Why do we have a Congress? Given our legislature’s recent performance, it’s tempting to just answer “why indeed!” and look for ways of putting the poor thing out of its misery. Such was the suggestion of one @RealDonaldTrump who, in May of 2020, after Congress rejected his offer to help install rapid Covid-19 testing capabilities at the Capitol, tweeted: “Interesting? By Congress not wanting the special 5 minute testing apparatus, they are saying that they are not ‘essential’” — a reference to the pandemic-era distinction between essential and non-essential workers. That’s the pith of it, alright.

But suppose that, to get at the question of what our Congress ought to do for us, we take the question more literally and ask: How is it that we came to have a Congress in the first place? Formally speaking, the answer comes from the first operative sentence of the U.S. Constitution, which declares: “All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” But why did the Constitution’s framers choose this representative structure?

Properly speaking, they did not; their convention was called by a sitting Congress, which was itself the young nation’s third national representative legislature (the First Continental Congress met in 1774, the Second Continental Congress met from 1775 to 1781, and the Confederation Congress met from 1781 to 1789). More to the point, though, by the time the Constitutional Convention convened in 1787, representative assemblies had been a central feature of every American colony’s political history, dating back to the Virginia General Assembly’s establishment in 1619. Representative legislatures, then, are just part of the fabric of American government. Their role is often disputed, and

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sometimes lamented, but their existence is generally treated as an uninteresting brute fact.

But what if we insist on pressing back further and ask how and why parliamentary government arose for our English forebears who bequeathed it to us? After all, representative legislatures were not a feature of ancient democracies—at least not in anything like the form we know today. And there are countries in modern times, most notably China, that make their major decisions of state without running them through national assemblies.

Having a national, geographically representative legislature often feels inevitable, but in historical fact, it is an arrangement that arose in response to particular conditions. Digging into the emergence of England’s parliamentary traditions can teach us how the assemblage of representatives from across a country can forge a sense of national identity in a way the acts of a singular head of state cannot. That lesson, in turn, can help us appreciate that our Congress’s dysfunction does not just make us miss easy policy opportunities or push power into the hands of unchecked presidents and unelected bureaucrats. Without a healthy legislature, our sense of the country as a polity will unravel—and is unraveling already—because the national assembly and the liberal nation-state evolved together. The two are thus dependent on one another for survival.

**The Origins of Parliament**

So just how far back into English history do we have to go? Certainly well past the limits of our European history classes, which cast only the most cursory glances at events before the 16th century.

Some have claimed that Parliament’s origins are located in the misty past of Anglo-Saxon kings, before the Norman Conquest. Back then, the king’s *witan*, or council, provided advice to the monarch. And in fact, one can find corresponding features between that arrangement and later parliamentary government.

But this answer is a stretch. On the one hand, every sovereign, from Genghis Khan to Xi Jinping, has received advice and intelligence from others; doing so is the only way for the sovereign to learn about and respond to developments in the world. Organizing one’s advisors into a council, then, is not an inherently parliamentary move.

On the other hand, Anglo-Saxon leaders didn’t possess anything like sovereignty in the sense we would understand today. There was no
expectation that their noble peers would do anything merely because a leader commanded them to do so, which meant obtaining consent from assembled nobles was a strict necessity. These were not representative assemblies, but (at least in theory) comprehensive ones that incorporated the actual people whose consent was required for the sovereign to govern.

If such councils sometimes resembled our modern lawmaking bodies, their ordinances were much less likely to receive universal respect simply because they bore the stamp of official approval. David Hume, the great philosopher and historian of England, notes that even as late as the reign of Henry II (1154-1189), the fate of laws was intimately bound up with the personal popularity of the king and his nobles:

If the prince was hated or despised; if the nobles who supported him had small influence; if the humors of the times disposed the people to question the justice of his ordinance; the fullest and most authentic assembly had no authority. Thus all was confusion and disorder; no regular idea of a constitution; force and violence decided every thing.

