

## CHAPTER 6

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 PARLIAMENT
 

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DURING the nineteenth and early twentieth centuries the political culture, functions, and organization of Parliament were transformed. If asked what drove these changes, most historians would point to the ‘rise of democracy’ associated with the major electoral reforms of 1832, 1867, 1884, and 1918, and the emergence of mass politics oriented toward national political parties and the development of ‘representative’ government. In a climate of ever-growing popular legitimacy, ministers and the cabinet assumed greater political prominence and power, assisted by a dramatic tightening of party discipline among parliamentarians. This ministerial dominance over Parliament, underpinned by what was increasingly seen as a government’s electoral mandate, grew steadily throughout the second half of the nineteenth century, diminishing the role of the individual politician or ‘private’ MP and the opportunities for non-government legislation, inquiries, and initiatives. From a situation in which it was common for private MPs to take the lead in introducing new laws, even in significant areas of social and public policy, they eventually became little more than lobby fodder—a change neatly captured in Gilbert and Sullivan’s famous lampoon of 1882 about MPs being forced to ‘leave their brains outside’ and ‘vote just as their leaders tell ‘em to’.<sup>1</sup>

One obvious outcome of this historical interpretation is that themes such as the growth of the party system, the emergence of ministerial control, and the role of public opinion and the press have loomed large in most accounts of parliamentary development.<sup>2</sup> The background of parliamentarians and the various pressures influencing their political behaviour also feature prominently in many studies. These were not only

I wish to thank Dr Kathryn Rix and Lord Rowlands CBE for their helpful comments.

<sup>1</sup> W.S. Gilbert, *Iolanthe* (London, 1883), act 2.

<sup>2</sup> This is implicit within a wide range of works, but see especially the essays on ‘Parliament and democracy’ and the “democratization” of procedure’ in G. Campion and L. Amery et al., *Parliament: A Survey* (London, 1952), pp. 9–36, 141–67; G. Cox, *The Efficient Secret: The Cabinet and the Development of Political Parties in Victorian England* (Cambridge, 1987), pp. 45–67; and G. Cox and J. Ingram III, ‘Suffrage Expansion and Legislative Behavior in Nineteenth-Century Britain’, *Social Science History*, 16 (1992), 539–60.

the factors shaping parliamentary history, however, and they are not the subject of the present survey. Political events sometimes forced Parliament to adapt and reform its working methods, but many of these topics are better suited to explaining the changing organization and practice of modern *politics* rather than the operation of Parliament *itself*. Separate accounts of these subjects can be found in other sections of this book.

Offering a rather different approach, this chapter focuses on the changing functions and organization of Parliament in areas that have received less attention. The ‘rise of democracy’ was by no means the only imperative driving Parliament’s almost complete remodelling as an institution during this period. Broader cultural factors, in particular, also played their part, as a number of innovative studies examining the environment of Parliament from the perspectives of architectural space, historic identity, parliamentary debate, scientific inquiry, and the concept of time (to name but a few) have sought to indicate.<sup>3</sup> Gaps still remain, however, particularly in terms of work on the House of Lords and the development of Parliament’s legislative and scrutiny functions. Drawing on some of these historical approaches, and proposing a few new ones, this chapter explores the changing power structures and operation of Parliament in two key areas: the business of law-making and the relationship between its two houses.

## I

The law-making and scrutiny activities of Parliament underwent a complete overhaul during the nineteenth and early twentieth centuries. This can be charted in all sorts of ways, from simple counts of the ever-increasing number of acts of Parliament reaching the statute book to more sophisticated assessments of their length and content; passage and failure rates for various types of bill (including ministerial and private members’ bills); and the growing number of related inquiries, committees, and other forms of investigation, including commissions. The enhanced scrutiny functions of Parliament can also be examined from the perspective of the number of debates and votes, requests for information (returns), and questions to ministers, to name but a few.<sup>4</sup> For the statistically inclined, the opportunities and permutations are virtually limitless.

<sup>3</sup> R. Quinault, ‘Westminster and the Victorian Constitution’, *Transactions of the Royal Historical Society*, 2 (1992), 79–104; D. Cannadine, ‘The Palace of Westminster as Palace of Varieties’, in C. Riding and J. Riding, eds., *The Houses of Parliament: History, Art, Architecture* (London, 2000), pp. 11–29; J. Meisel, *Public Speech and the Culture of Public Life in the Age of Gladstone* (Chichester, 2001); R. Vieira, *Time and Politics: Parliament and the Culture of Modernity in Britain and the British World* (Oxford, 2015). See also E. Gillin, ‘The Science of Parliament: Building the Palace of Westminster, 1834–1860’ (Univ. of Oxford DPhil thesis, 2015); S. Thevoz, ‘The Political Impact of London Clubs, 1832–68’ (Univ. of Warwick PhD thesis, 2014); R. Vieira, ‘The Time of Politics and the Politics of Time: Exploring the Role of Temporality in British Constitutional Development during the Long Nineteenth Century’ (McMaster Univ. PhD thesis, 2011).

<sup>4</sup> The development of non-parliamentary commissions during the Victorian era had a huge impact on the broader culture of inquiry but remains a massively neglected topic. For a broad overview see H.

Charting *how* all these activities were transformed, however, does not necessarily explain *why* they were transformed. The prevailing view has always been that it was the ‘rise of democracy’ that drove the major law-making, investigative, and procedural changes of the nineteenth century. Two key elements are assumed to have been at work here. First, as electorates expanded so did the need for party organization and coherent policies, which the party leaders would then seek to enact once in power. Law-making, instead of being an eighteenth-century free-for-all open to all parliamentarians, now became an increasingly essential and exclusive function of government. Since failure to implement party policies would have electoral repercussions, the ability of elected governments to pass their legislative programmes without unnecessary delays or interruptions became imperative. Accordingly in the Commons, where most major bills started their life, days dedicated to government business (order days) became the norm. These were soon followed by increasing restrictions on when individual MPs could speak, how often they might force a vote, and eventually curtailment of the amount of time permitted for scrutinizing the details of legislation. The main developments associated with this striking ‘growth of ministerial control’—the focus of a number of seminal articles on the Victorian Commons—can be seen in Table 6.1.<sup>5</sup>

A second factor driving these changes was the dramatic increase in the number of MPs who began to attend regularly and take part in debates.<sup>6</sup> Again, this development is traditionally linked to the ‘rise of democracy’. Being seen to be effective as a representative became far more important and one of the most efficient ways of maintaining a public profile was to make a Commons speech, which would then find its way into the reports of debates published in the national and local press. As one Tory MP explained in the immediate aftermath of the 1832 Reform Act, ‘members were anxious that their constituents should see that they took part in the discussion’ and even ‘delivered arguments that had been urged by former speakers, not regarding what had been previously stated, provided they had the opportunity of delivering their sentiments.’<sup>7</sup> Half a century later they were repeating not only each other but also themselves. As one of ‘no party’ observed:

The great majority of the house now consists of talking members, men who all have something to say on some subject or another and who consider that they are under

Clokie and J. Robinson, *Royal Commissions of Inquiry: The Significance of Investigations in British Politics* (New York, 1969). For a new study of the precedent established by the 1831 boundary commission see M. Spychal, ‘Constructing England’s Electoral Map: Parliamentary Boundaries and the 1832 Reform Act’ (Univ. of London PhD thesis, [forthcoming](#)). There is also surprisingly little work on the nineteenth-century select committee inquiry system, which, contrary to the assumptions of many scholars, failed to ‘take off’ in the Victorian era. Indeed, the legitimacy of this type of inquiry continued to be discredited by intermittent ‘packing’ scandals until the creation of departmental select committees in 1979.

