

ジョン・ステュアート・ミル

『代議制統治論』 自筆草稿

——第4章と第5章（翻刻）——

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日本大学図書館法学部分館（法学部図書館）は、ジョン・ステュアート・ミル（John Stuart Mill, 1806-1873）の『代議制統治論』自筆草稿を所蔵している。私たち著者は、前稿に引き続き、本草稿の翻刻に取り組んでいる。本稿で翻刻されるのは、『代議制統治論』第4章と第5章である。

なお、第4章の題名は出版に際して、「どんな社会には代議制統治は適用できないか（To what societies representative government is inapplicable）」から、「どんな社会条件では代議制統治は適用できないか（Under what Social Conditions Representative Government is Inapplicable）」に変更されている。同様に第5章は、「代表機関の本来の役割とは何か（What are the proper functions of representative bodies）」から「代表機関の本来の役割について（Of the Proper Functions of Representative Bodies）」に変更されている。

翻刻に際して、翻刻文に下線が引かれているものは、ミル本人によって下線が引かれていることを表している。翻刻文に二重の下線が引かれているものは、私たちが翻刻できなかったものを、灰色に着色されているものは、いまだその翻刻に確信が持てないものを表している。（ ）で示された部分はミルによるもの、[]で示された部分は、筆者たちが補ったものである。

一四（一四）

凡例

- 下線：ミル本人によって引かれた線
 二重下線：筆者たちが翻刻できなかった単語
 灰色部分：翻刻に確信が持てない単語
 ()：ミル本人が記したもの
 []：筆者たちが補ったもの

Bibliography : [Considerations on Representative Government]. [s.l.] : [s.n.]. [1860]. Untitled autograph manuscript. 228 leaves in 11 [A to K] quires. A quire: 24 leaves, B quire: 24 leaves, C to J quire: each 20 leaves, K quire: 20 leaves (7 leaves blank).

私たちのこれまでの翻刻結果は、以下の表のとおりである。

表1 掲載誌一覧／Journals

Preface	「ジョン・ステュアート・ミル『代議政治論』自筆草稿——序言と第1章（翻刻）——」『法学紀要』60巻、2019年 John Stuart Mill's Autographed Draft Manuscript “Considerations on Representative Government.” Transcription of Preface and Chapter 1. <i>HOGAKU KIYO</i> . Vol. 60. 2019. https://www.publication.law.nihon-u.ac.jp/bulletin/bulletin_60.html
[Ch.1] To what extent forms of government are a matter of choice	
[Ch.2] The Criterion of a good Form of Government	「ジョン・ステュアート・ミル『代議制統治論』自筆草稿——第2章と第3章（翻刻）——」『政経研究』56巻4号、2020年 John Stuart Mill's Autographed Draft Manuscript “Considerations on Representative Government.” Transcription of Chapter 2 and 3. <i>SEIKEI KENKYU</i> . Vol. 56(4). 2020. https://www.publication.law.nihon-u.ac.jp/political/political_56_4.html
[Ch.3] That the ideally best form of government is representative government	
[Ch.4] To what society representative government is inapplicable	「ジョン・ステュアート・ミル『代議制統治論』自筆草稿——第4章と第5章（翻刻）——」『政経研究』57巻1号、2020年 John Stuart Mill's Autographed Draft Manuscript “Considerations on Representative Government.” Transcription of Chapter 4 and 5. <i>SEIKEI KENKYU</i> . Vol. 57(1). 2020.
[Ch.5] What are the proper functions of representative bodies	
[Ch.16] Of Nationality, as connected with Representative Government	「ジョン・ステュアート・ミル『代議政治論』自筆草稿——第16、17、18章（翻刻）——」『法学紀要』61巻、2020年 John Stuart Mill's Autographed Draft Manuscript “Considerations on Representative Government.” Transcription of Chapter 16, 17, 18. <i>HOGAKU KIYO</i> . Vol. 61. 2020. https://www.publication.law.nihon-u.ac.jp/bulletin/bulletin_61.html
[Ch.17] Of the government of dependencies by a free state	
[Ch.18] Of Federal Representative Governments	
川又祐「J. S. ミル『代議政治論』自筆草稿（日本大学法学部図書館所蔵）について」『政経研究』52巻2号、2015年 Kawamata. H. “John Stuart Mill's Autographed Draft Manuscript Considerations on Representative Government in the Nihon University College of Law Library.” <i>SEIKEI KENKYU</i> . Vol. 52(2). 2015. https://www.publication.law.nihon-u.ac.jp/political/political_52_2.html	

表2 ミル『代議制統治論』対照表／A comparison between the manuscript and the first edition of *Considerations*

