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786 Lords A-Leaping

By Robert Blackett

> "*… Parliament, finding by too long experience, that the House of Lords is useless and dangerous to the people of England … have thought fit to Ordain and Enact … That from henceforth the House of Lords in Parliament, shall be and is hereby wholly abolished and taken away …*"
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> *MARCH 1649: AN ACT FOR THE ABOLISHING THE HOUSE OF PEERS*

The United Kingdom, mother of all parliaments, is toying, once again, with disowning one of her troublesome offspring – namely the House of Lords, which is the upper chamber of the UK's legislature. For readers who may be less familiar with the eccentricities of the UK's system, this article seeks to offer some insight into what the House of Lords is and why it is so problematic.

As the epigraph shows, dissatisfaction with the House of Lords is hardly a new phenomenon. 373 years ago, during the Interregnum following the English Civil War, parliament, under the control of Oliver Cromwell, briefly abolished the "*useless and dangerous*" House of Lords, only for it to be promptly resurrected eleven years later upon the restoration of Charles II, and Cromwell's head placed on a spike over Westminster Hall.

Composition

Parliament comprises two bodies, the House of Commons and the House of Lords. Both meet at the Palace of Westminster in London.

The House of Commons comprises 650 Members of Parliament (MPs). Each is elected to represent a geographical constituency using a 'first past the post' voting system (each voter in that constituency casts one vote for one candidate, whichever candidate gets the most votes wins). These elections occur at least every five years, though the government can call a general election at any time.

The House of Lords comprises 786 'peers', though the number fluctuates. With 786 members, the House of Lords is the second largest legislative chamber in the world. The largest is the Chinese People's Congress. None of the Lords is elected. Rather, their rights to sit in the House of Lords arise in one of three ways:

- There are **26 Lords Spiritual**. These are Archbishops and Bishops in the Church of England. They are appointed via an arcane and convoluted process within the Church of England. In theory each cathedral has a college of canons who elect that cathedral's Bishop or Archbishop. In practice a set of nominees for the position is identified by a body within the Church of England called the Crown Nominations Commission, who present their recommendation to the Prime Minister, who advises the Monarch, who directs the canons, who elect the recommended candidate. How the Crown Nominations Commission are appointed is unclear.

- There are **92 Hereditary Peers**. These are the descendants of people who were granted certain heritable titles (duke, marquess, earl, viscount or baron) by past Kings or Queens of England / the UK to reward or secure their loyalty or service – often for having supported a given monarch militarily. In some instances those awarded these titles were also granted rights over land associated with the title.

The oldest extant titles date to the twelfth century. There are around 800 people with such titles. Historically, all such titles conferred an automatic right to sit in the House of Lords. Prior to 1999 several hundred hereditary peers were entitled to sit in the House of Lords. Since 92 hereditary peers are entitled to sit in the Lords. 90 of those 92 are elected by the other hereditary peers and, once elected, have the right to sit in the House of Lords for life. Two (the Duke of Norfolk and Baron Carrington) have an automatic right to sit in the House of Lords. All the hereditary peers who are entitled to sit in the House of Lords are presently men, because most peerages can only be inherited by male heirs. Of the ten wealthiest British people, two (Hugh Grosvenor and Charles Cadogan) are hereditary peers.

- There are around **668 Life Peers**. Up until 1958 the House of Lords consisted of hereditary peers (mostly landowning aristocrats) and the Lords Spiritual. The Life Peerages Act 1958 gave the Prime Minister a power to create life peers. These are people who have been granted certain titles which are not heritable but do confer the right to sit in the House of Lords for life. By convention, the leader of the opposition is allowed to propose a certain number of life peers, but there is no legal requirement that they be allowed to do so, and no legal constraint on how many life peerages each Prime Minister may grant.

