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American Political Science Series

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REPRESENTATIVE GOVERNMENT

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LONDON
SIR ISAAC PITMAN & SONS, LTD.
PARKER STREET, KINGSWAY, W.C.2
1925

PRINTED IN THE UNITED STATES OF AMERICA

To

THE GRADUATE COLLEGE
OF PRINCETON UNIVERSITY

PREFACE

THIS work is based upon a great mass of material, collected in the course of an investigation of the history and characteristics of representative government which I carried on for several years in the Politics Seminary of Princeton University, with the assistance of graduate students working under my direction. I make to them my grateful acknowledgments of their zealous coöperation. My thanks are due also to my colleague, Professor Edward S. Corwin, who read the work in manuscript and made valuable suggestions.

H. J. F.

PRINCETON, N. J.

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PART I
ORIGINS

REPRESENTATIVE GOVERNMENT

CHAPTER I

THE SUBJECT STATED

In this treatise it is proposed to investigate the nature of representative government by inquiry into its origin and by examination of its characteristics. It is a species of government which exhibits itself in such different forms, that there is some difficulty in framing an exact and comprehensive definition that would be generally acceptable, but for the immediate purpose it is not necessary to make the attempt. Questions of institutional value, involving discrimination between what is genuine and what is spurious in claims of representative character, will come up for consideration later in the course of this treatise. For the present it is sufficient to remark that the essence of the term is plainly the fact of representation, however it may be arranged. The idea is that the people, while not in person present at the seat of government, are to be considered as present by proxy. The way in which the system

of representation is arranged, the conditions under which it acts, the scope of its authority, — all these are matters of great importance in determining the quality and effect of the system, and differences in these respects produce marked variety in representative government as displayed in actual practice; but the character mark of the type may be regarded as being simply the representative intention, however expressed in actual arrangements, whether well or ill.

As thus broadly viewed, it is beyond question that representative government is now the dominant political type. Representative institutions have been set up throughout the Americas, Europe, South Africa, and Australia, and they are now penetrating Asia. They have been adopted by Japan and they have been introduced into China, India, Persia, Turkey and Egypt. Whatever be the actual nature of the political arrangements that are taking shape in those countries, they at least attest the force of the tendency to assimilate political forms to the representative type. Among recent developments in world politics is some arrest of this tendency, but it has not gone far enough to impair the supremacy of the type.

This supremacy is of quite recent occurrence. Its beginnings go scarcely farther back than the middle of the nineteenth century. A peremptory

demand for representative institutions then broke out suddenly all over continental Europe. No great political movement ever made a more abrupt start. It was indeed a veritable explosion of popular feeling, and that explains why it came so suddenly. The way in which material for it had been prepared may be readily understood when the then state of the times is considered. The series of theoretic constitutions produced by the French revolution had left memories of horror and disgust. The various European constitutions framed during the Napoleonic era, although they had features whose value compelled eventual recognition, were essentially impositions of imperial authority and when that was broken they too collapsed. The group of constitutions that had appeared in the revolted American possessions of Spain, on the general lines of the constitution of the United States, had not produced results tending to make the type attractive. Everywhere the liberal experimentation of the age seemed to be a dismal failure, and after all the struggles and sufferings of the people, absolute government had been restored all over Europe. But its prestige was gone. The popular consent on which it rested when it was really powerful and efficient, had been withdrawn, and it now existed only on sufferance until the liberal tendencies of the age could find some new source

of inspiration, some new pattern of political structure. Such a source was found in the English constitutional system; such a pattern was supplied by English parliamentary institutions.

The first installation of a system modelled on that of England was made after Belgium broke away from Holland in 1830, and declared its national independence as "a constitutional, representative, hereditary monarchy."[1] The constitution adopted by Belgium dates from February 7, 1831. It provides for a cabinet system similar to that of England, with ministers appointed by the Crown but responsible to a national legislature composed of a chamber of deputies and a senate. This constitution has exerted a marked influence upon all European constitutional arrangements since then, but it can not be said that it initiated the general movement in favor of representative government. It was produced under circumstances that made it look like a result of diplomatic chaperonage. The annexation of Belgium to Holland had been an arbitrary arrangement made by the Congress of Vienna in 1815 in entire disregard of national sentiment and historical traditions. The cause of Belgian independence was upheld by England

[1] The constitution of Norway dates back to 1814 but in its original form it reflected the principles of the French constitution of 1791, and it did not acquire its present parliamentary character until 1884.

with the concurrence of France, and both powers forcibly intervened to compel Holland to submit. In the choice of a ruler and in making its governmental arrangements the new state acted under the advice of the protecting powers, especially England.

The general movement in favor of representative government dates from the French revolution of February 24, 1848, which turned on parliamentary issues. It had the effect of a call to the peoples of Europe, "now then, all heave together!" So general was the heave that every throne in Europe was shaken by it, and in most cases rulers could save themselves only by granting representative government. The first to capitulate was the king of Sardinia, who conceded parliamentary institutions to his subjects on March 4, 1848. As the kingdom of Italy was eventually formed by the union of other Italian states with Sardinia, the statute of 1848 became the national constitution of Italy. Some sort of constitution of representative government was adopted by most of the states of Europe as a result of the agitations begun in that year. What is known in European history as "the Year of Revolutions" — 1848, — marks the beginning of the movement towards representative government which has gone all over the world.

Antiquarian research animated by patriotic

zeal has in various times and places discovered grounds for claims of the existence of older forms of representative government than those noted in the foregoing. According to some writers representative government existed in Switzerland in ancient times, but such forms as are discernible in the available records seem more akin to the feudal system than to representative government of the existing type. Also in Holland, a quasi-representative character has been claimed for some ancient institutions, and the same claim has been made in behalf of Hungary. The feudal system was based on the idea of separate classes or estates each of which had its own political functions, and action by an estate through its deputies on sufficient occasion was familiar to the political thought of Europe, but this was something quite distinct from the idea of a national control over authority which is the characteristic principle of representative government. It is doubtless the case that ancient institutions have influenced the development of representative government in Europe, but it is historically manifest that the distinct type was first formed in England and that the English example was the master influence in propagating the type. It has been said of the English parliament that it is "the mother of parliaments." That claim appears to be well founded.

It is a remarkable circumstance that while representative government was making its rapid rise in the world, little was definitely known of its history, although there was much speculation on the subject. It was pretty generally agreed that England was the place in which it first showed itself in such a way as to attract general notice, but whence it came and how England got it were matters about which there was much dispute. The various theories which have been advanced seem to fall into one or the other of these two classes:

1. That representative government is a development which took place in the Middle Ages, through modification of royal administration by the events of English history.

2. That representative government is a modern restoration of ancient right, whose institutional embodiment was the Teutonic assembly of freemen. This institution was carried into England by the Anglo-Saxons, where it became the germ from which representative government was eventually developed.

The first of these views was that generally held by historians up to the middle of the nineteenth century, when the second one came into such extensive vogue as to take practically complete possession of historical literature. It still pervades popular history and its characteristic ex-

pressions have become proverbial, as in such phrases as "Anglo-Saxon principles," "Anglo-Saxon freedom," but exact scholarship is now returning to the older view.

Questions of this character are ordinarily supposed to have only an antiquarian interest without much practical importance, but this is a mistake. The question which of these two views is correct has really a very important bearing upon practical politics, although it might be rather difficult to explain it. But however that may be, the plan of this treatise requires a thorough examination of the merits of the case, and it so happens that the details form a very curious chapter of literary history possessing an interest of its own. Probably there can be no stronger instance than it affords of the ability of people to believe what they want to believe and make the facts appear what they wish them to be.

CHAPTER II

THE SEVENTEENTH CENTURY INQUEST

THE violent political controversies in England during the seventeenth century are particularly significant as evidence bearing on the subject now under consideration. The great intellectual occupation of the age was examination of the source and nature of authority, and if there had been extant any tradition of the primitive Teutonic community, as the original sovereign, it would have been brought into notice, but such a thing was never mentioned.

When the breach with the king had reached such a pass that public opinion turned to the idea of a commonwealth, the position was taken that monarchy was "neither good in itself nor for us." Argument in support of the first part of this proposition was drawn from the Book of Samuel; in support of the second part, from history and reason, but the history was a recital of the grievances of the people at the hands of the king and the appeal to reason invoked the law of nature.[1] There is nothing by way of an

[1] G. P. Gooch, *English Democratic Ideas in the Seventeenth Century*, p. 167.

appeal to the history of institutions such as the Teutonic polity theory would inevitably have suggested had it been known. One of the controversialists of the period, John Cook, a lawyer who took a leading part in the trial of Charles I on the side of the prosecution, published a treatise against monarchy in which he appealed to the Bible and scorned "the puddles of history."

It may be urged that the importance of these considerations is diminished by the fact that political motives were then habitually grounded upon religion, and hence in any controversies the customary appeal would be to the Bible; so therefore it does not follow that the tradition was lost or inoperative because it was neglected in the discussion. But even if this be accepted as a sufficient explanation of the general silence on this point, it does not apply to John Milton, the strongest writer of the age. Early in his career he prepared a history of Britain "from the first Traditional Beginning, continued to the Norman Conquest." The work was not published until 1670, but he had been engaged upon it before 1649, when he was called to the Latin Secretaryship for the Commonwealth, and he had it by him during the period in which he wrote his political treatises. But Milton did not see any freedom in Anglo-Saxon institutions but rather a state of "rapine and oppression," and

he described the people of Anglo-Saxon times as "fitted by their own vices for no condition but servile." He gave an account of the origin of parliament which directly antagonizes the theory of Teutonic origin. He described it as "originally signifying but the parley of our lords and commons with the Norman king when he pleased to call them."

It may be said that such facts as these nevertheless leave room for the contention that the spirit of Teutonic freedom was operative, making practical use of the representative assembly, although the historical beginnings of the institution had faded out of mind. But perhaps the strongest impression left by minute examination of the literature of the seventeenth century is that the struggle between king and parliament was not for the freedom of the people but for the possession of authority to rule the people. Of the Presbyterian party it was remarked that if the king would not grant them Presbyterianism, then they were for the people; and when the people resisted their will then they were for the king. An accusation brought by the Presbyterian writers against the Independents was that they gave power to the common herd. "The popular government," declared Robert Baillie, "bringeth in confusion, making the feet above the head." Clement Walker de-

clared: "They have cast all the mysteries and secrets of government before the vulgar, and taught the soldiery and the people to look into them and to ravel back all governments to the first principles of nature. They have made the people so curious that they will never find humility enough to submit to a civil rule."

But the leaders among the Independents showed that they too were opposed to the admission of the mass of the people to political power. When the Levellers, who obtained great influence in the army, demanded manhood suffrage, Oliver Cromwell replied: "The consequences of this rule tend to anarchy; must end in anarchy. For where is there any bound or limit set if men that have but the interest of breathing have voices in elections." The democratic demands were formulated in a paper entitled, "Agreement of the People," which it was proposed to back up with force. Cromwell acted with characteristic energy. His arrangements prevented united action by the adherents of the Agreement in the army, and when two regiments paraded without orders, wearing on their hats copies of the Agreement, Cromwell ordered the removal of the paper and on refusal shot one of the mutineers at the head of his regiment.

Richard Baxter, probably the most famous of

the Independent preachers, in his *Holy Commonwealth,* argued that "democracy or popular government is ordinarily the worst, . . . because it comes nearer to the utter confounding of the governors and governed: the ranks that God hath separated by his institution."

John Milton was quite in agreement with other Puritan leaders that it is the business of government to curb the sinful nature of man, and it was never any thought of his that the authority taken from the king should be restored to the people. He ardently sustained the autocratic rule of Cromwell, and after Cromwell's death he wrote to General Monk, arguing that the best way to establish a free commonwealth would be to substitute for parliament a grand council of good men with permanent authority. Milton argued that successive parliaments "are much likelier continually to unsettle rather than to settle a free government, to breed commotions, changes, novelties and uncertainties, to bring neglect upon present affairs and opportunities, while all minds are in suspense of a new assembly, and the assembly for a good space taken up with the settling of itself." He went into a long historical argument to show that popular assemblies "either little avail the people, or brought them to such a licentious and unbridled democracy, as in fine ruined them-

selves with their own excessive power." He spoke disdainfully of the notion that the real interests of the people will be secured by making provision "now and then to hold up a forest of fingers, or to convey each his bean or ballot into the box." The practical ends of good government would be best secured by a grand council "firmly constituted to perpetuity," and he held that under such a rule "we shall live the clearest and absolutest free nation in the world."

The downfall of the Commonwealth so intensified Milton's aversion to popular rule that it produced what is one of the most curious passages in all literature. In *Paradise Regained,* where the temptation in the wilderness is described, Satan's offer of the glory of this world is made the occasion of this tirade against democracy:

"To whom our Saviour calmly thus replied:
Thou neither dost persuade me to seek wealth
For empire's sake, nor empire to affect
For glory's sake, by all thy argument.
For what is glory but a blaze of fame,
The people's praise, if always praise unmixed?
And what the people but a herd confused,
A miscellaneous rabble, who extol
Things vulgar, and, well weighed, scarce worth the praise?
They praise, and they admire, they know not what,

And know not whom, but as one leads the other . . .
The intelligent among them and the wise
Are few, and glory scarce of few is raised."

Freedom and liberty are such variable terms that they have no definite content of meaning until one is informed, freedom from what? liberty to do what? When such details are obtained it appears that the leaders of thought and action in the Commonwealth period construed freedom as meaning relief from traditional authority that had become obnoxious; and they construed liberty as meaning the exercise of authority in accord with their own views. The actual control shifted from the Presbyterians to the Independents, from parliament to a narrow oligarchy, and thence to a military dictatorship, whose maintainers were well aware that the majority of the people were against them, but found in that fact only an incentive to greater zeal. Agents of the government were instructed to "keep a watchful eye on the confluence of the people on any pretence." Orders were issued to seize all the private presses in the counties and to arrest the hawkers of books. The most frequent entry upon the records of this period is notice of a warrant against the circulation of books and newspapers. As a pamphlet of the times put the case, "the people were ruled before

by king, lords and commons; now by a general, court martial and commons." The change was so little to the liking of the people that royalty was restored without conditions at the first opportunity.

Two great philosophers of the seventeenth century, Thomas Hobbes and John Locke, wrote upon politics, but neither Hobbes' *Leviathan* (1651), nor Locke's *Two Treatises on Government* (1689), show any knowledge of a Teutonic or an Anglo-Saxon origin of political rights. Hobbes argued in behalf of unlimited power for princes, as the essential principle of order in the body-politic, although — with an eye to contemporary English politics — he admitted the right of a subject to change his allegiance when a former sovereign's power to rule had irrevocably gone. Locke has been claimed as a champion of parliamentary authority, because he wrote in defense of the ultimate sovereignty of the people, but this was a corollary of his opinion that government must have originated in contract between men when living in a state of nature. This theory of the original contract, as manipulated by Rousseau seventy years later, became a violent corrosive, but Locke's own use of it was quite innocuous. Although he condemned absolute monarchy as "inconsistent with civil society," he showed de-

cided favor to the exercise of autocratic authority on proper occasion. He remarked:

> *Salus populi suprema lex* is certainly so just and fundamental a rule, that he who sincerely follows it can not dangerously err . . . prerogative being nothing but a power in the hands of the prince to provide for the public good in such cases which depending upon unforeseen and uncertain occurrences, certain and unalterable laws could not safely direct. Whatsoever shall be done manifestly for the good of the people, and the establishing of the government upon its true foundations, is, and always will be, just prerogative. . . . This power to act according to discretion, for the public good without the prescription of the law, and sometimes even against it, is that which is called prerogative.[1]

In general, it is to be observed that the struggles of the sixteenth and seventeenth centuries, although they turned upon issues that caused political authority to be explored to its foundations, did not discover any tradition of popular liberty derived from Teutonic sources. The contending parties were animated by mutual intolerance, and each sought authority over the people with claims of divine right. Magisterial control over the behavior of the people was the common ideal of the Protestant reformers, but their attitude to existing institutions varied ac-

[1] *Two Treatises on Government,* Book II., chap. 13, sections 158, 160, 167.

cording to circumstances. In Germany, where Luther invoked the power of "the godly prince" in opposition to papal authority, the Reformation tended powerfully to promote absolutism in politics. Where royal or princely authority was on the side of Catholicism, appeal was made to the people, not for the purpose of setting up popular rule but to establish a clerical rule, of a singularly oppressive character.[1]

From the writings of Catholic theologians, both before and during the Reformation period, many assertions of popular right might be collected, but for the present purpose it is not necessary to consider them, as no such theory has ever been advanced as that the democratic spirit of Catholicism owes anything to the usages of Teutonic heathen tribes.

[1] Within a period of three years at Geneva under Calvin's rule "there were passed fifty-eight sentences of death, seventy-six of banishment and eight to nine thousand of imprisonment on those whose crime was infringement of the church statutes. Hug and Stead, *Switzerland,* pp. 263, 267, 283, 285. Under Puritan rule in Massachusetts, branding, whipping, mutilation, banishment and hanging were among the penalties inflicted for offenses against ecclesiastical regulations. *Cf.* Brooks Adams, *The Emancipation of Massachusetts,* p. 39.

CHAPTER III

THE EIGHTEENTH CENTURY HISTORIANS

WHILE the evidence to be gathered from seventeenth century literature is mostly negative in character, relating to the present subject by significant omission rather than by any pronouncement on the point, the case is different with the great historians who appeared in the eighteenth century. By that time the controversial temper of the preceding age had declined so that the ascertainment of truth was now considered to be more important than triumph over an adversary, and philosophic composure was regarded as the proper attitude of the historian. A series of great writers appeared whose studies were devoted to the origin of European institutions of government, a task which involved inquiry into the source of English parliamentary institutions.

In sheer magnitude of achievement the historians of the eighteenth century have never been surpassed, and the vast erudition displayed in their works has secured for them a permanent place in historical literature. Since their time

intensive study of particular periods or episodes has been the most important development in that field, but there are signs that it has been pursued to an extent injurious to imagination and constructive power. If it be no more than a correct record of events history is as tedious and unprofitable as an old wives' tale. It is only as history is able to elucidate the significance of events with respect to the fortunes of nations and the welfare of society that it becomes really worth while.

Voltaire regarded the primitive institutions of Europe as a scene of barbaric disorder and violence of which Poland had preserved the main lineaments. "In Poland both the manners and the government were, as they now are, nearly the same as those of the ancient Goths and Franks. The crown was elective; the nobles had a share in the supreme authority; the people were slaves. . . . Voltaire held that the foundations of modern institutions could not be traced farther back than the feudal period.[1] Referring to the second half of the fifteenth century, he observed:

> "England, in the midst of her divisions, began to lay the foundation of that extraordinary govern-

[1] His general history was published in 1756, with the title "Essays upon the Manners and Spirit of Nations, and upon the Principal Facts of History from Charlemagne to Louis XIII."

ment, which through the most violent and bloody opposition, has in the course of ages produced that happy mixture of liberty and royalty which is the admiration of all nations."

Hume, although he was born seventeen years later than Voltaire, died before him. His early studies were pursued in France and he was familar with Voltaire's writings.

In an appendix to chapter III of his *History of England* Hume gave an elaborate dissertation upon "the Anglo-Saxon government and manners." He held that the German tribes were distinguished by their free institutions, and that by their invasion of the Roman Empire they had spread free principles of government through Europe. This opinion might be cited in support of the Teutonic polity theory, but he went on to say that the freedom of which he speaks was a privilege confined to a ruling class. "The leaders and their military companions were maintained by the labor of their slaves, or by that of the weaker and less warlike part of the community whom they defended." He pointed out that there is no evidence of any representation of the common people in the national councils. "The members are almost always called *principes, satrapae, optimates, magnates, proceres;* terms which seem to suppose an aristocracy, and to exclude the Commons." . . .

As to whether in its original form parliament had a representative character, Hume observed:

> "This question was once disputed in England with great acrimony; but such is the force of time and evidence, that they can sometimes prevail, even over faction; and the question seems by general consent, . . . to be at last determined. . . . It is agreed that the commons were no part of the grand council, till some ages after the Conquest; and that the military tenants alone of the crown composed that supreme and legislative assembly."

Hume held that the system of government introduced by the Teutonic invasions was "more a confederacy of independent warriors than a civil subjection." But in this confederacy were distinctions of rank and office, from which the feudal system emerged by a natural, indeed an inevitable, development. The account which Hume gave of the rise and growth of feudal institutions is marked by great learning and sound judgment. In its general tenor it is now confirmed by the conclusions reached in our own times through the labors of specialists in that field.

A work which promptly took classic rank was Robertson's *History of the Reign of the Emperor, Charles V.* Although the title might seem to indicate that it was a topical history it was

really planned as a general history. The author explained that the age of Charles V had been selected for particular consideration because it was "the period at which the political state of Europe began to assume a new form," and that it was his purpose to make his account "an introduction to the history of Europe." In pursuance of this design the first volume was entitled: "A View of the Progress of Society in Europe from the Subversion of the Roman Empire to the Beginning of the Sixteenth Century." This volume long served as the chief manual of general European history, a position which it fully merited by the extent of its information, the discernment of its views, and its sober and well-considered judgments. Until the case system of instruction was introduced Robertson was considered to be as indispensable as Blackstone in the study of the law.

Robertson was in agreement with Voltaire and Hume as to the character of the Teutonic tribes that overran western Europe during the decline of the Roman Empire. Their political institutions he held to have been then in about the same stage of development as those of "the various tribes and nations of North America." He sustained this opinion by a detailed comparison between the manners and customs of the Germans as described by Caesar and Tacitus and

those of the American Indians as described by observers, and he found the resemblance so close that the "philologists of the last century, who, with more erudition than science, endeavored to trace the migrations of various nations, and who were apt, upon the slightest appearance of resemblance, to find an affinity between nations far removed from each other, and to conclude that they were descended from the same ancestors, would hardly have failed, on viewing such an amazing similarity, to pronounce with confidence, 'that the Germans and Americans must be the same people.'"

Robertson himself thought that the resemblance was accounted for by the fact "that the characters of nations depend on the state of society in which they live, and on the political institutions established among them; and the human mind, whenever it is placed in the same situation, will, in ages the most distant and in countries the most remote, assume the same form, and be distinguished by the same manners." The notion that primitive Teutonic polity survives in any of the institutions of modern Europe received no support from Robertson.

The historians of the eighteenth century agreed in attributing the feudal system to the characteristics of the Teutonic tribes that invaded the Roman Empire. Undoubtedly Gibbon

had this in mind in remarking: "The most civilized nations of modern Europe issued from the woods of Germany; and in the rude institutions of those barbarians we may still distinguish the original principles of our present laws and manners." [1] Later on in the same chapter he ridiculed the antiquarian fables which credited the ancient Germans with stores of traditional knowledge of art and science, remarking that "the Germans, in the age of Tacitus, were unacquainted with the use of letters, and the use of letters is the principal circumstance that distinguishes a civilized people from a herd of savages incapable of knowledge or reflection." As a matter of historic fact the ancient Germans "passed their lives in a state of ignorance and poverty, which it has pleased some declaimers to dignify with the appellation of virtuous simplicity." Their assemblies he described as scenes of violence and disorder. "For the Germans always met in arms, and it was constantly to be dreaded, lest an irregular multitude inflamed with faction and strong liquors, should use those arms to enforce, as well as to declare, their furious resolves. We may recollect how often the diets of Poland have been polluted with blood, and the more numerous party has been compelled to yield to the

[1] Vol. I of *The Decline and Fall of the Roman Empire:* chap. IX, on "The State of Germany till the Invasion of the Barbarians in the Time of the Emperor Decius."

more violent and seditious." In a note Gibbon remarked: "Even in our (Anglo-Saxon) ancient parliament the barons often carried a question, not so much by the number of votes, as by that of their armed followers."

Gibbon recorded his agreement with Robertson and Hume in the opinion that the population of Germany was much magnified by ancient writers, impressed by the swarms of ferocious warriors from time to time descending upon the empire. He thought that in the great area of ancient Germany there might have been possibly a million warriors, but they were distributed among more than forty independent states. Gibbon summed up the case with these observations:

> "Modern nations are fixed and permanent societies connected among themselves by laws and government, bound to their native soil by arts and agriculture. The German tribes were voluntary and fluctuating associations of soldiers, almost of savages. The same territory often changed its inhabitants in the tide of conquest and emigration. The same communities, uniting in a plan of defense or invasion, bestowed a new title on their new confederacy. The dissolution of an ancient confederacy, restored to the independent tribes their peculiar but long forgotten appellation. A victorious state often communicated its own name to a vanquished people. Sometimes crowds of volunteers flocked from all parts to the standard of a favorite

leader; his camp became their country, and some circumstance of the enterprise soon gave a common denomination to the mixed multitude. The distinctions of the ferocious invaders were perpetually varied by themselves, and confounded the astonished subjects of the Roman empire."

In general it may be said that the great historians of the eighteenth century agreed in the opinion that what the countries of Europe derived from the Teutonic invasions was a military constitution of society, perpetual in its violence, unstable in its character, and miserable in its results. Law and order were established, art and industry were promoted, and civilization was introduced, by the gradual suppression of primitive Teutonic polity, through the consolidation of royal authority. Of representative government as a distinct form of polity the eighteenth century historians had no notion whatever. The representative element in the constitution of England they regarded simply as an incident of royal administration in that country.

CHAPTER IV

INCEPTION OF THE TEUTONIC THEORY

THE earliest mention of this theory appears to be that made by Montesquieu in his rambling work on politics, jurisprudence and ethics, *The Spirit of the Laws* (1748). It is a passing allusion, as follows:

> "In perusing the admirable treatise of Tacitus, 'On the Manners of the Germans,' we find it is from that nation the English have borrowed the idea of their political government. This beautiful system was invented first in the woods."[1]

That is all. He threw out the idea but he made no attempt to explain it or develop it. It was not at all in accord with the historical

[1] Book XI., chapter VI. It was probably due more to the idealizing of primitive conditions which Rousseau made fashionable than to the direct influence of Montesquieu that an echo of the Teutonic theory was heard across the Atlantic. According to a letter from John Adams to his wife, August 14, 1776, Thomas Jefferson proposed as a device for the great seal of the United States, "Hengist and Horsa, the Saxon chiefs, from whom we claim the honor of being descended, and whose political principles and form of government we have assumed." Jefferson's idea did not meet with a sympathetic response. The American situation at that time was not propitious to romantic views about government.

science of the period, but it was in full accord with the movement for a return to nature soon thereafter started by Rousseau. Montesquieu wrote in a juristic spirit, and in general he based his opinions on historical data, but he was fond of philosophic excursions, and in one of these he stated the case which Rousseau took as the cornerstone of his theories. In speaking of the civil and moral obligations to which man is subject as a member of society, Montesquieu remarked that antecedent to such obligations were the laws of nature. "In order to have a perfect knowledge of these laws, we must consider man before the establishment of society; the laws received in such a state would be those of nature." Montesquieu expressly dissented from the view of Hobbes that the state of nature was a state of war, remarking: "But is it not obvious that he attributes to mankind before the establishment of society what can happen but in consequence of this establishment, which furnishes them with motives for hostile attacks and self-defense." Montesquieu held that the state of nature was ordinarily a state of peace, as men would simply keep apart from one another unless companionship was made agreeable by mutual consideration. He held that it is only when man is fixed in a social system that the conditions exist under which warfare can arise. "As soon

as man enters into a state of society he loses the sense of his weakness; equality ceases, and then commences the state of war."

By these speculations Montesquieu presented Rousseau with the logical premises of *The Social Contract* (1762), and the philosophy of the Return to Nature. Montesquieu, an elderly jurist holding honorable posts and enjoying an assured social position, valued law and order. His opinions as to the origin of institutions formed a high explosive but it never occurred to him to touch it off nor indeed that such a thing was possible. But Rousseau did the trick, by dint of logical consistency. If man lived in peace in a state of nature, if the laws of nature sufficed for his happiness and welfare before society was instituted and political and legal authority were put as a yoke on man's neck, clearly the remedy for the sufferings of humanity is to return to nature.

Rousseau's eloquent advocacy of this doctrine set up vibrations that shook the world, with consequences that fill innumerable volumes of political and literary history. The return to nature was speedily arrested by collision with hard reality when the French Revolution took place. When Napoleon Bonaparte appeared upon the scene the peoples of Europe became occupied by considerations of too practical a nature to allow them either time or inclination for any-

thing else. There is, however, some evidence of an abortive development of the primitive Teutonic polity theory from the tendency to idealize primitive conditions, which was a feature of the ideas brought into vogue by Rousseau.

The scene was the republic of Holland, whose rise to power has been made familiar to American readers by Motley's histories, whereas its decline and fall is hardly within popular knowledge although really more deserving of study.[1] The prosperity attained by the Dutch Republic after throwing off the Spanish yoke, dazzled the eyes of Europe in the seventeenth century and exerted considerable influence in inclining the people of England to adopt republican institutions.[2] It looked at one time as if the Dutch Republic would be one of the great powers of the world. Amsterdam was the world's greatest commercial and financial center, while Berlin was a village of a few thousand inhabitants, and the Prussia of that period was a poor, backward country with about a million inhabitants. The

[1] In the preface to his *Fall of the Dutch Republic,* H. W. Van Loon says: "Out of a hundred interested inquirers, ninety-nine had none but the vaguest conceptions of the adventures of the Dutch Republic from the moment it ceased to be chronicled by the great American historian."

[2] Cf. G. P. Gooch, *English Democratic Ideas in the Seventeenth Century,* p. 52, 53, for numerous citations on the point. At that period the example of Holland had an influence affecting political structure, similar to that exerted by the United States at the close of the eighteenth century.

decline and fall of the Dutch Republic is attributed by historians not to disadvantage of position, deficiency in resources, lack of opportunity or inadequacy in national capacity, but to defect in the character of the government.

The direct line of the House of Orange, founded by William the Silent about the year 1568, died out with William III, who became King of England in 1689. After his death there was no stadtholder until 1747 when the male heir in collateral descent was elected as William IV. He died in 1751, when the son who succeeded as William V was only three years old. During the long regency that ensued the leaders of the provincial assemblies were well situated for establishing claims which they held to be an embodiment of ancient rights and privileges. Asserting a theory which in our own times has been assiduously cultivated in the United States, it was held that executive authority should be strictly confined to the duty of executing the laws made by the assemblies, without any right to interfere in their deliberations. It was in the course of active propaganda in support of this doctrine that the Teutonic primitive polity theory made its appearance. It was exhibited in its typical form by a famous pamphlet, "To the People of the Netherlands," written by a leading member of the provincial assembly of Overysel. The

pamphlet, which arraigned the House of Orange as a peril to the liberties of the nation, began with a statement of the origin of those liberties. The author related that the ancient Batavians lived like free men in a natural way, governing themselves by the will of all the people convened in popular assembly. In this assembly each man appeared fully armed, as befitted his sovereign and independent condition. Subsequent history, it was asserted, was a record of the attempts of oppressors to abridge or subvert the ancient liberties. Even William the Silent did not escape reproach. It was admitted that he performed notable services in the uprising against Spanish rule, but his motives were not disinterested. He sought to obtain power for himself and was seeking to found a dynasty, when his assassination arrested the execution of his plans.[1]

The author of this pamphlet died before the consequences of his theory were experienced, but the time came when some of the fellow citizens whose individual sovereignty he had extolled showed their appreciation of his doctrine by blowing up his grave. The republic, afflicted by the incapacity and demoralized by the corruption that always attend management of the public business by assemblies, so declined in power while increasing in wealth, that it became one of the

[1] Van Loon, *The Fall of the Dutch Republic*, p. 327.

first and about the easiest of the victims of the French Revolution. Its case is a striking example of the hollowness of material prosperity when it is not accompanied by governmental efficiency. Just before the collapse of the republic it seemed to be the richest country in the world. In 1789 the Bank of Amsterdam held 3,000 tons of gold. State securities paying 2½ per cent stood at 110 in the money market. But in 1810 the government was bankrupt and the Bank of Amsterdam was in liquidation. The people made a rapid descent from opulence to misery and want.[1]

In these convulsions the primitive polity theory perished never to be revived. After the Napoleonic wars were over, the country was reconstituted as a kingdom with the son of the last stadtholder on the throne as King William I. The politics of modern Holland date from the Napoleonic period, and the present structure of authority bears the impress of the national experience during that period. The old particularism is suppressed, national sovereignty is effectively embodied in a legislature composed of the executive in conjunction with the parliament, while executive power belongs exclusively to the crown. The success of the present constitutional

[1] J. E. Barker, *The Rise and Decline of the Netherlands* gives many details of the progress of industrial decay.

system in safeguarding the integrity of the nation during a war cycle of even more than Napoleonic violence, is in striking contrast with the experience of the old republic.

Although it was only in the Dutch republic that any distinct formulation of the primitive polity theory was observable as a motive force in politics, yet tendencies in the same direction were noticeable throughout Europe as an incident of the great romantic movement started by Rousseau. The force of this movement has extended to our own times, but since the Napoleonic era it has belonged rather to literary history than to politics. Realism and not sentiment has in the main presided over political arrangements. It was in England,— the only country in Europe that escaped revolution in its social and civic polity from the vast upheavals during the period 1789–1848, — that the Teutonic theory found a favorable climate and obtained an exuberant growth.

CHAPTER V

THE THEORY IN ENGLAND: ITS START

It was inevitable that the interest in primitive conditions inspired by the return to nature championed by the romantic movement in literature should produce some effect upon history. The romantic movement itself may be said to be a recasting of social values upon a naturalistic basis, and this tended to discredit the classic moulds which the eighteenth century historians had used. The romantic spirit caused a great revival of interest in early literature in its supposed character as a product of the close communion with nature in which people lived before the complications of government and art had overlaid and suppressed the original simplicity of human existence. For a considerable period the most famous book in Europe was that containing the poems of Ossian, published from 1761 to 1765 by a Scotch schoolmaster, James MacPherson, who pretended that he had collected them from oral tradition. Napoleon Bonaparte's copy of Ossian is still extant, with his marking of favorite passages, and smelling of snuff and

patchouli. The founder of the present royal house of Sweden was named after one of Ossian's characters, — Oscar, which has ever since been perpetuated in the family.[1]

But while imaginative literature was steeped in admiration of primitive social conditions, the historical literature of the period portrayed those conditions as rude, coarse, stupid and disorderly. The situation naturally prompted a re-examination of the historical evidence, and colossal labor in this direction produced Turner's *History of the Anglo-Saxons.* Its volumes which appeared from 1799 to 1805, at once sprang into fame because of the new light in which they exhibited the barbarians, of whose character and institutions the older school of historians had made such slighting estimate.

