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Elective dictatorship: a false charge by Lord Hailsham

As an ex-official may I comment on Lord Hailsham's constitutional theories? It is 23 years since I first sat in those official boxes which give such a good view of what goes on in our two Houses of Parliament. Little of what Lord Hailsham says squares with my own experience. He brands our system of government an 'elective dictatorship'. This amounts to saying no more than that we are ruled by representatives chosen by the majority of the electors in a majority of constituencies. Lord Hailsham desires no other mode of election. But then he proposes two chambers *each elected on a different basis*. This is a sure recipe for deadlock. Both could assert a mandate from the people and there would be no way of deciding which had an overriding claim. The difficulties would become insurmountable when, as would inevitably happen, there was a different party in power in each House.

Lord Hailsham claims that the Opposition is gradually being reduced to impotence. Did he say so when it was the Labour Party who were in opposition? 'At the centre of the web sits the Prime Minister.' Did he take such an arachnoid view of that office when he desired it for himself? He objects to the huge scale and range of modern government, but Tory governments pass nearly as many Acts as Labour. He says that the absence of legal limitation on the powers of Parliament has become 'quite unacceptable' but cites no instances of abuse.

The remedy of those who attack the power of Parliament is to give some of it away to the courts, citing the example of the United States. There, however, judges are elected or appointed on political grounds. The position over censorship of films shows what can happen. In 1965 the Supreme Court ruled precensorship unconstitutional as violating the First Amendment. In 1973 this was reversed by less liberal Nixon appointees. Our law is complex enough without importing such uncertainties as that.

Over many years as an official I have seen how sensitively the Commons responds to public opinion. Each member has been elected by a majority of his constituents. His postbag, weekly surgery and constituency contacts leaves him in no doubt what they think. Ministers are also constituency members, and crucial issues have to carry their backbenchers with them. What constituency does an appointed judge have? Who is to keep him in touch with the democratic grassroots? Who is to remove him from office when his judgments fail to accord with the popular will? Our judges have a vital function in interpreting and applying the law. We would endanger that function by thrusting political decisions upon them.¹

¹ *The Times*, 21 October 1976. See further Letter 13 below.