No judicial function

Historically the House of Lords served both a legislative function (discussed below) and various judicial functions. At one time, only peers could sit in judgment on other peers (they could not be tried before a jury of common people) and so peers charged with crimes were tried in the House of Lords. In the more recent past, the UK's court of last resort was the "*Judicial Committee of the House of Lords*", comprising the UK's most senior judges, termed the "*law Lords*", who heard appeals in a courtroom situated within the Palace of Westminster and were technically peers with the right to sit in the chamber of the House of Lords proper. This connection between judiciary and legislature was severed in 2009, with the creation of the Supreme Court of the United Kingdom as the final court of appeal for the UK, and the House of Lords no longer has any judicial function.

Remuneration

MPs are paid a basic salary of £84,144 (more than three times the UK median average salary). Each also has the right to claim expenses, with the average MP claiming £203,880.

Members of both Houses also enjoy the benefits of subsidised food and drink. In 2021 the cost of running catering services in the Palace of Westminster exceeded the revenue generated by £9.6 million, albeit this was impacted by low custom due to COVID – the typical loss (and thus public subsidy) has been between £2-3 million. In May 2022 the Liverpool Echo reported that, in the Palace of Westminster, coffee costs 69p, a pint of lager is £3.56 and a bacon butty costs £1.70.

Members of the House of Lords are not paid a salary but can claim a tax-free flat rate of £332 each sitting day that they attend the House and can also claim travel expenses. In 2019 the Sunday Times reported that, in the year to March 2019, the average peer had received tax free payments of £30,827 (more than the UK median average salary) and some peers had claimed more in travel expenses than the standard take home pay for an MP.

Peers only need attend the house to claim their allowance – they do not need to speak or vote. In a 2017 BBC documentary *Meet the Lords*, former speaker of the House of Lords Baroness D'Souza said: "*there are, sad to say, many, many, many peers who contribute absolutely nothing but claim the full allowance*". She described peers walking in and out in order to claim their attendance allowance while leaving their taxis running outside. A Guardian investigation in 2019 identified peers who had succeeded in claiming around £50,000 without speaking or asking any written questions and who had claimed around £41,000 without ever voting.

Award of life peerages

Most people who are awarded life peerages were, themselves, former MPs and party workers who have presumably been awarded life peerages as a *de facto* reward for their loyalty to a given prime minister and the political party of which they are a member. Having served their time as elected MPs and followed the party line, they are rewarded with secure jobs for life, no longer subject to the whims of the electorate and no longer burdened with any need even to pay lip service to representing constituents. As the political pendulum begins to swing against a given Prime Minister or government, and they fear losing their seats in the Commons, a Prime Minister may go on a spree of awarding life peerages, stocking the House of Lords with allies who, from the safe vantage of the Lords, can seek to hamper their incoming successors.

Since being given the power to create life peers in 1958 it has frequently been alleged that Prime Ministers have also awarded peerages to wealthy individuals in exchange for political donations or to media owners to reward or garner favourable coverage. Under the Honours (Prevention of Abuses) Act 1925 it is a crime to buy or sell a peerage but there has never been a successful prosecution of a Prime Minister under that Act.

In 2000 Tony Blair's Labour government created an independent "*House of Lords Appointment Commission*" which was charged with vetting Prime Minister's nominees and empowered to recommend at least two peers each year who are not members of political parties. In 2006 a scandal erupted in which it was alleged that Labour had sold peerages in exchange for loans from wealthy individuals, relying on a loophole under which loans (as distinct from donations) did not require to be publicly registered. The House of Lords Appointment Commission recommended against the appointment of several such lenders whom the Prime Minister had nominated. There ensued a lengthy investigation, with the Prime Minister being interviewed by police, but no prosecution was ever brought.

A Prime Minister is free to ignore the House of Lords Appointment Committee's Advice. In 2020 Prime Minister Boris Johnson nominated Evgeny Lebedev (Russian-British businessman who, together with his father Alexander Lebedev a Russian oligarch and former KGB officer, owns the London Evening Standard newspaper) and Peter Cruddas (founder of CMC Markets who has donated £3 million to the Conservative Party). The House of Lords Appointment Commission recommended against their appointments, but the Prime Minister appointed them anyway. Baron Cruddas reportedly donated a further £500,000 to the Conservative Party three days after his appointment. In 2022 a story emerged that Baron Lebedev had been appointed against advice by the Security Service. The House of Commons passed a motion requiring that the security advice given to the Prime Minister be provided to Parliament. The government has since refused to release the advice, to "*protect national security*".