Sharon Turner (1768–1847) was a London attorney who devoted all his spare time to study of the Anglo-Saxon period. He was the first to examine thoroughly the collection of Anglo-Saxon manuscripts in the British Museum. Examination of his works inspires one with admiration for his vast erudition mingled with amazement at the credulity of his attitude towards the myths handed down by the medieval chroniclers. He labored for sixteen years before

[1] J. S. Smart, *James Macpherson,* gives a vivid account of the immense vogue obtained by the poems of Ossian.

he produced his first volume. His huge collection of material and the elaborate dissertations in which he digested and arranged that material so as to cover every phase of political and social conditions in Anglo-Saxon times, first gave scientific character to historical knowledge of that period. The debt which scholarship owes to him is singularly large. A striking feature of the work, particularly in view of the romantic impulse that initiated it, is the cool, common-sense estimate of values which he displayed in discussing the Anglo-Saxon literary relics disinterred by his heroic industry. His critical judgments remind one of those of Dr. Samuel Johnson, whose literary influence probably had considerable effect upon Turner's style. The following passage seems to bear the marks of Johnson's critical method:

> "The barren and peculiar state of the Anglo-Saxon poetry leads us to infer that it was the product of art more than nature. Its origin seems to have been as homely as its genius The origin of the periphrasis is easily accounted for; a favorite chief or hero conquers, and is received on his return by the clamorous rejoicings of his people. One calls him brave; another, fierce; another, irresistible. He is pleased with the praises; and some one at his feast, full of the popular feeling, repeats the various epithets with which he had been greeted: —

Edmund,
the brave chief
fierce in war!
irresistible in battle!
slaughtered his enemies
at ———

This is in substance an Anglo-Saxon poem."

Of the class of men who built up, on such rude literary foundations, the poetry of the common people, he said:

"The ambulatory glee-men, who strove to please the public by their merry-andrew antics, were most probably the first inventors of the genuine ballad. While at one time they tumbled and danced, showed their bears and frolicked before the people in the dresses of various animals, at others they may have told little tales to interest the mob, from whose liberality they drew their maintenance. Incidents narrated in verse were more intelligible than the pompous songs of the regular poets, and far more interesting to the people. In time they gained admission to the hall and the palace; and, by the style of Canute's ballad, this revolution must have been achieved by the beginning of the eleventh century."

The good sense and discernment of such remarks are manifest. It is therefore the more remarkable that with such a clear understanding of the origins of Anglo-Saxon literature he should have been so credulous in dealing with its leg-

ends as historical material. The medieval rhymers and story-tellers in all countries made free use of anything that might interest and please, without the least concern about historical congruity. Classical and Biblical names and episodes are found jumbled together in the literary remains that have come down to our own time. No claims were too extravagant to be put forward. Antediluvian patriarchs traveled to Ireland, bringing with them a niece of Noah, named Cesara. The early history of England was connected with the siege of Troy, through the adventures of Brutus, son of Aeneas, who made his escape with a band of fugitives, whom he eventually conducted to England. Turner showed a curious deference to such bouncing statements. While he admitted that the Trojan episode, as narrated by Geoffrey of Monmouth, could not be accepted as authoritative, he observed that more ancient chronicles make allusions to it, and he thought that "it is remarkable that there should have been in Europe several traditions connected with both the conquerors and the conquered in that celebrated warfare which Homer has immortalised." He inserted in his work genealogies whose fabulous character is shown by such assertions as that among the direct ancestors of Odin were Japhet, "Saturnus of Krit," Jupiter, Darius, and Priam, King of Troy. He made no

comment on such absurdity, but remarked that "on the whole we may consider Woden, or Odin, to have really lived and reigned in the North," an opinion which critics would now regard to be as likely as that Jupiter or Mars actually lived and reigned somewhere.

In the portions of his work devoted to historical narrative, Turner became addicted to pomposity of style, which, together with his lack of critical judgment, so afflicted the successive volumes on English history subsequent to the Anglo-Saxon period that they made a quick passage to the oblivion in which they now remain. The only durable elements in his fame come from the colossal extent of his researches and the honesty with which he revealed the sources of his information. Although singularly uncritical in his use of material, he was entirely candid in presentation of it, making no attempt to conceal the ferocious brutality of the Anglo-Saxons. In view of the many revolting facts which he instances, one would be puzzled to know how he managed to set such a high value upon Anglo-Saxon institutions, were it not for a theory that controlled his opinions. He held that the Anglo-Saxon tribes, although apparently ignorant and barbarous, were derived from a civilized stock, living in remote antiquity, some of whose offshoots had "preserved and improved the primi-

tive stock of culture," while others temporarily "diverged from the civilized condition" into barbarism. Although the Anglo-Saxons sprang "from the great barbaric or Nomadic stock," he contended that in their remote ancestry they were a civilized people. In pursuance of this theory of aboriginal culture, Turner propounded curious opinions on the affinities of Anglo-Saxon to Arabic, Hebrew, Chinese, Japanese, Malay, "Carribee, Tongan," and other languages. He appears to have ransacked books of travel for native words for comparison with Anglo-Saxon words, and he framed comparative vocabularies that are so fantastic that one wonders that he could have taken them so seriously.

Such opinions readily conformed to notions of liberty of the Rousseau pattern, — absence of all restraint upon individual behavior. So he was able to say of the Anglo-Saxons, "Liberty was the spring and principle of their political associations, and pervaded the few civil institutions which their habits required." At the same time he was quite candid in the particulars he gave of the practical fruits of this sort of liberty. He described Anglo-Saxon society as the scene of continual rapine and bloodshed through the marauding tendencies of the nobility, while the mass of the people were sunk in miserable servitude.

It is only by bearing in mind the theory of primitive culture and barbarian liberty which gave him his point of view that one can understand how he could have insisted upon the substantial identity of Anglo-Saxon polity with the ordered government of modern England. The facts he adduced about the character of the casual assembly he designated as the Anglo-Saxon parliament, show that it was a gathering of the king's vassals summoned to meet him where he happened to be at the time, under penalty for failing to respond to the call, provided the king was strong enough to pursue the matter. But Turner insisted that in essence these gatherings were like the sessions of the modern English parliament. He declared: "After many years consideration of the question, I am inclined to believe that the Anglo-Saxon *witena-gemot* very much resembled our present parliament, in the orders and persons that composed it; and the members, who attended as representatives, were chosen by classes analogous to those who now possess the elective franchise."

He admitted that there was no evidence to support this assertion, and he instanced some facts that seem to make against it. He said: "The great bulk of the Anglo-Saxon population was in a servile state, and therefore without any constitutional right." The poor were liable

to such punishments as whipping, branding, amputation of a limb, mutilation of the nose, ears, and lips, plucking out of eyes, hair torn off, hanging or being stoned to death, while wealthy offenders could compound for felonies by paying fines. The assumption made by Turner, that in this barbarous state of society the principle of no taxation without representation was definitely known and habitually recognized, is an extraordinary instance of the way in which fixed ideas retain their hold in spite of all the facts. Had the primitive Teutonic polity theory no stronger support than Turner gave to it, it would have probably passed away with the decline of romanticism, but it was about to receive strong reinforcements.

The works of the historian Kemble may be said to have substituted a concrete foundation for the sands on which Turner rested his theory.[1] He did this by a process which he owed to German scholarship, but his materials were gathered by researches that rivalled Turner's in their extent. His work on *The Saxons in Eng-*

[1] John Mitchell Kemble (1807–1857), son of Charles Kemble, a famous tragedian, entered Trinity College, Cambridge, 1826; in 1829 was in Munich studying Teutonic philology; in 1831 went to Göttingen, and eventually he married the daughter of Professor Wendt of that university. Returning to England he lectured at Cambridge on Anglo-Saxon institutions. His principal works are: *Codex Diplomaticus*, a great collection of Anglo-Saxon charters, and *The Saxons in England*.

land is not a narrative history but is a collection of topical essays upon the particulars of Anglo-Saxon political and social organization. In dealing with the legends handed down by the old chroniclers he was far more critical than Turner. Whereas Turner was inclined to record Woden as a ruler who actually lived in prehistoric times, Kemble regarded him as a product of the myth-making faculty.

He ridiculed the stories transmitted by the chronicles of conflicts between the Anglo-Saxon invaders and the Celtic inhabitants of the land, remarking:

> "No authentic record remains of the slow and gradual progress that would have attended the conquest of a brave and united people, nor is any such consistent with the accounts the British authors have left of the disorganised and disarmed condition of the population. A skirmish, carried on by very small numbers on either side, seems generally to have decided the fate of a campaign. . . . The mass of the people, accustomed to Roman rule or the oppression of native princes, probably suffered little by a change of masters and did little to avoid it."

Kemble appears to have been the first historian to put in an authoritative shape the theory, now in the ascendant, that the original Celtic population largely survived under Anglo-Saxon

rule, and that the descendants of the invaders and of the conquered gradually became mingled together in the general mass of the people. He mentioned that the "signatures to very early charters supply us with names assuredly not Teutonic, and therefore probably borne by persons of Celtic race, occupying positions of dignity at the courts of Anglo-Saxon kings."

The great contribution which Kemble made to the theory under consideration is the existence of the Mark, — the self-governing community of Teutonic freemen. He admitted that there was no direct evidence of the existence of the Mark among the Anglo-Saxons, but he contended that the Mark system must have been brought by them from Germany, and that the system must have originated representative institutions, because attendance by representatives at the meetings of the Mark, to escape the inconvenience of personal attendance, would naturally suggest itself to a community of freemen. He held that despite the lack of any direct evidence of the fact, "the foundation of a representative system seems laid *a priori* and in the nature of things itself."

Analysis of Kemble's statements shows that, like Turner, he reached conclusions not by inference from the facts before him, but by dint of theoretic prepossessions bearing down the

facts. Nevertheless his importation of the theory of the Mark did much to promote acceptance of his conclusions. German scholarship was supposed to have fully established the existence of the Mark as a primitive Teutonic institution, so that use of it as a principle of interpretation seemed to be quite justifiable. Anglo-Saxon antiquarianism was much in fashion, and Kemble stood at the head of a school of historians whose works were supposed to give support to the theory of a primitive Teutonic polity from which English parliamentary institutions issued.

The theory as eventually completed may be summarized as follows:

Representative government is an outgrowth of the constitution of the primitive Teutonic community, a community of freedom whose territorial domain was the Mark, — lands which were held both in severalty and in common. The assembly of the Mark-men constituted the legislature which in its primitive form was attended by all the freemen. This primitive Teutonic polity was the germ from which constitutional government and representative institutions developed, with results that have varied owing to historical accidents. The original polity found a shelter in the forest cantons of Switzerland, in which it has been preserved to our own times. In general, on the continent of Europe, it was

extirpated by the absolutist systems that arose out of feudalism. In England it was overlaid by feudalism but not wholly destroyed, and its vitality was evinced by the growth of parliamentary institutions. Representative government originated as a delegation of the ancient right of personal attendance common to all freemen. From England Teutonic polity has been transmitted to America and to self-governing commonwealths in every quarter of the world. The spectacle of the free institutions enjoyed by England and America incited the popular revolts against absolutism that brought about the political reconstruction of Europe during the nineteenth century, attended by a general adoption of representative institutions, which thus became a characteristic of Western civilization, and an accompaniment of the spread of that civilization. Thus the original source of all existing models of constitutional government is the community of freemen embraced in the Teutonic Mark.

CHAPTER VI

THE SPREAD OF THE DOCTRINE

THE doctrine was greatly popularized and widely disseminated by Professor E. A. Freeman. In his hands it became a principle of interpretation of English constitutional history and a general standard of institutional value. The views which he propagated throughout his life with enormous industry were first set forth in 1849 in a pamphlet entitled *Thoughts on the Study of History,* issued in aid of the movement to found at Oxford a new School of Modern History. The methods and viewpoints of the school of Hume and Gibbon were ascendant at Oxford while Freeman was a student there, but under the influence of Turner and Kemble he experienced a reaction, of which this pamphlet was the expression. In it he contended that "we have at last discovered that we owe not more to Athenian forms of beauty, to Roman laws and government, than to those seeds of liberty and glory which the despised barbarian planted in his German forest or on his Scandinavian rock." When it was proposed that the new Oxford school should concentrate on the sixteenth and

seventeenth centuries, he urged that an understanding of that period could not be had unless Teutonic origins were consulted. "I can not conceive," he added, "that the history of the days of Crecy and Agincourt, with all their tinsel frippery of chivalry, can ever be brought into real comparison with those of true and unmixed Teutonic greatness."

Freeman began his career as a historian as a champion of these views, to whose service he brought extraordinary zeal and untiring industry, combined with great facility of literary composition. He was a keen politician and an active journalist as well as a historian. His fecundity was marvellous. His *History of Federal Government* and three volumes of his *Norman Conquest* were produced in the period 1860–1869, and during the same period he contributed 723 articles to the *Saturday Review,* 82 to the *Guardian,* and 7 to other periodicals, among them the *Edinburgh Review* and the *Fortnightly Review.*[1] During this decade his monthly output of review articles or magazine essays averaged over seven, and between times he was writing the histories upon which his reputation mainly rests; also carrying on a voluminous correspondence, for he was an indefatigable letter writer.

[1] W. R. W. Stephen, *Life and Letters of Edward A. Freeman,* Vol. I, p. 257.

These facts have a material bearing on the situation disclosed by critical examination of his works. One who approaches his *Norman Conquest* after a reading of the writings of Turner and Kemble must be impressed by the slightness of Freeman's own contribution to the theory he extolled and the ease with which he put his trust in it, although the whole scheme of his work depended upon its solidity.

According to the older historians, modern England took its characteristic pattern from the organization of public authority by the Norman kings. Freeman had quite another story to tell. His thesis was that the Teutonic invasions of England implanted a polity of Teutonic origin, which although overlaid and obscured by the Norman conquest, was never destroyed and eventually emerged in the form of the English system of representative government. On the first page of his first volume he announced this principle of interpretation, to which he adhered in all his writings:

> "The Norman conquest brought with it a most extensive foreign infusion, which affected our blood, our language, our laws, our arts; still it was only an infusion; the older and stronger elements still survived, and in the long run they again made good their supremacy."[1]

[1] E. A. Freeman, *History of the Norman Conquest.* Although he stated his theory in the introductory portion of his first volume, he reserved to the fifth, and last, volume, his statement of constitutional results.

Hence he held that the Anglo-Saxon *witenagemot* was a representative national assembly and that the Norman parliament was essentially a continuation of it. He stoutly asseverated the truth of both these propositions, but when the evidence is sought on which they rest, it is found that the first proposition has no better support than the vague conjectures of Turner and Kemble, although he added to them some conjectures of his own.

According to Turner, the primitive free community of Germany was produced by the characteristic habits of the Nomadic branch of the human race. Freeman improved upon this by declaring that such a polity "is far more than Teutonic; it is a common Aryan possession." He agreed with Kemble that the characteristic institution of this free community was the Mark, and he averred that it still survived, in its primitive form, in the forest cantons of Switzerland.

> "The ancient Teutonic community can now be seen in its purity only in a few of the smallest Swiss centers, and in several of these the ancient freedom had to be recovered and was not uninterruptedly retained."

He offered no evidence in support of this identification, but according to his biographer he had intended to deal with Swiss institutions in his

Federal Government, a work he never completed. This work, which he began in 1861, gives by its title an example of the way in which Freeman could jump to conclusions. It reads: *History of Federal Government, from the Foundation of the Achaian League to the Disruption of the United States.* But the United States was not disrupted, and Freeman never published more than the first volume of his history.

Freeman differed with Kemble on one point. Kemble had criticized as fabulous the stories of the extermination of the natives by the Saxon invaders, and held that the mass of the Celtic population remained on the land, reduced to a servile condition. Freeman held that the land was cleared of the Celts, and "the intruding nation altogether supplanted the elder nation." He had no additional evidence to offer, but nevertheless he made this sweeping assertion:

> "In short, though the literal extirpation of a nation is an impossibility, there is every reason to believe that the Celtic inhabitants of those parts of Britain which had become English at the end of the sixth century had been as nearly extirpated as a nation can be. The women would doubtless be largely spared, but as far as the male sex is concerned, we may feel sure that death, emigration, or personal slavery were the only alternatives which the vanquished found at the hands of our fathers."

The point of this statement was that it cured a defect in the case as Kemble had presented it. Kemble inferred the representative character of the Anglo-Saxon assemblies from the nature of the Mark, and he inferred the existence of the Mark in England from folk custom in Germany. But since there is no direct evidence that the Mark ever existed in England, and since that supposition rests upon an assumed continuity in the traditions of the people, what became of the theory if after all the mass of the people were Celtic and not Teutonic? Freeman got rid of this difficulty by sweeping away the Celts and substituting Teutons. This statement was subjected to a fire of criticism that caused him to admit that he had used "a hard word" in speaking of the Britons as having been "extirpated," and that all he now maintained was that "we took in no such infusion so great as to make us another people from what we were in our first home." Upon this ground he held that the Mark must be presumed to have been implanted in England, but he had to admit that no evidence of its actual existence is to be found. This fact he attributed to the seizure of all authority by the king and his thanes, which naturally controlled the records made by the chroniclers. Thus "the old system of free Teutonic polity gradually died out in England."

A circumstance of which Freeman made frequent use was that Bishop Stubbs accepted the theory of the Mark as a primitive Teutonic institution. Stubbs specialized in the medieval period and as regards Germanic antecedents of Anglo-Saxon polity he accepted the views of German specialists in that field. With some reservation he took the same general view as Kemble. The Anglo-Saxon invaders of England must have come with some principle of corporate unity. "In its earlier stage it may have been the community of free and kindred cultivators, or what is called the Mark." [1]

But Stubbs gave no support to Freeman's contention that the Anglo-Saxon assemblies were essentially representative in character. Stubbs observed:

> "On great occasions . . . we must understand the *witena-gemot* to have been attended by a concourse of people, whose voices could be raised in applause or in resistance to the proposals of the chiefs. But that such gatherings shared in any way the constitutional powers of the *witan,* that they were organized in any way corresponding to the machinery of the folkmoot, that they had any representative character in the modern sense, as

[1] William Stubbs, *Constitutional History of England,* Vol. I, p. 94. In a footnote he cited the authorities on which his conclusions rest, giving special credit to Kemble, although noting "his usual tendency to exaggeration."

having full powers to act on behalf of constituents, that they shared the judicial work, or except by applause and hooting influenced in any way the decision of the chiefs, there is no evidence whatever. They might, by an easy and welcome fiction, be considered as representing the nation, although they were really the mere retainers of the nobles or the inhabitants of the neighboring villages."

There is an allusion in the last sentence that was evidently felt by Freeman, for when he issued the fifth volume of his *Norman Conquest*, he asserted that the difference between his view and that of Stubbs was "more seeming than real." He said:

"It must be remembered that we have here to deal with an assembly of whose constitution we have no direct or formal account; we have put together our notions of it from a great number of scattered and seemingly contradictory notices. According to one view, the assembly was in theory open to every freeman, but in practice only a small class habitually attended. According to the other view, it was in theory confined to a small class, but in practice it was ever and anon thrown open to large classes of men besides its normal members. I still hold that the former view is the more consistent with the general history of political assemblies throughout the world; but the practical aspect of the two doctrines is the same."

Notwithstanding this clash over the *witenagemot*, the fact that Stubbs accepted the Mark

theory was generally regarded as ranging the great weight of his authority on Freeman's side. Further support to Freeman's views came with great power from the writings of the famous historian, John Richard Green. He was a struggling curate when Freeman gave him a timely lift by getting him on the staff of the *Saturday Review.* The two historians entered into an intimate friendship ended only by Green's untimely death at the age of forty-six. Green was a master of lively, attractive, sparkling narrative, and his *Short History of the English People,* published in 1874, had a huge popular success. Green agreed with Freeman in making Anglo-Saxon institutions extremely democratic. Green dedicated his work to his "masters in English history — Freeman and Stubbs," and the three formed what was commonly designated as the Oxford School. The association combined the merits of all to the advantage of all in popular esteem, and their views were generally accepted as authoritative. Of the three, Freeman was the greatest propagandist, through his manifold activities as lecturer, essayist, and producer of manuals for educational use.

Freeman's influence in the United States was enlarged by his visit lasting from October 7, 1881, to April 15, 1882. In addresses delivered at Johns Hopkins University he advocated the

study of American local institutions in their relation to Teutonic origins. He wrote an *Introduction to American Institutional History,* which was published as the preface to the series of studies in historical and political science which Johns Hopkins University has since issued from time to time. The theme of his *Introduction* was that "the institutions of the American States form a natural and important part of the institutions of the Teutonic race, and especially of the English branch of it." This is the keynote of the series. No matter what the particular subject, some reference to Teutonic origins could scarcely be omitted. Professor Herbert B. Adams, the first editor of the series, habitually employed a Teutonic framework for all his studies upon American local institutions, and his monographs bear such titles as "The Germanic Origin of New England Towns," "Saxon Tithingmen in America," etc.

The doctrine was propagated by innumerable monographs, dissertations, treatises and manuals, until American historical literature and school books became thoroughly soaked with it. It colored all of John Fiske's works on American history, which attained great popularity. In his *Beginnings of New England,* he devoted the opening chapter to a statement of the theory, making a singularly winning presentation of it

by giving it a setting in general history. The contrast which he made between "the Roman idea and the English idea" exhibited the theory in its most attractive form, and although he got the idea from Freeman he surpassed Freeman in literary dexterity of treatment. He avoided the use of such a technical term as the *Mark,* and availed himself of American prepossessions by speaking of it as a town-meeting. He held that from a cluster of towns the county-meeting emerged, but he was careful to add that this took place "while the county is a little state in itself and not a mere administrative district." The qualification was prudent for the very term county implies an administrative district issuing from royal authority. He then proceeded:

> "And in this county-meeting we may observe a singular feature, something never seen before in the world, something destined to work out vaster political results than Caesar ever dreamed of. This county-meeting is not a primary assembly; all the freemen from all the townships can not leave their homes and their daily business to attend it. Nor is it merely an assembly of notables, attended by the most important men of the neighborhood. It is a representative assembly, attended by select men from each township. We may see in it the germ of the British parliament and of the American congress, as indeed of all modern legislative bodies, for it is a most suggestive commentary upon what we are saying that in all other countries which

> have legislatures, they have been copied, within quite recent times, from English or American models."

The theory had now reached a stage of development at which it took rank as established doctrine. What in the original authorities had been offered as reasonable conjecture or as being a probable interpretation of fragmentary data, had, without any additional evidence, been gradually converted into a certainty upon which great constitutional principles could be safely based.

CHAPTER VII

OPPOSITION TO THE DOCTRINE

PROFESSOR FREEMAN did not have everything his own way in spreading his doctrine. The archaeologists found more extensive survivals of Roman civilization in England after the barbarian invasions than was convenient for Freeman's theory. An elaborate work, based upon minute investigation of British antiquities, was published by Thomas Wright in 1852.[1] He made no mention of the Mark and spoke as if it had never existed. He said: "The population of the country consisted of two elements — the chiefs and their followers, who had obtained possession and lordship of the lands, and the agriculturists and laborers, who were in the position of serfs and bondmen, and comprised chiefly the old Romano-British population, which under the Saxons was probably quite as well off as under the Romans."

[1] Thomas Wright (1810–1877), of Quaker descent, attended Trinity College, Cambridge. He was a founder of the British Archaeological Association, and devoted his life to pursuits of that order. His activities included research in Anglo-Saxon philology and literature, as well as field exploration of relics of antiquity. His principal work was *The Celt, the Roman, and the Saxon.*

He did not find that the town-meeting with its apparatus for free discussion of public affairs had ever existed, but he found evidence that municipal institutions were perpetuated under Anglo-Saxon rule, as convenient apparatus for supplying tribute:

> "The Saxons thus held the country, while the Roman citizens continued to hold the towns as tributaries of the Saxon kings, within whose bounds they stood. The country thus exhibited Teutonic rudeness, while the towns were the representatives of Roman civilization, and though the intercourse between the two, and the gradual infusion of Saxon blood in the towns, laid the foundation of modern society, there was a feeling of hostility and rivalry between town and country, which has hardly yet disappeared. Between the aristocratic feeling of the Saxon landholders, and the republican principles that existed in the towns, arose, under the balancing influence of the crown, the modern political constitution."

These views of English origins were corroborated by conclusions at which ethnologists arrived as to the persistence of Celtic race types in the population of England notwithstanding the successive Teutonic invasions. This class of evidence was ordinarily disregarded by historians of the Freeman school as being based upon obscure and conflicting data lying outside of the field of history, but it could not always be ig-

nored. The London *Times* of October 11, 1887, published a special article on "The British Race Types Today," which gave a résumé of opinions held by ethnologists and incidentally remarked:

> "For a generation or more the advocates of the view that the English are almost unmixed Teutons pressed their views upon the scientific and literary world with a persistence and learning which went far to produce conviction."

Professor T. H. Huxley at once pounced upon this sentence and in a curt letter which appeared in the next day's issue of *The Times* he said:

> "I can not answer for the literary world; but to the best of my knowledge, neither the persistence nor the learning of the advocates of this baseless notion produced the slightest effect upon scientific ethnologists."

Of course everybody recognized that this was a slam at Professor Freeman, and he made a prompt reply from his Oxford chair. In lectures beginning on November 24, 1887,[1] he dealt at length with the objections to his theory, brought forward by archaeologists and ethnologists. He made some concessions, but he claimed that the true fortress of his theory was still intact. He said:

[1] Included in a work entitled *Four Oxford Lectures;* London: Macmillan & Co., 1888.

> "Here then is the great fact of all. The man of France still speaks the tongue which the Gaul learned from the Roman. . . . The man of England still speaks the tongue which he learned of no man, the tongue which his fathers brought with them from their elder home."

The argument imputed a significance to the circumstance which the ethnologists denied. It was admitted that owing to the long continuance of Anglo-Saxon rule — from 600 to 1066 A.D. — that language had been spread among the inhabitants, but they did not thereby become Anglo-Saxon in race. As Professor Huxley put the case: "In Britain, the Teutonic dialects have overpowered the pre-existing forms of speech, and the people are vastly less 'Teutonic' than their language." A great mass of philological evidence in support of this proposition was presented in a work by Thomas Nicholas, *The Pedigree of the English People.* First published in 1868, it passed through a number of editions, strongly supporting the view that the modern English are a fusion of races, into which a large Celtic element entered. This is still the general opinion among archaeologists and ethnologists. Their opinion has been supplemented by the work of students of ecclesiastical history, who, although wholly occupied with the consideration of their own special topic, have incidentally pro-

duced facts that upset Freeman's linguistic argument.

It is indeed a remarkable circumstance that in England the speech of the barbarian invaders became the language of the country, while in France the speech of the Roman provincials prevailed over the Teutonic speech of their conquerors. But this difference is amply explained by a corresponding difference in the particular means by which Roman civilization was diffused among the barbarian invaders. Both on the continent and in England the Catholic church was the instrument of civilization, but in France it worked through the provincial bishops and clergy, and thus carried with it the use of the provincial Roman dialect. In England the native church, cut off from the rest of Christendom, was unable to cope with the situation, and civilizing contact with the Anglo-Saxons was not established until direct missionary effort was begun from Rome. There was no breach of ecclesiastical continuity on the continent. The Gallic church took the invaders into its embrace, tamed them, and Latinized their speech. In England there was a complete breach, and when the church was reëstablished it was by an entirely fresh start on the basis of Anglo-Saxon favor. As to these circumstances Freeman himself expressed himself with characteristic empha-

sis, although he does not appear to have noted their bearing upon his argument. He wrote:

> "One point which can not be too strongly insisted on is that the Church of England which was founded by Augustine has nothing whatever to do with the early British Church. . . . The Church of England is the daughter of the Church of Rome."

Notwithstanding the prestige of the Oxford school, the Teutonic theory of constitutional origins did not have it all its own way among the historians. Hallam did not subscribe to it and although he made no direct mention of it in his *Constitutional History of England,* he gave an account of the primitive state of government in England that was not in accord with the theory. In 1861, C. H. Pearson's *England during the Early and Middle Ages* appeared, at once taking rank as a work of solid and permanent value. Pearson held that "the common belief, that the Keltic population of Britain was exterminated or driven into Wales and Brittany by the Saxons has absolutely no foundation in history." He said:

> "The object of the races who broke up the Roman empire was not to settle in a desert, but to live at ease, as an aristocracy of soldiers, drawing rent from a peaceful population of tenants. Moreover, coming in small and narrow skiffs, the

> conquerors could not bring their families with them, and must in most cases have taken wives from the women of the country."

Pearson surveyed the characteristics of Anglo-Saxon polity with calm, scientific scrutiny, and his method must command respect although he reached the conclusion that "the bulk of the Saxon people was in no proper sense and at no time free." The idea one obtains from Pearson's exact and definite account, — entirely free from the romantic bias one observes in Turner and Kemble, — is not that of a network of free communities accustomed to self government spread over England by the Anglo-Saxons, but settlements of warriors lording it over the beaten provincials. Pearson observed:

> "It is easy to see how feudalism began. The soldier who received his hide of land at the first partition of territory, and settled down upon it as an independent yeoman, found himself in a position of freedom which he had never enjoyed before, but also isolated from the support of his comrades. In a town or its neighborhood he would naturally become a member of a guild, but in the county it would be safer to attach himself to the service of the nearest lord."

Opinions of this character could not but be offensive to Professor Freeman. The first volume of his *Norman Conquest,* in which he developed

his own views of Anglo-Saxon polity, appeared in 1867, the same year in which the complete edition of Pearson's history appeared. In the fifth volume of the *Norman Conquest,* which appeared in 1876, Freeman restated his theory with some reference to Pearson's views, but without any substantial modification in his own position.

Elton's [1] *Origins* was also a work that gave Freeman some concern. The vast learning and critical ability displayed in this work gave it an authoritative rank which it still holds. In one of his Oxford lectures Freeman remarked that when Elton's work appeared "there was a great flourish of trumpets to say that some supposed Teutonic theory was set aside forever," but his own theory had gone "through the ordeal unscathed. In Mr. Elton's book I found a mass of most curious learning on subjects which I had never thought about; I found nothing to upset any doctrine to which I had ever attached the slightest importance."

Elton's work did not assail the Mark; he was willing to accept it as characteristic of primitive

[1] Charles Isaac Elton (1839–1900) was an English lawyer, who was an eminent authority on old English law and custom relative to land tenure. He sat in the House of Commons in 1884–5 and again from 1886 to 1892. During the latter years of his life he retired to a great extent from legal practice and devoted much time to antiquarian research. He published a number of works on English land tenure in ancient times. His principal work, *The Origins of English History,* appeared in 1882.

Teutonic society. But he brought out with great distinctness the fact that the institution of capital importance was the war-chief and his troop of trusted companions. It was this institution "which was destined in its later development to change the whole fabric of society."

Elton gave the following account of the formation of Anglo-Saxon polity:

> "On the conquest of a new territory . . . the leader would naturally reward his followers with gifts of land, if only for the maintenance of the cattle and slaves that formed their share of the booty. But a conquest would seldom be so complete that all fears of future resistance and all hopes of plunder were at end, and while the military relationship subsisted, the follower could only hold his estate on the condition of fulfilling his service. On the tenant's death the land must in most cases have reverted to the lord with the horse and armor and the rest of the warlike equipment which his bounty had provided. The tenant of such a precarious estate could confer no better title in his own dependents; and thus would arise a class of half-free retainers with nothing that could properly be called their own. The English thanes or 'nobles by service,' who in course of time took the place of the 'nobles by blood,' appear at first as the followers of a successful chieftan to whom land had been allotted as a reward for service. As the chiefs increased in dignity, the position of their 'companions' was altered for the worse. They stood to their lords in the relation of servants

> bound not only to fight when required, but to ride on errands and to act as butlers and grooms. But in relation to their own tenants they were lords themselves, exacting service and labor and exercising jurisdiction in their turn, so that their estates from the first resembled nothing so much as manors of the medieval kind. . . The whole country passed in time under the power of the king, the church, and the thanes; and as the jurisdiction of the lords was gradually converted into ownership of the lands in their districts, the descendants of the free men fell under onerous rents and services, and in many cases became serfs and bondsmen."

Such statements do not fit in very well with Freeman's contention that the Anglo-Saxons introduced into England the principle of personal liberty. Rather they suggest that, as in the case of the barbaric invasion of other Roman provinces, they introduced rude conditions of graded servitude which medieval law reduced to some sort of nominal order in the feudal system. The general effect of the works of Pearson and Elton was to reëstablish the position of the eighteenth century historians with new fortifications derived from intensive study of Anglo-Saxon institutions. From this viewpoint the Teutonic institution of dominant importance was the chief and his band of devoted companions. There is nothing hypothetical about that. It is outstanding wherever

Teutonic usage comes into view. It was noted and described by Caesar and Tacitus, and over seven centuries after their time it is found with just the same character still flourishing among the Anglo-Saxons in England.[1]

The criticism to which the doctrine was subjected from various quarters, while not sufficient to overthrow its ascendancy, prevented it from obtaining in England such an authoritative position as it acquired in America. Works like those of Pearson and Elton lacked the romantic color which attracted readers to the writings of Freeman and Green, but they did possess clearness of statement and logical consistency sure to impress any one making a critical examination of the literature in this field. Different schools of opinion were formed, divergence between which became settled and permanent. The superior success of Freeman's school in reaching and forming general opinion is manifest. Professor Freeman himself set forth his doctrine in detail in an elaborate contribution to the ninth edition of the *Encyclopedia Britannica* (1878).[2] In the latest edition of the *Britannica* (1911) the doctrine is still put forth, although the effect of adverse criticism may be noted.

So long as the existence of the Mark as a

[1] See Appendix to this chapter.

[2] In the article on "England," Vol. VIII, pp. 314–316, 321–324, 326–327.

primitive Teutonic institution was conceded, the doctrine held its ground in the field of history. But the Mark theory too was eventually overthrown, not by direct assault but as an incident of deep explorations in the field of economic history.

APPENDIX TO CHAPTER VII

THE WAR LORD AND HIS COMPANIONS

Julius Caesar was elected consul 59 B.C., at a time when an invasion of Gaul was going on against which he took prompt measures. He employed German troops among his auxiliary forces and he crossed the Rhine to fight some German tribes in their own country. He gave this account of military custom among the Germans:

> "When any of their chiefs has said in an assembly 'that he will be their leader, let those who are willing to follow give in their names,' they who approve of both the enterprise and the man arise and promise their assistance, and are applauded by the people."[1]

Tacitus, who wrote over a century later, gave a more definite account.[2] He remarked:

> "The dignity of chieftan is bestowed even on mere lads, whose descent is eminently illustrious, or whose fathers have performed signal services to the public; they are associated, however, with

[1] *Commentaries.* Book VI, chap. xxiii.

[2] His famous treatise on the *Manners and Customs of Germany,* was published A.D. 98.

those of mature strength, who have already been declared capable of service; nor do they blush to be seen in the rank of companions. For the state of companionship itself has several degrees, determined by the judgment of him whom they follow; and there is a great emulation among the companions, which shall possess the highest place in the favor of their chief; and among the chiefs, which shall excel in the number and valor of his companions. It is their dignity, their strength, to be always surrounded with a large body of select youth, an armament in peace, a bulwark in war. . . .