帖・紙葉	自筆草稿章題	原典初版章題*
A_002-013	To what extent forms of government are a matter of choice.	Ch.1. TO WHAT EXTENT FORMS OF GOVERNMENT ARE A MATTER OF CHOICE.
A_014-024～ B_001-008	The Criterion of good Form of Government	Ch.2. THE CRITERION OF GOOD FORM OF GOVERNMENT.
B_009-022	That the ideally best form of government is representative government	Ch.3. THAT THE IDEALLY BEST FORM OF GOVERNMENT IS REPRESENTATIVE GOVERNMENT.
B_023-024～ C_001-009	To what societies representative government is inapplicable	Ch.4. UNDER WHAT SOCIAL CONDITIONS REPRESENTATIVE GOVERNMENT IS INAPPLICABLE.
C_010-020～ D_001-002	What are the proper functions of representative bodies	Ch.5. OF THE PROPER FUNCTIONS OF REPRESENTATIVE BODIES.
D_003-018	Of the infirmities & dangers to which representative government is Liable.	Ch.6. OF THE INFIRMITIES AND D A N G E R S T O W H I C H REPRESENTATIVE GOVERNMENT IS LIABLE.
D_019-020～ E_001-013	Of True & False Democracy; the representation of all, & the representation of the majority only.	Ch.7. OF TRUE AND FALSE DEMOCRACY; REPRESENTATION OF ALL, AND REPRESENTATION OF THE MAJORITY ONLY.
E_014-020～ F_001-011	Of the extension of the suffrage.	Ch.8. OF THE EXTENSION OF THE SUFFRAGE.
F_012-020～ G_001	Of the mode of voting.	Ch.10. OF THE MODE OF VOTING.
G_002-004	Of the duration of Parliaments	Ch.11. OF THE DURATION OF PARLIAMENTS.
G_005-011	Ought there to be two or only one House of Parliament in a representative constitution?	Ch.13. OF A SECOND CHAMBER. **
G_012-020～ H_001-003	Of local representative bodies.	Ch.15. OF LOCAL REPRESENTATIVE BODIES.
H_004-017	Of the Executive in a representative government	Ch.14. OF THE EXECUTIVE IN A REPRESENTATIVE GOVERNMENT.
H_018-020～ I_001-006	Of Nationality, as connected with Representative Government	Ch.16. OF NATIONALITY, AS C O N N E C T E D W I T H REPRESENTATIVE GOVERNMENT.
I_007-017	Of Federal Representative Governments.	C h . 1 7 . O F F E D E R A L REPRESENTATIVE GOVERNMENTS.

I_018-020～ J_001-012	Of the government of dependencies by a free state.	Ch.18. OF THE GOVERNMENT OF DEPENDENCIES BY A FREE STATE.
J_013-019	Should there be two stages of election ?	Ch.9. SHOULD THERE BE TWO STAGES OF ELECTION ?
J_020～ K_001-012	Ought pledges to be required from members of parliament ?	Ch.12. OUGHT PLEDGES TO BE REQUIRED FROM MEMBERS OF PARLIAMENT ?
K_014	Preface.	PREFACE.

* John Stuart Mill. *Considerations on Representative Government*.
London : Parker, Son, and Bourn, West Strand. 1861.

** 川又は、拙稿「J. S. ミル『代議政治論』自筆草稿（日本大学法学部
図書館所蔵）について」『政経研究』52（2）、2015年、において、自筆草
稿と初版原典（1861年）との対応を表にまとめた（表4 ミル自筆草稿と
『代議政治論』の章題および冒頭文対照表。pp.178-183）。本文およびその
表4には間違いが含まれていた。すなわち、第13章は自筆草稿ではなく、
初版において第13章が新たに追加されたとの記述は訂正されなければなら
ない。そこで、あらためて自筆草稿と原典初版全18章との対応表を掲出す
ものである。

John Stuart Mill's Autographed Draft Manuscript "Considerations on Representative Government." A Transcription of Chapters 4 and 5.

Hiroshi Kawamata
Atsushi Yoshino
Yusuke Arai
Thomas Lockley

Nihon University College of Law (NUCL) Library houses a John Stuart Mill's autographed draft manuscript of "Considerations on Representative Government" ca. 1860. This time, we, 4 authors transcribe the chapter 4 and 5 from it.

When Mill published the book, the title of chapter 4 was changed "To what societies representative government is inapplicable" to "Under what Social Conditions Representative Government is Inapplicable." And the title of chapter 5 was likewise changed "What are the proper functions of representative bodies" to "Of the Proper Functions of Representative Bodies."

The underline is written by Mill himself. Regrettably, the double underlined parts are the words which we couldn't transcribe. Words about which we are unsure are gray colored. Parentheses () are by Mill. Brackets [] are by us.

Bibliography : [Considerations on Representative Government].
[s.l.] : [s.n.]. [1860]. Untitled autograph manuscript. 228 leaves in 11
[A to K] quires. A quire: 24 leaves, B quire: 24 leaves, C to J quire:
each 20 leaves, K quire: 20 leaves (7 leaves blank).

B_023 to C_009. [Chapter 4]

B_023

To what societies representative government is inapplicable

Representative government is, we have concluded, the ideal type of the best government, for which, in consequence, any portion of mankind become more fit, in proportion to their degree of general improvement. As they range lower & lower in the scale of advancement, representative government will, generally speaking, be less applicable to them ; though this does not hold universally ; for the adaptation of a people to representative government does not depend directly upon the place they occupy in the general scale of humanity, but **rather** upon the degree they possess of certain special requisites, which special requisites are, however, so closely connected with their degree of general advancement that any variation between the two is rather the exception than the rule. Let us proceed to examine, at what point in the descending scale, if at all, representative government ceases altogether to be suitable ; either by being itself unfit, or by reason of the superior fitness of some other regimen.

In the first place, then, representative like any other government must be unsuitable in any case in which it cannot permanently exist ; i.e. in which it does not fulfil[sic] the three fundamental conditions. These

conditions **we** found to be, 1. that the people should be willing to have it. 2. that they should be willing & able to do what is necessary for its preservation. 3. that they should be willing & able to fulfil the duties or functions which it requires of them.