<sup>5</sup> See especially P. Fraser, ‘The Growth of Ministerial Control in the Nineteenth-Century House of Commons’, *English Historical Review*, 75 (1960), 444–63; V. Cromwell, ‘The Losing of the Initiative by the House of Commons, 1780–1914’, *Transactions of the Royal Historical Society*, 18 (1968), 1–24.

<sup>6</sup> For an overview see P. Salmon, ‘The House of Commons, 1801–1911’, in C. Jones, ed., *A Short History of Parliament* (Woodbridge, 2009), pp. 257–62. On debate see Meisel, *Public Speech*.

<sup>7</sup> *Hansard*, 20 Feb. 1833, vol. xv. c. 1013.

**Table 6.1 Main procedural reforms (public business) associated with 'growth of ministerial control'**

1811	Order days: precedence given to public bills on Mondays and Fridays
1835	Wednesdays added as order days
1835	End of debates on petitions (confirmed by standing orders in 1843 and 1853)
1837	Ban on moving amendments to orders of the day
1848	Ban on moving amendments on going into committee (on certain bills)
1854	Number of stages at which bills could be debated dramatically cut and ban on questions at first and second reading
1856	Restrictions on amendments at third reading
1879	Restrictions on amendments on going into committee of supply (Mondays) extended to all days in 1882
1881	'Closure' (closing debate with support of 100 MPs), 'urgency motions' (enabling Speaker to suspend ordinary rules and expedite 'urgent' business), and severe restrictions on 'dilatatory motions' (to adjourn or postpone). Confirmed by standing orders in 1882 and 1887
1882	First standing committees (miniature Houses) established. Revived by standing orders in 1888.
1887	'The Guillotine': introduction of cut-off points for debating separate parts of urgent or major bills
1896	'The Railway Timetable': fixed number of days for bills before closure (embodied in standing orders in 1902)
1902	Introduction of written answers to parliamentary questions
1907	Standing Committees extended to all non-financial bills. Separate Scottish standing committee

an obligation to their constituents, to their country, and to themselves, to say it, and resay it, and say it again, whenever they can.<sup>8</sup>

Aided by the growing facilities available for parliamentary reporting—a separate press gallery was provided in the temporary Commons chamber above and behind the Speaker in 1835 and replaced with a larger gallery in Barry's chamber of 1852—Commons speeches and the cult of the parliamentarian began to attract almost a mass following during the Victorian era.<sup>9</sup> Debates became accessible to millions, first as

<sup>8</sup> E. Sullivan, *Common Sense in Politics* (London, 1883), pp. vi, 60.

<sup>9</sup> Recent work on the cult of the politician includes H. Miller, *Politics Personified: Portraiture, Caricature and Visual Culture in Britain, c. 1830–1880* (Manchester, 2015); M. McCormack, ed., *Public Men: Masculinity and Politics in Modern Britain* (Basingstoke, 2007).

verbatim reports in newspapers but later via the vastly understudied medium of ‘parliamentary sketches’. From a pre-1832 situation in which only about 100–150 MPs (23 per cent) contributed regularly to debate, by 1876 some 385–400 (60 per cent) had become ‘talking members.’<sup>10</sup> MPs such as Henry Lowther, who sat for Westmorland from 1812 to 1867 without uttering a word, or Christopher Talbot, who allegedly only broke 60 years of silence in order to ask someone to open a window, still existed, of course, but they were increasingly unusual. The far more usual experience, as another long-serving MP lamented in his memoirs, was for MPs to become ‘almost all seized with a rage for speaking.’<sup>11</sup>

Just how far were these developments really related to the ‘rise of democracy’? One problem with this traditional narrative is that the pace of procedural reform assisting government law-making and regulating debate does not correlate particularly well with the chronology of franchise expansion. Key reforms such as the creation of government order days, for instance, were implemented decades before the 1832 Reform Act. The growing tendency for MPs to intervene in debate and present public petitions also clearly predated electoral reform, with a 20 per cent rise occurring between 1820 and 1828.<sup>12</sup> Moreover, although there was no dedicated reporters’ gallery in the old Commons’ chamber, which was destroyed by fire in 1834, since 1803 an estimated 60–70 reporters had been paying the doorkeepers three guineas per session for exclusive use of the rear benches in the ‘strangers’ gallery’, helping to fuel a steady rise in press coverage throughout the pre-reform period.<sup>13</sup> In terms of public interest in debates and other parliamentary activity, something akin to what has been termed an ‘information revolution’ was already underway well before the 1830s.<sup>14</sup>

Underscoring these chronological issues, it is also clear that the rules of procedure themselves only aided ‘ministerial control’ rather than guaranteeing it, leaving huge scope for independent activity and opportunities for parliamentary disruption by back-bench MPs, as the notorious activities of the Irish nationalists in the 1880s amply demonstrate.<sup>15</sup> In particular, the committee of supply, despite various attempts to regulate its separate rules, gradually became what has been termed a ‘paradise of the independent member.’<sup>16</sup>

<sup>10</sup> Sullivan, *Common Sense*, p. 60; A. Todd, *On Parliamentary Government in England* (2 vols, London, 1869), vol. ii, p. 401.

<sup>11</sup> R. Heron, *Notes* (Grantham, 1850), p. 203.

<sup>12</sup> On petitioning see C. Leys, ‘Petitioning in the Nineteenth and Twentieth Centuries’, *Political Studies*, 3 (1955), 45–64; H. Miller, ‘Popular Petitioning and the Corn Laws, 1833–46’, *English Historical Review*, 127 (2012), 882–919.

<sup>13</sup> Salmon, ‘Commons’, 259. On parliamentary reporting see K. Rix, ‘“Whatever Passed in Parliament Ought to be Communicated to the Public”: Reporting the Proceedings of the Reformed Commons, 1833–50’, *Parliamentary History*, 33 (2014), 453–74 and A. Sparrow, *Obscure Scribblers: A History of Parliamentary Journalism* (London, 2003).

<sup>14</sup> P. Jupp, *The Governing of Britain: The Executive, Parliament and the People* (London, 2006), p. 207.

