Key sources of and reforms to the UK Constitution

- **1536/1543:** two laws now known as the 'Acts of Union' between Wales and England legally incorporated Wales into England.
- **The Bill of Rights 1689:** the Catholic King James II was defeated in the revolution of 1688-89 and replaced by Mary II and William III (the Prince of Orange), ruling jointly. The Bill of Rights in essence established the terms of his ascension to the throne.
- **The Act of Settlement 1701:** prevented Catholics from taking the English throne and provided for the Hanoverian dynasty that sill rules the UK today.to the independence of the judiciary.
- **The Treaty and Acts of Union of 1706-1707:** provided for the union of Scotland and England.
- **Act of Union 1800:** brought about a Union of Ireland and Great Britain.
- **The Parliament Acts 1911 and 1949:** established in law the primacy of the House of Commons and reduced the power of the House of Lords.
- **The European Communities Act 1972:** provided for the UK's ascension to the European Community.

- **The Human Rights Act 1998:** gave direct effect in domestic law to the rights contained within the European Convention on Human Rights, which was adopted in 1950 after the Second World War. The 1998 Act meant that human rights cases could be heard in UK courts.
- **The House of Lords Act 1999:** reduced the size of the House of Lords and largely removed hereditary peerages.
- **The European Union (Withdrawal) Act 2018:** repealed the European Communities Act 1972 (see above), thus removing the provision that EU legislation automatically takes effect as domestic law in the UK.

Key Terms – House of Lords

Hereditary Peer – Someone who holds a title within the peerage of Great Britain, Scotland, England or Ireland.
Excepted Hereditary Peer – One of the 92 hereditary peers who retain the right to it in the chamber of the House of Lords.
Male-Preference Primogeniture – A system of inheritance that sees the eldest male child inherit the titles of their father.
Life Peer – A member of the House of Lords who holds their title for the remainder of their life. These were made possible under the Life Peerages Act (1958).
House of Lords Act (1999) – A reform bill that saw the removal of the rights of hereditary peers to sit in the House of Lords in all but 92 cases.
Law Lords – The judges who made up the Appellate Committee of the House of Lords.

Hereditary peers in the House of Lords: Government proposals

The government took office in July 2024 on a manifesto commitment to reform the House of Lords. On 5 September 2024, the House of Commons gave the House of Lords (Hereditary Peers) Bill its first reading. It would end the connection between the hereditary peerage and House of Lords membership.
The House of Lords Act 1999 ended the sitting and voting rights for all but 92 hereditary peers. This followed a cross-party compromise agreed during the bill's passage through Parliament. The House held by-elections to fill vacancies when a hereditary peer died or retired.
Hereditary peers currently make up about 11 percent of the House's membership. The bill would remove membership from 89 hereditary peers who currently sit in the House. Their membership would end at the conclusion of the current parliamentary session. Over half sit as Conservatives and a third as Crossbenchers. All are men.

A few useful links

♦ The UK Constitution explained – Useful definitions and links (See PowerPoint on Cahier de Prépa)
https://consoc.org.uk/the-constitution-explained/the-uk-constitution/

♦ Who are the Hereditary Peers and what does Keir Starmer intend to do with them?
https://politicsteaching.com/2024/01/19/who-are-the-hereditary-peers-and-why-do-only-92-sit-in-the-house-of-lords-2/

♦ An interesting debate in the House on the day the House of Lords (Hereditary Peers) Bill was introduced in the House of Commons
- House of Lords Private Notice Question on the removal of hereditary peers - 05.09.24
The Baroness speaking and answering the question is the Leader of the House of Lords
See here for more information https://en.wikipedia.org/wiki/Leader_of_the_House_of_Lords

♦ To know more about women and Hereditary peers, from the Library of the House of Lords (a treasure trove of information)
https://lordslibrary.parliament.uk/women-hereditary-peerages-and-gender-inequality-in-the-line-of-succession/

Document 1 - He Inherited a Seat in Britain's House of Lords. How Will It Feel to Lose It?

