
Rethinking House of Lords Reform

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Throughout its life, like all parliamentary institutions, the House of Lords has been in a state of flux. The road to reform has been a long and rocky one. Ironically, Canada has been facing the same questions over the Senate for almost the same period of time. This article looks at the recent attempt to reform the Upper House.



On September 3, 2012, Deputy Prime Minister, Nick Clegg made a statement to the House of Commons that the House of Lords Reform Bill (HCB 52) had been withdrawn. To shouts of hooray, the Deputy Prime Minister, who led the charge for reform, explained why the process had collapsed after only getting as far as its Second Reading. Oddly enough, the Second Reading had resulted in 462 members voting in favour of the Bill to 124 against.¹

This Statement ended what was a two and a half year process of attempting to alter the structure and make-up of the United Kingdom Parliament's Upper House; a practice that has been ongoing for the last century. I was not in the Chamber that morning, but if I was, I do not know if I too would have shouted hooray or cried out in despair.

Party Games

In 2010, as it had done over previous elections, the Liberal Democrat Party placed in their manifesto that it would "Replace the House of Lords with a fully-elected second chamber with considerably fewer members than the current House".² The Conservative Party limited itself to saying that it "will work to build a consensus for a mainly-elected second chamber to replace the current House of Lords, recognising that an efficient and effective second chamber should play an important role in our democracy and requires both legitimacy and public confidence".³

In 2009, the then leader of the Party (and current

Prime Minister David Cameron) had nevertheless proclaimed Lords Reform a 'third term issue'. However, this was clearly an item likely to appeal to the Liberal Democrats when in 2010 these two parties discussed forming the first post-war Coalition Government. As such, when the Coalition Agreement came about, the Conservative Party agreed to include reform of the House of Lords, by stating that "We will establish a committee to bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation. The committee will come forward with a draft motion by December 2010. In the interim, Lords appointments will be made with the objective of creating a second chamber that is reflective of the share of the vote secured by the political parties in the last general election".⁴ In hindsight, perhaps it should have been obvious to the Liberal Democrats that an agreement to establish a committee does not equate with passing legislation. Nevertheless, between May 2010 and September 2012, after half a dozen cross-party talks, the drafting of a White Paper and draft Bill (Cm 8077), not to mention the formation of a Joint Committee to examine the proposals. What comprised the Bill is briefly listed below:

House of Lords Reform Bill (HCB 52 12/12)⁵

Membership

360 elected members,

90 appointed members (Life Peers),

Up to 12 Lords Spiritual (Archbishops/Bishops) and Ministerial members. Most importantly, no Hereditary Peers.

Elected Members:

120 members would be elected at each election (3 elections, 5 years each)

Each elected Member would have a non-renewable term of 15 years

Elections would be via an open list system (STV

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in Northern Ireland),

Electoral districts would be created

Elected members would be disqualified from standing as MPs for a period of four years after their term expires

Non Elected Members:

House of Lords Appointments Commission would be set up to recommend nominated peers

Parliament Acts of 1911 and 1949 (see below):

Neither would be repealed

Current membership of the House of Lords (as of 8 October 2012)⁶

674 Life Peers

92 Hereditary Peers

26 Bishops/Archbishops

Although it is hard to say what the final Bill would have looked like after all the legislative stages had been completed, nothing in the Bill itself condemned it to the scrap heap. It was ironically the programme motion or 'guillotine' as it is frequently referred to which brought it to a close. There was a concern by the Government that with no fixed timetable the Bill could be filibustered out of time by those opposing it. With the need to keep a tight rein on parliamentary time, especially as priority would have to be given to issues of economic and financial importance, a programme motion was essential. The Bill was arguably the legacy of the previous Labour Government and was supported by the majority of the Parliamentary Labour Party, but ironically the Labour Party was partly responsible for its ultimate demise. They did not wish to have a timetable which would limit debating time on a substantial constitutional issue. Yet in the end I think that the Bill was pulled because, despite the Coalition Agreement, too many members of the Conservative Party would not have been willing to uphold their side of the coalition bargain. To prove my point, ninety-one Conservative backbenches rebelled, one of whom was me.

Background

To get the clearest understanding of the background to the issue it is necessary to look at the history of reform, successful and unsuccessful. Rather than going back many centuries, perhaps the best place to start is the early twentieth century.