The questions whether the people are willing to have representative government ? only becomes[sic] a practical one, when some enlightened ruler, or when a foreign nation or nations having gained power over the country, are inclined to offer them the boon. To individual reformers the question is irrelevant, since if the only objection to their enterprise is that the opinion of the nation is not yet on their side, they have the ready & proper answer, that to bring it over to their side is exactly the purpose

B_024

[Left sided of page. B quire 023 verso. in pencil.]

except the case of religious fanaticism

[Right side of page. B quire 024 recto.]

they **have in view**. In any case, in which the attempt to introduce representative government is **ever** likely to be made, indifference to it, & inability to understand its processes

& requirements, rather than positive hostility, are the practical obstacles likely to be encountered. These however are as **fatal**

& even harder to get rid of, than positive aversion ; as it is generally easier to change the direction of an active feeling, than to create one in a state purely passive. When a people have no sufficient attachment to, or value for, a representative constitution, they have no chance whatever of **being**

retaining

it. The executive in any country is the branch of the government which wields the immediate power, & comes directly in contact with the public ;

to it almost exclusively the hopes & fears of individuals are directed while by it the part of government is mainly represented, both in its benefits, & its prestige, to the public eye. Unless therefore the authorities which check the executive are backed by a genuine opinion & feeling in the country, the executive has always the power of setting them aside or compelling them to subservience, & is sure to be well supported in doing so. Representative

institutions which the people do not value sufficiently to fight for them seldom get a footing at all,

if they do, they are almost sure

to be overthrown as soon as the head of the government,

or any party leader who can muster a force for a coup de main, is willing to run some small risk for the purpose. The third case of failure in representative government is when the people have not the will or the capacity

to do the part which belongs to them in a representative constitution.

When the people, with the exception of some comparatively small portion

feel little or no interest in the general affairs of the state, so as not to form

a public opinion, they will seldom make any use of the right of suffrage but to serve their private interest, or some local interest or the interest of some one with

whom they are connected as adherents or partisans ; & the small class

who in this state of society get the command of the representative
assembly

[B_024 verso blank]

C_001

C

use it solely as a means of seeking their fortune. If the executive
is weak, the country is distracted by mere struggles for place ; if
strong, it is
despotic at the cheap price of giving to the representatives, or all
among them
who give trouble, a share of the spoil ; & the only fruit produced by the
representative system is that in addition to the
agents of the executive, an assembly is quartered on the public besides,
& that no abuse in which any of them are interested can conveniently
be removed. When, however, the evil stops here, the price may be worth
paying
for the amount of publicity & discussion which is in some degree
ensured
by any even nominal representative system. In the
kingdom of Greece, for example, there can be little doubt that the
company of
placehunters who compose the representative assembly, though they
contribute
little or nothing in a direct way to good government ; nor even greatly
temper the
despotism of the executive, yet keep up the idea of popular rights, &
conduce

greatly to the real liberty of the press which exists in that country. But this

benefit is entirely dependent upon the coexistence with it of a hereditary king. If, instead of struggling for the favours of the chief ruler, these selfish

& sordid factions struggled for the chief place itself, as happens in Spanish America, they would assuredly keep the country in a state of chronic revolution & civil war : & while a despotism, & a despotism of illegal violence, would be alternately exercised by a series of political adventurers, the name & forms of representation would have no effect but to prevent despotism from attaining the stability, & security which mitigates many of its evils.

The preceding are the cases in which representative government actually cannot exist. There are other cases in which it might possibly exist

but in which some other form of government would be preferable. These are principally when the people, in order to advance in civilization, have some lesson to learn, some habit to acquire, to the acquisition of which representative government would operate as an impediment.

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The most obvious case is when a people have still to learn the first lesson

of civilization, that of obedience. A tribe who have derived energy and courage from struggling with an **ungenial** climate or a barren soil, but who have

not acquired the habit of permanent obedience to any common

superior, would probably never acquire this habit under their own

collective government.

A representation assembly of such would simply reflect their own turbulent insubordination. It would refuse its consent to any proceeding which should impose

on their savage independence any improving restraint. The mode in which Such [sic] tribes are usually brought to submit to the indispensable conditions of civilized society is by the necessities of warfare, & the despotic

authority inevitably exercised by a military leader. That leader is the only superior to whom they will look up, unless occasionally some prophet supposed to be inspired from above & who by virtue of that inspiration

may exercise a temporary ascendancy ; but this rarely effects any change in the habits of the people at large unless the prophet, like Mahomet, is also a military chief, or unless the military chiefs avail themselves of his influence of & convert it into a support of their own power.

It is not so obvious, but it is nevertheless true, that a people are no less unfitted for representative government by the very opposite fault to that

of which we have now spoken ; by extreme passiveness, & readiness to submit

to tyranny. If a people thus prostrated by character or circumstances could obtain representative institutions, they would inevitably choose their tyrants as their representatives, & the yoke would be made heavier on them by the very polity which prima facie appears calculated to lighten it. On the contrary, many a people has gradually emerged from this

state by the aid of a central authority, whose

position has made it the rival, & has ended by making it the master of the local despots, & which, above all, has been one.

