House of Lords Reform: A History

Volume 3 *1960-1969: Reforms Attempted*

Peter Raina

Peter Lang

Preface

The present volume contains various schemes to reform the House of Lords made during the years 1960–1969. The demand for more radical reform became urgent when, in November 1960, Anthony Wedgwood Benn succeeded his father as second Viscount Stansgate, but refused to receive the Letters Patent of his father's creation. Benn had resolved to renounce his newly acquired title. But this he could not do because of the law: it would require an act of parliament to make an act of renunciation possible. Having lost his seat in the House of Commons because he was now a peer, Benn requested that he should have a hearing in the Commons in which he could plead his case. There was no precedent to justify such a move, so the request was refused. Benn accordingly adopted a different course of action. A man of turbulent spirit, he kept his matter constantly before the public. He also made a petition to the House of Commons to appoint a select committee to examine his case. Benn's reasoned arguments excited the attention of the government of the day. Prominent among those who recommended reform in the direction Benn suggested were Harold Macmillan, the Earl of Home and Viscount Hailsham. They eventually decided that a government committee should be appointed to introduce legislation enabling peers to renounce their titles, thus making them eligible for election to the House of Commons. Once this committee was established, the members' considerations went even further. They recommended that peeresses should have the same rights as peers. The prime minister, Harold Macmillan, observed that, since a major constitutional change was involved, the inquiry should be undertaken by a Joint Select committee of both Houses of Parliament. In April 1961 the cabinet resolved to appoint such a committee. But it was not until March 1962 that the Chancellor of the Duchy of Lancaster, Iain Macleod, moved in the House of Commons that a joint select committee of both Houses of Parliament be appointed to cover: (a) questions of the surrender of peerages; and (b) how anomalies

in the position of hereditary peeresses could be repaired. A similar motion was put down in the House of Lords by Lord Hailsham, the leader of the Upper House. Both Houses then debated the motion, approved it and nominated delegates to the joint select committee.

The committee met nine times between May and July 1962, inviting and considering diverse proposals from interested bodies and individuals. Once the deliberations were over, the committee drafted a lengthy report on House of Lords reform. This was in December 1962. The cabinet considered the report on 24 January 1963 and recommended that a debate be initiated in Parliament on the motion that the Houses 'do take note' of the report. The government indicated, that it would maintain an open mind during these debates, and be prepared to introduce legislation if such proved to be the general desire. Although no promise was made on the date for introducing the bill, the cabinet thought it desirable to state that it should become law 'in time to take practical effect at, but not before, the next General Election'. At the end of March 1963 the government moved the motion in both Houses: 'That this House takes note of the Report of the Joint Committee on House of Lords Reform.' The Houses debated the motion and agreed to the resolution. Thereafter, on 19 June 1963, the government introduced the bill for the Peerage Act 1963 in the House of Commons to be read a second time. It was a very short bill. The following were the main provisions:

1. Any person who succeeded to a peerage in the peerage of England, Scotland, Great Britain or the United Kingdom could disclaim that peerage for his life.
2. The disclaimer of a peerage was entitled for election to the House of Commons.
3. The holder of a peerage in the peerage of Scotland would have the same right to receive writs of summons to attend the House of Lords, and to sit and vote in that House, as the holder of a peerage in the peerage of the United Kingdom.
4. The holder of a peerage in the peerage of Ireland would not by virtue of that peerage be disqualified from being, or being elected, a member of the House of Commons.

5. A woman who was the holder of a hereditary peerage in the peerage of England, Scotland, Great Britain or the United Kingdom would have the same right to receive writs of summons to attend the House of Lords, and to sit and vote in that House as a man.

In the Lords, a second reading of the bill took place on 4 July 1963. In both Houses amendments and counter-amendments were put down. Some amendments were defeated, others agreed to. The bill received the Royal Assent on 31 July 1963. Its provisions must be counted as the most profound reform the House of Lords had as yet undergone. The occasion was indeed historic. As the Earl of Longford rightly judged, the bill was also the 'heroic achievement of one man' – Anthony Wedgwood Benn.

The Peerage Act 1963 was soon applied to solve particular issues. Tony Benn was allowed to return to the House of Commons. Another strikingly practical consequence was that the Earl of Home disclaimed his peerage for life to qualify for the office of prime minister so as to replace Harold Macmillan in October 1963.

