

HOUSE OF LORDS REFORM SINCE 1911

MUST THE LORDS GO?



PETER DOREY AND
ALEXANDRA KELSO



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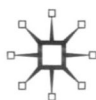
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No one in his right mind could ever have invented the House of Lords, with its archbishops and bishops, Lords of Appeal in Ordinary, hereditary peerages marshalled into hierarchical grades of dukes, marquesses, earls, viscounts and barons, its life peers nominated by the executive, its truncated powers, its absence of internal discipline and its liability to abolition. The case for reform seems unanswerable.

Lord Hailsham, *On The Constitution*, London,
HarperCollins, 1992, p. 48

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Introduction

In 1910, the Labour Party's manifesto declared that 'THE LORDS MUST GO' (Craig, 1975: 19–20, capitalisation in original), yet more than a century later, the House of Lords is still very much with us. It has endured partly because there has been little genuine support for outright abolition, and even those – usually on the Left – who wanted the House of Lords abolished have not been clear about what, if anything, they would wish to replace it with.

However, there is another important reason why the House of Lords remained largely intact for most of the twentieth century, and that is that it has proved extraordinarily difficult for Britain's main political parties to agree on how the Second Chamber should be reformed. It has not been the case, as might intuitively be assumed, that Labour has favoured reform while the Conservatives have been wedded obstinately to the status quo; both parties have variously advocated House of Lords reform throughout the last 100 years, and have occasionally enacted some of these proposals, but for much of the time, there has been a lack of agreement, both between and within the parties, over precisely how the Second Chamber should be reformed. In other words, House of Lords reform has been an issue characterised by both inter- and intra-party disagreements, and as a consequence, a plethora of reform proposals have been advanced and then abandoned during the last century, due to their failure to attract sufficiently wide parliamentary support.

To give but one example of the chequered history of House of Lords reform, one of the most controversial aspects of the Second Chamber has been the hereditary peerage, whereby peers sat by virtue of inheriting a title upon the death of their father. Not only was this widely deemed to be incompatible with a modern parliamentary democracy

but the vast majority of these hereditary peers, largely by virtue of their social background, sat as Conservatives in the Second Chamber, and were therefore an obvious target of attack from the Labour Party. Yet it was not until 1999 that most of the hereditary peers were finally abolished, although even then, 92 of them were granted a temporary reprieve as a concession to ensure that the relevant legislation was not obstructed by the House of Lords itself.

Hitherto, the hereditary peers had survived several Labour governments since the 1920s, not least because the party's MPs and ministers could never agree on what exactly to do about the hereditary peers, this uncertainty deriving from a more general quandary about how the House of Lords should be reformed. Even if Labour parliamentarians had unanimously agreed on abolition of the hereditary peers, this would have left them struggling to reach agreement on who to replace them with, because this yielded a range of options and permutations concerning elected and/or appointed peers, which in turn raised questions about the method of election and/or criteria for appointment, as well as the issue of who would be responsible for any such appointments.

Moreover, however much they denounced the undemocratic and often reactionary (or merely anti-Labour) character of the hereditary peers, many Labour MPs and ministers recognised that if they were replaced by elected peers, then the House of Lords would immediately enjoy a greatly enhanced legitimacy and increased political authority, whereupon it might well prove rather more willing (than the hereditary peers had been) to challenge the House of Commons, and governmental legislation emanating from therein. This realisation often cooled any Labour ardour for a democratic Second Chamber, and fostered a tacit view that the hereditary peers, capable of delaying legislation for one year only, might be the lesser of two evils. Labour clung to nurse for fear of something worse (Dorey, 2006; Dorey, 2008a: Chapter 3).

While it is true that much has been written about House of Lords reform, particularly more recently, this book comes at a unique moment, because 2011 is the centenary of the first Parliament Act, passed in 1911 by Herbert Asquith's Liberal government, in response to the refusal of the House of Lords to approve Lloyd George's (the then chancellor) budget. While the Act significantly constrained the powers of the Second Chamber, it also asserted that further, more comprehensive reform was required to address the composition of the hereditary house, yet as we have just noted, it was not until 1999 that most of the hereditary peers were finally abolished. As we mark the centenary of

the 1911 Parliament Act, it is a singularly opportune moment to put the entire century of House of Lords reform into perspective, to identify what has and has not been achieved, and consider why some reforms have been successfully introduced, while others have either stalled, been abandoned or defeated.

In some respects, the 'problem' of the House of Lords ostensibly seems relatively easy to solve. At issue is the nature of the Second Chamber in an advanced, mature, liberal democracy; what it should ultimately look like, and what it should be able to do, within the context of broader parliamentary relationships and governmental processes. The issue of House of Lords reform compels us to signify our priorities with respect to the capacities and composition of a Second Chamber, specify the details of institutional design, and then negotiate the reform process that lies between the Second Chamber as it is and the Second Chamber as it could (or should) be. This, however, is a highly idealised version of the purpose and process of institutional design and engineering, and bears little resemblance to the messy, complex and often frustrating process of reform in the real world of political compromises and partisan manoeuvring.

