Lords Reform: A History to 1937: Proposals Deferred olume I Book One The Origins to 1911 Peter Ra

Bibliographic information published by Die Deutsche Nationalbibliothek Die Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data is available on the Internet at http://dnb.d-nb.de.

A catalogue record for this book is available from the British Library.

Library of Congress Cataloging-in-Publication Data:

Raina, Peter K., 1935House of Lords reform: a history / Peter Raina.
v. cm.
Includes bibliographical references and index.
Contents: v. 1. The origins to 1937: proposals deferred -ISBN 978-3-0343-0749-9 (alk. paper)
1. Great Britain. Parliament. House of Lords--Reform. 2. Legislative
bodies--Great Britain--Reform. I. Title.
JN621.R35 2011
328.41'071--dc23

2011024591

ISBN 978-3-0343-0749-9

© Peter Lang AG, International Academic Publishers, Bern 2011 Hochfeldstrasse 32, CH-3012 Bern, Switzerland info@peterlang.com, www.peterlang.com, www.peterlang.net

All rights reserved.

All parts of this publication are protected by copyright.

Any utilisation outside the strict limits of the copyright law, without the permission of the publisher, is forbidden and liable to prosecution. This applies in particular to reproductions, translations, microfilming, and storage and processing in electronic retrieval systems.

Printed in Germany

House of Lords Reform: A History



Preface

To many, the British House of Lords may seem a strange and antiquated institution. It is an integral part of the British constitution, a second chamber or 'Upper House' working hand in hand with the monarch and the far more visible House of Commons. It originated in medieval times. Over the past two centuries many clever minds have tried to find a way of bringing the House of Lords up to date. Individual members of the House of Lords and of the House of Commons, select committees and cabinets have all searched for some means of reform and, at various times, there has been considerable public interest in the issue. Approaches to this long, laborious and complicated problem are the subject of the present study. We present a comprehensive coverage of the many measures and plans that have been put forward over the years. Though many of these have been seriously conceived, with good attention to detail, there have always been groups who resisted them or found them inadequate. For this reason an effective settlement has never been reached and the problem has been deferred from one session of parliament to another.

The creation of an Establishment

We begin with a brief chapter on the origins of the House of Lords. Although these origins are fairly well known, we restate them because a clear understanding of the roots of the English (later, British) constitutional arrangement will help readers appreciate attitudes their lordships came to adopt towards change.

The constitutional arrangement is complex and this complexity begins with the foundation of the King's Court or Council, the *Curia Regis* of Norman times. This council gathered together the principal persons of

xii Preface

the realm, lay and ecclesiastical – the men who later came to be called the lords temporal and spiritual and who, as such, claimed an absolute right to serve the king and defend the country. The lords temporal were particularly insistent on this right: they asserted that it was hereditary and the king recognized this claim. In time, the King's Council developed into the *magnum concilium*, the 'council of magnates' which eventually became the House of Lords.

At the beginning of the thirteenth century, the crown began to summon representatives from the English boroughs and shires (usually knights), gathering them in a national assembly. This was so the king could hear the views of the *communitas*, the community of the realm, in order to bolster the implementation of just rule. This loose group eventually became the House of Commons. If, earlier, the crown and the King's Council made the decisions on state policies, by this arrangement unanimous consent was needed between the crown, the prelates and earls, and also the community. Here then we have the three 'estates of the realm' – Crown, House of Lords and House of Commons. It was not possible to reform or change any one of these estates without the mutual agreement of all three. Only Cromwell's revolution – lasting a mere eleven years – disrupted this state of affairs.

In the course of its history, the House of Commons has successfully managed to carry out several important reforms – notably extensions of the electorate and adjustments to the return of constituency representatives. Standing for established interests, the lords, in their House, have consistently tried to block or defy such action, feeling it a threat to their landed estates and to their dominance in the counties and boroughs. In the face of this defiance, reforming governments have not been in a position to abolish the House of Lords – something they could only do if the crown and the lords themselves consented – but have had one single, constitutionally acceptable tactic in their armoury: they could warn the Lords that they would ask the crown to exercise its prerogative of creating peers and would ask for sufficient new peers to be made with political leanings that would ensure the passage through their Lordships' House of legislation initiated in the Commons.

