fabian tract 476
how to abolish the Lords

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acknowledgements:
This Fabian tract could not have been written without the research expertise of members of the Policy Services Library and Information Unit, Newcastle-upon-Tyne City Council: Veronica Gass, Rob Heslop, Lesley Phillips and Pat Harrison. They provided the author, in the words of the wit, with his every need. He extends to them his grateful thanks.

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Fabian Society, 11 Dartmouth Street, London SW1H 9BN.

September 1981  ISBN 7163 0476 7
Cover design by Dick Leadbetter  Printed by Blackrose Press (TU)
1. Introduction

It has been said by the National Executive Committee that the Lords is “an out-dated institution inappropriate to a modern democratic system of government”. But it is more than that. It is a battle theatre in the class war; it is divisive and anti-democratic; it represents privilege and wealth; it seeks to frustrate change; and because it is the last refuge of the Tory Party, its long-stop if you like, it encourages opposition to Labour measures and trade union rights. The Labour Party may march to the steady drum of socialism but beyond the hill, beyond the will of the electorate, there lie the massed forces of Tory peers, unelected, unrepresentative, but drawing their sustenance from the votes and attitudes of their ancestors, confident that they can ward off any attack which Labour may mount.

But for the votes of Tory peers, Ireland would have been united in 1912. But for the votes of Tory peers, children from 1930 would have left school at fifteen rather than fourteen; miners would have had a seven-hour week and in 1974, Clay Cross councillors would not have been surcharged into bankruptcy. But for the votes of Tory peers, Britain might today be a classless democratic society, with the trade union movement accepted, with proper consultation at all levels between employer and employed through worker participation. Instead, the class war is fought relentlessly. Labour governed from 1974-79 with one eye upon the Lords, gauging what legislation it could or could not pass, shelving state aid to political parties and the Bullock Report on worker participation because it knew it could not defeat those Tory forces massed beyond the hill.

Tory peers are famous for such amendments as those limiting the time a shop steward is entitled off on union business, reducing redundancy notice, and taking out of Parliamentary Bills schedules aimed at eliminating low pay. And yet they passed without a division the Trades Disputes and Trades Union Act in 1927 which forbade general and sympathy strikes, peaceful picketing, and which enjoined civil service unions to disaffiliate from the TUC and Labour Party. The European Communities Act 1972, which yielded up power from the House of Commons to the Brussels Commission, whilst guillotined in the Commons, was equally rushed through the Lords.

But through five Labour administrations this century, despite the rhetoric, the threats, and the lofty aspirations, the Labour Party has sought to reconcile its socialism with the Lords. It has succeeded in only a single reform, that of the Parliament Act 1949, limiting the suspensory veto to thirteen months. It has never come to grips with the hereditary principle. It has never grasped the nettle of abolition. It has confused rhetoric and sloganeering with viable workable policies and it has never taken the trouble to work out a legislative programme that would achieve either outright or de facto abolition, so that even Richard Crossman in 1966 could blandly admit that, with regard to the Lords, he “had no fixed plan in mind”.

Indeed, it is questionable whether Labour has the will. Clem Attlee was content to write that the “House of Lords fulfilled a useful role as a debating focus and a revising chamber” (As It Happened). Harold Wilson, in his book The Labour Government 1964-70, gave scant attention to the Lords. Jim Callaghan led the attack within the Cabinet against Crossman’s proposed reforms in 1967-68. It is not surprising
Labour has been constantly outmanoeuvred by the Tories who, the length and breadth of the century, have led Labour up constitutional garden paths with all-party conferences, Speaker’s conferences and talks behind the Speaker’s chair, all the while weakening Labour’s enthusiasm and will, so that in the end Labour has run out of legislative time and electoral support.

“There is only one other hereditary legislative body in the world and that is the House of Chiefs of the Ashanti.”

Phillip Whitehead MP speaking on “Any Questions?” (1980)

And yet, whatever the reason, something is fundamentally wrong when a democracy continues to put up with an unelected second chamber consisting, for the most part, of hereditary peers who, as Walter Bagehot wrote, represent “the tenth transmission of a foolish face”. This tract, therefore, is designed to point the way for Labour through the constitutional, legislative, legal and political minefields that lie ahead, so that not only will the Lords be abolished but representative democracy strengthened in our country.

2. can Labour abolish the Lords?

Tony Benn, in a speech to the 1980 Labour Party Conference, called for House of Lords’ abolition immediately Labour is returned to power.

Speaking of the industrial strategy which Labour would need to implement, Tony Benn listed three bills Labour would place on the statute book within a month of taking office. The first would be an Industry Bill, with powers to extend common ownership, control of capital movements and industrial democracy;
the second would transfer power back from the European Economic Community to the House of Commons. And the third would “do what the movement had wanted to do for years” – abolish the House of Lords, because without Lords’ abolition the first two bills would not get through Parliament.

Tony Benn’s thousand peers

Tony Benn suggested the creation of a thousand Labour peers and abolition of the peerage at the time the Abolition Bill went through. He declared: “It is not possible to continue if a Labour government has control over only half a Parliament”. Tony Benn, however, misapprehended the Parliament Acts of 1911 and 1949, which would permit both his Industrial Bill and his European Economic Community Bill to appear on the statute book after a thirteen-month delay by the Lords, since neither could be classed as money bills or bills to prolong the life of Parliament. And his proposal to abolish peerages would limit the monarch’s prerogative – that “group of powers of the Crown not conferred by statute but recognised by the common law as belonging to the Crown” (Constitutional Law. Wade and Bradley, Longmans). Similarly with the creation of a thousand peers. Constitutionally, they may be conferred on the advice of the Prime Minister, although the list is submitted to a political honours scrutiny committee of three peers, one from each of the major parties where approval is usually formal.

“It is not possible to continue if a Labour government has control over only half a Parliament.”

Tony Benn speaking at the 1980 Party Conference.

Labour, however, has accepted that there will be difficulty with Tony Benn’s creation of a thousand peers. In Statements to the Annual Conference 1977 by the National Executive Committee, the Labour Party declared: “The creation of several hundred new peers (up to nearly 1,000) would clearly entail the use of patronage on an unprecedented and unacceptable scale, and might also involve difficulties with the Crown”.

Labour’s proposed manifesto commitment read: “Should we become the government after the next General Election, we intend to abolish the House of Lords. No doubt given such an electoral mandate, the Lords would agree to this, but should they not, we would be prepared to use the Parliament Acts or advise the Queen to use her prerogative powers to ensure this.”

An incoming Labour government, assuming the Lords decline to consign themselves to oblivion, could either opt to advise the monarch to create sufficient peerages to enable Lords’ abolition by the use of the Parliament Acts, or attempt to battle abolition through both Houses and onward to the Royal Assent.

Both options are fraught with difficulties.

Can Labour confront the Queen?

Parliament consists of the Queen, the House of Commons and the House of Lords.

No party in the history of the nation has won an election on a manifesto which
included Lords’ abolition. With the exception of the Rump Parliament after the Civil War, no government has sought to do so. What would the judges make of legislation on the statute book without the imprimatur of the Lords? How can the sovereignty of the Commons be limited, as it is now, to five years by the Parliament Act 1911 if there is no Lords? What would prevent a government—any government—supported by a majority in the House extending the life of the Commons and the majority with it? Can the Parliament Act 1911 be subverted? Would any Abolition Act be declared invalid?

