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**THE PRIVY COUNCIL**  
as a  
**SECOND CHAMBER**

by  
**Anthony Wedgwood Benn, M.P.**



**FABIAN TRACT 305**

**1/6**

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January, 1957.

Printed in London by Riches of Hammersmith, Dalling Road, W6

# THE PRIVY COUNCIL

as a

## SECOND CHAMBER

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### PREFACE

**C**ONTROVERSY about the House of Lords has been going on for over 300 years. Since the Parliament Act of 1911 the issue of reform has often been described as 'urgent'. Indeed the Fabian Society has put out two pamphlets<sup>1</sup> on it since the war, and Sidney Webb wrote another as long ago as November 1917.<sup>2</sup> The publication of a new one, calls therefore, for some explanation.

The explanation is very simple. After many years of fruitless discussion, the Conservative Government are, at this moment, adding the finishing touches to a complete scheme for reforming the composition of the Lords. When this is presented the Labour Party will need to reach an immediate decision on the line it will take during the debates on the Bill in Parliament. And since we must assume that the Bill will be enacted, it will also mean that there will have to be a specific declaration of policy on this subject, before the next Election.

All the material for reaching this decision has been made available for those who want to study it. The earlier Fabian pamphleteers have dealt very fully with the history, record and work of the House of Lords. There can be little to add to their account. However, the positive proposals that they made were deliberately tentative.

This pamphlet, therefore, does not pretend to go over the ground again. It has been written to fill the policy gap by proposing a definite alternative to the present House of Lords and working it out in some detail. Though the plan has novel features, it is based on an interpretation of certain clear principles that have long been accepted by Socialists.

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<sup>1</sup> Frank Hardie and Robert Pollard *Lords and Commons*. Research Series 123, 1947. Lord Chorley, Bernard Crick and Donald Chapman, M.P. *Reform of the Lords*. Research Series 169. 1954.

<sup>2</sup> Sidney Webb *The Reform of the House of Lords*. Fabian Tract 183, 1917.

## THE ARGUMENT IN BRIEF

**I**T MAY be helpful to summarise the argument in this pamphlet in a few paragraphs at the outset. In the first section, which is largely factual, the House of Lords is considered in its present form. Some reference is made to its origins and history including the outcome of its conflicts with the Commons. Its composition is analysed in terms of its growth, party balance and effective strength. Its four main functions are described and so are its powers.

The second section describes in brief the long arguments over reform that have taken place in the last hundred years. It is noted that a measure of agreement was reached in principle in 1948. The Conservative desire to strengthen the Lords is explained. The Labour attitude to the Lords is traced, in outline, from the early decisions in favour of outright abolition to the present policy of leaving it alone to die quietly. The Government decision to produce a definite plan is attributed in part to the success of the Labour tactics, and the plan is described in general terms.

The third section deals with the new situation which confronts the Labour Party, and pinpoints the decisions that will have to be reached. It is argued that the Party cannot carry on saying that nothing should be done, and must think out its attitude afresh. The question of Titles is shown to be irrelevant and is divorced from the question of a second chamber. A strong case is made out for a second chamber to help the House of Commons, which would otherwise be overburdened with work. The possibility that a reformed House of Lords might serve this purpose is considered and rejected. It is argued that an alternative second chamber should be sought with advisory powers only. The idea that it should interpret the popular will by imposing delay is not accepted. Its composition is discussed and appointment is advocated in preference to any form of direct or indirect election. Simplicity is thought to be essential if it is to work.

The fourth section makes a definite proposal. It argues that the Privy Council fulfils all the conditions required of the second chamber. Its present composition and formal functions are briefly described. It is shown that there is a very considerable overlap between the peers who are now active in the Lords, and the Privy Council, and that the quality of Privy Councillors is higher than the quality of peers. A strong historical case is made out for the change and it is pointed out that the Judicial Committee could continue the Appeal Work. The problems of effecting the change from Lords to Privy Council are described and shown to be relatively simple to overcome. Specific recommendations are made as to the powers to be given to the new House, which would mean a reduction in the length of delay. The problem of Party balance and the associated difficulty of finding suitable Labour recruits are considered and the recommendations include the payment of a daily sessional allowance.

Finally, under a separate heading, the main provisions are set out, of the Parliamentary Reform Bill that would be necessary to give effect to this proposal.

## 1. BACKGROUND

### The House of Lords in History

THE HOUSE OF LORDS can be traced right back to the Saxon Witan, which after the Norman Conquest became the Curia Regis. This Council was divided in practice into the Great Council from which Parliament grew, and the continuing, or privy council which evolved as a body of more intimate advisers. From the model Parliament onwards, the representatives of the shires and the cities were added to the Great Council and met to discuss matters referred to them by the King. Later still, after the Commons made a practice of withdrawing to debate their petitions and the grant of supplies separately, the House of Lords was left as the Upper Chamber in a two-chamber system.

The greatest period of Lords power is generally recognised to have been the 18th century. Although the Commons had already asserted their special rights over financial matters, they were subject to a complete veto on their legislation. The only effective weapon which the Commons could hope to use to gain its way was the threat of a mass creation of peers. It was not an easy thing to persuade the Crown to give an assurance of this kind but on three famous occasions that assurance was obtained and used, with most gratifying results. In 1711 The Treaty of Utrecht was passed after the creation of a small number of peers. The Reform Bill of 1832 and the Parliament Bill of 1911 were both enacted under the threat of 'swamping'.

The Parliament Act marked a distinct change in the relationship between the two Houses. The Commons obtained a statutory declaration of their supremacy in financial matters and secured a reduction of the veto power to a period of two years. This was reduced still further to one year in the Parliament Act of 1949.

### Composition of the Lords

The House of Lords is made up of various elements. With deaths and creations taking place so frequently, it is difficult to keep the score absolutely up-to-date. However, using the latest lists for 1956, it is made up as follows: —

<i>Rank</i>	<i>Number</i>	<i>Percent.</i>
Peers of the Blood Royal . . . . .	4 . . . . .	0.5
Archbishops . . . . .	2 . . . . .	0.2
Dukes . . . . .	21 . . . . .	2.4
Marquesses . . . . .	27 . . . . .	3.1
Earls . . . . .	135 . . . . .	15.4
Viscounts . . . . .	107 . . . . .	12.2
Barons . . . . .	536 (including 13 life peers — the 'law lords')	61.1
Representative peers for Scotland	16 . . . . .	1.8
Representative peers for Ireland .	5 . . . . .	0.6
Bishops . . . . .	24 . . . . .	2.7
	<hr/>	<hr/>
TOTAL	877 . . . . .	100.0

In addition, there are, as listed in *Dod's Parliamentary Companion*, 17 Scottish peers and 65 Irish peers who are not peers of Parliament. There are also 24 peeresses in their own right.

The House of Lords has grown very rapidly over the years. This is shown by the following table:—

*Growth of Temporal Peers*

1454	. . . . .	56
1688	. . . . .	150
1760	. . . . .	174
1830	. . . . .	363
1900	. . . . .	567
1956	. . . . .	851

Indeed in the last 20 years there have been no fewer than 235 new creations, of which over 100 were on the recommendation of a Labour Prime Minister. The reason that the total has not grown at the same rate is that, in that period, 135 titles became extinct. *The Economist* calculated, however, in an article (July, 1956) that the ratio of peers to total population has actually declined slightly in the last 200 years. They put the figure at about 22 peers per million population in the 18th century and at about 17 per million today.