In essence, the lords have shown little inclination to reform their House. Their hereditary privileges go back to those of the medieval King's Preface xiii

Council and ever since they have been unwilling to acquiesce in the loss of any of these privileges. Their aim, in the words of the historian A.S. Turberville, has been 'not innovation but preservation'.

However, there have been some significant exceptions to this rule. To recount these and make them known is the chief purpose of the present study.

Attempts at reform before the twentieth century

Reviewing attempts to change the status quo, we start with the 'proxy reform'. The scheme of proxy was connected with the privilege of making 'proxies', whereby a lord of parliament, when hindered from attendance in the House 'upon evident and manifest necessity', could appoint a proxy to represent him. This practice was abused, some peers having multiple proxy votes. The Lords moved to create a committee to investigate the ancient rights of the baronage. This led to the first set of permanent standing orders for the House. A proxy reform took place in 1626, which limited a peer to a proxy of two votes. The use of proxies was finally discontinued by a standing order of the House in March 1868.

We have mentioned the temporary break in tradition during the Cromwell years. In 1640 an act of parliament excluded bishops from the House of Lords, and in January 1649 Cromwell abolished both the monarchy and the Upper House. However, by May 1661 there was a restored king and the House of Lords returned to the form it had lost in 1649.

The Act of Union joining the kingdoms of England and Scotland took place in 1707 and brought a major change in the composition of the House of Lords by providing for the election of Scottish peers to the new parliament of Great Britain. The compostion of the Upper House was again increased when Queen Anne created twelve new Tory hereditary peers to assure acceptance of the Treaty of Utrecht. Their lordships disliked this proceedure but could not obstruct the Queen's move.

xiv Preface

The first major scheme for real reform of the Lords was a Peerage Bill presented to the House by the Duke of Buckingham in 1719. Then, after a pause of sixty years, the Duke of Richmond came up with a bill on manhood suffrage reform. The bill was intended to diminish the power of the aristocracy and the influence of rich magnates in the country as a whole. These schemes did not gain acceptance.

When William Pitt became prime minister in December 1783, he increased the size of the House of Lords immensely by rewarding his supporters with peerages. When he took office, the Lords was a comparatively small chamber consisting of 238 peers, twenty-six of them not landowners but bishops. The existing lords temporal belonged to the old aristocratic families. During his seventeen years in power, Pitt created 114 new hereditary peers. The social structure of the House suffered a disastrous change, since the new 'plebeian aristocracy' (Disraeli's term) lacked the sense of noblesse oblige shown by the former 'patrician oligarchy' as well as their understanding of communities. The Lords became a staunch organ of Toryism for over a century.

The 1801 Act of Union with Ireland extended the representative character of the Upper House. The English peers tolerated this but ferociously opposed the admission of true Irish representatives.

Although the Reform Bill of 1831–32 confined change to the composition of the House of Commons, an obstructive House of Lords at first barred the passing of the required legislation. It submitted to agreement only after it became clear that the King would assent to the government's request and swamp the Lords with sufficient new peers to pass the bill in that House. In G.M. Trevelyan's words, the bill was 'carried in the teeth of the resistance' of the peers. This had lasting effects on how the public regarded the Lords and spurred calls for changes in its powers and composition.

An attempt to effect some change was initiated in the House of Commons in 1834. A bill was introduced 'for relieving the Archbishops and Bishops of the Established Church from Legislative and Judicial Duties in the House of Peers'. However, the Commons themselves rejected the bill after debate, as they did similar motions in 1836 and 1837.