"In the field of battle, it is disgraceful for the chief to be surpassed in valor; it is disgraceful for the companions not to equal their chief; but it is a reproach and infamy during a whole succeeding life to retreat from the field surviving him. To aid and to protect him, to place their own gallant actions to the account of his glory, is their first and most sacred engagement. The chiefs fight for victory; the companions for their chief. . . . The companion requires from the liberality of his chief the warlike steed, the bloody and conquering spear; and in place of pay he expects to be supplied with a table, homely indeed, but plentiful. The funds for this munificence must be found in war and rapine; nor are they so easily persuaded to cultivate the earth, and await the produce of the seasons, as to challenge the foe, and expose themselves to wounds; nay, they even think it base and spiritless to earn by sweat what they might purchase by blood."[1]

[1] Tacitus, *Germania*, chaps. 13 14.

The institution thus described was still in full flower in the Anglo-Saxon invasions of England almost four centuries later. One of the longest entries in the *Anglo-Saxon Chronicle* gives this account of the desperate loyalty of a chief's companions, and incidentally gives a typical picture of Anglo-Saxon times:

A.D. 755. This year Cynewulf, with the consent of the West-Saxon council, deprived Sebright, his relative, for unrighteous deeds, of his kingdom, except Hampshire, which he retained, until he slew the alderman who remained the longest with him. Then Cynewulf drove him to the forest of Andred, where he remained until a swain stabbed him at Privett, and revenged the alderman, Cumbra. The same Cynewulf fought many hard battles with the Welsh; and about one and thirty winters after he had the kingdom, he was desirous of expelling a prince called Cyneard, who was the brother of Sebright. But he, having understood that the king was gone, thinly attended, on a visit to a lady at Merton, rode after him and beset him therein; surrounding the town without 'ere the attendants of the king were aware of him. When the king found this, he went out of doors, and defended himself with courage, till having looked on the etheling [*i.e.* Cyneard, who, as a prince of the royal family, was an etheling], he rushed out upon him and wounded him severely. Then were they all fighting against the king, until they had slain him. As soon as the king's thanes in the lady's bower heard the tumult, they ran to the spot,

whoever was then ready. The etheling immediately offered them life and rewards, which none of them would accept, but continued fighting together against him, till they all lay dead, except one British hostage, and he was severely wounded. When the king's thanes that were behind heard in the morning that the king was slain, they rode to the spot, Osric his alderman, and Wiverth his thane, and the men that he had left behind; and they met the etheling at the town, where the king lay slain. The gates, however, were locked against them, which they attempted to force; but he promised them their own choice of money and land, if they would grant him the kingdom, reminding them, that their relatives were already with him, who would never desert him. To which they answered that no relative could be dearer to them than their lord, and that they would never follow his murderer. Then they besought their relatives to depart from him, safe and sound. They replied, that the same request was made to their comrades that were formerly with the king; "And we are as regardless of the result," they rejoined, "as our comrades who with the king were slain." Then they continued fighting at the gates, till they rushed in, and slew the etheling and all the men that were with him, except one, who was the godson of the alderman, and whose life he spared, though he was often wounded. . . .[1]

[1] J. Ingram, *The Saxon Chronicle.* London: 1823, pp. 69–71. The edition gives the Anglo-Saxon record and the English translation in parallel columns. The entry for the year 755, the greater portion of which is given above, is in marked contrast with most of the entries, which are usually brief mention of the accession of a king or of some ecclesiastical event.

CHAPTER VIII

THE DOCTRINE SAPPED BY THE ECONOMISTS

It was agreed on all sides that if the Mark ever existed it was eventually suppressed by feudalism; the point of contention was whether it ever existed at all. In default of any clear evidence of its existence in England, the champions of the Mark were able to point to works of German scholars in which was accumulated a mass of evidence to the effect that the Mark was a Teutonic institution. That being the case it might be presumed that when the Anglo-Saxons settled in England they brought the Mark with them.

This situation gave great importance to an elaborate essay by Coulanges,[1] which appeared in the *Revue des Questions Historiques,* April, 1889. On the face of it, the essay did not appear to

[1] Numa Denis Fustel De Coulanges (1830–1889) was sent to the French school at Athens in 1853, where he carried on archaeological and historical studies, among whose fruits was the remarkable volume *La Cité Antique* (1864), succeeded by other works of profound scholarship, the principal one being his *Histoire des Institutions Politiques de l'ancienne France,* the first volume of which appeared in 1874. He was an exact and conscientious scholar, and his works are models of learning and sagacity associated with fine qualities of literary style.

attack the theory. All that Coulanges professed to do was to make an examination of the particulars which had been instanced as supplying evidence of the existence of the Mark.[1] When he got through with his task he contented himself with asserting that the evidence adduced by the advocates of the Mark theory does not establish their case. But meanwhile his criticism had demolished the authorities upon which Kemble, Stubbs and Freeman had relied. Coulanges showed in minute detail that evidence cited as proof of the existence of the Mark as a tract of land held by a community of freemen, was really proof of the existence of private property, the term Mark, meaning primarily the boundary of such property, and in a derivative sense the property itself. Not only was there no proof of the existence of Mark assemblies or Mark courts, as agents of the community, but the evidence indicated that agriculture, which was admitted to have become a servile occupation under the feudal system, possessed that character as far back as it could be traced.

The points made by Coulanges were destructive of Freeman's theory. Freeman had fully admitted that the records of Anglo-Saxon times

[1] "*The Origin of Property in Land*," English translation edited by W. J. Ashley, who supplied a valuable introductory essay, reviewing the whole field of controversy. London: Swann, Sonnenschein & Co., 1891.

in England exhibited not a state of ownership of land by freemen but a state of lordship over the land and its inhabitants by king and thanes, whose rapacity excited his indignation. But he assumed that underneath the superficial appearance of universal lordship the Mark must have existed, obscure but potent, inasmuch as it was a deeply rooted Teutonic institution. The effect of Coulanges' investigation was to show that the Mark, in the sense called for by the theory, had not existed among the Teutonic tribes that invaded England, and hence they could not have brought it with them. Thus Freeman's constitutional theory was deprived of its foundations and it was left afloat in the air, a mere bubble of romanticism.

Despite its profound importance, Coulanges' essay was singularly lacking in any positive effect upon the attitude of the historians of the Freeman school. The theory has been, and still is, propagated as settled doctrine, although conclusions fatal to it have been left unrefuted. This is to be attributed to the strictness with which scholarship is usually departmented. Research along the lines laid down by Coulanges has been prosecuted in England by students interested primarily in social and economic rather than political conditions. They are classed more as economists than as historians, and statements

and conclusions which if offered in the field of history would have challenged the attention of specialists in that field have not received due recognition of their historical significance because they have been regarded as belonging to the literature of economics. The result is that at present historical literature is out of touch with results of economic research, and is still busy with constitutional theories which, if the economists are right, are radically wrong. The way in which incompatible opinions are now being advocated, side by side, only in different compartments of scholarship, is illustrated in the latest edition of the *Encyclopedia Britannica*. The article on the "Mark" expounds the old theory; the article on the "Manor," by Professor P. G. Vinogradoff, distinguished jurist, gives this account of the Teutonic conditions from which Anglo-Saxon conditions emerged:

> "The Germans had from old certain manorial features in the constitution of their government and husbandry. The owner of a house had always been possessed of a certain political power in its precincts, as well as the fenced area surrounding it; the peace of the dwelling and the peace of the hedged-in yard were recognized by the legal customs of all the German tribes. The aristocratic superiority of warriors over all classes engaged in base peaceful work was also deeply engraved in the minds of the fighting and conquering tribes. On

the other hand, the downfall of complicated forms of civilization and civil intercourse rendered necessary a kind of subjection in which tributory laborers were left free to a certain extent to manage their own affairs. The Germanic conqueror was unable to move slaves about like draughts; he had no scope for a complicated administration of capital and work. The natural outcome was to have recourse to serfdom with its convenient system of tribute and service."

According to this the constitution of German society at the time of the invasions was not democratic but aristocratic; it transmitted not freedom but servitude. Conclusions of the same general nature have been reached by many students of ancient economic conditions and judicial arrangements, whose research is not for the purpose of selecting evidence for the support of doctrine but to ascertain the facts whatever they may happen to be. This school is not confined to any one country. It has eminent exponents in France and Germany as well as in England. America, although placed at a disadvantage by distance from the scene, produced a pioneer investigator, whose studies, begun in 1875, were published in 1883.[1] He arrived independently at conclusions much the same as those of Coulanges. Professor W. J. Ashley has conferred a valuable

[1] *The Early History of Landholding among the Germans*, by Denman W. Ross. Boston: 1883.

service upon general readers by the close attention he has given to the work of specialists in this field. The critical reviews which he has published upon their volumes as they have appeared have been collected in a work which is a useful conspectus of recent literature in this field.[1]

It has been noted as a characteristic of the economic school of historians that they have kept to their own field, refraining from excursions into constitutional theory. But their conclusions in the economic field steadily tended toward an issue with constitutional historians of the Freeman school, that could not be permanently avoided. It came with a sharp distinctness with the publication of F. Seebohm's *English Village Community,* 1905. In the preface to this monumental work he noted the bearing of the controversy upon practical politics and gave a concise account of its literary stages. The fundamental question was whether English history

> "began with the *freedom* or with the *serfdom* of the masses of the people — whether the village communities living in the 'hams' and 'tons' of England were, at the outset, of English history, *free* village communities or communities in serf-

[1] *Surveys, Historic and Economic.* London: Longmans, Green & Co., 1900. See also his essay on "Early Teutonic Society," *International Quarterly,* Dec.–March, 1903–1904, a masterly discussion of the subject.

dom under a manorial lordship. . . . On the answer to this question depends fundamentally the view to be taken by historians (let us say by politicians also) of the nature of the economic evolution which has taken place in England since the English Conquest. If answered in one way, English economic history begins with free village communities which gradually degenerated into the serfdom of the Middle Ages. If answered in the other way, it begins with the serfdom of the masses of the rural population under Saxon rule — a serfdom from which it has taken 1,000 years of English economic evolution to set them free."

Seebohm's own opinion was that the process began not in freedom but in serfdom. This conclusion was derived from particulars obtained by study of economic conditions as attested by charters, manorial records, and local antiquities in Great Britain, France and Germany. It is impossible to give a summary statement of the evidence, but it possesses a cumulative force that must impress the reader.

The labors of the economic school of historians naturally affected scholarly activities in the special field of Anglo-Saxon institutions, and the evidence in that field collected by the older historians has been reëxamined in the light thrown upon the subject by more recent researches, with important results. Cambridge University, England, has been prominent in this work, and the

archaeological and ethnological series now being issued by its press, includes monographs which embody the results of the latest research in this field. Of special importance are the treatises,[1] by H. Munro Chadwick, Fellow of Clare College, in which primitive conditions in England and on the continent are surveyed, and then Teutonic antiquities are compared with Greek, Celtic and Slavonic antiquities. The general nature of the conclusions reached is indicated by such extracts as the following:

> "It is commonly assumed that before the period of autocracy a more or less democratic form of government prevailed, the chief power being vested in a tribal assembly, but the primitive assembly seems rather to have been religious gatherings of hereditary local chiefs with their followers. . . . From the very beginning of historical times we meet with a system in the Anglo-Saxon kingdoms which may be described as more or less autocratic. Conditions which go back to the fourth century give no hint of a different type of government."

The assemblies to which Turner and Kemble, followed by Freeman, imputed a representative character, were "essentially meetings of the king's personal dependents. . . . In England evidence seems to be altogether wanting for any

[1] *Studies on Anglo-Saxon Institutions;* 1904. *The Origin of the English Nation;* 1907. *The Heroic Age;* 1912.

assemblies which could properly be called national." [1]

In reaching such conclusions modern scholarship has definitely parted company with Turner, Kemble and Freeman on questions of institutional value. The weight of authority is now overwhelmingly against the Teutonic theory of the origin of representative government.[2]

[1] *Origin of the English Nation,* pp. 318–320, 369.

[2] J. M. Robertson, *An Introduction to English Politics,* p. 394, gives a good summary of the data which have established the fact that the mass of the Anglo-Saxons were serfs and not freemen.

CHAPTER IX

THE GENESIS OF REPRESENTATIVE GOVERNMENT

THE evidence now available warrants the following statements:

1. Representative government originated as a bud put forth by monarchy.
2. It developed first in England, not because people were more free there but because monarchy was stronger there than elsewhere.
3. In making its start it got its mode and form from the church.

Research into the early history of society has collected much evidence to the effect that there was no distinction between religious, family and political authority in the primitive form of the State. The ordinary principle of government was the rule of the elders — a principle of which there are still vestiges in modern institutions. It was the origin of such terms as aldermen, senators. Government of this sacred type laid down the primary strata of art and culture on which civilization rests, and it continues to be

an essential element of social stability whatever be the form of government.

Modern politics dates from the transition from sacred status to political contract which took place in the city states that formed in nooks supplied by the configurations of the Mediterranean littoral.[1] This transition did not tend to produce representative government, for the city state was so small that public policy could be considered in general assembly of the citizens.[2] Some leagues or confederacies were formed which required the periodical meeting of delegates, but such meeting was essentially a diplomatic congress — an organ of international relations.

When the Roman empire was established developments took place which approximated representative institutions and might have definitely produced them but for certain counteracting conditions. The Roman empire was built up by gradual extension of the power of the Roman city state, and the emperors were habitually jealous and suspicious of any organization of authority that might serve as a basis of opposition to

[1] Coulanges gave a remarkably vivid and interesting account of the process in his celebrated treatise, *The Ancient City*. The classic examination of institutional results is Sir Henry Maine's *Ancient Law*.

[2] Thucydides abounds in allusions to this situation, as, for instance, when Corinth and Corcyra, at war, both sent to Athens for assistance, "an assembly was convoked and the rival advocates appeared." Book I, chap. 2.

Roman authority. Nevertheless, provincial councils were formed consisting of delegates from cantonal and municipal districts, and to some extent they were employed in the government of the provinces. Imperial rescripts are known to have been addressed to such bodies in regard to various matters of public concern, but in general their activity was strictly confined to the care of temples and sacred monuments, and the cult of emperor worship. The status of these concilia was about the same as that of the collegia of Rome, licensed and regulated by the state, but forming no part of the ordinary imperial machinery of administration.[1]

Meanwhile the growth of the church was developing institutions which necessitated consultative arrangements. "The Catholic church," Gibbon remarked, "soon assumed the form, and acquired the strength, of a great federative republic.[2] With the triumph of Christianity and the growth of friendly relations between the church and the imperial administration, the ancient hostility that had repressed the development of representative assemblies died out, and as a feature of ecclesiastical administration they received imperial favor and coöperation. Gibbon

[1] Tenney Frank's *History of Rome* gives a number of instances of developments in the direction of representative government. See pp. 61, 68, 142, 157, 209.

[2] *The Decline and Fall,* chapter XV.

related that "the representatives of the Christian republic were regularly assembled in the spring and autumn of each year; and these synods diffused the spirit of ecclesiastical discipline and legislation through the hundred and twenty provinces of the Roman world." [1]

Under the Christian emperors, this ecclesiastical organization to a considerable extent supplemented the imperial administration, and was employed by it. The organization of civil government on similar lines would have been a natural development, had sufficient power and opportunity for the purpose then existed. But such was not the case. The times were such that the emperor had all he could do to keep his seat and attend to his military duties. But that a disposition did exist in favor of representative institutions is strikingly attested by a case which Professor Freeman admitted to be "a remarkable instance of something very closely approaching" representative government. It is an imperial rescript, A.D. 418, addressed to the prefect of the Gauls.[2]

This rescript delineated for the seven provinces of Gaul the constitution of a parliament not much different from that which did eventually

[1] *Ibid.*, chapter XX., sec. vii.

[2] A translation of the full text of this important document is given in Guizot's *History of Civilization.*

take shape in England. It was composed in part of officials and notables summoned in person, and in part of deputies from provincial estates and municipal bodies. It appears from observations made in the edict that steps in the same direction had been taken before, but had been frustrated "by the confusion of the times." Similar failure attended the renewal of the attempt. The emperor was not strong enough to enforce his summons. Indeed, the confusion of the times was such as to prostrate the imperial authority throughout this region during the period in which the edict was issued. In 409 bands of Vandals, Alans and Suevi swept across Gaul into Spain. In 414 the Burgundians settled in Gaul, and in 416 the Visigoths entered southern Gaul, eventually passing on into Spain. In 481, the Franks established themselves in Gaul, completely subverting Roman imperial authority which was never again reëstablished.

These facts strongly suggest that the failure of the Roman empire to develop representative institutions was not due to congenital incapacity, but was an incident of its decline and fall. Had the edict of A.D. 418 been effectual in founding representative institutions, the fact that originally they were an outgrowth from executive authority would have been manifest.

During the period in which "the confusion of

the times" frustrated the imperial plans for a representative assembly in Gaul, the Jutes, Angles and Saxons were invading Britain. Their permanent settlements began about A.D. 451, and by the end of the sixth century they had subjugated the whole of the province east of Cornwall and Wales. The invaders warred among themselves, and were in turn exposed to attacks from the northern tribes of Europe, quite in the same fashion as they themselves had originally followed. The Angles, whose settlements were made on the east coast, submitted to the Danes and acted as their allies in attacks on the Saxon districts, and it is a remarkable circumstance that the country should have taken its name from them. It is probably to be attributed to the circumstance that St. Augustine was sent to the country of those Angles whom Pope Gregory I had seen in the slave market at Rome. Although St. Augustine landed in a Saxon district and his labors were promoted by the favor of Saxon royalty, he retained his initial impression and he continued to speak of his mission as being to the Angles; and so the country got the name of Angle-land in every European language.

There was nothing in the institutions of the barbarian invaders of Britain to distinguish them from those of the barbarian invaders of other Roman provinces, or to give their institutions any

special trend towards representative government. The system of authority which the invasions imported was the rule of the war-lord and his retinue. The constitutional principle thus implanted throughout Europe was simply that of personal allegiance, and from the operation of this principle, as conditioned by the distribution of subjugated territory, the feudal system arose, in its essence a parcelling of territorial dominion upon a tenure of military obligation. A chronic conflict of interest tending to disorder was inherent in the nature of the system, for it made the king and his vassals parties to a vague contract, upon which each party could put his own construction to the extent that he was strong enough to maintain it by his own power. An incident of the system was the formation of feudal estates, the original character of whose assembly was that of a council called by the war lord, composed of his subordinates, but which in its developed form reflected the contractual relations of the feudal system, its determinations taking the form of bargains between the crown and the estates.[1] The assembly of the estates was a

[1] By a quaint survival this feudal pattern of legislation was preserved down to our own times in the Duchy of Mecklenburg. A. L. Lowell's *Governments and Parties in Continental Europe*, Vol. I, p. 365. "Each new law," says the author, "is in effect a contract proposed by the crown and assented to," by the estates.

prominent feature of every European government during the feudal period, but it always acted as the organ of particular interests and never tended to provide a system of general representation. The attitude of the estates so habitually reflected merely their own class interests that they came to be generally regarded by kings as an inconvenience which ought to be removed, and by the mass of the people as a nuisance that ought to be abated. The aggrandizement of royal authority by which European society was delivered from the oppression and disorder of the feudal system therefore generally tended to assume an absolute form.

Now if it can be conceived that a situation should arise in which the king's authority was so massive that he had no cause to fear meeting with his estates, no serious difficulty in controlling their actions, then their association with his rule would appear in the light of a convenience, by enabling him to reach effectively through their agency all sorts and conditions of his subjects. Just such a situation was created by the Norman conquest of England (A.D. 1066). At that time the disintegrating tendencies of feudalism had dissolved France and Germany into a large number of small states, loosely associated under the nominal headship of one of their own number. The French king was then merely the

primate of a host of petty sovereigns. As duke of Normandy, William knew from much sore experience what it was to have trouble with disobedient vassals, and in the arrangements he made in England he took care that the fiefs with which he rewarded his adherents should not afford standing ground against his own authority.

The French historians put the facts in better order than the English, and the clearest account of the situation is that given by Boutmy who says:

> "In France, the great fiefs, representing as they did, duchies, counties or marquisates created by the first Carolingians, consisted in each case of one unbroken stretch of territory. In England, the king more prudently rewarded his chief vassals with estates scattered here and there through every part of the territory. He to whom fell the largest share had 793 manors scattered over twenty counties. Forty other barons, the heads of their class, held manors in six, twelve and even twenty-one counties. . . .
>
> "Most of the great vassals were only able to gather any considerable armed array by the tedious process of dispatching a summons into every district in England; while the forces at their command in each county were far inferior to the forces of the king's officer, the vicecomes, or sheriff, under whose orders ranged all the inferior tenants of the crown. Add to this that many of these scattered estates lay within range, nay within the very grasp

of the king, who was able through them to strike effectually at his insubordinate barons. The very multiplicity of their fiefs only laid the great nobles open to attack at a number of points at once."[1]

The view which now prevails as to the new trend given to institutional developments by the conquest is stated by Professor Haskins as follows:

"At best England before the conquest was a loose aggregation of tribal commonwealths divided by local feeling and the jealousies of the great earls, and its kingship did not grow stronger with the process of time. The national assembly of wise men, whose persistence Freeman labored in vain to prove, became the feudal council of the Norman barons, and this council, the *curia regis*, and the royal household which was its permanent nucleus, became the starting point of a new constitutional development which produced the House of Lords, the courts of law, and the great departments of the central administration."[2]

It was in this wise that political institutions in England found a course of development different from that pursued on the continent. The fiefs of the English crown never became rival sovereignties to be absorbed one by one in the

[1] Emile Boutmy, *The English Constitution*, pp. 5, 6.

[2] C. H. Haskins, *The Normans in European History*, pp. 102, 103, 110. Trial by jury used to be regarded as a distinctively English institution, but Professor Haskins points out that it was a Norman importation.

process of national unification as in France, until all were gone and only royal absolutism was left. The English barons were administrative subordinates of the crown, dangerous to weak kings through casual combinations, but never able to act in opposition to the crown save by joining their forces and appealing for general support, a process which involved terms and conditions, the setting forth of which produced constitutional documents. Magna Charta is a typical case in point. Parliament was ordinarily the king's tool, and although in times when the king happened to be personally odious and incompetent, it might be wrenched from his grasp to become the tool of a combination of barons, neither party could dispense with the tool. Restraints upon royal prerogative which on the continent were effected through appropriation of authority by individual vassals, took the shape in England of legal stipulations of which parliament became the guardian. Thus conditions in England were such as to preserve, systematize and extend parliamentary institutions, while conditions on the continent tended to suppress them.

The stages of the process by which the modern English parliament grew out of a king's council, composed of such persons as he chose to call to it and meeting at such place as suited his convenience, form the special theme of constitu-

tional history. There is general agreement that the constitution of parliament as a scheme of national representation, instead of an assembly of feudal estates, dates from December, 1264, when the counties and boroughs were summoned to send delegates to the parliament of January, 1265, dominated by Simon de Montfort. His career illustrates the influence exerted by the English situation. He had personal clashes with the king which several times caused him to take refuge in France. Had the conditions existed in England which then prevailed in France, the natural recourse for a vassal of his independent and energetic character would have been for him to support his pretensions by organization of his own territorial resources; but in England he addressed his efforts to combinations of interest by which he obtained control of parliament, and he sought expression for his designs in parliamentary forms.

It is plain enough why at this period the burgesses should have been recognized as a distinct political factor. The towns had become important in wealth and influence; the commonalty had become important as a military force. At the time of the Norman conquest the strength of armies lay in the heavy cavalry, the armored knighthood. But with the development of archery the infantry superseded the cavalry as the

chief military power. This was not fully accomplished in Simon de Montfort's time, but was conspicuously evidenced shortly thereafter.[1] The great victory of Crecy (1346), which was a stunning revelation to all Europe of a great revolution in the art of war, was gained by the archers. It made a transfer of military importance to the disadvantage of knighthood and to the advantage of yeomanry, and this advantage was later on confirmed by the military use of gunpowder which began in the first half of the fourteenth century.

It was therefore simply a natural development from the circumstances of English politics in the thirteenth century that the growing importance of the commons should have received parliamentary recognition, and also that the radical difference between those who attended in a representative capacity and those who attended in response to an individual summons should have produced separate chambers. What was desired from the commons both by king and barons was

[1] A clear portent of the impending change was afforded by a battle fought in Normandy in 1124, in which a body of insurgent knights charged the king's archers, expecting to ride down the pack of "mercenaries and rustics," but were themselves completely overthrown. The archers aimed at the knights' horses and when they were brought down the heavily armed knights were as helpless as capsized turtles. Cf. Oman's *History of the Art of War*, p. 384. The reactions of military art upon political structure deserve more attention than they have yet received at the hands of political science.

distinct assent to measures proposed by crown authority. The motives prompting summons to this new estate ensured distinct embodiment of it. The point that requires special elucidation is not the recognition of the commons as a parliamentary estate, but the existence of facilities for making practically effective the summons sent to communities requiring them to attend in the person of their representatives.[1] It is obvious that there is a radical distinction between a summons to individual persons and a summons to a mass of people to send deputies. In the one case no question of procedure disturbs the issue. The responsibility is simple and direct. In the other case the question of procedure comes up at once. Who is to respond to the summons? How shall the deputies be chosen? Merely to notify the inhabitants of a particular region that they must send deputies is not enough. It is proverbial that what is everybody's business is nobody's business. Of course, it might be possible for

[1] The etymology of such terms as common, community, bears witness that the original notion was not that of right or privilege, but was obligation, from the Latin *communis*, i.e., bound, obliged. Attendence at parliament was originally regarded by all classes mainly as an obligation. There is a memorial on record in which the petitioner alleges that he is not really a baron and therefore begs to be excused. (Pearson's *History of England,* Vol. II, p. 462; Hallam's *Middle Ages,* Vol. III, p. 22). Long after representation of the commons had become regular practice, it occasionally happened that communities tried to beg off. Even American colonial history furnishes instances of this character.

agents of the central authority to select persons who would be designated as representatives, and there are indications that that sort of thing did in fact take place, but it would not be possible to maintain that the commons of England were present by their deputies, unless there was some sort of corporate relation between the deputies and the communities for which they appeared. Unless in some effective way the deputies did represent communities, acting for them and not merely for themselves, there would have been little of practical value in the business. These were serious difficulties that might have been insurmountable save for the influence of the church, which will now be considered.

CHAPTER X

THE INFLUENCE OF THE CHURCH

THAT representative government should get its original form from the church, was as inevitable a consequence of the situation that then existed as that documents should be drawn up by people who can write. The apparatus of government was in the main supplied by the church, crown authority supplying little more than its power. Kings were always trying to commandeer the offices of the church, with considerable support for their claims in the nature of the feudal system. The struggles that ensued receive the attention of historians chiefly in the matter of investitures, and the principal figure is Pope Gregory VII, who in 1075 forbade kings to nominate or invest bishops. In England the matter was eventually settled by a compromise by which the king was allowed to receive homage for temporalities held by ecclesiastics while their appointment and investiture was reserved to the church. But while the church stood firm on the question of investiture, and also against such demands as that bishops and abbots should serve as sheriffs, there was much political service to which the church

consented and what is now known as the civil service was originally an ecclesiastical employment. The king's accounts were kept, his letters were written, his proclamations were framed and the laws were drafted by churchmen.[1]

But such service was common throughout Europe at that period. Everywhere the influence of the church tended to moralize and systematize political institutions, whatever their type might be. In so doing, however, the church accepted and made the best of the conditions it found. An influence so general and so adaptable does not explain such a special event as the appearance of representative government in England. The motive was supplied by the special conditions heretofore noted. The church gave form to a constitutional purpose, excited by the events of English history during this period, and it was well able to do so, since in its own organization the principle of election had been introduced and systematized.[2]

[1] Many details of the way in which clerics shaped the administrative apparatus of government are given in T. F. Tout's *Chapters in the Administrative History of Medieval England.* In his *The English Civil Service in the Fourteenth Century* Professor Tout gives an interesting account of the way in which such great offices as the Exchequer and the Chancery originated in the labors of the king's domestic chaplains.

[2] Professor Freeman himself got hold of this clue but he did not follow it up. In a letter written to an Oxford student, August 2, 1854, he remarked: "The development of temporal institutions in Europe was very much influenced by ecclesi-

The view that the synodical system of the church supplied a pattern for the organization of the state, while doubtless in the main correct, needs considerable qualification to bring it into complete accord with the facts. In the confusion and disorder of Anglo-Saxon times the practice of holding synods became obsolete in England, and was not revived until the Norman conquest introduced some degree of order and social security. By the canons of the Council of Winchester, 1076, bishops were required to hold diocesan synods once a year, but their composition in general embodied simply the principle of summons. The Council of London, 1075, ruled that only bishops and abbots were to speak in synod except with the leave of the metropolitan. It was only in the monastic orders that the principle of election was developed into the form in which it was taken over into politics, but it is not an essential part of the monastic system and it was not originally a feature of that system.

Monasticism originally implied nothing more than segregation, as the etymology of the term still indicates. The primitive ideal was that of the hermit; monastic life in community was a

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astical ones, and I cannot help fancying that you will find something like a real representative system in ecclesiastical assemblies earlier than in civil ones." The full text of this letter may be found in W. R. Stephens' *Life and Letters of Edward A. Freeman*, Vol. I, p. 168.

secondary development, with widely varying results as to rule and method. In the fifth century monastic life had become indefinitely diversified, each monastery having practically its own rule according to the ideas of its abbot. The Benedictine rule introduced in the sixth century checked the process of variation which had produced much laxity and some gross abuses, but the new rule respected the autonomous constitution of the monastery. The monks of each Benedictine monastery formed a permanent community, distinct from every other Benedictine monastery. Their abbot ruled them like the father of a family,— a Roman father,— St. Benedict's conception of the abbot's position and office being derived from that of the *pater familias* of the Roman law. He was elected by the community, which at first might be a small group, but once elected the abbot held the office for life with unlimited power and undivided responsibility, except that in extraordinary contingencies the bishop of the diocese might intervene. The abbot, as he bore rule over the monks like a father over his children, might inflict even corporal punishment, a needful recourse when the community might be largely composed of emancipated slaves or half-tamed barbarians. The conventional representation of St. Benedict in early Italian art shows him holding a birch rod.

Such was the rule that regenerated European culture after the barbarian invasions. It reclaimed waste places, improved and extended agriculture, promoted settlements, perpetuated literature, inspired and systematized arts and industries, and provided models of just and humane administration whose influence gradually subdued the ferocity of barbarian practice. But the rule as originally devised and applied was entirely paternal in its character and there can not be discerned in it any features of the polity which is embodied by representative institutions of government.[1]

It was not until developments took place which associated monasteries as parts of one order under general administration that representative institutions made their appearance in monastic life. Change in this direction began in the eleventh century with the Cistercian offshoot from the Benedictine rule. It originated as a congregation, whose purpose was a more strict enforcement of the rule than was then general. As additional

[1] The principal authority for this account of the Benedictine system is Cuthbert Butler's *Benedictine Monachism*. The classic account of monasticism as a civilizing agency is Montalembert's *Monks of the West*, the eulogistic style of which may, however, at times excite suspicion that some of the claims made are too highly pitched. But if one consults the summary account given by Taine, in the first chapter of his *Ancient Régime*, it will be observed that the cool, disinterested survey of the scientific historian makes allowances of even more sweeping credit.

Cistercian monasteries were founded they were treated as branches of the original congregation, whose monastery was at Cistercium, France, whence the name of the order. The conditions thus established naturally developed representation. Each Cistercian monastery was subject to the abbot of Cistercium and had to send a representative thither to attend the annual chapter. In its primitive form this gathering was probably an administrative council meeting only in response to special summons like the English parliament in its primitive form, but the germ of representation was there.

The representative feature received systematic treatment in the constitution of the Dominican order, founded early in the thirteenth century. It adopted a federal organization, which facilitated occupation of any field in which it was desired to plant the order. At the second general chapter of the order held at Bologna in 1221, it was decided that a national province of the order should be established in England, and thirteen Dominican friars accordingly went to England, making their first settlement at Oxford. Whereas the Benedictine motive was withdrawal from the world in devotion to pious industry, the Dominican motive was to go forth into the world to turn it to righteousness. Founded as an order of preachers, meetings for conference were provided

for in the Dominican system of government. Each province had its own assembly, which was represented in the central chapter of the order. From their original base at Oxford, soon followed by one at London, the Dominicans spread all over England with houses at all important centers of population, which were virtually constituencies sending representatives to the yearly meeting of the provincial chapter, the national parliament of the order. Elective precedure was a natural development of such principle of organization. At first each house sent its own prior, who was accompanied by a varying number of representatives from the community. In 1265 the number was restricted to two, — the prior and one additional representative chosen by the community.

The Dominican representative system supplied a model that was imitated extensively by other orders and deeply affected the constitution of diocesan synods, which also assumed a distinctly representative character during the thirteenth century.[1] It is certainly a reasonable inference

[1] The principal authority for the above account of Dominican arrangements is Bede Jarrett's *The English Dominicans.* A detailed study of the growth of representation in the church during the thirteenth century and the way in which the system was taken over by the state has been made by Ernest Barker, fellow of St. John's College, Oxford, and is set forth in his monograph, *The Dominican Order and Convocation.* See also his article in the *Edinburgh Review* for July, 1921, on "The Origin and Future of Parliament."

that the analogous change which took place in the constitution of parliament in the same period was similarly inspired. All civic organization was then pervaded by clerical influence. When the burgesses were summoned to send their representatives they could know what to do for the clergy were there to tell them.

But the case does not rest wholly on general inference; there is some evidence which is more direct and more will probably be elicited by historical research. Simon de Montfort was a leader among the barons in their revolt against the capricious exactions and outrageous favoritism of Henry III. He participated in the arrangements made by the barons for governing the country through committees chosen by them, — arrangements which broke with all constitutional traditions and introduced the rule of a revolutionary junta. De Montfort, who had Dominican advisers, consented to these arrangements reluctantly and when he obtained individual control of the situation, we find new parliamentary arrangements which reflect Dominican practice. The writs for the parliament of 1265 summoned each borough to send two representatives, which was the Dominican ratio for each priory. Although De Montfort's fame as a statesman now chiefly rests upon his instrumentality in this matter, it should not be omitted from considera-

tion that during this same year his power was completely overthrown and he was slain in battle. And yet the innovation he had made in the constitution of parliament remained permanent. Although other political changes made by the baronial party in their period of triumph were at once undone, this was lasting. The facts are not intelligible if the new constitution of parliament be regarded merely as a stroke of individual statesmanship by De Montfort, but if he assumed that De Montfort's action was in response to an influence which still remained operative despite his death, then the sequence of events falls into rational order. The victor over De Montfort ascended the throne as Edward I, and he too had Dominican advisers. And so we find in the writs convoking the parliament of 1282, which doubtless like all public documents of the period were of clerical composition, a summons to each city, borough or merchant town, to send two men with power to act for their communities.[1] We may conclude, as Hume long ago judiciously observed, that the system of popular representation thus established, was "an institution, for which the general state of things had already prepared the nation." The agency by which this preparation was affected is manifest. The church originated representative institutions; the state adopted them.