However, it is still true that a very high proportion of the present House consists of first creation peers.

The total of peers of first creation are as follows:—

Earls	. . . . .	6
Viscounts	. . . . .	37
Barons	. . . . .	124
Archbishops	. . . . .	2
Bishops	. . . . .	24
Law Lords	. . . . .	13

*First creations as percentages of all members of each rank.*

Rank	Total number in rank	Total first creations	Percent.
Dukes (including royal dukes)	25	—	.0
Marquesses	27	—	.0
Earls	135	6	4.4
Viscounts	107	37	34.6
Barons	536	124	23.1

*First creations as percentages of the House of Lords as a whole.*

	First creations	Total of H.L.	Percent.
Excluding bishops and law lords	167	841	19.9
Including bishops and law lords	216	877	24.6

These first creation peers are a particularly interesting group because they constitute the vast majority of the active membership of the House. 47 per cent. of them have served at one time or another in the House of Commons and 35 per cent. of them have held ministerial office. They represent, therefore, the sort of people one would expect to see in an appointed Second Chamber. Those without previous political experience include the recipients of peerages for services in the armed forces and industry.

Party strength in the House of Lords is also worthy of study. *Vacher's Parliamentary Companion* gives it as follows: —

		<i>As per cent. of 877</i>
Conservative and Unionist . . . . .	484	55.2
Labour . . . . .	51	5.8
Liberal . . . . .	51	5.8
Independent . . . . .	6	0.7
No party stated . . . . .	285	32.5

One final table is necessary to give a proper account of the work of the House. Despite its large numbers, it is not such a crowded place as would appear. According to a paper prepared for the Commonwealth Parliamentary Association, only about 150 peers are actively engaged in the work of the House, although a larger number make an occasional appearance. In the four sessions 1947-51, 318 peers addressed the House at least once. In fact about 60 per cent. of the total membership exercise their rights from time to time. In the last session which ended on November 2nd, 1956, the following is a complete record of attendance: —

Number of Peers who did not take the Oath . . . . .	267
Peers who attended, but less than 10 times . . . . .	280
Peers who attended 10 times and more . . . . .	310
Average daily attendance throughout session . . . . .	104

### **Functions and Powers of the Lords**

The work of the House of Lords falls into four groups.

First of all, it enjoys equality of status with the Commons in so far as its power of initiation of legislation is concerned. The only exception to this rule is the right of the Commons to introduce money bills. In practice the House of Lords normally begins work on non-controversial measures.

The second function of the Lords is to consider bills sent to it after their passage through the Commons. In this respect it is a revising chamber capable of making amendments which it then falls to the Commons to consider. In the event of a disagreement, its power of delay is strictly limited. Conflicts between the two Houses are rare though not unimportant.

Its third function is to act as a forum for debate and many of the best speeches in the House of Lords are made on subjects which would, in the Commons, be regarded as private Members' motions. These debates rarely take place on a resolution but are brought in order by the use of the device of 'moving for papers'. This motion is almost invariably withdrawn at the end of the debate.

Finally, the Lords have their judicial functions which make them the Supreme Court of Appeal. These judicial powers are exercised by the Lords of Appeal in Ordinary assisted by those peers who hold or have held high judicial office. In theory any peer has a right to take part in this work, but in practice they are excluded.

With the exception of the limitations on powers imposed by the Parliament Acts and a few minor adjustments, the House has not changed for many centuries.

## 2. THE ISSUE OF LORDS REFORM

### Pressure for Reform

**T**HE FACT that the House of Lords has remained unchanged for so long cannot be attributed to any lack of effort on the part of the Peers. In the last hundred years there have been dozens of attempts by individual peers — many of them of great eminence — to bring their House into conformity with the spirit of the age.

In 1856 there was a protracted controversy over Lord Wensleydale. Finally the House decided that, though the Crown could make a life peer, that life peer was not entitled to sit and vote in the House of Lords. From then on Motions, Bills and proposals to set up select committees followed at regular intervals right up until Lord Simon's Life Peers Bill which was introduced in December 1952.

These proposals for a reform in composition have, in recent years, come mainly from the Conservative benches. They have been designed to meet the objections that were raised against the hereditary principle in its present form. They have sought to allow life peerages and to reduce, or end, the occupation of a seat and vote by inheritance alone. When taken with the discussion about the right of women peers to sit, following Lady Rhondda's petition (which was dismissed by the House) and the discussions, from time to time, about the right of ministers to speak in either House, one gets a fair impression of the elements likely to appear in any new reform plan.

These principles were drawn together most fully in the White Paper published by the Labour Government in 1948 after the breakdown of the all-party discussions. This statement showed that the representatives of the Parties had reached agreement on certain general proposals which were: —

- (i) The Second Chamber should be complementary to and not a rival to the Lower House, and, with this end in view, the reform of the House of Lords should be based on a modification of its existing Constitution as opposed to the establishment of a Second Chamber of a completely new type based on some system of election.
- (ii) The revised Constitution of the House of Lords should be such as to secure as far as practicable that a permanent majority is not assured for any one political party.
- (iii) The present right to attend and vote based solely on heredity should not by itself constitute a qualification for admission to a reformed Second Chamber.
- (iv) Members of the Second Chamber should be styled 'Lords of Parliament' and would be appointed on grounds of personal distinction or public service. They might be drawn either from Hereditary Peers, or from Commoners who would be created Life Peers.
- (v) Women should be capable of being appointed Lords of Parliament in like manner as men.
- (vi) Provision should be made for inclusion in the Second Chamber of certain descendants of the Sovereign, certain Lords Spiritual and the Law Lords.
- (vii) In order that persons without private means should not be excluded, some remuneration would be payable to members of the Second Chamber.



- (viii) Peers who were not Lords of Parliament should be entitled to stand for election to the House of Commons, and also to vote at elections in the same manner as other citizens.
- (ix) Some provision should be made for the disqualification of a member of the Second Chamber who neglects, or becomes no longer able or fitted, to perform his duties as such.

This agreement in principle was itself quite an achievement. It is far from certain that Mr. Attlee would have been able to get a scheme of this kind accepted by the Labour Party. For, five years later, when Sir Winston Churchill wrote to him suggesting that the discussion might be resumed without any reference to powers, this invitation was put before a Labour party meeting in the House of Commons, and, by a narrow vote, was rejected. Since that decision the Conservative Cabinet have considered what should be done. Pressure of other business and a certain difficulty in reaching agreement amongst themselves, have led to frequent postponements.

The main point at issue was a reduction in the hereditary element and Lord Exeter had been urging for some time that this could be done by a change in the standing orders of the House. At first the Government were hostile to this idea. Subsequently they realised its advantages. If in fact it was possible to exclude the backwoodsmen without legislation, then could not a more general scheme for reform be achieved in the same way? Perhaps the decision on the Wensleydale case and on Lady Rhondda's petition could be altered and the job would then be done. Finally, in 1955 a select committee of the House of Lords was set up to see if it were practicable.