Preface xv

The year 1856 had more importance. In what became known as the Wensleydale case, the government of the day proposed the creation of a 'life peer', thus putting into question the Lords' cherished 'hereditary principle'. The plan caused anger and uproar in the Upper House. The government claimed that the crown had a prerogative to create life peers; while their lordships – at least the majority of them – rejected this claim. The lords of the House, they alleged, must themselves decide who should sit and vote amongst their number. They threw out the motion. But, not very long afterwards, they relented and passed the Appelate Jurisdication Bill, enabling the crown to confer a very limited number of peerages for life upon distinguished lawyers to discharge judicial duties in their House. This time, the bill was rejected by the Commons.

The matter of life peerages slumbered for thirteen years, until it was 'agitated' anew by Earl Russell in 1869. At first encouraging words were bestowed upon the earl in the House. An infusion of fresh blood there was 'one of the mainstays' of the constitution, for it gave, so Lord Derby said, 'strength and influence' to the Lords. But then a cold shower descended. If the bill were passed, the peer continued, their lordships would increase the power of the crown, and thus of the ministry close to it and so of the House of Commons too. It would also establish a non-hereditary peerage such as had 'never existed from the foundation of the Constitution'. The bill was thereupon committed to a committee of the whole House and failed to pass its third reading.

One can see how the Commons could find the Lords exasperating. One thing that rankled especially with both the Commons and the general public was how, almost as a body, the bishops of the Established Church had opposed the great Reform Bills of 1832 and 1867. An attempt to weaken their strength was made in the Lower House in 1870. A bill to 'relieve Lords Spiritual from attendance in Parliament' was debated but ran short of a majority when it went to the vote. A spark of hope in Lords' reform appeared when, in 1871, the peers resolved to pass the Bankruptcy Disqualification Bill for the preservation of their 'dignity and independence'.

In this long narrative of events, one name emerges with great distinction – that of the Earl of Rosebery, a peer who assiduously urged reform. There is hardly any other person who displayed so strong and persistent a

xvi Preface

championing of it. He made his first attempt at promoting change in June 1884, when he begged their lordships to appoint a select committee to consider means of increasing the 'efficiency' of their House. After a 'warm' debate the House rejected the motion.

In 1886, disappointed at the recalcitrancy of their lordships, a leading radical MP, Henry Labouchere, introduced a resolution in the Commons that it was 'inconsistent with the principles of Representative Government, that any Member of either House of the Legislature should derive his title to legislate by virtue of hereditary descent'. Gladstone, the prime minister, disapproved of the resolution but the Commons voted for it with a majority of 36 votes. This was an indication of popular feeling.

In response to this feeling, there were several attempts to improve matters instigated by certain lords themselves. All attempts foundered. In March 1888 the Earl of Rosebery rose again, this time to request that a select committee should be appointed to inquire into the constitution of the Upper House. The Lords would have none of it. Only a month later, Lord Stratheden brought before their lordships a motion that an 'humble Address' be presented to Queen Victoria asking for a commission to inquire into, and report upon, the revision of standing orders in the House of Lords and other changes that might be made to improve on efficiency. The Lords rejected this too. In April 1888 the Earl of Dunraven introduced a bill with a wide range of proposals to reform the constitution of their Lordships' House. This roused the lords to anger and 'by leave of the House', the bill was withdrawn.

The issue of life peerages was another matter where progress had long been stalled. In June 1888, the then prime minister, the Marquess of Salisbury, submitted his own bill to make provisions for the appointment of peers for life. Predictably, the bill invited much criticism from their lordships and had to be withdrawn.

A year later, in February 1889, the Earl of Carnarvon pursued another line, asking in the House whether it was the government's intention to submit to parliament any measure for restraining 'unworthy Members' from taking part in the Lords' proceedings and from voting. Such a measure, their lordships thought, was unnecessary.

Preface xvii

The Earl of Rosebery, whose zeal for reform has already been noted, became prime minister in 1894. He at once announced his intentions of reforming the Upper House, but it was now the Queen herself who aired her dissatisfaction. (We refer to this controversy in detail.)