<sup>15</sup> On Irish tactics see D. Thornley, ‘The Irish Home Rule Party and Parliamentary Obstruction, 1874–87’, *Irish Historical Studies*, 12 (1960), 38–57; C. O’Brien, *Parnell and His Party 1880–90* (Oxford, 1957).

<sup>16</sup> Fraser, ‘Ministerial Control’, p. 461.

For these sorts of reasons, in recent years historians have increasingly begun to acknowledge the need for alternative ways to explain the transformations in law-making and parliamentary scrutiny that occurred during the nineteenth and early twentieth centuries. In particular, there has been a growing recognition of the role played by broader cultural factors and the necessity for a more interdisciplinary treatment of the entire subject. The appearance of Ryan Vieira's innovative study of parliamentary time, linking procedural developments at Westminster with the emergence of new Victorian conceptions of time and efficiency, marks a major turning point in this respect.<sup>17</sup> As well as offering the first sustained analysis of nineteenth-century procedural change since Josef Redlich's dated account of 1908, Vieira's work provides a much needed cultural reassessment of the working practices, attitudes, and historical constraints affecting parliamentary behaviour and political 'modernization'.<sup>18</sup> The resistance of the Commons to procedural change, in particular, is made abundantly clear, as is the disjuncture between new notions of 'efficiency' within public discourse and parliamentarians' concern to protect their scrutiny functions. It is a work that does much to bridge the gap between the 'new political history', of which it is clearly a part, and the more traditional parliamentary subjects that many 'postmodern' scholars have simply side-stepped. Above all, and in line with recent work in other areas questioning the broader teleological narrative of 'the rise of democracy', it presents an alternative and far more nuanced framework for conceptualizing some key components of nineteenth-century British political development.

## II

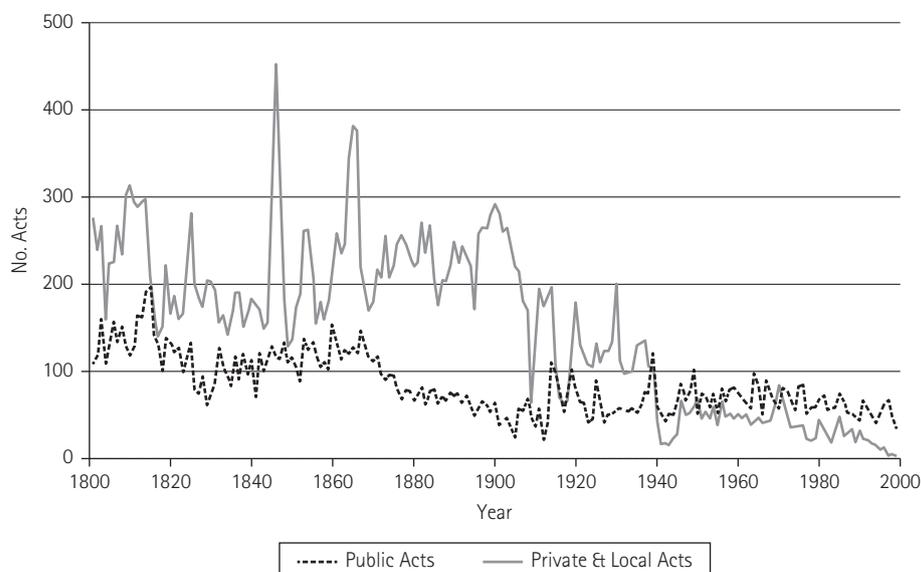
Vieira's thesis commands attention and will undoubtedly help to stimulate fresh work exploring the culture of institutional change in other representative bodies and periods. There was one other form of parliamentary activity, however, that also profoundly affected the political culture and practical workings of Parliament in this period, which has yet to receive any attention from modern scholars. This was the activity that actually occupied most MPs' time throughout the Victorian era: private bill legislation.

Private acts (meaning laws of a purely personal or local nature) have long been overshadowed by public acts (general legislation affecting the entire nation) in most analyses of British political development. The latest edition of *How Parliament Works* notes that the 'vast majority' of laws passed by Parliament 'and by far the more important, are public'.<sup>19</sup> Throughout the nineteenth and early twentieth centuries, however, arguably

<sup>17</sup> R. Vieira, *Time and Politics: Parliament and the Culture of Modernity in Britain and the British World* (Oxford, 2015).

<sup>18</sup> J. Redlich, *The Procedure of the House of Commons* (3 vols, London, 1908).

<sup>19</sup> R. Rogers and R. Walters, *How Parliament Works* (London, 2015), p. 173.



**FIGURE 6.1** Number of public and private/local acts passed each year, 1801–1999 (Figures calculated from PP 1857 (34), xiv. 359; *Statutes of the United Kingdom* (1801 et seq.); *Chronological Table of the Statutes* (1870 et seq.); www.legislation.gov.uk)

the opposite was true. Not only did private acts completely transform the physical environment and create Britain's modern infrastructure—legalizing the construction of railways, canals, tramways, docks, sewers, roads, bridges, museums, parks, and essential utilities such as water, gas, and electricity (to name but a few)—but they also outnumbered public acts by a factor of more than two to one well into the twentieth century.

Figure 6.1 shows the actual number of private and public acts passed each year since 1801. The 'railway' peaks of the mid-1840s and mid-1860s are clearly evident. What is most revealing, however, is the proportion of the total legislative output that these numbers represent. Figure 6.2 plots the percentage of each year's laws that were respectively private or public over the same period. The linear trend is remarkably clear and indicates that the switch to the modern situation described in *How Parliament Works* occurred considerably later than has often been assumed, after the Second rather than the First World War and apparently in tandem with the onset of nationalization and the creation of the modern welfare state.<sup>20</sup>

Of course, private acts were never as glamorous as their public counterparts and rarely attracted the publicity associated with large-scale debates on major issues of national policy. Many, after all, were little more than compulsory purchase bills, setting out a project's terms of authority and compensation. It does not follow, however, that they were

<sup>20</sup> See, for example, M. Rush, *The Role of the Member of Parliament since 1868: From Gentlemen to Players* (Oxford, 2001), p. 53.

