

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 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.

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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. When in the eighteenth century the House of Commons successfully claimed exclusive power over the public purse, in effect it thereby gained exclusive control of government. If at this time the House of Lords had been in a position to concede this only on condition that the development of *the law* (that is, the private and criminal law which limits the powers of all government) should be exclusively its concern — a development not unnatural with the House of Lords being the highest court of law — such a division between a governmental and a legislative assembly might have been achieved and a restraint of government by law preserved. Politically, however, it was impossible to confer such legislative power on the representatives of a privileged class.

Prevailing forms of democracy, in which the sovereign representative assembly at one and the same time makes law and directs government, owe their authority to a delusion. This is the pious belief that such a democratic government will carry out the will of the people. It may be true of democratically elected legislatures in the strict sense of makers of law, in the original sense of the term. That is, it may be true of elected assemblies whose power is limited to laying down universal rules of just conduct, designed to delimit against each other the domains of control over individuals, and intended to apply to an unknown number of future instances. About such rules governing individual conduct, which prevent conflicts most people may find themselves in at either end, a community is likely to form a predominant *opinion*, and agreement is likely to exist among the representatives of a majority. An assembly with such a definite limited task is therefore likely to reflect the *opinion* of the majority — and, being concerned only with general rules, has little occasion to reflect the *will* of particular interests on specific matters.

But the giving of *laws* in this classic sense of the word is the least part of the tasks of the assemblies which we still call 'legislatures'. Their main concern is government. For 'lawyers' law', as an acute observer of the British Parliament wrote more than seventy years ago, 'parliament has neither time nor taste'. So much indeed are activities, character and procedures of representative assemblies everywhere determined by their governmental tasks that their name 'legislature' no longer derives from their making laws. The relation has rather been reversed. We now call practically every resolution of these assemblies laws, solely because they derive from a legislature — however little they may have that character of a commitment to a general rule of just conduct, to the enforcement of which the