

'On from the Elective Dictatorship'

Hailsham Lecture to Society of Conservative Lawyers

Portcullis House, London

Thursday 20 June 2002

By The Rt Hon Lord Hurd of Westwell CH CBE

(Main points sidelined)

When I was asked to inaugurate this series of lectures in honour of Quintin Hailsham I quickly found on my shelves a dog-eared Penguin of his splendid book "The Case for Conservatism". On the flyleaf is my name in teenage scrawl with the date January 1947. I was following in his footsteps as a Kings Scholar at Eton, and already passionately interested in politics. I remember well his occasional visits to the College, his bursts of eloquence as he sought to inspire us, and the vehemence with which he corrected the pronunciation by the Headmaster of the Latin Grace.

"The Case for Conservatism" still strikes home because of its blend of ideas and practical policies. The background is familiar to us today. After the crushing defeat of 1945 people speculated whether the Tory Party had cut its own throat. It did not win a single by-election from the Government in that immediate post-war Parliament. The revival was slow. It followed a long period of listening and laborious policy making under the leadership of Rab Butler. Now again we experience the scorn with which the first efforts at revival are treated by those commentators who have learned to regard Labour as the natural party of government. But the wheel turned then, and it will turn again this time.

Quintin Hailsham was a formidable force at the darkest time for the Tories in the late 1940s, because he was a philosopher as well as a politician. We needed the Industrial Charter and the work of the Conservative Research Department, but we also needed fire and eloquence. In his search for ideas Quintin Hailsham dug in a different part of the Conservative garden from Margaret Thatcher thirty years later. She proclaimed the crucial importance of freedom and the market principle. Quintin Hailsham dwelt on the rule of law and the majesty of British institutions. One traditional asset which, like Winston Churchill, he learned to turn to powerful effect, was the English language. He shared another characteristic with Churchill. The word care and caring is over-used in modern political parlance. But there was nothing artificial or platitudinous about Quintin Hailsham's cares. He was genuinely passionately upset when something went amiss for his friends, for his country or for the Christian civilisation to which he knew his country belonged. It is that genuine passion which will keep his memory and his writing alive.

How would Quintin Hailsham regard today the prospects for his Party? He would certainly not underestimate the depths to which we have fallen or the difficulty of extricating ourselves. In his day the constituency which he represented, the City of Oxford, swung with the nation. He held it in the famous by-election of 1938, but it was lost in 1945, then regained then lost as the Party pendulum moved to and fro. He would be appalled to find that last month there was not one single Conservative elected to the Oxford City Council, even though in the villages and market towns of our county the Conservatives did well.

The collapse of the Tory Party in our main cities outside London is a formidable warning. It justifies the fundamental rethinking which Francis Maude called for in his recent Butler Memorial Lecture, and which is being undertaken within the Shadow Cabinet by a new generation of Conservative spokesmen and women. Certainly we shall need before the next election specific policies on the National Health Service and all the main public services. But this will not be enough unless people see in us a reflection of the kind of politics which they want. This means that the Conservatives have to be, in the widest sense, a constitutional

party, concerned with our institutions and also with the spirit in which our politics are conducted. We need to reconnect political debate with the loyalties and concerns of actual people living outside the Westminster village. The essence of Conservatism is not resistance to change, but a conviction that successful change is built on the foundations of the past. Against this background let us look at some of the constitutional issues which we face.

Let me say first, whether as warning or reassurance, that this is not a speech about Europe. Certainly our membership of the EU has and will continue to have a deep constitutional effect, in that the Treaty of Accession in 1972 endorsed in the 1975 referendum enabled EU law to override domestic law in those matters covered by the supranational arrangements freely entered into under Treaty by successive British governments. The last such major supranational arrangement was the single currency, agreed in 1991 at Maastricht. We still do not know how Britain will use the option which John Major obtained there. Whatever the outcome of that debate on the euro, the mood and instinct of the EU since Maastricht has become intergovernmental rather than supranational. I am confident that the matters I now turn to will continue to be decided by the British Government and the British Parliament. We shall not see a United States of Europe.

