

WHY THE HEREDITARY PEERS SHOULD STAY IN THE HOUSE OF LORDS

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As promised and as expected, on Tuesday November 24th 1998 the Queen announced plans to remove the hereditary Peers from the House of Lords. Though her annual speech to Parliament is normally heard in silence, this part of it was received with combined groans and cheers. What may be the last constitutional crisis in English history has begun.

As some of my readers may not be aware of English ways, I will explain. England possesses a mixed constitution, with elements of monarchy, aristocracy and democracy. Sovereign power is divided between the Crown, the House of Lords and the House of Commons. The first of these is entirely hereditary. The second is largely so, being composed of Peers who sit by right of inheritance and Peers who are nominated for life. The last is an entirely elected body. Together, these make up the Crown in Parliament, and — as in a Jury — power can be exercised only with the consent of each coordinate body.

Over the centuries, customary and legal rules have evolved to raise the elected House of Commons to the first place in the Constitution. Since the 1690s, the powers of the Crown have fallen gradually into the hands of Ministers responsible to the Commons. By custom, the Lords lost any right to interfere with money bills in the 1670s. Since 1911, they have had only

a limited veto over most kinds of Bill sent up from the Commons. But, despite many changes in both form and spirit, the English Constitution remains in essence mediaeval.

This is now about to change. The Labour Government has decided to expel the hereditary Peers from the House of Lords; and their place will, until some further reform in the indefinite future, be taken by nominees appointed or approved by Mr Blair.

As I write these words, the television is broadcasting one long gush about “democracy” and “modernisation”. The Labour and Liberal Democrat politicians are almost dancing with excitement. I heard one of them earlier call this the “last push” towards the radical dream of the past four hundred years, of an England where birth counts for nothing. He seems to have forgotten about the Monarchy — or perhaps there are plans for that as well. The Conservative leaders are pulling long faces — but only, they claim, because reform is coming in two stages rather than one. As this is all the Party leadership is saying, opposition is written off as a defence of the Tory majority in the Lords. The consensus of opinion seems to be that the power of the hereditary Peers is indefensible and that it ought — at least, eventually — to be abolished.

I disagree. If I were drafting a constitution for a people that had just emerged from foreign subjection, or had just settled a new territory, I doubt if I would suggest a second chamber as oddly put together as the House of Lords. But that is what we have in England, and I see no valid case for change. It is old. It is established. It works. It is the best second chamber that ever existed. For the most part, reform of the Lords is something proposed by the despotic and assented to by the ignorant.

AGE AS A DEFENCE

The Lords, quite as much as the Crown, embody continuity in England. They are descended from the *Witenagemot*, which was the council of great nobles and churchmen who advised the Anglo-Saxon Kings, and whose consent was required before any important act. This in turn was descended from the advisory councils described by Tacitus in his second century work on Germanic society. The Lords have existed in something like their present form since the thirteenth century. The oldest Peerage now represented there is the Barony of De Ros, dating from 1264. The most senior is the Dukedom of Norfolk, created in 1483. There are titles in the Lords that carry the mind back to times long before the modern age — to the time before America was discovered, before printing and gunpowder, when English was a collection of barbarous dialects, and when Europe was still in the shadow of the seemingly greater civilisations of the East.

The Lords have been associated with every great event in English history. The coordination and the tensions between them and the Crown and Commons have shaped the England that we still know. A Frenchman who studies the reign of Henry IV must look as if across a closed border. There is a whole dead terminology to be learned before there can be understanding — titles, courts, offices, units of money, territorial boundaries: all now are different. For an Englishman, the reign of Charles II is almost current politics. Yes, they wore different clothes in the seventeenth century. Yes, they often believed different things. But we need no prior explanations to understand how Charles was kept short of money by the House of Commons, or how he relied on the Lords to throw out the second Exclusion Bill. To lay hands so violently on the ancient Constitution is to attack the national identity of the English. It is to snap one more of the precious threads of continuity that bind us to our past.

THE FUNCTIONAL VALUE OF THE LORDS

And the Lords are not some passive relic of the past. They remain part of the working Constitution. They solve a problem

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FOR LIFE, LIBERTY AND PROPERTY

that has troubled constitution makers elsewhere for centuries. Experience suggests that single chamber legislatures are inefficient. They pass too many laws that are bad not merely in substance, but also in form. The answer has usually been to provide for a second, revising chamber. This, however, raises a further problem. If a second chamber is elected on the same franchise as the first, both will be dominated by the same party or coalition of parties; and what is approved in one place is unlikely to be questioned in another. If, on the other hand, there are different franchises, the second chamber may fall into the hands of the opposition parties, who will block everything sent up from the first. Since both chambers will be democratically elected in some way, both can claim to be representing the will of the people.

The House of Lords avoids this problem. Since they are unelected, their moral and legal authority is weak in any conflict with the Commons. But their historical legitimacy gives them enough strength to demand at least changes to very bad laws sent up from the Commons. This legitimacy is strengthened by the presence of the senior Judges and the Anglican Bishops. And in spite of their Conservative majority, the Lords have acted as an impartial check on misgovernment. The Thatcher and Major Governments suffered continual reverses in the Lords. I remember in 1994 looking at the Criminal Justice and Public Order Bill before and after its passage through the Lords. It went in as what can only be described as an enabling act for a police state. It came out as something that was just very bad. Clause after clause had been either deleted or softened by the Lords.