Or would judges simply ensure that the Abolition Act had been properly “enrolled”, that is assented by the Queen and Commons, and that it complied with Section 2 (1) of the Parliament Act 1911 expressly excluding money bills, bills to extend the life of the Commons and private bills? Peter Mirfield, lecturer in law, believes that abolition is not a question of policy only, but of legality and constitutionality (“Can the House of Lords be Lawfully Abolished?” Law Quarterly Review, January 1979). Of course, if the Lords decided upon their own demise and consented to Labour’s Abolition Bill, the constitutional issue would not be raised by the Queen or the courts. But if the Lords declined to consign themselves to oblivion? Mirfield believes that the courts might not enforce legislation assented to only by the Queen and Commons, since Parliament consists of “the Queen, the House of Commons and the House of Lords; these three bodies acting together may be aptly described as the Queen in Parliament and constitute Parliament” (ibid.).

really to campaign and spread the unanswerable case as to why this unelected, unrepresentative, undemocratic institution should be abolished. This commitment must be included in the next manifesto in the next general election.”

Jack Jones speaking at the 1977 Party Conference.

All future legislation passed by the Commons and assented to by the Queen might be held equally invalid. Mirfield’s view is not shared by the Conservative Party, for a review committee chaired by Lord Home came to the conclusion that “the second chamber could be abolished by the Commons alone”. The committee believed this could be achieved without the consent of the Lords, as the Parliament Act 1949 limiting their delaying power had been passed without their consent. This view was supported by George Winterton, senior lecturer in law at the University of New South Wales, in (“Is the House of Lords Immortal” Law Quarterly Review July 1979), answering Mirfield’s article which appeared in January of that year.

Winterton went further and suggested that even if Parliament were unable to abolish the Lords there were two ways in which the same objective could be achieved. One would be to pass a law under the Parliament Acts of 1911 and 1949 to abolish the peacetime system and right of the Lords to attend sessions; the second would be to amend the Parliament Acts so that all bills could be submitted directly from the Commons to the monarch for assent. Winterton believed that in either case the Lords would be deprived of their power to legislate or
modify legislation from the Commons, thus achieving de facto abolition.

All that would be left would be an influential but powerless debating chamber, a role “not altogether unlike its present one”.

Winterton, however, overlooks the constitutional role of the monarch. To seek to abolish peerages would be to interfere with the royal prerogative, unless supported by all three limbs of Parliament, or by the people at a General Election or referendum. To seek to amend the Parliament Acts would effectively remove the Lords from Parliament. The Queen would be confronted with the same constitutional dilemma posed by abolition or the creation of a thousand peers. She would accede to neither without a General Election or referendum and no Labour Prime Minister would decline to hold an Election or referendum unless he wished a constitutional crisis with the monarch as well as with the Lords. Indeed, as it is also the monarch’s prerogative to summon, prorogue and dissolve Parliament, she may decide upon dissolution, as did the Governor of Australia in 1975 to break a deadlock between the two Australian Houses. And since it is also within the prerogative to assent or refuse bills, she may simply decline to sign any bill under the Parliament Acts to abolish the Lords, using the ancient formula la Reine s’avisera.

The first audience of a future Labour Prime Minister with the monarch would have to concern itself, not only with the request to create a thousand peers but whether, if the Parliament Act route were taken, she would give her Royal Assent once an Abolition Bill had passed through all its stages. She is hardly likely to acquiesce either in the creation of a thousand peers or to an ultimate Royal Assent without first an election or referendum.

**The constitutional precedents**

Nor could the future Labour Prime Minister fail to comply with the request, since precedent is on the Queen’s side. In 1712, the government of the day created twelve new Tory peers to overcome opposition in the Lords. The Lords themselves perceived the challenge to their authority and proposed, in 1719, that “the number of English peers should not be enlarged beyond six above the present number”. This was rejected, but when the Lords refused to consent to the Reform Bill in 1832, William IV asked for a General Election prior to granting Earl Grey’s request to create 50 new peers.

This would have been enough to swamp the Conservative peers and let the Reform Bill through. As it happened, Earl Grey’s reformers were returned to power and therefore Conservative peers, led by the Duke of Wellington and Lord Derby, stayed away from the Lords so that the Reform Bill became law. The 50 peers were never created. Similarly, in 1910, King Edward VII informed the Prime Minister that he could not contemplate the creation of new peers until a General Election had been held, and this only weeks after an election that had seen the Liberals returned.

“Only two (Dukes), Norfolk and Somerset, go back before Charles I. Two, Bedford and Devonshire, founded their fortunes on the sacking of the monasteries by Henry VIII. Four were bastard sons of Charles II – St Albans (by Nell Gwynn), Grafton (by the Duchess of Cleveland),
Richmond (by the Duchess of Portsmouth) and Bucclleuch (by Lucy Walters). Only two were promoted for obvious merit as opposed to wealth.—Marlborough and Wellington."

Anthony Sampson: *Anatomy of Britain Today*

When King Edward VII died he was succeeded by George V, who agreed "most reluctantly" to give a secret assurance that he would create new peers to swamp the conservative majority in the Lords, should a fresh election again return the Liberals. The King wrote in his diary that he had only agreed to prevent the Cabinet from resigning, "which at this moment would be disastrous". The Liberals did not win the election (both they and the Unionists captured 272 seats) but the Irish nationalists with 84 and Labour with 42 were prepared to support the Liberals, and therefore Conservative peers acceded to the King's threat, when impanted to them, and allowed the Parliament Bill to pass.

The significant point, however, was that the King felt he had no alternative but to assent to the advice of the Cabinet. He was not advised that he might have called for Arthur Balfour, leader of the Conservative opposition, and asked him to form a government. Certainly, Balfour would not have been able to do so, but the timing of a future election would then have fallen to his hands, and with it the issues on which the election would have been fought. In 1913, when King George V learned that he might have awaited a Liberal cabinet's resignation, he dictated a note declaring that, had he known, this would have had "an important bearing and influence with regard to Mr Asquith's request for guarantees on November 16, 1910".

In short, the Queen at her first audience of a future Labour Prime Minister could constitutionally decline to give any assurances as to the creation of peers or Royal Assent to Lords' abolition, thus obliging a Labour government to resign. For, although the Queen governs on the advice of her Ministers, there is nothing in the constitution to indicate which Ministers. In 1910, Sir Arthur Bigge, Private Secretary to King George V, argued that the King could not use his prerogative to create peers because, by doing so, the King would become "partisan and is placing a powerful weapon in the hands of the Irish and Socialists who, assured of the abolition of the veto of the House of Lords, would hold before their electors the certainty of ultimate home rule and the carrying out of their socialist programme".

"In short, the Queen at her first audience of a future Labour Prime Minister could constitutionally decline to give any assurances as to the creation of peers or Royal Assent to Lords' abolition."