Quintin Hailsham knew how to dramatise the truth in a phrase. His phrase “the elective dictatorship” summed up a danger which has become more formidable since 1997. We do not have a separation of powers in this country. The House of Commons holds a double responsibility; it creates and sustains the Queen’s Government, but at the same time it needs to control that Government and prevent excessive growth of its power. The House of Commons falls down badly on this second task. That is one reason why a new danger has been added to that of the elective dictatorship. Politicians are now faced with active public dislike of the political process, as nowadays administered by the political parties.

In Quintin Hailsham's heyday politics were fun; he himself added notably to the jollity. People turned out at election time, not just to vote but in substantial numbers to campaign for the political party of their choice. Meetings in every town and village were thronged with supporters and hecklers. The streets were full of democratic noise and colour. Newspapers reported not just Parliament but the detailed coming and going of electioneering in the constituencies.

All that has changed. The streets are colourless at Election time, and the voters bored. It is not that people no longer take an interest in political issues. Anyone who visits a sixth form or a university nowadays knows that such interest remains high, and is perhaps more intelligently discussed than ever. But people do not regard the present political system as a useful vehicle for their interest. Either they stay away when elections are called or they vote for anyone, frivolous or serious, Ken Livingstone or Monkey man, who does not represent any of the main political parties.

Alternatively they channel their interest into membership of pressure groups. The spokesmen of respectable and law abiding pressure groups now receive a reverential attention from the media which is denied to party politicians. A word of warning is in place here. Any Cabinet Minister knows the usefulness of non-governmental organisations as a source of information and advice. For example, when Lynda Chalker was in charge of the British Aid Programme, she showed me how much could be gained by regular consultation with the voluntary agencies in that field. But politics are about balance, and the pressure groups are by nature unbalanced. They operate in blinkers; that is their strength, but also their limitation. They advocate a particular cause and focus their energy on that cause, excluding any considerations which point in a different direction. By contrast, the job of politicians is to balance the interests and opinions of those whom they represent and then lead them forward. The RAC and the AA represent the opinions and interests of motorists; a mass of environmental organisations represent the interests and opinions of those who wish to restrain the motorcar. A politician has to weigh the merits of each argument and the

force behind it, and take a decision on behalf of the community as a whole. That is how politicians are tested; that is what representative democracy is about. In this sense the chairman of a Parish Council has more democratic legitimacy than the director-general of some great voluntary agency. Pressure groups cannot become a substitute for the democratic processes of representation through election, followed by decision taking in the interests of the country as a whole.

A certain degree of scepticism about politics is healthy for politicians. It is a bad idea for them to be either excessively hated or excessively adored. But the present generalised dislike of the political process has reached a stage which weakens democracy. Politicians are not invaders from another planet. They volunteer and are chosen from the range of citizens. A country which despises its politicians is half way to despising itself. The belief that we are governed by knaves and fools of whatever party is to some extent self-fulfilling; the currency of that belief increasingly deters worthwhile people from answering an honourable vocation to public service in local or central government. I do not respect those armchair commentators who have never done a handsturn for the political process, but who make their name and perhaps their money by telling us how awful politics and politicians have become. The political parties, who should now be well aware of this danger, need to avert it by digging deep and finding again the active loyalties and instincts of the British people.

The enthusiasm for devolution is one aspect of that search. It is certainly producing a system of amazing untidiness. Other countries like Germany, with a tidy federal structure, look with astonishment at us in a Kingdom of four parts, of three Secretaries of State each with different powers, of two Assemblies and one Parliament, each different in composition and powers from the others.

