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John P Mackintosh memorial lecture  
University of Edinburgh

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## " NOTHING IN PARTICULAR"

It is hard to realise that it is now just over thirty years since John Mackintosh died. That means that no one today under the age of about 45 will have heard of him - unless at an early age they have delved into his magisterial book on cabinet government. So let me begin by saying what a genuine delight it is for me to be asked to deliver this annual lecture in his memory, and to share a few personal recollections with you before I turn to my subject. I first met John when running the school literary and debating society at George Watson's College when he spoke to us as a young Labour prospective candidate. He was immediately inspirational - there can be no lesser word.

Our paths next crossed in my first year here taking the 3-year ordinary MA which in those days was required before proceeding to the 2-year LL.B degree. John was a lecturer in the modern section of British History and for one term drew uniquely large crowds to his 9a.m. lectures with his lucid and vivid addresses.

He also served on the Senatus/SRC liaison committee which was the formal contact between staff and students, and I remember him saying to me as President of the SRC after one untypically acrimonious meeting : "The great thing about student politics is that it teaches you how to deal with rogues and villains" - not I thought a normal description by a member of the senatus academicus of the university's vice-chancellor and secretary.

During the 1964 general election we were both unsuccessful candidates in neighbouring constituencies. I did not expect to be successful but he did, as Berwick & East Lothian was a marginal Conservative seat whilst mine was still classed as safe. I remember him recounting to me a couple of incidents during that campaign with self deprecating laughter. The incumbent Tory Sir William Anstruther-Gray was a gentleman MP of the old school, and John found it difficult to find anything on which to attack him - but he tried, and later in the campaign came across Sir William in the High Street of Haddington: "I say, Mackintosh, I see you are bringing politics into this campaign - you'll never win that way you know". To which John added "and sadly he was right".

His other story concerned the disparate nature of the two halves of the seat - East Lothian being solidly Labour with Berwickshire loyally Tory.

One day he was on the doorsteps in one of the douce market towns introducing himself as "Professor John Mackintosh, of the chair of politics at Strathclyde University. I am your Labour candidate and I do hope you might come to my meeting tonight and hear my persuasive case for a change of government" at which point a bunch of his supporting left-wing miners from Tranent drove along the street in an old battered van equipped with loudspeakers shouting - and this was John's exaggeration - : "Yous should come out the night and hear oor candidate talkin' about the class war".

Another of his graphically illustrated tales was about the lecture he gave during the European referendum to two trade union audiences on the future for labour relations and employment in the European Community. The first was in Dusseldorf. "I was met at the airport by a smart car, taken to their local HQ. The glass doors slid automatically open and I was ushered into a comfortable lecture theatre. Next day I flew to Glasgow where no one met me and I took the bus into the centre, climbed two flights of stairs in Keir Hardie House where the audience was waiting in a room seated on dilapidated folding wooden chairs with two bare light bulbs hanging from the ceiling. At the end of my learned lecture when I invited questions or comments a comrade in the front row leaned forward and said 'but ye see John we jist dinna want tae be dragged doon tae their standards'."

As MP's capturing Conservative seats we developed a close collaboration on local issues and a close friendship. Indeed there was one committee formed in the village of Yetholm right down on the Border whose members used to go out canvassing on alternate nights for John and me regardless of the fact we were in different political parties, and I recall him once saying to me in exasperation: "David, you have no idea how lucky you are in your constituency to have no mines and no sea." Judy and Una with Kathleen Dalyell used to sit at Edinburgh airport on Thursday nights waiting for their husbands to arrive off the British Caledonian moonjet, sometimes late into the night when we were diverted to Glasgow or Prestwick by crosswinds before the second runway was built.

We enjoyed parties at their house and they were often Sunday lunch guests of ours in Ettrick Bridge arriving in a minibus complete with his children, her children and their children. John's premature death was a shocking and serious loss to Scottish and British public life - so why was this brilliant and highly engaging man not promoted to ministerial office during his twelve years as MP? I'm afraid the answer is that he had one irredeemable failing - he was totally and gloriously indiscreet and free with his opinions.

He must have infuriated Prime Ministers Wilson and Callaghan, and indeed more than once I had to remonstrate when something I had told him in the privacy of my house appeared in one of his newspaper columns two days later. After his death I found the whole of politics much less enjoyable, and I miss him still today.