This committee, which sat under Lord Swinton's chairmanship, went into the matter with great care. It finally reported in January 1956 that a change of the standing orders could not be used to exclude Peers who did not attend. It recommended that consideration might be given to a declaratory resolution which should guide peers as to their duties and obligations, and should seek by persuasion and practice, to cut down the effective membership to those who were active in the affairs of the House. This, however, could not conceal the fact that the committee had failed and the Government were obliged to turn back towards legislation.

So it was that in the Queen's Speech of November 1956 a specific pledge was made that proposals for a reform in the composition of the House of Lords would be laid before Parliament, in the 1956/57 session.

### Conservative Case for Reform

It will be seen that pressure for Lords Reform has recently come from the Conservative Party. They have seen the present composition as an actual hindrance to the effectiveness of the House. This was put very plainly in the pamphlet<sup>1</sup> published in December 1947 by the Conservative Political Centre — 'Is a House of Lords as at present constituted just the right sort of body to exercise and to be allowed to exercise such

<sup>1</sup> *The House of Lords*. Conservative Political Centre. 1947.

a discretionary power against a Socialist as well as a Conservative Government, and, even more important, might not its consciousness that it is not such a body restrain it from taking action in the national interest which in fact a differently constituted body would take with assurance?'

This revealing quotation underlines the change in the nature of the problem since 1909. Then it was a crowded House recklessly challenging the supremacy of the Commons that gave an impetus to the movement for reform and a reduction of powers. In 1957 it is an empty House inhibited from using its powers by a consciousness of its own defects and quietly observing its own decline.

The Conservative fear more than anything else that the House of Lords will die a natural death. The attendance is very small and among Labour peers sometimes minute. If once the Labour peers were to disappear from the Opposition front bench, the House would surely disintegrate completely. What is needed is an operation to increase Labour representation by life peerages and reduce Conservative representation by axeing the backwoodsmen. That is the Government's argument and the central theme of its policy.

However, the difficulties that confront the Government have been considerable. Despite the pressure for reform there has not been general agreement about the form it should take. The backwoodsmen themselves, with a strong instinct for self-preservation, might turn up in sufficient force to defeat a Reform Bill. There are too, in the House of Commons, a number of Conservative M.Ps. who would view with great disfavour any reduction in the hereditary element. They argue that the Throne would be in peril if the hereditary platform on which it rests were to be weakened. These two centres of opposition to a change have proved to be far more effective in delaying reform than the attitude of the Labour party. This must now be considered.

### **Labour Attitude to Reform**

The question of the House of Lords has come up from time to time at Annual Conferences of the Labour Party. The decisions reached on those occasions and the statements made by Party leaders at these Conferences, and in Parliament, offer the best available guide to Labour thinking on this matter.

In 1932 a resolution condemning the House of Lords and affirming the opinion that it must be abolished as being dangerous and unnecessary was carried unanimously.

In 1933 Sir Stafford Cripps proposed an amendment to the N.E.C. policy statement calling for the abolition of the House of Lords. This amendment was referred to the N.E.C.

A year later J. R. Clynes, speaking on behalf of the Executive, made it clear that a Labour Government would take immediate steps to overcome sabotage from the House of Lords and would, in any case, pass legislation to abolish it.

In 1936 the N.E.C. submitted another policy statement in which it pointed out that the Labour case must be competently presented in the House of Lords while that House continues to exist. It went on to

point out that the creation of peers in large numbers might prove to be the only way to abolish the House.

At the Blackpool Conference in 1945, Mr. Herbert Morrison said, 'If our Labour Party is returned by the will of the people, that will is going to prevail and no House of Lords is going to be permitted to obstruct it'. Three years later, in 1948, a resolution was moved expressing anxiety at the development of the all-party talks on Lords Reform. Mr. Herbert Morrison, replying for the Executive, supported the principle of a Second Chamber and gave an undertaking that the Executive and the Parliamentary Party would be consulted before any final decision was reached.

What, in fact, has happened over these years is that the Labour Party has realised the value of a Second Chamber and has, therefore, abandoned its previous determination to abolish the House of Lords outright, leaving only the House of Commons. At the same time it has also discovered that the most effective weapon against the Lords is to ignore it. By maintaining it as it is, with all its absurdities and anomalies, it has left it powerless to do more than minor damage to Commons' legislation.

These tactics have proved to be most successful. So successful indeed that the Party has not given any serious consideration to the long-term consequences of its own action.

### **Government Plan for Reform**

The main justification for ignoring the House of Lords has been the firm Labour belief that, as a result, the Lords would die. However, the nearer this prophecy has come to fulfilment, the more determined have the Conservatives become to reform the House and give it a new lease of life. It could well be argued that the Government are acting now because the Labour Party have forced them to do so. The paradox is, therefore, that by opposing reform the Labour Party have made it inevitable.

It is not hard to see in outline what form the Government's proposals are likely to take. There will first be a reduction of the hereditary element, probably by instituting some system for electing or selecting a representative group of peers from amongst their whole number. Those who were not chosen would then lose their right to attend and might be free to sit in the House of Commons.

The second element would be the establishment of life peerages, in addition to the Law Lords. This device could then be used to help redress slightly the present party balance, in favour of the Labour Party.

Thirdly, the disqualification on women members would be removed and, in addition to the admission of peeresses in their own right, life peeresses would be authorised.

Finally, some system of allowances, would be instituted to enable those without private incomes to attend to the business of the House.

At the time of writing, the exact details of the Government scheme are not known. But it is likely that they will contain proposals along these lines and will not touch powers at all,

### 3. SOME QUESTIONS FOR LABOUR

#### Labour's Dilemma

**T**HE PRESENTATION of a scheme of this kind will put the Labour Party in some difficulty. Up to now it has been very convenient to leave the Lords so full of absurd anomalies that it dare not make use of even its limited powers without exposing itself to public ridicule. Whatever the tactical advantages of this policy have been, it is a very different thing to advance arguments against a plan which would remove these absurdities. The initiative would then be entirely in the hands of the Government, and, since no issue of powers would arise, the dispute would be between a clearly archaic House supported by the Labour Party and a streamlined 'sensible' House advocated by the Conservatives. The public generally are unlikely to perceive the intricacies of suspicion which had led the Party into this curious position.

There is also the position of the Labour Peers to be considered. They would naturally be aggrieved if the Party reached a decision which condemned them, in perpetuity, to work within an assembly that was only being retained because it was such an attractive Aunt Sally for radical attack. Since they would also be denied a subsistence allowance if the status quo were to be maintained, their position would be doubly disagreeable.

The plain fact is that the Government's decision to change the composition of the Lords will itself destroy the basis of Labour's existing policy. An entirely new situation will be created which, in turn, will necessitate a complete re-examination of the whole problem. This will involve finding answers to at least three questions.

1. Do we want a Second Chamber at all?
2. If so, could the House of Lords be reformed in such a way as into an acceptable Second Chamber?
3. If not, what sort of Second Chamber do we want; how should it be composed and what should be its powers?

However, before these constitutional issues are considered one minor matter must be disposed of — the question of Titles.

#### What About Titles ?

The House of Lords, on its present basis, rests upon the creation and maintenance of the peerage. The five ranks of the peerage come above all the other honours conferred by the Crown and reach right up to the Throne itself. This whole system has been repugnant to many Socialists in the past. Their objections have rested on the general grounds that titles of all kinds tend to create social distinctions and more particularly on the two main characteristics of the peerage itself. First of all, they are inherited, and inherited status, like inherited wealth, confers an automatic social position without regard to merit. By contrast, a man who wins a Victoria Cross is looked upon with the respect due to his courage. If Victoria Crosses were inherited they would lose their peculiar value at once.