As will be apparent throughout this book, while it is easy for academics and politicians to promote what they believe to be the best, schemes for reforming the House of Lords into a 'new and improved' Second Chamber, we ignore the politics of parliamentary reform at our peril. As Judge (1983: 1) argues:

Even when there is agreement both that something is wrong and that there is a common root cause for this malaise, the chances are that there will still be disagreement about why this is the case and what is to be done about it. Consensus is not a marked feature of the debate on parliamentary reform.

Judge is absolutely correct, for at virtually no point during the last century has there been anything even approaching a consensus on what, if anything, should be done about the House of Lords, never mind how to go about actually doing it. Even at the point at which our story of the Lords reform draws to a close, on the eve of the centenary of the 1911 Parliament Act, the nascent consensus that seemed to have formed among the main Westminster political parties in favour of a predominantly elected Second Chamber (recounted in Chapter 6) was considerably strained by the significant disagreements which existed between them about exactly *how* it would be elected, *what* proportion would be

elected, by *which* method of election, and *when* such elections would be held. While these are undoubtedly questions about preferred institutional design, they are necessarily also about the political contexts in which these questions are considered by political actors. To the extent that House of Lords reform is, at least in part, concerned with how state power is utilised, and the extent to which it is held to account, it is ultimately one of the most controversial political questions Britain faces at the start of the twenty-first century.

Our story House of Lords reform since 1911 thus begins by recounting the events surrounding, and the reasons underpinning, the introduction of the 1911 Parliament Act. British politics was characterised by considerable upheaval between 1906 and 1911, both reflected and reinforced by the increasing conflict between the House of Commons and the House of Lords, with the latter seeking to curb what were perceived as the increasingly radical tendencies of the government residing in the former. Although the eventual outcome of that conflict was the 1911 Parliament Act, which significantly reduced the powers of the Second Chamber, there were several attempts in advance of the Act to find some other way to resolve the disputes between the two houses of parliament. The various debates and details of that transformative period form the basis of Chapter 1, which also moves beyond the 1911 Act to examine the ensuing proposals for reform canvassed during the next three decades, in an attempt at completing the ‘unfinished business’ of the Parliament Act.

Chapter 2 resumes the story at the close of the Second World War, with the Labour Government, led by Clement Attlee, passing the 1949 Parliament Act, which further curbed the powers of the Second Chamber and thereby added to the constraints already imposed by the 1911 Act. As was to prove to be the case on subsequent occasions, though, Labour had contested the 1945 election with no firm commitment to House of Lords reform, having merely asserted that it would ‘not tolerate obstruction of the people’s will by the House of Lords’, but without offering any clue as to what a Labour government would do if it did encounter such obstruction. One of the reasons that Labour’s stance remained so opaque was that the party had rarely given serious consideration to constitutional questions, having been more concerned to win control of Britain’s governing institutions, rather than reforming them.

This also reflected a widespread assumption among most senior Labour politicians about the neutrality of the British state and its political bodies; few in the Labour Party subscribed to the Marxist perspective that Britain’s governing institutions and senior personnel

served the interests of Capitalism or a Ruling Class, and would therefore be intrinsically and irredeemably hostile towards a Labour government. Consequently, beyond denouncing the unelected hereditary peers, and their predominantly Conservative allegiance, in the House of Lords, Labour entered office in 1945 with no clear ideas about what, if anything, it wanted to do by way of institutional reform.

As a result, when the 1945–50 Labour Government did finally embark upon an attempt at curbing the powers of the House of Lords, the issue revealed the divergent views among the party's MPs and ministers about what should be done to modernise the Second Chamber, with many of them insisting that its composition should also be reformed, to render it more democratic or representative. Against this view, however, there was concern that such reform would imbue the Second Chamber with much greater political legitimacy, whereupon it was likely to prove much more willing to challenge governments and the House of Commons than had been the case hitherto. Ultimately, therefore, it was decided that the only the powers of the House of Lords should be reformed at this juncture, the implication being that the more complex question of reforming its membership should be returned to at a later, and unspecified, date.

Meanwhile, the 1949 Parliament Act had not been prompted by the House of Lords' obstruction of the Labour Government's hitherto legislation, but was depicted as a preventative measure, to forestall hindrance by the Second Chamber towards the end of Labour's term in office. This reform was also intended to pacify those Left-wing Labour MPs who were frustrated by the Attlee Government's apparent failure to be more radical, particularly with regard to nationalising the iron and steel industries. In these respects, Labour's first reform of the House of Lords was motivated primarily by tactical considerations, and attempts at party management, not by any substantive programme or theory of constitutional modernisation.

