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The Origins of the Appellate Committee

It is a principle of law, long established, that the British Sovereign is the fount and source of all earthly justice within every territory where the British Crown holds sway. It is a matter of fact that this is too great a responsibility for any Sovereign to discharge alone. In Norman times the Kings of England performed their duties in this regard with the aid of a council of advisers. But being the fount and source of justice (or even being the adviser of the fount and source of justice) is a fairly time-consuming task and in the war-strewn Middle Ages there was enough for the King and his council to do without having to act as final arbiter in every legal dispute that arose within the King’s dominions. As a result the responsibility for deciding cases was devolved onto various other bodies which in time became the courts we know today. The King and his council of advisers remained the ultimate source of justice. And they continued to hear the most important cases. But less significant cases were tried by the lower courts and only went to the King and his advisers on appeal. Over time the King’s council of advisers evolved into the House of Lords and the Privy Council. These two bodies jealously guarded their judicial responsibilities and did not share them with the House of Commons whose members were never considered to possess the divinely-given power of justice which the King and his nobles claimed to enjoy.

By the early nineteenth century this constitutional framework had changed considerably though not so much as to be unrecognisable.
The House of Commons had a vastly more significant role than in Norman times but the monarch and the House of Lords continued to enjoy real power. Down at Oxford and Cambridge academics sought to justify this system of government by speaking of the Monarchy, the House of Lords, and the House of Commons as embodying respectively the three great virtues of power, sensibility, and democracy. They suggested that the balance between these three institutions of government had prevented Britain from descending into the vices of tyranny, faction and tumult, which plagued other nations. They conveniently ignored the fact that outside their dreaming spires the system was in fact hopelessly imbalanced, and was plagued by corruption, inequality, unrepresentativeness, and occasional violence. Still, change was afoot. In 1832 Parliament passed the first of four great reform Acts aimed at remedying the worst excesses in the British system of government. A new political vocabulary was also seeping into the political vernacular at this time. Inspired by the American and French Revolutions it abandoned traditional ideas about the fluctuating balance of power between the monarchy, the aristocracy and the plurality. It spoke instead of the need for checks and balances between the Executive, the Legislative, and the Judiciary, each of which was considered to be a separate but equal organ of government. In this new environment a House of Lords which was both a legislative and a judicial body quickly came to be viewed by many as a feudal anachronism ill-suited to modern times. Voices were soon heard suggesting that the House of Lords ought to be stripped of its judicial responsibilities and turned into a purely legislative body with the dispensing of justice left exclusively to the courts.

Not everyone supported the idea of reforming the House of Lords. But those arguing in favour of the status quo were not helped in making their case by the shambolic manner in which the House approached its judicial responsibilities at this time. These responsibilities were discharged in a like manner to any other piece of business that fell to be transacted by the Lords. Any or all peers could sit in judgment on a case regardless of whether they possessed legal qualifications or not. Any or all peers could vote on what way a case was to be decided regardless of whether they had attended the full hearings or not. While some peers with judicial experience such as Lord Chancellors, former Lord Chancellors, and the Lord Chief Justice did have seats in the House there was no requirement that they be present when a case was heard or decided. Even when peers with judicial experience were present there was no tradition in the House of yielding