The monarch, in order to protect the constitutional monarchy, would be entitled to seek the advice of other Ministers, a point taken up by the Conservatives in 1912, when the Liberal government proposed home rule for Ireland. The leader of the Conservative Party, Bonar Law, submitted a memorandum to the King in which he wrote: "If the Home Rule Bill passed through all its stages under the Parliament Act and requires only the Royal Assent, the position will be very serious and almost
impossible for the Crown. In such circumstances, Unionists would certainly believe that the King not only had the constitutional right, but that it was his duty, before acting on the advice of his Ministers, to ascertain whether it would not be possible to appoint other Ministers who would advise him differently, and allow the question to be decided by the country at a General Election”.

A future Labour government, far from creating a thousand new peers within a month of taking office, abolishing the Lords and peerages too, might instead be preparing for a fresh General Election, embroiled in a constitutional crisis with the monarch of a magnitude not seen this century, threatening not only Lords’ abolition but all of its socialist legislation.

“A future Labour government, far from creating a thousand new peers within a month of taking office, abolishing the Lords and peerages too, might instead be preparing for a fresh General Election.”

The greater danger, however, is that these issues will be so highlighted and exploited by the Tories and their allies in the media that Labour might not win the next election at all.

The Tory counter attack

But even should Labour win the second general election its Lords’ Abolition Bill, once promised of the Royal Assent, will meet with many legislative hurdles, so many that other socialist measures will be imperiled.

The Conservatives could call for an all-party or Speaker’s conference. There have been four such conferences and talks this century, but all have failed. Were they ever designed to succeed? Or were they simply conferences to show willingness, to mark time, to air the issues, all the while the public being prepared for the
inevitable breakdown? The Lords have been interested in reform on their own terms, and sometimes their reforms would have had as a consequence the actual extension of Lords’ powers rather than their weakening. Liberal and Labour governments have been interested in reform both of powers and composition, but by mixing the two they have made themselves an easy target for those who wished no reform at all. By over-ambition, or failure to comprehend the constitutional difficulties, or both, not even limited reforms have been achieved other than the Life Peerages Acts 1958 and the Peerages Act 1963, neither of which touched the Lords’ powers, and both of which were introduced by Conservative governments.

All-Party talks were held to keep the “inexperienced” King George V out of the constitutional firing line prior to the passing of the Parliament Act of 1911, although Austen Chamberlain believed they had been inaugurated by Asquith with the express wish that they should not succeed. The Bryce Conference was held in 1917 to give effect to the Preamble of the Parliament Act 1911 (“whereas it is intended to substitute for the House of Lords as at present constituted a second chamber constituted on a popular instead of an hereditary basis”). If its report is considered a succinct document on the reform of both powers and composition, together with an exposition of how the Lords worked, none of its recommendations were ever put into effect. In 1948, the Labour Party sent in Clem Attlee, Herbert Morrison and chief whip William Whiteley; in 1968, it was the turn of Richard Crossman and Lord Shackleton; but nothing came of these talks except to waste precious legislative time.

All-party talks mean that the Conservatives are given an opportunity to nit-pick to death any Labour proposals, yet if there are no all-party talks the Conservatives will refuse to work with a Labour government through “the usual channels”. This was so effective during the 1974-79 Labour administration that, after a particular incident, Prime Minister Jim Callaghan had to apologise to the Conservative leader before Parliamentary business could resume. Conservatives will argue that even if Labour had included in its manifesto Lords’ abolition, such constitutional change could not take place without an all-party conference, and therefore, with this refused, they would be entitled to make life impossible for a Labour government.

All-party talks mean that the Conservatives are given an opportunity to nit-pick to death any Labour proposals.

They could argue, too, that Labour did not have an “adequate majority” for such abolition, whatever this majority might be. In 1910, Asquith’s government informed the monarch that they would not advise a dissolution, unless they had an assurance that, if returned by an “adequate majority”, the monarch would be prepared to exercise his constitutional powers to create peers. The question of what is an “adequate majority” did not arise, but it might be raised by Conservatives in the future. And since Lords’ abolition is a constitutional issue, its committee stages would be taken on the floor of the Commons, thus preventing progress, for example, on Labour’s Industry Bill and the bill to transfer power back from the European Economic Community.

Nor could the Abolition Bill be subject to the guillotine – the extreme limit to which procedure goes in affirming the right of the majority at the expense of the
minorities in the House. The guillotine cannot be used on a constitutional issue. Tory backbenchers, supported by Tory whips and front bench spokesmen, would thus filibuster to death any Abolition Bill, as did Enoch Powell and Michael Foot from their respective back benches when Crossman proposed Labour’s Parliament (No.2) Bill in 1968.

But even assuming Labour overcame these Commons’ hurdles and the Abolition Bill reached the Lords, the Conservative peers are unlikely to respect the doctrine of mandate enunciated by Lord Salisbury during the 1945-51 Labour government and repeated by Lord Carrington between 1964-70 but ignored between 1974 and 1976. This doctrine states that where proposed legislation appeared in the Labour Party manifesto, it might be presumed to have the support of the people and should be passed by the Lords.

“These quarters of the members of the House of Lords inherited their position by birth; their ancestors were, by and large, cattle robbers, land thieves and a few were court prostitutes.”

Jack Jones, speaking at the 1977 Labour Party Conference.

Conservative peers could almost certainly argue that even if Labour had included Lords’ abolition in its manifesto, the legislation would be “contentious” and meritorious of further reflection by public opinion; and, further, that if Labour abolished the Lords there was no law in the land, and no Lords to prevent a future Labour or Conservative government prolonging its own existence beyond five years.

These points have already been raised by Conservatives in a document published by four Tory peers and entitled The Need to Retain A Second Chamber:

“The Parliament Act lays down that the House of Commons cannot extend the life of Parliament beyond five years, without the consent of the House of Lords. This is the sole guarantee that General Elections must be held at intervals of not more than five years. Since we have no written constitution in which our fundamental rights would be entrenched, if the House of Lords were abolished, and not replaced by a chamber with the same powers, all the powers of sovereignty would be accumulated in one chamber, the House of Commons”.

The document goes on: “The executive which controlled a majority in the chamber, could then do what it liked, passing any Bill on any subject, with no check on the extent or duration of its powers. In the United Kingdom a single chamber form of government would open the road to dictatorship. This is the most important reason for preserving a second chamber” (Association of Independent Unionist Peers).

A single chamber and the monarchy

Labour has itself perceived that a House of Commons with a majority in the hands of a single party might seek to prolong its own existence. That is why it has declared that, to safeguard electors’ rights, the House of Commons could not extend its own life without obtaining first the people’s approval in a referendum, or in time of war by a two-thirds majority of the House of Commons (Labour’s Programme, 1976).

But the promise of such a referendum would not produce a constitutional safeguard, even if embodied in legislation, for it could not bind Labour’s future leaders
let alone Conservative ones; and since the Commons is supreme it cannot bind its successors, so that a future Commons could pass an Act abrogating any legislative promise made, extending its own life without a referendum. Such an Act could only be prevented by the monarch refusing assent, or by dissolving Parliament and calling fresh elections.