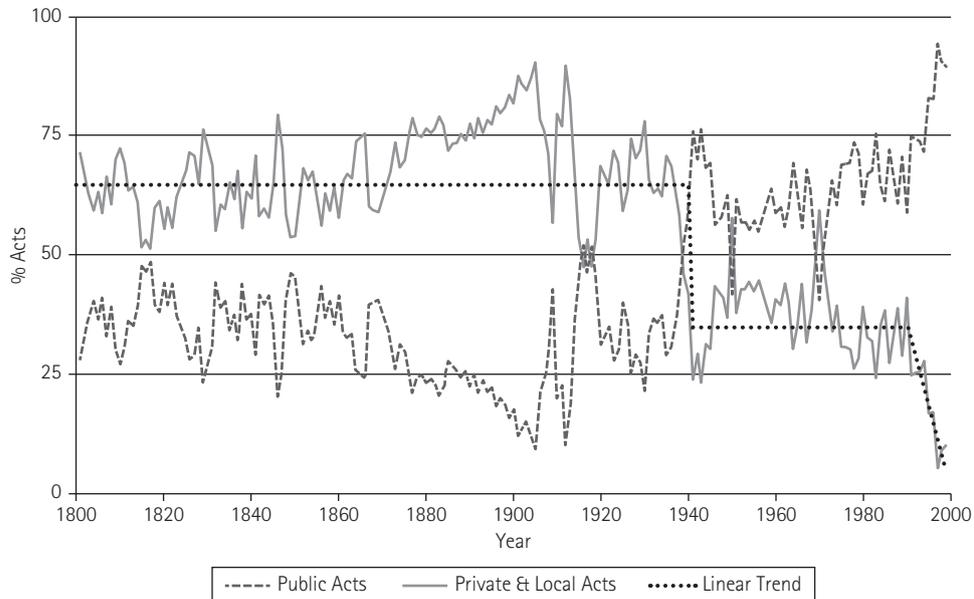
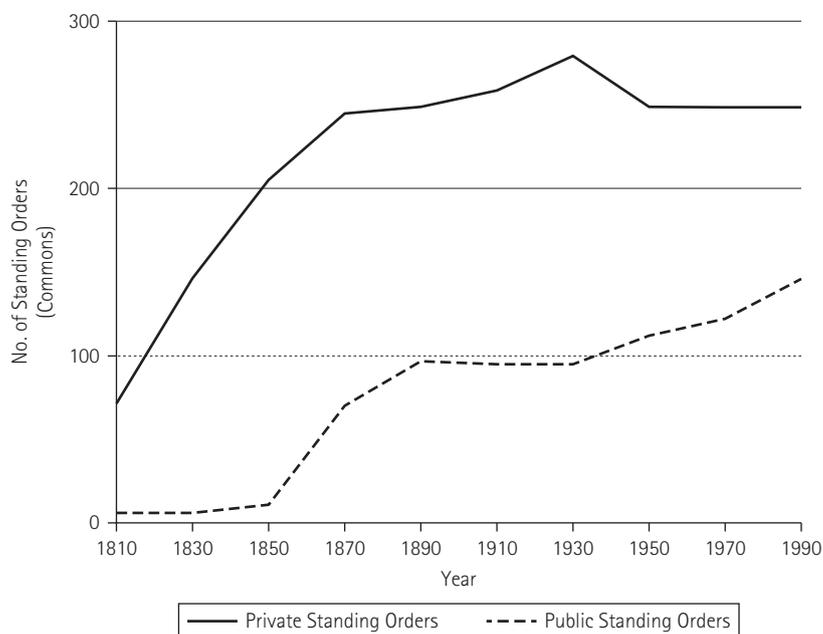


FIGURE 6.2 Proportion (%) of Acts that were public or private/local each year, 1801–1999

any less controversial or bitterly contested. Private bill proceedings rarely found their way into the national press, but they invariably secured plenty of coverage in the provincial papers, not least because of the legal duty to inform all those who might be locally affected by their provisions. Organized protests, deputations to Parliament, public meetings, and petitioning campaigns relating to private bills were often just as numerous and vibrant (sometimes far more so) as those held on issues of public policy, where the bulk of historical attention has been focused. Indeed, ‘nimbyism’ may have been just as significant in fuelling public awareness of Parliament and the need to improve its practical workings as any political factor.

Above all, it is becoming increasingly clear from the biographies of MPs being completed for the *History of Parliament’s* 1832–68 House of Commons project that what many Victorian backbenchers spent the bulk of their time doing was private bill committee work.<sup>21</sup> The fact that ministers and elderly members were excused from this essential parliamentary activity only increased the burdens it placed on the rest of the Commons and Lords. And with so much often at stake for private individuals and local communities in terms of the ways that private acts could affect their private property and livelihoods, it was perhaps inevitable that it was this key area of law-making and its associated methods of scrutiny, far more than general public acts, that was the first to attract widespread criticism and external pressure for reform.

<sup>21</sup> P. Salmon and K. Rix, eds., *The History of Parliament: The House of Commons, 1832–1868* (forthcoming). Draft articles are available at <<http://www.historyofparliamentonline.org/research/1832-1868>>.



**FIGURE 6.3** Number of standing orders regulating public and private business, 1801–1990

Sources: Williams, *Private Bill Procedure*, vol. ii; Rush, *Role of the Member of Parliament*, p. 59.

By as early as 1810, more than ten times as many written rules (standing orders) had been introduced to regulate private as opposed to public business in the Commons. Over the course of the next 60 years the pace of procedural change in private law-making continued to far outstrip that relating to general acts. It was only from the 1870s onwards that the overhaul of public business began to catch up, culminating in the reforms of the 1880s and early 1900s establishing the procedural culture and framework that was to remain in place for most of the twentieth century. Figure 6.3 charts the number of changes implemented by standing orders for both types of law-making. The initiative taken in private business reform is immediately apparent and correlates closely with the pressures created by mid-Victorian railway development, which pushed the total number of private acts to an all-time peak of 453 in 1846, almost four times that year's output of public acts.

### III

What these figures cannot reveal, of course, is how far the first set of procedural reforms, streamlining private business, may have influenced the later changes made to the system of public and government bills. The 'revolution' in private bill procedure that occurred in the first half of the nineteenth century created a whole new structure and set of

precedents for dealing with an unparalleled volume of legislative activity.<sup>22</sup> But to what extent did this also have an impact on the direction and development of the subsequent ‘ministerial controls’ introduced to regulate public business?

The connection between the development of Parliament’s private and public law-making functions, and the way the modernization of the one may have fed into the other, has yet to receive the detailed historical treatment it deserves. A broad correlation between the two, however, has long been recognized by the handful of scholars who have studied private business.<sup>23</sup> Tellingly, the reports of the numerous select committee inquiries established during the nineteenth century on public business made frequent reference to the solutions that might be ‘found in the course adopted in the case of private bills.’<sup>24</sup> Pressed for his views on how to improve the drafting of government bills in 1857, for instance, Thomas Erskine May, in one of his many appearances before such an inquiry, characteristically argued that ‘any change in regard to public bills’ ought to be ‘founded upon the experience of the House in regard to private bills.’<sup>25</sup> Erskine May is, of course, best remembered today as the founding author of the encyclopaedic guide to parliamentary practice that still bears his name. As a senior clerk in the Commons for more than 30 years, however, he was also one of the leading advocates for reforming public business, an area in which he was clearly influenced by his previous experience as a private bill examiner.<sup>26</sup>

Underpinning the advice of experts like Erskine May, whose views were shared by the highly influential Speakers Charles Shaw Lefevre and Henry Brand, there was also the cultural impact of the burgeoning private bill agenda on Victorian parliamentary life.<sup>27</sup> MPs working in the increasingly streamlined and regulated world of private business, where so much of their time was invariably spent each day, could hardly fail to notice the difference when they turned their attention to public legislation at night. Along with the broad influence this had on working methods and attitudes to law-making and scrutiny, there were also some specific ‘knock-on’ effects. In 1855, for instance, a number of restrictions were introduced on the type of amendments that could be made to private bills at their third reading. In 1856 the same tightening of the rules was adopted for public bills.<sup>28</sup> Similar types of correlation can be identified with many other details of procedural reform. However, it is at the more general level of principle that the most striking parallels can be found, with a number of key innovations in modern parliamentary practice being formulated in private business before being rolled out more widely.