[1] The Latin text of the original of the summons issued by De Montfort's government, and that issued by Edward I., is given in D. J. Medley's *Original Illustrations of English Constitutional History*.

PART II
CHARACTERISTICS

CHAPTER I

THE MEANS OF CONTROL

In the first part of this work the conclusion was reached that the representative system was originally merely an appendage to royal authority formed upon a pattern supplied by the Dominican order. Its conversion into an organ of control over royal authority was the result of a long course of development, which forms the theme of English constitutional history. While it does not come within the plan of this work to enter into the historical details, some general observations upon the character of the process are appropriate at this point.

Attendance of representatives of the people in parliament by the king's command does not necessarily imply any exercise of control over the king's exercise of his authority, and as a matter of fact representation long existed without showing any such tendency. Moreover, the representative character does not of itself confer ability to exert control. It is not until the representative assembly is in a position to make stipulations

and impose conditions that control becomes possible. It is a commonplace of English constitutional history that this position of advantage was obtained through the power of the purse. In No. 58 of *The Federalist,* it is described as . . .

> " that powerful instrument by which we behold, in the history of the British Constitution, an infant and humble representation of the people gradually enlarging the sphere of its activity and importance, and finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other branches of government. This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure."

But it does not follow that an effective exercise of this power will be made even if its existence be conceded. In the number of *The Federalist* just cited, the claim is made that the constitution of the United States invests the house of representatives with this power, but no one will pretend that the house of representatives now controls the government, and certainly little remains of dignity or authority in the representative assemblies of the various states of the Union. It is universally the case throughout the United

States that the senate has become the chief seat of legislative authority and this body, although both in the several states and in the nation it is now everywhere constituted by popular election, is not formed upon the principle of popular representation. Moreover, on a view of political institutions throughout the world, it appears that scarcely anywhere outside of the English constitutional system does the representative assembly possess the power and importance that constitutional theory ascribes to it. Actual occurrences plainly declare that constitutional grant of power is one thing and the disposition to use it on constitutional account is quite another thing. It is more important to know how such disposition is created than how the power is gained, but unfortunately constitutional history is apt to neglect this point on the mistaken assumption that by its essential nature a representative assembly must reflect the character of the people and get for them as good government as they deserve. On the contrary, the natural disposition of every assembly is to cultivate its opportunities on private account so far as conditions will allow, and how to reconcile representative institutions with good government has become the great political problem of the times.

The actual concurrence of power and disposition by which the principle of representation in

the English constitution generated an organ of control over the government, seems to be chiefly attributable to the situation of English politics during the reign of Charles II. The traditional idea, which was slow to die out, was that ordinarily the king should live on his own resources like other nobles, and that special aids should be granted only for special occasions, such aids being however only an augmentation of the funds at his disposal in his own discretion. Anciently there was no security that levies and imposts conceded to the king would be used on public account, save that as an incident of his station he would naturally be interested in promoting the welfare of his kingdom and that hence the general tenor of his administration might be trusted to concur with the interests of his subjects. If the king was not equal to his job his subjects might rise against him or rebellious nobles might even seize his person and wield his authority in his name, but not by his will. Moreover, disputes over the title to the crown might arise and engender civil war.

English history for some centuries is not much more than a record of struggles for the possession of power without distinct change in the conditions attached to the exercise of power. When a king ascended the throne with an acknowledged title parliament seemed to rejoice in displaying

its loyalty by unconditioned grants of taxes and imposts for the king's use.

Up to the reign of Charles II, the tenor of royal authority was still essentially barbaric. The king's power, like that of all barbarian chiefs, was circumscribed by customs which he could not afford to disregard, but these related principally to distributions of favors and interest, and the sources of his power thus secured, he could do as he pleased. His position in this respect was much like that of an American political boss, whose exploitation of his opportunities for his own profit is viewed complacently so long as he is munificent in his behavior, and is tolerably successful in providing for his adherents. But in theory the king's authority was indefeasible. If he was a failure he could not be lawfully superseded by a new boss. The modern constitutional remedy of a change of administration was not available. If conditions became intolerable the only recourse was to insurrection. Revolt against the king was in the nature of a mutiny. It did not aim at a change of system but at a change of command. After mutinying against Charles I, and cutting off his head, an unconditional restoration of monarchical authority eventually seated Charles II upon the throne.

The effect of the national experience during the Commonwealth period was to produce a deep

conviction that there was worse tyranny than royal tyranny. But now that the idea of further mutiny had become too dreadful to think of, what was to be done in case of intolerable neglect and mismanagement on the part of royal authority? The personal characteristics of Charles II were very influential in determining the lines on which a solution of the problem was sought. Fond of his ease and mindful of his bitter experiences while in exile, he was suave and pliable in his dealings with parliament, but he could not be trusted to make due use of funds put under his control. It was found that the only way to provide that funds meant for public services should not be squandered on the pleasures of the court, was to supervise the disbursements. The great shock to traditional ideas caused by arrangements of this character is reflected by a number of entries in *Pepys' Diary*. On one occasion the diarist remarked that had parliament attempted such a thing in Cromwell's time he would have turned the members out of doors. The definite institution of parliament as an organ of systematic control dates from the steps taken to curb the profligacy of the king, — a profligacy accompanied by so much kindness and good humor that although great national humiliations were experienced during his reign they never excited any serious dislike for him personally, and

he passed into popular history as the merry monarch.

The critical importance of the steps taken in the reign of Charles II, — crude and faltering though they were — was that for the first time a distinction was drawn between the nature of prerogative and the conditions of its exercise. Crown authority remained as unlimited as before; the means by which it might be exercised were now conditioned by law. An important fortification of this principle was set up in the reign of Queen Anne when the rule was adopted (July 11, 1713) prohibiting any grant of supply not recommended by the crown. This action was taken to counteract the operation of crown influence in securing supplies without assuming responsibility for the demand. As a consequence the government was no longer able to obtain any grant of funds without saying what it was wanted for or without incurring responsibility for the expenditure. This rule of order which puts up the bars against raids on the treasury by combinations of particular interests, as in the American practice of "log-rolling," is now the corner-stone of the English budget system.

Based upon these fundamental conditions an elaborate system of control over the particulars of the public business has been gradually developed, for the details of which special treatises

may be consulted.[1] What is here in place is to note the point that the position of control attained by the representative assembly in the English constitutional system, is due not at all to the fact of its representative character, but to the conditions imposed upon its behavior. Those conditions tend to maintain in their integrity the functions both of administration and control, just because each is kept intact and absolute within its own sphere, without impairment by any partition of authority or separation of power. Prerogative is undiminished; but its activity is subject to minute supervision. The administration may appoint and remove its agents in its own discretion, and the representative assembly has no power of direct interference with administrative choice. Even the office-holders in parliament's own service, — door-keepers, clerks, pages, etc. — are all appointed by the government. It is sufficiently obvious that such circumstances will be naturally apt to excite jealous concern that the government does not make an excessive use of such arbitrary authority. The representative assembly is in a position to control the situation since it can fix the number of positions available to executive

[1] The subject of budget control has been systematically covered by a series of treatises published by "The Institute for Government Research" at Washington, under the able direction of W. F. Willoughby.

appointment and limit their emoluments. The government has no power to enact laws; the representative assembly has no power of avoiding decisions upon the legislative proposals of the government in the shape preferred by the government. The assembly can not choose for itself what business it will consider; it has to face its responsibilities, and act on public account whether it wants to or not. The functioning of the representative assembly as an organ of control is thus contingent upon the massive and impervious character of executive authority. The control could not be complete unless executive authority were complete, for responsibility can not exist without freedom of action.

Appreciation of these principles is marred by the mistaken notion that constitutional progress has affected a diminution of crown authority. The customary description of the government of the United Kingdom as a limited monarchy is a misleading phrase. It is a strictly conditioned monarchy; not a really limited one. Crown authority instead of being smaller or weaker than in the past is now greater and stronger, and it is still rapidly growing. The point is stated with special emphasis by Professor Maitland, who, writing from the standpoint of jurisprudence, declared that "we must not confound the truth that the king's personal will has come to count

for less and less with the falsehood . . . that his legal powers have been diminished. On the contrary, of late years they have enormously increased."[1] This is simply a natural consequence of the transformation of the royal office from an individual estate into a public trust, and as the duties of the trusteeship enlarge its activity is correspondingly increased since it has so much more to attend to. The way in which the advance of democracy is expanding the sphere of government and enlarging its authority is the most outstanding feature of the times. The force of this tendency intensifies the need of corresponding development in the means of control, and the most important task to which political science can apply itself is to explain the principles upon which effective control may be established.

[1] F. W. Maitland, *Origin and Growth of the English Constitution,* Part I, p. X.

CHAPTER II

THE STATE OF POLITICAL THEORY

IT is an impressive fact that representative government was scarcely known or considered in political theory before the nineteenth century, at which time its type was so mature and its powers so highly developed that it began to spread rapidly, superseding all other types of government. Blackstone, whose *Commentaries* appeared in 1765, knew nothing of representative government as a distinct system. It was to him simply an element in those constitutional arrangements which make the government of England a limited monarchy. He explained that it was the means by which "all such men of property in the kingdom as have not seats in the house of lords" could have a voice in parliament by their representatives when summoned "to advise his majesty."[1]

Considerable attention was paid to the details of representation in De Lolme's[2] *Constitution of*

[1] *Commentaries*, Book I, chap. II.

[2] J. L. DeLolme (1740–1806) was a Swiss lawyer who got into trouble in his own country through his political writings, so that he took refuge in England. His work on English government was first written in French and was published in Holland in 1771. The first English edition was published the following year.

England, a work which had great influence in its day and was ranked as a weighty authority by the framers of the constitution of the United States. It is the source of the sound maxim that "the executive power is more easily confined when it is one," which is cited with approval in *The Federalist,* and helped to reconcile the people to concentration of authority in the office of the president of the United States.

In general, De Lolme expounded the British constitution on the lines drawn by Blackstone, but his knowledge of continental politics enabled him to develop still further some of Blackstone's points, with many instructive comparisons. A chapter of De Lolme's work, which has special present value in view of current American tendencies, is an inquiry "whether it would be an advantage to public liberty, that the laws should be enacted by the votes of the people at large." On this subject he could speak with precise knowledge from his Swiss experience, and his conclusion was that the supposed freedom of the people in such circumstances is "a play on words and nothing more." He then considered the "advantages that accrue to the people from appointing representatives" and he concluded that "the people are necessarily betrayed by those in whom they put their trust," unless the

activity of the representatives is strictly conditioned. As to this he observed:

> "The doctrine constantly maintained in this work, and which has, I think, been sufficiently supported by facts and comparisons drawn from the history of other countries, is that the remarkable liberty enjoyed by the English nation is essentially owing to the impossibility under which the leaders, or in general all men of power among them, are placed, of invading and transferring to themselves any branch of the governing executive authority; which authority is exclusively vested and firmly secured in the crown. Hence the anxious care with which these men continue to watch the exercise of that authority."

De Lolme's contention that representative government can not be actually secured unless appropriate conditions are maintained has been supported by all experience. His notion of appropriate conditions was that of his period, and rested on the surface of things, but at least it had a glimpse of correct principle.

The first complete recognition of representative government as a distinct system, instead of being merely an incident of limited monarchy or a substitute for legislation by the direct action of the people, was made by the great French historian and statesman, Guizot,[1] in lectures de-

[1] François Pierre Guillaume Guizot (1787–1874) early in his career distinguished himself by profound scholarship com-

livered in 1820–22, but not published in book form until some years later, when they appeared as *The History of the Origin of Representative Government in Europe.* This work, although it shows great learning and abounds in passages which stimulate thought, is as a whole vague and inconsistent. He argued that the true principles of representative government are: "First, the division of the powers; second, election; third, publicity." But he remarked upon the fact that election was a factor of limited importance in the composition of the English house of commons, and he observed that it was long a secret assembly and still might become such at any time, as "the demand of a single member who appeals to the ancient law is sufficient to clear the gallery." It follows that if the character marks mentioned by Guizot are true criteria then representative government did not exist in England at the time in which he wrote. He did not flinch from that inference but went on to remark that liberty "has developed itself in England less universally, less equally and less reasonably, we venture to believe, than we are permitted to hope

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bined with brilliant literary ability and great oratorical power. He was called to public service in 1814, when the monarchy was restored under Louis XVIII, and held a series of eminent posts, with occasional retirements full of literary activity. He is now chiefly remembered by his great *History of Civilization,* a work of permanent interest and value.

will be the case at the present day in our own country." That declaration reveals the true character of the work. It was a tract for the times. Guizot was then the leader of the party known as the "Doctrinaires," whose aim was a middle course between absolutism and popular government, and the work was intended to recommend the style of government they wanted to introduce. The time arrived when Guizot had to go into exile to save his own liberty, and in the latest edition of the work he admitted that experience had shown the need of modifying "some of the ideas which I have expressed in reference to some of the traditions and forms of representative government."

One might think that such an agitation as went on in England over the reform act of 1832 would be sure to cause a thorough overhauling of the theory as well as the practice of representative government. But the literary output was chiefly in the form of tracts and pamphlets, which in general avoided abstract considerations and made practical demands for redress of grievances. There was little about the nature of representative government itself, but much about the inequalities in the distribution of parliamentary seats and the lack of adequate means for popular representation. As compared with the political literature of other periods, the output of the

agitation over parliamentary reform shows remarkable sobriety of thought and moderation of purpose, due perhaps to the general spirit of conservatism produced by the results of revolution in France.[1]

The Utilitarian school was then famous and influential, and its characteristic principles insured a careful regard for actual values. Its acknowledged head was Bentham[2] who scoffed at the romantic fancies about the origin of government which had been so influential in France. He characterized the theory of the original contract as a "fiction," a "chimera," and he advocated the principle of the greatest good to the greatest number as the only safe guide for legislation. But any political movement that goes beyond fitful impulse must have some sort of a theory to form its intentions and in response to this need James Mill produced a treatise on *Government* which, in effect, is a powerful argument in behalf of representative institutions. Mill, a close friend and cordial adherent of Bentham,

[1] McGill University, Montreal, has a large collection of political pamphlets extending over three centuries, admirably arranged for convenient use.

[2] Jeremy Bentham (1748–1830) came of a family of lawyers and he himself had a solid legal education, but as he had ample means he did not care for court practice but devoted himself to the study of legislation and the improvement of social and political institutions, a field in which he accomplished much. W. L. Davidson's *Political Thought from Bentham to Mill* (Home University Library) gives a good account of the Utilitarian movement.

dealt with his theme from the strict utilitarian standpoint. Assuming that the proper end of government is the greatest good to the greatest number, it follows that institutions are to be valued in the measure by which they promote this end and prevent interference with it. But the master motive of human nature is self-interest, and so far as political institutions are subject to self-interest, power will be abused and government will be corrupted. On these points he found grave defects in the English constitution, particularly as regards the power wielded by the house of lords, and it is a rare instance of successful prophecy that in a work published in 1828 he anticipated the arrangements by which, in case of deadlock, the commons may now legislate without the concurrence of the lords.

The traditional check and balance theory of the English constitution formulated by Blackstone had been severely criticized by Bentham on the legalistic side. Mill now argued that it was practically worthless as a security for good government. The only hope of real improvement in political conditions lay in the development of representative government. He observed:

> "In the grand discovery of modern times, the system of representation, the solution of all difficulties, both speculative and practical, will per-

haps be found. If it can not, we seem to be forced upon the extraordinary conclusion that good government is impossible. For, as there is no individual or combination of individuals, except the community itself, who would not have an interest in bad government if entrusted with its powers, and as the community itself is incapable of exercising those powers, and must intrust them to certain individuals, the conclusion is obvious: the community itself must check those individuals; else they will follow their interest, and produce bad government. But how is it the community can check? The community can act only when assembled; and when assembled it is incapable of acting. The community, however, can choose representatives."

With regard to the constitution of the representative body Mill laid down these two principles:

"First, the checking body must have a degree of power sufficient for the business of checking. Secondly, it must have an identity of interest with the community. Otherwise it will make a mischievous use of its power."

Mill's treatise was the subject of one of Macaulay's slashing reviews, which was particularly effective in the way it contrasted Mill's abstract principles with the facts of real life. Macaulay fully conceded Mill's basic proposition that man acts from self-interest, and then went on to say:

> "This truism the Utilitarians proclaim with as much pride as if it were new, and as much zeal as if it were important. But in fact, when explained, it means only that men, if they can, will do as they choose. When we see the actions of a man, we know with certainty what he thinks his interest to be. But it is impossible to reason with certainty from what we take to be his interest to his actions. One man goes without a dinner that he may add a shilling to a hundred thousand pounds; another runs in debt to give balls and masquerades. One man cuts his father's throat to get possession of his old clothes; another hazards his own life to save that of an enemy. One man volunteers on a forlorn hope; another is drummed out of a regiment for cowardice. Each of those men has, no doubt, acted from self-interest. But we gain nothing by knowing this, except the pleasure, if it be one, of multiplying useless words."

Macaulay's criticism was the more effective since he was himself an advocate of reform, although he had no patience with schemes of demolition and reconstruction. In one way or another, institutions had been built up which suppressed rapine, protected persons and property against domestic violence and defended the nation against attack from without. Macaulay was quite ready to admit that these institutions had to be mended from time to time, but any proposal to scrap them in whole or in part, he regarded as the height of folly, and he turned

loose on the Utilitarians the full force of his great talent for sarcasm. A brisk exchange of shots took place, with the *Edinburgh Review* and the *Westminster Review* as the firing platforms.[1] In this engagement, Macaulay certainly carried off the honors, but nevertheless, Mill's treatise continued to exert great popular influence, and it was an important factor in the triumph of the agitation for parliamentary reform. Macaulay's greatest achievement was that he had convinced James Mill himself that there was something wrong with his theory of government, although his confidence in the practical value of the utilitarian principle was unimpaired, and he continued to advocate it with vigor and effect. To the end of his busy and useful life James Mill was too much occupied with practical tasks ever to find time to revise his theory of government and extricate it from the fallacies of which Macaulay had convicted it. This on the whole must now be regarded as a fortunate circumstance, as to it we are probably indebted for John Stuart Mill's masterpiece.

[1] Students of political science should not fail to read this series of articles which go deeply into problems of government. Macaulay's articles were: "Mill on Government"; "Westminster Reviewer's Defence of Mill"; "Utilitarian Theory of Government" to which as a suitable preface should be added his essay on "Hallam's Constitutional History." These have all been collected among his published essays. The principal articles on the other side of the controversy appeared in the *Westminster Review*, Nos. XXI and XXII.

The origin of the younger Mill's *Considerations on Representative Government* will probably be correctly discerned if it be regarded as a rejoinder to Macaulay, although the work itself does not bear the slightest trace of such character. His father's treatise and Macaulay's criticisms upon it doubtless put before him the case which he had in mind in constructing his own case, but he wisely avoided controversy and he approached his subject from the standpoint of practical politics, handling it with so much sagacity and knowledge that a political classic was the result. Due perhaps to these special circumstances, the work in style and method stands quite apart from any of its predecessors. It does not follow the legalistic method of Blackstone, the historical method of Guizot, or the deductive method of James Mill, but it is an original, independent examination of the nature and characteristics of representative government as a working system. In a modest preface Mill remarked that there is nothing novel in the opinions expressed and in the practical suggestions made by the work, but "there is novelty, however, in the fact of bringing them together, and exhibiting them in their connection." Despite his own unassuming account of his performance, he had made the most complete and systematic account of representative government that is to

be found in political literature, and it still retains that position. It was first published in 1861, so the world's experience for over sixty turbulent years is now available for testing the value of his statements and the soundness of his principles. There is then a manifest advantage in using the scheme of his work as the basis for the present examination of the subject and such will be the method that will be pursued in the following chapters.

CHAPTER III

PREREQUISITES OF REPRESENTATIVE GOVERNMENT

MACAULAY'S criticism of James Mill was particularly effective in showing by historical instances that what upon theory should have been bad government was actually good, while what ought to have been good was actually bad. Furthermore, Macaulay flatly asserted that "it is utterly impossible to deduce the science of government from the principles of human nature," so variable is human nature. On this ground he denied intrinsic excellence to any form of government. It was all a matter of practical convenience, the means of which might well vary in time and place.

The opening chapters of John Stuart Mill's treatise reflects his study of the points made by Macaulay, and in the main he concedes them. "Even personal slavery, by giving a commencement to industrial life, and enforcing it as the exclusive occupation of the most numerous portion of the community, may accelerate the transition to a better freedom than that of fighting and rapine." The institutions of a people should

be suitable to their stage of advancement. "The recognition of this truth," he remarked, "may be regarded as the main point of superiority in the political theories of the present above those of the last age; in which it was customary to claim representative democracy for England and France by arguments which would equally have proved it the only fit form of government for Bedouins or Malays." He observed that human society "in point of culture and development ranges downwards to a condition very little above the highest beasts." People who have been accustomed to a state of savage independence are practically incapable of making any progress in civilization until they have been taught obedience to authority, and in such case "the constitution of the government must be nearly, or quite, despotic."

These are large allowances, particularly as coming from a liberal leader, and in making them Mill seemed to have gone over to Macaulay's side, agreeing with him that government is a product of social forces and reflects their character and distribution. But Mill went on to argue that this does not wholly exclude the element of choice as regards form of government, if it is possible to alter the distribution of social forces by thought and effort. "Politically speaking," he said, "a great part of all power consists

in will," and he cited historical instances showing how far mere physical and economic power is from being the whole of social power.

He summed up his argument as follows:

> "It is what men think that determines how they act; and though the persuasions and convictions of average men are in a much greater degree determined by their personal position than by reason, no little power is exercised over them by the persuasions and convictions of those whose personal position is different, and by the united authority of the instructed. When, therefore, the instructed in general can be brought to recognize one social arrangement, or political or other institution, as good, and another as bad, one as desirable, another as condemnable, very much has been done towards giving to the one, or withdrawing from the other, that preponderance of social force which enables it to subsist. And the maxim that the government of a country is what the social forces in existence compel it to be, is true only in the sense in which it favors, instead of discouraging, the attempt to exercise, among all the forms of government practicable in the existing condition of society, a rational choice."

The question which Mill considered is the same that Alexander Hamilton raised in 1787 in recommending the adoption of the constitution of the United States. As he put it, it is "whether societies of men are really capable or not of establishing good government from reflection and

choice, or whether they are forever destined to depend for their political constitutions on accident and force." It is generally considered that the most satisfactory answer to this question that history affords was given by what then happened, but when the matter is closely examined there seems to have been more in it of accident and force than is entirely agreeable to the notion of reflection and choice. For one thing, the electorate whose action decided the issue was closely limited by the property qualifications on the suffrage which then existed, and what was chiefly urged was the interest of this electorate in having additional security against spoliation. "The passions of men will not conform to the dictates of reason and justice without constraint." [1] "The safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed." [2] Although reasonable grounds were set forth with great power and influence, yet it is now clear that the constitution was adopted, and the national government set up, through dexterous concentrations of interest. Selection of the site of the national capital was the pivot on which turned the financing of the government, without which the new constitution would have been as

[1] Hamilton in No. 15 of *The Federalist.*
[2] Madison in No. 43.

transient as every federation had been up to that time. The great contribution to political science made by the events of that period is Hamilton's law of political development, namely, that "every institution will grow and flourish in proportion to the quantity and extent of the means concentred towards its formation and support." [8] According to this principle, on which Hamilton acted with brilliant success, the most important thing in politics is to enlist interest, and only as reason serves to point out interest does it seem to figure at all.

Considerations of this nature soon bring forward the standing issue between free will and determinism, as to which Mill seems to have taken a different position in his writings on politics from what he occupied in his writings on logic. In claiming for man a limited degree of free agency in the making of political arrangements, Mill's position now receives strong support from current tendencies in psychology as well as from history, which has ever borne witness that free agency is a real though a limited factor in human affairs. Like a canoe in the rapids, man is carried along willy-nilly, but the way in which he plies his paddle may make a great difference how he fares. That is to say, man has a flicker of causality in his own nature

[8] *The Federalist*, No. 11.

and hence may have some say about his own destiny. But any attempt at a precise statement of the case lands one in difficulties from which there is no logical escape, although they do not in the least impede action. There are things of which we can be certain although we can neither understand nor explain them, and this is one of them.

Mill did not pursue the subject beyond making the modest claim that there is some room for choice with respect to political arrangements inasmuch as the distribution of social forces is alterable by thought and effort. During the agitation over the reform bill of 1832 much solid historical evidence had been brought forward showing that representative institutions had originated in obligation and not in choice. The position at which Mill rested made that question now immaterial. It sufficed for his purpose that representative institutions did exist, that their operation was open to criticism, and that they were as susceptible of improvement by thought and effort as any other art or contrivance of mankind.

In taking this line Mill had no need of inquiring into the origin of government or the early history of institutions. But that he did not hold romantic notions on the subject is shown by his treatment of it. He remarked that at some

period of their history "almost every people now civilized had consisted, in majority, of slaves."[1] Such comments as he made rather imply that it was a good thing for them. A slave is "no doubt, one step in advance of a savage," for he has acquired the first lesson of political society; "he has learnt to obey." With a few dry observations Mill thus threw overboard the vast collection of romance about the state of nature and its inalienable rights, upon which political reformers had always before been in the habit of drawing. The Utilitarian school of radical reformers were as severely practical in their aims as the authors of *The Federalist,* and this goes far to explain the beneficial character of their activities.

The problem which Mill avoided has since his time been the subject of intense study and voluminous research, without arriving at settled conclusions as to the nature and the inception of government, although on the historical side the evidence is all to the effect that government is everywhere and always an incident of man's situation.[2] Moreover, the old romantic views as

[1] Caesar's *Commentaries,* Book VI, Chap. XIII: — "The commonalty is held almost in the condition of slaves, and dares to undertake nothing of itself and is admitted to no deliberation." This statement refers to conditions in Gaul, but the same might have been said of the conditions generally existing among barbarian tribes.

[2] In *The Natural History of the State* (Princeton University Press, 1915) the author made a systematic collection of scientific data bearing on the subject.

to the freedom of man in a state of nature have been shown to be sheer fiction, at the widest possible distance from the actual facts. All the evidence is in agreement that political power in its earliest manifestations takes arbitrary forms. Political authority was originally of a piece with family authority, authenticating itself by its mere presence and power. The notion of individual rights is a late development of political evolution, marking an advanced stage in the growth of the linguistic apparatus of thought. Such terms as freedom and servitude are as inapplicable to the condition of savages as they are still to the situation of children, but servitude is far closer to the fact than freedom. The tight mesh of custom that binds savage life and the ruthlessness with which it is enforced leaves no room for such freedom as is in mind when the matter is talked about in civilized life.

But if any particular form of government, even absolute despotism, may be good in its time and place, how can it be determined when change is desirable and along what lines should improvement be sought? Upon this what Mill has to say is a development of the maxim that by their fruits ye shall know them. A government may be forgiven any demerit, if it has the merit that it improves the condition of the people and tends to raise them to a higher level. The disciplinary

function of government Mill regarded as its most important characteristic. He entered into a detailed analysis of such concepts as order and progress to show that they were insufficient to supply a practical criterion of good government. "The most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves."

Observations of this character do not usually rise above moral platitude and are apt to decline into cant. But Mill gave a practical turn to the discussion by pointing out that it is the function of constitutional government to do for the public business what sound organization does for private business, — bracing character, improving morale and securing efficiency through the conditions it introduces. "There is no mode," said Mill, "in which political institutions can contribute more effectually to the improvement of the people than by doing their more direct work well. And if their machinery is so badly constructed that they do their own particular business ill, the effect is felt in a thousand ways in lowering the morality and deadening the intelligence and activity of the people." He held that representative government is the ideally best form of government, for the very reason that it will not actually be representative in its char-

acter unless it is properly organized and conditioned. By its essential nature it is a system of trusteeship and its integrity depends — as in the case of any sort of trusteeship — on successful provision for strict accounting and definite responsibility. Institutions claiming to be representative can justify their character as such only to the extent that they establish and maintain such trusteeship, and it is from this point of view that he examined and stated the requisites of representative government.

In thus resting its claims on utilitarian grounds, Mill parted company with his father who advocated representative government on grounds of abstract right. James Mill laid it down as a self-evident proposition that "the community can not have any interest opposite to its interests." It therefore followed that the test of a good form of government is the accuracy with which it is made to reflect the community. Macaulay made mincemeat of James Mill's argument, which indeed is an easy thing to do as soon as the historical method is applied. What James Mill avowed to be a self-evident proposition flies in the face of notorious fact. And yet James Mill's notion of representative government is still that which generally prevails, namely, that it means an accurate reflection of the community. In pursuit of this ideal no end of elaborate con-

stitutions have been framed which were tragic failures. It is still the line on which reform movements usually operate in American politics with monstrous results. It supplies the atmosphere of thought which one usually finds in political treatises, and to this may be ascribed the general air of unreality which pervades them. There appears to be nothing particularly wrong with the argument. It sticks together well. And yet one knows that it isn't so, as soon as one thinks of the real world. People spin logical schemes for political use to which they would not trust a cent, if it were proposed to apply them to business trusteeship. How many subscriptions would the promoter of a new joint stock company get if he used the argument that the interests of the shareholders would be perfectly secured, because it had been arranged that they themselves should elect all the employees?

What then is wrong with the proposition that it is the business of representative government to reflect the community, which makes it so mischievous in practice? Is it not plain that such terms as the people, the community, connote an ideal unity, whereas the actual situation is one of endless multiplicity, great inequality and continual variation? The notion of institutions as a reflection of such instability is as vain and impossible in politics as it is recognized to be in

every other kind of business. No one would regard it as a correct principle in the organization of a joint stock company that the management should be such as would fairly reflect such knowledge as the shareholders might have about the business the company is to carry on. The principle universally relied on there is grant of power to men of special knowledge and capacity, subject to responsibility for results. The case is not different in the management of public business. It is the peculiar merit of John Stuart Mill's treatment of the subject that he applied to institutions the same test which mankind ever applies — the test which in the long run always decides the fate of institutions — namely, do they work well? Be traditional theory what it may, people can not be made to keep on respecting institutions that have ceased to be respectable. Mill was in accord with the teachings of history and the actual constitution of human nature in holding that the criterion of value in representative institutions is their efficiency in establishing responsible trusteeship, and that the test of merit in all incidental arrangements is their effect in that direction. The elective process, the constitution of the representative assembly, its rules and arrangements, the scope and mode of its authority, are all matters that should be determined with regard to effects on actual behavior.

In admitting, as he did with entire frankness, that representative institutions are unsuitable unless people have been prepared for them by previous discipline, Mill had to face this difficult question: "Under what social conditions is representative government inapplicable?" He held that representative government can not permanently subsist unless it fulfills these three fundamental conditions:

> "First, that the people should be willing to receive it. Second, that they should be willing and able to do what is necessary for its preservation. Third, that they should be willing and able to fulfill the duties and discharge the functions which it imposes on them."

It should be noted that Mill does not say that all these things are prerequisites, but only that they are of vital importance to the continued existence of representative government. As a matter of fact, representative institutions originated solely on the basis of the third of these conditions, and the other conditions were the result of developments which converted representative institutions into an organ of popular control over the government. But such institutions may be so arranged that they swindle the people instead of protecting them. There is indeed much to show that representative institutions may be utilized as machinery for exploiting

the industry and resources of the mass of the people for class advantage, and that under cover of its forms an oligarchical rule of a peculiarly debased type may be set up. Mill was well aware of the maladies to which representative government is liable, and the principal value of his treatise lies in its account of the way to cure them. He had this matter in mind in stating the fundamental conditions, which, standing alone, might seem to be mere truisms, but he went on to give particulars which draw out their practical importance.

According to the criterion of value which Mill laid down, it is conceivable that representative government might not be for the best even if conditions were such that it could subsist. Mill faced the issue squarely, and allowed that some other form of government would be preferable "when the people, in order to advance in civilization, have some lesson to learn, some habit not yet acquired, to the acquisition of which representative government is likely to be an impediment." Authority must be built up before the organ of control over authority can be developed. Mill declared:

> "It may be laid down as a political truth, that by irresponsible monarchy rather than by representative government can a multitude of insignificant political units be welded into a people, with

> common feelings of cohesion, power enough to protect itself against conquest or foreign aggression, and affairs sufficiently various and considerable of its own to occupy worthily and expand to fit proportions the social and political intelligence of the population."

Such observations, however brilliant, leave in the dark the question, how is it possible to tell when a people have become fit to govern themselves? As to this it does not seem possible to lay down any rule. In practice it is a matter that must show for itself and find its own way. However, we are not now considering the suitability of particular forms of government to particular cases, but simply the question of how to secure the integrity of representative institutions when they are actually in being, or are about to be introduced. Certainly it is not possible to establish representative institutions without sufficient virtue and intelligence to support them, but whatever stock of good character is socially available is also politically available. Indeed, superior results are obtainable in politics, because motives of honor and distinction may be employed that do not apply to effort on the plane of private interest. People are not looked up to and respected so much for what they do for themselves as for what they do for others, and this circumstance opens a great fountain of

political force for the use of statesmanship. If the ethical standards of politics fall below those of ordinary behavior it is an infallible sign that the constitution is faulty, and no real improvement is to be expected until the defect is corrected.

CHAPTER IV

FUNDAMENTAL CONDITIONS

REPRESENTATIVE government is by its specific nature founded upon election by the people, but any consideration of elective process whether it be as to the theory or as to the actual practice, shows that it has defects which can never be removed since they are rooted in human nature. Representative institutions allow choice, but the grounds of choice may admit all the folly, wickedness and perversity of which human nature is capable. Defects of such origin will always exist while freedom of choice exists, but it does not follow that effects can not be controlled. It is the special aim and particular purpose of all sound business organization to do that very thing. Every art or contrivance has limitations imposed by the nature of its material which must be allowed for in accomplishing results, and in this respect politics has no special problems and few peculiarities. There is a prevalent notion that the special problem of politics is to overcome the propensity of agents to abuse their authority for their own advantage, but this sets a task rather than a problem. Ordinary business administra-

tion has always upon it the need of controlling that same propensity and the means of doing so are tolerably well understood. The same general principles by which integrity is secured in private business are available in public business, with even greater assurance of success. The matter resolves itself into precaution against infirmities disclosed by practical experience.

At the very outset there is an infirmity so noticeable that it strikes every observer. Mill made this blunt statement of it: "Unless a man is fit for the gallows, he is thought to be about as fit as other people for almost anything for which he can offer himself as a candidate." If American experience suggests any modification of this statement it would be that the one reservation made by Mill is no longer called for by the facts of the case. Now what can be done to guard against such infirmity?