The second particular objection rests on the connection between inherited title and membership of a legislative assembly. It is intolerably offensive to radicals and democrats that a man should be born with a place, voice and vote in Parliament.

However, it is important to realise that the issue of titles, as such, need have nothing whatsoever to do with the decision that must be reached about a Second Chamber. It would be perfectly possible to retain the peerage unaffected and abolish the House of Lords. Baronets already inherit a status with no power, and peers could easily be put in the same position. Alternatively, all titles could be abolished and a Second Chamber of any desired kind could be established.

Therefore, whatever view a Labour Prime Minister might take of the Honours List, or the maintenance of the peerage, it can be divided absolutely and certainly from the constitutional questions that must be decided. Indeed, it must be so divided, or else consideration of this important matter will be needlessly confused by our view of a totally separate though interesting issue.

### Is a Second Chamber Wanted ?

If the Government insist on carrying through their plan for Lords reform there will certainly be a renewal of the pressure to end the Lords, once and for all. These total abolitionists can trace their political ancestry back to a long and distinguished line of radicals. The fact that they have lost power and influence in recent years is attributable more to the decline of the Lords, than to any weakening of the validity of the case which they advocate. Except on a few notable occasions the Upper House has become 'constitutional' in much the same way as the Monarchy has done, and the abolitionist movement, like the republican movement, has lost its urgency. A threat to revive the House of Lords might easily change all that.

A clear distinction must be made, however, between the case for the House of Lords and the case for a Second Chamber. With hundreds of years of history, during which time the Lords have been the Second Chamber, this distinction is not always easy to make. Two different problems are being considered. It is one thing to object to the House of Lords as such, but it is quite a different thing to argue that the functions it has performed, and is performing, are unnecessary.

The case for a Second Chamber is really a technical one, and must be advanced on technical grounds. It can only be proved by showing what the Second Chamber now *does* (as distinct from what it now *is*) and by demonstrating that, without it, an enormous new burden would be imposed on the already overloaded House of Commons.

First of all it is not subjected to the same pressure of time as is the House of Commons. It can, therefore, give infinitely more detailed consideration to non-controversial legislation. Indeed it is now the practice that Bills with a low political content, but high technical complexity should originate in the Lords. A leisurely passage through committee provides a perfect opportunity for a detailed examination

of each clause. If the Commons were to have to do this, they would be completely bogged down. Any new Second Chamber must provide a similar opportunity for this type of work.

Secondly, there is the task of revising legislation. Many of the hundreds of amendments made by the Lords have been in response to pledges, given by successive governments during the later stages of the passage of those Bills, in the Commons. The vast majority of these amendments have been improvements and clarifications for which the Commons were very grateful. It would be a great mistake to think that the Lords are only important when they disagree with the Commons. These occasions are not frequent, and nowadays, the Lords tend not to insist upon amendments which the Commons will not accept.

Once this is recognised the idea of a Second Chamber is shown in a new light. It should be seen as a means of achieving improvement rather than as a means of imposing delay. The value of delay has always been completely over-rated. What is important is that a Second Chamber should help the Commons. Without this help a second committee stage would be inevitable and this would overburden the timetable still further.

Various views have been expressed about the value of a Second Chamber as an alternative forum for general debate. Yet the Lords do manage to discuss, with much greater frequency, those very subjects which the Commons have no time to raise. Grievances are aired and Government statements are forthcoming on a wide variety of topics. In the big debates a Second Chamber also has a part to play. The intervention of men of independent mind may not sway the policy of a Government, but it does play a part in educating public opinion. This is particularly valuable since it provides the only opportunity for elder statesmen to continue their contribution to the political life of the nation without occupying a Commons' seat. All that is wrong is that there are not nearly enough representatives of left wing and working class opinion.

Finally, the present House of Lords has its judicial functions to perform. Admittedly these could be transferred elsewhere without any more than a sentimental loss. But there is a case for trying to devise a system under which certain members of a new Second Chamber should be qualified to carry on as the Supreme Court in the way that is now done.

To sum up, the case for a Second Chamber rests on the fact that the Commons alone simply could not cope with all the work now done by the Lords. This would be particularly important when there is a really heavy legislative programme. Paradoxically, therefore, a Labour Government needs a second chamber more than does a Conservative Government.

### **Can Labour Accept a Reformed House of Lords?**

At this stage in the argument it may seem that the Conservative and Labour viewpoints are so close as to permit an agreement on reform. And, indeed, there is an element in the Labour Party which will favour the Government scheme. They will point to the 1948 agreement which laid down certain principles as being common ground between the parties.

They will note that the Government have now dropped any question of increasing the powers of the House and have thus accepted the period of delay insisted upon by Mr. Attlee and embodied in the Parliament Act of 1949. Moreover, some Labour peers themselves will see in the new proposal a chance for rationalising their House, to which they naturally feel a certain loyalty. There is reason to believe, too, that the Government plan will recommend itself to a large body of intelligent opinion in the country. It is, after all, a piece of tidying-up which retains the basic structure of the House of Lords and simply removes those anomalies which make it absurd.

This is the Government's case and it will need a close examination. If it is accepted, no problems arise, and the scheme will go through with general blessings. The Labour Party in the Lords will be strengthened by the creation of life peers and the Conservative element reduced by the exclusion of the backwoodsmen. Those worthy people who are left on the scene will be given enough money to live on, and the constitution will move into a new stage of development from which it is unlikely to vary for many years.

Unfortunately it is not as simple as that. One cannot judge the Government scheme solely by its own provisions. Its intentions and motives require examination. The real pressure for Lords Reform comes from those who are desperately anxious that it should be an effective body to restrain the House of Commons when the Commons have a Labour majority. They fear that, as it is now, it could never perform this task properly. The reason that they do not seek to increase its powers at this moment are even more sinister. First of all they believe that a reformed House would not be frightened of using its powers more fully, even to the extent of delaying Labour measures in the early stages of a Parliament. This could impose a most effective check which could be defended as constitutionally right and proper. Then, in the back of their minds, is the idea that later on, the matter of powers could be looked at afresh. What could be more reasonable than to revert to a two-year period of delay once the new House has had a chance to settle down and become more acceptable to public opinion?

This, in itself, constitutes a very powerful argument against accepting the Government scheme. There are others too. There is no chance at all of materially altering the heavy preponderance of Conservative strength in a reformed House of Lords. Nor is there the slightest intention of trying to do so. If by some miracle a technique could be evolved for providing a Labour majority in the new House as great or as permanent as the Conservative majority now is, the Government would have no interest at all in bringing it into existence. For, like the Duke of Wellington, it believes that the British constitution rests upon the acceptance of Conservative principles and it conceives of the House of Lords as guaranteeing the maintenance of that very desirable state of affairs.

Finally, there is the radical objection to any scheme for Lords Reform which upholds the hereditary principle in any form. It is bad enough to have the eighth Duke or the fourteenth Earl casting their vote with

as much force as a Member of Parliament. But it is nothing short of ridiculous to argue that a Duke would have any greater claim to exercise this power if he had been selected by 20 other Dukes. A ducal constituency of this size would not confer a representative status on its 'member'.