The whole of French history from Hugh Capet to Richelieu & Louis XIV, is

a **comment** on this text. Even when the King was scarcely more powerful than an average feudatory, the best French historians have pointed out the immense advantage which he derived from being one. To him the eyes of all the locally oppressed were turned :

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he was the object of reliance & hope over the whole Kingdom ; while each of the local potentates was only powerful within a more or less confined

space. At his hands refuge & protection was[sic] sought from every part of the Kingdom, against first one then another of the immediate

oppressors. His progress to ascendancy was slow ; but it resulted from successively taking advantage of opportunities which offered themselves

only to him. Though slow, therefore, it was sure ; & in proportion as it was

accomplished, it raised the oppressed portion of the community out of the habit of submitting to oppression. The King's interest lay in encouraging all

partial attempts on the part of the serfs to emancipate themselves from their masters, & to place themselves under his general authority ; Obedience to a distant monarch is liberty itself, compared with the domination of the lord of the neighbouring castle : & the monarch, besides

was for a long time compelled by the necessity of the case, to exert his authority as the ally rather than the master of the classes whom he had aided in enfranchising themselves. Thus a central authority, despotic in principle however restricted in practice, became the main instrument of carrying the people through a necessary stage of improvement into which representative institutions would probably have effectually prevented them from **ever** embarking. Nothing less than despotic rule, or a general massacring would have emancipated the serfs of the Russian Empire.

The same passages of history forcibly suggest another mode in which unlimited monarchy overcomes obstacles to the improvement of a people which representative institutions would have been likely rather to aggravate. One of the strongest hindrances to improvement is an inveterate spirit of locality. A people, in many other respects capable of & prepared for freedom, may be wholly unqualified for amalgamating into even the most inconsiderable nation. They may, like the citizens of an ancient community, or like those of an Asiatic village have exercised their faculties consecutively & vigorously on village interests & even acquired the habit of tolerably effective popular government

C_004

on that small scale, & yet may have but slender sympathies with any thing beyond, & no habit or capacity of dealing with any interests common to many such communities. **Never** in history have a number of these political

corpuscles or atoms **learnt** to feel themselves one body, one people, but by their subjection to a high central authority common to all. It is through the habit of deferring to that authority. Entering into its **counsels** & subserving its purposes, that such a people receive into their minds the conception of large interests, common to a considerable geographical extent. These interests, on the other hand, are necessarily the predominant consideration in the mind of the central ruler, & through the relations more or less intimate which he progressively establishes with the localities, they become familiar to the general mind. The most favorable concurrence of circumstances would be one which should raise up a representative body or bodies, drawn from the localities, & becoming the aid or instrument of the central power but seldom or never attempting to control or thwart it : representative institutions in a monarchical government, as distinguished from representative government. By means of these institutions the political education given by the central authority is carried home much more effectually to the local chiefs & the population generally, while a tradition is kept up of government by general consent, or at least a tradition is prevented from growing up of government without the general consent, which

_____ ⁽¹⁾ habit has so often put a bad end to a good beginning, & is one of the most frequent cases of the sad fatality which in most countries has made improvement stop short early, because the work of some one age has been so done as to be a bar to the needful work of the ages following. Meanwhile we may lay it down as a maxim that by irresponsible monarchy, rather than by representative institutions, can a multitude of insignificant political units be **connected**

into a people, with common feelings of cohesion, powerful enough to protect

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itself against conquest or aggression from abroad, & having affairs sufficiently various & considerable of its own to occupy worthily & expand to fit proportions the social & political intelligence of the people.

These several reasons are amply sufficient to make kingly government

free from the control (though perhaps strengthened by the aid) of representative institutions

the most suitable form of government for the earliest stages of any community ; even

a mere city community like those of ancient Greece ; where accordingly the government of kings under some real but no ostensible or constitutional

control by public opinion, preceded for an unknown & probably great duration all for institutions ; & gave place at last, for a considerable length of time, to oligarchies of a few families.

It would be easy to **point** out a hundred other infirmities or shortcomings

in a people, which pro tanto disqualify them from making the best use of representative government ; but in regard to these it is not equally obvious that the government of One or a Few would have any tendency to remove or

alleviate the evil. Strong prejudices of any kind ; obstinate adherence to old

habits, national infirmity of temperament, or general

ignorance & **defect** of mental cultivation, if prevalent in a

people, will be in general faithfully reflected in their representative assemblies : & if it so happen that the executive government, the direct management of public affairs, is in the hands of persons imperatively free from these infirmities, more good would possibly be done by them if unhampered by the necessity of carrying such **bodies** voluntarily with them in what they attempt. But the position of the rulers does not in these, as it does in the other cases which we examined, impress on them interests & tendencies **acting** in the contrary direction. From the general weaknesses of the people or of the state of civilization, the One & his counsellors, or the Few, are not likely to be habitually exempt ; saving the case of their being foreigners, belonging to a more improved people or state of society, in which case the rulers

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may be, to almost any extent, superior in civilization to the people they rule

over ; & to be under a foreign government of this description, notwithstanding

its inevitable evils, is often of the greatest **service** to a people, by carrying them rapidly through several stages of progress, & clearing away obstacles to

improvement which might have continued indefinitely if the subject people had

been left to the unassisted influence of native tendencies to improvement. In a country not under the dominion of foreigners, the only cause adequate to producing similar benefits is the rare accident of a monarch of extraordinary genius. There have been a few such in history, who happily for humanity, have lived

long enough to make some of their improvements durable by leaving them under the guardianship of a generation which has grown up under their influences. Charlemagne is to a certain extent an instance ; Peter the great is another.

But these cases are so few in number that they must be classed among the happy

accidents which have so often decided at a critical moment whether some large portion of

humanity should make a sudden start, or sink into stationariness

such accidents as the existence of such a man as Themistocles at the time of the Persian invasion, or of the first or third William of Orange.

It would be absurd to construct institutions for the purpose merely of taking

advantage of such accidents ; not to mention that men of such calibre in any distinguished position, would probably have exercised great influence under any institutions

as is indeed evidenced by the career of the three last mentioned.