The U.K. government has pledged to remove hereditary peers from Parliament in 2025. For Lord Cromwell and 87 others, it is a wistful departure.

Godfrey John Bewicke-Copley, the 7th Baron Cromwell, said his lineage had little bearing on his public servant work: "We are not the port-swilling, fox-hunting hoorays on vast Downton Abbey-esque estates of popular imagination."Credit...Andrew Testa for The New York Times

By Mark Landler, Reporting from London**, The New York Times,** Dec. 24, 2024

Godfrey John Bewicke-Copley, the 7th Baron Cromwell, traces his family's title back to 1375. His forebears fought the French at the Battle of Agincourt.

For the last decade, Lord Cromwell's day job has been in Britain's House of Lords, where he mulls legislation, runs to committee meetings and briskly greets fellow lawmakers in Parliament, many of whom are elected.

His right to be there is rooted in his ancestry: Hereditary peers inherit their seats, in his case from his father, the 6th Baron Cromwell. But Lord Cromwell insists that his aristocratic lineage has little bearing on his work as a public servant in the halls of Westminster.

"We are not the port-swilling, fox-hunting hoorays on vast Downton Abbey-esque estates of popular imagination," he said. "Indeed, sometimes people are rather disappointed when they find that we are typically hard-working professionals of one sort or another."

For Lord Cromwell, that includes a career in private banking, advising companies on doing business in Russia — something he no longer does — and running the family farm in Leicestershire. Gregarious, well-informed and opinionated, Lord Cromwell, 64, has spoken up regularly in debates on issues from Ukraine to water quality.

None of that will spare him from being evicted when the Labour government enacts a law eliminating hereditary peers, likely by the middle of next year. Labour argues that these peers are undemocratic, a relic as

superannuated as the ermine robes they wear. Purging them is the first step to reforming an ancient institution which, though it has little more than a consultative role in lawmaking, has become, by all accounts, bloated, hidebound and ethically dodgy.

Lord Cromwell, whose family name is Bewicke-Copley, admits a touch sadly that he is related to neither of England's most famous Cromwells, Oliver and Thomas. Having first gained his seat in 1982 after his father's death in a riding accident, he views the passage of the law with regret but also stoic acceptance. He even manages a dash of mordant wit.

"Christmas is approaching," he said during a debate on the legislation this month. "While, as one of the so-called turkeys directly affected by the bill, I might abstain on it, I certainly do not propose to obstruct or delay it."

Members of the House of Lords attending the State Opening of Parliament in London in July. As critics delight in noting, it is the world's second-largest legislative body after China's National People's CongressCredit...Pool photo by Henry Nicholls

Instead, Lord Cromwell pleaded to convert the most active and engaged of the 88 remaining hereditary peers to so-called "life peers," which would save their seats and grant them the same status as a majority of the 805 members of the Lords, whose peerages are bestowed on them by the prime minister and who can remain in their seats for life.

"The hereditary principle is indefensible, other perhaps than by appeals to romantic ideas about growing up with a sense of duty," he said in an interview. "I do not defend it and am happy with the government's commitment to end it."

But Lord Cromwell noted a paradox at the heart of the House of Lords: since 1999, hereditary peers have actually been elected — albeit by their fellow peers, not by the country. Life peers are simply appointed, ostensibly for their public service but often as a reward for donating money to political parties.

That is a result of a deal cut by a previous Labour prime minister, Tony Blair, who ran into resistance when he set out to cull all the hereditary peers. Mr. Blair swept out most of them — including Lord Cromwell, who regained his seat in a peers' by-election in 2014 — but agreed to let a rump group remain until a future government could carry out a more root-and-branch overhaul.

Now that moment has come. But the government of Prime Minister Keir Starmer has also retreated from an earlier vow to abolish the House of Lords and replace it with a "new, reformed upper chamber." Instead, it is again singling out hereditary peers, who are in some ways low-hanging fruit, while leaving unresolved the thornier question of what to do about the more politically connected life peers.

