

WHITHER DEMOCRACY?

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I

The concept of democracy has one meaning — I believe the true and original meaning — for which I hold it a high value well worth fighting for. Democracy has not proved to be a certain protection against tyranny and oppression, as once it was hoped. Nevertheless, as a convention which enables any majority to rid itself of a government it does not like, democracy is of inestimable value.

For this reason I am more and more disquieted by the growing loss of faith in democracy among thinking people. This can no longer be overlooked. It is becoming serious just as — and perhaps partly because — the magic word democracy has become so all-powerful that all the inherited limitations on governmental power are breaking down before it. Sometimes it seems as if the sum of demands which are now everywhere advanced in the name of democracy have so alarmed even just and reasonable people that a serious reaction against democracy, as such, is a real danger. Yet it is not the basic conception of democracy, but additional connotations which have in the course of time been added to the original meaning of a partic-

ular kind of decision-making procedure, which now endanger the belief in a democracy so enlarged in content. What is happening is indeed precisely that which some had apprehended concerning democracy in the nineteenth century. A wholesome method of arriving at widely acceptable political decisions has become the pretext for enforcing substantially egalitarian aims.

The advent of democracy in the last century brought a decisive change in the range of governmental powers. For centuries efforts had been directed towards limiting the powers of government; and the gradual development of constitutions served no other purpose than this. Suddenly it was believed that the control of government by elected representatives of the majority made any other checks on the powers of government unnecessary, so that all the various constitutional safeguards which had been developed in the course of time could be dispensed with.

Thus arose unlimited democracy — and it is unlimited democracy, not just democracy, which is the problem of today. All democracy that we know today in the West is more or less unlimited democracy. It is important to remember that, if the peculiar institutions of the unlimited democracy we have today should ultimately prove a failure, this need not mean that democracy itself was a mistake, but only that we tried it in the wrong way. While personally I believe that democratic decision on all issues on which there is general agreement that some government action is necessary is an indispensable method of peaceful change, I also feel that a form of government in which any temporary majority can decide that any matter it likes should be regarded as 'common affairs' subject to its control is an abomination.

II

The greatest and most important limitation upon the powers of democracy, which was swept away by the rise of an omnipotent representative assembly, was the principle of the 'separation of powers'. We shall see that the root of the trouble is that so-called 'legislatures', which the early theorists of representative government (and particularly John Locke) conceived to be limited to making laws in a very specific narrow sense of that word, have become omnipotent governmental bodies. The old ideal of the 'Rule of Law', or of 'Government under the Law', has thereby been destroyed. The 'sovereign' Parliament can do whatever the representatives of the majority find expedient to do in order to retain majority support.

But to call 'law' everything that the elected representatives of the majority resolve, and to describe as 'Government under the Law' all the directives issued by them — however discriminating in favour of, or to the detriment of, some groups of individuals — is a very bad joke. It is in truth lawless government. It is a mere play on words to maintain that, so long as a majority approves of acts of government, the rule of law is preserved. The rule of law was regarded as a safeguard of individual freedom, because it meant that coercion was permissible only to enforce obedience to general rules of individual conduct equally applicable to all, in an unknown number of future instances. Arbitrary oppression — that is coercion undefined by any rule by the representatives of the majority — is no better than arbitrary action by any other ruler. Whether it requires that some hated person should be boiled and quartered, or that his property should be taken from him, comes in this respect to the same thing. Although there is good reason for preferring limited democratic government to a non-democratic one, I must confess to preferring non-democratic government under the law to unlimited (and therefore essentially lawless) democratic government. Government under the law seems to me to be the higher value, which it was once hoped that democratic watch-dogs would preserve.

I believe indeed that the suggestion of a reform, to which my critique of the present institutions of democracy will lead, would result in a truer realisation of the common *opinion* of the majority of the citizens than the present arrangements for the gratification of the *will* of the separate interest groups which add up to a majority.

It is not suggested that the democratic claim of the elected representatives of the people to have a decisive word in the direction of government is any less strong than their claim to determine what the law shall be. The great tragedy of the historical development is that these two distinct powers were placed in the hands of one and the same assembly, and that government consequently ceased to be subject to law. The triumphant claim of the British Parliament to have become sovereign, and so able to govern subject to no law, may prove to have been the death-knell of both individual freedom and democracy.