Chapter 3 shows that it was the Conservatives who were successfully to reform the House of Lords' composition and membership, in order to render it somewhat more representative, and ensure its continued existence, albeit without actually removing the hereditary peers. Much of the impetus for the Conservatives' pursuit of reform during the 1950s emanated from the party's leader in the House of Lords, Lord Salisbury, who seemed concerned that without some modernisation of its composition, the Second Chamber might suffer either atrophy or eventual abolition. In accordance with the Conservative principle, derived from Edmund Burke, that change is often necessary precisely in order to conserve an institution, and thereby pre-empt its overthrow or replacement, Lord

Salisbury recognised that the Conservatives needed to seize the initiative, by imbuing it with greater expertise through the creation of a new type of peer, based on someone's major achievements or renowned expertise in their profession, or their significant and distinguished contribution to public life. It was envisaged that the creation of such Life Peers (their titles not subsequently being inherited by their children) would open up membership of the House of Lords to a wider variety of people, such as academics, business people, former local government officials, lawyers, medics, retired civil servants, senior trade unionists, writers, etc, as well as former MPs. Although this would certainly not have rendered the House of Lords representative of the whole population, because the likely 'candidates' for a Life Peerage would invariably emanate from professional careers or vocations, it would nonetheless make the Second Chamber rather more representative of British society than leaving it comprised almost entirely of hereditary peers.

This infusion of new blood was not only intended to revitalise the House of Lords, and thereby ensure its continued existence, it was also meant to improve the quality of its debates and scrutiny of government legislation, by virtue of this infusion of greater expertise from the 'real world'. Certainly, some senior Conservatives had become aware that with the expansion of governmental activities and responsibilities for economic and social affairs, particularly since 1945, few of the hereditary peers possessed the requisite expertise or extra-parliamentary experience which would enable them to make a meaningful or informed contribution to some of the work of the House of Lords, or even make suitable appointments to ministerial posts. By the same token, it was acknowledged that the opposition parties also struggled to play a consistent and constructive role in the House of Lords, due to the preponderance of Conservative peers among the overwhelmingly hereditary membership therein.

The creation of Life Peers was therefore intended to revitalise the House of Lords, both by making it somewhat more socially representative, and by enhancing its ability to play a fuller and more informed role in conducting debates on issues of major political importance, and in examining governmental legislation with a view to improving it. This would ultimately imbue the House of Lords with greater legitimacy, and thus prevent atrophy or abolition, while also (the Conservatives hoped) deflecting much of the criticism levelled against the hereditary peers.

Chapter 4 examines an issue which was raised during the ministerial discussions over the 1958 Life Peerages Act, but which it was decided not to pursue at that time, namely the right of renunciation of a hereditary

peerage. Yet this particular issue dramatically returned to the political agenda in late 1960, when the Labour MP, Anthony Wedgwood Benn, was obliged, against his wishes, to accept the title of Viscount Stansgate upon the death of his father. This effectively meant that Benn was no longer eligible to remain in the House of Commons, although he vigorously challenged this ruling, albeit to no avail. However, the controversy engendered by this case, and the recognition that some Conservative MPs might be similarly affected in the foreseeable future, resulted in the passage of the 1963 Peerage Act, which granted hereditary peers the right to renounce their title, within specified time limits, usually in order to remain in, or seek election to, the House of Commons.

Chapter 5 examines the 1964–70 Labour Governments' failed attempt at further reforming the House of Lords, via the ill-fated Parliament (No. 2) Bill. The party had narrowly won the 1964 election, and was then re-elected in 1966 (having called the second election to obtain a working majority), proclaiming the need to modernise Britain's governing institutions, in large part to reverse the country's relative economic decline, which had become increasingly evident by the 1960s. Although it was never quite clear exactly how parliamentary reform, for example, was supposed to boost the British economy, the professed commitment to modernisation of Parliament and the senior civil service was an integral part of Labour's efforts at portraying itself as a forward-thinking and progressive party, while depicting the Conservatives as backward-looking, and an intrinsic part of the apparently out-of-date and out-of-touch political establishment.

Yet Labour still lacked a clear or coherent approach to reforming the House of Lords, so that its ensuing efforts, largely driven by the personal commitment of Richard Crossman, almost inevitably faltered due to the combined impact of the range of potential measures (themselves concerning both the composition and powers of the Second Chamber) and the concomitant lack of agreement over which of them should be adopted. Nor was it simply the traditional differences between Labour and the Conservatives, and the House of Commons and the House of Lords, which hindered the 1964–70 governments' pursuit of reform, but the disagreements within the Labour Party itself. Furthermore, these intra-party divisions were not of a straightforward 'Ministers versus backbenchers' character, but derived from the divergence of views and preferences both within the cabinet, and among Labour backbenchers.

