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HOUSE OF LORDS

HOUSE OF COMMONS

MINUTES OF EVIDENCE

TAKEN BEFORE

THE JOINT COMMITTEE ON THE DRAFT HOUSE OF LORDS REFORM BILL

DRAFT HOUSE OF LORDS REFORM BILL

MONDAY 16 JANUARY 2012

Damien Welfare and Daniel Zeichner

Lord Cormack and Rt Hon Paul Murphy MP

Baroness Hayman

Evidence heard in Public Questions 569 - 620

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Members Present

Lord Richard (Chair)
Baroness Andrews
Lord Hennessy of Nympsfield
Bishop of Leicester
Lord Norton of Louth
Lord Rooker
Baroness Shephard of Northwold
Baroness Symons of Vernham Dean
Lord Trefgarne
Lord Trimble
Lord Tyler
Baroness Young of Hornsey
Gavin Barwell MP
Tom Clarke MP
Ann Coffey MP
Oliver Heald MP
Dr Daniel Poulter MP
Laura Sandys MP
John Stevenson MP
John Thurso MP

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Examination of Witnesses

Damien Welfare and **Daniel Zeichner**, Campaign for a Democratic Upper House

Q569 The Chairman: Good afternoon, gentlemen, and thank you very much for coming. I think that you know what this Committee is about and what it is attempting to do. Perhaps first you would like to introduce yourselves and then make a short opening statement before we launch into the questions.

Damien Welfare: Lord Chairman, good afternoon and thank you very much for the invitation to come to speak to you. My name is Damien Welfare. I am the co-ordinator of a group called the Campaign for a Democratic Upper House. My

colleague is Mr Daniel Zeichner, who is a long-standing supporter of that campaign. Unless Mr Zeichner wants to add anything at this stage, perhaps I could take up your invitation briefly to make a statement.

The central objection to democratic reform of the House of Lords, it seems to us, are fears and concerns over the primacy of the House of Commons. Everyone agrees that the House of Commons should be the primary Chamber. In our view, the answer—or answers, as they may be various—lies in our hands. A number of variants have been put forward or can be put forward to deal with that question. The Government has put forward in its draft Bill a traditional set of structural provisions to secure the position of the House of Commons—long terms, single non-renewable terms, an appointed element and a different voting system. Mr Zeichner will respond on the question of non-renewable terms, if you wish to discuss those. The last two in particular—the appointed element and a different voting system—can certainly have their place, but our suggestion to you in the evidence that we have put forward is that there is a better course, which is to decide the framework that you want, set up the rules to sustain it and put those in place in advance of or alongside the reform in advance to its coming into effect.

The fears that have been articulated to you in the evidence that you have received are about what happens if you reform the composition of the House and do not to any significant extent reform the powers. What happens in consequence? The fear that has been put to you is that there would be a degree of chaos or instability in relation to the House of Commons. We believe that the powers and the opportunity to deal

with that lie in our own hands and that the moment to address that concern is now or in the course of reform, not worrying about what will happen afterwards. You could proceed, as part of the package of reform, in a way that would prevent that instability from happening, using the consensus that exists at the moment against it to set up, in advance, a framework within which the new House would operate, so that politically, as well as in terms of powers, the new House would not be able to act in that way were it tempted to do so. You could create a permanent settlement now as part of the reform process.

What are those steps? They are in the paper at paragraphs 55 to 64. In brief, the Houses could consider establishing a statement that sets out first of all the acceptance that the House of Commons is primary. It would set out the basic building blocks for that: the House of Commons chooses the Government, controls supply and taxation and secures its legislation. That is drawn up between the two Houses, perhaps by a Joint Committee, advised by the Clerks and others. In that statement also goes a statement on the roles of the Houses—we define that and reach a consensus on it. You also define the functions. There is an outline of the existing legislation—the Parliament Acts and possible amendments to them if they are thought to be necessary. The conventions should be defined in terms of the 2006 report—our evidence to you is that the Cunningham report sets out the conventions as they stand as present. Those conventions should be defined with some changes, which are suggested in the evidence. That draft, once produced, agreed and perhaps

looked at by another Joint Committee, stands to inform the debate on the draft Bill while it is going on.