The case most requiring practical consideration, in reference to institutions

is the not very uncommon one, in which a small but leading portion of the community are from circumstances, such as difference of race, more civilized origin, or many other causes, very markedly superior in point of civilization & general character, to the remainder. In

this case, government by the representatives of the mass

would stand a chance of depriving them of much of the benefit

they might derive from the higher civilization of the superior ranks, while government by the representatives of those ranks would inevitably

rivet the degradation of the multitude & leave them no hope of

C_007

decent treatment but by rebelling against the yoke. The best chance of improvement for a people so situated lies in the constitutionally unlimited

authority of the chief ruler of the dominant class : he alone has by his position an interest in raising & improving the mass, of whom he is not jealous, as an aid against his associates

of whom he is. And if fortunate circumstances associate with him as subordinates, not as controllers, a body

representative of the superior caste, which may keep alive habits of collective

resistance, & may admit of being at some time & by

some degrees expanded into a representation of the nation (as has been the case with the English Parliament) the nation has then the most favorable prospects for its future improvement, which can well occur

to a community so constituted & situated.

Among the tendencies of a people which without absolutely rendering representative government unfit for them, greatly incapacitates them from reaping

the full benefit of it, there is one in particular which deserves to be noted. There are two widely different states of the inclinations, which nevertheless

have something in common, & in virtue of that common something, often coincide in the

direction they impress on individuals & nations. These are the desire to exercise

power over others ; & the desire, not to have power exercised over themselves.

ジョン・ステュアート・ミル『代議制統治論』自筆草稿（川又・吉野・荒井・ロッキリー）

九七（九七）

There is nothing in which different portions of mankind differ more from one another than in the relative strength of these two desires. There are nations of which it may be affirmed without exaggeration that the passion for governing others is so much stronger than the desire of personal independence, that for the mere shadow of the one they are willing to sacrifice the whole of the other. Each of them is willing like the private soldier in an army, to abdicate entirely his personal freedom of the action into the hands of his general, provided that the army itself is triumphant & victorious & that he is able to flatter himself that he is one of a conquering host, though the

C_008

notion that he himself has any share in the domination exercised over the conquered is a sheer illusion. When, as in the case of such a people, an average individual prefers the chance, however distant & improbable, of wielding some small share of power over his fellow citizens above the certainty to himself & them of having no unnecessary power exercised over them by any one, we have the elements of a people of placehunters in whom the course of politics is mainly determined by placehunting in which equality alone is cared for but not liberty, in which the struggles of parties in the legislature are mere contests as to whether the power of tyrannizing shall be in the hands of one portion of the community or another, perhaps merely of one knot of public men & another when the idea of democracy is merely that of opening places to the

competition of all instead of a few ; & the more popular the institutions the greater [are] the number of places created & the more monstrous the over-

government exercised by all over each, & probably by the executive over all. It is the universality of this point of character among the French people which caused representative government by a limited class to break down by excess of corruption, & the attempt at representative government by the entire male population to end in giving one man the power of consigning any number of that population to Lambessa or Cayenne provided he allowed all of them to think they were not excluded from the possibility of sharing his favours.

The point of character which more than any other fits the people of this country for representative government is that they have almost universally the contrary characteristic ; they are very jealous of any attempt to exercise power over them, not sanctioned by long usage & by their own opinion of right ; but they care very little for the exercise of power over their fellow citizens, of would generally prefer that any **function** which gives that power should be discharged by others rather than themselves.

C_009

that placehunting is a form of ambition to which the nation, considered as a nation, are entire strangers : that if we except the few of whom official employment lies directly in the way, the aspirations of an Englishman to success in life take an entirely different direction ; that of success in business, or in a profession ; that they have no sympathy in,

but the strongest distaste for, any mere struggle for place on the **part** of political

individuals or parties ; & there are few things to which they have more aversion than the multiplication of public employments, a thing on the contrary, always popular with the bureaucracy-ridden nations of the Continent, who would rather pay more taxes than diminish their individual chances of a place for themselves or their connexions & with whom the cry for retrenchment never means the abolition of places but the reduction of the salaries of those which are too considerable to fall into the hands of the middle or lower class.

C_010 to D_002. [Chapter 5]

C_010

What are the proper functions of representative bodies

In treating of representative government it is necessary always to keep in view the distinction between its idea or essence, & the particular forms in which accidental historical developments, or the ideas intertwined at some particular period, have clothed that idea.

As already **remarked**, the meaning of representative government is that either the whole people, or some numerous portion of them exercise, through deputies periodically elected by themselves the ultimate controlling power which, in every constitution, must reside somewhere.

To fulfil completely the idea of representative government, the whole people (those only **excepted** who are not in other respects considered adequate to their own guidance, such as children or lunatics) must possess some share in this controlling

power, by means of the choice of representatives. If any are entirely excluded, whether this be rightly or wrongly done, the government so far as the excluded portion are concerned, is not representative government ; it is government exercised by others over them, without reciprocity. As we shall see, however, the idea of representative government, though it requires that all shall have some share in the representation, does not require that all shall have an equal share. That is a separate question to be decided by other considerations, to which we shall **come** presently. It is also an open question what precise part in the machinery of government, what actual functions, shall be directly & personally discharged by the representative body. Great varieties in this respect are equally compatible with the essence of representative government, provided the functions are such as completely to secure to the representative body, the control of everything in the last resort.

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Possible to control everything without doing everything
One question what an assembly shall control another
what it shall do.