To Lord Cromwell, that does little to advance reform. Many life peers, he said, scarcely bother to show up for work, while the appointments process has devolved into a vast patronage machine.

"This positively feudal system makes the hereditary elections look democratic," he said over coffee in Portcullis House, Parliament's office building, across the street from Big Ben.

Image

On Friday, Mr. Starmer submitted his first list of 30 nominees for peerages. It attests to how the Lords has become a handy way to reward friends and offer consolation prizes to fallen allies. On the list were Labour members of the House of Commons who had been voted out of their seats, as well as Mr. Starmer's former chief of staff, Sue Gray, who left after losing out in a feud with other advisers.

Her elevation to the Lords drew quiet grumbles about hypocrisy from Conservatives. Many have reviled Ms. Gray since she played a role in the downfall of a previous prime minister, Boris Johnson, by leading an investigation into social gatherings held in 10 Downing Street that violated Covid lockdown restrictions.

But Mr. Johnson, his critics say, corrupted the appointments process more than anyone. Among his peers were Evgeny Lebedev, a Russian-British media baron who publishes the London Evening Standard and is the son of a former K.G.B. officer, and Charlotte Owen, a 31-year-old former aide to Mr. Johnson whose thin résumé raised questions about why she deserved a lifetime sinecure.

"Prime ministers have abused the powers of patronage to appoint cronies," said Vernon Bogdanor, a political scientist at King's College London. "You can still, in effect, buy a place in the chamber."

The debate over reforming the House of Lords has always seemed a bit precious to some. By convention, it does not block government legislation; its role is mainly to raise questions about bills. Earlier this year, several of the peers objected on human rights grounds to a plan

by the previous Conservative government to put asylum seekers on one-way flights to Rwanda (the law passed anyway but was scrapped by the Labour government).

Lord Beaverbrook, a newspaper baron of another age, once called it "the house of make-believe." Gilbert and Sullivan, in their comic opera "Iolanthe," said it "did nothing in particular, and did it very well."

Image

Still, Professor Bogdanor said, the antediluvian nature of the Lords eroded faith in government generally, particularly among young people. At a minimum, it needs to be downsized. As critics delight in noting, it is the world's second-largest legislative body after China's National People's Congress. Other reforms being mooted include age limits or term limits for peers.

Even these changes are likely to run into resistance, either from the peers themselves or from the Conservative Party, which has long enjoyed a numerical advantage in the chamber. That is why Lord Cromwell and his fellow aristocrats find themselves on the chopping block.

"The reason they're starting with these is that it is the least controversial part of this in the country as a whole," said Simon McDonald, a former head of the British diplomatic service who is a cross-bench, or nonpartisan, peer. "The hereditary principle is kind of discredited as a governing principle."

Mr. McDonald said he favored term limits and more scrutiny of people who get life peerages. But neither of those, he said, would justify preserving hereditary peers.

For one thing, they are all men, owing to the hurdles for women in inheriting most peerages. The last female hereditary peer, Margaret Alison of Mar, a Scottish politician known as the Countess of Mar, retired in 2020.

Lord Cromwell pointed to accomplishments like persuading the second chamber to create a committee to monitor the development of space, as well as strengthening legislation that would curb nuisance lawsuits against journalists. To the critics, it all sounds familiar — and unpersuasive.

"Their first argument is that the hereditary peers are, to a man, good, upstanding men who do their shift," Mr. McDonald said. "I'm sure everyone agrees with that. My answer to that is, So what?"

By Invitation | British constitutional arrangements

Document 2 - Think twice before shaking up the House of Lords, says its speaker

Lord McFall of Alcluith makes the case for incremental change

The Economist, Nov 7th 2023

IT IS THE peculiar fate of the House of Lords, the upper house of the Parliament of the United Kingdom, to be rarely

in the headlines except when there are calls for its reform or abolition. Now is one of those times.