In 1906, the Liberal Party won a significant election victory. They campaigned on creating a new welfare state and produced an impressive array of reforms. David Lloyd George, the then Chancellor of the Exchequer wished to pay for these reforms via taxation which was not welcomed by the aristocracy who as landowners would be most affected. As the aristocracy made up the majority in the House of Lords they

would prove to be most hostile. As expected, the 'People's Budget' as it was called was defeated in the Lords. Furious, the Government went back to the people won the election and forced the Budget through. However, the Government and the House of Commons were still unprepared to have its democratic authority challenged by what Lloyd George called "five hundred men, chosen randomly from the ranks of the unemployed".⁷ Prime Minister Henry Herbert Asquith put forward a Parliament Bill which would curtail the Lords ability to amend or veto money bills. Over what contemporaries considered to be some of the most outrageous behaviour ever witnessed in Parliament, the *Parliament Act* 1911 was passed, and when supplemented by the *Parliament Act* 1949, the House of Lords would be left without the power of vetoing legislation only delaying it (suspensory veto). Despite only intending to be temporary measures, the Parliament Acts are still in use, last being employed in 2004 for the *Hunting Act*. Perhaps what began in 1911 may have continued if it had not been for two world wars, a great depression, a Cold War and many other troubles along the way.

In addition to the Acts, there are some conventions that although not constitutionally binding are still in practice. The most notable of these is the *Salisbury Convention*. The Convention is simply that the House of Lords will not oppose a Second Reading of any piece of legislation (originating in the Commons) that was in the winning Government Party's manifesto at the previous election. It does not prevent placing amendments on Bills, but they cannot be wrecking motions. The reasoning behind the Convention dates from 1945, when an agreement was reached between the Conservative majority in the House of Lords (led by the fifth Marquis of Salisbury) and the Labour Party Minority (led by Lord Addison). The Government, in a similar scenario to that of 1906 wished to put through Parliament legislation that would create the 'Welfare State'. The Convention was intended to prevent obstruction and to uphold the principle that democratically elected governments should not be hindered by unelected peers.

In fact the *Salisbury Convention* was built on the principles set down in the Mandate Doctrine which originates with the Marquis's ancestor, the third Marquis of Salisbury and Prime Minister for most of the latter end of the nineteenth century. He argued a slightly different case which was more in favour of the House of Lords, that as the will of the people and the views expressed by the House of Commons did not necessarily coincide, the House of Lords had an obligation to reject, and hence refer back to

the electorate, particularly contentious Bills, usually involving a revision of the constitutional settlement, which had been passed by the Commons.⁸ Both codes of behaviour are still in principle upheld today, but with the end of the Conservative majority in the Lords, and with a more assertive Chamber, there is less of a willingness to uphold it.

In addition to altering the power of the House vis à vis the House of Commons, the biggest shake up to the internal dynamic of the House of Lords come from the *Life Peerages Act* 1958 and the *House of Lords Act* 1999. The 1958 Act created Life Peers or as they are also known, Lords Temporal; meaning that the title of Lord was not hereditary and could not be passed on to their children. This meant Prime Ministers could bestow patronage and change the political dynamic of the Chamber. Most importantly, women would now be allowed to participate. The 1999 Act was a compromise which got as far as removing most of the Hereditary Peers (leaving only 92) and reducing overall membership from 1330 to 669.

The final Act passed that would alter the membership and power of the House of Lords came in the shape of the *Constitutional Reform Act* 2005 which ended the judicial role of the House of Lords. As a consequence of the Act, the Law Lords would no longer sit in the House, a Supreme Court of the United Kingdom would be created and the Lord Chancellor would cease in his/her official capacity in presiding over the House and was Head of the judiciary. A new Lords Speaker would be created; to date the only two office holders have been women, Baroness Hayman and Baroness D'Souza.

However, the course of true reform never runs smoothly and there have been many failures along the way. More recent than the little known Bryce Commission in 1917; the Wilson Government in 1967 attempted to alter the powers of the House and its membership by ending the voting powers of the Hereditary Peers. Additionally, they could only remain in the Lords for the remainder of their lives. The House of Lords agreed to the proposals but the Commons did not and the Bill eventually fell at Committee Stage. After the successes of the Labour Government under Tony Blair, in 1999 a Royal Commission under the Rt Hon. Lord Wakeham (Cm 4534) was set up to take the 1999 Act further forward and look at numerous wholesale changes. The report recommended the following proposals:

- The House of Lords would be reduced in number to around 550 members
- Rather than being selected by the Prime Minister, an Appointment Commission would choose who would become a Peer

- A minority of members would be elected on a regional basis, elections would be on a three election cycles for a 15 year term.
- Hereditary Peers would be removed.⁹

It is clear that a great many of the proposals from the *Wakeham Report* are reflected in the recent House of Lords Reform Bill. But in both circumstances the proposals could not make it on to the statute books. Between 2005 and 2008 numerous cross-party talks, White Papers, debates and Committees examined an assortment of proposals which predominately shared a number of common factors, namely removal of Hereditary Peers, appointed vs. elected Peers, length of term of office, etc. All have fallen by the way side and no Government has been clear or decisive enough to push anything through.