The Parliament Act of 1911

With the dawn of the twentieth century, a new stage begins in this long, frustrating story. The Liberal government, returned in 1905, wished to bring through a raft of radical social reforms. The Lords were obstructive, but the Liberals were determined to persevere nonetheless and their leader, Sir Henry Campbell-Bannerman, appointed a cabinet committee to work out proposals that could counter the Lords' obstruction. The committee came up with the idea of a suspensory veto – the Lords' veto would, by law, be limited to a minimum period. It was left to the remarkable skill of Campbell-Bannerman's successor, Herbert Asquith, finally to clip the wings of the Lords.

Before this happened, the House of Lords had the opportunity to discuss various reform proposals of its own. In May 1907, the highly conscientious Lord Newton proposed a change in the composition of the Upper House to make it more representative and more answerable to the needs of contemporary society. Although the Lords agreed, through an amendment, that a select committee should be appointed to consider efficiency in matters affecting legislation, the Newton Bill was effectively thrown out. When, in June, the Commons resolved that they intended to restrict the voting power of the Lords by law, fear gripped their lordships. They then agreed to establish a select committee under the chairmanship of Lord Salisbury. This would recommend necessary reforms of the House – but very little more was heard of it. In 1908 Lord Rosebery together with Lord Curzon put forward further suggestions for reform. The lords refused to take them up. Again, in 1910, the Earl of Rosebery moved that

xviii Preface

the House of Lords 'do resolve itself into a Committee to consider the best means of reforming its existing organisation'. Now in a corner, their lordships debated the motion for four days. At the end of the debate they overwhelmingly resolved the motion in the affirmative. But no pratical steps followed. Also in 1910, the fourth Marquess of Salisbury circulated a valuable memorandum on Lords' reform among his colleagues but to no avail: there is no record of the fate of this paper.

The crisis of relations between the two Houses had to be resolved. In June 1910 the prime minister (Herbert Asquith) and the leader of the opposition (Arthur Balfour) agreed that an inter-party conference would be worth holding in an attempt to find a settlement. This 'Constitutional Conference' went on for twenty-two sittings, lasting from 17 July to 10 November 1910; but the deliberations produced no results. On 17 November, immediately after the failure to resolve the issue was announced, Lord Rosebery begged his fellow peers to reconsider his resolutions for reform. To his great satisfaction, the lords passed the resolutions. However, what the lords had agreed on was of little use to the government now. It was keen to pursue its own line of legislation.

Asquith prepared his blow. On 21 February 1911, in the Commons, he asked for leave to introduce a bill 'to make provisions with respect to the powers of the House of Lords in relation to those of the House of Commons, and to limit the duration of Parliament'. The bill was vehemently opposed by Balfour, but it passed its second reading by a majority of 125 votes. It was sent to committee to be debated until 3 May and scheduled to come before the House of Commons for the third reading on 15 May.

In order to delay – or even obstruct – the third reading, Lord Lansdowne introduced his own bill in the Lords on 8 May proposing to amend the constitution of the Upper House. He argued that no lasting solution to the problems existing between the two Houses could be possible except with a reconstituted second chamber. A reform of the Lords, the marquess asserted, must precede reform of the relations between the two Houses. The Lansdowne Bill provoked a vigorous debate which lasted five days. The Lords then directed the bill to committee.

The drama of how the Parliament Act of 1911 eventually came to be passed in the House of Lords has been the subject of extensive historical

Preface xix

research. This present study contributes to an understanding of the drama by presenting some valuable and previously unpublished source material. Throughout the negotiations, in our view, Asquith performed his services as first minister of the crown in a correct and extraordinarily competent manner. He acted constitutionally in securing an assurance from the King that, if necessary, the sovereign would exercise his prerogative of creating new peers. If the exercise of this prerogative later proved unnecessary, we owe it to the skill and sagaciousness with which the prime minister conducted the whole affair. The Parliament Act of 1911 is the outstanding measure of reform affecting the Upper House until we come to a period some time after the Second World War. In effect, the act caused, what David Cannadine so aptly describes as the virtual 'emasculation' of the House of Lords.