In either event, the relationship of the monarch to her people would be irreversibly changed, and the monarchy would no longer be constitutional. This would be an unforeseen consequence of Lords’ abolition, for the monarch exercises her powers upon the advice of her ministers; she is expected to act in accordance with the will of Parliament, as communicated to her by the leaders of the governing party; but without the Lords the likelihood of the monarch coming into conflict with her elected representatives increases.

We have seen one example in the prolongation of the life of the Commons. Another could be on the doctrine of mandate. Should the monarch assent to bills which did not appear in a party manifesto? Or to bills which have not been approved by the people? Should the monarch insist that they be submitted to the people by referendum or General Election? Should she take the advice, no doubt offered by an Opposition party, that she should seek other ministers who would put the issue to the people? Or should the monarch, faced with a refusal by her first minister, use her prerogative to call a General Election to test the will of the electorate?

And will that be the end of the monarchy? Or will she be succeeded by her heir? Or should she not resign at all but acquiesce in the will of her people? And if the end of the constitutional monarchy is one of the unforeseen consequences of Lords’ abolition are there others?

The answer to these questions may only be found in a detailed examination of Labour’s proposals.

3. Labour’s proposals 1980

Under the heading, Democracy at Westminster, in Labour’s 1980 draft manifesto, it is proposed “immediately to abolish the House of Lords ... we will ensure the passage of the necessary legislation and secure a majority for that purpose. In the legislation to enact this we shall make provision to ensure both that the life of the Parliament cannot be extended except by referendum, and to safeguard the independence of the judiciary. We shall abolish peerages.”

No specific reference is made in this manifesto to the Law Lords, nor to the Lords Spiritual – the 24 Bishops and 2 Archbishops who sit in the Lords. It also makes no reference as to how the independence of the Judiciary is to be secured.
Will Labour disestablish the Church?

A former Archbishop of Canterbury told the Lords, in the great constitutional debates of 1910, that his title was 600 years older than that of any hereditary peer. Yet in its documentation on Lords' abolition, no mention at all is made to the Lords Spiritual.

The Lords Spiritual

In 1954, the then Archbishop of Canterbury pointed out that "the majority of Bishops rarely attend the sittings, only a few make any attempts at regular attendance". The Archbishop added, of course, this was also true of temporal peers. And so it is today. But the Archbishop made two points, firstly: "As long as the church remains established Parliamentary approval is necessary for a large number of measures, great and small, which affect its welfare. Every year there are sent from the church assembly measures which require an approving resolution in each House before they receive the Royal Assent".

Secondly, the Church of England has a special status as an established church. Under the terms of the Act of Settlement, the Sovereign must join in communion with the Church of England. Roman Catholics, of course, and those who marry Roman Catholics, are expressly excluded from the Throne. According to constitutional law: "The Sovereign is the Supreme Governor of the realm in all spiritual and ecclesiastic causes as well as temporal. The royal supremacy is exercised on the advice of ministers who are responsible to Parliament and has been subject since 1689 to Parliamentary control" (Constitutional Law, ibid).

The Church may legislate for itself, but its legislation requires the consent of the state. Its forms of worship cannot be altered without the consent of Parliament. But the difficulty of obtaining proper discussion in Parliament of proposals for legislation affecting the Church led, in 1919, to the passing of the Church of England Assembly (Powers) Act, and the setting up of a new legislative assembly for the church under the name of the National Assembly of the Church of England.

There is an Ecclesiastical Committee in Parliament, which consists of fifteen members of the House of Lords and fifteen of the House of Commons, nominated at the beginning of each Parliament by the Lord Chancellor and the Speaker. The Ecclesiastical Committee reports to Parliament upon the expediency of measures submitted to it, especially with relation to the constitutional rights of Her Majesty's subjects. How would this relationship between Church and State be affected by Lords' abolition? Could it lead to disestablishment of the Church? With the Lords abolished, and with it the right to send twenty-six Bishops to its benches, it would be for the Church to take its affairs into its own hands, since a single chamber would be too overburdened to continue with a programme of, for example, approving church liturgy. Should this be the case, however, the Royal Assent shall no longer be required, and separation of Church and State would de facto be accomplished. It may come about by accident, by inadvertence, but it will come about nonetheless, when there is a complete transfer of Church legislation from the Crown in Parliament to the National Assembly of the Church. And once the Church itself becomes the final authority in matters of doctrine and worship, the question might well be asked why the Prime Minister should continue to advise the Queen on the appointment of Church dignitaries, even though she does
so on the advice of the Church.

Lords' abolition, and with it the right of Bishops to sit there, would so modify our institutions that the Church of England would be disestablished. Disestablishment of the Church, however, at the same time as Lords' abolition, might prove too much even for a future radical Labour government. But stroke-of-the-pen abolition would create so many new situations, unless adequately thought out, that disestablishment has to be envisaged.

A Ministry of Justice?

Labour's 1980 draft manifesto commitment is simply "to safeguard the independence of the judiciary". As mentioned at the head of this chapter the Party does not specifically state how it proposes to do this, but in its conference document, *Reform of the House of Commons* (1977), the Lords as a court of appeal appears under "Miscellany", with the proposal that the Law Lords should be given accommodation elsewhere and that "a Royal Commission should be set up to decide the future of the Law Lords". It is curious that the Labour Party, in its haste to abolish the Lords, should look to a Royal Commission for succour. Royal Commissions, according to the principles of constitutional law, "may be set up when the matter is of high import and time is not of the essence" (*Constitutional Law*, ibid). A Royal Commission "may be said to enjoy a somewhat greater prestige than a department committee"; it hears evidence in public and that evidence is subsequently published; but is a Royal Commission an appropriate body to deal with the Law Lords?

Labour cannot abolish the Lords until it has decided what to do with the Law Lords. If three years are lost while the Royal Commission is formed by royal warrant, whilst it hears the evidence, prepares for the publication of the evidence for the public, produces a command paper; whilst its recommendations are studied first by the Minister, then by the Cabinet; whilst a Cabinet decision is made for presentation to Parliament, then it is difficult to see how the Lords can be abolished within the lifetime of a single Parliament, let alone within the month promised by Tony Benn at Labour's 1980 conference.

"It is curious that the Labour Party, in its haste to abolish the Lords, should look to a Royal Commission for succour."

The Labour Party has probably set its mind against a departmental committee because of the greater prestige attaching to a Royal Commission, and because a Royal Commission is independent of any government department; but this itself is curious, for Lords' abolition would be a deliberate act of Labour policy requiring no endorsement from any Royal Commission; so that it would be more appropriate, whilst in opposition, to invite a group from the Society of Labour Lawyers consisting of at least one former Attorney General and Lord Chancellor to produce a Supreme Court framework, which could then be incorporated in a draft Labour manifesto for discussion throughout the Party. In fact, in order to underline the constitutional changes brought about by Lords' abolition, a Ministry of Justice would probably be required to take over the functions of the Lord Chancellor.

These functions would need to be transferred either to a newly-created Ministry of Justice or merged with the Home Office, but either way the charge would be made
that patronage was being extended to cover the judiciary. Yet a merger of those functions of the Lord Chancellor with those of the Home Office would appear inevitable, for administrative arrangements of metropolitan courts are under the Home Office, and it is the Home Secretary who confirms clerks’ appointments made by committees to magistrates’ courts. The Home Office, too, seeks uniformity by means of advisory circulars on such matters as the collection of fines. It is in charge of the general administration of the magistrates’ courts. It is in charge of the probation system, juvenile delinquents, prison and Borstal administration, Approved and Remedial schools and releases from Broadmoor.