While it may be hard to satisfy the criminal standard of proof when it comes to proving that individual Prime Ministers have sold peerages, the statistical picture speaks for itself. A 2019 study (Radford, Mell and Thevoz *Lordy Me! Can donations buy you a British peerage? A study in the link between party political funding and peerage nominations, 2005–2014* British Politics (2020) 15:135–159) considered the political donations made by new life peers appointed in the period 2005 to 2014. 303 had been appointed. 204 of them (c.69%) were

former MPs, public officeholders or party workers who, between them, had donated £735,000 to political parties. The other 31%, appointed from outside politics, had between them donated £33.8 million.

What power does the House of Lords actually have?

Unlike (say) the US Senate, whose powers and functions are clearly defined in a written constitution, the powers and function of the Lords are not easily stated, have varied considerably over time and are derived from a jumble of custom and practice, and haphazard legislation. Undoubtedly, the average British citizen could not explain how our Byzantine parliamentary system works.

The House of Commons has the power to remove a government from office and force a general election by passing a vote of no confidence. The House of Lords lacks these powers. By custom, most government ministers are MPs rather than peers and it is rare for peers to hold senior cabinet positions. Since 1902, all Prime Ministers have been MPs. None of that is the result of any legal rule, however – it is custom and practice.

Parliamentary business is divided into 'sessions', usually around one year long, usually commencing in May. At the start of each session, at the State Opening of Parliament, the King reads out a speech prepared by the government outlining its policies and proposed legislation for the new parliamentary session.

Any MP or peer can introduce a proposed law (bill). MPs introduce bills in the Commons and peers introduce bills in the Lords. Few 'private member's bills' and 'private peers' bills' proposed by individual MPs/peers ever get voted into law because the majority of parliamentary time in each session is allocated to bills proposed by government ministers. The parliamentary time allocated to each bill is thus extremely important in determining its chances of becoming law, and is ultimately controlled by whomever has a majority. The time allocated to a bill can be fixed in advance by way of a programme motion which the House votes to approve when the bill is first introduced. Alternatively, during the course of debate, an MP may make a 'closure motion', asking that the debate end. If a closure motion is passed, whatever proposal was being discussed is immediately put to a vote. Guillotine motions are similar, setting a maximum time for a proposal to be debated before it must be put to a vote.

Whether a bill starts in the Lords or in the Commons, it goes through several stages - a series of readings where its content is debated in the chamber, scrutiny by a committee, a report by the committee, and then further debate. If / when that House approves a bill, it is passed to the other House, where the procedure is repeated. That House may approve the bill, or it may reject it outright or propose amendments. If the other House does not accept the rejection / amendments, or all of them, it may send back a form of bill which it wants. This is called the "*ping-pong stage*" where a bill is shuttled back and forth, with neither House yet willing to approve the other's proposal.

Until 1911 for any proposed piece of legislation (bill) to become law it was necessary that it be approved by both Houses of Parliament in the same form. There was supposed to be a convention though, that the Lords would not block 'money bills' – those concerned with raising taxes. In 1909, however, the House of Lords (composed, at that time, exclusively of hereditary peers and controlled by the Conservatives) vetoed a money bill, the so-called People's Budget, by which the Liberals had sought to introduce tax reforms which would have operated to the disadvantage of large landowners. The Liberals proposed a new law to limit the powers of the Lords. The Lords vetoed that new law. George V threatened to create hundreds of new Liberal hereditary peers to

neutralise the Conservative majority in the House of Lords, at which point the House of Lords backed down and voted into law the Parliament Act 1911, but preserving their majority in the Lords.

Following the Parliament Act 1911 the House of Lords can only veto: (i) bills to extend the duration of parliament beyond five years; (ii) bills which were introduced in the Lords (whether government bills or private peers' bills); (iii) private members' bills; (iv) delegated legislation; and (v) provisional orders (a rarely used procedure under which local authorities can propose certain bills for consideration by parliament, usually concerned with compulsory purchase and rail construction).

