



10 DOWNING STREET

Mr Gov.

Please see the French
Minister's comment below.

Is this suggestion:

a. practicable

b. sensible?

THW

29/10



Yes, but
Is it not possible
to be proposed in a
PRIME MINISTER

not have high present
at present?
HOUSE OF LORDS REFORM AND THE PARTY CONFERENCE

Prime Minister
I was not with me...
All were agreed with...
I have x 1 and Y 1...

I held a meeting today, as we agreed last week I should in your absence abroad, to consider how the Chancellor of the Duchy of Lancaster should reply to the motion urging the strengthening of the composition and powers of the House of Lords which will be the subject of the opening debate at the Party Conference next month (the text of the motion is attached). The Lord Chancellor, the Lord President, the Chairman of the Party, the Chancellor of the Duchy, the Paymaster General, the Chief Whip in the House of Commons and Ian Gow were present.

The wording of the motion is unfortunate because, as Christopher Soames in particular was at pains to point out at my meeting, if Norman St. John-Stevas accepts it in his reply, there is a real risk that it will be thought the Government is committing itself to make changes in the membership and powers of the House of Lords. We are then likely to be asked whether we propose to introduce legislation in this Parliament or the next. We were all agreed this morning that for a number of reasons we must avoid giving the impression that we are entering into any kind of commitment to take action on the House of Lords. In the first place, the Government has not yet considered the question of House of Lords reform in any real depth, much less made up its mind what its long term objectives and strategy are. And in any case, even if we wanted to move in the direction of changing the composition and powers of the Upper House, it is very doubtful whether we could get the necessary legislation through the present House of Commons. The same objections, it seemed to my meeting, apply to any attempt to entrench the House of Lords in its present form.

In view of these difficulties we considered whether we had to accept the motion at all. Peter Thorneycroft said that the Party

/was passionately

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X | was passionately in favour of keeping a Second Chamber. The motion selected for debate was only one of 25, and some others were much more toughly worded. We concluded that the strength of feeling in the Party was such that we had no alternative but to accept the motion.

Y | This means that Norman St. John-Stevas will have to make a very carefully balanced speech which, while going along with the motion, gives no hostages to fortune. He agreed this morning that he would steer clear - both in his speech and in any subsequent questions from the media - of saying anything which might suggest that the Government proposed to move on this subject either before or after the next General Election. To reinforce the absence of any commitment on the Government's part, he will rehearse some of the difficulties of reforming the House of Lords. We thought that, at the same time, he should attack the Labour Party's proposals for abolishing the Second Chamber, with all that that would mean if we had at some future date a House of Commons with a clear left wing majority, and defend the record of the present House of Lords, pointing out that it had been by no means ineffective, as we know to our cost. We also suggested that he might show that, contrary to popular belief, the House of Lords has been in recent years more of an obstacle to Conservative Governments than to Labour Administrations. !!

We agreed that it would be helpful if John Boyd-Carpenter were to speak in the debate, arguing the case for keeping the House of Lords in its present form. Michael Jopling will arrange this. We also agreed incidentally that Peter Thorneycroft should authorise the publication of a pamphlet on this subject which John Boyd-Carpenter, David Eccles and Niall Drumalbyn want to bring out.

We also discussed briefly Lord Alport's Bill about which he wrote to you on 11th September. We were all clear that whatever the merits of his proposals, a Private Member's Bill was not the right vehicle for introducing them. Quintin Hailsham and Christopher Soames will be letting you have advice on a reply to him.

/I should be

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I should be grateful to know whether you agree that Norman St. John-Stevas should handle the debate at the Party Conference in the way I have outlined above.

I am sending copies of this minute to all those who were at my meeting.

hwb

24 September, 1980

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In the light of the Socialist commitment to abolish the House of Lords and the likelihood that a future left wing government intent on perpetuating itself would establish a single chamber Parliament as a step towards the creation of a Marxist state, this Conference urges that the composition and powers of the Upper House should be strengthened and firmly established as a safeguard against arbitrary government.