But such a super ministry is likely to so overburden the administration of justice that a separate Ministry of Justice would be inevitable. Therefore, such Ministry needs to be carefully considered by the Society of Labour Lawyers for ultimate consideration by Party Conference. The Society would have to examine the entire function of the Law Lords (who consist of the Lord Chancellor, the nine Lords of Appeal in Ordinary appointed by the Crown on the recommendation of the Prime Minister, ex-Lord Chancellors and other peers who have held high judicial office) so that with the Lords abolished the Law Lords could sit as a new Supreme Court of Judicature, with powers no greater than the Law Lords have now, and with appointment by the monarch on the advice of the Prime Minister. The Supreme Court could be bound by its own decisions and by the precedents of the former Law Lords, and court organization and the fusion of law and equity could be carried over from the Supreme Court of Judicature Consolidation Act 1925.

The Supreme Court could continue to be the ultimate arbiter of justice and qualifications for nomination the same as those for the present Law Lords: the holding of high judicial office, a practicing barrister or advocate in Scotland of fifteen years standing, with a retiring age of seventy-five. Appeals may be heard by divisions of five or three. But once Labour has the nation and the Queen’s consent for Lords’ abolition, it would be essential to pass legislation permitting an orderly transfer of the Lords’ judicial function to the Supreme Court, so that appeals might continue to be heard. For though the issues surrounding the creation of a Supreme Court might be of sufficient complexity to warrant a Royal Commission, the subsequent delay would be fatal to ultimate Lords’ abolition.

Reform of the Commons

Labour accepts that Lords’ abolition is dependent upon a reformed House of Commons.

It is always risky to make one major reform dependent upon another, as Richard Crossman learnt to his cost in 1966-1968. But since Labour accepts that the Commons must be reformed, the question must be asked whether such reform precedes or follows Lords’ abolition; and if it follows and there are no Commons reforms, does this mean that the Lords shall not be abolished at all?

"It is always risky to make one major reform dependent upon another."

But whilst these aims are laudable in themselves, they have nothing to do with Lords' abolition.

Indeed, the only proposals which touch upon Lords' abolition are those which promise major improvements in the legislative process, "including new methods of considering bills in committee and strengthening the select committees which scrutinise the work of government departments". These proposals, as the Draft Manifesto points out, are taken from the 1978 Conference Statement on Commons' reform, and include the "sweeping away" of the present system of standing committees in the House of Commons and their replacement with legislative committees. In the words of the 1980 Draft Manifesto (ibid) "These legislative committees, membership which would reflect party strengths in the House, would have more power than Standing Committees. They would call witnesses if they chose, decide how to divide up their timetable, and even guillotine debate without reference to the House if they wished. The legislative committees could, in any case, be required to report on Bills before them by a specified date, and we are in no way suggesting limiting the present powers of the House of Commons to curtail discussion on a Bill in any committee".

Once the legislative committee has reported, an intermediate stage would be introduced between that and a third reading. Bills would then be submitted to a Revision Committee: "It is at this stage that 'second thoughts' on the precise drafting of legislation could be considered. The Revision Committee would report with recommendations to the House, which would approve or reject them. Effectively, this Committee would be performing the only useful role which the House of Lords now performs" (1980 Draft Manifesto, ibid).

The legislation of a Labour government is likely to be the first victim of such a revising committee. Bernard Crick suggests Labour was never over-anxious to abolish the Lords in 1945 because, had the Party sought to do so, the government would never have placed on the statute book its socialist legislation (The Reform of Parliament, Weidenfeld and Nicholson). A Labour government, by its reforming nature will tend to produce much legislation. But by authorizing mandatory reselection of its MPs, the Labour Party has ensured that they will spend more rather than less time in their constituencies, so that revision committees in which Labour MPs might be expected to play vital roles, are hardly likely to be more efficient than the present House of Lords.

Nor could the Labour researchers have fully appreciated the extent of the revision carried out by the Lords. The Times is on record as stating that if the Lords did not exist it would be necessary to invent it. On 6 May, 1947, it declared: "Seldom if ever have the surviving functions of the Upper House been more important. The casual glance at the (Transport) Bill as it leaves the Commons suggests that if a revising chamber did not exist it would have been necessary to invent it. The Bill will no doubt pass into law. There is no question of the Lords frustrat[ing] the will of the Commons. But it is vitally important that, before it is passed these sections and clauses which have so far been discussed inadequately or not at all should be subjected to the impartial, practical and expert examination of which the Upper House is capable".
"It is singular that the Lords did not use their delaying powers in 1972 to reflect upon the terms of the European Communities Act which yielded up the power of the House of Commons to decide whether Community legislation should apply to the United Kingdom."

Over a 34-year period, between 1946 and 1970, the Lords amended 217 bills with 6,962 amendments. Only 219 of these amendments were rejected by the Commons. Under a future Labour government, this workload would fall upon the revision committees of the House of Commons. Could they bear the strain? But in addition to its revising role, the Lords has introduced public bills on behalf of governments to ease heavy legislative programmes overburdening the Commons. From 1952 until 1970, 274 such bills were introduced. And peers in the Lords have also introduced private members' legislation on abortion, sexual offences, television, matrimonial homes, protection of birds, racial discrimination, Sunday entertainment, and medical termination of pregnancy. This additional workload, too, will require to be taken up by the reformed House of Commons.

Labour accepts the likely difficulties, for it also seeks to "discourage MPs from having other occupations, and to improve conditions in which they make decisions; the House of Commons should have regular hours similar to the practice in industry, and thus end its proceedings at a reasonable hour" (1980 Draft Manifesto, ibid). The Labour Party proposes that, once the revision committee has reported its recommendations to the House: "the Bill as amended should be put to the House of Commons for a vote for or against. It would then become law. The published Act should, as far as is possible, be written in clear and easily understood language and should be accompanied by an updated memorandum explaining the purpose and meaning of the legislation clause by clause" (1980 Draft Manifesto, ibid).

This proposal, however, makes no provision for the Royal Assent and, taken literally, the Queen with the Lords is abolished too, making the Commons supreme. Similarly, it will no longer be for the courts to interpret Acts of Parliament; they will be interpreted and reinterpreted in an "updated memorandum explaining the meaning of the legislation clause by clause". What becomes then of judicial independence? Would the courts lose their independence by the "updating" process? How would precedence apply to "updated" legislation? Would an important case, to be decided on the interpretation of an Act, be stayed while the interpretation was "updated"? What would happen should an "updating" occur between a hearing before the divisional court and court of appeal? Or between the court of appeal and the final appellate court? Would the "updating" apply to criminal as well as civil laws passed by Parliament? Who would do the updating, the House of Commons or the Executive? Would private bills similarly be "updated"? And what would be the influence of those lobbyists who had an interest to "update" a law, or a clause in a law, before a case in which they might be interested, criminal or civil, came to be heard?