Other institutions of government that matured during the 11th and 12th centuries, including the Exchequer and some courts of justice, emerged not out of any plan for legitimate government of the whole realm, but out of estate-management concerns. In those cases, the king’s considerable authority as a property holder, rather than as sovereign, led to the development of administrative capacity for taxation and dispute resolution.

It was not until the 13th and 14th centuries that Parliament emerged as a major force in English political life. The institution arose slowly — and not out of any principled commitment to representative government, let alone political empowerment of regular people, but because an institutionalized body provided a practical way of adjudicating the periodic clashes between the barons and the king.

Those of us reared on American constitutionalism can’t resist looking for founding moments, and the most promising era for pinpointing one appears to be around the 13th century. Perhaps the most obvious candidate in this regard is the Magna Carta, extracted from King John by his barons in 1215. John had embroiled his country in a protracted
conflict with the pope, called down an interdict on the English people, and then ignominiously subordinated England to the papacy such that the king of England would thenceforth hold the crown as a vassal of Rome. As humiliating as this development was, John’s barons resented being enlisted in his dubious military campaigns in France even more. As Hume put it, the king “had not the art of attaching his barons either by affection or by fear,” and so they eventually conspired against him, captured him, and imposed upon him their terms at Runnymede.

Not surprisingly, then, the Magna Carta was first and foremost a charter of baronial rights, the most important function of which was to limit the king’s ability to impose taxes without the barons’ assent. It put in place a council of 25 barons empowered to oversee the king’s compliance with its terms, essentially without limitation. But the barons also included several provisions meant to benefit all ranks, including unobstructed travel and trade free from arbitrary impositions. Their pursuit of a widely available and fair system of justice redounded naturally to the benefit of all.

Yet after securing his freedom, John appealed to the pope to release him from the charter’s terms. The pope annulled the document, which led to open war between the barons and the king that ended only with John’s untimely death in 1216. The agreement to the Magna Carta itself, then, was not much of a founding moment; the document was repudiated almost as soon as it was signed, and it never produced a functioning regime. But it did provide a template for later reconciliations between the king and the nobility. John’s son, King Henry III, would re-issue it in 1225 in exchange for the barons granting him new taxes. Since that issuance came when Henry was still a minor and therefore could be questioned, he executed the same maneuver when he again ran into trouble with his assembled people in 1253. Throughout Henry’s long reign, plenty of assemblies were called for the purposes of raising funds, but they tended to go badly. As historian Marc Morris puts it, “[t]he king and his people would meet to parlay, only to talk at cross purposes.” The people’s representation thus remained irregular.

Two other conflictual moments in Henry’s reign seemed to indicate the beginnings of something better institutionalized. First, in 1258, a large group of barons came in arms to the king’s council and imposed a new structure upon it. This agreement, known as the Provisions of Oxford, would summon four knights from each county to subsequent
parliaments—a word then understood by the French speakers who dominated English political life to signify discussion among the king’s councilors. But since the barons came to dominate this arrangement, Henry followed his father John’s example and repaired to the pope to nullify this document as soon as he could, in 1261, leading to another open war between the barons and the king.

Another potential founding moment came in the midst of this conflict. In 1265 Simon de Montfort, the king’s brother-in-law, routed the royal forces in the Battle of Lewes and took Henry prisoner. De Montfort was in effective control of government for about a year, during which time he convened a parliament at Westminster that included, in addition to the usual group of barons and senior churchmen, two knights from each county and two burgesses from each of the major towns.

Given this broader membership, it is possible to see de Montfort as having established the first representative parliament in England’s history. In fact, the Parliament of the United Kingdom commemorated the 750th anniversary of de Montfort’s Parliament in 2015. But if de Montfort can lay claim to such a monumental achievement in the history of Western government, why is he such an obscure figure? After all, he had made his name as a great crusader and then as the scourge of the recalcitrant barons in Gascony, and later distinguished himself as a military strategist in besting the king. Although his reign as England’s effective leader would be short-lived (ended by his defeat at the Battle of Evesham in August 1265), it is possible to construe his conquest as a blow for representative government for the English people.