The fourth component, namely England, comprising 80% of the population, has no Secretary of State and no specific representative body. Within England the confusion becomes absolute. A few towns and cities now have elected mayors, others not. The Royal County of Berkshire is now a shell with all the powers of local government removed to unitary authorities in the form of District Councils. Next door in Quintin Hailsham's county the Oxfordshire County Council is still an effective body. The Government now proposes to pile confusion on confusion. The North East of England may if it wants have an elected Regional Assembly, but the South East need not follow suit. The Government are wise to be cautious in this venture. There is genuine loyalty to be tapped for the North East of England as a region, just as there has been for Scotland and Wales. But the bureaucrats have drawn a map which puts Oxfordshire in a region whose capital is Guildford, a town with which we in Oxfordshire have no connection and – how shall I put it – no overwhelming desire for close acquaintance. The counties with which we are culturally and economically connected belong to different bureaucratic regions. Who can suppose that the people of Cornwall will be satisfied by being part of a region centred in Bristol, or indeed that they will be happy to share the same administrative region as Devon?

A map of mediaeval England shows all kinds of exceptions and anomalies. On these maps little bits of one county crop up in the middle of another. Places like Peterborough, Durham and Monmouth had a peculiar status all of their own. The Tudors centralised the system and that process of logical tidying up continued gradually until say Peter Walker's Local Government Act of 1972. Now we are heading rapidly back to mediaeval confusion. As a Tory I am not sure that this particularly matters. Tories don't have to be tidy minded. But it means that we are entering a period not of final constitutional settlement, but of experiment at many levels of Government. The same, incidentally, could be said of our education system. We seem to be entering an age without ideological drive, devoted to never ending experimentation.

We must recognise that experiments in devolution will only work if we resist the continuing pressures for centralisation. At the moment Government is theoretically in favour of devolution, but constantly in practice pressing for further centralisation. Writing powerfully last week in the Financial Times, Ruth Richardson, a former Minister of Finance from New Zealand who has been studying our scene, wrote of the extraordinary increase here in the activity at the centre of government. "More than 20 new Whitehall units", she wrote, "are no substitute for freeing and encouraging managers". The Health Secretary and the Press Secretary denounce postcode variations in the National Health Service, but any decentralised system is bound to involve different priorities for different services in different places. Local authorities are subjected to continuous interference in the form of targets and regulations to make their performance uniform. Magistrates are told to reduce the disparities in their sentencing, even though the facts and perceptions of a particular offence will vary widely from one part of the country to another. The Home Secretary, leading the Department of State with the greatest centralising instincts, tries to gain powers to dispose of Chief Constables of whom he disapproves, though I believe that in the House of Lords we may have frustrated him. We have a Home Secretary who likes to roar loudly about once a week, but in different directions. We listen to him with respect, but there is no coherent message. For example, sometimes he seems to want the prisons filled, sometimes emptied. The same is true of the Government's attitude to diversity. Conservatives need to encourage diversity at a local level, but must accept that we cannot at the same time expect uniform standards of public service. To devolve means to differ and to tolerate difference.

The Scots, for example, seem to be settling for a future as a more socialist and rather less prosperous part of the United Kingdom. If that is their wish it should be accepted, provided of course that they pay for their student grants, or their extra care for the elderly, out of higher taxation in Scotland or by spending less on other Scottish public services. Simple justice also requires the removal of the anomaly by which Scottish MPs at Westminster can vote on policies affecting England and Wales, when English and Welsh MPs have no voice over the same areas of policy in Scotland. This is of course the famous West Lothian

question, named after its first proponent Tam Dalyell, now the Father of the House of Commons. The sensible answer to Tam Dalyell is the one put forward in the last Parliament by William Hague. We do not need an English Parliament or indeed legislative powers for the Welsh Assembly. We need a rule that legislation only affecting England and Wales requires in the House of Commons the assent of a majority of English and Welsh MPs. All members of the House of Commons, English, Scots, Welsh, Northern Irish, would continue to have equal rights on all subjects not devolved, for example foreign affairs and defence.

If we turn to the central institutions of the Kingdom the one about which perhaps least needs to be said this month is the Monarchy. Through her long reign, despite personal mishaps and sadnesses, the Queen and the Royal Family have shown how an institution can evolve in a way which continues to tap the deep-seated loyalties which sustain it. I do not need to argue this point in the Summer of 2002 as I might have had to argue it a year ago. In different ways the mourning for the Queen Mother and the celebration of the Queen's Golden Jubilee have told us what most of us hoped was still true – that the nation values the monarchy as a focus of unity and a precious link between past and present. Alas, the same cannot be said of Parliament or government. To put it crudely, the organisers of the Jubilee need no guidance from the organisers of the Dome, or from those in Parliament who should have controlled them.