Or is the "updating" to have no legal validity at all, to be merely advisory, for the guidance of interested parties; but then, if this is the case, why have it at all?

Labour also proposes legislation to be carried over from one Parliamentary
session to another: “We believe that it should be possible for a bill introduced in one session to complete its passage in the next”.

This is an admission that a reformed Commons is hardly likely to be able to cope with its work load and will require additional Parliamentary time. The consequence of this is that, with legislation spilling over from one session to another, a Labour government will find itself running out of time in a five-year Parliament, thus bringing about the very situation Labour is seeking to abolish, namely the curtailment of its legislative programme by a Tory Lords using its suspensory veto. The complaint is often heard that, because of the veto, Labour governments can only govern for four years rather than five.

“The complaint is often heard that because of the (Lords) veto, Labour governments can only govern for four years rather than five.”

As if, however, the Commons will not be sufficiently burdened, the House will need to take on board delegated legislation, that is legislation consisting of other than Acts of Parliament. At the present time, subordinate legislation, private bills and bills to confirm provisional orders do not come within the limitations imposed by the Parliament Acts. They may consist of Orders in Council or Ministerial Orders. They may not be modified by the Lords, but they may be debated and rejected, as in the case of the Southern Rhodesia (Renewal of Sanctions) Order 1968. The Commons, too, with no second chamber to back it up, will become entirely responsible for these. In the words of Labour’s proposal: “We would suggest that there is no reason why delegated legislation should not be debated and amended in committee, by which we mean, of course, the Legislative Committees” (1980, Draft Manifesto, ibid).

The practicality of these proposals for a country with a flow of legislation as big and complex as Britain’s is open to serious doubt.

4. a new second chamber

All of Labour’s convolutions around the House of Lords and a reformed Commons occur because the Party cannot bring itself to face the only democratic and sensible solution, that is a second chamber duly elected by the voters.

There are elections to parish councils, election to metropolitan and non-metropolitan boroughs, elections to county councils; there are elections to the House of Commons and to the European Parliament. Why cannot there be elections to an upper house?

According to Labour’s Statement to Annual Conference 1977, it is because they would not seem “appropriate”, and because an elected assembly would challenge the
elected Commons. This sentiment was echoed by Jim Callaghan in a *Tribune* interview of 20 June 1980.

It has indeed echoed down the century, from the first conflicts between Lords and Commons in the early 1900s, when Campbell-Bannerman declared that "to set up an elective second chamber would be to destroy the unique character of the House of Commons, and introduce a new dissension into the heart of the constitution". It finds its expression in the correspondence columns of *The Times*, when the ubiquitous Lord Boyd-Carpenter has declared: "The basic difficulty about an elected or even partially elected Upper House is that its members would feel bound in duty to their constituents and to their pledges to them to press to the limit the exercise of their powers on controversial issues".

This too is opinion rather than fact. Parish councils do not challenge non-metropolitan councils; non-metropolitan councils do not challenge the county; metropolitan boroughs do not challenge the Commons. Nor does the European Parliament challenge the Commons. Why should an elected Upper House? Lord Boyd-Carpenter was joined by Lord Rawlinson in proposing a bill "making quite certain that the Parliament Act 1911 cannot be used for the abolition of the Lords, and by restricting the number of peers of first creation in any one year from taking their seat and voting in the Lords."

These proposals, however, run into the same constitutional difficulties as those of Labour. Lords Goodman and Perch have added their own pennyworth in proposing a referendum to ascertain whether the majority "would not like to see relegation to a single chamber government", and have declared that if the result of the referendum is in favour of a second chamber, it would "presumably be the duty of both Houses to work out the plan as a matter of urgency". This supposes that the public shall vote in favour of a second chamber, though different in composition and powers from those of the present Lords; otherwise, it would be hardly worthwhile that both Houses "work out the plan as a matter of urgency". But if the nation decides upon Lords' abolition with no replacement, shall the country lurch into a constitutional crisis surrounding the monarch, the law lords and the church, not to mention how the Commons would manage whilst remaining unreformed? Those who believe in the Lords should not suppose their faith is reciprocated by the public.

The Swedish and New Zealand experiment

Labour itself has used curious arguments to support single-chamber government. In recommending Lords' abolition, the Labour Party in its *Statements to Annual Conference* 1977 referred to Sweden as a nation which, in recent years, has abolished its second chamber. However, there are many social democrats in Sweden who might well wish they had retained their second chamber, because the only tangible consequence of its abolition was a loss of the Social Democratic Labour Party's majority, for the first time in forty years. In any event, a country with a population of no more than eight million, with 200 propositions a year coming through its Parliament, can hardly be compared with a country of fifty-five million, with at least a thousand items to deal with, including delegated legislation from the European Economic Community. A unicameral system was introduced in Sweden in 1970, but prior to that the country had co-equal chambers with equal representation on
parliamentary standing committees; committee reports were debated simultaneously and independently in each chamber, and draft bills lapsed if the committees could not reach agreement.

The irony of the change, however, was that when the Social Democratic Labour Party lost control of the Lower House in 1977 it could no longer fall back upon its majority in the Upper House, which until 1970 it had been able to rely upon to offset joint control of the legislature: “By 1970, the social democrats had lost a bastion of support through the abolition of the old indirectly elected Upper Chamber... They had enjoyed a settled majority there in all the years since the second world war and had, as a result, been cushioned to some extent from the vicissitudes of their electoral fortunes in the directly-elected part of the legislature.” (Neil Eldon, *The Swedish General Election*).

New Zealand is another country with unicameral government which the Labour Party quoted in its *Statements to Annual Conference* 1977. But how has New Zealand fared without a second chamber? Its House of Representatives has 92 members, but because of the smallness of the legislature the two major political parties can still hold their parliamentary meetings each in a single room. Decisions made by the majority party in committee are decisive, as they are in our own local government, so that the direct influence of the House has passed to largely unseen negotiations between pressure groups, the public services and Ministers. In 1975, a National Party MP saw a need for providing “constitutional and Parliamentary checks upon executive power”; another backbench MP has sought to appoint at least six Cabinet ministers from outside the House. And a Labour MP who retired in 1978 declared that not only is it necessary to protect the rights of the minority “but curb and control the privileges of the majority”.

It is not surprising, therefore, that three of the four political parties included formal proposals for Parliamentary reform in their 1978 election manifestoes, the exception being the governing party. The New Zealand Labour Party proposed a planned Parliamentary session, a Freedom of Information Act, an increase in the size of the House, greater powers for local and regional government, and the appointment of a law reform commission. Parliamentary reform played no major role in the campaign, but that is not to say it is not necessary; “At present recesses for select committee work are largely used as a convenience when the House is short of work for the debating chamber. The lack of an effectively planned Parliamentary timetable still regularly leads to an end-of-session legislative rush which, if less serious than it appears to many outsiders, is nevertheless both unnecessary and unbecoming” (Keith Jackson, *Parliamentary Affairs*).