Yet one must work very hard to turn de Montfort into any kind of political visionary. Most assessments of him over the centuries have found little beyond his prowess as a military leader to glorify, and much to lament. Rather than depicting de Montfort as some kind of egalitarian, his limited gestures toward broader representation more accurately demonstrate that the language of representativeness can be used as a means of legitimizing oligarchy. Under de Montfort’s government, it was the barons who would dictate policy. By suppressing the king’s courts, baronial courts were left virtually uncontested, granting the barons free rein in dealing with their unfortunate vassals. Meanwhile, de Montfort and his sons persecuted their enemies and confiscated their lands for themselves. Their claims to be working on behalf of the commonwealth were thus little more than window dressing.
Some of the barons’ reforms survived their failed rebellion, codified in the Statute of Marlborough passed in 1267 after Henry’s restoration. But de Montfort’s violent rule and violent demise make him an unlikely hero for those looking to celebrate the birth of representative government.

UNITY THROUGH PLURALITY

There are no other standout candidates for the founding of Parliament as a stable institution. The assembly convened by de Montfort in 1265, which drew in new representative elements, was clearly irregular, and was soon after denounced as having been traitorous. But the man most responsible for defeating de Montfort’s forces — the future king, Edward I, who was de Montfort’s nephew — would learn much from the example of his uncle.

During his reign from 1272 to 1307, Edward would call parliaments that shared many of the features of de Montfort’s, including representation of the towns. In his writ summoning Parliament in 1295, which drew in representatives as diverse as de Montfort’s convening, he wrote: “What touches all, should be approved of all, and it is also clear that common dangers should be met by measures agreed upon in common.”

It is tempting to think that, in issuing this summons, Edward sought to understand the will of the majority of his subjects. But no such concept had a place in the king’s understanding of his kingdom. As Edward saw it, he was the sovereign, and the men assembled in Parliament were there to aid him in governing wisely, not to decide questions by any process as straightforward as voting. And yet their presence was nevertheless important for securing meaningful and effective consent for his taxes — of which he needed plenty to fund his wars against Wales and Scotland. Since this Parliament could refuse to give its assent, it had the opportunity to air all manner of grievances and effectively enter into negotiations with the king.

Edward promoted a broader-based Parliament because he saw it as a means of taming the barons, whom he viewed as his rivals. The burgesses, whose power came from expanding commerce, made natural allies for a king who offered them what amounted to a rudimentary rule of law and protection from the arbitrary predation of the barons. In turn, since they were the ones with the money, the burgesses could support the monetization of feudal obligations as a way of increasing their own influence. Great reform legislation, like the Statutes of Westminster and the Statute of Quo Warranto of 1290, helped simplify land titles and
the court structure, simultaneously consolidating the king’s power and the merchant class’s position.

Participating in this state-building work was not considered an honor at the time; instead, the obligation to attend Parliament was considered, well, a royal pain in the rear. In an era when travel and long-distance communication were extremely onerous, obeying the king’s summons meant spending costly time away from one’s own affairs. Representation, which allowed just some part of a community to participate in any particular convening, was an innovation that lessened this burden. As the great English historian A. F. Pollard put it, “[t]he boon of representation is not in election to serve, but in the license to stay away; it consists in the immunity obtained through vicarious service of others, and centuries elapse before the service becomes a privilege and the burden an object of envy and a source of pride.”

In *The Evolution of Parliament*, Pollard explained that it is a mistake to imagine the House of Commons beginning with an awareness of itself as a prime mover of the English state. Instead, it arose as the knights and burgesses routinized the functions of countering the king’s requests for funds (which came ever more frequently during the Hundred Years’ War) with petitions for redress of grievances. “[T]he common petition,” Pollard observed, “required common deliberation, common action, and perhaps even a common clerk; the common action became a habit, the habit an institution, and the institution a house.”

This evolution, which made great strides during the 14th century, did not immediately produce a reliable system of government. Parliament became the venue in which power struggles between the crown and magnates played out their final chapters, as with the banishment of Edward II’s court favorite in 1311, the imposition of rule by council in 1316, and the deposition of the unfortunate king in 1327. Near the end of Edward III’s half-century reign, Parliament again was made the means of ousting the king’s closest advisors, effectively changing the government ruling on behalf of the by-then-declining king. Finally, in 1399, Parliament deposed another king, Richard II, after years of maladministration and political turbulence.