THE ARGUMENT FROM DEMOCRACY

Of course, the Government is not proposing to abolish the House of Lords outright. The life Peers will remain; and it can be argued that the practical benefits of the Lords will continue without the hereditary Peers. The Judges and other life Peers have been just as active in revising bad legislation. Bearing in mind that many hereditary Peers never attend the Lords — and many who do attend never oppose anything — why should the life Peers suddenly fall silent?

The answer is that the hereditary Peers are the House of Lords. It is from the presence there of the great landed families that the Lords as a whole draw their tone and legitimacy. They provide a set of cultural values to which the life Peers soon assimilate. A man may have started his career as a coal miner. Raised to the Peerage, he sits with and is the equal of a fourteenth Earl. He forgets that in the Commons he voted as his leaders directed. He now sits and listens to the arguments, casting his vote for the better one. Take out the hereditary Peers, and the glamour disappears. The ennobled miner becomes just an old man with a funny title — the equal of other old men given their titles by the Prime Minister.

It is because they are not elected that the hereditary Peers are so valuable. The elected politicians talk endlessly about democracy. But, except in the purely formal sense, this is not a democratic country. About the only way to get elected to the House of Commons is to stand as a candidate for one of the big parties. In all the parties, the candidate lists are carefully vetted to ensure that all but an irreducible minority are acceptable to the party bosses and the security services. The ideal is obedient mediocrity; and that is what we get. Occasionally, mediocrity is tempered by gross personal corruption. Nor is it coincidence that so many of the elected ones have embarrassing sexual habits: blackmail is the quietest form of control. On the whole, people of intelligence and integrity do not nowadays stand for election in England.

The Lords have avoided this degrading fate because they are not “democratically” accountable. A Earl or a Baron can stand up and speak his mind and vote as conscience dictates. There

is no pressure that can be placed on him — no orders sent out to a constituency association, no newspaper campaigns to discredit him before the electors. He owes his position to accident of birth and nothing else. This may sometimes throw up legislators who are mentally subnormal or even insane, but it will also throw up men of incorruptible honour.

And that is why the hereditary Peers are being expelled from the Lords. It is their independence, not their birth, that makes them so objectionable. Arguments about democracy are an excuse, not a motive. Tony Blair is strutting about like some reincarnation of John Lilburne. The Lords must be reformed, he says, so that the will of the people may prevail. This is rich coming from a man who has personally excluded Labour Party candidates because they do not agree with him, who is looking for some device to stop Ken Livingstone from standing to be Mayor of London, and who seems very happy to share power with an absolutely unelected and unaccountable European Commission in Brussels.

One further point worth making is that the Government of this country is perhaps the least English since Norman times. The Prime Minister, the Lord Chancellor, the Chancellor of the Exchequer, the Foreign Secretary, the Defence Secretary — all are Scottish. Virtually every second accent around the Cabinet table is Scottish. Until recently, this would not have mattered. Indeed, one Prime Minister in the 1920s was a Canadian born of Scottish parents, and the fact was barely noticed. But Scottish opinion has turned solidly against the Union. It has abandoned the liberal values of England and of the Scottish Enlightenment. The climate of opinion there is comparable to that in Eastern Europe before 1989. A complete history has been fabricated to show how Scotland is an oppressed colony of England. English people in Scotland suffer routine discrimination. They are denied jobs or promotion. They are abused. Some have been violently assaulted because of their accents.

Most of our Scottish rulers, I am sure, are looking for real advancement to Edinburgh, and what they do in Westminster is only to impress the electors of an independent Scotland. They understand little and care still less about the English Constitution. And, I am sure, most share their nation's hatred of England and all things specifically English. All other reasons set aside, if they can strip us of our national identity under some pretence of “modernising” us, that is what they will do.

THE END OF POLITICAL LEGITIMACY IN ENGLAND

The hereditary Peers have promised to go down fighting. They will use every constitutional power available to them in defence of their rights. But they will almost certainly lose. *They will be swept aside and their places taken by the same class of hirelings as now pack and disgrace the Commons.*

Or perhaps not. So far, the destruction of our country has been achieved slowly and cautiously. There have been no immediately killing blows directed at the nation. The European Communities Act was a massive betrayal, but it meant little in practice for many years after. All other change has been incremental — lamentable in itself, but affecting only a small area of our life at a time. The removal of the hereditary Peers is in a different class of destructions. It is an unmistakable and fundamental change in the Constitution; and it will be followed by a mass of laws that will make us into a nation of slaves living in a province of a centralised European state.

As such, there is good reason for calling this change a revolution and for rejecting the Government that carries it as having exceeded its lawful authority. At last, the British State will have delegitimised itself in the eyes of patriotic Englishmen; and it will then be simply a question of prudence in deciding how far to carry the resistance.

We live in exciting times.