So what to choose as a topic? I was tempted by two topics: First the development of devolution post the Calman Commission, and second the outlook in Europe as we see the likelihood not of not so much a Eurosceptic government coming to power but a Europhobic one which would further weaken Britain's influence and also weaken Europe's in a world where power is passing increasingly to the big states such as India and China and where global, not national, solutions have to be found to the problems of climate change, nuclear proliferation, and terrorism to mention just a few; whilst the pound is disappearing as an international currency in favour of the stronger Euro.

Either of these topics would have been dear to John's heart, but they are well trodden by others more qualified than I, and so I have chosen the apparently lesser topic of House of Lords Reform, recalling in my title the lines of WS Gilbert in Iolanthe that "the house of peers did nothing in particular but did it very well."

My wife said that John would be turning in his grave at the thought that such an unsuitable topic as this could be chosen for a lecture in his memory - but let me explain. The House of Commons today is not the same as the one which John and I entered in the mid-sixties. Then you could look round the benches and see people who brought to the Commons the experience of their very differing working lives. There were people who had served in the coal mines, in steel works, as chairmen of banks, managers in industry, senior officers in the armed forces and so on. Today entry into the Commons is the same in all parties - it is service to the party which counts for selection as a candidate - as a councillor, a central office researcher, assistant to an MP or officer in the constituency party. It could be said that I fell into that category myself, but nowadays the House of Commons is almost entirely composed of such recruits, indistinguishable across the political parties. A noted medical Member of the Lords told me the other day that nearly all the current MP's with any scientific qualification were retiring from the Commons at the forthcoming election.

Most MP's are now full time with a bevy of researchers and secretaries. The demands on them are greater than they used to be with instant responses expected by constituents via email. I am not saying it was better in the old days when all I had was a coat hanger with a pink ribbon on which to hang my sword - what I am saying is that it is very different.

A further change has been in the legislative procedure. Nowadays all bills are programmed to a timetable - what we used to call guillotined - with the result that some sections of some bills pass through the Commons unexamined. A former minister, Jeff Rooker, suggested in a Lords debate recently that those unscrutinised sections should come to us in the Lords clearly marked so that we could treat them with particular care. All of this leads me to suggest that the role of the Upper Chamber is now much more important and significant than it was when John and I were young MP's, which is why it is worth carefully considering its function, powers and composition.

When I studied Constitutional Law here the late Professor JDB Mitchell had as one of his favourite examination questions the following: "The Parliament Act of 1911 was like slapping a bucket of whitewash over a structure riddled with dry rot - discuss". That is as good a starting point as any.

Prime Minister Asquith had threatened to ask the king to create enough Liberal peers to overcome the Conservative dominated House's objection to Lloyd George's people's budget. When he presented his Parliament Bill it had two purposes - first to end the Lords power of veto over legislation, reducing that to the power of delay and reference back, and second to end altogether the involvement of the Lords in passing the government's annual budget.

In presenting the bill, he declared that it was a "temporary measure" prior to replacing the Lords with a chamber constituted on a popular basis - note that he did not use the word "elected", though most assume that is what he meant. As all three political parties are likely at the forthcoming election to promise to create an elected Upper House it is good to recall as I said in a debate the other day that next year we shall celebrate the centenary of the first government promise to do so - surely the only time in history that a political pledge has qualified to receive a congratulatory telegram from the Queen.

The next major reform of the Lords was the Parliament Act of 1958 which introduced the concept of Life Peerages, thus enabling people to be appointed without inflicting their descendants ad infinitum on the chamber, and importantly opening its doors to women peers. No change is achieved easily in the Lords, and one of the opponents of my own recent bill, which I shall come to in a moment, now a distinguished and respected ex-minister who has served the Lords well but then a young peer who had succeeded his father at an unexpectedly early age spoke as follows:

"I hope very strongly that this provision will not become law because in my humble opinion it would be an unmitigated disaster to have women in this House.....Frankly, I find women in politics highly distasteful. In general they are organising, they are pushing and they are commanding."



He was speaking in the days before we had a woman Prime Minister, and continued: "It is generally accepted that the man should bear the major responsibility in life. It is generally accepted that a man's judgement is generally more logical and less tempestuous than that of women. Why then should we encourage women to eat their way, like acid into metal, into positions of trust and responsibility which previously men have held?"