<sup>22</sup> O. Williams, *The Historical Development of Private Bill Procedure and Standing Orders in the House of Commons* (2 vols, London, 1948).

<sup>23</sup> See, for example, Williams, *Private Bill Procedure*, i, 2.

<sup>24</sup> PP 1857 (99), ii, p. 900.

<sup>25</sup> PP 1857 (99), ii, p. 832, question 487.

<sup>26</sup> D. Rydz, *The Parliamentary Agents* (London, 1979), p. 105.

<sup>27</sup> The increasing institutional significance of the Speakership and the role of various Speakers in overseeing procedural modernization lies outside the scope of this account, but there is fresh work on Brand, based on his private papers, in Vieira, *Time and Politics*, pp. 84–123.

<sup>28</sup> Williams, *Private Bill Procedure*, i, 171.

By far the most significant was the subdivision of parliamentary labour into unbiased committees, grouped and chosen by a process of selection designed to maximize parliamentary integrity and public confidence. One of the major complaints against all types of select committees in the early nineteenth century was that they were invariably too large and ‘packed’ by those with vested interests. Early railway bill committees, for example, were often chaired and attended by precisely those individuals who stood to gain the most economically, sometimes even by the railway directors themselves. Select committee inquiries on a whole range of public matters, meanwhile, were invariably instigated, monopolized, and ‘manipulated’ by the very campaigners most actively involved in advocating a particular cause or point of view.<sup>29</sup> The outcomes of both types of ‘scrutiny’, as a result, were often a foregone conclusion. By the 1830s the whole parliamentary inquiry and select committee system had fallen into disrepute. Indeed for some radical critics it was this issue, far more than electoral reform, which really warranted national attention.<sup>30</sup>

Significantly, it was the unelected Lords that seized the initiative. In 1837, in a ‘radical change’, they began to refer all private bills to a small committee of completely ‘disinterested’ peers, chosen by a special committee of selection.<sup>31</sup> Each bill committee was to sit on specific days for agreed times, and attendance was compulsory. In 1844, under mounting pressure at the board of trade, Gladstone applied the same system to the huge backlog of railway bills in the Commons, which was then extended to cover all private business in 1855.<sup>32</sup> Adapting these principles of subdividing labour and impartial selection to the arena of public legislation proved less straightforward, because most public bills continued to be dealt with by committees of the whole house. Nevertheless, select committee inquiries on public matters slowly began to be reformed and by the end of the 1870s their membership was also being determined by the committee of selection, who took ‘the greatest care’ to obtain ‘a proper representation of all political parties’.<sup>33</sup>

It was the 1882 introduction of standing committees or ‘miniature houses’, for which Erskine May had been pushing for almost 30 years, which marked the real turning point, however. Initially set up temporarily, to deal only with law and trade bills, they also adopted the same selection system to appoint members on a ‘proportionate’ basis. Placed on a permanent footing in 1888, they were then applied to all public business in 1907 (except finance measures or unless agreed otherwise). This new system of standing committees, which ‘enjoyed the advantage of having precedents to follow and a well trodden path to pursue’, as the clerk of the Commons put it, was in essence the one that operated throughout the rest of the twentieth century.<sup>34</sup> ‘Public bill committees’, as

<sup>29</sup> The classic account of this is S. Finer, ‘The Transmission of Benthamite Ideas 1820–50’, in G. Sutherland, ed., *Studies in the Growth of Nineteenth-century Government* (London, 1972), pp. 11–32.

<sup>30</sup> See, for example, ‘Committees of the House of Commons: Administration by Large Numbers’, *London and Westminster Review*, 5 (1837), 209–25.

<sup>31</sup> Rydz, *Parliamentary Agents*, p. 93.

<sup>32</sup> F. Clifford, *A History of Private Bill Legislation* (2 vols, London, 1885), ii, 841, 843.

<sup>33</sup> Redlich, *Procedure of the House of Commons*, ii, 186, 214.

<sup>34</sup> Redlich, *Procedure of the House of Commons*, ii, 207; Rush, *Member of Parliament*, p. 61.

standing committees were rebranded in 2006, remain the routine way of dealing with almost all non-financial legislation in Parliament.

A number of other guiding principles of modern parliamentary practice were also clearly initiated in the arena of private law-making. The use of legal templates, or ‘model’ bills, and the creation of ‘enabling’ legislation was first formulated and fine-tuned to deal with mid-Victorian private business, but then had a major influence on the acceptance and development of delegated legislation, statutory instruments, and the other types of secondary laws increasingly used by government departments. The successful operation of a ‘devolved’ commission for dealing with private bills in Scotland provided an important template for the creation of a completely separate standing committee on Scottish public bills in 1907, composed exclusively of Scottish MPs.<sup>35</sup> Many of the restraints on speaking, the moving of amendments, as well as the strict timetabling of a public bill’s progress through its various stages also had clear antecedents in the numerous technical devices implemented to streamline private bill procedure.

Far more work needs to be done on the precise nature of these connections, as well as the broader influences on Parliament of the increasingly litigious methods used in private bill committees, where specialist lawyers worked alongside politicians.<sup>36</sup> However, if there was ever a missing component in the history of modern parliamentary development, it surely has to be the central role played by Victorian private bill legislation. The ‘rise of democracy’ and the pressure of public business have long been viewed as the main catalysts of change, responsible for transforming Parliament’s law-making processes into a recognizably modern form, but they do not tell the whole story. As more research is carried out on the culture and working dynamics of Parliament as an institution, the limitations of these older explanatory narratives centred on democratic progress are becoming ever more apparent.

## IV

One of the other obvious shortcomings of the ‘rise of democracy’ model in explaining parliamentary development is that one half of Parliament, the House of Lords, has always been unelected.<sup>37</sup> Many traditional accounts of Parliament have, as a result, either tended to backdate the supremacy of the Commons, viewing the Lords as a subservient chamber long before it really became so, or—more usually—simply focused the bulk of their attention on the ‘popular’ Commons. Both approaches have skewed the relationship between the two Houses, compartmentalizing them as institutions, separating their activities and assuming a level of constitutional conflict and tension that in

<sup>35</sup> Williams, *Private Bill Procedure*, i, 199–210; Redlich, *Procedure of the House of Commons*, iii, 213.