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To determine, therefore, through what channel this general control of the operations of government is most expediently exercised, & what portion of the functions of government should be actually

taken to itself by the representative assembly, the main point to be considered

is, what kinds of business a numerous body is competent to perform properly.

That alone which it can do well, it ought to take upon itself : with regard to the rest, its proper province is not to do it, but to take means for having

it done properly by others.

For example, the duty which of all others is most universally allowed to be peculiarly the province of an assembly representative of the people, is that of voting the taxes. Nevertheless, in no country whatever does the representative body undertake, by itself or its delegated officers, to prepare the estimates. Though the taxes can only be voted by the House of Commons, & though the sanction of the House is also required to the appropriation of the public revenues to the different items of the public expenditure, it is the maxim & the uniform practice of the constitution that money can be granted only on the proposition of the Crown. It has, no doubt, been felt that moderation as to the amount, & care & judgment in its application can only be expected when the Executive government, through whose hands it is to pass, can be made responsible for the calculations & plans which **decide** on every disbursement. Parliament, accordingly, is not called on, nor **even** permitted, directly to originate either taxation or expenditure. All it is asked for is its consent ; & the only power it possesses is that of refusal.

The principles which are involved & recognized in this constitutional doctrine, if followed as far as they will go, are those which will guide us to the limitation & definition of the functions of

representative assemblies. In the first place, it is universally admitted in countries where the representative

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system is practically understood, that representative bodies ought not to administer. For this there are innumerable reasons, connected not only with

all the most important principles of good government, but with those of the successful conduct of business of any description. No body of men

(except when under command) is fit for action, in the proper sense.

Even a select body, composed

of few members, & **those** specially conversant with the business to be done,

is an inferior instrument to some one individual who could be found

among their **number**. The office which a body of men can perform better

than an individual, is deliberation. Where it is necessary, or important

that variety of opinions should be taken into consideration, &

deliberative body is

indispensable. But administration in all

its departments is better conducted with the advice of several, but

under the responsibility of one. Even a joint stock company has always

in practice if not in theory a managing director : its good or bad

management depends essentially on that one person ; qualifications, &

the remaining directors if they are of any use at all, are so by their

suggestions to him, & by the power they possess of watching over him, &

restraining or removing him in case of misconduct. That they are

ostensibly equal sharers with him in the management is a considerable

⁽²⁾ : it diminishes greatly the sense in his mind & in those of all others, of that individual responsibility in which he should stand forth

personally & undividedly. But it is far worse when a popular

assembly attempts to administer, or to dictate in detail to those who have the charge of the administration. Even when they do it honestly, the effect is prodigiously mischievous. Every branch of public administration is a skilled business which has its own peculiar principles & its own traditional rules, many of them known only to those who have had a hand in carrying on the business, none of them, duly appreciated except by

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i No one but he who thoroughly knows the modes of action which experience has sanctioned, is competent to understand even the cases which require a departure from those modes of action.

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them. **E** The interests of which depend on the acts done by the department, the consequences liable to follow from any particular mode of conducting it, require for weighing & judging of them a kind of knowledge & a specially exercised judgment almost as rarely found in the **outside** would as the capacity to reform the law in those who have not professionally studied it. All these difficulties are sure to be ignored by a representative assembly when it attempts to decide on special acts of administration. At best, it is ignorance sitting in judgment on knowledge inexperience or experience. In general, it is jobbery & self interest **more** unblushing than the worst corruption which can **take** place in a public office under a government of publicity. **The bad**

measures or bad

appointments of a minister may be checked by Parliament ; but quis custodiet ipsos custodes ? A minister, a head of an office, feels himself under some responsibility. An assembly feels no responsibility at all : for when did a member of parliament lose his seat for the **vote** he gave on any detail of administration ? To a minister, or a head of an office, it is of more importance what will be thought of his measures some time hence, than what is thought of them at the present moment ; but an assembly, if the cry of the moment goes with it (even though hastily raised or artificially stirred up) holds itself & is held by everybody to be completely exculpated however disastrous may be the consequences. Besides, an assembly never personally experiences the inconveniences of its bad measures : until they have reached the dimensions of national evils : ministers & administrators see them approaching, & bear all the annoyances & troubles of attempting to ward them off.

The proper duty of a representative assembly in regard to matters of administration, is not to decide them by its own vote, but to take care that the persons who have to decide them shall be fit & proper persons. Even this they cannot advantageously do by actually nominating the individuals. There is no act which more imperatively requires to be performed under strong individual

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quote H. Taylor

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responsibility than the nomination to appointments. There is scarcely any **single** act respecting which the conscience of an average man is less sensitive — scarcely any case in which less consideration is paid to qualifications, partly because men do not know, & partly because they do not care for the difference in qualifications between one man & another. Besides, the qualifications which fit special individuals for special duties can only be known by those who know the individuals, or who make it their business to examine & judge of persons from what they have done, or from the evidence of those who are really in a position to judge. These conscientious obligations are very little regarded even by those who can be made personally responsible for their appointments; but by those who cannot, they are never regarded at all. Unless a man is fit for the gallows, he is thought to be about as fit as other people for almost any thing for which he can offer himself as a candidate. Party connexion or family or **ceteris** jobbery almost exclusively decides on appointments made by a popular body. It has never been thought desirable that Parliament should itself nominate even the individual members of a Cabinet. It is enough that it virtually decides who shall be prime minister, or who shall be the two or three individuals from whom the prime minister must be chosen. In doing this it only recognizes the fact that a certain person is the candidate of the party whose general policy commands a majority. In fact, the Parliament only decides which of two or at most three parties or bodies of men shall furnish the executive government, & the opinion of the party itself decides which of its members is fittest to be placed at the head. According to the present practice of the British Constitution, these things