I believe that we need to create a double career structure in the House of Commons to reflect the double task which it has to fulfil. On the one hand there should continue to be a ladder up which Members of Parliament climb to ministerial office, so that the Queen's Government is carried on. But that is not enough. Much has recently been written on this theme, notably by Lord Norton in his report to William Hague and by the Hansard Society. In sum, alongside the ministerial ladder we need to construct a more effective career ladder for those who simply intend to be parliamentarians. This means freeing the Select

Committees from the grip of the Party Whips, magnifying the role and popular perception of the Public Accounts Committee, and regarding the Speakership as the top rung of this parliamentary career ladder.

I would like to focus not so much on what the House of Commons does, as on its membership. Comment nowadays concentrates on the need to have more women Members of Parliament – I agree; and more representation of the ethnic minorities – I agree again. But as the number of women MPs and those belonging to the ethnic minorities have slowly increased, one category which used to be substantial has almost disappeared. I refer to people who enter the Commons after years of practical experience in other walks of life, or who even continue to gain that experience as Members of Parliament. My father, representing Newbury for nineteen years, was a farmer as well as a politician – indeed a farmer more than a politician. When he was offered a junior ministerial job by Winston Churchill in 1951, he turned it down because it would have meant giving up active farming life. In those days, and it is not long ago, the House of Commons was full of Members who farmed, or ran a business, or had commanded a brigade, or ran a trade union, driven a train, dug coal, taught a primary class of schoolchildren. They tended to speak on the subjects which they knew, and on the rest to listen. Not much listening is done in the House of Commons today.

Over recent decades politics has become a much more professional career. Politicians are just as honourable as their predecessors; they work harder in their constituencies; they are probably better informed across a wider range of subjects. What they have lost is a close connection with particular sectors of life outside politics. The Westminster village, inhabited by politicians and those who comment on politics, has become estranged from the country as a whole. Its habits, its vocabulary, the subjects which interest the inhabitants of that village are uninteresting or unattractive to the world outside. Defensive about sleaze, they regulate themselves to protect their virtue, but in a way which cuts them off even more

completely from ordinary life. Witness the temporary misfortune of Geoffrey Clifton Brown MP who was prevented from taking up a Shadow agricultural appointment simply because he was a farmer and knew something about the subject on which he was invited to speak. In his case ignorance would have been bliss, and 'twas certainly folly to be wise.

At the same time as the House of Commons creates a career ladder for parliamentarians, the constituencies need to cast their net much wider when choosing candidates. Previous service to the Party and faithful adherence to its policies should be less important than professional achievement outside politics which would enable a Member of Parliament to speak from experience in a particular subject. They should worry less about whether the man or woman they choose will shine on television or be the next Prime Minister but three. A ten year spell in Parliament after twenty or twenty five years as a successful professional should be regarded once again as a normal and praiseworthy form of public service.

The only part of our Parliamentary system where practical experience now makes a substantial appearance is the House of Lords. The trouble is that our personal experience in the Lords tends to be elderly. Life Peers like myself in our 60s 70s or 80s tend to apply to the present lessons we learned in the past as if nothing much had changed. There is an overwhelming case for continuing to bring into the Second Chamber, through nomination by an independent Commission, a sizeable number of people with real and up to date experience of different walks of life – the industrialists, the trade union leaders, those who help to run our universities and our voluntary organisations, many others.

I say “continuing to bring” because that is what the existing non-statutory Appointments Commission, chaired by Lord Stevenson, has begun to do. Our first list, which was agreed to be of high quality, was derided because some spin doctor at the heart of Government had fed to the media the irresistible phrase “people’s peers”. We were never asked to produce

people's peers in the current sense of that phrase, and we did not do so. What we did, free from any influence of Government on our choice, was to bring in men and women whose achievements outside politics across a wide range showed that they could, as independent non party members, strengthen and refresh the Second Chamber.