Continued skirmishing

The preamble of the Parliament Act 1911 had made it clear that, at some future stage, measures would be taken to reconstitute the House of Lords on a popular and not entirely hereditary basis. In 1913 the Liberal government did indeed set up a cabinet committee to make suggestions for a reconstituted second chamber. The cabinet considered the committee's report. However, it left the issue unsettled. The chief reason for this indecision was that more important problems were crowding in on the government. These included the crisis of international relations that was to lead to the First World War. But this did not stop certain members of the House of Commons from introducing a bill for the termination of hereditary titles. This was in May 1914. After the debate (in June) the bill was committed to a standing committee of the House, which passed it in July of the same year, just before hostilities began.

Even before the war ended Lloyd George's cabinet entertained new thoughts about the Lords. Lloyd George proposed the summoning of an xx Preface

inter-party assembly to discuss reforms and Bonar Law agreed to the idea. Thus, on the order of the prime minister, a 'second chamber' conference was appointed in August 1917 under the chairmanship of Viscount Bryce, the distinguished constitutional historian. The members of the conference included sixteen Conservatives, twelve Liberals, two Irish Nationalists, one representative from the Labour Party and the Archbishop of Canterbury. The conference held forty-eight sessions which took place at regular intervals between October 1917 and April 1918. The chairman's report, known as the Bryce Report, was submitted to the prime minister on 24 April 1918. The report outlines the deepest and most thorough-going scheme ever put forward to reform the House of Lords. We publish the complete minutes of some of the sessions in our survey, as well as the full text of the Bryce report. Unfortunately, the government - preoccupied with post-war social problems in the country and with the Irish issue – showed little enthusiasm for translating the report into legislation. There is evidence that, anyway, the House of Lords would have rejected the bill.

And yet the will to reform was not wanting either during the Coalition Cabinet of Lloyd George or during Bonar Law's Conservative cabinet of 1922. A government House of Lords reform committee continued to meet and drafted various schemes. Detailed proposals were prepared by Lord Curzon, by Winston Churchill and by H.A.L. Fisher. A revised draft resolution, agreed on by the cabinet committee, was submitted to the House of Lords on 18 July 1922. The tone of the ensuing debate in the House was not encouraging. It was decided to postpone the discussion until the autumn. Baldwin's first Conservative cabinet of 1923 then deferred consideration of the issue indefinitely.

In May 1923 a number of Labour MPs led by Arthur Ponsonby begged leave to bring in a bill 'to provide for the termination of hereditary titles among his Majesty's subjects'. In its conferences of January and September 1918, the Labour party had confirmed its opposition to any form of second chamber and some of the radical members of the party had vowed to abolish the House of Lords. But circumstances were changing: Labour was achieving increasing support in the country, and it looked as if it might form the next government, which it indeed did in January 1924. This meant that any challenge to the authority of the House of Lords would only

Preface xxi

complicate the work of the first Labour cabinet. No one knew this better than the Labour leader, Ramsay MacDonald. He thought the Ponsonby initiative was unwise, and discouraged Labour members of the Commons from following it up.

Moves now came from the right. The fear that a Labour government might subvert the social order haunted the Conservatives and National Unionists. This fear mounted once Labour had a majority in the Commons. The lords believed that the destruction of the Upper House was imminent – an eventuality opened up (to their way of thinking) by the Parliament Act of 1911. Such a move must be stopped from happening under all circumstances. The only course possible, they maintained, was to reconstruct the Upper House in such a way as to re-establish the power their lordships had lost in August 1911. So, when in the general election of 1924, the Conservatives won an outright victory, they were convinced that the time for action had come. During Baldwin's second Conservative government, committees busily drafted schemes, memoranda and recommendations proposing changes in the power and composition of the House of Lords. There was not only the cabinet committee but a 'second chamber' committee of the Unionist party.

And yet, the Government refused to move any legislation. This irritated many of the peers. Some of them proceeded to put forward their own schemes in the House of Lords – the Duke of Sutherland's in 1925, Viscount FitzAlan's in 1927, the Earl of Clarendon's in 1928, and Viscount Elibank's in 1929.