So it can be seen that the differences between the Conservative and Labour approaches to the problem are as wide and fundamental as ever. The Conservatives are motivated by the twin purposes of checking any progressive House of Commons and salvaging something from the wreck of the aristocratic tradition in politics. The Labour Party, on the other hand, needs a second Chamber to get through the legislative programme of a Labour Government without Parliamentary indigestion. For this purpose the Lords reformed or unreformed, are quite unsuitable and unacceptable even if their powers were further reduced. So the search for a new Second Chamber must be taken a stage further.

### What Sort of Second Chamber ?

It is now agreed that there is a technical case for a Second Chamber to make Parliament more efficient, and that its functions should remain much as they are now. Consideration must now be given to what powers it should have, and how it should be recruited.

The important thing to underline again and again is the fact that the value of the Second Chamber lies in its power of giving advice. It should be no more than an advisory body. The theoretical duty of a Second Chamber to check the Commons is of little or no value, though at one time it was thought to be the most important function of all. The Lords, assisted by the Gallup Poll, have tried from time to time to set themselves up as the interpreters of the Popular Will. As recently as 1947 Sir David Maxwell-Fyfe said, 'Nobody wants a Second Chamber, whatever its composition, to throw out bills because they do not like the bills'. He went on to say that what was needed was a Second Chamber that would 'throw out bills when they are sure that the electorate does not like them'. Similarly, Lord Salisbury proclaimed the doctrine in a different form during the second reading of the Death Penalty Abolition Bill in July 1956.

'We must act on the assumption that anything that had been included in the programme of a Party which had been successful at the previous General Election had been approved by the electorate; and I recommended that view to my supporters in this House and they accepted it. It was on that basis that we gave a Second Reading to all the nationalisation Bills, though we did not like them; and we did our best to improve them and make them more workable on the Committee stage. But there was a corollary to that policy, and it was this. Where issues had not been before the electorate we had to regard it as our function not to oppose the will of the people, the electorate, or even to interpret the will of the people, but very definitely, where we could, to give a breathing space to enable public opinion to crystallise on issues on which they had not been consulted and on which their views were not known.'<sup>1</sup>

<sup>1</sup> Lords. *Hansard*. July 10, 1956.



Implicit in these two quotations is an assertion of the twin rights of interpretation of the popular will, and of delay. Neither of these stand up to any sort of examination. The claim to interpret public opinion is one that even the House of Commons itself does not make. Certainly since Edmund Burke, the idea that it was a representative rather than a delegated assembly, has inspired the work of the Commons. Indeed it is essential for good government that the House should be prepared to take the long view. Public opinion almost invariably takes the short view. To claim that a House, based on appointment and heredity, should act as a mouthpiece for the daily opinions of the nation, is not only ridiculous because it is untrue, but it would also be very undesirable even if it were true.

The doctrine of delay has also passed for too long uncriticised. Those acts of government which are likely to do the most damage are not legislative acts but administrative acts and the use of the prerogative: the declaration of war; Treaty making; Orders-in-Council, etc. For example, the decision to launch an attack on Egypt in November 1956 was more precipitate and potentially dangerous to the future of this country than any single measure introduced by either party could possibly have been. Yet on this matter the Lords had no power of delay. Nor did any Conservative statesman urge a period of delay to enable public opinion to crystallise.

If, therefore, these two claims are dismissed, a much more limited range of powers may be left to a new Second Chamber. These will be considered in detail later.

The next most important decision to be reached is that of composition. Once the hereditary idea is excluded it has to be an elected or an appointed House, or a mixture of both. Traditionally, Socialists writing on this subject have favoured an elected House. The basis of the election would not be by popular suffrage, since that would inevitably bring the Second Chamber into a position of rivalry with the House of Commons. The most popular idea has been the indirect election of the Second Chamber by the House of Commons. The Norwegian Parliament divides itself into two after every General Election in this way. However, the modification advocated by Sidney Webb and others, was that the Second Chamber should be elected by the House of Commons from those outside its own number. This would guarantee that it reflected the same balance of party strength and would avoid the evils of patronage that he thought inevitable in any system of appointment. Laski writing 30 years later, wholly rejected the idea of an appointed Second Chamber on the grounds that the Canadian Senate had completely failed for this reason. On the other hand, the 1954 Fabian pamphlet *Reform of the Lords* advocated a mixture of appointment and election as being the best method.

It is important to remember exactly what Labour's objection to the present House of Lords really is. It does not stem primarily from the weakness or unfairness of the system of creating peers so much as from the absurdity of the inherited element. In practice the appointment system has not worked too badly. It has provided successive Prime Ministers with a very convenient way of gaining the services of outsiders

and of promoting Members of the House of Commons. If there has been reluctance among good Labour people to serve in the upper House, this has been due partly to the absence of any allowances and partly to the fact that they knew they were to be condemned to work in a Chamber whose activities were to be subjected to ridicule by the Party which sent them.

It is also a mistake to think that patronage applies any more strongly under the appointment system than it would under the selection and election system. If the Labour Party in the Commons were to elect outsiders, the effective decision would almost inevitably be left in the hands of the Whips. It could never be possible for Labour M.Ps. to know the relative quality and capacity of the candidates, who would probably be approved by the national executive or the parliamentary committee on the recommendations of the T.U.C. or the regional organisers. There might not, in practice, be any choice for the House of Commons other than the right to rubber stamp a decision taken by the party machines.

The case for appointment over election must, therefore, be considered on a purely practical level. Flexibility itself has great advantages, and it would be very awkward if a Cabinet reshuffle, involving the translation of a minister from one House to another, could not be achieved unless a peer resigned and the House of Commons had filled the vacancy by picking on the minister whose translation it was necessary to effect.

Finally, if the powers were cut again, the question of Party strength would matter still less. No doubt there should be a rough equality but the contribution made by this new Second Chamber would come far more from the quality of its members as individuals, than from their Party allegiance.

To achieve the greatest independence of mind ought, therefore, to be an additional object in deciding the question of composition. It has been suggested that the members of the Second Chamber should only serve for a short period. One idea was to limit them to a twelve-year term with one quarter resigning every three years. This might have some importance if the votes of the new House were to matter greatly, but as an advisory body they would not. Similarly, Sidney Webb's caveat that, the term of election of the House should be exactly co-terminus with the Commons, also falls for the same reason. If appointment is accepted, then there is a case for allowing the appointment to be for life rather than for a fixed term. That is certainly the best way of getting complete freedom from pressure of any kind.

Above all, any scheme for a new Second Chamber must be simple. In one sense the merit of the Lords is that it is such a simple body. People are appointed and they stay there. We should reject any idea for introducing complicated formulae of any kind. Such formulae might not be restrictive, but it is more likely that they would cause trouble and start arguments which could never be satisfactorily ended.

## 4. THE PRIVY COUNCIL AS A SECOND CHAMBER

### Rediscovering the Privy Council

**WE** NOW know exactly what sort of Second Chamber we want. It should be an advisory body, with sufficient power to enable it to help the Commons but not to frustrate it. It should be made up of men and women, appointed for their competence and ability, and able to take over the work now done by the House of Lords. It should be a new House of Parliament, constructed on a simple basis and easily brought into being. Does such a body exist, and if not, can it be created?