In any further reform there should continue to be such independent peers. For this we need an Appointments Commission, but it should be set up by Parliament, not by Government. As recommended by the Royal Commission it should not only choose the independent non party peers, but also make the final decisions about peers with party allegiances, taking into account the nominations of party leaders.

Some argue that only a fully elected Second Chamber could have democratic legitimacy. Certainly it is true that if you ask people how a Second Chamber should be chosen, most reply "by election". But you might get a different answer if you asked the question in a different way. How would you like to be represented in a Second Chamber with the job, say, of revising some proposed NHS legislation? Should it be by a practising doctor or surgeon with no party links? Or should your representative be old Fred, chosen for direct election to the Lords though he doesn't know much about anything, but has always followed the party line in the borough, just missed the short list for the last general election, and was unlucky to be pipped at the post for the European Parliament?

The truth is that people want an elected Second Chamber provided there aren't any of those damned party politicians in it.

Personally I have always argued, in private and in public, for a substantial elected element in the Lords to give the Chamber extra strength and bite, and to represent the regions more effectively than at present. I see no reason why the elected and nominated Lords should not

bed down together. Each has its legitimacy. We are a mixed lot already, Life Peers, Hereditaries, Bishops, Law Lords, and our different origins cause no fuss, either in the tea room or the Chamber.

But the elected peers should be as different as possible from members of the Commons, and in particular less dependent on the Whips or on local parties. This means, as the Royal Commission suggested, long terms of membership, say fifteen years, no closed party lists, and a bar to using the Lords as a platform for eventual election to the Commons. Personally I would keep the title Lords, though its members would be there for a job of work and not as an honour for past service. I would myself keep the elected peers to a proportion, namely a substantial minority, which the House of Lords could assimilate without losing the qualities of reasonableness and informality which make it different from the adversarial Commons.

The Government now realises, rather belatedly, that no scheme yet put forward is likely to carry in both Houses of Parliament. It is hard to imagine the Cabinet deciding to use the Parliament Act with all its delay and hassle to impose on the House of Lords against their declared will a solution favoured by the Commons. If that is true then the Parliamentary Joint Committee which is now being set up will have to produce a particularly ingenious compromise, or join the long list of bodies which have studied this matter without achieving any change. My own belief is that the Government has shuffled off onto Parliament a task which it began and botched, and of which it now despairs.

Conclusion

I have tried in a summary way to analyse from a Conservative point of view a few of the main constitutional controversies of the day. I close by suggesting three threads which should run through Conservative discourse on these matters. They are obvious, yet often

neglected. First, we should, like our present Leader, believe in and practise courteous and educated debate. Of course we will often be tempted off this path by those whose interest it is to encourage crudity and exaggeration. But that deviation, though it may sell newspapers and television advertising, does not win votes. Winston Churchill paid a price for neglecting this truth in 1945 and William Hague in 2001. The electorate does not live in a world of exaggeration; it is neither as feeble minded nor as nasty as much of the material in press and television which it so avidly consumes. Turning up the volume of political abuse is the last way to regain respect for politics.

Second, when change is necessary we should base it on institutions and loyalties already in place. I have laboured this point throughout my remarks, and need only restate it firmly here.

Third, we should recognise the limits of politics and the effectiveness of political actions. “The divine right of majorities is just as fallacious in conception as the doctrine of the divine right of kings, and although there is a qualified duty of responsible duty imposed on the governed by either type of constitution, there comes a theoretical limit beyond which duty can no longer be demanded, and a practical limit beyond which it cannot be enforced.” That is a carefully phrased truth worth pondering, from Quintin Hailsham’s memoirs ‘A Sparrow’s Flight’.

A straightforward civility, a rational regard for the past as a guide to the future, humility about the limits of politics – all three of these precepts are alien to the preachers and propagandists of new Labour. They are specifically Conservative precepts which we should recall if we seriously want to win elections while remaining true to ourselves. Consistently practised, they can help the Conservative Party; they can also begin to restore a much needed measure of respect for politics as a necessary and honourable profession.