Ramsay MacDonald headed the first National Government of 1931, brought into power by the slump in the world economy. He was keen to settle measures to reform the Upper House and designated Arthur Ponsonby (recently created a peer) to suggest proposals. This Ponsonby did. And so did a Conservative committee under Lord Linlithgow. Some (rather limited) use of these proposals was made by a joint committee of peers and members of the House of Commons established in 1932 under the chairmanship of the Marquess of Salisbury. This joint committee was charged with finding a reform solution that might be acceptable to both Houses. It came up with a report of unusual length in October 1932. But the report then disappeared from sight.

xxii Preface

The negligence with which the report was treated by the government seems to have frustrated Lord Salisbury immensely. This motivated the marquess to introduce a bill of his own to reform the constitution of the Lords in December 1933. What were his chief motives? He sensed, he said, danger from a future socialist government. 'We should be insane,' the marquess contended, 'if we did not take some precaution to prevent the country, not knowing, not dreaming of the consequences which are going to happen, from being exposed to these perils by the advent of a Labour Government.' The bill clearly stated what Lord Salisbury had in mind. It would change the composition of the Upper House no doubt, but would bestow extensive powers on the lords so they could put heavy obstacles in the way of changes the House of Commons might legislate. Realizing that the chief intention of the bill was to consolidate the dominance of the Conservative party yet further, the Labour leader in the House of Lords, Lord Ponsonby, moved an amendment to oppose the bill. The bill was debated in the Lords for three days in May 1934. The government declared that it had no intention of supporting it. All the Marquess of Salisbury could achieve - though perhaps more than his father had accomplished in 1888 - was to obtain a second reading. The bill then fell into oblivion.

The story of frustrations and failures continues. In June 1934 the cabinet political committee invited and discussed reform proposals but took no decision towards putting them into effect. In 1935 two more bills were moved in the House of Lords. They were short and simple: one concerned life peerages (Lord Rockley), the other related to the Parliament Act 1911 (Lord Rankeillour). Though their lordships gave approval to the first bill, the second was, by leave, withdrawn by the mover. In February 1937, a bill to change the constitution of the Upper House was introduced in the House of Commons by the private member H.W. Williams and his associates. There was some debate, but the House agreed to put decisions off for six months - the customary way to kill a bill. In March the same year, Baron Strickland put forward a motion in the House of Lords to increase its membership by giving the Dominion prime ministers the right to sit and vote there. However, the lord chancellor declared that he had no authority from the government to 'make any statement at the present moment about the House of Lords reform' and this motion too was thereupon withdrawn.

Preface xxiii

After these attempts there was a very long pause in the story. This was most certainly due to the grave international crisis – the threat of impending war and then its outbreak. These contingencies swallowed up the energies of cabinet and parliament; and thoughts of Lords' reform were left to one side. I therefore end the first volume of this work in 1937. Volume II will cover the period from after the end of the war to the present.

Source material

The materials used in the present work have been drawn entirely from original sources, most of which, I believe, are being made available to the general reader for the first time. Almost all the important bills, motions and resolutions concerning our subject are reproduced. Proposals, schemes and memoranda affecting the reform of the Lords have been included too. I have made full use of the minutes of cabinet committees. For a better understanding of the statesmen's attitudes I have also felt it fundamentally important to quote parliamentary debates at length. It must have been such a delight to hear the eloquence, the logical argument and the wit with which people like Curzon, Dunraven, Gladstone, Grey, Granville, Labouchere, Ponsonby, Rosebery, the two Salisburys and the Duke of Sussex addressed parliament. These speeches are available in libraries, but are a largely unexplored territory. It gives great pleasure to read this elegant prose and cherish its grace. Not only that, the speeches impart the spirit of the times.

Styles of reporting in print have changed over the years, so, in following these speeches and documents, the reader will have to allow for words capitalized in one place, not capitalized in another; also for the rather quaint forms of address used by their lordships and the more technical terms describing how parliamentary bills are introduced, debated and voted on. Even these details convey a period flavour the reader could not gain from a mere second-hand account.