A general election was timed for October 1964. In its election manifesto, the Labour Party declared that, if it won the election, it would take action against the delaying powers of the House of Lords. Labour did win the election, but only with a tiny majority; so the legislation it planned in this regard was postponed for the time being. This did not, however, prevent a Labour MP, William Hamilton, from moving a motion about the issue in the Commons. His motion, put forward in May 1965, asked that leave be given to bring in a bill to abolish the delaying powers of the House of Lords on government legislation. Second reading of the motion was deferred several times because Hamilton's own party leadership would not support him. Harold Wilson, the prime minister since October 1964, decided to dissolve Parliament in March 1966. In the new election Labour won an overall majority of 97 seats. This meant that the party leadership could now go ahead to realize its pre-election declaration of 1966 that 'legislation will be introduced to safeguard measures approved by the House of Commons from frustration by delay or defeat in the House of Lords'. In May the cabinet resolved to appoint a ministerial committee to propose

schemes to reform the House of Lords. Those showing a strong disposition to work on these schemes were: Lord Gardiner, the Lord Chancellor; the Earl of Longford, the Lord Privy Seal; Richard Crossman, the Lord President of the Council; Lord Shackleton, Deputy Leader of the House of Lords, and Lord Shepherd, the Chief Whip in the House of Lords. On the prime minister's instructions, the proceedings of the committee had to be kept confidential.

The reforms were worked on by men who went beyond the terms postulated in the election manifesto of 1966. In their deliberations they did not limit themselves to reducing the delaying powers of the Lords alone. They felt that reform of the composition of the Upper House was equally important. Lord Longford was first to suggest introducing a 'two-writ scheme', which would give some lords the right to sit and speak but not vote, while others could sit, speak and vote as well. It took almost a year before the committee members began to get their various schemes together. In May 1967 Richard Crossman circulated his memorandum on composition and powers of a reformed House of Lords; a month later Lord Shepherd presented his very lengthy memorandum on composition, functions and procedure of a reformed House. The ministerial committee met at various times to consider draft proposals, to make suggestions and to invite fresh ideas. In its work, the ministerial committee counted on assistance from the government and from parliamentary officials. Here Michael Wheeler-Booth, in particular, distinguished himself.

While the work of the ministerial committee was progressing, both Richard Crossman and Lord Shackleton thought it expedient to invite the opposition parties to join in. Thus Lord Carrington, Leader of the Opposition in the House of Lords, was approached. He very much welcomed the idea, and suggested that a plan should be put forward for consideration and should go to Edward Heath, the Conservative Party Leader. At the end of October 1967 Harold Wilson wrote to Heath and to the Liberal leader, Jeremy Thorpe, inviting them to begin inter-party consultations on what Wilson called 'weighty and complex' constitutional issues. Both Heath and Thorpe agreed to take part in these consultations. The first meeting of what came to be known as the 'Inter-Party Conference' was held on 8 November 1967. The conference resolved to appoint a working subcommittee of three to look fully into diverse drafts on reform, and submit

them to the attention of the conference. The members of the working sub-committee, Lord Shackleton (Labour), Lord Jellicoe (Conservative) and Lord Byers (Liberal) proved remarkable in their legislative thinking. They met on 35 occasions. By the middle of June 1968 the conference put forward a detailed draft of 75 paragraphs, recommending reform of the composition and powers of the House of Lords. It was suggested that these paragraphs serve as a conference white paper for discussion in parliament. But before this could happen an unfortunate incident occurred. On 19 June 1968 the House of Lords, by a tiny majority, voted down the Southern Rhodesia (United Nations Sanctions) Order previously approved by the Commons. The decision was entirely foolish; and it marred the prospects of the conference proposals.

The government was furious. On 20 June the prime minister stated angrily in the Commons that, by a slim majority, the Lords, 'accountable to none, have now, quite deliberately, sought to assert power to put this country in default of international obligations solemnly entered into'. Under those circumstances he declared that all-party talks on reform had to be terminated. But the government, the prime minister said, had every intention of soon introducing 'comprehensive and radical legislation' to give effect to reform of the House of Lords.

The precious work of the conference now appeared to have been lost. However, this turned out not to be the case. The ministerial committee was now entrusted with drafting a government bill on reform of the Lords. The committee considered the recommendations of the inter-party conference seriously, and its proposals were the primary basis of its own white paper. The Opposition was promptly notified. The government decided to have the white paper debated in both Houses of Parliament, before it introduced a bill.

