightmare of Ticonderoga.

Thus, as he had no recourse to a congressional inquiry as a public forum in which to state his case, St. Clair wasted little time. He not only "made his personal papers available to the committee, but he also attended most of its sessions."[23] In a testimony to the Select Committee, the general argued that the reasons for the mission's failure were not as much his personal flaws as a commander but rather poor operational timing in the Department of War that in the long term made his soldiers ill-prepared for an Indian attack. St. Clair presented his mission as plagued by a series of misfortunes, including delays in the delivery of boats and horses, and serious issues with troops, many of whom were "swept off the streets or jails . . . and sent to Fort Washington with little or no training."[24] Added to this was the fact that two very important members of the military personnel—General Richard Butler, second in command in St. Clair's army, and Quartermaster Samuel Hodgson—were supposed to arrive in Ohio in early summer, but in fact came as late as in September,[25] causing several logistics complications. At the same time, St. Clair presented correspondence with Henry Knox, the Secretary of War, that demonstrated that Knox, though very aware of all the issues with personnel and supply, nevertheless strongly encouraged St. Clair to proceed according to the original schedule.[26] The general indeed presented his vindication as if he were in the courtroom, expecting a select committee to become an impartial referee that would set him free and assign blame to the federal government bureaucracy.

Even though it was the first-ever congressional investigation, select committee members envisioned their role just as St. Clair did. Three days after Congress authorized the existence of the committee, the body asked Secretary Knox to deliver any papers or records from his office that might have been related to the case.[27] As Chairman Fitzsimons saw the committee's oversight function "under the cognizance of the House, particularly respecting the expenditures of public money,"[28] a similar request was soon presented to the Department of the Treasury, led by Alexander Hamilton.

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[23] Chalou, "General St. Clair's Defeat, 1792–1793," 9.
[24] Taylor, *Grand Inquest: The Story of Congressional Investigations*, 21.
[25] Taylor, *Grand Inquest: The Story of Congressional Investigations*, 21.
[26] Chalou, "General St. Clair's Defeat, 1792–1793," 9.
[27] Taylor, *Grand Inquest: The Story of Congressional Investigations*, 21.
[28] Quoted after Dimock, *Congressional Investigating Committees*, 88.

It was soon recognized, however, that the respective department heads could not have decided to pass any executive branch documents to the federal legislature without the authorization and knowledge of the President. Therefore Secretary Knox informed President Washington of an innovative development in the investigation on the same day that he received a congressional request. The following day, Washington summoned his Cabinet—Secretary of State Thomas Jefferson, Attorney General Edmund Randolph, and the Secretaries already contacted by the Select Committee, Knox and Hamilton, to discuss the matter. It was rather an unusual gathering, not only because Washington rarely called his Secretaries to meet together, but also because he asked them to do so on a Saturday. This very fact clearly demonstrated how significant this issue – the first-ever congressional request regarding the separation of powers and thus the very heart of American constitutional theory—had been to President Washington. Jefferson's notes reveal the magnitude of the Saturday, March 31, 1792, Cabinet meeting. As the Secretary of State noted, "The President had called us to consult, merely, because it was the first example, and he wished that so far as it should become a precedent it should be rightly conducted. He neither acknowledged, denied, nor even doubted the propriety of what the House was doing, for he had not thought upon nor was acquainted with subjects of this kind: he could readily conceive there might be papers so secret in nature, as that they ought not be given up."[29]

With the first meeting being inconclusive, the Cabinet members had to meet again the following Monday, April 2. This second discussion was more fruitful, as its participants generally agreed on the course of action that followed, namely, as again indicated by "We had all considered, and were of one mind, first, that the House was an inquest, and therefore might institute inquiries. Second, it might call for papers generally. Third, the Executive ought to communicate such papers as the public good would permit, and ought to refuse those, the disclosure of which would injure the public: consequently were to exercise discretion. Fourth, that neither the committees nor House have a right to call on the Head of a Department, who and whose papers were under the President alone; but that the committee should instruct their chairman to move the House to address the President."[30] Such a conclusion had notable consequences for the course of action in the St. Clair defeat investigation. Two days after the second meeting, "Washington ordered Knox and Hamilton to turn over copies of the pertinent records to the Committee."[31]

As the President perceived Congress as a co-equal branch of government, he believed he could not simply ignore congressional pleas for documents of an important nature or the confessions of executive officers in possession of information of vital importance. However as presented in the Cabinet's position, Washington

[29] Quoted after Taylor, *Grand Inquest: The Story of Congressional Investigations*, 23.

