

Full Circle

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When the founding fathers came to draw up a constitution, although all of them had been born and bred in what Thomas Jefferson described as the "orthodox doctrines of British liberties," they necessarily found but scant guidance looking at the English model because that country had never found it necessary to write down a constitution.

Clearly, the House of Representatives was modeled after the House of Commons, there being no other model to draw upon, since Europe at that time was for the most part absolutist and possessed no such traditions. Further drawing on their understanding of the English model, the founding fathers wanted a second chamber, but had to resolve upon some system other than the House of Lords, which at that time was composed of hereditary peers, which the Americans had decided would not do at all in the new Republic, along with the bishops of the Church of England, also entirely foreign to American way of thinking which was based upon non-conformism and a refusal to countenance an established church. They resolved upon a curious compromise reaching back to the old Roman tradition for the word "Senate," but still looking to the English model for representatives from each state.

Oddly enough, the House of Lords has continued to evolve, while the Senate remains more or less fixed as it was set down in the Constitution of 1776, and has by now become in a sense quite anomalous. Hereditary peers have lost all right to exercise any vote in the House of Lords, but the British still have not entirely decided upon the best manner of composing the upper house, which though it has lost all power to the House of Commons nonetheless is preserved as a deliberative chamber with a certain power to delay legislation.

In the years before the great Reform Bill of 1832, many members of Parliament were returned by a mere handful of votes, being returned for what were then termed "Rotten Boroughs," because of the clearly inequitable proportion of votes required to return such members, sometimes no more than a dozen. Today in a somewhat amazing reversal of history, one could view many of the states of the Union as rotten boroughs, because they return two Senators in spite of having a disproportionately tiny number of voters. The state of Delaware has far fewer residents than the San Fernando Valley, yet returns two Senators with exactly the same voting powers as the two California Senators who between them represent the fifth largest economy in the world and 30 million people.

At the time of the American Revolution, the House of Lords exercised great powers but those powers have gradually disappeared, whereas today each Senator is in effect a virtual fiefdom. Any Senator can stop any business from being transacted; that is to say, a single Senator from a state with few than one million people can prevent the passage of legislation, even if that legislation has been passed by the House of Representatives. What ever else this may be, it is certainly not anything resembling a true democracy because the Senate today, with incumbents nearly impossible to unseat, is far more like an aristocracy than today's membership of the House of Lords.

When it came to constructing the judicial system, the founding fathers sought to retain the common law in its entirety, with the single exception of the Constitution, and it must be said that the Constitution is an exceedingly important difference. But as for form and procedure, the old tradition of the common law, already at that time more than 600 years old, prevailed almost without change. But when it came to deciding what should be the highest court, again the founding fathers were on their own, because they could derive nothing but mystery and obfuscation from looking at the English system.

Even today, although the current British government is seeking to change the system, the highest court in the land is said to be the House of Lords, but it is not really the House of Lords at all but a mere committee of the House of Lords composed of a number of senior judges, who collectively are referred to as the Law Lords. But whereas the Justices of the Supreme Court have a magnificent Greco-Roman style building of their own, and frequently appear in resplendent black robes as celebrities in their own right, most people in England would not be able to name of a single Law Lord. Indeed, the House of Lords is so informal that it is hardly a court at all; it meets in a committee room in the upstairs of the House of Lords, and the Law Lords wear no kind of robe but merely appear in lounge suits. The present English government, breaking with a tradition of more than half a millennium, says it intends to replace the House of Lords with a Supreme Court, so perhaps with wonderful irony the highest court of appeal in Britain will finally come to resemble the U.S. Supreme Court. Charles B. Parselle is a mediator, arbitrator and attorney. He graduated from Oxford University's Honor School of Jurisprudence and is a member of the English bar, then was admitted to the California Bar in 1983. A practicing attorney, he is a prolific author and sought-after mediator. For a free consultation, please contact him through his website: <http://www.parsellemediation.com>