In my non-political role as Lord Speaker, which includes chairing the chamber's daily business, it is not for me to promote a favoured blueprint for a future upper house. However, it is my duty to ensure that any debate is conducted with proper understanding both of the work that the Lords performs and the pros and cons of current arrangements.

We live in a democratic system. It is easy to assume that this simple fact renders an unelected House of Lords "indefensible", as asserted in a recent report recommending its replacement with an Assembly of the Nations and Regions.

However, of the 78 second chambers globally, just 20 are wholly directly elected. Many of these—not least the United States Senate—are the subject of domestic controversy. Others have a mix of direct or indirect election and appointment, with 15 wholly appointed.

The composition of the House of Lords is indeed unique: a mixture of lifetime appointees, hereditary peers and Church of England bishops. But this does not in itself make it anachronistic or unacceptable. More important is the quality of its work and the impact this has on the governance of our nation.

In his recent book, "How Westminster Works…and Why it Doesn't", Ian Dunt described the Lords as being "one of the only aspects of our constitutional arrangements that actually works", pointing to its record of diligence, expertise, independence and consensus.

During the passage of legislation through Parliament, it is in the Lords that a bill receives detailed line-by-line scrutiny. With no guillotine on debate and no restrictions on which amendments can be debated, unlike in the House of Commons, the lower chamber, discussions continue for as long as it takes. With no overall party majority, ministers must proceed by persuasion rather than force of numbers, often seeking support from the 25% of peers who have no political

affiliation. Without the need to secure re-election, peers can focus on the substance of issues, rather than chasing headlines or indulging in partisan point-scoring.

Government defeats occur more frequently in the Lords than in the Commons—around 100 in a typical session. But when they are overturned by MPs, peers most often back down, accepting that the elected Commons must have the final say.

More significant are the 1,000-plus amendments passed in the Lords annually with government backing. These often represent ministers revising plans in response to concerns raised by peers. University College London's Constitution Unit estimated that 55% of changes to legislation made during passage through Parliament occur this way.

However awkward this may be for ministers, many acknowledge that it helps highlight difficulties and prevent unintended consequences. This is the case, in no small part, because of the expertise and experience on offer in the second chamber.

The appointments system means that the Lords' red benches are home to eminent figures from all corners of public life: scientists, doctors, diplomats and judges; business leaders and trade unionists; campaigners for civil liberties and disability rights; environmentalists, academics and engineers. Their presence reflects the fact that the life of the nation resides not only in political parties, but is expressed through organisations of many kinds. It makes the second chamber a forum for the discourse of civil society.

That expertise is to the fore in Lords committees, whose reports are recognised for their astute analysis of crucial long-term issues. For example, as long ago as 2021 the Economic Affairs Committee was raising the alarm over looming inflation. And critical reports on the HS2 project dating back as far as 2015 warned of the very outcome which we have just seen: the scrapping of the high-speed-rail project's northern leg.

Advocates of an elected House of Lords must explain whether it would deliver similar levels of expertise and independence. Would former judges, generals and secretaries of state stand for election? If not, would their contribution be missed?

Would an elected second chamber accept the primacy of the Commons, and if not how would disputes be resolved? If both houses were elected on the same voting system and timetable, how could the second chamber avoid being a redundant carbon copy of the first? If election systems were different, how would this affect perceptions of legitimacy?

Anyone doubting the importance of this final point need only consider what would have happened in 2019 if the large Commons majority to "get Brexit done" produced by Britain's first-past-the-post voting system had been confronted by a proportionally elected second chamber where most members belonged to parties promising a second referendum.

I am not arguing that the Lords as currently constituted is perfect. Reform is needed. I have myself raised questions over the balance between independent recommendations of crossbench (non-party-political) peers by the Lords Appointments Commission and prime ministerial nominations. Baroness Stowell of Beeston, a Conservative former Leader of the House, has proposed barring the award of peerages in "resignation honours lists" drawn up by outgoing prime ministers. There are proposals within the Lords to reduce the number of peers and to end by-elections for hereditary peerages.