But he did not stop there: "If we allow women into this House where will this emancipation end? Shall we in a few years' time be referring to the noble and learned Lady the Lady Chancellor? I find that a horrifying thought". (He now sits in a chamber presided over by a female Lord Speaker on the woolsack and with a female Leader of the House)." Shall we follow the rather vulgar example set by Americans of having female ambassadors? Will our judges for whom we have so rich and well-deserved respect be drawn from the serried ranks of the ladies?" And so it went on. That was in his young radical days so it was not surprising that he objected to my own much more modest bill. The then Earl of Glasgow also declared "Women are not suited to politics.....they are often moved by their hearts more than their heads, and the emotional urge which exists in a woman's make-up does not help towards good judgement". Perhaps these are good examples providing the reason for abolishing the right to sit in the Lords solely by heredity!

But life peers were duly introduced, and with the exception of two distinguished people who had no male descendants no hereditary peers have been created in the last half century.

The third reform came in 1999 when 659 hereditary peers were removed, with a compromise 90 left behind elected by their fellow hereditaries. That was not an unreasonable compromise because most of those were giving good service to Parliament.

But during the passage of the bill a ludicrous amendment was made to the effect that whenever any one of them dies a by-election is held for a new hereditary peer to fill the vacancy. Moreover the only people who could vote were the sitting hereditaries of the party or group to which the deceased belonged. In the Conservative Party and on the cross-benches that is just passable, but in the Liberal Democrats and Labour Party the process is indefensible. On the one occasion when we had a vacancy in my party there were three candidates and four voters. In the Labour Party there were eleven candidates and only three voters - surely the only election in British history where the number of eligible voters was exceeded by the number of candidates. The result was the election of two persons to the high court of parliament in conditions which make the pre-1832 rotten borough of Old Sarum with its seven voters seem respectable in comparison.

The 1999 changes also included an important all-party agreement that in future the government of the day should never have an over-all majority in the Lords. These changes were also described as "temporary" awaiting full-blooded reform, but in the past decade all we have had are several government documents on the subject with the additional recent promise of a draft bill to come.

We had "Reforming the House of Lords" in 1999; "The House of Lords - Completing the Reform" in 2001. "Next Steps for the House of Lords" in 2003; "The House of Lords - Reform" in 2007; and "An Elected Second Chamber" last session. As my colleague Bill Rodgers observed it reminded him of the books by Richmal Crompton: "Just William", "More William", "William Again" and 35 other similar titles.

The later of these publications have been under the aegis of Mr Jack Straw as Justice Secretary, and they have varied from a proposed "50% elected 50% nominated" House to the latest which proposed either "100% elected or 80% plus 20% nominated" - no clear decision yet having been made. Nor have they decided on the election system, nor even what it should be called. Mr Straw has appeared before us as someone declaring "these are my principles and if you don't like them I have others", so much so that one wag has suggested that an appropriate title for the promised draft bill would be "The Last Straw".

Meantime doubts have grown in both Houses as to whether we shall ever see the elected Upper Chamber, and indeed whether it is in fact desirable after all. There are five reasons for that dubiety:

1) An elected second House would undoubtedly start to flex its muscles and expect more powers on the basis of "we are elected too" thus challenging what ought to be the supremacy of the Commons. A joint committee of the two Houses has already accepted that the conventions between the two Houses would need to be re-drafted. The former government chief whip in the Lords put the matter succinctly: "How can you create a replica of the Commons without it becoming a rival?"

2) We would lose the substantial expertise which we have in an appointed House with individuals of outstanding merit in their own fields who would never stand as candidates for election, and elections might indeed consist largely of those who failed to get selected for the Commons. Commentators are unanimous in declaring the superiority of debates in the Lords.

3) Some elected peers (especially if elected as the Conservatives wish by first-past-the-post) would meddle in MP's constituency affairs, more so if they were of a differing political party.

We have already seen that happen with some regional list MSP's in the Scottish Parliament. I would therefore vote only for a House elected by the Single Transferable vote.

4) I hesitate these days to mention the word "expenses" and "parliament" in the same breath but we have to consider the likely costs. In the session 2007/8 the cost of allowances for Members of the House of Lords (we of course do not receive salaries) was £18.4million. The cost of salaries and allowances for MP's was £159million. An elected House would presumably be almost full-time with salaries and secretaries and offices.

5) Is there any appetite amongst the public for yet more elections? The declining turnout at those we already have suggests not.

But the growing view in the Lords is not so much doubt about the wisdom of moving to an elected Chamber as doubt about whether it will ever actually happen. The chances of this government being re-elected are not great and its track record on the subject poor, and Mr David Cameron has said that if he becomes Prime Minister the creation of an elected Upper House would be "a priority for the third term".