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HOUSE OF LORDS REFORM

Text of Lord Hailsham's speech in the House of Lords on 7th May, 1980
in the Central and Local Government Debate introduced by Lord Foot.

4.55 p.m.

The LORD CHANCELLOR (Lord Hailsham of Saint Marylebone): My Lords, until I realised that I was going to have to reply to this debate, I was rather looking forward to it. But when it dawned upon me that I should have to say something at the end of it, I realised that my task was an impossible one. The noble Lord, Lord Foot, made what I hope he will not think it patronising of me to say was one of the most perceptive and thoughtful speeches I have ever heard in this House. But what he was saying—with which, as he probably knows, I very largely agree—was of such earth-shaking importance that, in a sense, one was astonished that, instead of being received with the praise which it certainly deserved as a contribution, it was not also greeted with howls of execration, for instance, from the noble Lord, Lord Bruce of Donington, who must have disagreed fundamentally with everything that Lord Foot was trying to say.

What he was trying to say, and what I largely agreed with, was something like this; and I know that he will not think that I am trying to misrepresent him. He was trying to say that the constitution of this country is breaking down from overstrain. This is very largely what I was trying to say in the lecture some years ago to which he was good enough to refer and also in the more elaborate book which I published about two years ago.

If that is true, it is both serious and very highly controversial. Serious because, although we received some support in a narrow field from the noble Lord, Lord Mackie, and the noble Viscount, Lord Hanworth, no one has been able to devise a means whereby a discontinuous change in our constitution can be made without any form of violence or revolution—which none of us wants.

I am bound to add this, I hope not cynically. The noble Lord, Lord Bruce of Donington, who made a very optimistic speech, said, basically, that what we want to do on this part of the case is to educate people enough, to choose our Members of Parliament rather better, to give them a few clever, young, research assistants and, of course, we must provide more freedom of information. I wonder whether he is right about that—because, if Lord Foot is right, I do not think he is.

Of course, what I have found, approaching this matter from a very different party point of view but still rather tending in the same direction, is almost total non-interest in the subject either among my own Parliamentary colleagues or among my Parliamentary opponents; but still more completely among the public. You do not find page 3 of the *Sun* full of the breakdown in our constitution. On the contrary, you find a blithe non-interest in our constitution, and of course the sporting and financial pages are equally unperceptive if either the noble Lord, Lord Foot, or I are right about it.

I can, however, tell the noble Lord, Lord Bruce of Donington, that far from being secretive, the Lord Chancellor's office is guardian of the public records. Since the Lord Chancellor has been guardian of the public records, which is for the past 22 years from, I believe, 1958, 40 miles of information, 40 miles of shelf space, have been added to what the public have available if they want to get it in preference to page 3 of the *Sun*. If one actually contemplates the number of future historians at the rate at which that mileage of shelf space is being added to every day as the 30-year limit begins to have its impact upon the Public Record Office, all I can say is that I suppose that half of us will be researching into the present age in another 25 years—and even then we shall not be able to keep pace with the increase in documentation. So I am not sure that freedom of information is either wanted or going to do the trick. I feel much the same about the clever young researchers but I ought not to trespass on the patience of the House to indicate my disbelief in that.

May I now make a genuflection in front of our traditional constitution, because, although I have come to the conclusion that it is showing signs of breaking down through overstrain, as the noble Lord, Lord Foot says, we ought to recognise the perfectly amazing success which it has had over a thousand years: its extreme versatility; its capacity for survival; its adaptability from one state of society and organisation to another, and the extent to which twice in a human lifetime—in two world wars—it has really saved this country because of its peculiar characteristics.

We all know that English history starts with the Norman Conquest. Unfortunately, the Scots did not suffer from that great advantage. It is worthwhile considering what has happened over the years. We started as an occupied country and we still to this day retain a centralised Executive with greater central authority than any other free society, which is the direct result of the Norman Conquest. The history of the development of our constitution over the succeeding thousand years was very largely the development of Parliament. Incidentally, Lord Foot's Motion refers to the supremacy of Parliament, to which I shall refer in a moment. Parliament has been devoted from the first to this day to the theory that government must command a certain measure of consent. The development of the constitution ultimately consisted in the fact that the instrument of government by consent ultimately attained supremacy over the system of centralised authority imposed by the invading conquerors.