Why HCB 52 was Withdrawn

What are my issues of concern with the latest Bill (and its previous incarnations) and why has there been so much contention? Although there is a vast array of reasons, the most salient can be condensed into a number of points.

Those in favour of reform believe that having elected Peers would be a cure-all for the House of Lords. They claim it would give democratic legitimacy to the chamber. That is all well and good, but is being elected necessarily adding legitimacy and democracy to the Upper House? This is a question that Lord Norton, Professor of Politics and member of the Joint Committee that examined the Draft Bill asks. He and I are opponents of the recent Bill, because being democratic is more than just being elected. It is also about accountability to the public and the role and authority that peers have. Democracy is about people power, but history suggests that you cannot then expect them not to try to acquire extra powers. The concept of accountability is shot to pieces if members are given a 15 year term without having to face the electorate again.

A second issue relates to authority. Any attempt at reforming the House of Lords must come with the proviso that whatever the transformed Upper House looks like, it cannot challenge the supremacy or to use a more popular term, primacy of the House of Commons. It goes without saying that my colleagues and I in the Commons would be unwilling to institute reform that would undermine our power and authority. But the problem arises that as soon as you create a chamber whose membership is democratically elected, either wholly or partly, the authority of the Lower House comes into question. It could be argued that an elected chamber would challenge our authority to a certain degree. Some may argue that, if the Lords are elected

under a form of Proportional Representation and MPs in the Commons are elected via First Past the Post, they will have more credibility. Then the question arises, if they have more credibility, members in the House of Lords could challenge the laws and conventions that give primacy to the Commons. The Coalition Government has tried to hold back the potential floodgates of undermining Commons supremacy by keeping in place the Parliament Acts and by giving Peers longer terms of office and a rolling membership, but there would be nothing to stop an elected House from challenging MPs authority in the future, especially as the UK has no codified constitution. I and many others feel that the power and role of the Upper House should be to complement and support the work of the House of Commons and not be a rival to it. We also feel that no piece of legislation should be laid before either House without examining the membership and more importantly the role of the House of Lords.

What also raises concerns is that if Lords are elected they may find themselves rivalling members of the House of Commons in our constituency work. Who would represent the electors more, them or us? Although these new Peers would not be expected to deal with constituency casework, I suspect that willingly or otherwise they will be drawn into it. The scope for duplication and controversy could be limitless. As I understand it, a similar issue could affect those in the House of Commons and provinces across Canada.

Putting all these arguments to one side, it could be said that primacy in the UK Parliament in fact lies with the Executive which wields substantial power in the House of Commons and Lords via the Whips and the parliamentary timetable. A more assertive Upper House may give greater strength to Parliament as a whole. It could also be argued that, if it is elected and more competent in its role and functions, the House of Commons may have to 'up its game' scrutinising, legislating and debating to a higher degree. Whatever reform is proposed must state the role, power and membership of the House and its relationship with the House of Commons. Either way, until any of these squares can be circled the reform cannot move ahead. The real difficulty in the UK is through 700 years of history power has transferred from the Lords to the elected representatives of the people. No-one has convincingly shown how the flow can be reversed.

One of my strongest reservations about the 2012 reform Bill is the type of peer likely to emerge from the election process. It is hard to imagine most of the crossbench peers (Lords who do not take the party whip) who are independent and considered extremely competent standing for popular election. The same

is true of many of the party elders who contribute their experience to the present Upper House. I find it difficult to identify the possible benefits. Through a PR system of election we risk ending up with a Lords (or Senate) membership dominated by political party influence. Large electoral districts will ensure no real connection with voters in much the same way at the UK's members of the European Parliament struggle to be identified. The resulting Upper House will become 'more partisan' when in its unreformed state it often has more objective and insightful debates than the Commons. Electing members to a chamber which has no powers does not obviously make it a better place making better laws.

When you look beyond those who are to be elected, there is still the matter of the Lords Spiritual, the 26 most senior bishops of the Church of England. Should twelve of them remain in a reformed House? Although the UK is still a Christian country, should not other faiths be equally represented? However, it is clear from opinion across the board that to remove Lords Spiritual would be unpalatable for too many. As noted in a report entitled *Breaking the Deadlock*, which was written back in 2007 and was intended to build consensus on Lords reform which at the time had stalled, it was stated that, "whilst we believe that there are arguments for removing Bishops from the chamber, this opens up bigger issues which could derail Lords reform"¹⁰ I am in no doubt this sentiment is still applicable today.

In his evidence to the Joint Committee on the Draft House of Lords Reform Bill, Lord Lipsey suggested that the cost of implementing the reform would be £177 million in the first year and a further £433 million between 2015 and 2020. This bill would cover salaries, pensions, elections and staff support. It is questionable whether at this time such a cost is affordable. Lord Lipsey qualified it by saying such a cost would be the equivalent to 21,000 nurses.¹¹ Yes, you cannot put a price on democracy, but the timing of the recent Bill which coincides with a serious global financial downturn does not help sell the argument for spending more.

