Modernising Parliament: Reform of the House of Lords
Transcript
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1. Most democracies have two chambers of Parliament. Most of the countries which have only one – e.g., Denmark, Sweden and New Zealand – are small, homogeneous and tightly knit, and with a long history of political agreement. Of countries which have been democracies for longer than 25 years, the largest country with just one chamber is Portugal, with a population of around 10 million.

2. BUT – the problem facing every country which two chambers is how to choose the second chamber. We all agree, I think, that the lower house, the House of Commons, should be directly elected, although we may disagree about what electoral system should be used – first past the post, which is what we use today, or one of the proportional representation systems which we have discussed in previous lectures. The House of Commons represents a very simple principle of representation, the representation of individuals.

How should we choose the upper house, the House of Lords. What alternative principle of representation is there to the representation of individuals?

In a federal state, such as the US, Australia or Germany, the answer is clear. The lower house represents individuals, while the upper house represents geographical units – the states, provinces or regions – Texas, New South Wales, Bavaria.

However – Britain is not a federal state, but unitary. We have no provinces or regions in Britain, except perhaps in those areas enjoying devolved government – the non-English areas of the United Kingdom – Scotland, Wales and Northern Ireland. In the light of the recent referendum on devolution in the north-east, it seems fairly clear that the English do not at present want to be divided into regions. I suspect that if you asked people in Reading, Guildford or Basingstoke which region they belonged to, you might receive some quizzical looks.

What alternative principle of representation, therefore, can there be in a unitary state?

3. Our own upper house, the House of Lords, is not the product of any sort of constitutional logic, but of history. It is one of a very small number of parliamentary chambers which is not elected, but nominated. Of long-established democracies, only Canada and Ireland have nominated upper houses.

Until 1999, two-thirds of the members of the House of Lords were nominated peers. But the House of Lords Act of that year removed all but 92 from the House.

The vast majority of peers – around 700 – are life peers. There are also 26 archbishops and bishops and the current and retired law lords – generally around 20 to 24.

The two archbishops and the 24 senior bishops of the Church of England are in the Lords because the Church of England is an established Church, with delegated powers to legislate. Church of England clergy are not allowed to stand for election to the House of Commons. There must, therefore, be some channel by which the Church can make its views known to government.

The current and retired law lords – - more precisely lords of appeal in ordinary – will be removed from the House of Lords in 2008 as a result of Constitution Reform Act.

Life peers are in the Lords as a result of the Life Peerages Act of 1958. This Act also admitted women for the first time to membership of House.

Since 1958, hardly any new hereditary peerages have been created.
Thus, while, at the beginning of the 20th century, the House of Lords was a hereditary and aristocratic institution, by the end of the century, it was a predominantly nominated and indeed expert body. The same name hid a very considerable alteration in composition. Some might regard this as a good example of the great flexibility of the British Constitution.

The CRITICISM, however, is that hereditary aristocracy has been replaced by a system based on political patronage.

BUT - it should be noted that it is only since 1958 that the opposition parties have been granted peerages as of right. Before 1958, peers were almost always created from the government party.

The PURPOSE of the Life Peerages Act was to re-invigorate the House of Lords by enabling more Labour peers to be created. For there were very few hereditary Labour peers, and Labour supporters were unwilling to accept hereditary peerages, and were in general opposed to the concept.

Thus, in 1955, there were only 55 Labour peers as compared with 507 Conservatives, 238 Independents and 42 Liberals.

Nevertheless, despite the Life Peerages Act, the Conservatives still enjoyed, thanks to their preponderance amongst the hereditaries, a permanent majority in the Lords. The Lords was always dominated by one party, the Conservatives, whatever the outcome of the general election.

Many people thought that a permanent one-party house did not fit easily into a modern democracy. It was almost as offensive as a one-party state.

That was one of the main reasons behind the 1999 House of Lords Act removing all but 92 of the hereditary peers from the House of Lords. This measure deprived the Conservatives of their overall majority in the Lords; and since the 1999 Act, no single party has enjoyed an overall majority in that house.

Now, for the first time in its history, Labour is the largest party in the House of Lords. The state of the parties in October 2005 was:

Labour 210.
Conservatives 208.
Crossbench 190.
Liberal Democrats 74.
Greens 1.
Others 11.

How are the nominated peers chosen – in two different ways.

FIRST – the party members. These are nominated by the leaders of their parties. The Prime Minister decides how many peers there are to be, and how often peers are to be nominated. He also decides how many peers to give to the opposition parties, but he makes no attempt to interfere with the nominations of the opposition parties.