Then a terrifying and, in our lifetime, disconcerting, discovery has begun to be made. It is that universal suffrage operating through Parliament is no guaran-

tee at all, either against folly or against incompetence or oppression. This is where I honestly fall foul of one of the first things that the noble Lord, Lord Bruce of Donington, said. Curiously enough, it was something which he said would command universal assent in all quarters of the House. He was not trying, and I am not trying, to make a party point. He said that the function of democracy was to promote the greatest good of the greatest number. I do not believe that to be true. On the contrary, I believe that every lawyer when he addresses a judge in court; every politician when he speaks to his House of Parliament; every candidate who utters a word on the platform, says words which are totally inconsistent with that theory. It was of course promulgated by Jeremy Bentham and it was sanctified by his close friend John Austin.

However, in the end we do not believe that to be true. We do not put down deformed children as if they were unwanted rabbits. We do not think with Caiaphas that it is meet and right that one man should perish for the good of the people. On the contrary, we speak of what is fair and what is just. We talk as if individuals and minorities had rights which cannot be overridden by the greatest good of the greatest number. It is precisely—and I think the noble Lord, Lord Foot, would agree—because Parliament is not responding to the needs of individuals as they are felt but that individuals, on the contrary, feel themselves oppressed by the power of an omnipotent Parliament, that one of the symptoms of breakdown has begun to appear.

One or two noble Lords discussed—not always unanimously—the merits of proportional representation in one of its 14 forms as an immediate remedy to the difficulties which I am trying to expound. I am not a dogmatist about voting systems. I would say this, quite frankly, to the supporters of that as a panacea. I think it all depends on the kind of office to which you are electing people, on the kind of country, on the kind of assembly and on the kind of powers, what kind of voting system you adopt. Personally, I say to the noble Lord, Lord Mackie of Benshie (who made an excellent speech on the subject) that I see nothing objectionable in the executive power of a state being operated by the largest organised minority—and that is what, roughly speaking our first-past-the-post system does. But I see everything objectionable in that largest organised minority operating the powers of an all-powerful legislature, which is what our constitution has given it.

Therefore although I have no objection at all to a system which elects a Lower House to cover the executive of a country with the cover given to it by the largest organised minority, I see every objection

to that House elected in that manner, operating as an omnipotent legislature. The noble Lord, Lord Foot, referred to numerous changes, all of which I agree with, which have taken place in the past hundred years. One to which he referred only in passing is the gradual slide from a system of checks and balances to a system of elected dictatorship.

There was a time when Parliament had two Houses—we still think it has—but we, as the noble Lord, Lord Foot, pointed out, lack the authority which a representative character would otherwise give to us. My Lords, do not think I am being disloyal to this House, because I have been in it too long not to love and admire it, but, as the noble Lord, Lord Foot, said, we lack the political authority to do what is required of a second chamber. Personally, I think that if every Member of this House were, by a miracle, an elected member under whatever system of voting, and we went on with our present membership and our present rules of order, everyone would recognise—and many people, when they listen to wireless broadcasts of Parliament, say this as one goes about—that our debates are civilised, courteous and constructive and compare very favourably with the kind of animal noises one sometimes hears at Prime Minister's Question Time in another place.

But we are not an elected assembly, and personally I would say that if we are going to look at our constitution we have to look at the question of a second Chamber because—and I say this to noble Lords opposite not particularly wanting to offend them—their party, whatever may be true of them, is committed to the abolition of this House and to the substitution of nothing in its place. That I find profoundly repugnant and I think it would exaggerate all the evils to which the noble Lord, Lord Foot, was drawing attention. One thing is quite clear, of course: if we were going to substitute an elected chamber we would have to substitute a chamber elected by a method of voting different from that chosen in another place.