The main feature of the white paper was a 'two-tier' scheme which would divide the membership of the House of Lords into two groups: 'voting' peers and 'non-voting' peers. All new members of the House would sit by right of creation, and not by right of succession to a hereditary peerage. Voting peers (the first 'tier') would constitute the 'working House' in which the effective power of decision would reside. Their number would include every created peer prepared to accept, for the term of one Parliament at a time, the responsibilities of regular attendance. The second 'tier' would

be composed of non-voting peers making up all the other members of the House. The existence of the second 'tier' would make it possible 'to bring into the House created peers who could not attend regularly but who would be able to make valuable contributions from time to time: they would include representatives of the professions, scientists, trade union leaders and other leading members of the community, together with those experienced parliamentarians who had passed the age of retirement'.

Other characteristic parts of the white paper were the following:

1. On powers of the reformed House of Lords, it was proposed that if the Lords rejected a public bill sent up from the Commons, the bill could nevertheless be presented for Royal Assent at the end of a period of six months (taken from the point of disagreement between the two Houses). With regard to subordinate legislation, it was suggested that the Lords' power of outright rejection should be replaced by a power only to insist that the government of the day should think again.
2. New members were to be created by the Queen on the recommendation of the prime minister, who would consult other party leaders in the case of nominations from their parties.
3. The government was to consider how far the reformed House could include members 'with knowledge of the various parts and regions' of the United Kingdom. Here the reformers had Scotland, Wales and Northern Ireland in mind.
4. The question of remuneration was to be referred to an independent body.
5. All serving law lords would possess voting rights.
6. The number of bishops represented in the Upper House would be gradually reduced from 26 to 16, and they would include both voting and non-voting members.
7. All peers, whether or not members of the reformed House of Lords, should in future be qualified to vote in parliamentary elections. And a peer who was not a member of the Upper House should be qualified for election to the House of Commons.

The white paper was published on 1 November 1968 and was debated in the Commons on 19 and 20 November, then in the Lords on 19, 20 and 21 November. In the Commons the Labour Left opposed the white paper, and the Tory Right put up even stronger opposition; but the Conservative front bench supported it. The government won a comfortable majority. The Lords appeared to be much more keen on reform than had been expected, and, surprisingly, the vote in favour of the white paper was larger in the House of Lords than in the Commons.

Approval of the white paper in both Houses made the government willing to introduce the Parliament (No. 2) Bill in the House of Commons on 3 February 1969. In the debate on the second reading of the bill, the Labour, Conservative and Liberal back bench opponents of reform showed no disposition to side with their corresponding front benches. And it was thus only with the support of the Opposition front bench that the government carried the division. The victory was temporary. The real battle started at the committee stage. Here the bill was abandoned to the mercy of the back bench MPs. They were now given an opportunity to exact revenge for their earlier defeat. The committee debated the bill on six days in February, two days in March, and on four days in April 1969. By April more than 80 hours had been spent on discussions. Various amendments were put down and points of order raised, and filibustering became the back benchers' tactic. The government could stop this obstruction only with the help of the Opposition; but when this help was sought, the Opposition refused to assist, arguing that since the bill concerned important constitutional change it would be next to impossible to win the approval of its party members. The cabinet found itself in a dilemma. If it allowed the bill to run further, there was no certainty that it would be passed. Moreover, the government still needed time for other important legislation and time was running out. The Parliament (No. 2) Bill was becoming burdensome. Finally, its patience fully exhausted, the government decided to drop the bill. The prime minister announced this decision to the House of Commons on 17 April 1969. Such was the dismal end of a project on which distinguished men had worked with great dedication for over two years.

Why did the attempt fail? We are tempted to make some conjectures. We believe that the 'two-tier' scheme would have divided the House of Lords into two classes: a privileged class of those who could speak and vote;

and a class shorn of power consisting of those who could only speak, but were not permitted a vote. One could not really call this reform. Secondly, the bill had a long and unnecessary preamble which had no legal effect and which was an anomaly. Thirdly, the bill contained far too many clauses, which made it complex and not readily comprehensible to all MPs: a bill of one clause, two clauses or, at the most, three clauses would perhaps more easily have secured agreement than the bill actually presented, which contained 19 clauses.

Yet, the ill-fated Parliament (No. 2) Bill had its worth and dignity as well. The enormous number of memoranda drafted and redrafted, the intensive discussions these documents provoked, and then the final conclusions reached divulge the dedication and wisdom with which attempts were undertaken to enact reform of the House of Lords. As evidence sufficing to establish these facts, we produce here all the documents relevant to it. These comprise: (i) minutes of the cabinet, ministerial and conference meetings; (ii) the extensive correspondence entered upon; and (iii) a comprehensive record of the reform proposals. Until recently, all this source material was kept secret, but the files are now open to the researcher. We here make the documents available to the public for the first time.

— Peter Raina
Senior Research Associate

Holywell Manor, Oxford
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Graduate Centre, Balliol College, Oxford