One view that may be urged and which indeed is widely held, is that the case does not admit of direct treatment; — that if the people do not elect good men to office they are themselves to blame and that the only available remedy is to inculcate a deeper sense of moral responsibility. This argument implies that as a system representative government is irresponsible in its nature and is merely reflective of such morality and conscientiousness as happen to exist in the

electorate. But no such argument would be indulged in private business. In it the matter of positive checks to condition behavior is always attended to. No one would say, if a private business concern was looted by those in charge of it, that the only moral to be drawn was that the shareholders had failed to elect good men to office. In such case the conditions that attached to the trusteeship would be considered in accounting for the occurrence and remedial action would be sought through improvement of those conditions. It would be rightly considered to be either sinister or absurd to take the position that there was nothing to be done except to await improvement in the morality and intelligence of the shareholders. And if this be the case as regards so definite a body as a group of shareholders, how much more so as regards such a vague entity as the people. When the blame of political defect is laid upon the people it is put nowhere. Such avoidance of responsibility should never be tolerated for it is nugatory of constitutional government. It may be laid down as a safe maxim that to say "it is the fault of the people" is the characteristic plea of the political scamp.

The stream cannot rise higher than its source! True enough; but there are such things as rams and pumps; and politics too does not lack

special contrivances for attaining special ends. To regard representative institutions as merely reflective of the average morals of the electorate is as inaccurate as would be the notion that artistic or scientific institutions are merely reflective of popular ideas about art or science. Political institutions are exactly like all other institutions in that they reflect special aptitude and opportunity. Politics will always be carried on by politicians just as art is carried on by artists, engineering by engineers, business by business men; but in each case their ordinary character and aims will respond to the conditions governing their activity. So while it is impossible to get rid of politicians much may be done to improve the breed. The test of value in political arrangements is the kind of men they tend to select for public office. By far the most important principle of politics is the controlling influence of conditions, and it is through ability to shape conditions that the character of government is susceptible of improvement through thought and effort.

Considered merely as an abstract statement the profound importance of this principle will scarcely be appreciated. The point may be made clearer by a concrete example drawn from ordinary business experience. An employer is aware of leakage from his cash receipts but does not

know how to stop it. One tells him that his trouble is due to the fact that he is not sufficiently careful to choose good persons for his service. Another suggests a system of examinations to exclude the unfit. Another advises effort to inculcate morality. There may be merit in all these familiar suggestions, but the problem is not efficaciously attacked until the question is asked, "What sort of system have you for keeping your cash?" Suppose it appears that each counter has its till from which the employees get what they require in the transaction of the business. The proper remedy then is a change of system. Abolish the tills, put the custody of the money in the hands of a cashier and verify his accounts at frequent intervals. The change of system will not absolutely preclude individual delinquency but will be apt to expose it when it occurs and it will establish conditions that will tend to secure financial integrity and give tone and character to the service. Exactly the same principle applies to the conduct of the public business. No real improvement can be obtained through change of persons without change of system.

In every kind of government power must exist and be trusted somewhere. The characteristic function of representative government is to hold the trusteeship to steady account for its behavior.

Therefore to establish a representative system all the following conditions are essential:

1. That the people shall be free to choose whom they will to represent them.
2. That the representative assembly shall be face to face with the administration.
3. That the representatives shall be so circumstanced that they can use their authority only on public account.
4. That elections shall be confined to the choice of representatives.
5. That the supervision and control of the representative assembly shall extend over the whole field of government.

On all these points Mill made instructive observations, the value of which is now enhanced by the fact that we are in a position to test them by the results of actual experience in the working of representative institutions for over sixty years since he wrote.

CHAPTER V

FREEDOM OF CHOICE

In actual practice the people have never been allowed complete freedom of choice in selecting their representatives. Qualifications are prescribed which may relate to character, or status, or residence.

Instances of the first class are laws making ineligible aliens, mental defectives, bankrupts and felons. Disqualifications of this nature which the electorate is not allowed to disregard, were anciently much more extensive than at present, but for at least a century past it has been the settled tendency to reduce them in number and importance. Religious tests, once general, have almost disappeared from the statute books, and questions as to moral fitness are left to the people themselves to decide in expressing their choice at the polls. In the famous Wilkes case, the British parliament repeatedly excluded as morally unfit a man whom the people were bent on electing, and in the end parliament had to give way. That famous case settled the question so far as English practice is concerned, and some legal difficulties revealed by the Bradlaugh case in 1880 were soon removed by appropriate legislation.

In the United States a return to ancient claims of moral supervision over the popular choice has taken place in at least one noted instance. In 1920 the New York assembly unseated some of its members on the ground of unfitness because of their adherence to the doctrines of Socialism. This was in effect a ruling that the people have no right to choose Socialists as their representatives. The transaction brought so much censure upon those responsible for it that it is more likely to serve as a warning than as an example.

Although in general a liberal spirit now pervades the laws with respect to personal qualifications, the doctrine is still constantly preached that it is the duty of the people to elect good men to office, and it is a common opinion that the chief cause of bad government is popular negligence in the performance of this duty. It seems therefore to be still a point for consideration whether it would not be proper to take legal steps to compel the performance of that duty. Whatever shape action might take the issue involved would be this: — Ought people to be allowed to choose a bad man as their representative? The proper answer to this is that it is of the essence of representative government that the people themselves shall be the judge in that case. What looks good to them is just the good which the representative system seeks, no matter how bad it looks to other people.

The matter is of such fundamental importance in the working of representative institutions that it would be a misfortune if none but good men, — according to ordinary conventions, — should be chosen. The more foolish, spiteful and dangerous may be the spirit in which the choice may have been made, the more important it is that it shall be allowed to show itself and be given opportunity to state its case for what it is worth. Mere badness alone cannot confer eminence. It is never gained on such easy terms. Distinction of any kind obtained through personal effort is an evidence of force that may be employed to public advantage. There are numerous instances in history of good achieved through depraved agency. Representative institutions being in their essential nature a control over the government in behalf of the people, even a sprinkling of rogues in the representative body may add to its efficiency, on the principle "set a thief to catch a thief." All elements that free popular choice may impart to a representative body may be salutary provided conditions are such as to secure the integrity of the representative function.

The second class of checks, those which relate to status, are conceived with the idea that there are certain occupations and connections so strongly disposed to seek their own interest that it is not safe to trust them to act as repre-

sentatives of the people. Checks of this character were also much more considerable in the past than at present, although some impress of them still remains in modern constitutions. There was a period in English history when belief was so general that lawyers habitually used their parliamentary membership to further their own interests that there was an urgent demand for their exclusion. Legislation in this direction took place in 1372 without practical effect. In 1404 Henry IV in issuing the writs for parliamentary elections expressly excluded lawyers. Disqualification of clergymen was very general in the past and still continues to a considerable extent. Complete exclusion of office-holders was long energetically advocated in England and this state of sentiment was reflected in the provision of the constitution of the United States disqualifying office holders for service as presidential electors or as members of Congress. In 1782, English law disqualified contractors for public work. French law contains numerous restrictions of this nature, particularly with regard to service on municipal councils. Domestic servants are among the disqualified classes.[1]

[1] D. J. Medley, *Constitutional History of England*, p. 196, etc., gives an account of the disqualifications made by English law. W. B. Munro, *Government of European Cities*, p. 24, describes disqualifications made by French law, which have had an extensive influence since the French municipal system has been adopted by many other countries.

The idea underlying this class of checks can not be regarded as chimerical. Popular jealousy of the political influence of lawyers and bankers is not without rational foundation. Both these classes seem to be peculiarly inclined to rapacious exploitation of political opportunity. Their inordinate prominence in the state is apt to assume a cancerous character; but their regulated activity is not merely salutary but indeed appears to be essential to vigor of function in a constitutional system. To shut them out altogether would be more apt to make things worse than better. As a matter of fact the nature of their calling disinclines bankers as a class from presenting themselves for membership in representative assemblies; their political activity is in the main a lobby influence, and this would not be in the least impaired by their complete disqualification for the representative function.[1] The lawyer class however always contains elements which swarm into representative assemblies when political conditions yield good pickings for needy adventurers. Active, pushing, free from diffidence, inured to

[1] How sordid and powerful that influence may be is strikingly displayed by the efforts of certain bankers to defeat economies introduced by the Federal Reserve Board, and their ability to obtain state legislation in aid of that purpose, a circumstance which eventually brought the matter before the U. S. Supreme Court. A report of the case may be found in *The Commercial and Financial Chronicle,* for June 16, 1923, p. 2718.

controversy, hardened to criticism, they will corrupt any constitutional system which does not firmly limit their opportunities. The laws become a dreadful labyrinth when lawyers are in a position to manipulate them at the suggestion of their own interests. But while the lawyer type of politician is capable of extreme developments of callous effrontery and cynical selfishness it is also able to supply magnanimous service and enlightened statesmanship. None of its noxious possibilities would be suppressed by confining its influence to the lobby, and capacity of indispensable value would be excluded from the legislative chamber. Such experiments as have been tried in shutting out the lawyers did not have happy results. The parliament called by Henry IV from which all lawyers were excluded behaved in such a way that it was entitled "The Unlearned Parliament."

It is obvious that checks upon the choice of electors by disqualification of particular classes cannot extinguish influence if it really exists but will merely force it to take cover. If members of a proscribed class may not go themselves they can at least pick others to go in their interest. It is doubtful whether even the exclusion of office-holders, although quite proper on other grounds, is really of any advantage to the character of representative assemblies. The activity of office-

holders ought to be restricted to the duties of their office, and this of itself should make them generally ineligible, but if other conditions are such as to enable them to sway the action of the representative assembly, they can do so quite as effectively from the lobby as they could by their open presence in the chamber, a fact of which there is abundant evidence. It is a political principle of universal application that the quality of power is determined by the conditions under which it is exercised. The matter of real importance is the fixing of those conditions, and that well done the electorate may be safely left to an unfettered choice of representatives.

In the matter of residence qualifications, the general rule of countries having representative institutions is that constituencies may take from any place in the national jurisdiction any one they desire to choose for service as their representative. Representation by non-residents is a common practice under the system as developed in England and transmitted by English example. The effect in imparting a strong element of dignity and sincerity to public life is strongly marked in English politics. An able statesman is not dependent on the favor of any particular constituency. If he should not be wanted in one place, other places will be glad to have him. It has happened that a popular leader has been

elected by more than one constituency and can choose which seat he will accept. The system keeps drawing competent ability into public life, and at the same time keeps reaching out for promising recruits in every walk of life. Its influence is felt even as an educational incentive. Youth may become marked for future public service while still at school.

In this respect, the written constitution of the United States reflects the liberal spirit of English institutions. Any citizen of a state is eligible for election as a member of congress from that state, irrespective of his place of residence, if he is otherwise qualified. But in practice the choice of a constituency is rigidly confined to a resident of the district, except that occasionally in large cities, where congressional districts are small in area, a district line may be crossed in favor of a candidate. In municipal arrangements both law and custom favor restriction of choice to local residents, a practice which seems to antagonize the constitutional principle which was the mainspring of the American revolution. What practical significance is there in the principle of no taxation without representation if those who own property cannot vote where their property is situated but only where they are domiciled? In the cities of the United States the janitors of office buildings are privileged far beyond the

owners in the matter of representation. The connection with real interest which the representative system contemplates is generally ignored in practice and this goes far to account for the strong set of American opinion in favor of wiping out ward lines in municipal elections, as in what is known as the commission plan of city government. But local choice of representation is such an indispensable element of a sound constitution that any suppression of it is dangerous. Discontents may gather for which there is no constitutional outlet such as it is the business of representative government to provide.

That there is no practical difficulty in allowing non-residents to qualify as voters by payment of taxes, is shown by the fact that it is the general rule outside of the United States. In European cities a taxpayer may vote either where he is domiciled or wherever he pays local rates. This freedom of suffrage is attended by a corresponding freedom in the choice of representatives. The constituency of a particular district may go outside of it in choosing its representative, and in actual practice many members of the council of an European city live outside of the districts represented by them, and indeed quite often outside of the city limits.[1] This latitude of choice on

[1] W. B. Munro, *Government of European Cities*, may be consulted for particulars. In Liverpool at one time only 25

the part of constituencies has been of great advantage to poor districts, by enabling them to import champions who can urge their feelings and interests with special power, securing for them consideration that otherwise might not have been accorded. This has been a factor of great importance in imparting a democratic spirit to municipal government and in augmenting its administrative efficiency. The benefits of the system are particularly conspicuous in France where the liberal suffrage conditions are regularly availed of by business and professional men to keep up relations with the home town, no matter where they may have settled. In qualifying as voters such non-residents are eligible for election to office, and it is not uncommon for a provincial community to include in the membership of its council former townsmen who have long since ceased to live in the district but who still cherish connection with it, bringing into its affairs the breadth of vision and the knowledge they have gained from outside experience. There could be no stronger testimony to the effect of such conditions in fortifying the character of local government than the fact that bequests form such a regular feature of municipal assets that French law makes them the subject of special regulations. To get an

out of the 137 members of the Council resided in the wards which elected them, and the situation was not at all extraordinary.

American parallel we should have to suppose it to be a common practice in making wills to leave money to the mayor and city council for public uses, whereas the actual fact is that when similar acts of munificence take place great pains are taken to keep the money out of the hands of the mayor and city council, and it is the ordinary practice to provide for administration by creating special boards of trustees.

Upon abstract grounds there seems to be no good reason why people should not look where they will to find a representative to their liking. In view of ordinary business practice that would certainly appear to be the normal situation. In electing the directors of any coöperative undertaking who bothers where they live? All that matters is ability to perform the service and they live where it suits their convenience in fulfilling their engagements. The common European practice thus reflects the normal tendency while American practice indicates the presence of conditions which exclude the substance of representation while retaining its form. It may be laid down as a general principle which admits of few exceptions that any sort of limitation upon popular freedom of choice is essentially an impairment of the representative system. The people will not be present by means of their representatives unless conditions are such that they can make a

free choice of whom they will have to represent them.

From this point of view even such an important principle of public order as that the majority should decide is open to criticism. It is at best only a rough and ready means of securing the coincidence of declared will with actual power. The fundamental idea was pithily expressed in the English maxim, "We count heads to avoid breaking them." It was and is a ground of objection to woman suffrage that it falsifies the count as a test of actual power to rule. There has not yet been sufficient experience of consequences to remove all anxiety on this score, but so far results indicate that the risk is inconsiderable, the effect of woman suffrage being to augment the electorate without seriously affecting its party distribution. The women divide as do the men and the result is as good an indication of actual preponderance of force as before. Now that the suffrage has come to be generally regarded as a valuable privilege instead of a troublesome obligation there seems to be no valid reason for denying women the suffrage. Moreover it must be conceded that this state of sentiment is a natural and proper incident of the development of representative institutions, and this holds good even if it be believed that women have more important things to attend to than politics. Politics need

not hinder them from attending to them. They do not have to vote unless they want to, and if they refrain they will do only what many good men do. But on the other hand, there is no reason why women who have ambition in that line should not go into politics as freely as into any other art or craft. However, the notion that the influx of women will exert a purifying or refining influence in politics is plainly opposed to all experience. Women may be quite as impure and unrefined as men if not more so, and women who go into politics will take their tone from its actual system as men do. If the system supplies good opportunities for shady characters women of shady character will figure in it. Dirty politics will then get a fresh lot of dirt, making it smell worse than before.

But even when results at the polls correspond to actual preponderance of force, the point may still be made that a large section of the electorate is left without direct representation. It has often happened that sweeping results in the composition of a representative assembly have been accomplished by a small preponderance in the total vote at the polls. Thus the majority may secure a representation greatly out of proportion to its actual strength, while a minority only a little less strong at the polls is left without representation at all correspondent to its size. This is a

matter which received much attention from Mill and he strongly advocated measures to correct such discrepancy. Much thought and effort have been expended upon schemes of minority representation and a movement of public opinion in favor of the principle is a marked feature of the times, but results as yet have not been satisfactory. Such schemes are necessarily complicated and difficult to work and they are liable to produce fantastic results.[1] It has yet to be shown that the gain from such arrangements is large enough to compensate for the risks involved, and in most circumstances more equitable representation of the varieties of public opinion would be obtained by having a large number of single member constituencies, the result in each of which is decided by majority rule. If no candidate receives an absolute majority then a second election might be held confined to choice between the two candidates who stood highest in the vote at the previous election. This practice, which is common in continental Europe, has much in its favor. It is extremely unlikely that in such circumstances, — given the right to range abroad in choice of

[1] A good monograph on this subject, compiling the results of practical experience, would be a valuable contribution to political science. Although there is already a large body of literature devoted to the subject of minority representation, it is too much concerned with what ought to result instead of with what actually happens.

candidates, — any considerable body of opinion would be excluded from effective representation. A minority party could then always find enough constituencies to provide seats for its parliamentary champions. It is much less important that a minority party should have as many seats in the representative assembly as corresponds to its proportion of the total vote, than that it should be in a position to put its views before the country with the greatest possible force, and this would be better accomplished by having a large assembly with free range of popular choice than by any formal scheme of minority representation. It should be borne in mind that representative institutions do not aim at a sharing of power but at a general participation in the exercise of control over the exercise of power, and it has been shown time and again that a strong controlling influence can be exerted, and important modifications of public policy be effected, by ability in argument even though its parliamentary support be then slight. The value of criticism goes by weight and not by count. What really matters is whether the country is moved, for then a minority can readily be converted into a majority through electoral process.

These observations have in mind the case of countries in which the habit of constitutional action already exists. When it has yet to be im-

planted, special arrangements to secure actual representation of all important interests may be necessary. But even then better results may be secured by specific allotment than by schemes of minority representation. If a population is so distracted by racial or religious antipathies that any faction gaining power is likely to use it to oppress its opponents, it may be wise to allot to each element its fair share of seats to be filled by its own election, or by a combination of appointment and election. Cases are conceivable in which better representation will be secured by a sprinkling of members nominated by the government than if all the seats were filled by popular election. As the habit of constitutional government is acquired such arrangements will tend to disappear, but they are quite in place during a period of noviciate in the working of representative institutions. Napoleon Bonaparte gave more actual representative character to municipal councils in France when he constituted them by his own appointment of men of substance and character, than when they were chosen by the riffraff of the community under the complicated form of popular election, that had been abruptly introduced by revolutionary enactments.[1] But in addition he so regulated the duties and con-

[1] This Napoleonic method has been adopted in the United States for the government of the District of Columbia.

ditioned the behavior of the municipal councils that eventually it became possible to constitute them by popular election without sacrificing their integrity and efficiency. Democratic impulse can actually produce democratic government only when appropriate institutions exist for making possession of power a public trust, and the appropriateness of any institution may be contingent upon time and place. All institutions are instrumental in their nature, and some training is necessary before representative institutions can be used to advantage.

CHAPTER VI

DIRECT CONTACT WITH ADMINISTRATION

A POINT upon which Mill insisted was that the very nature of its constitutional function required that in its sessions the representative assembly should be face to face with the administration. He held that the proper business of representative institutions is to provide "a place where every interest and shade of opinion in the country can have its cause even passionately pleaded, in the face of the government, and of all other interests and opinions." Adverting to the fact that representative assemblies are often taunted with being places of mere talk, he remarked that there is no way in which they can more usefully employ themselves "when the subject or talk is the great public interest of the country." It is not their business to govern; — Mill went so far as to say that it is not their business to legislate, further than to give or refuse consent to measures proposed by the government. "Instead of the function of governing for which it is radically unfit, 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 of all of them which any one considers questionable; to censure them if found condemnable, and, if the men who compose the government abuse their trust, or fulfill it in a manner which conflicts with the deliberate sense of the nation, to expel them from office, and either expressly or virtually appoint their successors."

The elective process can do no more than to designate persons for the representative office. In order that the representative function shall be actually discharged, conditions must exist that will provide sufficient opportunity and will also engender disposition to use the opportunity on public account. Unless both these conditions are present, then, as Mill points out, "the only fruit produced by national representation is, that in addition to those who really govern, there is an assembly quartered upon the public, and no abuse in which a portion of the assembly is interested is at all likely to be removed." Whichever party wins at the polls, jobbery in office and traffic in legislation will still continue, and cadging for patronage and sparring for points in the electioneering game will be the principal occupation of the representative assembly. Constitutional maladies of such character are now tending to discredit representative institutions alto-

gether and to a marked extent people are turning away from them in disgust to seek some different form of government. Those maladies are in the main attributable to defect in constitutional precaution on the two points that have been mentioned: — opportunity and disposition.

It is obvious that nothing short of having the government present at the sessions of the representative assembly will put the government where it can be got at by all the members on the same terms. Whatever advantages may be claimed for any other arrangement it will necessarily involve some impairment of the representative position of the assembly as a whole. When the government is shut out of the chamber some other means of communication must be provided and an inevitable result will be special privilege for some and diminution of public opportunity for others. Even granting that the authority which the assembly delegates remains subject to its supervision — which however is never really the case in practice — then even so, what is supervised is not the government itself but only sections of the assembly's own membership. There is no way in which the assembly itself can function as an organ of public control over the government except by immediate contact and direct connection. Whatever other system may be introduced it will not be representative

government but a substitute, be its merits what they may. Acknowledgment of this fact is implied by the nature of every argument by which it has been sought to justify the exclusion of the government from the sessions of the representative assembly. Invariably, it is either that that is necessary to enable the assembly to resist the government or to enable the government to resist the assembly. Either way, the essential principle of representative government is discarded, — namely, that the people have complete control over the government through their representatives.

Anciently the idea of separation as a protection to the representative assembly was much in favor. The assembly not only kept away from the government, but also from the people, claiming secrecy for its proceedings. But at that time the assembly did not pretend to represent the nation but only a particular estate in whose special interest it acted. It is historically manifest that the representation of the commons did not install representative government as a constitutional system until direct connection between the government and the assembly was established. Although the connection was originally introduced for the convenience of the government and not by the desire of the assembly, the government thereby subjected itself to conditions which facil-

itated the development of the assembly as an organ of national control. Direct connection is the vital principle of representative government without which it cannot be maintained even if the form of representative institutions be provided by constitutional arrangements.

A setback from which representative institutions are still suffering acutely was produced by Montesquieu's doctrine of the separation of powers, in pursuance of which he contended that the executive power should have no connection with the legislative process. His views powerfully affected constitution making in Europe for a considerable period. In revolutionary France, a series of constitutions framed on the principle of the separation of the powers promptly broke down, and it was not until connection was established that any constitutional stability was secured. The constitution of 1875 under which the present French republic was established expressly connects the executive and legislative powers and confers upon the President of the republic an initiative of legislation. A stipulation of the same character is now a feature of all European constitutions, but it was not introduced into the constitution of Norway until after a struggle that is particularly instructive in its exhibition of constitutional values. The constitution adopted by Norway in 1814 was founded

on the principle of the separation of the powers, so rigorously applied that the councillors of state forming the executive department were prohibited from even entering the legislative halls. The theory was that this would secure the dignity and power of the representative assembly, but it was found to work just the other way, and the democratic party that had formerly insisted on shutting out the councillors now insisted that they should be brought in, while the court party opposed the demand. The struggle had reached the verge of civil war, when in 1884 the king at last yielded and the cabinet heads accepted the responsibility of presenting their measures and explaining their acts in the presence of the assembly. The effect has been to make the representative assembly an organ of popular control over the government as in England, virtually converting Norway into a democratic republic under royal presidency.

Montesquieu's idea that separation from the executive department would be advantageous to the legislative branch made a deep impression upon constitutional arrangements in the new world, and the effect in degrading the character of representative institutions has been strongly marked. A naïve confession of this tendency is made by the constitution of the state of Maryland. It still retains the traditional opinion that

"for redress of grievances and for amending, strengthening and preserving the laws the legislature ought to be frequently convened," but by adoption of amendments prompted by dire experience, the same constitution now goes on to ordain that the representative assembly shall not meet oftener than once in two years or sit longer than ninety days. Other state constitutions present quite as striking evidence of the evil plight into which the representative assembly has fallen. They abound in restrictions on its behavior. In most American communities it would be almost an insult to say that the sort of people who figure in the capacity of representatives really represent the morality and intelligence of the people.

The constitution of the United States differs radically from the general type of constitution found in the various states of the Union, in that it was not framed on the principle of the separation of the powers. The right was expressly conferred upon the president to recommend to the congress "such measures as he shall judge necessary and expedient," and the original expectation was that the heads of the executive department would continue to present their measures directly to congress as had been the practice under the confederation. But influenced by Montesquieu's doctrine, congress shut them out

with the result that the house of representatives has been shorn of its dignity and power. The senate overrides it all the time.

The mistake made in the constitutional arrangements of the United States in this respect has had malign consequences wherever its influence has penetrated. In setting up as independent states Spanish American countries, with the exception of Chile, took the United States as a model, with disastrous consequences. The world has never seen a more unstable and turbulent group of states. In proportion as the principle of the separation of the powers has been discarded in those countries conditions have improved. Most of the existing constitutions of South American states now conform to the model of the present French constitution and hence now make express provision for the connection of the powers. It should be observed however that like most great errors, Montesquieu's doctrine contains partial truth. The organ of administration and the organ of control ought to be separately constituted, but the separateness that is essential to their functional activity cannot be realized in practice unless they are directly connected in their operation.[1] When they are dis-

[1] This principle was distinctly stated by Madison in No. 48 of *The Federalist*. A detailed examination of Montesquieu's doctrine and its consequences may be found in the author's article contributed to *Scribner's Magazine* for January, 1911, entitled "The Cause of Political Corruption."

connected each is impelled to usurp functions which belong to the other.

Although it is invariably the case that the representative assembly sinks in character and ability when it is separated from the government, it does not follow that the increase of power which it gains by direct connection will always be advantageous to the public welfare. Much dismal experience has shown that while direct connection provides opportunity for exercising control over the government, it does not of itself insure the presence of disposition to exercise control on public account, and defect in that respect is now manifest to an extent which indicates that the mode of the connection has an important bearing upon the nature and prospects of representative government. Although representative government originated as an incident of parliamentary institutions and thus acquired its usual form, it does not follow that that need be its only form or that a better constitution of it is not possible.[1]

It is well known that historically the position

[1] Mill noticed this point although he did not discuss it. He remarked: "I will not affirm that it would in all times and places be desirable that the head of the executive should be so completely dependent upon the votes of a representative assembly as the Prime Minister is in England, and is without inconvenience. If it were thought best to avoid this, he might, though appointed by Parliament, hold his office for a fixed period, independent of a parliamentary vote."

of the English parliament as an organ of control was established through the practice of choosing the ministers of state from the membership of the assembly. This practice was long viewed as a corruption which impaired the independence of parliament, encouraged the spirit of faction, and diminished the ability of the crown to provide for the public welfare; but it gradually became an established constitutional principle that the tenure of the ministry was contingent upon its ability to retain sufficient party support to command a majority in the house of commons. It is clear that under this system administrative stability is dependent upon the solidity and coherence of party organization. For its smooth working the system indeed requires as its coordinate a two-party system — a government party and an opposition party which is ready and able to become the government party in its turn should public opinion declare in its favor. If party groups multiply, executive weakness and mutability are an inevitable consequence, and yet the multiplication of party groups is a natural tendency of party spirit. It is proverbial that many men are of many minds. There is no natural disposition in public opinion to arrange itself in merely two categories, and the actual strength of the two-party system in English politics for so long a period is to be attributed to

historical accidents and not to innate tendencies. Certain it is that executive infirmity from the spirit of faction is noticeable in the politics of every country which has adopted the English parliamentary system, and it is occasionally visible in England also.

Furthermore, it is obvious that when ministerial tenure is contingent upon the continuous support of a majority, the individual freedom and independence of representatives must be subordinated to the needs of party discipline. Such a situation is hostile to the position of the representative assembly as a clearing house of opinion and an arena of free criticism. In the interest of party solidarity members must suppress their convictions. On the other hand the government will be constantly under pressure to shift or modify its policy with a view to party support, and it will be constantly tempted to give superior consideration to what will please adherents and catch votes rather than what will benefit the nation. Moreover, such a situation confers blackmailing opportunities upon factional spirit, and the government may be confronted with the necessity of submitting to rapacious demands from particular groups or else go out of office. Indeed, actual experience in some countries having parliamentary institutions has shown that mutability may be systematized, and fre-

quent changes of ministry be brought about by fresh deals shifting the alignment of parliamentary factions, so that governmental authority may become as phantasmal as the succession of shapes in a dream. Instances of such results are supplied by parliamentary history in France, Italy and Spain, and they have been so abundant in Portugal as to cause that country to be known as "the nightmare republic."

On the other hand, it may be said that nothing can impart so much interest to parliamentary proceedings or cause such signal displays of oratorical power as when the fate of the government hangs on the issue. It is impossible to deny this. Nothing rivets popular attention like a sporting interest, and it must be admitted that the bigness of the stake gives a thrill to the struggles in the parliamentary arena that would otherwise be lacking. But is government properly a form of sport? Is the thrill of dramatic encounter a suitable incident of prudent trusteeship? No one would think so in the conduct of private business. No such thing is known in the business world as the dependence of executive authority on ability to please at all times a majority of the members of the board of directors. The rule is universal there that executives are chosen for definite periods and the ground of the esteem in which they are held is not oratorical brilliancy

but ability to secure satisfactory administrative results. Indeed in the business world the intellectual nimbleness and the fluency of speech which parliamentary conditions now prefer are not regarded as being commonly associated with sound judgment and practical sagacity. Why should it be otherwise in the conduct of public business? Upon abstract grounds no good reason is forthcoming. But it may be said with great cogency that at any rate the form in which representative government has worked successfully in the British empire must be a safe model to follow. This however is an affirmation on whose correctness events are now casting so much doubt, that it is at least worthy of consideration whether it is not possible to secure the advantages of representative government without incurring the risk of executive instability.

Although in general throughout the British empire the parliamentary system conditions the tenure of executive authority upon the explicit support, whenever called for, of a majority of the members of the representative assembly, there is one notable exception. It has attracted so little attention that few know of its existence, and yet it is full of instruction. The little commonwealth of Barbados differs from all the other self-governing commonwealths of the British empire in that the government holds on for a

definite term irrespective of the decisions of the assembly. Next to the English house of commons the Barbados house of assembly is now the most ancient elective assembly in the world which still retains its original rights and privileges. Its authority has continuously subsisted since its charter was granted in 1639, at which time English parliamentary institutions had not attained their present form. There was then no direct connection between the executive and the legislative branches such as the cabinet system now supplies. Abuses and disorders resulted which prompted efforts at charter amendment that were pertinaciously resisted. Finally the situation became such that steps were taken by the British government to merge Barbados with other West Indian colonies in a scheme of federation under direct imperial control. In this emergency the Barbados assembly took action which defeated the federation scheme and preserved its own legislative independence, by settling the relations between the executive and legislative branches on a plan of its own contrivance. It provides for an executive committee of nine persons, six of whom are members of the Assembly, which committee has virtually the powers of an English ministry in preparing the budget and proposing measures for enactment, but its tenure of office is permanent for the term of the

session. Since this arrangement was introduced in 1878, business has been conducted in as quiet and orderly a manner as at the meetings of the directors of a well-managed corporation. There is no government party nor any regular opposition, but any measure proposed by the committee is considered upon its merits and the decision of the house whether for or against does not affect the position of the committee. It keeps on with its work and performs its functions for its allotted term. The results of this system, both in the conduct of the public business and in social reactions upon civic behavior, are such as to afford strong testimony in its favor.[1]

It may be observed that while this system was introduced simply as a modification of English practice suitable to local circumstances, it is in fact a divergence towards a different type of government, approximating the Swiss type much more closely than the present English type. The Barbados executive committee corresponds to the Swiss executive council, which also is chosen for a definite term during which it carries on irrespective of party grouping in the representative body. The executive council functions like the executive management of a corporation in preparing business for consideration, in explaining

[1] A detailed account of the Barbados system of government may be found in *Scribner's Magazine* for November, 1919.

the measures proposed and in putting them to vote. And the analogy is completed by the fact that it is the practice of the representatives to meet several times a year, in the spirit of a board of directors rather than that of an ordinary parliament. The procedure is businesslike and a session lasts only a few weeks. Such expeditious action is made possible by the fact that the executive council makes public in advance the particulars of the measures it will bring forward, and in preparing them expert opinion is consulted and representations from interests specially concerned by them are heard and considered. Thus public opinion in regard to the government's legislative proposals is in a mature state by the time they reach the stage of enactment and the decision of the representative upon them can be promptly rendered. The executive council remains in charge of its proposals while they are under consideration, making such changes or modifications as may be required to give legal effect to the conclusions reached. The effect of this procedure is signally displayed in the succinctness, clearness and precision of Swiss law, with social benefits of inestimable value through the facilities thus afforded for prompt and economical adjudication of all questions of legal right.

The example of such instances is weakened in

influence by the fact that Barbados is tiny and Switzerland is small as compared with most other countries, but there is no historical basis for the notion that political conditions are less exacting in a small country than in a large one. There was no vice or disorder of which government is capable that was not displayed in the little states of ancient Greece or medieval Italy. The success of Barbados and of Switzerland in overcoming the infirmities to which representative government is liable is in fact exemplary of sound principles of universal application. The principles of sound organization in large business are in no wise different from those which apply to small business, and in the business world no distinction is made between the large and the small in organic constitution. The same general incorporation act supplies a pattern common to both. In both Barbados and Switzerland there were indeed conditions producing exceptionally severe strains, and the results obtained afford a signal demonstration of the efficacy of the system that was adopted. Barbados lies in the tropics, a geographical circumstance commonly supposed to be unfavorable to self-government. It has experienced great shocks to its social system and to its industrial position. A large slave population was emancipated and admitted to the suffrage on the same terms as the whites, but there are no

race conflicts and orderly and efficient government is maintained. The way in which representative institutions have been organized has enabled them to endure with safety stresses which have produced grave disorders in the United States. Switzerland has had to deal with inveterate differences of race, language and religion. At least four distinct languages are spoken in the country and are recognized in official transactions. Switzerland had a turbulent history and up to the middle of the nineteenth century its politics were notorious for venality and discord. Schiller's characterization of a large section of the country as "an Athens of scoundrels" expressed a view at that time prevalent in Europe.[1] The present reputation of Switzerland for frugal and prudent management of public affairs is a consequence of the system that was introduced by constitutional reforms, affording a conspicuous instance of the moral transformation which a sound organization of government can effect.[2]

[1] The allusion was made in the first edition of *The Robbers*. One of the characters of the drama is made to remark that to make a complete rogue a certain rascal-climate is required, "the Grisons, for instance, that Athens of scoundrels." The Grison confederacy was then the largest of the various political areas included in Switzerland, which was then not a nation but a group of independent states.

[2] The provisions of the Swiss constitution to which this transformation is chiefly due are the following:

Art. 101. The members of the Federal Council shall have the

Perhaps a still more impressive exhibition of the possibility of organizing representative government without admitting executive instability is afforded by European municipal institutions. It is well known that all political problems are particularly acute in centers of population. It is there that opinion is most active and turbulent. If executive dependence upon the casual moods of the assembly is a proper incident of representative government, that arrangement would be most in place in municipal government; but as a matter of fact it is unknown there. In that field, the rule is universal that executive authority is constituted for definite periods, and usually for long periods.