In fact such a body does exist. The Privy Council meets all the requirements that have been specified, save only that it is not, at present the Second Chamber.

At the moment there are 283 members of the Privy Council, made up as follows:—

<i>Privy Councillors</i>	<i>Number</i>	<i>Percent. of total</i>
Peers . . . . .	125	44.2
Members of Parliament . . . . .	77	27.2
Others . . . . .	81	28.6
	—	—
TOTAL	283	100.0

125 peers are Privy Councillors, and, reckoning the effective strength of the House of Lords as 877 (see page 3), this gives a percentage of 14.3 per cent. 77 Members of Parliament out of a total of 630 are Privy Councillors, a percentage of 12.2 per cent.

It is interesting to note that of the Privy Councillors who are peers, 93 are newly created and 32 have inherited their titles.

The Party strength among existing Privy Councillors in the House of Lords is as follows:—

		<i>Percent.</i>
Independent . . . . .	1	.8
Conservative and Unionist . . . . .	60	48.0
Labour . . . . .	20	16.0
Liberal . . . . .	5	4.0
National Liberal . . . . .	2	1.6
No party . . . . .	37	29.6
	—	—
	125	100.0

The Party strength of M.Ps. who are Privy Councillors does not particularly matter, as they would retain their seats in the House of Commons. However, it would be necessary to add figures for the Party allegiances of the 81 who are at present in neither House. These figures are not available.

The rate of creation of Privy Councillors has been slightly higher than the rate of creation of peers since 1940 as the following figures show. This does not affect the total size of the Privy Council as there is not the hereditary accumulation to be considered.

<i>Year</i>	<i>Creation of Peers</i>	<i>Creation of Privy Councillors</i>
1940 . . . . .	7	18
1941 . . . . .	15	15
1942 . . . . .	7	8
1943 . . . . .	7	13
1944 . . . . .	10	13
1945 . . . . .	32	33
1946 . . . . .	20	19
1947 . . . . .	17	23
1948 . . . . .	8	10
1949 . . . . .	6	9
1950 . . . . .	16	8
1951 . . . . .	10	26
1952 . . . . .	9	14
1953 . . . . .	8	12
1954 . . . . .	9	11
1955 . . . . .	11	11

The first conclusion to draw from all this is that there would be a considerable continuity from the old House to the new, because of the 125 peers who are Privy Councillors. As it happens the vast majority of them (93) are first creations out of a total of 213 first creation peers. Peers with inherited titles include among their number only 32 Privy Councillors as compared with 661 peers with inherited titles who are not Privy Councillors. Thus, at one blow, all but a very few peers now sitting by virtue of their inheritance would have been swept away, and the exceptions would all be men who had earned their Privy Councillorships by public service.

This characteristic of public service is one that distinguishes the Privy Council from the House of Lords. The majority of them are made from recruits to the Cabinet and higher ministerial ranks in the House of Commons. Relatively few are given as honours in the ordinary sense, and it is for this reason that it is such a highly prized thing, particularly valued in political life.

With this high quality of membership and the overlap already mentioned, the Privy Council could go into action at once as a Second Chamber. Initially its size would be small, consisting only of 206, excluding those who are M.Ps. The exclusion is inevitable as there must be Privy Councillors in the Commons. Some arrangement is suggested below for making this possible.

In addition to all the practical reasons why the Privy Council might be regarded as a suitable Second Chamber, there is also a strong historical case for this change. The Privy Council goes right back to the Curia Regis which came into existence after the Norman Conquest. Feudal kings exercised great power and around them gathered a body of lesser nobles with whom it was their practice to consult. From this Assembly stem most of our constitutional institutions, including Parliament itself, the Courts and the Cabinet. As Professor A. V. Dicey wrote of the Privy Council in 1860,

‘ . . . its history will be found the more instructive the more carefully it is studied: for that history is nothing else than the account of the rise of all

the greatest institutions which make up our national constitution. Our Parliaments and our Law Courts are but the outgrowth of the Council. In its history is seen how not only institutions but ideas assumed their modern form. As we study the gradual separation of judicial, political, and administrative functions, it is perceived that the notions of 'Law', 'the State', and 'the Government', which now are so impressed on men's minds as almost to bear the delusive appearance of innate ideas, themselves grew up by slow degrees.<sup>1</sup>

But today, if the Cabinet, the Courts and the Committees are excluded, there are only few functions left to the Privy Council as a whole. Admittedly they are called together on the demise of the Crown and for the proclamation of the new Sovereign. They are also called when a reigning monarch decides to marry, but that is the measure of their responsibility. They are still permitted, however, to sit as individuals on the steps of the throne in the Parliament Chamber. This symbolises their special status as Royal advisers, though of course they now have no voice or vote. They have faded from their original glory and power to an honorific status. Yet they remain, as a group, a most distinguished body of men and women who have attained their position by the character of their public service.

It is, therefore, paradoxical that no task of importance should be assigned to them, while the House of Lords, whose membership rests on heredity rather than merit, should continue to exercise such considerable responsibilities. It would be curiously appropriate for the Privy Council to resume its ancient role as an advisory body. It is a task they are well fitted to perform and it would be in the best traditions of the evolution of our constitution that they should be asked to do so.

And to complete the picture, the Judicial Committee of the Privy Council could continue uninterruptedly the Appeal work now done by the House of Lords in its Judicial Sessions. The wheel would turn full cycle, and the Privy Council would come into its own once more.

### **Making the Transition**

All the many schemes for reform which involve the use of complicated formulae suffer from one disadvantage. They tend to be inflexible and difficult to put into operation. The merit of the Privy Council proposal is that it can be implemented with the very minimum of difficulty.

The first stage in the operation would be to add to the House of Lords, as it now is, all those Privy Councillors who do not at present sit in the House of Commons. This could be done by making use of a special Writ. At the moment those peers who are eligible to sit, receive a Writ of Summons from the Crown Office. This enjoins them to be present without fail at Westminster to give their counsel and advice. However, there is another sort of Writ, of very limited use, which is called a Writ of Attendance. This is sent to all the Judges and to the Law Officers of the Crown. The origins of this practice lie far back in history. These people as former members of the Concilium Regis had a special responsibility to give advice on legal problems that arose.

<sup>1</sup> A. V. Dicey *The Privy Council*. 1887.

The introduction of the life peerages for Law Lords, by means of the Appellate Jurisdiction Acts of the last century, has greatly reduced the necessity for the Judges to appear. And now that peers are no longer tried on criminal charges by the House of Lords for criminal offences, the need for them has virtually disappeared. They do attend on ceremonial occasions but their function has now shrunk to a purely formal one. Similarly the Law Officers persistently ignore their summons to attend. They are available to give advice (as, say, in peerage claims) but this only occurs rarely.

The interesting thing about the Writ of Attendance is that it may be sent to commoners without regard to sex. A woman serving as Attorney-General would certainly receive one. These Writs come from the Crown Office and instructions could be given that they were to be sent to all Privy Councillors not sitting in the Commons. Legislation might be necessary to achieve this, but even if it were, it would be a very easy thing to draft the necessary provisions.