These follow the tradition of incremental reforms which have improved the Lords, such as the creation of life peerages, the removal of most hereditary peerages and the introduction of retirement. More radical plans—under Harold Wilson in the 1960s, Tony Blair in the 1990s and the Conservative-Liberal Democrat coalition government in 2012—stalled because they had no answer to the questions listed here.

Edmund Burke famously said: "A state without the means of some change is without the means of its conservation." But when reform is being considered, my watchword is: "First seek to understand." Understand the work of the Lords and understand the potential consequences of radical change.■

Document 3 - The Guardian view on Lords shake-up: meaningful change goes beyond scrapping birthright

Editorial

MPs are right to abolish hereditary seats in the upper house. However, Britain needs a representative second chamber fit for modern democracy

The Guardian, Wed 13 Nov 2024

More than a century ago, the 1911 Parliament Act restricted the House of Lords' powers under threat of a flood of Liberal appointees. The act boldly declared that "it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be

immediately brought into operation". This "temporary" measure has become a historic understatement, frustrating those who seek reform – including this newspaper.

MPs took a step forward this week, voting to abolish hereditary peers in the Lords. The bill aims to end the 92 seats reserved for those inheriting titles through paternal lineage – a long-overdue decision. It completes what Tony Blair began in 1998 when ministers tried to expel those in the Lords by birth. The hereditary principle is a relic. While royalty endures ceremonially, inherited political power undermines equality, representation and accountability in government.

Labour's manifesto in July committed the party in government to a number of reforms ahead of a longer-term ambition to replace the Lords with an alternative second chamber. Yet Sir Keir Starmer opted not to support in this parliament the proposal from the Labour commission led by Gordon Brown to replace the Lords with an elected "Assembly of the Nations and Regions". It's a missed opportunity.

In a devolved UK, a second chamber connecting its nations and regions to parliament could unify the country, streamline decision-making, and foster shared goals – much like the German Bundesrat. International comparisons clarify the debate. Globally, upper houses often have members serving longer terms than the lower chamber, but very few – UK peers and a few Italian senators – hold lifelong terms.

The prime minister favours cautious reform, less likely to provoke an awkward backlash, over bold change. Regrettably his government did not this week oust the 26 bishops from the upper chamber. Instead, these "lords spiritual" are likely to remain, with a new rule that vacant seats can go to female bishops until May 2030. While seldom decisive in votes, bishops still enjoy privileged access to ministers and a platform in debates – odd perks in a secular, diverse society. The recent abuse scandal leading to the archbishop of Canterbury's resignation highlights the peculiar anachronism of an established church.

Ministers now promise only to "consult on proposals" for a more regionally representative second chamber – a clear step back from earlier pledges for decisive reform. While Labour's smaller programme, featuring a mandatory retirement age and participation requirement, is welcome, it does not address the core issue. A wholly elected replacement for the Lords would bring true democratic legitimacy, while a wholly appointed chamber risks becoming a haven for political cronyism. The real challenge lies in defining the role, membership and electoral process of a reformed upper house. Britain deserves a second chamber that is genuinely representative and effective; anything less would squander the chance to strengthen our democracy.

By Invitation | British constitutional arrangements

Document 4 - The United Kingdom's political constitution is under severe strain

Relieving it requires stronger checks on power, say Jess Sargeant and Hannah White

The Economist, Nov 7th 2023

POLITICAL INSTABILITY and constitutional uncertainty have framed the past eight years of British politics. Parliament, government and the courts were the scenes of seemingly endless battles over Brexit. A wave of scandals over the conduct of individual MPs and law-breaking at the top of government have eroded public trust in politicians and political institutions. A year of three prime ministers—2022—damaged the country's reputation as a stable democracy. Big questions hang over the future of the United Kingdom, with the continuing absence of a functioning government in Northern Ireland and the Scottish government's unceasing efforts to secure independence. The boundaries of the constitution have been tested to—and sometimes beyond—their limits.