III

This development may have been historically unavoidable. Certainly, it is not logically cogent. It is not difficult to imagine how

development could have taken place along different lines in the eighteenth century: the House of Commons succeeding to the exclusive power over the public purse, in effect it had been in a position to concede this only on condition of development of the law (that is, the private and criminal law) — a development not unnatural with the House the highest court of law — such a division between a legislative assembly might have been achieved and government by law preserved. Politically, however, it is not possible to confer such legislative power on the representative privileged class.

Prevailing forms of democracy, in which the representative assembly at one and the same time makes the law, governs, and exercises the executive, owe their authority to a delusion. This delusion is that such a democratic government will carry out the *will* of the people. It may be true of democratically elected legislatures that they are the strict sense of makers of law, in the original sense of the word, but it is not true of elected assemblies whose power is, as it may be true of elected assemblies whose power is, to lay down universal rules of just conduct, designed to regulate each other the domains of control over individuals, a power which can only be applied to an unknown number of future instances. A government which governs individual conduct, which prevents conflict, may find themselves in at either end, a community in which a predominant *opinion*, and agreement is likely to be reached, and a representative assembly of a majority. An assembly with such a task is therefore likely to reflect the *opinion* of the community, and, being concerned only with general rules, has it is likely to reflect the *will* of particular interests on specific matters.

But the giving of laws in this classic sense of the word is not part of the tasks of the assemblies which we still call parliaments. Their main concern is government. For 'lawyers' law, as an observer of the British Parliament wrote more than a century ago, 'parliament has neither time nor taste'. So many activities, character and procedures of representative assemblies everywhere determined by their governmental tasks, 'legislature' no longer derives from their making law, but has rather been reversed. We now call practically all of these assemblies laws, solely because they derive their authority to a general rule of just conduct, to the enforcement of

coercive powers of government were supposed to be limited in a free society.

IV

But as every resolution of this sovereign governmental authority has 'the force of law', its governmental actions are also not limited by law. Nor can they, and this is even more serious, still claim to be authorised by the opinion of a majority of the people. In fact, grounds for supporting members of an omnipotent majority are wholly different from those for supporting a majority on which the actions of a true legislature rest. Voting for a limited legislator is choosing between alternative ways of securing an overall order resulting from the decisions of free individuals. Voting for a member of a body with power to confer special benefits, without being itself bound by general rules, is something entirely different. In such a democratically elected assembly with unlimited power to confer special benefits and impose special burdens on particular groups, a majority can be formed only by buying the support of numerous special interests, through granting them such benefits at the expense of a minority.

It is easy to threaten to withhold support even of general laws one approves of unless one's votes are paid for by special concessions to one's group. In an omnipotent assembly, decisions therefore rest on a sanctioned process of blackmail and corruption. This has long been a recognised part of the system, from which even the best cannot escape.

Such decisions on favours for particular groups have little to do with any agreement by the majority about the substance of governmental action, since in most respects the members of the majority will know little more than that they have conferred on some agency ill-defined powers to achieve some ill-defined objective. With regard to most measures, the majority of voters will have no reason to be for or against them, except that they know that in return for supporting those who advocate them, they are promised the satisfaction of some wishes of their own. It is the result of this bargaining process which is dignified as the 'will of the majority'.

What we call 'legislatures' are in fact bodies continually deciding on particular measures, and are authorising coercion for their execution, on which no genuine agreement among a majority exists, but for which the support of a majority has been obtained by *deals*.

In an omnipotent assembly which is concerned mainly with particulars and not with principles, majorities are therefore not based on agreement of opinions, but are formed by aggregations of special interests mutually assisting each other.

The apparently paradoxical fact is that a nominally all-powerful assembly — whose authority is not limited to, or rests on its committing itself to, general rules — is necessarily exceedingly weak and wholly dependent on the support of those splinter groups which are bound to hold out for gifts which are at the government's command. The picture of the majority of such an assembly united by common moral convictions evaluating the merits of the claims of particular groups is of course a fantasy. It is a majority only because it has pledged itself not to a principle but to satisfying particular claims. The sovereign assembly is anything but sovereign in the use of its unlimited powers. It is rather quaint that the fact that 'all modern democracies' have found this or that necessary is sometimes quoted as proof of the desirability or equity of some measure. Most members of the majority often knew that a measure was stupid and unfair, but they had to consent to it, in order to remain members of a majority.

V

An unlimited legislature which is not prevented by convention or constitutional provisions from decreeing aimed and discriminatory measures of coercion, such as tariffs or taxes or subsidies, cannot avoid acting in such an unprincipled manner. Although attempts are inevitably made to disguise this purchase of support as beneficial assistance to the deserving, the moral pretence can hardly be taken seriously. Agreement of a majority on how to distribute the spoils it can extort from a dissenting minority can hardly claim any moral sanction for its proceedings — even if it invokes the figment of 'social justice' to defend it. What happens is that *political necessity created by the existing institutional set-up produces non-viable or even destructive moral beliefs*.