Furthermore, it is to be observed that avoidance of a parliamentary tenure of executive authority has a marked effect in moderating party spirit, enlarging the control of reason and reducing the sway of passion. In Barbados party struggles were bitter and violent before the constitutional reform of 1878; since then regular

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right to speak but not to vote in both houses of the Federal Assembly, and also to make motions on the subject under consideration.

Art. 102, sec. 4. It shall introduce bills or resolutions into the Federal Assembly.

Art. 102, sec. 14. It shall administer the finances of the Confederation, introduce the budget and submit accounts of receipts and expenditures.

"Federal Council" is the term by which the Swiss designate the administration or executive department.

party organization has disappeared. Alignments for or against particular measures take place from time to time, but they last no longer than the immediate occasion. In Switzerland activity of political opinion is a marked characteristic, but parties content themselves with spreading their ideas of public policy by speech and print, with about the same amount of organization as any other spontaneous social activity. Their differences do not seem to enter into administrative arrangements. When a vacancy occurs in the executive council it is usually filled by electing to the post some member of the assembly who in the course of its proceeding has shown suitable capacity, no matter what his party predilections may be, and it is commonly the case that the executive council includes adherents of different parties. Free play of opinion associated with administrative stability also prevails in municipal government throughout Europe. No other election brings out quite so heavy a vote as the choice of municipal councillors, but there is little in the way of regular party organization. As an election comes on, committees are formed in the interest of particular candidates, party views and principles are declared, canvassing is active, feeling runs high, but the administrative staff carries on as usual, and while the result of the election may affect the policies that are to

be executed it has little if any effect upon the composition of the executive management. The administrative staff is as permanent as in a well-managed business corporation, despite the changes that may occur in the board of directors.[1]

Such manifestations direct attention to a very important principle of practical politics which is that always and everywhere party organization is proportionate to the work it has to do. This political principle seems to be of a piece with the biological principle of the correlation of structure and function. Party organization is massive and elaborate in the United States because there is no direct connection between the administration and the representative assembly, and the only means of coördinating their activities is through party action. In English commonwealths of the ordinary pattern party organization is called upon to form the ministry and supply it with the support of a majority in the representative assembly. English politics all over the world are always bickering over this task, and it is in connection with its financial burdens that corruption occasionally invades the constitutional system. Mill observed that in England "the worst appointments are those which are made for the sake of gaining support or disarming opposition in the

[1] Cf. W. B. Munro, *Government of European Cities*, pp. 89, 205, 307.

representative body." But it appears that when constitutional arrangements provide a stable executive management and invest it of right with power to propose measures to the representative assembly and get its decision upon them, party rage subsides and party organization tends to become simply the propaganda of opinion carried on by volunteer activity, in speech and print, much as doctrine is spread in other fields of thought. In the United States there was a period during which there was an approximation to the present Swiss system by the practice of allowing congressional nomination to decide succession to the presidential office and by arranging the committees of congress with a view to executive convenience in presenting measures for consideration. That period has passed into history as "the era of good feeling."

Mill made a very significant admission when he observed that "by irresponsible monarchy rather than by representative government can a multitude of insignificant political units be welded into a people." Nation-making is necessarily antecedent to any system of national representation. But parliamentary institutions in their ordinary shape foster the spirit of faction, resolving the community into hostile groups, each intent on its own advantage and inclined to make a tyrannous use of such power as it can gain.

The distracted state of Europe today is largely due to such tendencies. This infirmity of representative government will eventually be fatal to it, if not corrected, but as has been seen it is quite feasible to constitute representative government without making executive authority contingent upon factional alignments in the representative assembly. It must be reckoned a fortunate circumstance for the American people that parliamentary institutions of the English type are precluded by the constitution of the United States, which like the constitution of Switzerland incapacitates members of the assembly from holding executive office at the same time. The Swiss type and not the English type is the only form in which representative government can be actually established in the United States. In the meantime, the presidency will continue to be the organ of national representation, and not the houses of congress, which until brought into direct and open contact with the government can not amount to more than agencies of class interests, intent upon their own advantage regardless of the general welfare.

CHAPTER VII

SECURITIES AGAINST MISUSE OF OPPORTUNITY

ALTHOUGH direct contact between the representative assembly and the government is essential to representative opportunity, much more than that is necessary to establish representative government. Unless means are provided for insuring an active disposition to use opportunity on public account it will most certainly be employed mainly for private advantage, and representative institutions will in that case tend to become a vast system of plunder, to escape which public opinion will at last plunge desperately towards some sort of dictatorship. History supplies many instances of this tendency, and illustrations of it may be found in the events of our own times. It was with this in mind that such a shrewd and experienced observer of men and affairs as Benjamin Franklin, while exerting himself to frame the constitution of the United States, expressed doubts whether it could be made durable.[1] It is well known that a potent

[1] He said that "there is a natural inclination in mankind to kingly government. It sometimes relieves them from

influence on the side of social revolution throughout the world today is the increasing hatred and contempt felt for parliamentary institutions. That fact is of itself an evidence that such institutions may fail to represent the general mass of the people to an extent which makes them detestable.

The difficulty of making a representative system really representative centres in the fact that commonly when any set of persons get opportunity they are naturally inclined to use it for their own advantage. Hence watchful supervision of all agency and trusteeship is a recognized necessity in private business management. A concern which allowed its agents to fix their own compensation, and pass their own expense accounts, without any restraint except that imposed by their own sense of decency, would soon be bankrupt. The case is not fundamentally different in the management of the public business, but in that field the motives of direct self-interest do not operate which in private business constantly inspire watchfulness over expendi-

aristocratic domination. They had rather have one tyrant than five hundred. It gives more the appearance of equality among citizens, and that they like. I am apprehensive therefore, perhaps too apprehensive, that the government of these states may in future times end in a monarchy. But this catastrophe I think may be long delayed, if in our proposed system we do not sow the seeds of contention, faction and tumult, by making our posts of honor, places of profit." *Madison's Journal,* June 2, 1787.

tures. The loss falls upon the public at large and what is everbody's business is nobody's business. That is the great difficulty which attends representative government and is apt to break it. In some instances representative institutions have had less success in coping with this difficulty than was formerly attained by the simple method of trusting the public purse to absolute authority without any restraint but the natural limitation of its own appetites. The waste and profusion of which an assembly is capable exceeds that of which a despot is capable. More than the cost of carrying on the building of a Versailles palace may be squandered in the course of one annual session through the perquisites, emoluments, jobs and junkets of the membership.[1]

[1] The palace of Versailles is a stock instance of royal extravagance. The *Encyclopedia Britannica* estimates that "twenty million pounds" were spent on the palace, gardens and works of art. The work was undertaken with a public motive. Colbert, superintendent of finances, wrote to Louis XIV that "apart from brilliant actions in war, nothing marks better the grandeur and genius of princes than their buildings, and that posterity measures them by the standard of the superb edifices that they erect during their lives." Colbert opposed the selection of Versailles instead of Paris for fear that results there could not be made sufficiently impressive, but a royal chateau had already been erected at Versailles and Louis XIV decided to continue the work begun by his father. The actual cost of the series of buildings forming the palace is unknown, but in their various parts they date all the way from 1627 to 1687, completed portions being made habitable as the work progressed. In 1663, after a period of great activity and outlay, Colbert reported that the work done on the palace and gardens during the two years previ-

The principles on which this difficulty should be dealt with may be readily discovered, but they are hard to apply. The essence of representative government is this: that a watch is kept on the behavior of those entrusted with power. But this at once raises the problem formulated in the Roman proverb, *Quis custodiet custodes?* — Who will watch the watchmen? The only effective way of answering this question is by the election of representatives so situated that they must watch since they will have no power to do anything else. No matter what pretences may be made or what blandishments be practised, representative government will not actually exist unless those who serve as representatives of the people shall have no access to official patronage or to the public treasury. They must be placed under such conditions that they will be personally disinterested in such matters. There is no greater fallacy in government than that of electing good men to office. The only real security is that obtained by establishing such conditions that whoever is elected, good or bad, will have to behave himself properly. History affords no instance in which a representative assembly has

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ous had cost 1,500,000 pounds. The amount which the American congress spends upon itself every year is much more than that. For details see Ford, *The Cost of Our National Government* (Columbia University Press), pp. 95. 96, 106.

been actually disposed to represent the people if the members are allowed to help themselves to money and offices and choose for themselves what business they will consider. It is only when representatives are so situated that they have no power to vote to their own use offices and appropriations that they will be watchful to see that those who do make appointments and propose appropriations shall not be excessive in their demands. If, on its own motion, the government makes all appointments without confirmation or ratification by any other authority, the representative assembly is then naturally impelled to restrict the process by economical appropriations. But if the representatives have any means of sharing the appointing power the tendency then is to multiply offices and resist economy. If they can choose what business they shall consider, they will select that in which they find their own advantage, and will be guided by what will please their districts and not by what will benefit the nation. A representative assembly is bound to become a public nuisance if it is allowed to do anything more than watch over the government and pass judgment on its recommendations. Any participation in the work of the government is fatal to the position of the assembly as an organ of control. It cannot at the same time be a participant in the exercise of administrative

authority and also be a control over executive authority, any more than a man can act as an impartial judge in his own case. As Mill remarked: "Instead of the function of governing, for which it is radically unfit, the proper office of a representative assembly, is to watch and control the government."

Considering the subject from this point of view, the first question that naturally presents itself is the matter of compensation. In what way and to what extent should representatives be requited for their services? Mill took strong ground against money payment, pointing out that it tends to make politics a profession carried on, "with a view chiefly to its pecuniary returns and under the demoralizing influences of an occupation essentially precarious." Seats in the representative assembly then become objects of desire "to adventurers of a low class" who would be "incessantly bidding to attract or retain the suffrages of the electors, by promising all things, honest or dishonest, possible or impossible, and rivalling each other in pandering to the meanest feelings and most ignorant prejudices of the vulgarest part of the crowd." Mill concluded that "under no despotism has there been such an organized system of tillage for raising a rich crop of vicious courtiership."

The original theory of representation was that

it should be regarded as a duty, and not as a gainful employment. Until recently members of parliament drew no pay from the public treasury. It has long been the practice in most English commonwealths to make some money allowance to representatives but it has been characterized as a sessional indemnity, merely to cover some necessary expenses involved by the representative function, and not as being in any sense in the nature of compensation for the services rendered. But the ancient tradition that representatives are paid in honor and not in money, was badly ruptured in 1911 when it was decided to give members of the house of commons a salary of £400 year. The precedent thus set by the mother of parliaments was promptly influential on parliamentary practice everywhere, and the present set of political opinion is to the effect that it is too much to expect of representatives that they should work for nothing and find themselves.

The matter of constitutional propriety is not easy to decide. There is considerable weight in the argument, used with effect in England when the innovation of salary payment was made, that it was necessary to enable labor interests to be represented in parliament by members of their own class. But on the other hand the practice of salary payment cannot fail to sap the inde-

pendence of the assembly. The dictum of *The Federalist* that "power over a man's support is power over his will" is supported by all experience, and the working of parliamentary institutions will doubtless be deeply affected by the augmented force which the power of dissolution acquires when its exercise means that the members will lose their salaries. They will be apt to put up with much that they disapprove rather than risk a dissolution, and the efficiency of the assembly as an organ of control will be impaired. Indeed, some observers note a new spirit of submissiveness in parliament since salaries were introduced, and certainly the British elections of 1922 showed that a government which had wielded great authority had derived its power more from parliamentary timidity than from public confidence.

This particular consideration does not apply to the case of countries in which, — as in Switzerland and the United States, — the power of dissolution does not exist, and in which elections regularly recur at the end of fixed periods; but the danger remains which Mill notes of turning politics into a shady profession intent upon pelf. This danger Switzerland avoids by the extreme frugality that characterizes all provision for the money reward of public service in that country.

It is certain that paid service to the public

cannot compare in dignity and independence with unpaid service. In municipal government, there is no good argument in favor of granting any pay or emolument to members of the representative assembly. Every class will be better represented by unpaid agents. Any allowance that will make the position attractive to job hunters will lower the character of a municipal council. In that field representative service can be performed without sacrifice of private interest. Meetings of the assembly can be held at times that do not interfere with ordinary business employment and such indeed is a common practice. A working man who follows his trade can at the same time readily find time for representative service.

The case is however different in a national assembly, whose place of meeting may be remote from the homes of most of the members. Unpaid service will then be apt to mean in practice desultory service. So it has always been in the English house of commons, in which ordinarily the work goes on with only a sprinkling of members present in addition to the various party leaders. It is only on special occasions, when a full showing of strength is desirable, that there is anything like a full attendance of members, and it takes place then in response to a summons (known in parliamentary lingo as "a whip")

from the party leaders to their adherents. In accommodation to these conditions quorum requirements are low, — 40 in the house of commons and only 3 in the house of lords, although in each the total membership is over 600. Much the same situation exists in the French chambers. Although there the quorum is a majority of the whole, as is the rule in the United States, it is systematically evaded by proxy voting. When a division takes place members vote by handing in cards on which their names are printed, and usage allows a party leader to hand in the names of his adherents even although they are actually absent. A very noticeable feature in the arrangement of the French chamber of deputies is the stack of boxes on the desk of a party leader, containing the cards of his adherents to be voted by him. In the United States it is a common practice in state legislatures to allow the clerks to record the votes of absentees as they would have been cast had the members been actually present. As a rule it is done with the consent of the absentees. If they think they run any risk of being wrongly recorded, they can leave special instructions with the clerks, and moreover the record is open to subsequent correction.

If it be thought that such slack methods are dangerous, it should be considered that they re-

flect what is ordinary behavior in private life. A full attendance of members of clubs, societies, or any numerous body is rare except on special occasions and is generally unnecessary. Nor can the matter be mended by paying members salaries and requiring them to be regular in their attendance. Requirements will be disregarded and penalties will be evaded. There is nothing of real value to be gained by coercive methods. As a matter of fact no assembly with strict quorum requirements can compare in efficiency as an organ of control with the British house of commons with its lax requirements. The only point of constitutional importance involved by the matter of attendance is whether a proper watch over the government is kept up, and if enough members are on hand to do that, nothing more is necessary.

In a compact country like England, and with the assembly seated in a city of great and varied attractions, no political difficulty has been experienced on this score, but in a country of such vast area as Canada, some difficulty has been experienced in maintaining such an attendance as is requisite to make the assembly function effectively as an organ of control. The problem has been solved by an arrangement that seems to be a new constitutional expedient of genuine value. It consists in provision of a salary for the official

leader of the opposition. The government chiefs of course draw salaries as ministers of state; but a salary of ministerial size is also given to whatever member the opposition designates as its leader, and he is thus enabled to give his whole time to parliamentary business. In effect, the arrangement provides the opposition with professional advocacy, and insures vigilant scrutiny and steady criticism of the government's behavior without tying members in general to close attendance. Sir Robert Borden, who was the Canadian premier during the war, had been the salaried leader of the opposition before he was raised to the premiership through the victory of his party at the polls. The system seems admirably calculated to keep the direction of public affairs in the hands of knowledge and experience, and it wears every look of being a great forward step in the art of popular government.

Even when no pay directly attaches to representative office, or the amount is so small as to be in itself a trivial consideration, the existence of valuable emoluments will be enough to corrupt and degrade the character of the service. Of the various influences that have discredited representative institutions in the United States probably the most potent has been what is known as the legislative budget, — the appropriation by the assembly of money for its own purposes to be

disbursed by its own officers. This arrangement subjects the members to continual pressure and importunity to provide for adherents in the distribution of patronage. When one is elected a member of a city council, or of a state legislature or of congress, one will be pursued indoors and out by job hunters. They crowd the precincts of the legislative body while it is organizing and the pulling and hauling to which members are subjected is terrific. Time and again groups of rival contestants for some office have come to blows, and bitter feuds have their start in the way the patronage is awarded. Of course members can not please everybody, and it is a common saying in American politics that an appointment to office makes one ingrate and a dozen enemies. Every election produces changes due to disappointments over the way in which the offices have been distributed, but willy-nilly members must resign themselves to the rôle of party employment agents so long as such conditions exist. Representative government is practically impossible when members are under such servitude.

The marked degree of representative vigor displayed by the English parliamentary system is mainly due to the budget rule which disables the representatives from imposing any taxes or making any appropriations not recommended by the government. As Mill observed:

> "It has, no doubt, been felt that moderation in amount, and care and judgment in the detail of its application, can only be expected, when the government, through whose hands it is to pass, is made responsible for the plans and calculations on which the disbursements are grounded. Parliament, accordingly, is not expected or even permitted, to originate directly either taxation or expenditure. All it is asked for is its consent and the sole power it possesses is that of refusal."

This provision, which is a staple feature of all constitutions of English make, confines the assembly to its proper function of acting as a control over the government in behalf of the people. It is the rule of all honest management of affairs, whether in private or public business, that financial policy shall be directed by the executive management. As *The Federalist* put the case, "Nations in general even under governments of the more popular kind, usually commit the administration of their finances to single men, or to boards composed of a few individuals, who digest and prepare in the first instance the plans of taxation which are afterwards passed into laws."[1] Such is the general rule of civilized government, but in the United States the constitutional design was frustrated by the exclusion of the administration from the floor of congress and the consequent development of the Congres-

[1] No. 36.

sional committee system. Only by giving the administration the exclusive initiative of taxes and appropriations, with the means of obtaining prompt decision thereon, can public interests be protected and the representative character of the government be secured. In these matters prompt action is necessary to accomplish the proper purpose of taxation, — to raise funds for public use. Delay frustrates that purpose by supplying opportunities for turning to private account the effect of the taxes. When the incidence of the taxes is put off, that allows speculators to stock up at old rates. When at last the taxes go into effect, they are forthwith reflected in the prices charged to consumers, and hence, although the added burden of taxation falls at once on the people, the proceeds are to a large extent intercepted on private account. The long delay which attends tariff legislation in the United States is thus made the means of outrageous profiteering.

Among the countries of continental Europe, sound principles of representative government are in general better exemplified in municipal institutions than in the central government. In French municipal government only the mayor can appoint or remove any municipal official. The council may criticize but cannot directly interfere. German municipal law expressly provides that although a council may create an un-

paid office in its service and in that case fill it by its own appointment, whenever any pay or emolument is attached the office must be filled by executive appointment. Such arrangements so condition the activity of members that they can not be converted into employment agents and hence they are able to give their time to public affairs. To this circumstance is due the superior character and ability found in European municipal councils. Their service is attractive to men of public spirit, but is not attractive to those who seek public position for the satisfaction of private needs. The difference that results in the matter of economy of expenditure becomes startling when one compares the monstrous pay-roll of an American legislative assembly with that of a like body in countries having the English budget rule. There is no propensity of human nature more marked than jealousy of opportunities that one does not share. When the assembly can have no say who shall get the jobs it is then keen to have its say as to how many jobs there shall be and as to the reasonableness of the compensation proposed by the government.

It may conceivably be urged as an objection to disabling the assembly from voting appropriations on its own motion, that the government may not recognize public needs of which the assembly might be aware and which by reason of its repre-

sentative capacity it ought to reflect. The answer to this is that the position in which the assembly is then placed gives special vigor to its activity in just such particulars. Any omission by the government is at once noted and criticized, and such action is a common incident of English parliamentary practice. Indeed, in these times in which there is a strong disposition in favor of making the government the universal caretaker, the government is more exposed to criticism for what it does not do than for what it does do. But the budget rule puts upon criticism the task of showing that a public need really exists to which the government ought to attend, and thus issues are defined upon which the electorate may pass judgment in specific terms. Unless the action of the assembly is thus conditioned it tends to become an agency of factional greed rather than an organ of public control. Those who should act as representatives of the people are converted into solicitors for local favors, office brokers and perquisite hunters, and their votes and activities are controlled by these employments. Instead of acting as the watchmen of the commonwealth they will unite to raid the public treasury by the combinations of interest known in American politics as "log-rolling." Events of this nature have always resulted when representative institutions have been adopted

without the safeguards of the English budget system.

It is a weighty consideration in favor of the practice of entrusting all financial initiative to executive discretion, that it originated in the country where representative government made its start and where the control of the assembly over the government is most jealously insisted upon. Its practical benefit has been conspicuously illustrated by the rapid recovery of British financial credit after the World War, notwithstanding the tremendous burdens which that war had put upon the nation. Another illustration of the value of confiding such matters to the government, is afforded by the benefits secured in Switzerland, through the action taken by its congress at the outbreak of the war, in voting the government unlimited power to make whatever arrangements the public safety might require, including the negotiation of loans on such terms and conditions as it deemed expedient.[1] Methods which maintained the independence of a neutral state completely enclosed by the battle lines of the nations at war and which despite the frightful strains of the situation enabled it to meet all engagements and to protect the money supply of its people from depreciation, are cer-

[1] For the text of this enactment consult R. C. Brooks, *Government and Politics of Switzerland*, p. 114.

tainly entitled to respect. The objection usually urged against such sweeping grants of authority is that power is dangerous, which is true; but it is also true that lack of power is still more dangerous. The true concern of a sound constitution is not to reduce power, but to enforce responsibility.

Mill made a very sagacious observation when he remarked that, "the principles which are involved and recognized in this constitutional doctrine, if followed as far as they will go, are a guide to the limitation and definition of the general functions of representative assemblies." When it is borne in mind how dependent is all good business management upon sound accountancy, it will be the more readily perceived how multifarious and far-reaching are the consequences of making budget-making the undivided responsibility of the government. In addition to safeguarding the personal independence of members the English budget rule secures for them freedom of deliberation. The fact that members are disabled from introducing measures proposing any taxes or appropriations or creating any salaried office, of itself shuts out most of the bills congesting American legislative calendars. Under the conditions which exist in congress the number of bills is far too great for intelligent consideration, and to get through necessary business a

complicated system of rules has been evolved, which puts actual control in a few hands and reduces the mass of the membership to a servitude so abject that its existence would be incredible were there not conclusive evidence of it. The case is a striking verification of the dictum of *The Federalist* that "in all legislative assemblies the greater the number composing them may be, the fewer will be the men who will in fact direct their proceedings."[1] That is an unavoidable circumstance, but it accords with the representative function if the direction rests with the government through its power to prepare all measures required by public needs. This will secure the representatives in the exercise of their proper function as intelligent critics of the government and nothing else will.

So far-reaching is the importance of budget control that all procedure will take its tone from whatever situation exists in that respect. A direct consequence of the English budget rule is lucidity and comprehensiveness of public accounts. The government, being constantly exposed to jealous scrutiny of the way in which it exercises its exclusive prerogative, naturally tries to avoid trouble, by making budget statements so exact and complete that they speak for themselves. This effect is just as marked in

[1] No. 58.

Barbados, in whose electorate negroes preponderate, as in the public documents of England itself. One finds a statistical completeness that one may look for in vain in American public documents despite the enormous sums spent upon their compilation. It may be laid down as a rule of universal application that clearness and precision in public accounts and statistical exhibits are correspondent to the degree of the power and responsibility of the government for making them, under the obligation of justifying their accuracy under the criticism of an assembly with which the government stands face to face.

A feature of some modern constitutions which lays the axe at the root of representative government is a provision by which taxes and appropriations remain operative even in event of the refusal of the elective assembly to pass the budget. This provision now finds a place in the government of Hawaii, the Philippines, Porto Rico and Cuba, and a restricted version of it is embodied in the new constitution of Finland. This is manifestly a breach of the cardinal principal of representative government, namely, that of budget control. If a representative assembly is divested of that power its constitutional importance is so reduced that it is scarcely worth retaining at all. Bismarck's cynical designation of a house of representatives as "a June bug in

a bottle," is a fair characterization of an assembly that has lost the duty and responsibility of budget control.

The immediate cause for nullifying the power of the assembly to reject the budget has been employment of it as a means of factional blackmail. It is contended with great force that however the case may have been in the past, the conditions of modern government will not allow crippling of its functions on any pretext whatever. So much must indeed be conceded, but that does not justify an expedient which strikes down representative government and makes its institutions a noisy humbug and a costly sham. The line on which such an emergency should be treated is an immediate dissolution of the assembly and the holding of new elections as promptly as possible. Meanwhile only such continuance of governmental expenditure should be allowed as would be necessary to provide for fixed charges and carry on the bare police functions of government. All public works should be stopped and all but essential services should be suspended. The seriousness of the situation should be brought home to the people in every possible way. It is very doubtful whether such conflicts would ever occur if the assembly itself is duly constituted and its activities are properly conditioned, but if an incorrigible tendency in that

direction should be displayed it is evidence that the community is unfit for representative government and the pretence of it ought to be abandoned. Better results will be obtained in such case by creating a legislative council mainly composed of members appointed by the government from among the most substantial and reputable elements of the community.

CHAPTER VIII

FURTHER SECURITIES

THE question may be raised whether complete exclusion of the assembly from budget initiative is not incompatible with its office as a grand inquest. How can it conduct investigation with energy and success if it can not, of its own motion, vote funds for the purpose? Is it reasonable to suppose that the government will recommend an appropriation for an investigation of its own acts? The objection, although superficially plausible, will not bear close examination. An assembly that has the government before it is always in a position to inquire, and if any case were presented for detailed investigation no government could thwart it by refusal of funds. For example, let it be supposed that a case exists in which a government is really culpable and is bent on using all its power to avoid investigation! Is it at all credible that the government could manage to avoid it merely by refusing funds? Is it supposable that when large funds are continually being supplied by private contribution for party purposes, that there would be a failure of supply when critics of the government were promoting

an investigation that offered a promising line of attack? The mere matter of funds would be the least of the difficulties that would have to be encountered.

Turning now to a consideration of how far practical experience bears out these theoretical conclusions, it appears that it is just where the grant of public funds is under the exclusive control of the government that the work of investigation is most complete and effective. It is morally impossible for a government, standing before the assembly, and exposed to its criticism, to resist investigation when a prima-facie case has been made out for it. Such action would look like an acknowledgment of guilty participation in the transactions complained of, and that would be too heavy a load to carry when the inevitable time arrived when the government had to go before the country and submit its claims for public confidence to the judgment of the electorate. All that the government is actually able to do for itself is to take steps to insure that the investigation shall be sincere and impartial, and in English practice this is accomplished by constituting what is known as a royal commission. It is appointed by the government, and funds for it are provided by the government, so that conceivably it might be packed by the government, but here again such action would

be an abuse of power that would only intensify the force of adverse criticism, and the government would stand in a sorry position in the presence of the assembly and before the country. As a matter of actual practice, men of such ability, position and special knowledge are selected for membership of such commission that their findings command universal respect. On the other hand, in countries where investigations are financed and staffed by the assembly itself, the usual result is division on party lines, majority and minority reports, with findings commanding so little respect that scarcely any attention is paid to them. Incidentally evidence may be elicited that is really important and which attracts wide-spread attention, but the spirit in which such investigations are conducted makes them fruitless of results of permanent value. Their ordinary purpose is not public benefit but the gathering of party material for electioneering use. In the United States, a marked tendency is manifested to set up investigations as a source of party patronage, each one providing so many more jobs to give out as clerk, messenger, doorkeeper and so on. An alleged need for investigation may also be made an occasion for a pleasant junket at public expense for members and their friends. Even in Switzerland, there has been complaint about the hotel expenses of congres-

sional committees. In the United States, among the official perquisites which may be supplied to members out of the legislative budget, are visits to the Rocky Mountain country, or to the West Indies, or the Canal Zone, or the Philippines, or European tours and even trips to the Holy Land. Some years ago when the subject of currency reform was under Congressional investigation, the extent to which it was made the excuse for luxurious foreign travel became a public scandal. There is no way of preventing the watchmen from pilfering and of keeping them to their duty as watchmen, except to deny them any access to the public treasury and nothing short of the English budget rule will do this; nor indeed will that be entirely effective unless supplemented by other constitutional precautions.

Mill was strongly of the opinion that the principle of the budget rule should be extended to general legislation, so that in law-making the assembly should do no more than pass upon recommendations made by experts. His idea was that a commission of professional legislators should be established whereupon the legislative activities of parliament should be thus conditioned:

> "No measure would become a law until expressly sanctioned by parliament; and parliament or either house would have the power not only of

rejecting but of sending back a bill to the commission for reconsideration or improvement. Either house might also exercise its initiative, by referring any subject to the commission, with directions to propose a law . . . once framed, however, parliament should have no power to alter the measure, but solely to pass or reject it, or, if partially disapproved of, remit it to the commission for reconsideration."

It should be reckoned a matter of considerable weight in favor of this scheme that it corresponds to ordinary business practice. What sensible board of directors would mull over legal details or attempt to tinker into a shape that suited their own fancy the measures submitted to their consideration? What they actually do is to reserve their control to matters of general policy and they entrust to professional advisors the legal formulation of measures. It is in fact customary to have experts present for that purpose when the directors are in session, and it is expected that they shall tender their advice if at any time the course of the proceedings seems to be taking a wrong turn.

In private business management provision for expert advice is ordinarily attended to by the executive management and forms a part of its own organization. Having in view conditions as they were in his day, Mill thought that to make the law-making process a genuine expression of public reason a constitutional agency would have

to be created distinct from the government. His idea was that arrangements might be made that "would leave the business of legislation, except on questions involving political principles and interests, to the professional legislators." Now where could the line be drawn? Conceivably it might be answered that such matters as simplification of legal procedure, improvement in departmental methods, economies in the organization of public services, or improvement in credit facilities and currency supply, might be classified as matters to be assigned to the care of the professional legislators. Perhaps in theory such matters might be regarded as not properly involving "political principles and interests," but surely not so in actual practice. Nothing of importance along any of such lines could be attempted without antagonizing vested interests that would promptly assert themselves as energetic political interests, and nothing short of the full weight and influence of the government, backed up by an aroused public opinion, could possibly prevail over the opposition that would have to be encountered! With the government standing apart, and allowing the proposals to stand or fall merely on the basis of recommendations from the board of professional legislators, they could scarcely count upon more than decent burial. In practice, the sole matter in which the

acquiescence of the assembly might be expected to proposals brought forward without a party mandate would be such an abstract and technical matter as the codification of existing laws. That is about the only matter which party spirit might possibly be willing to leave to the management of a non-partisan commission of experts.

The special trend of Mill's thought on this matter is probably to be attributed to the existence of a situation which he thus described:

> "The mere time necessarily occupied in getting through bills renders parliament more and more incapable of passing any, except on narrow and detached points. If a bill is prepared which even attempts to deal with the whole of any subject (and it is impossible to legislate properly on any part without having the whole present to the mind) it hangs over from session to session through sheer impossibility of finding time to dispose of it. It matters not though the bill may have been deliberately drawn up by the authority deemed the best qualified with all the appliances and means to boot; or by a select commission, chosen for their conversancy with the subject, and having employed years in considering and digesting the particular measure; it cannot be passed, because the house of commons will not forego the privilege of tinkering it with their clumsy hands."

But since the time when this was written the government has acquired the means of closure,

so that it can now set a limit to discussion and fix a time when the assembly must render its decision. This power now possessed by the government (which in parliamentary lingo is known as "the guillotine") has mitigated the evils of which Mill complained, although it has not wholly removed them.

In view of the fact that motives of direct self-interest support correct procedure in private business while in public business they often oppose it, and considering also that penalties for delinquency are available in the one that are not available in the other, it cannot be claimed that a complete analogy exists between private and public business; and yet there is no difference whatever in the fundamental principles on which control must rest. In both, strict accountability is essential to integrity of trusteeship. Therefore when suitable precautions have been adopted to secure the conduct of public business against the invasions of selfish private interest, and to make the controlling motive simply the welfare of the business, methods and results in public business may be expected to correspond to those usually found in the honest management of private business. Since deference to expert advice is a regular feature of good management of private business, it is to be inferred that that is a natural tendency which will display itself

also in the conduct of public business, as it gains in sincerity of purpose and efficiency of method; and when we consider the actual situation that is just what we do find.

Along with improvement in the means by which, in England, the government can confront the assembly with its responsibilities and obtain its decision upon measures put before it, a law-making commission somewhat resembling that described by Mill has in fact made its appearance, through developments inspired by administrative needs. The actual work of drafting government bills is entrusted to a permanent staff of experts. Their work is purely ministerial and is confined to giving exact and concise legal expression to the legislative recommendations of the government, but it is of immense value in standardizing legal terminology and giving clearness and precision to enactment.[1] Such defect as may still be noted in English constitutional arrangements in the matter of correspondence between public law and social needs, will be found to hinge upon the precarious situation of the government rather than the lack of a suitable organ for legislative initiative. The obligation to which the government is subject of maintaining a majority party in the assembly, clogs its activities and restricts its opportunities of public usefulness.

[1] See C. P. Ilbert's *The Mechanics of Lawmaking*. The author is the clerk of the house of commons.

In Switzerland the executive management of the public business is exempt from that anxiety, and there the actual procedure in the matter of law-making closely approaches the ideal arrangement which Mill described. Without any formal restriction of the right of individual members to introduce bills, it has become the practice to leave all bill drafting to the government, which employs a staff of professional draughtsmen for the purpose. As a natural incident of such procedure it has become customary for the administration to publish in advance of a session the measures it intends to propose. Should the government fail to present a measure for which, in the opinion of members of the assembly there is need, the course usually taken is to put to vote a resolution (the technical term for which is a "postulat") calling upon the government to prepare and submit a bill for that purpose. Although the Swiss congress alters and amends in its discretion, in that matter too it employs the services of the government, which retains charge of the bill and shapes its language in accordance with the decisions reached. It is obvious that such a system not only precludes the furtive manipulation of the terms of enactments for which American procedure allows scandalous opportunities, but it also standardizes the language of the laws, making them so clear and

intelligible that questions of intention and significance do not occupy the time of the courts. Any one who examines Swiss statutes is impressed by their succinctness and clarity. The community is thus spared the torment and expense which result from obscurity and inconsistency in the laws. Much similar evidence might be collected in the field of municipal government in Europe.

There is therefore sufficient warrant for the statement that the matter of legislative behavior may be safely left to its own natural inclination if effective precautions are taken against the exploitation of public opportunity on private account. The most important of these precautions has already been mentioned, — namely the budget rule which makes it out of order for members of the assembly to propose appropriations. But while this rule prevents the watchmen from putting their own hands into the public treasury, it will not of itself prevent them from forming combinations to force a hand-out to them by the government. It has already been noted as an inherent weakness of the parliamentary system that it tends to make executive authority dependent upon the casual moods of the assembly. In England risks of this character are greatly mitigated by the fact that the government has an unrestricted power of dissolution.

The assembly is as subject to accountability to the people as the government is to the assembly, for at any time, on its own view of sufficient occasion, the government can send the members back to their constituents to justify their conduct if they can. Moreover, the government is always in a position to put its measures before parliament in such form as it thinks best, and can require action upon them. But in countries where such means of confronting the assembly with its public responsibilities are lacking, the parliamentary system keeps the government busy in the distribution of personal favors to stave off attempts to turn it out of office. A French publicist, speaking of the situation in his own country, has said:

> "The ministers, never sure of the morrow, always absorbed by the fear of an interpellation and a possible fall, think only of recruiting friends in parliament by distributing the government favors which they control." [1]

The same miserable situation exists in most countries having parliamentary institutions.