[30] Quoted after Rozell, "George Washington and the Origins of Executive Privilege," 147.

[31] Chalou, "General St. Clair's Defeat, 1792–1793," 3.

thought that the authority of the chief executive allows for a certain level of discretion when dealing with documents created within the executive branch. Apparently, Washington believed that there were at least three types of documents that were in possession of the executive officers. Two of them could have been shared with the national legislature, but not without conditions. Firstly, Washington "announced that the original record would stay in the physical custody of the department. It was agreed that the House of Representatives could send a clerk to check that the copies prepared for the committee were accurate and complete."[32] But there were also papers that should not have been in plain view. They could be seen by Congress, but revealing them to the wider public would not be in the interests of the federal government or the United States. Even though he maintained that the legislative branch had the authority to request executive documents, "Washington established as a condition that legislators review in closed session any information that, if publicly disclosed, would bring harm to the national interest."[33] Finally, the President believed there were also documents that the executive could not give away to Congress, as it would reveal information that might harm the public interest. It was for the President to decide which documents have such potential, but significantly, if chief executives were to withhold the documents, a potential "injury has to be to the *public*, not the President, his associates, or his political party. Information should not be withheld because it might embarrass the administration or reveal improper or illegal activities."[34] Until 1974, "this rule has been followed by every successive President in the light of his individual judgements,"[35] and since Dwight Eisenhower's administration, it has been known as executive privilege. But when in the midst of the Watergate investigation Richard Nixon's lawyers claimed executive discretion was total, the presidency was denied that right by the court. While acknowledged by the Supreme Court in *United States v. Nixon*, the authority in this very case was also judged as not unlimited. As indicated unanimously by the justices, "neither the doctrine of separation of power nor the generalized need for confidentiality of high-level communications . . . can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all the circumstances."[36]

But in the St. Clair case, no document was withheld, as the Cabinet, under the arguments made by Washington, was of the opinion that "there was not a paper that could not be produced."[37] As it was believed by the President that "General St. Clair shall have justice,"[38] the Select Committee was granted the right to review papers

[32] Chalou, "General St. Clair's Defeat, 1792–1793," 3.
[33] Rozell, "George Washington and the Origins of Executive Privilege," 147.
[34] Fisher, *The Law of the Executive Branch: Presidential Power*, 209.
[35] Alan Barth, *Government by Investigation* (Clifton, New Jersey: The Viking Press, 1973), 31.
[36] *United States v. Nixon*, 418 U.S. 684 (1974).
[37] Fisher, *The Law of Executive Branch: Presidential Power*, 209.
[38] Quoted after Taylor, *Grand Inquest: The Story of Congressional Investigations*, 24.

as well as to receive testimonies, delivered in person, by individuals with knowledge related to St. Clair's mission. The General himself "attended most of the committee sessions, while Secretary Knox testified before the Committee,"[39] as well as Quartermaster "Hodgson and others called to testify upon the request of the committee or of the principal individuals under investigation."[40] For instance, Secretary "Knox had detained certain military officers in Philadelphia, so that they might give testimony,"[41] while Secretary Hamilton also appeared before the Select Committee.[42]