SECOND – the cross benchers. These are chosen by a House of Lords Appointments Committee set up by the Blair government in 2000. To secure a place under this scheme, individuals have to apply – others can apply on their behalf, but they have to agree to accept nomination. Selected candidates are interviewed, and then nominated by the Commission.

Some hoped that the Commission would nominate members of the general public, so-called `peoples peers'. In fact, however, the nominations have been of the `great and the good', people of distinction in public life who are relatively independent of party ties.

4. The composition of the House of Lords is, from the point of view of logic, irrational. No one drawing up a constitution from scratch would construct an upper house in this way.

BUT - the irrational composition does have some advantages.
The FIRST is that it prevents serious conflict between the two houses. When the House of Lords disagrees with the Commons, it must, in the last resort, give way, because it has no democratic legitimacy. An elected chamber, on the other hand, might cause a great deal of conflict with the House of Commons.

It is the composition of the House of Lords that determines its powers. These powers are laid down in statute – in the Parliament Acts of 1911 and 1949.

These Acts provide for THREE kinds of bill.

FIRST, a bill certified by the Speaker as a money bill, that is one concerned solely with the raising of revenue and taxation. The House of Lords has no power over such bills. A bill certified as a money bill is presented for the Royal Assent one month after it is introduced into the Commons whatever attitude the Lords takes towards it.

SECOND, a non-money bill. Here, the House of Lords can delay a bill but only for one parliamentary session. If the House of Commons passes the same bill in two successive sessions, it becomes law, whatever attitude the Lords take towards it.

This procedure has been used just four times since the 1949 Parliament Act.


c. The Sexual Offences (Amendment) Act, 2000, lowering the age of consent for homosexual activity to 16, the same as the age for heterosexual activity.


But, of course, one cannot evaluate the significance of the Parliament Acts solely by the small number of occasions on which it is used. For they act as a deterrent to the Lords, and provide an incentive for them to seek a compromise with the Commons when there is disagreement.

Since 1945, the Lords have voluntarily limited their powers further than the Parliament Acts through the Salisbury Convention. This Convention was laid down by Lord Salisbury, who was the Conservative leader in the House of Lords in 1945, when a majority Labour government was returned, threatening conflict with the Conservative-dominated upper house.

The Convention states that where a measure has been foreshadowed in the manifesto of the government party, it should be regarded as having been approved by the people, and therefore should not be either rejected or amended out of recognition by the Lords.

Some in the opposition parties say that the Convention need no longer be observed, since the upper house is no longer a one-party house with a permanent Conservative majority.

BUT – others, and in particular the members of the government, say that the Convention should still be observed, since it should apply to a non-elected chamber, whatever its composition.

The difficulty for the government is that, since the abolition of the hereditary peers, the House of Lords has become more assertive. It is now composed, almost wholly of life peers, chosen specifically for the purpose, rather than being composed of those who were there as a result of the accident of birth. The life peers, therefore, say that they have more legitimacy and a greater right to challenge the government, particularly on matters of civil liberties, where, so they say, the government is too populist, and tends to ignore basic principles of civil liberties.

These matters – the legitimacy of the Salisbury Convention – and the role of the Lords in civil liberties - will run and run!

The THIRD kind of bill is one to lengthen the life of Parliament. The Lords retain an absolute veto over such a bill. In addition, the consent of the Lords is required to dismiss a judge.

Thus, the Lords offers protection against a government seeking to subvert the electoral or the judicial process. It thus performs the function of CONSTITUTIONAL PROTECTION, albeit over a limited area. Some believe that this function should be extended.
For, on major constitutional issues, such as the European Union, the reform of local government, or devolution, it is difficult for the Lords to make real alterations to government legislation.

The main power is one of legislative revision – requiring the government to think again. The legislative powers of the Lords are, however, as we have seen, severely limited. It has no POWER to ensure that the government of the day takes notice of its proposed revisions. But nevertheless, the Lords does do some useful work in tidying-up legislation.

Perhaps the most effective work of the Lords lies in a quite different field, that of scrutiny by select committee, particularly the permanent Select Committees on the European Union and Science and Technology.

A former Leader of the Lords, Lord Windlesham, has said, `the House of Lords should not attempt to rival the Commons. Whenever it has done so in the past it has failed, and usually made itself look ridiculous in the process’.

He thought the role of the Lords should be quite different. `In any well-tuned parliamentary system there is a need and a place for a third element besides efficient government and the operation of representative democracy. This third element is the bringing to bear of informed or expert public opinion --- it is now one of the principal roles of the Lords to provide a forum in which informed public opinion can take shape and be made known’.

The non-elected nature of the House of Lords offers an opportunity for experts – scientists, economists, lawyers etc. – people who would not normally be expected to stand for election to the House of Commons - to bring their expertise to bear on legislation.