<sup>36</sup> The best account of private bill advocacy remains Rydz, *Parliamentary Agents*.

<sup>37</sup> Excluding the representative peers.

reality did not exist, at least not outside exceptional moments of crisis. Scholarly work on the nineteenth and early twentieth-century Lords, perhaps because it sits so awkwardly within the prevailing model of democratically driven change, remains thin on the ground compared with the amount of research on the elected chamber.<sup>38</sup> As one of the more recent studies noted, ‘for the last half-century and more it has been largely ignored.’<sup>39</sup>

The significance of the Lords, however, should not be underestimated. More than half of the 20 prime ministers of the nineteenth century, including the two longest serving (Liverpool and Salisbury), formed their governments as members of the Lords, while two more (Russell and Disraeli) started out in the Commons but later served as premier in the upper house. For just over half the entire nineteenth century, the government was led by a Prime Minister sitting in the Lords. At the ministerial level the enduring presence of peers was even more striking, even in the twentieth century. Attlee’s first cabinet of 1945 and Macmillan’s in 1957 contained five Lords, while Churchill’s of 1951 had seven. Perhaps most importantly, family ties and patronage networks ensured a close working relationship between members of both houses, with many MPs either succeeding or being promoted to peerages and many Lords continuing to exercise a considerable degree of influence over elections to the Commons well into the Victorian era.

One often overlooked factor determining the level of conflict between the two houses during the nineteenth century was the Lords’ political composition. Despite years of Liberal peerage creations aimed at trying to rectify a long-standing imbalance, by 1880 the number of Liberal Lords had only just passed the 200 mark, or roughly 40 per cent of the total, which was then decimated by the Liberal party’s split over Irish home rule. The Lords was therefore always an overwhelmingly Tory chamber. One effect of this was that many Whig and Liberal measures that passed the Commons were often defeated or altered beyond all recognition by the Lords, sometimes even against the express wishes of the Tory leaders. The fact that so many controversial reforms of the nineteenth century ended up being proposed by Tory or Conservative governments, however, meant that the number of conflicts between the two houses was far lower than it otherwise might have been. Hugely contentious issues such as Catholic emancipation (1829), the Maynooth grant (1845), the repeal of the corn laws (1846), and of course the Second Reform Act (1867), all of which would surely have been defeated in the Lords if sent there by a Liberal ministry, were allowed to pass by a Tory-dominated Lords, albeit with varying degrees of dissent.<sup>40</sup>

<sup>38</sup> Notable exceptions include: E.A. Smith, *The House of Lords in British Politics and Society 1815–1911* (London, 1992); A. Adonis, *Making Aristocracy Work. The Peerage and the Political System in Britain, 1884–1914* (Oxford, 1993); R. Davis, *Leaders in the Lords 1765–1902* (Edinburgh, 2003); and the excellent recent study by C. Ballinger, *The House of Lords 1911–2011: A Century of Non-Reform* (Oxford, 2012).

<sup>39</sup> Davis, *Leaders in the Lords*, p. 2.

<sup>40</sup> A classic example of this was the greater party loyalty demonstrated by the Lords (compared with the Commons) over Corn Law repeal: R. Davis, ‘Wellington, Peel and the House of Lords in the 1840s’,

It was this deep-seated loyalty to the Tory leadership that helped limit the number of showdowns between the two houses for most of the nineteenth century, even on major constitutional issues. In 1867, despite many misgivings, the Lords loyally backed Disraeli's 'leap in the dark' extending the franchise. In 1884 they initially rejected the Liberal ministry's Third Reform Bill by 205 votes to 146, but, taking their cue from their new leader Lord Salisbury, then allowed it to pass after a deal was hatched between the two front benches over an accompanying redistribution bill. Steady resistance in the Lords to measures such as the abolition of church rates, the removal of religious tests in universities, and allowing Jews to enter Parliament put them at odds with the Commons on a regular basis throughout the 1850s and 1860s, but again it was at the behest of leaders, notably Disraeli, that they eventually gave way. In 1868 the Lords threw out Gladstone's preliminary measures for disestablishing the Anglican church in Ireland, passed in the Commons during the tail-end of Disraeli's minority government. Following that year's general election, however, which gave the Liberals a substantial majority, the Tory Lords reluctantly consented to pass a compromise measure at the behest of their leader, Lord Cairns.

By now the results of a general election, in so far as they appeared to endorse any particular policy, were beginning to be accepted by many influential Lords as amounting to a 'mandate' reflecting the wishes of the nation, which the upper house ought not to resist.<sup>41</sup> The way Lord Salisbury, leader of the Tory lords after 1881, cleverly adopted and adapted this concept, eventually to the point of almost turning it on its head, is widely regarded as having opened a new era in the relationship between the two houses, making clashes increasingly likely (when the Tories were not in power) and ultimately leading to the constitutional crisis of 1909–11.

Salisbury's doctrine, which should not be confused with the rather different 'Salisbury convention' developed by his grandson to placate the Labour ministry of 1945–51, was that the Commons' ability to scrutinize legislation and act as an effective check on ministers was being steadily eroded by the government's increasing hegemony over the lower house. If MPs were being forced to 'vote just as their leaders tell 'em to', who was there to caution, revise, and refer bills back for improvement? Only the Lords, independent of electoral pressures and party platforms, could be relied upon to carry out these essential parliamentary functions and protect the rights of minorities. Rather than diminishing the power of the upper house, changes in the representative and party system were actually making its political presence and intervention all the more necessary.

With no little irony, given his own party's control over the Lords and his personal role in creating the single-member constituency system of 1885, Salisbury even began to suggest that, owing to the way the Commons had become 'enslaved to the party caucus' and the glaring representational deficiencies of the 'first-past-the-post' voting system, the

in C. Jones, R. Davis and P. Salmon, eds., *Partisan Politics, Principle and Reform in Parliament and the Constituencies, 1689–1880* (Edinburgh, 2005), pp. 164–82.

<sup>41</sup> See in particular the speech of Lord Cairns: *Hansard*, 14 July 1869, vol. 96, cc. 1655–8.

Lords was on occasion better placed to represent the ‘will of the people’ than the lower house.<sup>42</sup> It could, as another Tory peer put it, ‘be a more correct interpreter of public feeling than the House of Commons’, with its crude emphasis on bare majorities.<sup>43</sup> This bold and ‘daring proposition’, enshrined in Salisbury’s public musings and speeches, was to receive an extraordinary endorsement as a result of the Irish home rule crisis of 1893.<sup>44</sup> In the largest vote of the period, the Lords threw out Gladstone’s Irish home rule bill, which had been forced through the Commons using many of the new draconian procedures available to ministers. On this occasion, unlike Irish church disestablishment in 1868, the Lords seemed to have captured the mood of the nation perfectly: at the next two general elections the Conservatives and their Unionist allies secured substantial majorities.