It is certainly the most serious and difficult of constitutional problems to secure against blackmailing use the powers which it is necessary to confide to the assembly to enable it to discharge

[1] Quoted by E. M. Sait, *Government and Politics in France*, p. 88.

its own proper functions. There is no hope of solving it save by stopping every crevice through which selfish interest can make its way. The principle that should govern all arrangements is that the government should be so situated as to be exempt from private pressure. Its responsibilities should always be public and definite. There appears to be no way of establishing such a situation short of giving the government a permanent tenure of authority for a fixed period, together with the absolute right of proposing measures, participating in debate upon them, and putting them to vote at whatever time and in whatever form it sees fit. So far from weakening the control of the assembly such conditions will invigorate it. The assembly may vote the proposals of the government up or down; a government scheme may be countered by an alternative scheme; any weakness, omission or deliquency on the part of the government may be exposed and brought up against it; but what cannot be done under such conditions will be avoidance either by the government or by the assembly of responsibility for what is said and done. There will be no room for the process known in American politics as "passing the buck," — the shifting of responsibility upon plausible pretexts, producing the situation, now so familiar in public affairs, which was thus characterized in *The Federalist:*

"It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which have led to any national miscarriage or misfortune are sometimes so complicated that, where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable!"[1]

Unless the government is completely in possession of means for putting its case before the assembly and of obtaining its decision, the constitutional powers which are essential to the assembly's proper functions may be perverted from the ends of their institution and serve to produce darkness and confusion instead of enlightenment. The assembly should have the right to interrogate the government on any details of the public business. There is no way of getting exact information and clearing up misunderstandings comparable in efficacy with putting the direct question, and it is essential to

[1] No. 70.

representative government that the executive management should be open to such inquiry; but it is susceptible of abominable abuse, unless the government is free to answer or not as it sees fit without any impairment of its power to require action by the assembly on the business it has to present for consideration. In proportion as the position of the government is thus secured this matter of interpellation declines in mischievous quality. It gives little trouble in England where a sensible procedure has taken shape, in conformity with which advance notice of a question must be given and the government replies as it sees fit. This freedom of action is of course conditioned by the moral responsibilities that always attach to behavior, and always make themselves felt when behavior is under observation. The social penalties that apply to rudeness or peevishness operate with such force in politics as to put a high premium on tact and suavity. Moreover, behavior is further qualified by the need of cultivating the good will of a body whose consent is necessary to give effect to the measures proposed by the government. In these circumstances a question asked in good faith may count upon a frank reply and the process is unquestionably an efficacious means of public enlightenment; but at the same time if the motive is really insincere or spiteful it may provoke a reply that

neatly rebukes the questioner. The process as it has taken shape in English procedure affords some opportunity to bores, but scarcely any to obstructionists and mischief makers. Swiss procedure is quite free from trouble on this score, a fact which is probably to be attributed to the practice of the assembly in leaving all bill draughting to the government. The behavior of the Swiss congress closely resembles that of a sensible board of directors, meeting to consider measures of whose details they have already been notified. They do not waste time on routine matters, but address themselves forthwith to such business as requires further elucidation and discussion, and the work proceeds so expeditiously that ordinarily about three weeks suffice for a legislative session. But in most countries having parliamentary institutions the right of interpellation as exercised by the assembly is a veritable pest, serving rather as a lever of faction than as a means of control.

Another means of exercising the function of control which is extremely susceptible of abuse is the appointment of committees for the performance of special service in carrying on the work of the assembly. It is quite in line with the proper nature of the assembly's duties for it to appoint committees to prosecute inquiries, audit accounts or collect and digest information

for its use, but not only may the process be used as a means of extorting personal favors, but it may be actually made the means of suppressing the freedom of the assembly itself, shackling its procedure and subjecting it to a duress that paralyzes its constitutional functions. Instead of occupying their proper place as the servants of the assembly the committees may become its masters.[1] This invariably happens when the committees are allowed to control the gateways of legislation and the assembly is allowed to consider only such measures as the committees put before it. The composition of the committees then carries with it control over the pro-

[1] Perhaps the most extreme instance of this fact is afforded by one of the rules of order of the New York assembly. It is as follows:

"During the last ten days of the session a notice may be given requesting that any matter be made a special order, or that the rules be suspended for the purpose of reading a bill out of its order, which shall be referred without debate to the committee on rules. The member making the motion or giving the notice shall submit in writing the reasons for making such special order or suspension and attach thereto a copy of the bill. The committee may report at any time, and such report shall stand as the determination of the house unless otherwise ordered by a vote of two-thirds of the members present. The committee shall not be instructed by the house to report any matter or special order, or to report that the rules be suspended for the purpose of reading a bill out of its order, except by a vote of two-thirds of the members present."

Most of the important enactments of the legislative session are made under the operation of that rule. In those ten days more bills are passed than during all the preceding time of the session.

ceedings of the assembly, and on this circumstance may be founded a systematic traffic in legislation by organized lobby for that purpose.

The scene of the most extreme development of this character has been the legislative sessions of the states of the American Union, with respect to which the collection and sale of political influence has become a regular business. The lobbyists and professional politicians are constantly busy packing the legislature with persons attached to their interests, and thus the whole machinery of popular election of representatives is deeply corrupted. A surprisingly large capital outlay is frequently made in activities of this nature, and the business engages a class of men who possess to an exceptional degree tact, energy, shrewdness and perseverance. While they are well aware that their business is frowned upon by the general public, they regard it as being as morally justifiable as any other form of brokerage and as being probably the most necessary, because it serves as a corrective of the natural infirmities of democracy, which without its steadying influence and guidance might produce all sorts of eccentric and mischievous results. It must be admitted that much may be said in behalf of this view of the case, when the assembly is separated from the government and abandoned to its own devices. American business interests,

whether they like it or not, have to act on this view and avail themselves of lobby influence in their relations to the legislative process. After all, the fees paid to lobbyists for directing legislative action are no higher than the fees paid to lawyers to influence judicial process. It is a distinct gain to public order, when no constitutional provision exists for associating the legislative process with administrative knowledge and intelligence, that private enterprise steps in to provide a refuge from chaos. The escape of the United States from the ruin which is the usual fate of constitutions that separate the executive management from direct contact with the assembly, is doubtless to be attributed to the way in which its politics have been commercialized.

In national politics, control of the legislative process by committees is ordinarily less liable to systematic venality but serves rather to subject the conduct of the public business to the exactions of faction. In France, committees seize and direct all legislative business, and during the war committees were appointed to supervise even the conduct of military operations, which was a return to methods like those which wrecked the Dutch republic, but the committees did not venture upon a practical exercise of the authority with which they were invested. The evils of committee control in France are somewhat miti-

gated by the fact that the committees are so large that they are in effect a section of the chamber itself accurately reflecting all its elements, but they remove from the government its proper responsibilities and give the chamber more the character of a diplomatic congress than a national legislature. Some transient combination of factional interests may shape public policy and give legislative expression to it, while the government stands apart and lets events take their course.[1] Much the same situation exists in other countries having parliamentary institutions, with miserable consequences. A country lacking a government on which rests at all times the right and the duty of action in every emergency, is doomed to be the prey of faction. In the pithy language of *The Federalist,* "its situation must always savor of weakness, sometimes border upon anarchy."

Complete avoidance of responsibility by the government is impossible in the United States

[1] A striking case in point is the anti-clerical legislation of 1905, now virtually abandoned as mischievous and impracticable. It was enacted under committee direction, while the government maintained a neutral attitude. J. E. C. Bodley, the best English authority on French politics, says: "During the passage of the Separation Bill through parliament the minister of public education played only a minor part while the prime minister of France took practically no part at all, — actually never opening his lips during the long debates in the senate, of which he is a member." *The Church in France,* p. 18.

because of the veto-power, — a singular revival of royal prerogative everywhere else extinct. But ability to say what ought not to be done is a long way from saying what ought to be done and how to do it. The committee system as it has been developed in the United States has practically annulled the clause of the constitution which makes it the right and the duty of the president to recommend such measures as he shall judge to be necessary and expedient. If it were omitted altogether it would make no difference to the present practice, as the clause requiring the president to give "information on the state of the Union" would suffice to cover the vague, general recommendations made in his messages to congress. The president is not allowed to present specific measures to Congress; that function has been usurped by the committees. The spectacle has often been presented of the arrest of government measures for weeks or even months by the committee to which they were referred, and until the members have been squared by private negotiations it is practically impossible to get the measures out for legislative consideration in any form whatever. If at last they are reported out, they are apt to reflect the ideas of the members of the committee rather than the recommendations of the government founded upon administrative experience. The

government is left without any open means of presenting its case and must put up with such partial and incomplete advocacy as it can obtain through private influence. It is impossible to conceive of any arrangement more apt to subject the public business to the exactions of faction, which even when honestly conceived means that provincial views and interests shall have priority over the national welfare. Action will be decided by what will please the districts and not by what will benefit the nation. To get anything at all done the government must concentrate its influence upon some particular measure and employ all its resources in the way of patronage and favor, in its behalf, refraining from any interference with the general course of business and avoiding any responsibility for the outcome, if it falls short of such intolerable quality as to necessitate a veto. In such circumstances it is a common occurence for different committees to pursue conflicting policies in regard to public services. The spectacle was once presented on the floor of the United States senate of committee chairmen blaming each other, one because the navy yards were too small, the other because the vessels were planned on a scale too large for the yards.[1] It is no uncommon thing in the course of one session

[1] *Congressional Record,* Vol. 43, No. 53, Feb. 15, 1909, p. 2435.

for bills to pass, whose provisions are conflicting because each was the production of a committee having in view simply its own purposes. Sometimes great mischief is done by committee management of legislation through sheer inadvertence. President Arthur had to call the attention of congress to the fact that it had unwittingly repealed authority of law for the use of troops to suppress outlawry in western territory, with distressing results. The numerous and costly Indian wars from which the United States has suffered, and the comparative exemption of Canada, are mainly due to the different circumstances produced by the existence of the committee system of legislation in the United States and the absence of it in Canada.

In addition to its subordination of the general welfare to the particular interests of classes and localities, the control of legislative procedure by committees opens the way to still more dangerous exactions, — those of individual arrogance. In *The Federalist* attention is called to a proclivity of human nature which never fails to display itself in political transactions so far as circumstances permit. It is that "men often oppose a thing, merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike." Illustrations abound in history showing "to what desperate

lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals." [1] The danger from this particular source is peculiarly great in foreign relations. In domestic affairs, it is considerably reduced by the fact that there is usually a pretty good general knowledge of the subjects under consideration which sets bounds to the opportunities of individual caprice, but not so with respect to foreign affairs. In all countries there is such a great stock of inveterate prejudice, traditional antipathy and chronic misinformation with regard to other countries, that it is always easy to arouse distrust and suspicion on any question of foreign policy, and in this field factional purpose will never lack opportunities of making effective appeals to popular sentiment. The task of the government will be hard enough, with every facility for conducting negotiations and concluding arrangements, subject to accountability for results, but when meanwhile it is exposed to committee interference and is so situated that it cannot effectively defend itself against misrepresentation and bring home to its opponents their responsibility for their actions, capable guardianship of national interests becomes impossible. Great national losses may in this way be incurred

[1] *The Federalist*, No. 70.

without any possibility of finding to whose account they were chargeable. The mischief may have been really accomplished by some one who posed before himself and the world as an ardent patriot. In no field does committee interference do so much harm as in foreign relations and at the same time nowhere is it so hard to trace accurately the sequence of cause and effect. Even a country so fortunately situated as the United States has suffered greatly in this way without any clear perception of the nature and extent of the injury.

The extent to which committee procedure may serve factional purpose in disregard of the general welfare is exactly correspondent to the extent to which the committees can obstruct the government and hinder its efforts to present its measures and obtain a decision upon them. If constitutional arrangements secure to the government complete opportunity, the matter of committee procedure may safely be left to the assembly's own views of convenience and propriety. Under such conditions little need will ordinarily be felt for the existence of committees. The British parliament, with the affairs of an empire to supervise, gets along with only six standing committees.

CHAPTER IX

EFFECTS OF TOO MUCH ELECTION

AMONG the numerous side remarks in *The Federalist* which cast flashes of light into dark places, is one which notes that paradoxical as it may seem to be, yet it is a fact "as undeniable as it is important," that a lack of "due responsibility in the government to the people" may result from "that frequency of elections which in other cases produces that responsibility."[1] The severely practical purpose of *The Federalist* did not allow opportunity for drawing out fully the implications of the general observations made, but only so much as was required by the immediate purpose, which in this case was the need of a more permanent body than an annually elected assembly. As the constitution provided for election by the people only in the case of members of the house of representatives, and for that purpose adopted just such suffrage conditions as were prescribed by the several states for the election of their own representative assemblies, it did not come in the way of *The Federalist* to discuss the limitations upon the scope of elections which

[1] *The Federalist*, No. 63.

inhere in the nature of representative government. Moreover, that was a point on which political practice seemed then to be well defined and permanently settled. All administrative office was filled by executive appointment, and elections were held only for the choice of representatives. The provision of the constitution that "executive power shall be vested in a president of the United States," reflected the principle of the undivided authority of the English crown, which had been the means by which the people had been delivered from the countless miseries resulting from the partitions of power and conflicts as to rights and duties which existed under the feudal system. There was general acquiescence in this principle, although influences corroding it were even then active in New England politics. The matter did not however attract general attention during the formative period of the American constitution, and the only point over which there was serious contention was whether representatives should be elected for a long term or a short. A maxim that had considerable vogue was that "where annual elections end, tyranny begins," and this view was so influential that in Connecticut and Rhode Island elections of members of the assembly were held every six months, as an extra precaution. The results were such as to supply an argument in

favor of the two year period fixed by the constitution of the United States.

The main argument of *The Federalist* in opposition to an annual election of representatives was that sufficient time was not allowed for intelligent service. It was observed:

> "The objects of government may be divided into two general classes: the one depending on measures which have singly an immediate and sensible operation; the other depending upon a succession of well-chosen and well-connected measures, which have a gradual and perhaps unobserved operation. The importance of the latter description to the collective and permanent welfare of every country needs no explanation. And yet it is evident that an assembly elected for so short a term as to be unable to provide more than one or two links in a chain of measures, on which the general welfare may essentially depend, ought not to be answerable for the final result, any more than a steward or tenant, engaged for one year, could be justly made to answer for places or improvements which could not be accomplished in less than a dozen years."

The argument proves rather too much, for a two year term is almost as defective from this point of view as a one year term, and *The Federalist* virtually admitted this by remarking that the proper remedy was "a well-constructed senate." Furthermore, a flaw in the argument is

produced by the fact that it does not follow that an annually elected body need necessarily be mutable in its composition. The annually engaged steward may feel so sure of retention in office that he can enter upon improvements requiring years for their completion. The present tendency everywhere in politics is decidedly against annual elections, but it is the rule in business corporations, without noticeable impairment of their ability to adopt plans whose execution may extend over a series of years. The old charter under which Barbados is still governed provides for annual elections and nevertheless the assembly is as permanent in its composition as any assembly elected for the five-year term now more usual for English colonial legislatures. In general the same members are elected year after year, and the assembly has as much capacity for sustained consideration of the public business as any long-term body. On the other hand, it would be possible to adduce instances in which long tenure of office has failed to impart to a legislative body breadth or elevation of view. Practical experience leads to the conclusion that the matter is one of minor importance. The character of the assembly takes its tone from the conditions under which the assembly exercises its power. The five-year term of the British parliament does not produce indifference to

public opinion; the one-year term of the New York assembly does not make it sensitive to public opinion.

The only aspect of the case which seems to possess real importance is that which relates to election costs. It puts too heavy a burden on representative service when it is subjected to an annual charge for election expenses, particularly as these show an incorrigible tendency to keep increasing. Here too, however, the conditions under which the representative service is performed make a great difference. If the service is wholly unpaid the effect in moderating the elective process is very noticeable. Competition for jobs in which the holder works for nothing and finds himself is not likely to be violent or productive of heavy outlay. Nor is it in municipal elections as a rule, when that situation exists, although occasionally exceptional contests occur in which large electioneering costs are incurred. But English parliamentary experience has shown that in the field of national politics the privilege of unremunerated service as a representative may become the occasion of costly competition with demoralizing effects upon the behavior of the people. Legislation regulating and limiting election expenditure has to some extent restrained this tendency but can not arrest it altogether. Election costs may be strictly supervised, but

much expenditure bearing upon election results can not be subjected to control, as for instance the practice of miscellaneous munificence which in England is designated as "nursing a constituency." A prospective candidate may ingratiate himself in advance with voters by being a liberal patron to popular sports and pleasures, although when his formal canvass begins he keeps strictly within the law in the scale of his expenditure.

The only practical security against the undue preponderance of wealth is not to hold elections oftener than is necessary to make the representative body correspondent to the state of public opinion. The former seven-year term of the British parliament, subject to abridgment by dissolution at the discretion of the government, was a good practical embodiment of that principle, but probably a better one is the five-year term now provided in the case of the self-governing English commonwealths coupled with the requirement that the assembly shall meet at least once a year. Practical experience shows that this arrangement, so far from diminishing the attention of the government to the movement of public opinion, appears to intensify it. The by-elections — and in a numerous assembly some are bound to occur through death or resignation — are always watched with keen interest for indications of the set of public opinion, and public

policy is affected thereby. There is no evidence that the representative quality of assemblies is impaired by election for a considerable term of years, while the saving to the community is considerable in various ways. In quality of performance the long-term assemblies certainly compare favorably in general with the short-term assemblies, but this is not universally the case, and such difference as may be noted is doubtless to be ascribed to other causes than mere length of term. The annually elected Barbados assembly is not inferior to any of the long-term assemblies in its work and behavior.

Of immensely greater importance than the question, how often ought elections to be held to maintain the representative character of assemblies, is the question, to what extent should elections enter into the administration of the government? Without election, responsibility of the government to the people cannot be secured; but, as *The Federalist* noted, too much election is destructive of responsibility. It is in fact an essential condition of representative government that elections shall be wholly confined to the choice of representatives. Every deviation from that principle is an impairment of representative government, and if the practice of filling administrative posts by popular election becomes at all general, representative government perishes even though the form of it remains.

Mill's treatment of this matter can not be said to be deep in its analysis. His immediate surroundings were not such as to impress its importance upon him, as the rule is universal in England that all administrative positions are filled by executive appointment. He remarked that "a most important principle of good government in a popular constitution is that no executive functionaries should be appointed by popular election" and he observed that the American practice of "submitting judicial officers to periodical popular re-election will be found, I apprehend, to be one of the most dangerous errors ever yet committed by democracy."[1] But he rested his opinion upon the qualifications required for

[1] In the nature of the case an intelligent judgment by the people on the way a judge performs his duties is not practicable. There are plenty of screens for incompetency. Only experts can understand what is going on. In an address before the New York State Bar Association, March 26, 1915, the eminent jurist, D.Cady Herrick, gave the following account of the situation in that state:

"When we see judgeships offered for sale, when we see men placed upon the supreme court bench who ought to have been disbarred, it is high time for a change in the method of selection of our supreme court justices.

"It is a fact that cannot be successfully disputed that there has been a steady deterioration in the calibre of the justices of the supreme court of this state. Many of us have refrained in the past from expressing our real views on this subject for fear of being quoted.

"The justices of the appellate division will tell you that in half of the appeals that go to the appellate division the records are shameful. They will further tell you that two-thirds of the appeals are solely the result of the utter incompetency of the supreme court justices."

making prudent appointment to office. He observed:

> "The entire business of government is skilled employment; the qualifications for the discharge of it are of that special and professional kind which cannot be properly judged of except by persons who have themselves some share of those qualifications or some practical experience of them."

But might not the same be said with regard to the choice of representatives? If the general body of the people should be allowed to choose them why not also other officers of government? Mill replied by pointing out that choice of representatives does not require qualities that are essential in choice of administrative officers. Neither justice, calmness nor impartiality need figure in the qualifications of a representative, although essential to the proper occupancy of administrative office. In choosing representatives it is peculiarly the case that "the electors have not to award something which either candidate has a right to, nor to pass judgment on the general merits of the competitors, but to declare which of them has most of their personal confidence, or best represents their personal convictions." The only question involved in the choice of a representative is whether he is wanted in that capacity by the people making the choice; the selection of an administrative officer involves

many other things, for he is not to represent any particular element of the community, or to express particular views or ideas, but is to be the just and impartial servant of all the people. This distinction underlies the sound maxim: For representation, elect; for administrative service, appoint.

Although Mill's comments set forth impressively the desirability of restricting popular election to the choice of representatives, he did not point out that the use of elections for any other purpose is incompatible with the actual existence of representative government. Examination of things as they are, whether from the standpoint of theory or of practice, demonstrates that it is not possible to fill administrative office by popular election and at the same time have representative government.

To get the case clearly before one it is necessary to keep in mind the essential nature of representative government, namely that it is a control over the government by the people, who, while not in person present at the seat of government, are nevertheless present by their representatives. But if the people choose any officer of government other than representatives they themselves are answerable for his character and conduct and the representative system is correspondently abridged. The fact would be quite

obvious in the ordinary affairs of life. Every one would be aware that if he gave powers of attorney to several persons none of them could completely represent him just as if he were present in person. His authority would in fact be split up among several agencies, which if quite independent of one another would be liable to conflict. The case is not different in the public business. If various sorts of authority derive straight from the people then, whatever it may be called, the result is manifestly not a system of representation but a multiple agency system, which attempts to solve the problem of self-government on altogether different lines from those on which representative government operates.

Both of these systems are of such importance that an examination of particulars is called for by the purpose of this discussion. Whenever public consciousness has been developed in a people, so that instead of bowing down before traditional authority they try to direct the conduct of the government under which they live, the problem at once presents itself, how are you going to guard against abuse of power by the custodians of public authority? Now if we avoid romance and refrain from considering what ought to be but isn't and never has been, and limit our view to the data of human experience, it will appear that all the answers which have

been given to that question in the whole course of human affairs, fall into two classes and only two. For the most part, mankind have found the question so unanswerable that they have put it to one side by resigning themselves to the rule of despotic authority; but from time to time answers have been attempted with notable energy and perseverance. One class of answers, — historically, by far the larger, and until modern times, the only one, — is that which we have designated as the multiple agency system. It aims at making such a partition and such a separation of power, distributed among particular agencies, that authority will be subject to checks and limitations affording security against abuse of power; and moreover, it seeks to provide that the people themselves shall retain in their own hands as much power as possible, so that they themselves can appoint to office or remove from office, can initiate legislation or revoke legislation. This mode of solving the problem of self-government admits of great variation in detail, in accordance with the particular agencies created and the way they are grouped. Exemplifications of this type of government are afforded by the Greek city-state, the Roman republic, all the medieval republics, and all the states of the American Union. Some elements of this type, of medieval derivation, enter into the Swiss re-

public, but they are no longer of controlling importance, nor sufficiently active to subvert the representative character of the Swiss national government.

The only other practical answer to that question which history records — and only modern history supplies it — is representative government. Its method is the reverse of the multiple agency system. It does not scatter power but consolidates it. So to speak, it puts all the eggs in one basket and watches that basket. It allows to the government the staffing and management of all its agencies and then holds the government accountable for results. The representative body is in no particular a participant in the administration, but it is a control over the whole administration of public affairs in behalf of the people. The fact that it is constituted by popular election does not of itself suffice to put it in this position. It occupies this position only when it is the sole authority constituted by popular election and when its behavior is so conditioned that it must act from public motives. Then, and then only, are the people present by their proxies, making the representative assembly the plenary agency of popular rule, the sole effective embodiment of the sovereignty of the people. It follows that elections cannot be held for any other purpose whatever without antagonizing the essential

principle of representative government. The multiple agency system and representative government are incompatible in their natures. If it be said that a mixture of the two systems is plainly noticeable in the affairs of some states — particularly, the states of the American Union, — it may be replied that examination of such cases will invariably show that while the name of representative government has been retained the substance has perished.

It may help to make clear the radical distinction between these two types of government, if a parallel is set forth drawn from ordinary business affairs with which everybody is more or less familiar. Suppose that in a joint stock company the shareholders, in addition to electing the board of directors, should also elect the managers and foremen of the various departments of the company's business! In such case, no one would expect that those designated as directors would really be able to direct, and no one would pretend that a board so circumstanced represented the shareholders with full power to act in their behalf. It would be manifest that nothing would be left of a representative system but the name, while the actual fact would be a multiple agency system. The board of directors, instead of being a representative assembly, would be only a particular agency in a group of agencies, all deriving

their authority from the shareholders and each in its province entitled to claim that it represented them. Exactly the same is the case with the representative assemblies of states which have adopted the multiple agency system. Their representative character has been extinguished. They are a class of particular agencies, — weak, mischievous, distrusted and despised. Evidences of this attitude of opinion towards those degenerate institutions abound in American state constitutions, which keep multiplying restraints upon them.

Popular experience of the mischiefs of divided authority during the feudal period made such a deep impression on European political traditions, that the prevailing tendency is strongly in favor of executive discretion in matters of appointment to office. The evils which afflict European representative assemblies are due to other causes than multiplicity of elections. It is the rule throughout the British empire that all offices of profit or emolument shall be filled by executive appointment, and there is general acquiescence in the propriety of this arrangement. To this is due the vast difference which is noticeable between American and Canadian politics. In the United States any candidacy for election as a representative involves maneuvring for the support of the party organization to get a place on the regular

ticket. Candidates are in the field for the offices of sheriff, clerk of court, register of wills, district attorney, treasurer, comptroller, various judgeships, coroner, constable, etc., and legislative candidacy must reckon with all this other candidacy. In addition, there are various party officials to be dealt with — the county chairman, the district committeeman, the ward leader and others. Then the primaries are held and furious struggles take place over the lucrative offices, the less valuable figuring as makeweights in the combinations of influence formed to control results. Thus in the end the legislative nomination may be an award made in the interest of somebody's candidacy for sheriff or judge.

Nothing of the sort confronts a Canadian candidate. There is no clerk, judge, sheriff or attorney to be elected. Elections are confined to choice of representatives and each constituency is a political unit. There are no primary elections. All that a candidate need do is to file his name with a few endorsers, and desposit a sum of money sufficient to cover his share of the cost of printing and distributing the ballots, which give simply the names and occupations of candidates but not their party affiliations. But while the legal requirements are easy to satisfy, there are moral requirements that are exacting. As there is no party machine that undertakes to

hand out patronage, levy assessments and dictate election issues, a candidate is dependent upon volunteer support and must himself say what he stands for. The organization on which he must rely is a committee formed in aid of his candidacy, gathering contributions and arranging for the services of speakers and canvassers. So unless a candidacy makes an effective appeal to public support, it is futile and ridiculous. It is easy to enter the race, but it is impossible to make a respectable showing without a genuine call to public service. The ballots contain only a few names, but they must needs be those of men whose personal reputation is such as to assure voters both of their political principles and of their individual ability.[1]

The situation which has been described illustrates the general difference which exists between

[1] The radical divergence of type which has taken place between Canada and the United States, both derivatives from the English constitutional stock, supplies an instructive theme for a comparative study of political development. The root cause of the trend in the United States towards the multiple agency system is the separation between the executive and legislative departments. The people, unable to get control of executive policy through the representative assemblies, have sought to obtain control by making elective numerous offices that had originally been filled by executive appointment. A concise account of the process is given in Professor C. A. Beard's "The Ballot's Burden" (*Political Science Quarterly*, vol. XXIV, No. 4.) A detailed account of its phases, and of the effects upon political structure, may be found in the author's *Rise and Growth of American Politics*. A. M. Kale's *Unpopular Government in the United States* is an admirable analysis of the multiple agency system.

the conditions produced by the multiple agency system and the representative system. Wherever the representative system prevails the electoral process is simple and easy; where the multiple agency system prevails it is so complicated, difficult and costly that it can not be carried on at all except by professional management, which virtually takes charge of the government and administers it primarily for its own interest and advantage. The class control thus established excites jealousies and resentments which afford a lucrative field for exploitation by demagogues. A marked feature of the situation wherever the multiple agency system is found is the credit and influence enjoyed by a class of professional reformers, who are themselves really the worst and most dangerous products of the system. The class control at which they rail is an inevitable incident of the political methods they promote. They keep increasing the complications of the multiple agency system by the quack remedies they propose for defects that are bound up in the nature of the system, and are ineradicable as long as the system survives. The professional management of politics which is usually denounced as a blemish is really a great constitutional security, without which orderly government could not be carried on at all under the multiple agency system.

To get the idea, let it be supposed that large values are periodically thrown upon the common to be scrambled for by the crowd! Would it not then be a gain to public order if some organization were effected to form a ring about the spoils and preside over their distribution, even if the insiders did take a large share for themselves? The case is not essentially different when the values exposed to all comers happen to be public offices. Among the ancient and medieval republics such periodical appeal to the violence and cupidity of the mob produced from time to time frightful scenes of tumult and bloodshed, to escape from which the people would eventually resort to the rule of a dictator. In all ages this has been the road to ruin for every form of popular government in which administrative offices were filled by popular election.

The same causes still tend to produce the same results, but in the main the situation is now such as to show that some strong counteracting influence is operative in modern times which in former times was absent or too feeble to be effective. It can scarcely be doubted that this counteracting influence emanates from the supremacy of commercial interests in the modern state, and their determination to repress disorder of a kind that interferes with business. A strong tendency has been set up to organize politics on the basis

of commercial profit, and this produces and maintains the elaborate party organizations whose business is to control and distribute the offices of government. Tammany Hall is a typical example of the type and one of the best. Politics organized as a business is as solicitous in behalf of order as any other form of business, and to this cause such peace and order as are still to be found in the states of the American Union are mainly due. Public security of this nature has always heretofore turned out to be transient. The general verdict of history is that when wealth becomes the master it is unable to protect even itself.

It has been mentioned that the disintegration of executive authority had already begun in New England at the time the constitution of the United States was taking shape. This disintegration was effected through the agency of the town-meeting, about whose character and value idyllic views are still held. There is something that appeals to the imagination in the notion that the people should take direct charge of their own affairs by meeting periodically to audit the public accounts and choose the agents of the community. It is admitted that such methods may be impracticable in large centers of population, but it is held that nevertheless they should be regarded as an ideal to which actual arrangements should

conform so far as possible. A marked feature of the political speculation of the times is the favorable consideration given to schemes of social and political reorganization on the principle of a federation of communities each managing its own affairs, their activities coördinated so far as needful, and provision made for common counsel, through a hierarchy of committees. Such is the general idea, although it goes by various names, such as syndicalism, the Soviet system, the pluralistic state. So far as actual results of schemes of this character are available for examination, their democratic value is about the same as is realized in Tammany Hall, in which the theory is that the committees choose the rulers while the practice is that the rulers choose the committees.[1]

The stock instances of the practicability of this type of government, when the people have a due appreciation of the measure of their opportunities, are the folkmoot, held periodically in some small Swiss cantons, and the New England town-meeting. Both institutions have been much extolled as specimens of pure democracy, and as evidences of its efficacy when social conditions make it feasible. But if one's views be formed rather by experience than by traditional senti-

[1] Typical instances are recorded by H. N. Brailsford, from observations made in 1919, in a spirit of sympathy with Soviet effort. *Cf.* his *Across the Blockade,* pp. 32, 64.

ment, it will appear that neither of them supply much actual opportunity for popular control of the government or ever attained any high degree of efficiency. At one time it was the fashion to regard both institutions as relics of primitive democracy, but this view is now known to be a piece of political mythology. The Swiss folk-moot is of medieval origin; its procedure was regulated by clerical control, and where it still functions smoothly it does so because it is still subject to that control. Some cantons which used to have it have got rid of it because of the disorders that occurred when real differences of opinion moved the people.

It is obvious that no matter how free and open a mass-meeting may be in theory it must necessarily be immensely inferior to a representative assembly as an arena of opinion. Collisions of views and interests that would be quite all right in a representative assembly would cause a mass-meeting to break up in a row. If a public meeting of any kind is to pass off in an orderly manner, its proceedings must be of a cut and dried character. There is little opportunity for dissent or remonstrance. The proceedings are directed by a few insiders and the mass of those present have little to do save to look on or fall in line. In the cantons which still preserve the institution it makes a fine show, very attractive to tourists,

but these cantons are such solidly Catholic communities that the folkmoot is virtually nothing more than an open air meeting of the congregation, with its business arranged in advance. It was the same way with the New England town-meeting in its palmy days. It was a Puritan derivative from the English parish, with the local offices made elective instead of appointive. The town-meeting was originally the congregation convoked for secular purposes. It worked smoothly enough, although crudely, while under clerical control, but when church membership was no longer required as a suffrage qualification its character gradually deteriorated and it became the means by which the caucus and the ring were first introduced into American politics.[1]

[1] The following is an entry in John Adams' diary for February, 1773:

"This day learned that the Caucus club meets at certain times in the garret of Tom Dawes, the adjutant of the Boston regiment. He has a large house with a movable partition in the garret which he takes down and the whole club meets in one room. There they smoke tobacco until you cannot see from one end of the garret to the other. There they drink flip, I suppose, and they choose a moderator who puts questions to vote regularly; and selectmen, assessors, collectors, firewards and representatives are regularly chosen before they are chosen in the town."

Josiah Quincy in his *Municipal History of Boston* (1852) gave this account of the actual character of the Boston town-meeting before it was superseded by the city charter of 1822: —

"When a town-meeting was held on any exciting subject in Faneuil Hall, those only who obtained places near the

Among the latest of the developments of the multiple agency system in American politics is the direct primary, which applies the principle of popular election to party nominations, so that candidacy for public office must now reckon with two sets of elections. It was introduced on the usual plea of giving more power to the people, but whatever assigns to the people power they are unable to wield, in effect takes it away from them, and so it has been in the case of the direct primary. Hamilton correctly defined power as "the ability or faculty of doing a thing."[1] So when it is provided that the people shall themselves choose what candidates shall be nominated, it means in practice that the choice will actually be made by the portion of the community so circumstanced as to have the time, means and opportunity of attending to the business and finding their account in it. Therefore the practical effect of the direct primary has been to establish a class rule of a singularly degraded and irresponsible character, producing results in the filling of public office that are sometimes ab-

moderator could even hear the discussion. A few busy or interested individuals easily obtained the management of the most important affairs in an assembly in which the greater number could have neither voice or hearing. When the subject was not generally exciting, town-meetings were usually composed of the selectmen, the town officers and thirty or forty inhabitants."

[1] *The Federalist,* No. 33.

solutely grotesque.[1] The issues in the direct primary being purely personal and not directly involving any issue of public policy, do not appeal to the general mass of citizenship, and it is well known that the vote cast in them is much less than that brought out by the regular election.[2]

From the considerations that have been presented two general principles may be deduced that call for little in the way of comment. Their logical connection is almost obvious and their validity is readily verifiable by observation of actual conditions. They are:

1. *The greater the number of elections the less is their effect on public policy!* They may make changes among the players, or shuffle their positions at the table, but the same old game goes on as before. Results then illustrate the French proverb that the more change you have the more you get of the same thing.