**Why a second chamber should be different**

We have seen how abolition of the second chamber in Sweden actually weakened and then lost the Social Democratic Labour Party’s hold on parliament, and that abolition of the second chamber in New Zealand has led to a grotesquely overburdened and inefficient House of Representatives, with three of the four parties calling for reform. However, a second chamber in the United States has been described by Bryce, of Bryce Commission fame, as “indispensable”. Originally, a United States Senator was chosen by his own state legislature for six years; later he was chosen by universal
suffrage, which is the case today.

The Senate has a hundred members, two from each state, directly elected to serve for six years, with elections in rotation so that one-third of the Senate is renewed every two years. The constitution requires that a Senator be at least thirty years old, be an inhabitant of the state for which he is elected, and a citizen of the United States for at least nine years. It has been said that a Senator's six-year term is a major factor in analysing the Senate, for six years gives relative security of tenure, whereas a member of the House of Representatives is elected only for two; and the Senate system of rotating elections means that the Senate never dies. Unlike the House of Representatives, it is a continuing body.

An elementary function of the Senate is that "it restrains the impetuosity and fickleness of the popular House and so guards against the effect of gusts of passion or sudden changes of opinion in the people" (*Second Chambers*, John Marriott, Oxford, 1927).

The same might be said of the French Senate, whose members are elected for nine years by indirect suffrage. They too have an age qualification, in that they must be at least thirty-five years of age, be French citizens of more than ten years standing, with a disqualification extending to magistrates and civil servants as well as members of the government, constitutional council or council of state. A French Senator, however, represents no constituency, only his country as a whole; and this arises not out of philosophical reflection but out of Article 27 of France's written constitution, which declares that *tout mandat imperatif est nul*. This means that a French Senator may use his mandate as he sees fit, without taking orders from anyone, though of course the party system exists in the Senate as it does in the National Assembly.

In examining the roles of the United States Senate to that of the House of Representatives, and that of the French Senate to that of the National Assembly, it can be seen there are no substantial clashes or competition, because their respective roles are clearly established, provision for such clashes are clearly defined, so that it is irrelevant that in the case of the United States Senate election is by universal suffrage, and that of the French Senate by indirect suffrage. However, though the method of election is different, both Senates share one thing in common: they never die.

Membership is renewed every two or three years, with a third standing for re-election. In order to prevent conflict, therefore, between the House of Commons and an elected Upper House, not only should the powers of the Upper House be clearly defined, so that they are complementary to but not in conflict with those of the Commons, the method of election should be different. "A second chamber, in order to be able to maintain a co-ordinate position against the pressure of a popularly elected assembly must itself, in some way, though perhaps indirectly, be the result of popular election." So wrote Henry Sidgwick, in a book entitled *Elements of Politics*. And he added: "In order to get the full advantage of the system of two chambers, with co-ordinate powers, it seems desirable that they should be elected on different plans, in respect both of extent of renewal and of duration of powers; so that, while the primary representative chamber being chosen all at once for a comparatively short period of time, may more freshly represent the opinions and sentiments of the majority of the electorate, The Senate, elected for a considerably longer period, and on the
system of partial renewal, may be able to withstand the influence of any transient gust of popular passion or sentiment”. This may be achieved by indirect or secondary election, a difference in the length of the period for which election is made, continuous existence secured by the device of partial, periodic renewal, a difference in the electoral area or mode of election, or both.

5. the way forward

We have seen that the Tory peers “massed beyond the hill” cannot be dislodged by frontal attack.

The Labour Party has itself long known this, and the 1977 NEC document, The Machinery of Government and the House of Lords, left open Lords’ replacement by a second chamber: “We believe that the House of Lords is an out-dated Institution, completely inappropriate to a modern democratic system of government. It should not therefore continue in its present form. Any second chamber which replaces it must be much more representative of a community as a whole, and we shall examine ways of bringing this about”.

Even the reasons why Labour came down on the side of a unicameral legislature have been eroded. It was anticipated there would be devolution for Scotland and Wales, with a surge towards regional government, and that these additional tiers, with voting in local government and Euro-elections, would prove too much for the elector. But support for devolution for Scotland and Wales and regional government has not been sustained so that the electorate are hardly likely to find burdensome voting members to an Upper House on the same day as they vote in local elections. Indeed, they might find it to be fun.

“There that the Upper House, being an irresponsible part of the legislature, and of necessity representative only of interests opposed to the general interest, is an hindrance to national progress and ought to be abolished.”

Declaration of Parliamentary Labour Party, House of Commons, 22 March 1910.

There is no question, of course, of going back to two Houses of Parliament which have co-ordinate, equal and mutually independent assemblies, which existed at the time of the House of Lancaster. But the Second Chamber should indeed be complementary to and not rival of the House of Commons, and the permanent majority assured by the Conservatives in the present Lords would be swept away.

The legal, constitutional, legislative and political stumbling blocks in the way of Lords’ abolition without replacement by a
directly-elected Upper House would be too great for a future Labour government to surmount and would place in jeopardy its entire five-year socialist programme; but Lords' abolition with an appropriate replacement would not only gain the support of the people; it would strengthen representative democracy without raising equally insurmountable stumbling blocks to the cause of socialism.

With those Tory peers no longer massed beyond the hill, Labour will be able to march to its steady drum at a quicker pace than it has done in these last eighty years.

6. summary of recommendations

There should therefore be an elected Upper House, which should be so-called officially.

composition and election to an upper house

Elections to such Upper House should be by proportional representation, the constituency for election should be the Euro-constituency, with four members returned for each constituency. There are 82 Euro-constituencies, so that this would mean an Upper House of 328 members, and since the daily attendance for the 1974-75 Parliamentary session averaged 262, this would appear about right.

Members of the Upper House would be elected for fixed four-year terms, with Upper House elections on the same day as those of local elections. However, so that the Upper House never dies, elections should be held every two years, with two seats to be fought for at each election. Obviously, after the first election, the mandate of two members would be limited to two years, and those two members may be the two winning candidates polling the least number of votes at the first election. Elections held on the same day as local elections would stimulate voting in both.

A major Labour objection would be election by proportional representation. But the reason why neither major party wishes to introduce proportional representation is doctrinal rather than organisational. Wedded to conflicting ideological beliefs of capitalism or socialism, and fearing that a centre party would be able to ally to either wing, thus keeping one of the major parties out of power, neither will accept proportional representation. But provision for election to the Euro-Parliament is that though European nations might choose their own method of election the first time round, from 1984 all nations must use the same method. And since all eight European nations used proportional representation, it is hardly likely that Great Britain will persuade the other eight to adopt its electoral brand of "first past the post".
Great Britain will be required to choose a method of proportional representation for the Euro-elections in 1984, and there is no reason why the same system cannot be applied to elections for the Upper House. There are, of course, different systems of proportional representation, such as that of the single transferable vote or the regional list system. Franchise for election of members to the Upper House would be according to the Representation of the People Act 1948, but disqualification should cover Members of the House of Commons, Euro-MPs and local government councillors; and since the Upper House shall be a revising chamber there should be an age qualification of thirty-five, in order to attract experience. A certain number of government portfolios may be distributed to members of the Upper House and membership qualification disputes should be dealt with by a committee of the Upper House.