Putting party politics aside, when you took the temperature outside the 'Westminster Village' there was very little enthusiasm for any change. With over 35 years of representing my constituency I could count on the fingers of one hand the number of letters I had received pressing for House of Lords reform. It seemed to me that with the country struggling to get out of a recession, the public felt that the reform agenda was ill timed and a nonsensical side-issue; far more important was that the Government should concentrate on improving the economy. This was confirmed by the

poor turnout and interest in the recent referendum to change the UK electoral voting system. Even on that issue the public preferred the status quo.

What I considered to be an element lacking from the reform process was the refusal to have a referendum. This meant there would be no national debate, nothing to strike up an interest in the issue. Yet again, as with Europe, matters of huge constitutional reform were going to be the purview of a small number of experts and of course the media.

Unfortunately because the world will not come to a crashing end if things remain the same, things may very well remain the same. Realistically, there needs to be some change in the next few years. It has been estimated that by 2015, there will be approximately 1000 Members in the House of Lords if things remain unchanged and new appointments continue to be made. This number is simply unmanageable despite members not all being present at once. Nevertheless there is a growing concern that there is a lack of effective scrutiny of legislation. More importantly and based on a number of recent instances there is a need for Peers to be held more accountable for misdemeanours. A Private Peers Bill, one of many over the last five years, has been presented by the Rt Hon. Lord Steel of Aikwood. His House of Lords [Cessation of Membership] Bill which is viewed by many, particularly in the House of Lords, as an acceptable temporary alternative dealing more realistically with accountability.¹² However, the Bill is currently in the House of Commons and without the support of the Government, it looks like it too will fail.

Concluding Thoughts

In the most recent statement by the Coalition Government made on October 8 by the Leader of the House of Lords, Lord Strathclyde, he stated that

Lords reform is now a matter for future Parliaments. I can confirm that the Coalition Government will not deliver Lords reform during this Parliament..¹³

It would seem from this and other remarks that reform will remain on hold for the time being. I voted against the House of Lords Reform Bill, not because I am opposed to any kind of reform. I opposed it because of its central failure to deal with the issues of powers and accountability, because of the control it would give to political parties to determine the candidates, but most importantly because it puts at risk the primacy of the House of Commons. I believe in bringing the House of Lords into the twenty-first century, even the twentieth century would do. I am not sure what the best solution is, perhaps Lord Steel's Bill would be worth supporting or even a continuance of cross-party talks. Yet I feel the present

Government has lost its appetite for pursuing reform. The public it seems had no appetite in the first place.

I am a passionate believer in democracy and I believe the CPA and the Commonwealth should promote the creation and development of democratic institutions. I know the British and Canadian Governments promote the same principles. Perhaps I should feel a sense of guilt for tolerating the continuance of an unelected chamber in my Parliament. Nevertheless it is hard to disentangle oneself from the way the UK Parliament has developed.

As a Conservative I respect tradition, but I am not a slave to it. We should respect the past but be restless in questioning whether our institutions reflect changing needs and new challenges. For me the true test of parliamentary democracy is whether there is a chamber elected by the people and accountable to the people. Provided that the last word rests in such a place, having a reviewing body however composed is a secondary issue. The elected chamber must continue to demonstrate its relevance and effectiveness to each new generation of citizens.

Notes

- 1 HCD 03/09/12, *House of Commons Official Report*, Monday September 3, 2012.
- 2 Liberal Democrat Manifesto 2010.
- 3 Invitation to join the Government of Britain – The Conservative Manifesto 2010.
- 4 The Coalition – Our programme for Government, Cabinet Office, May 2010.
- 5 HCB 52 12/13, House of Lords Reform Bill, 27/06/12.
- 6 <http://www.parliament.uk/mps-lords-and-offices/lords/lords-by-type-and-party/>
- 7 *The Story of Parliament: History of Parliament in the Palace of Westminster*, John Field.
- 8 LLN 2006/006, *The Salisbury Doctrine*, House of Lords Library Note, Glenn Dymond and Hugo Deadman, June 30, 2006.
- 9 Royal Commission on the Reform of the House of Lords: A House for the Future, January 2000.
- 10 Reforming the House of Lords: Breaking the Deadlock, Final Draft, 05/07/2007.
- 11 HCP 1313-III 11/12 / HLP 284-III, Joint Committee on the Draft House of Lords Reform Bill, Draft House of Lords Reform Bill, Volume III, Other written evidence, Lord Lipsey evidence, April 23, 2012.
- 12 HLB 21 12/13, House of Lords (Cessation of Membership) Bill.
- 13 HLD 08/10/12, House of Lords Official Report, Monday October 8, 2012.