The Contemporary History of House of Lords Reform

At the centre of the conundrum that is the British constitution is the House of Lords, reform of which is once again being discussed by Parliament, though conspicuously not by the public. The enduring mystification inherent in the subject is clear from first principles: the upper chamber is in practice the lower chamber. Since the 1911 Parliament Act the House of Commons has been superior to the House of Lords. 1911 was however also the last major reform; that it was also the first major reform is not a coincidence. The 1911 Act mattered greatly, as hitherto an unelected chamber could thwart the will of that which had been elected. With that clear democratic outrage removed, there was no consensus over subsequent reform: though the Act conveyed the intention "to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of a hereditary basis", with some perspicacity it went on that "such substitution cannot be immediately brought into operation". Thus, one hundred years on, with no public interest, therefore no partisan political benefits, and so in turn no momentum, the situation remains.

There have been many attempts at reform. Of those that succeeded, the most important were the 1958 Life Peerages Act, which provided for the creation of life peers (and so for the admittance of women for the first time), and the 1999 House of Lords Act, which reduced the number of hereditary peers from 747 to 92. The 1999 Act was typical: the product of compromise in the absence of consensus, avowedly only part of a process, but still greatly controversial to those actually exercised over the issue. It began a process which continued to a Royal Commission and the Wakeham Report of 2000, which led to public consultation that produced no consensus, and hundreds of different opinions, before a Joint Committee of both houses offered parliamentarians seven options, ranging from a wholly-appointed, to a wholly-elected house. None of the options gained a majority. A Department for Constitutional Affairs was established in 2003, demonstrating that whatever else it was, the Blair governments were certainly the most radical in relation to constitutional change since those of Asquith before the First World War. The new Department managed reform of the judiciary, but Lords reform again foundered on the absence of any agreement, or, indeed, any will.

The latest initiative comes amidst an unprecedented period of constitutional upheaval, as Nick Clegg, Deputy Prime Minister, one hundred years after Asquith – one of his predecessors as Liberal leader – sought to use the unexpected and probably fleeting opportunity of a presence in government permanently to modernise the constitution. The first reform, and the most pluralistic, has already been lost, in a referendum in May 2011: electoral reform. The embarrassment of that defeat at least gave face-saving momentum for Clegg to pursue Lords reform; to demonstrate the progressive constitutional vitality of at least the Liberal Democrat part of the Coalition. Another of Clegg's predecessors, David Steel (a life peer since 1997) has suggested a bill to break the deadlock, which would replace 1958's unaccountable system of patronage with a Statutory Appointments Commission, create a system of retirement (peers are peers unto death), the ability to remove peers guilty of serious transgressions, and, by ending the system of by-elections when hereditary peers die, and converting the existing hereditaries into Life Peers, finally remove heredity from Britain's legislature (though not of course from the constitution).

Even if Steel's suggested bill were eventually passed, the essential issues of the second chamber would remain unresolved: whether it should be elected or appointed, or a mixture of the two, and if so on what proportions. Some maintain that no legislator should be anything but elected; others hold that an elected Lords might effectively reverse or at least rebalance the 1911 settlement and claim democratic legitimacy over the Commons, or at the very least confuse matters. Then there is the nature of the members of the Lords themselves: if elected, the problems of party politics may be reproduced in a chamber currently characterised by its relative distinctiveness from (increasingly unpopular) machine politicians, whilst also in all likelihood doing away with the accumulated years of experience in all areas of national life that the present 789 peers can call on when scrutinising legislation, peers who would be unlikely to want to stand the rigours of campaigning if they were required to be elected. If members were appointed, who should appoint? There appears at least to be a consensus that a hybrid system – of election and appointment – should be introduced, but no agreement whatever as to the proportions has been, or is likely ever to be, reached. More fundamentally

one could indeed ask whether there needs to be a second chamber at all. Such debates have taken place, and continue, in the face of widespread public indifference.

Public indifference, however, is not a reason to do nothing about an issue; it is however the most specious of the claims by those resisting any change, just as it was to those opposing electoral reform. Nor should one refrain from stating that elites are not inherently undesirable if those elites are open, any more than that voting does not necessarily equal democracy: a democratic second chamber therefore need not be elected. Those who argue that every legislator has to have been elected or else is it not democratic may be called democratic dogmatists, implying as they must do that the Commons is a model of the form, and overlooking that the Lords have consistently displayed independence of mind based on wider life experience, and a consequent freedom and independence of mind. Lords reform is not any more a matter of left and right, as the unholy alliance of Michael Foot and Enoch Powell demonstrated when it derailed another doomed effort, in 1968. Indeed, the most recent impetus for 'democratising' the Lords has come from the right of the Conservative Party, after the Lords defeated two 'democratising' bills of the present government for elected police chiefs and for a 'referendum lock' before ratifying future European treaties, measures for which the term "democratic dogmatism" could have been invented.

A minority, easily derided, support a wholly-appointed chamber, to preserve the best of the old, and with the creation of a transparent, inclusive, and rigorous, appointments commission, and a correlational retirement process, introduce the best of the new. The Steel 'bill' is as close to such a reform as has been mooted, though it fulfils the wishes neither of Asquith nor Clegg. Unlike the monarch, another component of the conundrum, which has in common with the Lords the probability that it would not exist in any constitution that had actually been created rather than had merely evolved, the Lords holds no public attention one way or the other. Unlike the winning campaign in the referendum on electoral reform, however, it will not be subject to 'democracy' in its purest form: a direct poll of that minority of the electorate that could be bothered to vote after a campaign disfigured by far from impartial and heavily funded publicity and press coverage. So, in the absence of 'democracy', and even the failure of the Steel bill, the upper chamber seems likely, in its anachronistic way, to continue to exercise scrutiny and restraint on the lower chamber, reform of which is long overdue.

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