Once that has happened and the legislation has been passed, it is open to the Houses to pass identical resolutions—there are models for this going back 300 years—referring to the statement, which set out the joint understanding that that is the basis on which the Houses see the settlement taking place. You then promulgate it, you simplify it and you make it known publicly. The Joint Committee continues to review the conventions as they evolve and recommends adoptions of new ones. Essentially, you have set up a political and institutional framework around conventions and such legislation as there is which has been decided by the Houses themselves. That can be put into legislation as one option, but the option that is being proposed here is that it can be put forward as something that the Houses have defined themselves, thereby respecting parliamentary privilege in so far as that can be achieved.

I will not go through all the changes that are desirable; they will perhaps emerge in what we have to say in our evidence. That is the concept that we were trying to put forward of a way in which to approach this, the basic point being that the machinery is there or can be created in different ways to deal with the question of the primacy of the House of Commons in a way that, it seems, everyone wants to see—that is to say that it is made clear, asserted and put on to a reliable basis that can be seen to work in effect as the legislation comes through.

The Chairman: That is really a policed concordat between the two Houses.

Damien Welfare: Yes, I think that you could describe in that way.

Q570 The Chairman: I see. Could I ask you a rather fundamental question before we go into the details? How important do you think it is that the second Chamber should have a democratic mandate?

Damien Welfare: I think that it is a matter of principle that, as you have heard from other witnesses, legislators and others in that role—those who scrutinise legislation, who act as a constitutional back-up and so on—should be elected in order to have the legitimacy and accountability to carry out their role. If we do not accept that, we are saying that we are content here with the position where half of Parliament, having exported democracy around the world, should not be elected. That is one reason, but there are others for the importance of the democratic mandate. The second Chamber needs the democratic legitimacy of elections in order to perform its functions most effectively and to give it the weight within Government so that its views count. Our evidence to you is that, in the past and perhaps for much of the time in the present, the views of the Lords count when there is some other factor in play—when timing is in play or when adverse publicity is in play—but not when their view is being put forward on behalf of, or with the legitimacy of, the mandate that they have behind them. Thirdly, an elected second Chamber could—this may be apposite in relation to recent developments and issues—act as a forum for the voices of the nations and regions of the UK to be heard in an institutional way at Westminster. Finally, it would enable Parliament to take a more integrated view of itself, because the differences between the two Houses, in terms of one being elected and one not, would fall away over time—or, if you had a largely elected House, would fall away in large part. That

would enable more joint working and a better culture of understanding between the two Houses, the lack of which at times, although I hesitate to say this to a room of Members of both Houses, can perhaps lead to misunderstandings or a lack of a sense of Parliament as a whole vis-à-vis the Executive and the way in which the two Houses can work together.

Q571 The Chairman: Following on from that, we have heard a lot about the argument that if the Lords were elected they would become more assertive. In terms of the democratic process and the parliamentary process of this country, do you think that that would be a good thing or a bad thing?

Damien Welfare: For the House of Lords to become a degree more assertive, as it has been doing since 1999—and, frankly, as it has been doing since the 1970s, if you look at the records, particularly during the 1980s and 1990s—does not strike me as a bad thing. But you want it to operate within an agreed and understood framework. There needs to be an acceptance that the House of Commons gets its way in the end. It is that fear, I think, that can stand in the way of the acceptance of the democratic principle. If we can establish a framework within which the House of Commons is supreme but the House of Lords is in a position to assert a viewpoint based on democratic legitimacy and to ask the questions that need to be asked, that is a good thing, because what it does from the Government's point of view ultimately is to improve the quality of lawmaking. I think that it was Lady Symons who said that it is important, if you are in the middle of the House of Lords, to have to appeal to the Cross-Benchers. Certainly there is an argument that, in a mixed elected and

appointed House, that would still be the case and would be something that the Government would have to consider. In terms simply of being able to defend its provisions in the face of scrutiny in two Houses, with a second Chamber that was much more public and in which there was greater public interest and understanding, that, too, would be good for the quality of lawmaking and for the strength of Parliament and its legitimacy in the country.

Q572 Baroness Symons of Vernham Dean: Thank you very much for that introduction, which I found enormously helpful. I think that you said that everybody agrees that the House of Commons should have primacy. Everybody certainly agrees that the House of Commons has primacy at the moment, by virtue of being elected, where the House of Lords clearly is not, so that in any disagreement the House of Lords must give way to the elected House. If, as you suggest, half of Parliament acquires legitimacy and accountability through election, why should the primacy of the Commons prevail? What is the argument in logic that the primacy of the Commons should be protected? Why could we not have a system that was more like the American system, where you have a means of reconciliation? Why does one House have to prevail over the other?