Agreement by the majority on sharing the booty gained by overwhelming a minority of fellow citizens, or deciding how much is to be taken from them, is not democracy. At least it is not that ideal of democracy which has any moral justification. Democracy itself is not egalitarianism. But unlimited democracy is bound to become egalitarian.

With regard to the fundamental immorality of all egalitarianism I will here point only to the fact that all our morals rest on the different esteem in which we hold people according to the manner in which they conduct themselves. While equality before the law — the treatment of all by government according to the same rules — appears to me to be an essential condition of individual freedom, that different treatment which is necessary in order to place people who are individually very different into the same material position seems to me not only incompatible with personal freedom, but highly immoral. But this is the kind of immorality towards which unlimited democracy is moving.

To repeat, it is not democracy but unlimited democracy which I regard as no better than any other unlimited government. The fatal error which gave the elected representative assembly unlimited powers is the superstition that a supreme authority must in its very nature be unlimited, because any limitation would presuppose another will above it, in which case it would not be a supreme power. But this is a misunderstanding deriving from the totalitarian-positivist conceptions of Francis Bacon and Thomas Hobbes, or the constructivism of Cartesian Rationalism, which fortunately in the Anglo-Saxon world was at least for a long time held back by the deeper understanding of Sir Edward Coke, Matthew Hale, John Locke and the Old Whigs.

In this respect the ancients were indeed often wiser than modern constructivistic thinking. A highest power need not be an unlimited power but may owe its authority to its commitment to general rules approved by public opinion. The judge-king of early times was not selected in order that whatever he said was to be right, but because, and so long as, what he pronounced was generally felt to be right. He was not the source but merely the interpreter of a law which rested on a diffused opinion, but which could lead to action only if articulated by the approved authority. And if the supreme authority alone could order action, it extended only so far as it had the support of the general assent to the principles on which it acted. The only and highest authority entitled to take decisions on common action might well be a limited authority — limited to decisions by which it committed itself to a general rule of which public opinion approved.

The secret of decent government is precisely that the supreme power must be limited power — a power that can lay down rules limiting all other power — and which thus can restrain but not command the private citizen. All other authority rests thus on its

commitment to rules which its subjects recognise: what makes a community is the common recognition of the same rules.

Thus the elected supreme body need not have any other power than that of making laws in the classical sense of general rules guiding individual conduct. Nor need there be any power of coercing private citizens other than that of enforcing obedience to the rules of conduct thus laid down. Other branches of government, including an elected governmental assembly, should be bound and limited by the laws of the assembly confined to true legislation. These are the requirements that would secure genuine government under the law.

VI

Solution of the problem, as I have already suggested, seems to be to divide the truly legislative from the governmental tasks between distinct legislative and governmental assemblies. Naturally, little would be gained by merely having two such assemblies of essentially the present character, and merely charged with different tasks. Not only would two assemblies of essentially the same composition inevitably act in collusion, and thereby produce much the same sort of results as the existing assemblies. The character, procedures and composition of these have also been determined so completely by their predominant governmental tasks as to make them little suited for legislation proper.

Nothing is more illuminating in this respect than that the eighteenth-century theorists of representative government almost unanimously condemned an organisation of what they conceived as the legislature on party lines. They usually spoke of 'factions'. But their predominant concern with governmental matters made their organisation on party lines universally necessary. A government, to perform its tasks successfully, needs the support of an organised majority committed to a programme of action. And to give the people an option, there must be a similarly organised opposition capable of forming an alternative government.

For their strictly governmental functions, existing 'legislatures' appear to have become fairly well adapted and might well be allowed to continue in their present form, if their power over the private citizen were limited by a law laid down by another democratic assembly, which the former could not alter. It would, in effect, administer the material and personal resources placed at the dis-

posal of government to enable it to render various services to the citizens at large. It might also determine the aggregate amount of revenue to be raised from the citizens each year to finance those services. But the determination of the share each citizen would be compelled to contribute to this total would have to be made by a true law; that is, the sort of obligatory and uniform rule of individual conduct which only the legislative assembly could lay down. It is difficult to conceive of a more salutary control of expenditure than such a system in which every member of the governmental assembly would know that to every expenditure he supported he and his constituents would have to contribute at a rate he could not alter!

