

The House of Lords

1. Historical Background

13th century origins

Reasons bi-cameral structure

separation/fragmentation of powers
`broaden representativeness' of legislature

Initial composition

Peers of first creation by Monarch; inherit peerage

Relations with Commons

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Law

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co-equality; both can veto Bill

Convention

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Commons claim superiority

i.e. 1678 finance resolution

Queen Anne Treaty of Utrecht episode

1832 Great Reform Act controversy

Liberals (large Commons majority) propose minor electoral reform. Tory peers (majority) block Bill. King refuses mass creation of Liberal peers. Govt resigns. King re-appoints having agreed to mass creation. Tory peers give way.

Emergence of democratic justification for convention of Commons superiority

Doctrine of the mandate

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HoL veto Bill if Bill not have popular support

Tories retain clear majority; huge majority by 1900 as many Liberal peers defect to Tories

Convention of doctrine of mandate generally works effectively

2. The 1909-1911 crisis

`People's Budget'

`Mr Balfour's poodle'

Huge liberal majority in Commons; huge Tory majority in Lords vetoes; Tories invoke doctrine of mandate. King refuses mass creation. Govt resigns

1910 election 1 on issue of budget; Liberal win; King agrees create peers; Tories give in

Asquith (PM) seeks reduce powers of Lords; Tory peers block; govt resigns

1910 election 2 on issue of Lords reform to place previous convention on legal basis; Liberals win; Tories give in

3. The Parliament Act 1911

creates `2 part Parliament'

Measures passed 3 times in Commons but rejected by Lords can go to Monarch for Royal Assent

i.e. HoL loses power of veto; replaced by power to delay for 2 years

Measure will be an `Act'

`Act' must state passed by PA procedure

Cannot be used to extend lifetime of Parliament

Interim measure; pending reform composition ??

4. The 1945-1999 era

still very large Tory majority

The Salisbury Convention

> Tory peers say not use delay power re Bill in manifesto

Parliament Act 1949

> Passed by 2 part Parliament; reduced HoL delay power to 1 year
Was it ultra vires 1911 Act ? No legal challenge made

HoL seems anachronistic in modern democracy; rarely sat; little work; little legitimacy

Life Peerages Act 1958

> Increase level of expertise in HoL
Make composition more representative
Reduce Tory majority

Rejuvenation of House more work and better quality work

1967 White Paper

functions

complement Commons; examine details of bills; initiate non-contentious bills; forum for debate; scrutinize executive

composition

suggest divide 'working peers' and voting peers; this wd reduce Tory majority; not pursued

Relations with Labour government 1974-1979

frequent votes against Commons measures

Relations with Thatcher government 1979-1990

occasional votes against Commons measures

1990; hereditaries (750) more numerous than life peers (450) and HoL has constant Tory majority

5. The House of Lords Act 1999

Blair government manifesto pledge

Initial proposal remove all hereditaries; compromise with Tories allows 92 hereditaries remain

Immediate effects

reduce size of HoL membership
reduce Tory peers; no party has majority
HoL oppose government regularly; esp. criminal justice issues

5.1 Further reform proposals

Wakeham Commission (2001)

propose minor reduction in HoL powers

Suggest mainly appointed house; 550 members; appointment power to independent body; no party to have majority

Commons not able to agree reform. No immediate prospect further reform

Elected HoL more 'representative', but if PR danger seen as more representative than Commons and so should have more power

6. The legal status of Parliament Act 'legislation'

The provisions of the 1911 Act

Measures passed under PA procedure are 'Acts'

Wade's view (1955) CLJ

Can't be Act as PA Parliament created by Parliament. So must be form of delegated legislation; so limits to its powers

Problem with this view: what are the limits?

De Smith's view

Just a different form of procedure to enact statute; so PA Parliament is sovereign save for express limits

Problem Can we have 2 (or more) sovereign lawmakers?

Few 'Acts' passed under PA procedure – no legal challenges to PA Parliament's power

6.1 *Jackson v Attorney-General* (2004)

Substantive challenge is to Hunting Act 2004. Real challenge is whether the PA 1949 was ultra vires the PA 1911

Court of Appeal

PA Parliament cannot undo 'fundamental' features of constitution
Reducing HoL powers in PA 1949 not 'fundamental'?

Problem Which features are 'fundamental'?

House of Lords

PA Parliament is Parliament. No limits on its lawmaking powers. Parliament can define itself.

Problem Parliament or 2 part Parliament both sovereign?
And can create other 'Parliaments'?

Baroness Hale may be possible to entrench legislation

Conclusion

recent reforms beneficial

HoL no longer a partisan body; govt must win cross party support to command majority

Representativeness and legitimacy increased by removing most hereditaries; remove all obvious next step

HoL forceful in resisting and criticizing government bills; esp. re civil liberties issues