2. *The greater the number of elections the greater the cost of government!* In addition to supplying funds for vast electioneering outlay the community must support a huge staff of pro-

[1] The author's article on "The Direct Primary" in the *North American Review* for July, 1909, gives instances drawn from actual experience.

[2] An exception is to be noted in the case of certain states in which the direct primary has virtually superseded the regular election; but this is an abnormal situation resulting from national legislation of the Reconstruction period.

fessional politicians.[1] Legislation will then be controlled by campaign contributions and the taxing power of the state will be exploited on private account. The inevitable result will be an exceptionally high price level for supply and service to the community.

[1] Bryce computed the number of professional politicians engendered by the British system as being about 4,000, as compared with over 250,000 in the United States. See his *American Commonwealth,* vol. II, chap. LVII, p. 63. The estimate for the United States is now doubtless far below the actual figures.

CHAPTER X

DIVIDED REPRESENTATION

A QUESTION whose bearing upon representative government has been and still is a matter of anxious consideration is whether the legislature shall consist of two chambers or only one. Mill remarked:

> "Of all topics relating to the theory of representative government none has been the subject of more discussion, especially on the continent, than what is known as the question of the two chambers. It has occupied a greater amount of the attention of thinkers than many questions of ten times its importance, and has been regarded as a sort of touchstone which distinguishes the partisans of limited from those of uncontrolled democracy."

Mill himself regarded the matter as being of only secondary importance, "if all other constitutional questions are rightly decided." Nevertheless he considered the matter at some length, and he made observations whose acuteness has since his time been often illustrated by the course of events. He allowed little weight to the argu-

ment oftenest urged for having two chambers, namely that the arrangement checks precipitancy and compels deliberate action, remarking that "it must be a very ill-constituted representative assembly" if its own methods do not secure circumspect behavior. He observed, with a prescience which has since been signally attested by events, that it was incredible that "in a really democratic state of society, the house of lords would be of any practical value as a moderator of democracy." The only real check upon the behavior of the popular assembly must be such as is provided by its own composition and by the conditions under which it exercises its authority. If there is a proper place for a second chamber, he thought that it would not be merely as a moderating body but that it might be rather as an impelling force in the path of progress. Although frankly admitting that the ideal was not within the range of practical politics, he thought that it would be advantageous to have a senate "composed of all living public men who have passed through important political offices or employments," such as cabinet office, eminent judgeships, big posts in the civil service or the diplomatic service, high command in the army or navy. Such a body, he thought, might rival in character and influence the Roman senate, which he pronounced to have been "the most consistently prudent and

sagacious body that ever administered public affairs." But he concluded his examination of the subject by reiterating his mature conviction that

> "the main reliance for tempering the ascendency of the majority cannot be placed in a second chamber of any kind. The character of a representative government is fixed by the constitution of the popular house. Compared with this all other questions relating to the form of government are insignificant."

It may aid in appreciation of the soundness of this conclusion if we consider the analogies of private business. Who would argue that two boards of directors would be desirable to avert precipitancy and secure well-considered action in the affairs of a joint stock company? There the reliance is upon the fact that the business to be considered emanates from administrative experience, and the issues to be decided have been thoroughly prepared by the executive management. The process is virtually the same when representative government is duly constituted, and in such case no need whatever is felt for the existence of a second chamber as a checking and moderating influence.

Practical experience since Mill's time on the whole confirms the soundness of his judgment on

this point. Sixteen of the Swiss cantons carry on good government without any second chamber. The English commonwealths which have discarded their senates do not appear to have suffered in the least thereby, but on the contrary their institutions work more smoothly and efficiently. With the exception of Quebec, none of the Canadian provinces which border the United States now have senates, but no one will contend that they have thereby suffered from rash legislation, or that the American states — all of which have senates — have thereby been protected from that evil.[1] On the contrary, the mass of crude, botched, tangled enactments dumped into the statute books by the two-chambered legislatures of the United States strikes with amazement any one who looks into the subject. The Canadian parliament has a senate constituted by appointment but it is not generally regarded as supplying an ingredient of any special value to Canadian public life, and at present it seems to be a problem just what to do with it. The same problem is up in Great Britain with regard to the house of lords, and it is receiving an amount of thoughtful consideration

[1] The members of the Quebec senate are appointed for life. The maritime province of Nova Scotia and the colony of Newfoundland have nominated senates. Full details of all governmental arrangements in the self-governing commonwealths of the British empire may be obtained from A. B. Keith's *Responsible Government in the Dominions.*

that will be apt to supply valuable gains to political science.

So long as senates embodied the principle of aristocratic prerogative, and popular election figured only in the constitution of the lower House, it seemed to have become a settled rule of legislative procedure that taxes and appropriations should be left to the decision of the representative assembly. Even the Prussian herrenhaus had to accept or reject the budget as a whole. No sort of interference with such matters is tolerated by the British house of commons, and since 1911 the consent of the lords to general legislation is no longer indispensable if the house of commons is so bent upon a measure as to enact it thrice in two years. The nominated senates of the various English commonwealths have generally conformed to the model set by the behavior of the house of lords, and have indeed been formally instructed to do so by the home government on various occasions when a conflict occurred between the two houses of a colonial legislature. Conflict became more frequent and much more determined when some of the Australian states constituted their senates by popular election. Then there were two bodies each deriving its authority from the people. The plight of the legislature was then just such as Benjamin Franklin had described as character-

istic of a two-chambered body: "It is a cart with a horse hitched to each end and both pulling in opposite directions." Some serious deadlocks resulted from such conflicts until finally the home government found a practical solution which has since been a feature of every English-made constitution.

The idea was taken from the constitution of Norway, which provides that in case a measure supported by the lower house is twice rejected by the upper house, the question shall be decided by the vote of the two houses meeting in joint session. A provision of that general character was put into the constitution of the Australian Commonwealth, and it was furthermore provided that the senate shall not amend money bills. The same provision entered the constitution of the Union of South Africa, with the significant addition that the Union parliament shall have the power to remodel the senate. This means that it may eventually be found convenient to dispense with the senate as most of the Canadian provinces have done. A disposition to imitate the Canadian example has become noticeable in Australia. Queensland, one of the six states comprised by the Australian Commonwealth, has abolished its senate, the enactment going into effect March 3, 1922.

Throughout the British empire it is a settled

principle that the popularly elected assembly is to be regarded as the sole expression of the will of the people. A strong drift of opinion in the same direction is very noticeable in the new European constitutions which have been adopted since the war. Finland, Esthonia, Jugoslavia and Latvia have dispensed with senates altogether, and the countries which still retain them strictly circumscribe their powers. In Czechoslovakia, although the senate itself is an elective assembly, if it does not act within six weeks on a bill passed by the chamber of deputies its assent is presumed, and if it rejects a bill the chamber of deputies may nevertheless make it law by reënacting the bill by a three-fifths majority. In Poland also, a three-fifths majority in the lower house can overrule the senate.[1]

In the United States, senates have everywhere acquired dominant authority over taxes, appropriations and general legislation,[2] but this situation is quite exceptional and is an evidence of the decay which sets in when representative government is not duly constituted. In general, wherever representative government actually exists it tends to concentrate its authority in one repre-

[1] For details see McBain and Rogers, *The New Constitutions of Europe,* which also contains Lord Bryce's report on the question of the two chambers.

[2] The causes of this situation are discussed in the author's *Cost of our National Government,* p. 33 *et seq.*

sentative assembly. If representation is divided between two chambers it is extremely liable to be confused, distracted and impaired. The two-chamber system seems to owe whatever merit it still possesses to historical antecedents making the upper house the expression of a traditional authority entitled to respectful consideration, but its functions are reconcilable with representative government only when they are solely consultative and advisory. A senate may also be at least innocuous if it is so constituted as to be fundamentally a diplomatic body, like the council of states which forms one house of the Swiss legislature. Its members are chosen by the various cantons of Switzerland, which decide for themselves what shall be the mode of their appointment, their tenure of office, qualifications and official compensation. This council has coördinate authority with the elective assembly, but this sharing of power does not appear to cause any friction, which fact is probably to be ascribed to the complete control which the executive department has over budget preparation, legislative initiative and appointments to office. In actual practice, the two houses function like sections of the one body. The administration divides its business between them at its own convenience, and while some bills are before one house, other bills are before the other house,

and as one house finishes with the bills laid before it the members of the government in charge of those bills cross over to the other house with them. Because of this characteristically Swiss practice, the double chamber system as thus carried on actually saves time. What has been thoroughly examined and explained in one house does not have to be rehearsed again in the other, and in this way the Swiss congress is able to finish a legislative session in a few weeks. It is however clear that the ordinary argument in favor of two chambers, that by the delays they interpose they insure careful deliberation, finds no support in Swiss practice. Intelligent and circumspect action is mainly secured through the authority confided to the administration.

A form of divided representation to which considerable favor has been shown by political speculation is that which ensues from popular election of the chief executive. The fact is notorious that the use of popular election for that purpose does impart a representative character to the chief executive, apart from and often in opposition to the representative character of the elective assembly. The most striking instance of such divided representation is supplied by the United States, in which the presidency promptly took rank as a representative institution as soon as it got fairly upon the basis of popular elec-

tion.[1] Mill admitted that in a country like the United States some advantage may be claimed for the election of the president by the people, thus making him "constitutionally independent of the legislative body," but he held that the advantage "is purchased at a price above all reasonable estimates of its value." He brought forward objections whose weight will be recognized by every one at all familiar with American politics. He observed:

> "The eminent men of a party, in an election extending to the whole country, are never its most available candidates. All eminent men have made personal enemies, or have done something, or at the least professed some opinion, obnoxious to some local or other considerable division of the community, and likely to tell with fatal effect upon the number of votes; whereas a man without antecedents, of whom nothing is known but that he professes the creed of the party, is readily voted for by its entire strength. Another important consideration is the great mischief of uninterrmitted electioneering. When the highest dignity in the state is to be conferred by popular election every few years, the whole intervening time is

[1] President Polk in his Message of Dec. 5, 1848, declared: The president represents in the executive department the whole people of the United States, as each member of the legislative department represents portions of them." For details of this transformation of the presidency into a representative institution, see the author's *Rise and Growth of American Politics,* chapters XIII, XIV, and XV.

spent in what is virtually a canvass. President, ministers, chiefs of parties, and their followers, are all electioneerers: the whole community is kept intent on the mere personalities of politics, and every public question is decided with less reference to its merits than to its expected bearing on the presidential election. If a system had been devised to make party spirit the ruling principle of action in all public affairs, and create an inducement not only to make every question a party question but also to raise questions for the purpose of founding parties upon them, it would have been difficult to contrive any means better adapted to the purpose."

A further objection, the importance of which events keep emphasizing more and more, is the huge burden of expense entailed by the process of country-wide election. Campaign funds mounting into millions are required and party policy and legislative action must be so directed as to produce revenues for party support. Influences are thus engendered which tend to give the management of public affairs a distinctly plutocratic character. The natural outcome is a system by which big business subsidizes party organization and in return is allowed to frame legislation and govern the government.

Another obvious consequence of country-wide election is the premium it puts upon fraud. When elections are limited to the choice of rep-

resentatives, incentives to fraud are greatly diminished and the effects are localized. Fraud which would then give a party only a few more seats than it was justly entitled to, might in a country-wide election be sufficient to determine the general result. The great stimulus thus given to fraud and violence at the polls has often been exemplified in American history, but the commercialized character of American politics sets some bounds to such tendencies, and precautions have been generally adopted that have greatly reduced this class of risks. Ballot-box stuffing is becoming a rare crime; the object is now more to buy voters than to falsify their voting. But when a country is so undeveloped commercially that the stabilizing influence is absent which is so actively present in the United States, the choice of the president by popular election is sure to make the country the prey of revolution. The government makes the elections; the only available course of action for the opposition is to start a revolution.

A quite unsubstantial argument often brought forward in support of popular election of the head of the state, is that it is a valuable educative process. As the case is sometimes put by American politicians, the presidential election is a school of political education for the nation, and in that respect is worth much more than all it

costs. This plea can only impose upon people so ignorant as to believe that politics and electioneering are the same thing. Instead of being a means of popular enlightenment upon political issues the effect of the presidential election is systematically to darken understanding of them. The statements of party aims which accompany party nominations are long, insincere rigmaroles, full of braggart generalities without commitment on particulars. However, the place of such documents in the conduct of a presidential election is now confessedly one of minor importance. The main reliance is upon slogans, claptrap, personalities and sentimental humbug, poured out in bewildering profusion on the principle that the people can be made to believe anything that is hammered into their ears long enough. Even the possibility of carrying on an intelligent discussion of public policy is extinguished by the enthusiastic racket of the electioneering campaign. Such popular discussion of campaign issues as is in fact incited is mostly of the nature of gossip about the personal character and habits of candidates, and the politicians cater to such tastes by systematic calumny. Circumstantial stories about how a candidate has crazy spells, or tipples on the sly, or ill-treats his wife, or runs after women, are kept out of print for that would provoke exposure of their falsity, but they are

industriously circulated in irresponsible ways and while the effect is not distinctly traceable it is undoubtedly a factor of importance in election results.[1]

Forged documents, which in these times are the common resource of inflammatory propaganda, of course figure from time to time in electioneering tactics. So far from being an argument in favor of popular election of the chief magistrate, the effect it has upon the morality and intelligence of the people supplies a powerful argument against it. If Mill was right in holding that "the most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves," then no condemnation can be too strong for the practice of choosing the chief executive by popular election, even if the process is reconcilable with public order, which in the long run it has never been found to be. The Swiss people have in nothing more shown the

[1] The classic instance of the political use of this kind of material is the action of the leaders of the English revolution of 1689 in casting slurs upon the legitimacy of the heir to the throne in the Stuart line, although they could not but have known that there was nothing really suspicious or uncertain about the child's birth. But the candidacy of the Prince of Orange for the English throne was in the nature of an appeal to popular election as between him and James II, and hence the aid of calumny was invoked. In the original draft of the Declaration issued by the Prince, it was not mentioned, but at the instance of the Whig leaders a reference to the matter was inserted.

genuine quality of their democracy than by their rejection of proposals to make popular election the means of appointment to national executive office.[1]

Another political practice which partakes of the nature of divided representation is direct action by the people themselves through the initiative, referendum and recall. It may be said that strictly speaking such agencies only abridge representation, but in American practice they reduce the responsibilities of representative bodies in a way that amounts to a division of the authority entrusted to them.[2] These institutions have been characterized as new forms of democracy, but they are very old devices which have been tried over and over again, and in the long run they have always been ruinous to democracy. They were known to the ancient Greeks and

[1] In some of the Swiss cantons the members of the executive council are chosen by popular election. An impartial study of the practical consequences, as compared with conditions in the other cantons which retain the usual mode of appointment, which is by the action of the representative assembly, would be a valuable document. The original draft of the constitution of the United States (the document known as the Virginia plan) provided for the election of the president by the congress as is the case in Switzerland. The electoral college and the participation of the senate in appointments to office were features introduced to conciliate the small states.

[2] In 1914, 39 percent of the 177 constitutional amendments and statutes submitted to the people of the 14 I. and R. states were proposed by their legislatures, which found this a convenient means of avoiding decisions on troublesome questions.

Romans.[1] They abounded in the middle ages. They were among the institutions introduced by the French revolution and had much to do with bringing on the Reign of Terror.[2] European experience showed them to be so incompatible with public order and security that they were everywhere discarded save in the secure nooks of the Swiss mountains. Their survival there eventually acquired such an unique aspect that in modern times they have come to be regarded as a characteristically Swiss institution, and their presence in so democratic a country as Switzerland has been extremely influential in recommending them for American adoption. Opinion differs widely in Switzerland itself as to their practical value, and it would require a special treatise to explore the merits of the controversy. For the present purpose it must suffice to remark that they were a copious source of weakness and disorder until the present representative system was established, prior to which Switzerland was as notorious for venality and corruption as it is now celebrated for the economy and efficiency with which its affairs are managed. Furthermore, the use of such agencies in Switzer-

[1] See Professor F. F. Abbott's "The Referendum and the Recall among the Ancient Romans," *The Sewanee Review*, January, 1915.

[2] For the text of the revolutionary enactments consult, F. M. Anderson, *Constitutions and Documents: France, 1789–1901*. Pp. 24, 25, 28.

land is slight compared to that made of them in the American states which have adopted them.[1] Moreover, it is obvious that such agencies supply facilities for class arrogance. If a faction is too lacking in credit or influence to make its views prevail through representative agency, it may vex its opponents by subjecting the community to the expense and disturbance of a special election. The facilities which such agencies supply to factional animosity reach their most dangerous extent in the recall, which enables any powerful interest to menace an elected official with the cost and trouble of another election if he is not subservient. No arrangement is conceivable more likely to sap official integrity. As *The Federalist* succinctly remarked: "Power over a man's support is power over his will."

All the fundamental conditions of representative government stated in Chapter IV have now been examined, except the last one there men-

[1] The great mass of current legislation originates in and is determined by the Federal assembly. In 42 years only 21 federal measures went before the people for approval. A citizen of California or Oregon will have far more referenda to pass upon in a year than a citizen of Switzerland in a lifetime. A comprehensive view of the working of these agencies in Switzerland, together with an extensive bibliography of the subject, will be found in W. E. Rappard's "The Initiative, Referendum and Recall in Switzerland"; *The Annals*, September, 1912, published by the American Academy of Political and Social Science, Philadelphia. Professor Rappard is now bringing his account up to date, in articles begun in *The Political Science Quarterly*, June, 1923.

tioned, namely that " the supervision and control of the representative assembly shall extend over the whole field of government." There is no need of any extended remark to draw out the significance of this principle. It is a matter which takes care of itself. If representative government is duly constituted, its supervision and control over the whole field of government will be incontestable, and moreover there will be then no disposition to contest it. Any governmental action in any sphere of authority will inevitably become subject to the examination and criticism of the representative assembly. It is a power that inheres in the very nature of representative government, and if it is depressed or limited in practice the fact is evidence that representative government has been corrupted.

The only point that seems to call for special comment is the position of the judiciary. If its behavior is made subject to the supervision and control of the representative assembly, will not its independence be destroyed? This is an American fallacy produced by the infirmities of the representative system in that country, making the people tolerant of an irresponsible, magisterial authority which no other country permits. Judicial administration is the most important branch of all administration, and none should be under more vigilant supervision and

control. A judiciary should be able and impartial, but not independent. Its tenure should be contingent upon good behavior; never one of complete independence. Although much is said in the United States about the importance of an independent judiciary, there is nothing in the constitution of the United States to establish judicial independence. It provides that judges "shall hold their offices during good behavior," which is just what the English constitution provides and that has never been interpreted as establishing the judiciary as a distinct and independent department of state. Particulars of judicial behavior are as subject to parliamentary scrutiny as the conduct of any other administrative officer. For instance, in explaining to the house of commons a bill for the better regulation of immigration, the minister in charge of it explained that existing law was sufficient for the deportation of aliens convicted of crime, and the only change it was proposed to make was that a judge failing to certify for deportation a convicted alien should be required to state his reasons. Such assertion of authority over judicial behavior is systematic throughout the British empire. It is a common practice to make the chief-justice a member of the executive council in colonial administration. There are Canadian instances in which judges are required to serve as

police commissioners, in which capacity they appoint the chief constable and prescribe regulations for the discipline of the force. The arrangement insures a concert of action between the courts and the constabulary in the repression of crime which has most salutary results. Such proceedings are of course incompatible with the theory that the judiciary should be an independent branch of the government, but that theory has no secure foundation even in the United States. It is a convenient fiction which now receives influential acceptance because of the dire need of some means of protecting the public against vicious legislation.[1] By the aid of this fiction judicial discretion has been substituted for legislative discretion, and the opinion prevails that it is safer to endure judicial arrogance and incompetency than to allow any sort

[1] In an address before the National Bar Association, October 20, 1914, Senator Elihu Root gave this account of the situation:

"According to a count made in the Library of Congress, our national and state legislatures passed 62,014 statutes, during the five years from 1909 to 1913 inclusive. During the same five years 63,379 decisions of the national and state courts of last resort were reported in 630 volumes. Many of these statutes are drawn up, artificially, carelessly, ignorantly. Their terms are so vague, uncertain, doubtful, that they breed litigation inevitably. They are thrust into the body of existing laws without anybody taking the pains to ascertain what the existing laws are, what decisions the courts have made in applying and interpreting them, or what the resultant of forces will be when the old laws and the new are brought together."

of interference with the courts, no matter what they do. But if an urgent need arises an obnoxious judge can be got rid of by impeachment, which, although a clumsy means of enforcing good behavior, involves the principle of supervision and control.[1]

It has been contended that the extraordinary power exercised by American judges over legislation is a necessary incident of a written constitution, and especially a federal constitution. But if so why has no such development generally attended these features of government? Some tendencies in that direction did appear in the German empire, but they were soon checked. The courts refrained from courses that American courts have followed, not so much because of a difference in the legal situation as because of difference in the moral situation. When statutes are known to be a mature and circumspect product of legislative consideration of the subject,

[1] According to the constitution of the United States "all civil officers" may be removed from office on impeachment for and conviction of "treason, bribery or other high crimes and misdemeanors." The limitations imposed by these terms made trouble at an early date, when a judge became insane. That was a calamity and not a crime, and it was difficult to find plausible grounds for removing him from an office he was unfit to occupy. But largely owing to rulings made in the impeachment proceedings against Judge Archbald, the doctrine is now pretty well established that the senate, sitting as a court of impeachment, is not bound by ordinary definitions of crime, and may in its discretion rate as a high crime and misdemeanor any sort of conduct unbecoming judicial office.

judges will hesitate to set up a contrary opinion of their own. Some instances of the kind in German courts, in which American precedents were cited, excited such strong and general disapproval from juristic experts, that the courts were deterred from proceeding further on that line.[1] Eventually the principle was judicially enunciated that a constitutional provision is to be understood as a rule for the legislative power to interpret. No such attitude of serious opinion could exist in the United States with regard to the legislative power, as its activities are too crude and irresponsible to command respect. The abnormal exaltation of judicial authority in America is correlated with an abnormal degradation of legislative authority, and will surely disappear if ever the cause is removed.

[1] Some particulars are given by Brinton Coxe, *Judicial Power and Unconstitutional Legislation.*

CHAPTER XI

CONCLUDING OBSERVATIONS

THE movement of liberal thought, which during the nineteenth century strongly supported parliamentary institutions, seems now to be turning against them. The sneers of Carlyle at them in his *Latter Day Pamphlets,* as government by wind-bags and "constitutional battle of Kilkenny cats," were at the time regarded as the mere whimsies of an eccentric genius whose opinions on the subject did not deserve serious consideration. When read at the present time they seem to have true prophetic quality, and there is now extensive and influential concurrence in his opinion that parliaments and congresses "are, as ruling bodies and sovereign bodies, not useful, but useless or worse." [1] Serious and thoughtful books are now appearing with arguments in favor of substitutes for representative government, which — whether that term be employed or not — are decidedly of the

[1] The present attitude of Liberal thought in Europe is finely portrayed in an article entitled "Our Bankrupt Parliaments," translated from the Spanish and published in *The Living Age* for June 16, 1923.

Soviet pattern. Undoubtedly profound disappointment over results in the United States contributes to this trend of thought. It is a large movement receiving active intellectual support, and although the daily newspapers generally ignore it, it has an able and well-informed press in the weekly field.

What is going to be the outcome? If the instructions of history are worth anything, it would be presumptuous folly to attempt an answer to that question. The shrewdest and best informed observers of all past periods were shown by the course of events to have been completely out in their reckoning. It was assumed by all the historians of the seventeenth century that Poland would always figure as a great power, and nothing would have seemed more unlikely than that the time would come when Prussia, which up to 1660 was a vassal of Poland, would arrange for the partition of its territory among its neighbors. Perhaps the closest parallel which history affords to the eminence which the United States gained by its intervention in the late war, was that once attained by Poland. In 1683, when the Turks were besieging Vienna, and the situation seemed so desperate that the emperor took flight, a Polish army marched to the rescue and defeated the Turks. Poland gained dazzling renown as the savior of Europe; and yet, in 1795, Poland

ceased to exist as an independent state, until recent events put it on the map again.

Also, in all the old histories the Holy Roman Empire figured as an imperishable entity. Even so mocking and sceptical a critic as Voltaire, although he described it as neither holy nor Roman, and as being more the phantom of authority than an effective embodiment of it, had no notion that its end was approaching. And yet it did not long survive his own lifetime. It is pretty well known that before the French revolution, the general verdict of political prophecy was that the constitution of England was more unstable than that of France. That was the deliberate opinion of such well-informed observers as Hume and Gibbon. The modern prestige of the English constitution, which has caused the British parliament to be known as the mother of parliamentary institutions throughout the world, dates from Waterloo. It exemplifies the familiar proverb that nothing succeeds like success.

It is reasonable to suppose that with the elaborate means existing in modern times for apprising statesmen of political developments day by day, better intelligence of coming events than was possible in the past is now to be had. Presumably that is the case, and yet there are striking instances of the fact that it is still the unexpected that happens. Among the benefits

which the English free trade movement was expected to confer was the suppression of war by pressure of economic interest. The great Crystal Palace Exhibition at London in 1854 was projected as a monument of the new era of free trade and peace among nations. Before it could open its doors the Crimean war had broken out.

Lord Granville has related that when he took office in 1870, he was assured by the permanent secretary of the foreign office, that "he had never during his long experience known so great a lull in foreign affairs, and that he was not aware of any important question" that would have to be dealt with. And on June 30, of that same year, M. Ollivier, then the prime minister of France, declared that "on whichever side we look there is an absence of troublesome questions; at no time has the maintenance of the peace of Europe been better assured." In less than two months thereafter the battle of Sedan had been fought, Louis Napoleon was a prisoner, and the French empire had collapsed.

On November 9, 1903, Mr. Balfour, then the British prime minister declared: "I know not that any danger within the ken of human vision menaces in the smallest degree that peace which it should be our earnest endeavor to preserve." The war between Russia and Japan, which opened a great new chapter of history, began on

February 6, 1904. It is well known that the last great war burst suddenly on the deliberations of an international peace congress, scattering the delegates.

With such facts before one, it would appear that nothing could be more futile than any attempt to foretell what is going to happen in world politics. "There's a divinity that shapes our ends, rough-hew them how we will." All that seems to be feasible is observation of the nature of tendencies, meanwhile acknowledging that particular results may come in ways quite unexpected. Considering the matter from this point of view there seems to be sufficient occasion for the following remarks:

1

Revolt of popular sentiment against legislative assemblies is no new thing, but is the revival of a feeling that was for centuries the strongest political force. It is a commonplace of history that the people of Europe were rescued from the manifold oppressions of feudalism by the development of absolute monarchy; but it is not sufficiently remarked that this was a popular process. The diets, parliaments and assemblies that abounded in the middle ages were regarded by the people as organs of class selfishness and rapacity, and hence the people energetically sup-

ported any movement to wipe them out. Far from absolutism being the result of royal usurpation, kings were dragged along by the force of the movement. Powers were forced upon them which they were reluctant to accept. Striking instances of this appear when details are examined. The text has been preserved of an address made to the king of France in 1412 by a national assembly, in which profiteers were denounced, the king was blamed for inaction, and a blunt demand was made that he should seize and use absolute power. At the meeting of the states-general in 1614, the *parlement* of Paris, with the support of the third estate, declared it to be a fundamental law that the throne was absolutely independent, though the king himself demurred to a principle which ignored the privileges of the nobles. When absolute power was conferred upon the king of Denmark in 1660, he at first refused to accept it, but the burghers closed the gates of the city to keep the nobles from leaving the diet to collect their forces, and carried their point by sheer intimidation. No fact of European history is better attested than that absolute monarchy was erected by public opinion and its burden of responsibility was forced upon kings by the insistence of the people. But it was during this very period that representative government was maturing its type in

England. It was not representative government that was suppressed by the continental development of absolute monarchy, but a class of assemblies that were agencies of private interest and class advantage inimical to the general welfare.

2

The present reaction against representative government is only a part of the world-wide unrest and desire for change. Among the pat phrases by which Herbert Spencer is still remembered, although his bulky system of philosophy has gone to the dust-bin, is his characterization of the times in which we live as a period of exuviation. There really appears to be something in that. Everywhere, whether in the east or in the west, in the old world or in the new, society appears to be in the moulting stage, sloughing off the covers of its past life and striving to produce new ones that will be more to its liking. It is beyond the power of political institutions to avert such processes or to escape dangerous strain from them. The matter of practical importance is their ability to endure the strain and survive the crisis.

Professor Sidgwick has pointed out that in the middle of the eighteenth century absolute monarchy was regarded as " the final form of govern-

ment to which the long process of the formation of orderly country-states had led up; and by which the task of establishing and maintaining a civilized political order had been, on the whole, successfully accomplished, after other modes of political construction had failed to realize it." [1] And yet, before the century was out, this form of government was breaking up in every direction, and when affairs settled down again the English representative system was found to have stood the strain better than any other type of polity. In the late war, it was not the representative systems that fared the worst, although many grave defects were disclosed in them. The philosopher Nietzsche, whose views had made a distinct impression on European thought, had characterized democracy as a decaying form of the state, and he regarded the Russian empire as being the most solid and permanent form of authority in the modern world. But it was the first to collapse, with a completeness of ruin that is almost unparalled.

3

Although if we accept as representative government all that pretends to be such, there is much to suggest that representative government is a decaying form of the state, yet if we distinguish

[1] H. Sidgwick's *Development of European Polity*, p. 318.

between what is genuine and what is spurious in existing forms of representative government, it becomes quite noticeable that respect for political institutions corresponds to the actual value of their representative character. It is notorious that the spirit of revolt is less powerful in English self-governing commonwealths than it is in countries that have adopted parliamentary institutions without the safeguard of the English budget system. It is least powerful in Switzerland, whose representative system is probably the closest practical approximation to the ideal type whose criteria we have been examining. And this is the more remarkable since the central position of Switzerland and its habit of granting free asylum to political exiles, make it a catch-basin for the political discontent of Europe. Both in the British empire and in Switzerland, Socialism — which is the line which revolutionary effort usually takes in these times, although with singularly little constructive power — seems to be declining in importance.

What seems likely to take place in the civilized world is not a rejection of representative government but a weeding out of its spurious forms. In some cases this may occur through revolution, or through counter-organization like that of the Fascist movement in Italy, but it may also occur through the gradual wasting or atrophy of tradi-

tional institutions, which was the way in which the Roman republic was converted into an empire. Constitutional developments in the United States are now following the Roman road. The present division of authority between the president and the senate is analogous to that which existed during the Roman period which historians distinguish as the principate. It is not a workable system of government, and its natural trend is towards correction of its infirmities through development of absolute authority. The present limitations upon presidential authority are no more likely to be permanent than the original checks and limitations upon the Roman imperatorship, which began as a republican office and always remained such in theory. The only limitations that could be permanently effective would be those which the installation of a genuine representative system would introduce, and those would be such as result from definition of responsibility and not from curtailment of power. *The true distinction between despotism and constitutional government does not lie in limitation of power but in the existence of means for making power accountable for its behavior.* Ability to act promptly and energetically in the presence of emergency is of such paramount importance that every other consideration should give way to it, and does in fact give way to it. Any con-

stitution of government which disregards that principle is doomed. A genuine form of representative government avoids that error. It neither seeks nor allows any partition of executive authority, nor restricts it in any way save that it shall be answerable for results.

4

The proverb that the corruption of the best makes the worst receives its most striking verification in the case of the spurious forms of representative government. No other sort of government the world has ever known has given power and opportunity to so many worthless characters, or has produced a class rule of quite so degraded a type. It is notorious that elective assemblies which allow their members to help themselves to offices and appropriations and traffic in legislation, tend to become a collection of political riff-raff. Talleyrand's cynical definition of a democracy as an aristocracy of blackguards, gets its point from the fact that democracy is apt to err in the arrangement of its institutions, introducing complications that turn over the actual management of affairs to windy demagogues and electioneering tricksters. No form of government is then so impervious to public opinion or so incorrigible. Reforms that multiply offices and create new agencies of government find an easy course; but

any interference with the profits or emoluments of the political game meets with stubborn and generally victorious resistance. A corrupt representative assembly will never allow genuine representative government to be installed with its consent. Any proposal to divest it of existing opportunities for capturing offices and tapping the public treasury, is sure to excite horrified remonstrance and all sorts of arguments will be brought forward on assumed constitutional grounds, to make out that that would never do at all. The vested interests accumulated by the spurious forms of representative government are so extensive, powerful, ingenious and persevering, that in the ordinary course of events they will be able to maintain their ascendency. It is vain to expect that representative government will ever be accepted merely through rational appreciation of its advantages; but stress of practical necessity from time to time will compel modifications of governmental system, and knowledge of the principles of representative government may give them intelligent direction. Plastic periods sometimes arrive in which action may be taken in advance of the formation of vested interests. Such was the case when the constitution of the Confederate States was framed. It was then possible to insert a provision approximating the English budget rule which

prohibits any appropriation unless recommended by the government.[1] The most important point at which to direct effort for political improvement is always the matter of budget control. That rightly settled all other matters tend to fall in line, as Mill pointed out.

5

A broad survey of political history must impress one with the belief that no gain to progress can be so great as constitutional arrangements that will break the vicious circle in which politics has so long revolved from despotism to liberalism and back again to despotism. Where liberal institutions have been successful they seem to have been dependent upon some past discipline maintained by coercive authority, and as that decays liberal institutions seem to lose their ability to discharge the primary duties of government — to maintain order, execute justice, and safeguard the public welfare. The eventual result is ordinarily some change in the form of government

[1] The provision was as follows: "Congress is forbidden to appropriate money from the treasury, except by a vote of two-thirds of both houses, unless it be asked by the head of a department and submitted by the President, or be for the payment of its own expenses, or of claims against the confederacy declared by a judicial tribunal to be just." The exceptions are ill-conceived and if such a rule were now imposed on the American congress, they would be apt to empty it of practical efficacy in restraining the propensities of members.

which does not subject the custody of power to any more real responsibility than before. History tells of many flops from despotism to republicanism and back again, as experience showed that republican institutions may admit worse abuses than the rule of a despot. This vicious circle has seemed to be such a permanent feature of politics that Hegel declared that the only lesson of history is that men learn nothing from history. Like most sweeping generalizations this is but partially true. The new constitutions of Europe, although they bear marks of the haste with which they were constructed, reflect political experience on many important points. It is certain that absolute monarchy of the eighteenth century type is incapable of revival, and although periods of dictatorship may intervene at particular times and places, it seems most probable that some type of elective assembly will figure in any regular scheme of government. The hope of breaking for good and all the old vicious circle lies in the establishment of forms of government in which an honest control over executive authority can be maintained without interfering with the energy and promptitude of its action. Representative government can supply such a polity and it is the only kind of government which can. It is, as Mill contended, the ideally best polity. And there has been sufficient practical

experience to show that when actually installed under conditions which maintain its representative character, it is the form of government which attains the highest degree of practical efficiency together with the greatest stability.

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