The second stage in the operation would be to eliminate from effective membership those peers who were not members of the Privy Council. This could be done very easily by an Act which laid down that a Writ of Summons, by itself, should not confer the right to take part in the proceedings of the House. This Act could be drafted in many ways. It could exclude peers altogether from membership; it could simply deprive them of the right to vote, leaving them the right to speak; or it could deprive them of voice and vote leaving them only the right to sit. So long as peers, by virtue of their peerage, were effectively excluded from all legislative function it would not much matter what other rights were left them for ceremonial purposes. Indeed there is a sentimental case for retaining the House of Lords for ceremonial occasions, as say, at the Opening of Parliament, or for Coronations.

There would be a few minor consequential changes left to be made. The undoubted right of women Privy Councillors to sit might have to be clarified. The disfranchisement and disqualification of peers would have to be ended. The words of enactment of bills might need to be changed and references to the House of Lords in past Acts, rules and practices would have to be construed as relating to the House on its new basis. We should then be left with a Chamber constituted differently but able to proceed much as now. The royal power of creation of Privy Councillors and of peers would be left unaffected and could be exercised as now on the advice of the Prime Minister.

The position of Privy Councillors in the House of Commons would require a little thought. They should, of course, be free to remain so long as they wished to do so and continued to be returned. However, if at any time, or for any reason, they choose to apply for a Writ of Attendance to the Upper House they should then become disqualified from sitting in the Commons. This might best be done by adding the words, 'A Member of the Privy Council who has received a Writ of Attendance' to the list of offices, the occupation of which, constitutes a disqualification under the House of Commons Disqualification Acts. It is arguable whether a Privy Councillor who has once received this

Writ of Attendance should ever be allowed to stand for the Commons again. There is a certain virtue in flexibility but it would be quite intolerable if Ministers who were defeated in their constituencies in a General Election could spend the ensuing Parliament in the House of Lords and return to a safe seat in the Commons as soon as one could be found for them.

### The Powers in Detail

In an earlier paragraph it has been argued that the real value of a Second Chamber rests on its ability to help, and not on its ability to frustrate, the House of Commons. As an advisory body the Privy Council can do its job with the very slightest of powers.

What then should these powers be? It is best to proceed from the proposition that both the Commons and the Privy Council would be equal Houses of Parliament. That is to say, that in their legislative capabilities the Privy Council would be able to do all that the Lords does now. They could introduce Bills, read them three times, pass them, and send them to the Commons. They could receive Bills from the Commons, read them three times and pass them. The issue only becomes important when there is a disagreement between the two Houses.

At present the Lords can reject a Commons Bill on second reading and thus kill it for the current session. It is then open to the Commons to bring it in again in the following session and have it enacted with or without the approval of the Lords. Amendments by the Lords made in committee, are referred to the Commons. If the Commons reject them, and the Lords subsequently insist upon them, there is a theoretical possibility that these contradictory motions will lead to the Bill being sent, like a shuttlecock, between the two Houses until the end of the session, when the process is ended by prorogation with the death of the Bill. Money Bills, of course, have a special protection under the Speaker's Certificate and are not subject to this sort of treatment.

This power is too great for an advisory chamber. The Privy Council, operating under the new scheme, would not need to have it in order to be effective, nor should it if the supremacy of the Commons is to be properly recognised.

The reduction of powers is a very easy thing to achieve. Though there would no doubt be a variety of views as to what exactly should be the delaying period, there is a strong case for limiting it in this way. If the Commons pass a Bill and the Privy Council reject it on second reading, then this should be reported to the Commons in a message addressed to the Speaker. It would then be open to the promoters of that Bill to set it down again for a fourth reading at any date after three months from the date on which the Bill was sent from the Commons to the Privy Council. For the sake of convenience this three months' period should be allowed to extend over the prorogation of a Parliament so that the gap between sessions would not affect the life of the Bill. If then the Commons gave it a fourth reading, the Bill would be enacted as if under the Parliament Act.

There remains the question of amendments by the Privy Council.

These should be reported to the Commons and their fate should be finally decided by the Commons vote. That is to say, the Privy Council would not enjoy the right, now exercised by the Lords, to insist upon amendments that the Commons have rejected.

These powers, though they seem very limited, would enable the Privy Council to continue the good work that the Lords have done. It would, however, most effectively prevent them from doing much of the bad work that the Lords have done.

There is one additional and extremely important point. Despite the two Parliament Acts, the present House of Lords enjoys absolute parity of power with the House of Commons over statutory instruments. Orders in Council and other instruments requiring affirmative resolutions, require them in both Houses. Similarly, a prayer to annul an order is just as effective in the Lords as it is in the Commons.

So far as is known, this power has never been abused. But it is a reserve power at present enjoyed which could be of enormous importance. Not only is the volume of statutory instruments per year many times greater than the volume of Acts, but they also include measures of the first importance. For example, the constitution of the Central African Federation is embodied in an Order-in-Council, as are all colonial constitutions. If a Labour Government decided to liberalise any one of these constitutions in a way that roused the opposition of the House of Lords, they could kill it stone dead without any constitutional redress. The only remedy open to the Prime Minister thus defeated, would be to recommend the creation of enough peers to flood the Lords. The Crown would be unlikely to grant this without an election.

Therefore any reform of the Powers of a Second Chamber must include a provision to bring its powers over statutory instruments into line with its powers over legislation. This could be done by providing that a prayer to annul an order passed by the Privy Council should first be reported to the Commons. This report would then be voted upon by the Commons who could either confirm or reject it. If they confirmed it, the prayer would go to the Crown with the authority of both Houses. If they rejected it, the matter would be at an end. Where an affirmative order is required a similar provision should apply. The rejection of an affirmative order by the Privy Council should also be subject to confirmation by the House of Commons. Since it is generally thought that orders under the affirmative procedure are of greater importance it might be held to be desirable for a short delay to be laid down before the Commons could reach its decision. Again its decision would be final.

Of course these recommendations about powers can be looked at, to some extent, in isolation. It would be theoretically possible to tack them on to a scheme for Lords reform. A reformed House of Lords with these powers would be far less objectionable than one that enjoys the present powers.

But in practice this would not work. The Conservatives would never agree to this further reduction, since it would completely destroy the suspensory veto to which they attach such importance. Moreover, for the reasons given earlier, the Labour Party could never accept that a



reformed House of Lords, still based on the peerage, was fit to do the job that is wanted from a Second Chamber.

Whatever else is said, the reduction of powers here suggested is an essential part of the Privy Council idea. It would certainly not be enough to substitute the Privy Council for the present House and leave the Powers unchanged. The Labour Party, whose strength will always be in the Commons, must insist that the powers of a Second Chamber should be the absolute minimum required for its advisory task.

### Party Balance and Recruitment

The most outstanding characteristic of the House of Lords, as it is now, is the enormous preponderance of Conservative opinion over Labour opinion. The numbers of those receiving the Whip on both sides itself reveals this only in part. For while many peers do not accept the Conservative Whip they may be relied upon to vote against the Labour Party on most controversial issues. They may not be good Party members but they would never support Labour legislation.

This would remain true even under the scheme of reform at present contemplated, and is bound to be one very strong argument against accepting the Government's proposals. Nobody has yet devised a system which would ever, under any circumstances, give to the House of Lords a majority favourable to the Labour Party.