In all of these struggles, Parliament was reactive and pliant to the will of the victorious party, rather than capable of asserting itself for the sake of order. As Winston Churchill put it, “Parliament was not the author, or even the powerful agent, in these changes, but only the apprehensive
registrar of these results of martial and baronial struggles…. Parliament was but the tool and seal of any successful party in the State.” This was thus a disordered constitution, prone to chaos quite regardless of the defects of particular kings (which were plentiful on their own).

Looking back on the record of Parliament through this time, Pollard offered a searching analysis of what the institution’s growth had accomplished:

The great service which parliaments rendered in the middle ages was not, in fact, to make England a constitutional state, but to foster its growth into a national state based on something broader and deeper than monarchical centralization, to make national unity a thing of the spirit rather than a territorial expression or a mechanical matter of administration, to evoke a common political consciousness at Westminster and then to propagate it in the constituencies. The value of parliaments consisted not so much in what members brought with them as what they took away.

Representatives performed their duty by participating in and consenting to the proceedings of the whole, and then by propagating that consent back out to the shire or borough or town from which they came. “Representation from the beginning was a fiction” wrote historian Edmund Morgan. “If the representative consented, his constituents had to make believe that they had done so.”

If at the time this was an almost formulaic transaction in which the important thing was the representatives’ legal power to confer the consent of their communities (“plena potestas,” as with the modern power of attorney), as Parliament matured, the substance and weight of its deliberations came to elevate the representative body into an embodiment of the nation and its interests. In the 15th century, representatives were first referred to as “members” of Parliament—a word that before had meant a “limb” (usually, yes, that one) of a body. The membership of Parliament reflected elements from all around the country; but just as importantly, representatives returned to their communities as full members of the central body, thereby forging a sense of centralized identity. Pollard put a rather fine point on it: “[I]t is grotesque to speak of ‘England’ doing anything at all before parliaments appeared, because there was no ‘England’ capable of doing it.”
The body drew its legitimacy from its plurality, but as it flourished, it rendered the nation one. That equation may be nearly as inscrutable as the mystery of the trinity, and its sustainability depends on not pushing too hard on either side of it. As Morgan observed, there is a permanent tension between the idea that, once assembled, the people of the nation are the ones fully embodied as a singular whole and the idea that the body is an assemblage of geographically anchored representatives. If representatives are constrained to merely convey the parochial interests of their districts as messengers or delegates, the body is likely to lose its ability to bind together the whole. But if Parliament leans too heavily on its “national authoritarian” character, as the revolutionary Long Parliament did in the 17th century, it is likely to lose its credibility as an assemblage.

Remarkably, none of this had anything to do with election by majorities of voters. Representative government is a different achievement than democracy, and in our mother country’s history, it was the representative system that played a decisive nation-building role. Representatives coming together and arguing as a single body, without discarding their communities’ interests or distinctive views, forged a national sensibility—something that kings could not manage on their own. This national sensibility would mature even further with the House of Commons coming into its own as a prestigious and powerful body during the reign of the Tudor monarchs—strong evidence that a legitimizing representative assembly is just as likely to complement a powerful central executive as to be its adversary.

This process lacks the tidiness of contractarian theorizing: The nation coalesces out of coping with centuries-long power struggles and wars, rather than being called into being as a conscious answer to some collective need for security. Because this evolution fails to conform to our modern ideas about the basis of government, and because it happened so long ago, it is simply left out of most of our educations altogether.

BINDING A NATION TOGETHER

Of course, one may wonder whether this story has anything to do with America. Our nation’s founding fathers obsessed over the history of the Roman republic and the struggles between Parliament and the Stuart kings in the 17th century, but they do not seem to have dwelt on the emergence of representative government. Nevertheless, when they
formulated their grievances in the 1760s and 1770s, the impairment of their representation was their paramount concern.