The critical issue then becomes the composition of the legislative assembly. How can we at the same time make it truly representative of general opinion about what is right, and yet make it immune from any pressure of special interests? The legislative assembly constitutionally would be limited to passing general laws, so that any specific or discriminating order it issued would be invalid. It would owe its authority to its commitment to general rules. The constitution would define the properties such a rule must possess to be valid law, such as applicability to an unknown number of future instances, uniformity, generality, and so on. A constitutional court would gradually have to elaborate that definition as well as decide any conflict of competence between the two assemblies.

But this limitation to passing genuine laws would hardly suffice to prevent collusion of the legislative with a similarly composed governmental assembly, for which it would be likely to provide the laws which that assembly needed for its particular purposes, with results little different from those of the present system. What we want in the legislative assembly is clearly a body representing general opinion, and not particular interests; and it should therefore be composed of individuals who, once entrusted with this task, are independent from the support of any particular group. It should also consist of men and women who could take a long-term view, and would not be swayed by the temporary passions and fashions of a fickle multitude which they had to please.

VII

This would seem to require, in the first instance, independence of parties, and this could be secured by the second, independently necessary condition — namely, not being influenced by the desire for

re-election. I imagine for this reason a body of men and women who, after having gained reputation and trust in the ordinary pursuits of life, were elected for a single long period of something like 15 years. To assure that they had gained sufficient experience and respect, and that they did not have to be concerned about securing a livelihood for the period after the end of their tenure, I would fix the age of election comparatively high, say at 45 years, and assure them for another 10 years after expiry of their mandate at 60 of some dignified posts as lay-judges or the like. The average age of the member of such an assembly would, at less than 53 years, still be lower than that of most comparable assemblies today.

The assembly would of course not be elected as a whole at one date, but every year those who had served their 15 years' period would be replaced by 45-year-olds. I would favour these annual elections of one-fifteenth of the membership to be made by their contemporaries, so that every citizen would vote only once in his life, in his forty-fifth year, for one of his contemporaries to become a legislator. This seems to me desirable not only because of old experience in military and similar organisations that contemporaries are usually the best judges of a man's character and abilities, but also because it would probably become the occasion of the growth of such institutions as local age clubs which would make elections on the basis of personal knowledge possible.

Since there would be no parties, there would of course be no nonsense about proportional representation. Contemporaries of a region would confer the distinction as a sort of prize for the most admired member of the class. There are many other fascinating questions which an arrangement of this sort raises, such as whether for this purpose some sort of indirect election might not be preferable (with the local clubs vying for the honour of one of their delegates being elected representative), but which it would not be appropriate to consider in an exposition of the general principle.

VIII

I do not think experienced politicians will find my description of the procedure in our present legislatures very wrong, though they will probably regard as inevitable and beneficial what to me seems avoidable and harmful. But they ought not to be offended by hearing it described as institutionalised blackmail and corruption, because it is

we who maintain institutions which make it necessary for them thus to act if they are to be able to do any good.

To a certain extent the bargaining I have described is probably in fact inevitable in democratic *government*.

What I object to is that the prevailing institutions carry this into that supreme body which ought to make the rules of the game and restrain government. The misfortune is not that those kinds of things happen — in local administration they can probably not be avoided — but that they happen in that supreme body that has to make our laws, which are supposed to protect us against oppression and arbitrariness.

One further important and very desirable effect of separating the legislative from the governmental power would be that it would eliminate the chief cause of the accelerating centralisation and concentration of power. This is today the result of the fact that, as a consequence of the fusion of the legislative and the governmental power in the same assembly, it possesses powers which in a free society no authority should possess. Of course, more and more governmental tasks are pushed up to that body which can meet particular demands by making special laws for the purpose. If the powers of the central government were no greater than those of the regional or local governments, only those matters where a uniform national regulation would seem advantageous to all would be handled by the central government, and much that is now so handled would be devolved to lower units.

Once it is generally recognised that government under the law and unlimited powers of the representatives of the majority are irreconcilable, and all government is equally placed under the law, little more than external relations need to be entrusted to central *government* — as distinct from legislation — and the regional and local governments, limited by the same uniform laws with regard to the manner in which they could make their individual inhabitants contribute to their revenue, would develop into business-like corporations competing with each other for citizens who could vote with their feet for that corporation which offered them the highest benefits compared with the price charged.

In this manner we may still be able to preserve democracy and at the same time stop the drift towards what has been called 'totalitarian democracy', which to many people already appears irresistible.