seem to be on as good a footing as they can be. The Parliament nominates

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no minister, but the Crown appoints the chief in conformity to the general wishes & inclinations manifested by Parliament, & the other ministers on the recommendation of the chief : while every minister has the undivided moral responsibility for appointing proper persons to all the other offices of administration. In a republic, some other arrangement than this would be necessary ; but the more nearly it approached in practice to that which exists in England, the more likely it would be to work well. Either, as in the American Republic, the head of the executive must be elected by some agency entirely independent of the representative body, or the body must content itself with nominating the prime minister, having to ⁽³⁾ the entire responsibility of the choice of his associates as well as of his subordinates. In all these considerations, at least theoretically, I fully anticipate a general assent : though practically the tendency is strong in representative bodies to interfere more & more in the details of administration, merely by the general law that whoever has the ultimate power, is more & more tempted to make an excessive use of it ; & this is one of the greatest practical dangers with which the futurity of representative governments will have to contend.

But a truth not yet equally recognized is that a numerous assembly is as little fitted for the direct work of legislation as for that of administration. There is no intellectual work which stands so much in need of being done not only by experienced & exercised minds

but by minds trained to it **through** long & laborious study, as that

of making laws. This is of itself a reason why they can never be well made but by a Committee of very few persons, or even by some **on** person. Another reason no less conclusive is that every provision of a law requires to be made with the clearest & most far sighted perception of its effect on all the other provisions, & as far as possible,

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so as to fit into a consistent whole with all other existing laws. And it is absolutely impossible that these conditions should be in any degree fulfilled when laws are voted clause by clause in a miscellaneous assembly. The **utter** incongruity of the **very** idea of such a mode of legislating would strike every one, were it not that our laws are already as to form & construction such a mere chaos, that these confusion & contradiction seem incapable, by any addition to their mass, of being made greater than they are. Yet even now the absurdity of the attempt is making itself practically felt every year more & more. The mere time necessarily taken up in going through Bills, renders Parliament more & more incapable of passing any except on detached & narrow points. If a Bill is prepared which even attempts to deal with the whole of any subject (& it is impossible to legislate tolerably on any part without having the whole before the mind), it hangs over from session to session through sheer impossibility of finding time to deal with it. The practice has been to some extent introduced, when the principle of a Bill has been affirmed on the second reading, of referring it for consideration in detail to a Select Committee ; but it is not found that this practice in general causes less time to be lost in afterwards carrying it through the Committee of the whole House ; in fact the practice itself has been adopted principally by the House of Lords

when the individual members are less stirring & intermeddling, & less jealous of the importance of their individual voices, than the members of the elective House. And, after the discussion of details, what can exceed the confusion in which a Bill comes out of Committee ! Clauses omitted which are **essential** to the working of the rest ; new ones inserted to conciliate some private interest or some crotchety[sic. crotchety] member who threatens to delay the bill : provisions foisted in on the motion of some sciolist who has a mere smattering of the subject, which lead to consequences

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such as the member who introduced the bill or those who supported it do not at the moment foresee, & which need an amending Act in the very next session to remedy their consequences : as a general **rule** **the** task of explaining & defending the separate provisions necessarily performed by somebody who did not **frame** them, & who does not know the best arguments by which to defend them & cannot meet unforeseen objections, having only a general acquaintance with the subject.

In regard to legislation as well as administration the task to which a representative assembly is competent, is not that of doing the work, but of causing it to be done ; of determining by whom or by what sort of people it shall be done, & of giving or withholding their sanction to it when performed. In every government fit for a high state of civilization there should be a small body, not exceeding at most the **numbers** of a Cabinet, who should be a Commission of Legislation & **whose** appointed office it should be to make the laws. If the laws of this country are ever revised & put into a connected form, the

Commission of Codification by which this is effected, should remain as a permanent institution to watch over the work protect it from deterioration, & make further improvements when required. No measure of course would become a law until it had been expressly sanctioned by Parliament ; & Parliament, or either House would have the power of sending back a Bill to the Commission for reconsideration & improvement. Either House also might exercise its initiative by remitting a subject of any kind to the Commission with directions to prepare a law. It would of course be necessary that the Commission should not have the power of refusing its instrumentality to a law which the nation desired ; instructions, concurred in by both Houses, to draw up a law which should effect a particular purpose, would be imperative

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on them unless they preferred to resign : Once framed, however Parliament should have no power to alter it, but solely to pass or reject it altogether, or if partially objectionable to remit it to the Commission for reconsideration. The Commissioners should be appointed by the Crown, but should hold their offices for a time certain, say five years, unless removed on an address from the two Houses of Parliament ; which address might be grounded either on personal misconduct, (established in the mode required in the case of judges) or on refusal to draw up a Bill involving the provisions required by Parliament. At the end of five years a member should cease to hold office unless reappointed in order to provide a convenient mode of getting rid of those who had not been found equal to their duties, & of infusing new

& younger blood into the body.