For all other bills, the House of Lord's power is now to delay. Following the Second World War, the House of Commons (to prevent the Lords hindering post-war nationalisation) used the Parliament Act 1911 to pass a new Parliament Act 1949, shortening the periods by which the Lords could delay legislation so that, today, the Lords can delay money bills for around one month and non-money bills for around one year (until the next session of Parliament) following which the Commons can vote to pass them notwithstanding the Lords' opposition. This ability to delay for up to around a year means that, in the last year before a general election, the House of Lords will have a *de facto* veto, if the government of the day is not re-elected.

From the 1950s there also developed an unwritten convention (the "*Salisbury Convention*") whereby the House of Lords will supposedly not oppose any government legislation which was promised in an election manifesto. Towards the end of an electoral cycle, however, a government will usually no longer be seeking to enact things mentioned in its manifesto, but will be proposing new legislation, in response to issues which have arisen in the years since they were elected.

The Parliament Acts have rarely been used. In practice what tends to happen when the government proposes a bill to which the Lords object, is that the Commons will pass it, but the government is then defeated in the House of Lords who will reject the bill and send it back with amendments. Eventually, after some parliamentary ping pong, but before the year period has elapsed, either the Commons abandons the bill and devotes time to something else, or both houses settle upon an agreed form of wording and the bill passes into law before it becomes necessary to invoke the Parliament Acts. Alternatively, towards the end of an electoral cycle, a general election may occur and a new government installed before it becomes possible to invoke the Parliament Acts.

A significant number of bills passed by the commons are initially rejected by the House of Lords in this way. In the 2020-2021 session of Parliament alone, government bills were defeated in the House of Lords some 128 times. Yet the Parliament Acts have only been invoked seven times in the last 111 years, specifically to pass: (i) Government of Ireland Act 1914 (which would have established home rule in Ireland but never became effective because its coming into force was repeatedly postponed following the outbreak of the First World War); (ii) Welsh Church Act 1914 (disestablishing the Welsh part of the Church of England); (iii) Parliament Act 1949; (iv) War Crimes Act 1991 (conferring jurisdiction on UK courts to try British citizens or residents for certain war crimes committed in Germany or places under German occupation during the Second World War); (v) European Parliamentary Elections Act 1999 (changing elections to the European Parliament from first past the post to proportional representation); (vi) Sexual Offences (Amendment) Act 2000 (reducing the age of consent for male homosexual activities to 16); (vii) Hunting Act 2004 (banning hunting of wild mammals with dogs – despite this having been promised in Labour's election manifesto, the House of Lords had sought to block it, in breach of the Sainsbury Convention).

What is a second chamber for?

Countries which have their legislatures split into two chambers are said to have a 'bicameral' model. Advocates of (or apologists for) bicameralism suggest the basic rationale for having a legislature split into two chambers is to avoid concentrating power in a single body. The second chamber needs to have sufficient power to act as a check on the first, whether that is a right to veto or materially delay legislation, or particular kinds of legislation. The first and second chamber also need to be differently composed, otherwise the second chamber serves no purpose. This can be achieved by having each chamber appointed or elected using different mechanisms or at different intervals. The result is to make it harder for the whole legislature ever being dominated by a single 'snapshot' political view at any given moment, thus 'smoothing out' what would otherwise be the impact of peaks and troughs in public opinion as the political pendulum swings back and forth, and serving to moderate legislation and policy, and avoid extremes.

This sounds plausible, but the fact is that around 40% of countries, among them Sweden, Finland, Denmark, Norway, Iceland and New Zealand, have unicameral systems and seem to function despite having a single chamber legislature. Countries with bicameral legislatures include Russia and Myanmar. There does not seem to be any empirical evidence that bicameral systems are any less prone to extremism and tyranny than unicameral ones. The Kingdom of Italy pre-Fascism and the Weimar Republic pre-Nazism both arguably had bicameral systems. Bicameralism *per se* offers, at best, modest protection against extremism.