The United Kingdom is unusual in having no single written constitutional document that can be enforced by the courts. Instead it has a political constitution, which relies heavily on norms and conventions. When challenges arise, it rests on a shared understanding of the rules and the principal actors being willing, for the most part, to abide by them—the "good chaps" theory of government. When actors step out of line, or even contemplate doing so, the system of political checks and balances—involving MPs, members of the House of Lords, ministers, civil servants, the devolved institutions, the media and ultimately the public—is meant to ensure that they are either unable to or are punished for their behaviour.

Over the past eight years, however, politicians have been increasingly willing to test the boundaries of the constitution. The convention that the UK Parliament will not normally pass legislation on matters devolved to Scotland, Wales and Northern Ireland without the

consent of their respective legislatures—a convention which had held up for decades—was set aside as the government in Westminster sought to implement Brexit. Disputes with the EU over the terms of exit also led to the government twice introducing legislation that, if passed, would have broken international law by overriding elements of the Northern Ireland protocol, a part of the Brexit deal that, in effect, drew a border in the Irish Sea. And Boris Johnson's failed attempt to prorogue Parliament—force it into recess—in order to stymie opposition to his government's Brexit deal, showed a willingness to shut down democratic debate in a way that had once been unthinkable.

Politicians are increasingly willing to set aside key constitutional principles for the purpose of achieving specific policy aims. In most countries the constitution is a form of higher law, sitting above the cut and thrust of day-to-day politics. In Britain the two have become increasingly intertwined, with leading politicians seeking to interpret the constitution in a way that suits their agenda. Consider the Scottish National Party's insistence that securing a majority of Scottish seats in a UK general election would hand it a mandate for independence, or the claims of Mr Johnson and his allies that his victory in the general election of 2019—his "personal" mandate—made removing him from the Conservative leadership an affront to democracy.

Such bold constitutional claims demand close, authoritative scrutiny. Unfortunately, the British system has failed to provide an independent source of challenge. A recent review of the constitution by the Institute for Government, where we work, and the Bennett Institute for Public Policy, concludes that there is a pressing need for enhanced checks on power to shore up our political constitution.

This could be achieved in a number of ways. One would be to set up a powerful cross-party committee to provide an authoritative view on the constitution, separate from the government of the day. This body could remedy the paucity of information and analysis available to parliamentarians, strengthening their ability to fulfil their constitutional-safeguarding role.

Legislation that affects the constitution should, moreover, be put into a category of its own. There is currently little meaningful distinction in the UK between major constitutional legislation such as the Human Rights Act and minor laws such as the Wild Animals in Circuses Act. As a result, lawmakers pay little additional care or attention to bills that amend the foundations of our political system, which can easily be rushed through Parliament. Creating a new category of constitutional acts could help strengthen the processes around constitutional change, while also underlining the importance of laws on constitutionally weighty matters such as devolution.

More can also be done to help ministers understand and undertake their obligations in relation to the constitution. Establishing a new centre for constitutional expertise in government could ensure they receive high-quality advice on the most complex issues. Creating mechanisms through which officials could raise concerns about constitutional propriety would help ensure that ministers were held accountable if they chose to deviate from established constitutional practice. Clearer guidance on the unwritten rules governing political institutions and a simple list of high-level constitutional principles—akin to the Nolan principles on standards in public life, drawn up under John Major's government in the 1990s—could provide a common basis on which to judge such decisions.

The past decade has underlined the need to strengthen the guardrails of Britain's political constitution. And calls for more radical reform will grow louder if the constitutional instability of recent years is allowed to continue. The British constitution is often described as a product of evolution. It urgently needs to evolve once again.■

Jess Sargeant led the Institute for Government's review of the UK constitution and is an associate director at the think-tank. Hannah White is its director.