

# The House of Lords

## 1. Historical Background

13<sup>th</sup> 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