Over the course of the 18th century, colonial assemblies—the element of government most closely tied to the people—had emerged as the dominant political force. They came to be seen as genuinely representative of colonists’ full range of interests, while royal governors and councils were suspected of working on behalf of alien and oppressive elements. As the historian J. R. Pole noted, when the Massachusetts Assembly erected a visitors’ gallery in the 1760s, it was emblematic of the two-way relationship that had emerged between elected representatives and their constituents in America:

By exposing its debates to the public, the Assembly offered itself to the people as an agent of public opinion far more direct and immediate than could have normally been the case before. But its action also proceeded in the reverse direction—towards the public. The publicity of debates excited interest and accentuated the sense of crisis. The members, while framing their bold policies of resistance, challenged the people to support them.

In his 1774 pamphlet “Considerations on the Nature and Extent of the Legislative Authority of the British Parliament,” James Wilson argued that the single most important protection of liberty in the British Constitution was the presence of representatives drawn from the body of the people: “The interest of the Representatives is the same with that of their constituents. Every measure, that is prejudicial to the nation, must be prejudicial to them, and their posterity. They cannot betray their electors, without, at the same time, injuring themselves.” The absence of American representatives in the Commons, and the fact that members of Parliament were not themselves subject to the laws made for the American colonies, deprived Americans of this crucial protection. And since the people’s happiness was considered the proper end of liberty, if Parliament was constructed without due regard for respecting Americans’ liberties and interests, it must be utterly without legitimate authority over them.

When Americans finally declared their independence, they pointedly declined to refer to Parliament at all. But again, their objections to “a long train of abuses and usurpations” revolved as much around
their insufficient protection through representation as around their objections to particular policies. After all, they charged that the pattern of British actions “evinces a design to reduce them under absolute Despotism,” which should have been impossible if their concerns were really represented.

Forrest McDonald’s classic history of the 1780s, *E Pluribus Unum*, explains that as Americans went to war, the colonies became the United States by virtue of their cooperation in arms, their accumulation of a national debt to pay for the war, and their common representation in the Congress. But it is too easy, in hindsight, to imagine that the survival of national government was inevitable, when in fact it was a remarkably close call.

After the Peace of Paris in 1783 brought martial cooperation among the states to a close, the would-be nation’s inability to service its debts, including those owed to the soldiers who had won the war, threatened to bring on disunion. The Congress in Philadelphia under the Articles of Confederation briefly flourished as a source of ingenious solutions to this debt crisis, but it ultimately failed to bring any of them to fruition. Its failure was hardly surprising, given its lack of implementation authority and its inability to enhance its powers without the unanimous approval of the 13 states. Whereas the medieval English Parliament may not have possessed sovereign power of its own, it had been closely tied to the king's exercise of sovereign power. In America in the 1780s, it was unclear if there was any national sovereign power to speak of.

When Congress failed to find a way to pay soldiers’ overdue wages, its members were more or less chased out of Philadelphia in June 1783. The disunited condition of the states was symbolized by the frequent inability to produce a quorum in Congress as it met in Princeton, Annapolis, and Trenton from late 1783 until January 1785. Congress at the time was more a gathering of ambassadors from mutually suspicious allies than a representative, deliberative body, and the United States looked likely to become an unrealized vision rather than a fully functioning nation. Shays’s Rebellion in August 1786 portended dissolution.

At this point, 12 of the 13 states decided to send delegates to the Constitutional Convention in Philadelphia. They hoped to create a genuinely sovereign national government, but could not do so without working out what the operative representative principle would be. The Constitution devised a necessarily complicated answer, adopting
representation by population in the lower house and equal representation for states in the upper house to bridge the divide between large and small states. Just as importantly, it divided “the people into various aspects or capacities of themselves,” as McDonald put it. The representative government they devised was “of (that is, from) the people; hopefully, it would be for the people; but by no means would it be by the people.” Again, representative government, rather than democratic government, was to be the binding force.

After the Constitution’s ratification, the new Congress, which began its work in the temporary capital city of New York on March 4, 1789, initially suffered from the familiar lack of a quorum, and some worried that it was too late to save the fledgling nation. But by April, once members from across the country had overcome the harsh winter and pitiful roads, quorums became reliable. More to the point, once endowed with real power, this group of men proved able to hash out compromises on a remarkable number of issues, both prosaic and explosive.