Also, while these kinds of arguments might explain why some countries have adopted modern bicameral systems it certainly was not the rationale for our system. Our system simply has ***no*** rationale because it is not the product of any conscious design – it is just a residue from our pre-democratic history and, if it does presently perform any useful function in moderating extremes of government then it is entirely stochastic. One suspects that even the staunchest defenders of the House of Lords, had they sat down behind a veil of Rawlsian ignorance to try to design a constitution from first principles would never have come up with our peculiar system – a second chamber of unelected aristocrats, clergy and life peers appointed by successive Prime Ministers (largely comprising those who have been most loyal and obedient to previous governments and those government's most generous political donors) charged with hampering or frustrating any overly ambitious government whom the great unwashed might imprudently elect.

Lords reform in the news …

On Monday 5 December 2022 the Labour Party published a report by former Prime Minister Gordon Brown recommending constitutional reforms including the abolition of the House of Lords, to be replaced with a new, entirely elected "*Assembly of the Nations and Regions*". The proposal, still light on detail, had previously been announced by Labour leader Keir Starmer as part of a range of measures which Labour will adopt if elected with the somewhat ambitious goal of "*restoring faith in politics*".

In an age of intense political polarisation, the response to Labour's announcement is strikingly uniform. Commentators on right and left respond that *obviously* the House of Lords should be reformed, yet all exhibit a marked lack of excitement about any prospect of its actually being achieved.

… again

The reason for universal weary scepticism, of course, is that we have all been here before. In fact, we have all been here for at least the last quarter century and arguably for the last 121 years. The Parliament Act 1911 itself was intended to be a temporary measure. The preamble said: "*it is intended to substitute for the House of*

Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation". 111 years later, our second chamber remains partly hereditary and is not constituted on a popular basis. When Labour came to power 25 years ago in 1997 it had in its manifesto a promise to reform the House of Lords and get rid of hereditary peers. In 1999 Labour instead enacted a messy, unprincipled compromise which left 92 hereditary peers still in place. The next decade of Labour power would see literally dozens of different options for reform being debated in parliament, a Royal Commission on Lords reform, a parliamentary joint committee and extensive public consultation, none of which led anywhere. One of my tutors sat on that Royal Commission and, twenty years on, I still shudder at the memory of having been made to read that report and write a singularly turgid piece of coursework on it.

At the 2005 election the Labour Party manifesto again promised to abolish hereditary peers and offer a free vote to decide the future of the chamber, but carefully gave no detail of what might replace it. At the same election, the Conservative party (having previously opposed any reforms) promised an 80% elected House of Lords. The Liberal Democrats promised a fully-elected senate. Labour won but the hereditary peers remained in place and no reform of the House of Lords ever materialised. During the time that Labour were in power, between 1997 and 2010, successive Labour Prime Ministers Tony Blair and Gordon Brown appointed 408 life peers. Tony Blair appointed more life peers than any other Prime Minister in history.

Following the 2010 election it was the turn of the Conservative-Liberal Democrat coalition. Both parties had promised in their election manifestoes to reform the House of Lords. The coalition government published detailed proposals for reform in 2011 providing for a part-elected part-appointed second chamber. These were refined by a Joint Committee on House of Lords Reform, and a House of Lords Reform Bill was introduced in 2012, but the government, controlled by the Conservative Party, ultimately abandoned it in the face of opposition from Conservative peers and backbenchers and it was never passed into law. In the meantime, successive conservative Prime Ministers David Cameron, Teresa May and Boris Johnson had between them appointed some 367 new life peers.

Unsurprising, then, that in response to Labour's announcement, *The Observer* quotes several anonymous senior Labour figures warning of the dangers of getting bogged down in a "*constitutional quagmire*" which will distract from more urgent issues and use up "*huge amounts of political capital on an issue that few voters mention on the doorstep*". While Lords reform may not present quite the same risks for Starmer as it did for Cromwell, it does seem unlikely to be a big vote winner.