This problem arises even if the proposal for substituting the Privy Council were to be accepted. There are proportionately more Labour Privy Councillors than there are Labour peers as compared with the whole in both cases. Yet it is obvious that there will have to be a fairly big creation of Labour Privy Councillors if the balance is to be struck fairly. At the same time one would want to have a number of independents sitting in the Privy Council. Indeed, part of the value of the whole idea is that men, without fixed Party allegiances, should be free to express their views and cast their votes in accordance with their best judgment. If these were to be on any scale, they would be bound to hold the balance between the two Parties in the Privy Council. This would matter much less if the powers were reduced as suggested above.

What does matter is that the Labour Party should face up to the general problem of recruitment, which will confront the next Labour Prime Minister. We are often reminded that the Labour Party made a large number of peers. Yet, of course, there is a statutory provision that a fixed proportion of the Ministers in any Government must be members of the Upper House. And since it is a convenience — if not a necessity — to support your front bench with a sprinkling of backbenchers, this is not hard to understand. The same considerations would apply to the Privy Council.

On the other hand the substitution of the Privy Council for the House of Lords should make Labour recruitment easier. A man who might decline a life peerage might be more ready to go and do a job of work as a commoner. This applies with especial force to Trade Union leaders and others in the movement. It is exactly those people, who for one reason or another would not want a title, who ought to serve.

The effect of all this would be to enhance rather than to reduce the status of the Privy Council. At the moment it is a very high honour for a commoner to become sworn of the Privy Council. The prefix 'Right Honourable' is a peculiarly satisfying one, since it testifies to a record of public service without conveying the embarrassment of an hereditary element or, indeed, any title whatsoever. It is true that the size of the Privy Council would tend to rise quite sharply but this reduction in scarcity value would be more than outweighed by the increase in public importance that accompanied the creation. The incentive to accept would therefore be stronger rather than weaker.

Nothing in these proposals would prevent a Prime Minister from creating anyone a Privy Councillor. The churches could be represented by distinguished men and women of all denominations. Commonwealth statesmen could take their seats and any outstanding figure, willing to attend, could be given an opportunity to serve. The great advantage would be that honours would be divided from responsibility, thus underlining the honorific character of the peerage and the responsibilities of the Privy Council.

### **The Question of Payment**

If the suggestions for the reconstitution of the Second Chamber on the basis of the Privy Council are accepted, then some consideration must be given to the problem of paying its members. The objections to this in the past have been based, rightly, on the impossibility of paying hereditary peers. It is bad enough to have inherited titles, but the idea of inherited annuities is altogether repugnant.

This has led to real hardship for those Labour peers who have conscientiously sought to do their duty in the House of Lords. Those with private incomes have managed all right, though even here there has been some sacrifice of earning capacity. If good men are to be attracted to give their services, they must receive something in return.

The very nature of service in the Second Chamber makes it inevitable that payment would be on the basis of attendance. A straight salary would not altogether be fair. But the total amount earned by regular attendance ought to be enough to keep a man going. Needless to say, the matter should be examined as part of the whole question of parliamentary salaries, allowances and pensions which must be put on to a proper basis at the same time. Whatever the sum decided upon may be, it would be an inducement to older Members of Parliament, who were given the opportunity, to move in due course to the Privy Council. Indeed M.Ps. who were Privy Councillors would be entitled to promote themselves simply by resigning from the Commons and applying for a Writ of Attendance. This they could do without fearing the financial consequences.

This system of promotion would provide a valuable source of replenishment for the Upper House. And inevitably that House will have to rely on a nucleus of politically experienced members if it is to do its work effectively. As it will be a semi-automatic process it will mean

that the element of patronage in choosing new members will be reduced to a great extent.

Finally this process will release seats in the Commons for younger men, a result which should recommend itself to any political party.

## THE PLAN IN OUTLINE

**L**EGISLATION would, of course, be required to make the Privy Council into a Second Chamber. Below are summarised the main provisions of a Parliamentary Reform Bill.

- (i) The right to a 'seat, place and voice,' in the House of Lords, at present enjoyed by Peers by virtue of their Letters Patent and Writs of Summons, shall be terminated except for certain specified ceremonial purposes.
- (ii) All Privy Councillors, whether Peers or Commoners, shall be entitled, regardless of sex, at the beginning of each new Parliament, to a Writ of Attendance to the Second Chamber, which Writ shall confer upon them the right to a seat, voice and vote in that House.
- (iii) The Privy Council, meeting as a House of Parliament, shall enjoy all the powers and privileges at present enjoyed by the House of Lords, subject to those modifications as are specified below.
- (iv) In particular, the Judicial Committee of the Privy Council shall assume all the powers, privileges and responsibilities at present exercised by the House of Lords in its judicial sessions.
- (v) The provisions of the Parliament Acts of 1911 and 1949 shall be amended as follows:
  - (a) If the Privy Council reject on second reading a Bill passed by the Commons, that rejection shall be reported by the clerk of the Parliaments to the Speaker of the House of Commons. At any time after the elapse of three months from the date on which the Privy Council first received that Bill from the Commons, it may be put down for a fourth reading in the Commons. If it receives such a fourth reading the Speaker will issue his certificate and the Bill will be enacted without the consent of the Privy Council. This three months period may extend over the prorogation, but not over the dissolution, of any Parliament.
  - (b) The Privy Council shall have no power to reject Commons amendments to Bills sent them by the Privy Council, nor to insist upon amendments made by them to Bills sent from the Commons.
  - (c) Statutory instruments requiring affirmative resolutions shall require them in both Houses. But the Commons may, by resolution, override any rejection by the Privy Council of such an order one month after its rejection and that order shall accordingly then be made.
  - (d) If a motion praying Her Majesty to annul an order laid before Parliament, is carried in the Privy Council, that fact shall first be reported to the Speaker of the House of Commons. If the Commons, by resolution, shall resolve, within forty days, that that prayer shall not be conveyed to Her Majesty, it shall not do so and the order will stand as if the prayer had not been agreed to.

- (vi) Members of the Privy Council who have taken their seats in response to a Writ of Attendance shall receive a daily sessional allowance for each day on which they attend the House.
- (vii) Members of the Privy Council who have taken their seats in response to a Writ of Attendance shall be disqualified thereafter from serving in the House of Commons.
- (viii) From the passing of this Act, all Peers shall enjoy the same right as commoners to vote in elections, and if elected, to serve in the House of Commons.
- (ix) Nothing in this Act shall affect the present arrangements for creating Peers or Privy Councillors.
- (x) Nothing in this Act shall in any way affect the present position of the Privy Council, or its committees, which shall continue unaltered.

### Conclusion

This then is the scheme in its entirety. It accepts the need for a Second Chamber while absolutely rejecting the hereditary principle. It offers an alternative basis of recruitment and yet gives a sufficient overlap of membership to guarantee continuity of legislative experience. It thus combines all that has been best in the history of the House of Lords with the abolition of that House for all but ceremonial purposes. It settles the 'End or Mend' controversy over the Lords by advancing a new formula for replacing them.

Finally, it achieves this revolutionary change by making use of a body that has a longer and more distinguished history than the House of Lords and that has maintained the quality of its individual members uninterruptedly for many centuries. Thus radicalism and traditionalism are drawn on freely to find a simple and practical answer to an immediate constitutional problem.

If it is given a chance to show itself, the Privy Council can be a far more useful Second Chamber than ever the moribund House of Lords has been. By applying itself constructively to a detailed examination of measures introduced by all Governments and by its general debates on public affairs it can greatly enrich our Parliamentary system.