All the papers and testimonies allowed the committee to conclude its work in a relatively short time, as on May 8, 1792, the committee report was ready. While it exonerated St. Clair, it did not present the administration, particularly the Department of War, in a good light. According to the Committee report, the general "had it in contemplation to commence the expedition at least one month earlier than it was commenced, with few he then had, which was not very different from the real forces in action; but was prevented for the want of the Quartermaster and contractor, and in consequence of the extreme deficiencies and derangement of the business of their Departments, the person sent forward by the Quartermaster being totally incompetent to the business; and the contractor's agents not being sufficiently supplied with money to enable them to execute their duties."[43] Congressmen blamed delays on the part of Department of War for the failure of the St. Clair mission. As for the general himself, the Committee was of the opinion that "the failure of the late expedition can in no respect be imputed to his conduct."[44] The report emphasized that mistakes on the part of Quartermaster Hodgson and the Military Stores Departments, responsible for supplying soldiers with the military equipment, in fact, any equipment, made the army ill-prepared for undertaking any expedition. When the Indians attacked, it "was unexpected, the troops having been just dismissed for the morning parade."[45] St. Clair's conduct on the battlefield, on the other hand, "appears to have been cool and deliberate in the whole of the action, and officers in general active and intrepid. The whole order of march, as far as the Committee are capable of expressing the opinion, appears to have been judicious, and the ground for action well chosen."[46] With that summary, the first congressional investigation on the executive branch of America's federal government appeared to be concluded.

But when it was read to the full House upon its conclusion, the discussion on how to act on the information reported therein was postponed until November,

[39] Chalou, "General St. Clair's Defeat, 1792–1793," 9.

[40] Quoted in: Taylor, *Grand Inquest: The Story of Congressional Investigations*, 24.

[41] Chalou, "General St. Clair's Defeat, 1792–1793," 9.

[42] Ernest J. Eberling, *Congressional Investigations: A Study of the Origin and Development of the Power of Congress to Investigate and Punish for Contempt* (New York: Octagon Books, 1928), 37.

[43] Annals of Congress, 1112.

[44] Annals of Congress, 1113.

[45] Annals of Congress, 1110.

[46] Annals of Congress, 1110.

which marked the start of the second session of Congress. Moreover, when the Select Committee report reappeared at the beginning of the next congressional session, "friends of Knox and Hamilton stirred up considerable opposition to the report."[47] Numerous representatives argued that major actors in the Wabbash defeat should present new documents and give testimonies again.[48] In effect, "the report itself was recommitted for further consideration by the Second Committee,"[49] now operating as a five-member body. The Second Committee's actions were the same as those of the first Select Committee, with the exception that it also dealt with writings prepared by Secretary Knox and Quartermaster Hodgson as rebuttals to the original report. But again, the Select Committee was unpersuaded, as an auxiliary report presented on February 15, 1793, confirmed the judgement of the initial report. But again, Congress chose not to take any action. By the end of the month, as the Second Congress of the United States was set to expire, "the Committee of the Whole . . . ordered the Select Committee be discharged from any further consideration."[50] After investigating its first case, the US House was presented with two versions of the report. But without any action, the first inquiry seems to be incomplete, even if the investigation was concluded by the Committee.

CONCLUSIONS

What is thus the conclusion of the investigation itself? First and foremost, the St. Clair inquiry, an unprecedented step, established a right of Congress to actually investigate the actions of the executive branch. Until then, oversight powers not explicitly stated in the Constitution were perceived as illegitimate by a number of members of both the legislative and executive branch. But with the St. Clair inquiry, they were nevertheless confirmed as a congressional authority. The House Select Committee subpoenaed the executive officials for papers and testimonies, which were granted. In the background of the investigation, if not its frontline, there was an active involvement of several individuals, responsible for drafting America's founding documents and setting its constitutional structure in motion. Cabinet members, Thomas Jefferson and Alexander Hamilton, as well as Representative James Madison of Virginia, did not dispute the federal legislature's investigative powers. In fact, the executive actions build an "assumption that compliance with congressional request should be the default of presidential administrations."[51] By his conduct in the St.

[47] Taylor, *Grand Inquest: The Story of Congressional Investigations*, 25.

[48] Chalou, "General St. Clair's Defeat, 1792–1793," 11–13; Taylor, *Grand Inquest: The Story of Congressional Investigations*, 25.