Several noble Lords referred to the system of local government, with which I am profoundly ill-qualified to deal; but I am bound to say both to the noble Viscount, Lord Thurso, and to my noble friend Lady Elliot of Harwood, that I think she was right when she said that whether our recent reforms in 1972 and 1973 were good or bad, one has to admit that they have had an almost universally bad press. However, whether they were good or bad, a little respite from changes in structure is almost indispensable if local government is to be carried on at all anywhere, because if you once keep on making changes I do not know where it will end.

The Motion—and here I think I am really going to stop because the truth is

that one could continue talking indefinitely about this subject—refers to “the supremacy of . . . Parliament”. That is a doctrine about which I have my reservations, again in slight difference from the noble Lord, Lord Bruce of Donington. Supreme over the Executive, supreme over the Crown, supreme over the Government?—why certainly: we fought and won that battle 300 years ago. Supreme over the judiciary?—yes, so far as it means that Parliament prescribes the laws which the judiciary are bound to apply, whether statute law or customary law, as the case may be. But supreme over them in the sense that they must fear for their jobs if they make unpopular political decisions?—and I see a trace in some political quarters of an anxiety to achieve that result. Then, most emphatically, no. Supreme over individuals and minorities? There, I would say “No” again. I believe this is one of the most important lessons which Government must learn, whatever their political composition may be: there are inherent limitations as to what Government can do or ought to try to do.

This, I think, is an underlying debate between all three of the political parties, each taking a slightly different standpoint. But so far as I personally am concerned, I challenge the theory that Government can hope to intrude into every aspect of economic or cultural life. I believe that the individual, I believe that the minority, I believe that the educational institutions of the country, I believe that the great professions, I believe that the scientific world, and I believe that the academic world are entitled to an independence of existence and thought, quite irrespective of the wishes which Parliament in either of its Houses may express about it. I do not believe that Government of any kind, be it of one man, of groups of men or of elected men and women, ought to have supremacy over the people they are supposed to govern and I think that if they try to do so they will kill out the creativeness and the spontaneity of the human spirit, upon which in the long run civilisation depends.

May I just say this before I sit down. Some people have said: “The Good Book says there is nothing new under the sun”, but we are living in an age, as the noble Lord, Lord Foot, said in a rather different context, in which things are happening which neither have happened before nor could have happened before. If a Rip Van Winkle had gone to sleep at the time of the Roman Empire before the Dark Age and had woken up again in the 18th century England, he would have found many things different but he would have encountered a non-industrial society in which he would not have found himself wholly not at home. But the immense development of modern technology has altered the whole condition of human life in a way which nothing has ever done in the history of the planet before.

It is to this that government has got to accommodate itself. It has got to accommodate itself in the internal field—and we have been talking about this mostly this afternoon—and it has also got to accommodate itself (the noble Lord, Lord Foot, touched on this) on the international plane. Here I thought he was perhaps a little unfair about the structural changes which have taken place since the end of the last war. I think he was fair when he said that the two main attempts at constitutional reform—devolution in Scotland and reform in the House of Lords (and perhaps he should have added local government)—were the only constitutional changes of a radical kind which had been undertaken since 1945. I think myself they all failed, for the reason I was trying to put forward in the lecture and in the book, by failing to understand that the parts of a constitution are really interrelated and the questions cannot be divorced the one from the other.

I do not think you can have a different system of government in Edinburgh from that in Belfast, Cardiff or London. There, I think I differ a little from the noble Viscount, Lord Thurso. But internationally, the international organisations have made structural changes. The EEC is something which, whether you like it or not, has happened. The Eastern European *bloc* is something which has happened, and so is NATO. These are all reactions in greater or lesser degree to the nuclear explosions at Hiroshima and Nagasaki in 1945. However, I have detained your Lordships enough. I have replied to the debate—I have not spoken for the Government, except marginally—because, I suppose, there was no one else to reply to it. But, at any rate, I hope that I have not bored your Lordships beyond endurance.