Underpinning the Lords’ powerful claim to be able to stand up in this way for the broader ‘will of the people’, the upper house also began to be transformed in other areas, especially during the closing decades of the nineteenth century. Echoing some of the changes taking place in the social composition of the Commons, its membership underwent a mini-revolution, with ever increasing numbers of non-landed elites from banking, business, industry, and the professions being awarded peerages by the leaders of both parties. James Williamson, a Liberal linoleum manufacturer who was created Baron Ashton, was a typical example of this new breed of peers, who accounted for more than 40 per cent of all the ennoblements made between 1897 and 1911. By the latter year the size of the house had grown to around 630, some 115 higher than 30 years previously.<sup>45</sup> Its proceedings and debates, often likened to ‘addressing tombstones by torchlight’, also began to enjoy a renaissance, particularly in the wake of Irish obstruction in the Commons and the increasing restrictions on MPs’ speeches.<sup>46</sup> The superiority of Lords debates on major issues was frequently commented on in the press. Its capacity for business, especially in the area of private legislation, is also worth stressing.

## V

By the end of the nineteenth century the Lords had emerged not as a subordinate chamber to the elected Commons, as one might have expected, but as more assertive, constitutionally reinvigorated, and politically active than it had been in the early 1800s.

<sup>42</sup> *The Times*, 14 Apr. 1882, cited in A. Hawkins, *Victorian Political Culture: Habits of Heart and Mind* (Oxford, 2015), p. 314.

<sup>43</sup> T. Legh, *Lord Lansdowne: A Biography* (London, 1929), p. 360.

<sup>44</sup> C. Comstock Weston, ‘Salisbury and the Lords, 1868–1895’, *Historical Journal*, 25 (1982), 109. See also C. Comstock Weston, *The House of Lords and Ideological Politics. Lord Salisbury’s Referendal Theory and the Conservative Party, 1846–1922* (Philadelphia, 1995); P. Marsh, ‘Salisbury’s Definition of the Powers of the Lords’ in Davis, *Leaders in the Lords*, pp. 91–9.

<sup>45</sup> Excluding bishops.

<sup>46</sup> E. Cook, *The Life of Florence Nightingale* (2 vols, London, 1913), vol. i, p. 402.

One area, of course, where it was not able to challenge the supremacy of the Commons was government finance—specifically its income and expenditure plans. This had long been the exclusive preserve of the lower house. An enduring problem here, however, had always been what exactly this financial embargo covered. In 1860, in an important showdown between the chambers, the Lords had rejected the Liberal ministry's proposals to abolish the duties on paper. This formed part of the government's broad move towards obtaining more revenue from income and property, but was also seen by many Lords as touching on wider national issues beyond a financial remit.<sup>47</sup> Rather than confront the Lords head on, the ministry passed resolutions in the Commons reasserting its exclusive right to deal with all money matters, and in the following session controversially inserted the proposals into their budget, which, despite many objections, was duly passed.

This increasing practice of 'packing' budgets with other measures lay at the heart of the constitutional crisis of 1909–11. After three years throwing out a series of Liberal reforms, including an unpopular licensing bill, and earning themselves their reputation as 'Mr Balfour's poodle', the Lords went one step further and rejected the so-called 'People's budget' of 1909, which, as well as extending inheritance duties on landed estates, had tacked on previously rejected licensing and land valuation reforms. The Liberal ministry called an election, held in January 1910, but their resulting losses made them heavily dependent on the support of the Irish Nationalist MPs and Labour, both of whom shared the Liberal party's growing commitment to a formal reduction of the Lords' powers. After months of high political drama and abortive negotiations between the two houses, and yet another general election in December 1910 that solved nothing, the Parliament Act of 1911 was eventually passed under the threat of mass peerage creations by the king.<sup>48</sup>

Much has been made of the way the 1911 Parliament Act formally ended the Lords' ability to interfere in money matters (as defined by the Speaker) and its replacement of the Lords' complete veto over legislation with a delaying power of two years. In reality, however, this was precisely the way in which the Lords had operated for most of the nineteenth century, rarely intruding into budgetary matters and often postponing rather than preventing the passage of controversial measures (with the obvious exception of Irish home rule). Not only did the Parliament Act's provisions only apply to bills that originated in the Commons—leaving completely untouched the peers' powers over bills introduced in the Lords and all secondary or delegated legislation—but also the opportunity for bills to be delayed until after the next election in effect conferred a 'referendum' power on the upper house, legitimizing its claims to a separate constitutional relationship with the electorate.

<sup>47</sup> See Smith, *House of Lords*, p. 123.

<sup>48</sup> On the constitutional crisis see C. Ballinger, 'Hedging and Ditching: The Parliament Act 1911', in P. Norton, ed., *A Century of Constitutional Reform* (Chichester, 2011), pp. 19–32; K. Epstein, *The British Constitutional Crisis, 1909–1911* (New York, 1987).

Perhaps most significantly, the Parliament Act's technical requirements—bills delayed by the Lords had to go back through the Commons in the same form three times before becoming law—in practice made it far too cumbersome to be used on a regular basis. Tellingly, during the twentieth century it was implemented just six times. In 1914, Welsh church disestablishment and Irish home rule were enacted under its provisions, only for their implementation to be suspended for the duration of the war (and in the latter case aborted owing to Irish independence). The 1949 Parliament Act, which further reduced the Lords' delaying powers to one year, also reached the statute book without the Lords' consent, as did the 1991 War Crimes Act, the 1999 European Elections Act, and the 2000 Sexual Offences Act.

All other legislation that was passed during the twentieth century, however, continued to be debated, scrutinized, and, where necessary, amended by the Lords before becoming law, much as it had been during the Victorian era. The only difference was that after the primacy of the Commons had been asserted during the showdown of 1909–11, the Lords became less disposed to ~~combativeness~~ in its approach and more inclined to engage in subtle political manoeuvrings, especially behind the scenes. To this extent, the change implemented in the early twentieth century was as much a cultural as a constitutional one.

One unintended consequence of this delicately reconfigured power relationship between the two houses was its impact on plans to reform the composition of the Lords. The opening lines of the 1911 Act had famously declared: '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.'<sup>49</sup> In the years ahead, the impracticality and drawbacks of almost every 'popular' form of second chamber became clear, ~~however~~, as first the Bryce commission (1917–18) and then numerous committees and government bills of the twentieth century sought but failed to find an acceptable solution to this 'unfinished' component of Lords reform.

At the heart of the problem lay the simple dilemma that any improvement in the composition of the Lords would be likely to embolden the upper house, making it more likely to use its substantial remaining powers and interfere with the will of the Commons. Another complication was that a wholly elected chamber based on the system for electing MPs would simply end up mirroring the balance of parties in the Commons, making it superfluous. One elected on an alternative principle, however, would in effect pitch two rival electoral systems against each other in terms of being able to represent the 'popular will'. Given the democratic anomalies of first-past-the-post elections this would inevitably put electoral reform back on the political agenda, with all its implications for the two-party system and the ability for governments to be formed without resorting to coalitions. Only the Labour party's proposal of 'total abolition' and making

<sup>49</sup> 1 & 2 Geo. V, c. 13.