The necessity of some provision corresponding to this was felt even in the Athenian Democracy, when the popular Ecclesia could pass Psephisms or decrees on single matters of policy, but laws so called could only be made or altered by a different & select body elected annually called the Nomothetae. In the English Constitution the difficulty is great of introducing anything new both in name and in substance, unless it can be engrafted on existing forms & traditions. But it appears to me that the means might easily be devised of enriching the Constitution with this great improvement through the machinery of the House of Lords. If it were made a rule that every person appointed a member of this Legislative Commission, unless removed by an address of Parliament, should be a Peer for life. I think it probable that the same good sense & taste which leaves the judicial functions of the House of Lords practically to the exclusive care of the Law Lords

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would leave the business of Legislation, except on questions involving political interests, to the professional legislators ; that bills originating in the Upper House would always be framed by them ; that the Government would always devolve on them the framing of its bills ; & that individual members of the House of Commons, would gradually find it more convenient, & likely to facilitate the passing of their measures through both Houses, if instead of introducing a Bill & carrying it through the House, they obtained leave to introduce it & have it referred to the Legislative Commission. For it would of course be open to the House to refer for

the consideration of that body not a subject merely, but any specific proposition, or even a draft of a Bill on all its details, if any member of the House thought himself capable of preparing such a one as ought to pass, & the House would doubtless refer all such drafts to the Commission if only as materials, & for the useful suggestions they might contain. By such arrangements as these legislation might assume its proper place as an affair of skilled labour & special study & experience, while the most important liberty of the nation, that of being governed only by laws assented to by its elected representatives would be completely preserved, & would become more precious by being detached from the serious but by no means unavoidable drawbacks which now accompany it in the form of ignorant & ill considered legislation.

Instead of the function of governing, for which it is radically unfit, the

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proper office of a representative assembly is to watch & control the government ; to throw the light of publicity on all its acts, to compel a full exposition & justification of all of them which any one considers questionable, to censure them if they are found condemnable, & if the men who compose the government abuse their trust or fulfil it in a manner contrary to the deliberate sense of the nation, to expel them from office & either expressly or virtually appoint their successors. This is surely power enough, & security

enough for the liberty of the nation. In addition to this, the Parliament has an office of even greater importance ; to be at once the nation's Committee of Grievances, & its Congress of Opinions : an arena in which not only the general opinion of the nation, but the opinion of any section of it, & as far as possible of every eminent individual whom it contains can produce itself in full light & challenge discussion : where everybody in the country may count on finding somebody who speaks his mind, as well or better than he could speak it himself -, not to, mere friends & partisans but in the face of opponents, & to be tested by adverse controversy : where even those whose opinion is overruled, have the assurance that it is heard, & that it is set aside for what are thought superior reasons, not by a mere act of will ; where every party or opinion in the state can muster its strength, & be cured of any illusion respecting the number & power of its adherents ; where the opinion which is prevalent in the nation makes itself at once recognised[sic] as such, & marshals its hosts in the face of the government, which is thus enabled & compelled to give way to it on the mere manifestation without the actual exertion of force ; where statesmen can assure themselves what elements of opinion or of power are growing in the nation & what declining, & are thus enabled to shape their measures with some view not solely to present exigencies but to tendencies in progress. Representative assemblies are derided by their enemies as places

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of mere talk, & bavardage. There are few instances of derision more utterly misplaced. I know not how a representative assembly can more usefully employ itself than in talk, when the talk is about the great public interests of the country, & when every sentence of it represents

the opinion either of some important body of persons in the nation, or of an individual in whom some such body have placed their confidence. A place where every interest & opinion in the country can get its cause pleaded, in the face of the government & of all the other interests & opinions, & can compel them to listen, & either comply or explain why they do not, is in itself one of the most important

political institutions which can exist anywhere, & one of the very foremost benefits of a free government. Such "talking" would never be looked upon with disparagement if it were not allowed to stop "doing" ; which it never would do if assemblies knew that talking & discussing is their business, while "doing" is the business not of a miscellaneous body but of individuals specially trained to it, & that their

business was to see that the individuals were honestly & intelligently chosen, & this done, to interfere no further with them except by unlimited latitude of suggestion & criticism. It is for want of this judicious reserve that popular assemblies attempt to do what they cannot do well, namely to govern & legislate, when of course every hour spent in talk is an hour withdrawn from actual business. Their part is to indicate wants, to be an organ for popular demands & a place of adverse discussion for all opinions relating to public affairs, whether large or small ; & along with this, to check by criticism, & eventually by withdrawing their support, those great public

officers who really do carry on the public business, or who appoint those by whom it is

carried on. I venture to predict, that nothing but the restriction of

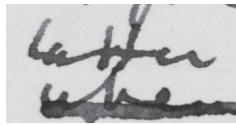
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representative bodies within these rational limits, will enable the benefits of popular control to be enjoyed in conjunction with the no less important requisite of skilled administration & legislation. There are no means of combining these except by separating the functions which ensure the one from those which require the other ; by disjoining the business of control & criticism from the actual conduct of affairs, & devolving one on the representatives of the Many, while securing for the other the acquired knowledge & practiced intelligence of the specially trained & instructed Few.

The preceding discussion of the functions devolving upon the sovereign representative assembly of the nation, should be followed by an enquiry into those which may properly be vested in the minor representative bodies which ought to exist for purposes which regard only localities. And such an enquiry forms an essential part of the present treatise : but many reasons require its postponement until after we have considered the most proper composition of the great representative body destined to control as sovereign the enactment of laws & the administration of the general affairs of the nation.

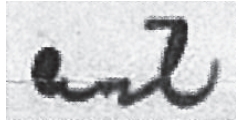
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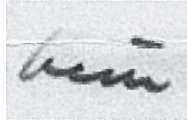
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