[49] Taylor, *Grand Inquest: The Story of Congressional Investigations*, 25.

[50] Chalou, "General St. Clair's Defeat, 1792–1793," 14.

[51] Wilhelm et al., *Congressional Oversight Manual*, 2.

Clair inquiry, President Washington indeed confirmed that the role of the American head of state, the president, was far from that of the British monarch. While it is argued that "to make executive . . . the subject to impeachment was to make him, not a king,"[52] the St. Clair case also demonstrated that the American executive might be investigated in cases that by their nature were unrelated to presidential impeachment, but to find answers that would make ways to improve the government service.

At the same time, Washington established presidential authority to decide which documents may be passed to Congress. While executive privilege, as it was later to be called, was judged by the federal courts as not unlimited, it has been broadly used by Washington's successors, from John Adams through Abraham Lincoln, Richard Nixon, and Bill Clinton to Donald Trump. The first chief executive thus set the precedent of the presidency actively seeking to limit the boundaries of congressional inquiry.

The St. Clair investigation was also the first to reveal what was later demonstrated in numerous inquiries. In general, "many times when prior to an investigation it has been generally assumed that personal inefficiency or culpability is to blame . . . inquiry shows that such waste is merely the natural concomitant of inefficient organization."[53] In the St. Clair case, it was a matter of inefficiency on the part of more than one individual, and not the troops' commander. The investigation itself demonstrated that even the separation of powers and the highest ideals of the Founders cannot keep politicians from acting according to their core instincts and that instead of impartially searching for answers, some might be willing to include politics in their considerations when the opportunity arises. The St. Clair congressional inquiry was welcomed by "the Jeffersonians, who were already using the disaster as a stick with which to beat the incumbent Federalists,"[54] to which, of course, the Federalists responded by diluting any immediate effects that the Select Committee reports might have had.

Finally, the St. Clair inquiry proved to Congress that investigating is the proper way of seeking information that helps improve the workings of government. If not for the notes and testimonies offered by witnesses, and the documents requested and delivered by the executive branch, the legislature might have been unable to eliminate Department of War deficiencies identified during the first investigation. In the larger sense, "the proper office of a representative assembly is to watch and control the government: to throw the light of publicity on its acts; to compel a full exposition and justification on all of them which anyone considers questionable; to censure them if found condemnable."[55] But the first step to fulfilling all the above

[52] McConnell, *The President Who Would Not Be King. Executive Power under the Constitution*, 57.

[53] Dimock, *Congressional Investigating Committees*, 88.

[54] Taylor, *Grand Inquest: The Story of Congressional Investigations*, 24.

[55] John Stuart Mill, *Considerations on Representative Government* (New York: The Bobbs-Merrill Company, 1958), 300.

duties would be to seek information which would provide the basis for further action. As James Madison remarked, "no man can be a competent legislator who does not add to an upright intention and a sound judgement a certain degree of knowledge of the subjects on which he is to legislate."[56] Therefore, proper congressional oversight is in part investigating, and in part legislating.

Summary: The chapter explores the historical development and legal foundations of the United States Congress's oversight function. It emphasizes the critical role oversight plays in ensuring federal agencies and departments administer programs effectively, efficiently, and economically, contributing to informed legislation. The resurgence of interest in congressional oversight, especially in light of recent high-profile investigations, underscores its significance in monitoring executive conduct and authority. Drawing on examples from American history, the article investigates the origins of congressional investigative power, its legal basis without explicit constitutional text, and the precedent-setting investigations that have shaped the practice. Through a detailed examination of foundational events and legal interpretations, the Author articulates how oversight mechanisms, rooted in English laws and colonial practices, have evolved to become a cornerstone of American governance, enabling Congress to scrutinize executive actions and uphold democratic accountability. The study concludes that congressional oversight, while occasionally contentious, is a fundamental aspect of the US political system, ensuring transparency and accountability in government operations.

Keywords: congressional oversight, United States Congress, Arthur St. Clair

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