Only elected representatives might sit in the Upper House; the law lords would sit as a Supreme Court of Judicature, with the functions of the Lord Chancellor devolved upon either a Minister of Justice or Home Secretary; whilst the bishops would continue to have their forum in the General Synod. In this way, the affairs of the Church would be disentangled from those of the State, and there would be a true separation of the judiciary from the legislature.

Nor would the Labour Party have difficulty choosing its four candidates in each Euro-constituency, since it already has Euro General Management Committees who languish without a role since first choosing Euro-candidates in 1979.

**Powers**

Supreme legislative authority shall still remain with the House of Commons.

The Upper House would have no delaying power on money bills, and the suspensory veto on non-money bills, which at present is thirteen months, would be reduced to six.

The Upper House shall also be entitled to examine and revise public bills from the Commons, initiate private members' bills and certain public legislation at the request of the government to ease the pressure on the Commons. It should also scrutinize subordinate legislation from the Commons and regulations flowing from the European Economic Community. It shall be able to hold full scale debates on major issues, and on other subjects which might be less "political" than those treated by the Commons. The debates can be important, influential and with wide terms of reference.

The existing provisions of Section 2 of the Parliament Act 1911 which exclude any bill to extend the life of a Parliament from its statutory maximum of five years without the consent of the Upper House would remain. A fuller description of the powers of the Upper House, based upon the 1968 White Paper prepared by Richard Crossman, may be found in the appendix to this tract.

The question then remains whether the nation would approve of these proposals? They should in any event be fully discussed within the Labour Party and especially at Party Conference. There should in addition be full debates in the country. But not only should they be included in Labour's manifesto they should be specifically put to the country in a referendum once Labour has won the election. A referendum would obviate the need for all-party talks, speakers' conferences, talks behind the speaker's chair and other Tory inspired procrastination, but most important of all, should Tory opposition and peers not accept the proposals, with the sanction of the public the monarch would be able to give the Royal Assent under the Parliament Acts 1911-1949.
Appendix: Powers of the Upper House

This appendix lists the powers of an elected Upper House listed by Richard Crossman when he attempted reform of the second chamber in 1968 (White Paper, HMSO, 1968).

1. A public bill originating in the House of Commons on which there was disagreement between the two Houses should be capable of being presented for Royal Assent at the end of a period of six calendar months from the date of disagreement provided that a resolution directing that it should be presented had been passed in the House of Commons.

2. For this purpose, disagreement would be defined so as to cover the situation where a bill sent up from the Commons is rejected by the Upper House, where a motion that it should be read at any stage or passed is rejected or amended, or where the Upper House insist on an amendment which is not acceptable to the Commons.

3. The Upper House would have a period of 60 parliamentary days in which to consider a bill; if its consideration of a bill on which there was subsequent disagreement exceeded this period, the excess would count as part of the period of six months’ delay following disagreement.

4. Since it would be theoretically possible for the Upper House to destroy a disputed bill by postponing any overt disagreement until the end of the session, the bill should also be treated as disagreed to if after the 60 parliamentary days the Upper House rejected a motion necessary to its progress or, in the last resort, if the Commons resolved that the bill should be so treated. A suitable period of notice would have to be given in the latter case.

5. A bill would be capable of being presented for Royal Assent at the end of the period of delay, notwithstanding that this ran over a prorogation of Parliament and into a new session; similarly, in the case of a dissolution, any bill which had been passed by the House of Commons and to which the Upper House had disagreed could be presented for Royal Assent in the new parliament after the period of six months; delay had elapsed from the date of disagreement.

6. Provision would also be made to allow any modification which had been agreed between the two Houses after disagreement and before the end of the period of delay to be incorporated in the bill before it became law. The procedure for this purpose would not provide for the discussion of the bill as a whole to be reopened and the House of Commons would not be obliged to take any action on proposals for compromise; but there would be provision for the bill to include such amendments as gave effect to the proposals for modifications agreed to by both Houses since the date of the disagreement.

7. Where Royal assent was to be given in the following session of parliament, it would be necessary for the bill to be submitted within 30 Parliamentary days from the end of the period of delay after disagreement.

8. Since there is little likelihood of conflict between a government and the Upper House on private bills and bills to confirm provisional orders, and since the quasi-judicial procedures on such bills would make it inappropriate to apply the Parliament Act procedure to them, it is proposed to make no change in the present powers of the Upper House on private legislation.

9. The existing provision in Section 2 of the Parliament Act 1911 which excludes from the application of the Act any bill to extend the duration of a parliament would be continued in relation to the new powers of the Upper House.
10. The procedure in respect of subordinate legislation which can be annulled by either House is governed by Section 5 of the Statutory Instruments Act 1946, under which a resolution for annulment may be passed by either House within 40 parliamentary days from the day on which the instrument is laid before that House.

11. If either House passes a resolution for annulment, the instrument is immediately ineffective. The government proposes that in future any resolution for annulment which may be passed by the Upper House should be suspended for a period sufficient to enable the instrument to be considered (or considered again) by the Commons, and that the decision of the Commons, if different from that of the Upper House, should prevail.

12. As regards instruments which require approval by each House of Parliament as a condition of coming into force or continuing in force, it is proposed that if the Upper House rejects a motion for the approval of an instrument which has been previously approved by the Commons, and the Commons thereafter confirm their approval, the instrument should be treated approved by both Houses.

13. There should be no right to impose a period of delay by the Upper House in respect of subordinate legislation.

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how to abolish the Lords
The author is concerned that Labour will be well prepared when it comes to abolishing the Lords when next in power. He believes that some of the proposals made to date would - by the constitutional precedents - lead to a constitutional crisis and either the calling of an additional general election or result in so much lost time being taken up in debating the issue (constitutional Bills must be taken on the floor of the House of Commons and there can be no guillotine) that Labour’s legislative programme would be frustrated as much as if the Lords themselves were blocking the legislation directly.
Stuart Bell wishes to see the end of our hereditary, politically partial and anachronistic second chamber but in this pamphlet he asks some of the hard questions. The difficulties caused by the ecclesiastical and judicial functions of the House of Lords are fairly easily disposed of: a new supreme court is necessary; a ministry of Justice to replace the Lord Chancellor’s department and the legal independence and possibly disestablishment of the Church of England. Difficulty arises over the reform of the House of Commons following abolition of the Lords. How would the work load be accommodated? The author believes that, given the size and complexity of Britain’s legislative process, a unicameral parliament is unworkable. He concludes that the most workable and democratic solution is to replace the Lords with an elected but complementary chamber.

fabian society
The Fabian Society exists to further socialist education and research. It is affiliated to the Labour Party, both nationally and locally, and embraces all shades of Labour opinion within its ranks - left, right and centre. Since 1884 the Fabian Society has enrolled thoughtful socialists who are prepared to discuss the essential questions of democratic socialism and relate them to practical plans for building socialism in a changing world. Beyond this the Society has no collective policy. It puts forward no resolutions of a political character. The Society’s members are active in their Labour parties, trade unions and co-operatives. They are representative of the labour movement, practical people concerned to study and discuss problems that matter.
The Society is organised nationally and locally. The national Society directed by an elected Executive Committee, publishes pamphlets and holds schools and conferences of many kinds. Local Societies - there are one hundred of them - are self governing and are lively centres of discussion and also undertake research.