Parliament a ‘single-chamber legislating body,’ a policy endorsed overwhelmingly at its 1977 conference, appeared to provide a straightforward, albeit brutal, solution.

By then, however, the Lords was no longer an exclusively hereditary body and the constitutional context had shifted. The life peerages act of 1958, passed by the Conservative ministry of Macmillan despite strong Labour opposition, had given the Lords a new lease of life, allowing non-hereditary peerages to be conferred on partisans nominated by the leaders of the main parties—which over time helped to dilute the Tory bias of the chamber—and also on distinguished figures from all walks of public life.<sup>50</sup> Significantly, the act enabled women to become ennobled, and by 1997 more than a hundred had entered the upper house.<sup>51</sup> Prime ministers, of course, had always had the option of nominating peers from a range of backgrounds. The way in which the entire honours system had been thrown into disrepute by Lloyd George’s venal creations of 1918–22, however, had ensured that no subsequent ministry had dared make quite as many, despite the official cleaning up of the system by the 1925 Honours (Prevention and Abuses) Act. Crucially, removing the hereditary component of a peerage created just enough of a symbolic break with the old discredited system to make wholesale nominations viable again. By the end of Wilson’s Labour ministry just over a decade later, some 215 life peers had been created. By 1999 the total had reached 887 (excluding law lords), bringing the proportion of the house who sat as life peers to 37 (allowing for deaths).

It was not just their growing number, however, but also the disproportionate impact of life peers on the ethos and working culture of the Lords that really marked a new beginning. Bolstered by their backgrounds as experienced politicians drawn from all parties and distinguished public figures, within just a few years they had easily surpassed the hereditary peers as the ‘most active’ members and begun to contribute to a very substantial increase in attendance and the volume of business undertaken on the floor of the house and in committee.<sup>52</sup> By the late 1990s the average attendance during each day’s sitting, at 446, was over four times higher than it had been in the mid-1950s, while the sittings themselves had become twice as long, at more than seven hours. Comparable increases in the frequency and size of votes, the length of debates, and the number of questions to ministers (starred and written) all testified to a steady resurgence of the Lords and its powers of scrutiny throughout the late twentieth century.

It is in this sense that Blair’s reform of the Lords in 1999, which initially aimed to remove hereditary peers completely, in many ways merely accelerated existing historic trends, both in terms of the practical workings of the House and by again deferring the question of how to achieve a more ‘popular’ membership. As one commentator has recently noted, Blair’s changes, however unintentionally, resulted in ‘a much more active and assertive second chamber.’<sup>53</sup> The backstairs compromise that was hatched

<sup>50</sup> For a useful analysis see P. Dorey, ‘Change in Order to Conserve: Explaining the Decision to Introduce the 1958 Life Peerages Act,’ *Parliamentary History*, 28 (2009), pp. 246–65.

<sup>51</sup> House of Lords Library, LLN/2008/019; House of Commons Library, SN/PC/5867.

<sup>52</sup> See J. Morgan, *The House of Lords and the Labour Government 1964–70* (Oxford, 1975).

<sup>53</sup> P. Cowley, ‘Parliament,’ in A. Seldon, ed., *Blair’s Britain 1997–2007* (Cambridge, 2007), p. 17.

between the two main parties in 1999, allowing 92 ‘elected’ hereditary peers to remain in return for Conservative acquiescence, has been variously ridiculed as ‘hilarious’ and ‘nonsense’. It was widely condemned for having ‘brought a hugely questionable form of democracy into the second chamber’, by enabling peers disqualified from sitting to nevertheless nominate members and their replacements at ‘by-elections’.<sup>54</sup> What was perhaps most revealing about this arrangement, however, was the way it almost resuscitated the system introduced to elect Scottish representative peers in 1707, which was later extended and used to elect Irish representative peers between 1800 and 1919.<sup>55</sup> The practice of peers electing peers was a standard feature of the nineteenth-century Lords. Until the issue of how to elect a more ‘popular’ second chamber is finally resolved, the reintroduction of this historic practice will continue to offer yet another reminder of the enduring legacy of Victorian constitutional culture in modern parliamentary practice.

## VI

The relationship between the Commons and the Lords lies at the heart of the UK’s bicameral parliamentary system, but explaining its development in terms of the prevailing ‘rise of democracy’ model is clearly unsatisfactory. It does not account for the enduring significance of the ‘unelected’ upper house or the reluctance of successive governments to apply the democratic principle to the second chamber. Moreover, by focusing so disproportionately on the ‘elected’ chamber, political historians have not only overlooked the residual importance of the Lords but also downplayed its role as an instigator of reform—for example, in initiating the modernization of procedure (private bill) in the nineteenth century or by being the first to televise debates in the twentieth century. Recent analysis of the post-1999 Lords, if anything, only confirms its growing effectiveness as a legislative revising chamber, despite the restrictions created by the automatic programming or ‘timetabling’ of bills ~~and its increasing willingness to act as a check on the government.~~<sup>56</sup> Viewed from the perspective of the Victorian era, it is not so much the degree of change that is most striking, but rather the remarkable similarity of the relationship between the two houses after a century of constitutional development.

Parliament continues to be a curiously neglected component of modern political history. Compared with the amount of scholarly literature on political languages, ideology, ‘popular’ movements, and electoral organization, work on the structures and operation of the institution at the centre of the nation’s political system remains in short supply.

<sup>54</sup> A. Kelso, ‘Stages and Muddles: the House of Lords Act 1999’, in Norton, ed., *Constitutional Reform*, p. 111.

<sup>55</sup> For further details see J. Sainty, *A Parliamentary Miscellany: Papers on the History of the House of Lords* (Chichester, 2015), pp. 47–71.

<sup>56</sup> Cowley, ‘Parliament’, pp. 22, 30–3; M. Russell and M. Sciarra, ‘The Policy Impact of Defeats in the House of Lords’, *British Journal of Politics and International Relations*, 10 (2008), 571–89.

One upshot of this is that, at a time when researchers working in other areas of political history have almost begun a process of revising the revisionists, the historiography of Parliament has yet to experience even its first comprehensive overhaul. Important advances have recently been made, most noticeably in Vieira's welcome study of procedure. A younger generation of scholars are also pursuing innovative PhD projects. However, a huge amount of work still needs to be done before this topic can in any sense be said to have 'caught up' with the field as a whole. This chapter's examination of the development of modern law-making practices and the relationship between the two Houses of Parliament has sought to highlight just some of the enduring influences and legacies of the Victorian constitution in the operation of Britain's modern parliamentary system. The process of revising the old traditional 'rise of democracy' model, however, still has a long way to go.

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