

What would be the constitutional consequences of Lords reform?

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Andrew Blick, 24th May 2011

The details of the government's new proposals for House of Lords reform are certain to generate much discussion over the coming months, if not years. In the short-term, we can expect hundreds of hours of Parliamentary time to be devoted to discussing issues such as: the choice of electoral system; the balance of elected to appointed members; the timing of elections; and the length of terms of members.

But looking beyond the immediate plans, what might be the broader and longer-term democratic implications of these reforms, if they are implemented?



The House of Lords during the Queen's Speech (Credit, OpenDemocracy, CC by S.A. 2.0)

The government white paper *House of Lords Reform Draft Bill* misguidedly presents the introduction of an 80 per cent elected second chamber as a measure which can be executed in isolation from other components of the UK constitution. It states that:

The Government believes that the change in composition of the second chamber ought not to change the status of that chamber as a House of Parliament or the existing constitutional relationship between the two Houses of Parliament.

It is intended, then, that the 'primacy' of the House of Commons will remain intact.

The problem is that – as the white paper acknowledges – this 'primacy' is associated to a considerable extent with

constitutional conventions (alongside statute in the form of the Parliament acts of 1911 and 1949). As well as being difficult to enforce and often vaguely defined, constitutional conventions are prone to change over time.

How might this process play out following the implementation of House of Lords reform? As the elected component of the second chamber grows, so too will the sense of democratic legitimacy surrounding it. Indeed, some may claim that – because they have been returned by a more proportionate system and represent larger constituencies – elected members of the second chamber are *more* legitimate than MPs in the Commons. The second chamber may then become increasingly assertive, challenging certain prevailing notions of Commons ‘primacy’.

Some of the key conventions of Commons ‘primacy’ – such as the practice that prime ministers are drawn only from the Commons; and the Salisbury-Addison convention (more of which below) – can be seen as prompted to a large extent by the successive expansions of the franchise in the nineteenth and twentieth centuries, which rendered the Commons increasingly more legitimate than the Lords.

The current set of proposals would serve to reverse this progressive widening of the ‘democratic legitimacy gap’, in turn undermining the rationale for these conventions.

An area of likely change would be in the extent to which the second chamber chose to resist government bills of which it disapproved. Since 1945, the key regulatory convention here has been the ‘Salisbury-Addison’ doctrine. Its purpose is to prevent the Lords from trying to block legislation implementing commitments that were included in the manifesto of the governing party.

However, precise interpretations of ‘Salisbury-Addison’ have changed and differed over time; and the advent of a Coalition government, with no single manifesto to draw upon, has possibly destroyed it. ‘Salisbury-Addison’ was not referred to in the draft Cabinet Manual published last December. Now in the House of Lords white paper the Coalition has attempted to fill the vacuum by asserting the existence of a broader doctrine, extending beyond bills implementing manifesto commitments:

the relationship between the Houses is governed on a day to day basis by a series of conventions which have grown up over time. These include that the House of Lords should pass the legislative programme of the Government which commands the confidence of the House of Commons; the principle that the Government of the day can continue in office only if it retains the confidence of the House of Commons and the consequence that, whether or not a Bill has been included in a Manifesto, the House of Lords should think very carefully about rejecting a Bill which the Commons has approved

Regardless of whether or not this is a satisfactory description of existing practice, this convention can only function if it is accepted by the House to which it is said to apply. It is plausible that a reformed second chamber might begin to take on a role in government legislation more assertive than that suggested in the white paper. A foretaste of this possible more autonomous second chamber may be provided by the Lords over the next few years in its response to the attempts to reform it. The long-run implications of such a tendency for the UK constitution would be profound.