Moreover, some Labour MPs and ministers were opposed to Crossman's efforts at securing House of Lords reform altogether, albeit motivated by different concerns. Some of them wanted to see the House of Lords

abolished, and therefore feared that any reforms which rendered it more effective or legitimate would consequently ensure its continued existence, thus *ipso facto* making abolition much less likely. Meanwhile, other Labour opponents of the House of Lords reform deemed the issue a waste of ministerial and parliamentary time, and certainly of less importance or urgency than economic, industrial, and social issues.

With Labour's pro-reformers unable to agree on precisely how to reform the House of Lords, and various of their ministerial or backbench colleagues opposed to any such reform anyway, the Parliament (No. 2) Bill was eventually abandoned, having been subject to the full gamut of parliamentary tactics intended to obstruct its progress through the House of Commons, and thereby threatening to wreak havoc with the rest of the government's legislative programme for the remainder of the session. Not for the first time, and certainly not for the last, the House of Lords survived, to a considerable extent, due to lack of agreement or interest among MPs in the House of Commons about what, if anything, they should do by way of reforming the Second Chamber.

Chapter 6 concludes our story with the Labour party back in government in 1997, pledging to remove all the hereditary peers from the Second Chamber. This manifesto commitment resulted in the 1999 House of Lords Act but, as we explain, that Act did not remove all the hereditary peers, and a significant number were allowed to remain in what became known as an 'interim' chamber as part of a deal to ensure that the Labour government did not stop at this 'stage one' of the reform process but did in fact proceed to the more comprehensive 'stage two'. Yet, even although Labour remained in office until 2010, 'stage two' of reform never materialised: we recount the reasons for this in our final substantive chapter, among which were the divisions which the House of Lords reform again prompted inside the Parliamentary Labour Party. Indeed, we note that many of the problems which confronted the 1997–2010 Labour Governments with regard to reforming the composition of the Second Chamber very much echoed unresolved questions which had been raised on previous occasions when the party embarked upon House of Lords reform. More than 90 years after its official formation (in 1906), the Labour Party still could not agree about how the membership of the Second Chamber should be constituted or determined, beyond removing the hereditary peers. Consequently, the Conservative-Liberal Democrat coalition government which was formed in May 2010 still had the enduring problem of the Second Chamber to resolve.

The history of the House of Lords reform since 1911 has not been short on drama, mystery, or excitement. It has without question

tested the patience of some of Britain's most level-headed politicians, and driven many would-be reformers to pained distraction. Almost every decade is littered with the empty shell of some reform scheme or another, which ended up being kicked into the constitutional long grass. At the close of the first decade of the twenty-first century, and on the eve of the centennial of the first significant measure of House of Lords reform in our story, the 1911 Parliament Act, it is important to put the last hundred years of change and development, and sometimes paralysis, into perspective and attempt to make sense of the story which it reveals. House of Lords reform is, after all, still far from complete, and much remains to be done, although this does not mean it will be done, at least not in the foreseeable future. Understanding the past can help to illuminate the future. Or as Shakespeare wrote in *The Tempest*, 'What is past is prologue.'

1

Firing the First Shots: The 1911 Parliament Act and Inter-War Initiatives

The period from 1906 to 1911 has been described as ‘the most traumatic period in the history of the House of Lords’ (Longford, 1988: 136), for it was during this period that increasing conflict between the House of Commons and the Second Chamber culminated in the 1911 Parliament Act to curb the latter’s power, with further reform pledged to follow imminently. A number of developments during the first decade of the twentieth century served to focus critical attention on the House of Lords, even though reform of the Second Chamber did not actually feature in the main political parties’ manifestos for the 1906 election, which was won by the Liberal Party. This proved to be an increasingly radical government which subsequently sought to enact a number of significant social and tax reforms that alarmed many Conservatives, the latter’s growing anxieties being compounded by the formation, also in 1906, of the Labour Party, which saw 53 MPs elected in that year’s election. Furthermore, the 1906 election returned 83 Irish Nationalist MPs, committed to Home Rule, which the Liberals broadly supported, but which the Conservatives bitterly opposed. With the House of Commons thus dominated by Liberals, Labour, and the Irish Nationalists, and the Liberal government pursuing various measures which many Conservatives viewed as ‘socialist’ in character or effect, the Conservative-dominated House of Lords increasingly seemed to adopt the mantle of last-ditch defender of the British Constitution, thereby bringing it into repeated conflict with the elected Lower House and the government therein.

The 1906–10 Liberal government and the House of Lords

The Liberal Party’s programme for the January 1906 general election had pledged various measures of social reform, allusions to Irish Home Rule, trade union legislation to address the 1903 Taff Vale decision, and