For all of these reasons an all-party group of Members in both Houses started in 2007 to draw up proposals for what we called "incremental" or "effective" reform of the Lords. A bill was drafted by Professor Lord Philip Norton of Hull University, and at a meeting where I was not present it was decided that I should present it, and it has become known somewhat inaccurately ever since as the Steel Bill.

It was debated in the Lords at the tail end of the 2007 session and reintroduced and re-debated in the 2008 session when both at second reading and in committee stage it was overwhelmingly supported in the Lords, with support echoed by a report from the Commons Select Committee on Administration. The government has now included three of its four provisions in its own Constitutional Reform and Governance Bill currently proceeding through the Commons which is why this is a topical subject. These are known oddly enough as the Steel clauses.

The one provision which the government has not adopted was our proposal to put the Lords Appointments Commission on a statutory footing rather like the one which makes the appointment of judges.

The commission would no longer be appointed by the Prime Minister but by the Speakers of both Houses and have responsibility for ensuring the proper proportions of the parties in the House, the propriety of all nominations, and the encouragement of the political parties to make their own nominations more transparent to avoid the various "cash for peerages" charges which have dogged most governments since that of Lloyd George. Such a step was in fact promised in the Labour election manifesto but has now been left out on the spurious grounds that the government intends to proceed to an elected House and therefore will not need an appointments commission any more.

They have however adopted the other three parts of my bill:

First, the proposal for a voluntary retirement. At the moment peers may apply for leave of absence but we are appointed for life and remain on the books with no capacity to retire from the House. As a result there are some 740 peers with the prospect of many more after the election of a new parliament. (The current average daily attendance is just over 400.) If there is a Conservative government Mr Cameron will be entitled to at least 30 nominations to become the largest party in the Chamber, and Mr Brown to an unknown number in a resignation list.

In Canada senators are appointed until the age of 75. We have not proposed any hard and fast age limit - merely enabling the House to devise a retirement scheme. Bearing in mind the fact that we are unpaid we do not qualify for a peer's pension, and so some kind of if not golden then silver handshake needs to be introduced to help people to leave after so many years service or after a certain age. That is badly needed to reduce the House to manageable numbers. As it is we love to tell the tale of the elderly peer who dreamed that he was addressing their lordships' House only to wake up and discover that he was. The average age in the Lords is nearly 70.

Second, we propose to end the hereditary by-elections. Without them the number of hereditary peers would by now have dwindled to about 80, and anno domini will gradually abolish them altogether. No more shall we have the clerk of the parliaments solemnly declaring that a new Member has been elected to the British parliament by three votes to nil.

The third provision was to expel serious malefactors. In the Commons any Member sentenced to a year or more imprisonment is automatically removed. Legislators should not be serious law-breakers and we simply proposed to bring the Lords into line; thus no more Jeffrey Archers or Conrad Blacks.



I tried unsuccessfully both publicly and privately to persuade the government to adopt my bill since it had such obvious support both among those who want to see an elected House and those who don't. As Professor Norton observed some regarded it as necessary and sufficient, others as necessary but insufficient, but most were agreed that it was necessary. Unfortunately they stonewalled and now there is some doubt whether their own measure will get through before the dissolution of this parliament.

I stressed earlier the importance of the Lords in view of changes in the Commons. It is essential that a second chamber exists, not to help govern the country, but to scrutinise government and especially check on legislation. As far as scrutiny of government is concerned, ministers who have served in both Houses concede that our question time is much more rigorous and effective than in the Commons, because each parliamentary question lasts seven minutes, and the rules of what is in order to ask are much wider. Also our select committees tend to be composed of real experts in their field.

As to checks on legislation, Dr Meg Russell of UCL's constitution unit who is the academic with the most profound record of study of the Lords reckons that some 40% of amendments inflicted by Lords defeats on the government end up being accepted into legislation, and that the number of amendments made in the Lords - many indeed proposed by the government itself - runs into hundreds annually.

The House of Lords is a body of less partisan people with a large independent component, with life peers chosen for their abilities and range of experience and expertise. They are able to concentrate on improving legislation, examining government and contributing to public debate because they are free of constituency responsibilities which properly belong to the elected MP's.

In a recent editorial "The Guardian" summed up the position admirably:

"In recent decades under both Conservative and Labour governments the House of Lords has often played a vital role both as a traditional revising chamber and as a block against over-hasty and oppressive bills. Given the volume of legislation now issuing from Whitehall these roles have never been more needed. It is thus essential that reform should safeguard that independent and effective but subordinate function".

I can only add "amen" to that.