The current composition of the House of Lords thus EVADES the problem of finding an alternative principle of representation for the second chamber.

5. Nevertheless, it is not surprising that there have been many calls for reform of the House of Lords, a legislative chamber which contains not one elected member.

The call for reform comes because:

a. Nomination cannot yield democratic legitimacy.

b. The current system gives too much patronage to the Prime Minister and other party leaders. In eight and half years, Blair has created 292 peers - well over one-third of the total membership of the Lords. Margaret Thatcher created 216 peers in 11 years and John Major 171 in 7 years.

c. There is danger of corruption in that a number of peerages are given to party donors. `The Times’ on 14 th November, pointed out that around 1 in 10 of the life peers created by Tony Blair since he became Prime Minister, have been Labour party donors, contributing in total nearly £25million to party funds. It erodes public trust to promote people to the legislature solely because they have given large sums of money to a political party. Many would argue that the political parties should not have to rely upon large donations from rich men and women. The answer, they say, is the state funding of political parties and a limit on large donations to parties. But perhaps that is a subject for another lecture!

There is no real agreement on how to reform the Lords. As long ago as 1911, the preamble to the first Parliament Act declared that it was an interim measure since `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’.

This preamble had no effect in law, but it was the statement of an aspiration. However, the aspiration has not been fulfilled. Perhaps it was a politician’s promise!

In 1999, a Royal Commission on reform of the House of Lords was set up. It was chaired by Lord Wakeham, a former Conservative Cabinet minister. In 2000, its report appeared. It recommended that a `significant minority’ of the upper house be elected on a regional basis by proportional representation. The majority would still be appointed. But they would be appointed by the Appointments Commission, and not by the Prime Minister – and the party composition of the Lords would have to reflect the balance of votes in the most recent general election. Both nominated and elected members would serve for just 15 years, and would be ineligible to stand for office to the House of Commons for 10 years after retiring from the upper house, thus preventing them from using the second chamber as a springboard for a career in professional politics.
Part of the reason why reform has not occurred is that the Left, until recently, did not want to create a more legitimate chamber, since such a chamber would prove a more powerful resistance to a Labour government. A more rationally organized Lords would be encouraged to use its powers, or perhaps even seek an extension of its powers. Indeed, if it did not enjoy real powers, it would be difficult to persuade able and ambitious people to stand for election to it. Why should they bother to get elected to a talking-shop? Thus, as Richard Crossman, a Labour Cabinet minister in the 1960s, observed, Labour's policy was 'that an indefensible anachronism is preferable to a Second Chamber with any real authority'. This was a position which he found 'logical, but rather reactionary'.

Perhaps there is an analogy with the European Parliament. Until 1979, the European Parliament was nominated not elected. Since 1979, it has been elected. One of the first things it did after being elected was to seek an increase in its powers. Indeed, its powers have increased very considerably since 1979. It now has powers of co-decision with the Council of Ministers, giving it a power of veto over much European Union legislation. Many might welcome this in the European context, but they might not want co-decision in Britain, that is, two chambers with roughly equal legitimacy.

For a directly elected House of Lords would have very great democratic legitimacy, and would claim that it represented public opinion at least as effectively as the Commons. If the upper house were to be elected by proportional representation, many would say that it had become more legitimate than the Commons!

Might there, moreover, be the danger that a directly elected second chamber would reproduce some of the worst features of the House of Commons – the yah-boo system of adversarial politics and point-scoring, with domination by the party whips and by professional politicians. Do we really want another house with confrontational politics and whipped majorities.

John Major once said that if the answer is more politicians, we are asking the wrong question!

Many witnesses told the Wakeham Royal Commission that they wanted an elected upper house so long as it was not composed of professional politicians. But, how is this to be achieved. Any elections for the upper house would inevitably be dominated by the political parties.

Would a reformed second chamber be as willing to carry out the expert functions of scrutiny in such committees as the Science and Technology Select Committee?

Instead, therefore, of radical reform, there have been evolutionary reforms – the 1949 Parliament Act, further restricting the powers of the Lords, the creation of life peerages in 1958 and the right to disclaim peerages in 1963 – which led to Lord Home becoming Prime Minister.

There is still an ongoing debate on House of Lords reform. The government’s position is that the removal of all but 92 of the hereditary peers in 1999 was phase one of a two-phase reform, and the second phase will involve democratic election. MPs, however, like the government, are divided.

In 1895, a Liberal leader, Sir William Harcourt, said, ‘There are two things that you can neither mend nor end: the House of Lords is one, the other is the Pope of Rome’.

Was he right?