As Fergus Bordewich describes in The First Congress, members instituted a tariff and created a system of customs collectors and port officials to enforce it, thereby creating an all-important source of revenue for the national government that the Congress of the Articles of Confederation never managed. They structured the executive departments and federal courts, and established the first federal crimes and copyright laws. Although their most famous work was the Bill of Rights, for many legislators, the “amendment problem” was viewed as a distraction. As Representative John Vining of Delaware put it, “[t]he people are waiting with anxiety for the operation of the Government. Have they passed a revenue law? Is not the daily revenue escaping us? Let us not perplex ourselves by introducing one weighty and important question after another, till some decisions are made.” It was by addressing concrete concerns that the representatives could best bind the new nation together.

A FORUM FOR DELIBERATION

In our own time, we are beset by worries of national dissolution. And while many such worries are more clickbait than serious analyses, it is hard to deny we are experiencing a weakening of forces that have heretofore held us together. Our religious and cultural foundations have fractured; our civic identity is fiercely disputed; our great achievements, such as victory in World War II and the moon landing, are too far back
in our history to unite us. We are a house divided. Given this picture of the citizenry as a whole, it seems only logical that our Congress should also be bitterly divided. As a representative body, could it be otherwise?

But we should also consider how much causation may run in the other direction. In other words, it is precisely because we no longer have vital deliberation in our representative bodies that our citizens have become so ready to forsake each other, fantasizing about secession or civil war rather than believing Americans who are sharply divided in their beliefs and interests can nevertheless work through the nation’s problems together.

The point should not be exaggerated. If Pollard could assert that there was little to make England England before Parliament, there are surely quite a few institutions today that make America America, even in the presence of a malfunctioning Congress. And of course, Congress is not completely feckless or marginalized, even if it sometimes feels like the institution is determined to bring itself to that point.

Still, when Congress fails to act as a body whose members successfully bring forth their constituents’ grievances and devise ways of constructively addressing them, it undercuts the idea that we can be a single, self-governing people. For all the happy talk around “diversity” in our time, our society has come to fear letting people with great differences confront each other directly, warts and all.

Congress ought to be the place where bringing diverse elements together yields previously unconsidered compromises and institutional arrangements that allow us to work through our shared problems. When it instead conspicuously fails at this, when it becomes merely a forum in which people lob insults at each other, its failure seems to justify those who see politics as a zero-sum struggle for control of the commanding heights, today embodied by the administrative state and the federal judiciary. These bodies open themselves to various sorts of inputs, but representativeness is not their priority; it is inevitable that many people who attempt to have their voices heard in these fora will come away feeling ignored. That leaves Americans to think of their government as a collection of powerful magnates whose favor must be assiduously curried and whose wrath must be appeased, rather than as the emanation of a self-governing people. Once that shift in thinking takes hold, it makes perfect sense to turn away from persuasion and toward palace intrigue.
Those who despair of a vital Congress often shift their hopes for representation onto the president. Echoing our most theoretically accomplished holder of the office, Woodrow Wilson, they emphasize the president’s unique claim of having been elected by the whole people, and argue that mere coalitions of parts have no right to frustrate the will embodied by the chief executive.

There is no denying the rhetorical potency of this position, even if its plebiscitary vision of government is largely foreign to our constitutional system. But it relies on an implausible, almost mystical sense of national will that bears little relation to the complex realities of our extended republic. It assumes that our national will is out there, waiting to be expressed by one avatar, rather than requiring constant provisional assembly by members in congress with each other.

The path back to flourishing representative government is fraught, and its discussion beyond the scope of this reflection. The point here is to realize what we are missing when our legislature resigns itself to acting as the registrar of deals worked out by powers operating elsewhere. If we hope to perform the feat of bringing forth one nation from the many elements that comprise it, the deliberations of a functioning representative legislature ought to be one of our greatest assets. If we do not remind ourselves why we have a representative government, we may not have the sense to keep it.