Damien Welfare: I am not against a means of conciliation; indeed, our evidence is that it would be a good idea to have such a system. The basic point that I am making is that, in almost all two-Chamber systems, one Chamber has primacy over the other. In many cases, that is decided by a written constitution, but a decision is made as to which has primacy. We have come to a position where the House of Commons, over

a long period of time, is the House that provides the Executive—the Executive's legitimacy rests on its position in the House of Commons. Some people may take the view that that is not right and that there ought to be an equal balance between the two Houses, but that has not been reflected, as far as I can see, in the evidence that you have had or, as far as I am aware, within Parliament as a whole, other than perhaps conceivably in individuals here and there. The consensus is that the House of Commons should retain primacy in the way that it carries it out at the moment, with control of taxation and funding and so on. Given that that is the case, we have the opportunity now—this is really why I was giving you this dry set of proposals in the introduction—to make that decision explicit and to confirm what we already have, having set it out in terms that both Houses could agree before reform takes place. Having done that, we then proceed to decide what the relative balance between the two is and what the rules are that govern that.

Q573 Baroness Symons of Vernham Dean: I think that you have set that out more clearly than an awful lot of the witnesses that we have had, but I do not think that you are right to say that everybody accepts that the primacy continues. We have had a lot of—my colleagues will argue with the word "evidence"—opinion that, were the basis of getting people into the Lords change to elections, the primacy of the House of Commons would come into play. That has been the crux of quite a lot of the argument. Can we just examine your point a bit more? Let us accept your proposition that everyone agrees about the primacy in principle, but it seems to me—forgive me if I have got this wrong—that what you are saying is that we should revisit the

Cunningham report. Cunningham was quite clear that, if firm proposals were brought forward, the conventions would have to be revisited. In the sequencing that you gave a moment or two ago, I think that you said that you would have to do that before legislation and before the first people came into the Lords on an elected basis so that the settlement was clear from the beginning. That seemed to me, if I may say so, a rather more sensible view than the view of life that says, "Well, let's wait and see what happens". Forgive me if I have got that wrong, because I would like you to clarify the point. Are you saying the sequencing goes that we do this report, that Cunningham is revisited by us or by whomsoever, but by a Committee of both Houses, which is what I think was agreed in both the Lords and the Commons, and that at that point we move forwards to legislation once we have that settlement clear?

Damien Welfare: Not entirely. The Cunningham report has defined the conventions as they stand, although I grant that it said that the conventions should be re-examined if the House were reformed. In our view, which we set out in the evidence, there are some changes that will clarify the present position and probably ease it which would not be of themselves terribly substantial and which fall into the field of conventions. One of them would be to clarify the convention in relation to Bills of aid and supplies to remove any question of a veto on a Finance Bill or anything of that kind. Equally, you could see some sensible developments in conventions in relation to ping-pong and exchanges of amendments. The introduction of a conciliation procedure could be created by a process of this Joint Committee. The sort of changes at the level that we have been suggesting could be done, if I may say so, by this

Committee in outline or by another Committee looking fairly briefly at a package that went with this reform Bill or something like this reform Bill. It does not seem to me that it would be sensible to re-open the whole Cunningham process, which might take another couple of years, as a result of this Committee's deliberations, but that is for you to determine—that is the view that I put to you. In terms of producing a workable package that strikes a sensible balance with the Commons, you start with Cunningham and you reduce some of the powers—that is in practice what we are talking about—in order that they are a little more workable, so that there is an understood outcome. Then you set up a process of review, which could be periodic or continuous—it could be that you are going to have Cunningham again in 10 years' time. We have suggested a continuous Joint Committee, but you have some process that looks at conventions as they evolve and makes recommendations as you go along.

Baroness Symons of Vernham Dean: And that is done before you introduce the legislation to elect Members of the House of Lords.

Damien Welfare: If this Committee were to take on something like what I am suggesting, it could be encompassed in its report. It may not go that far and the feeling may be that out of this Committee could come some sort of process of agreeing a statement of the existing conventions plus some minor modifications in order to produce a workable package. That process would be, I suggest, another Joint Committee, but it would work alongside the Bill process. With all due respect—I do not want to embarrass the advisers to this Committee—it seems to me that the Clerks

of both Houses would probably be in a position to produce a statement that reflected Cunningham and the existing conventions within a time that would fit within the sort of timescales that are under discussion, although clearly there would need to be a process of agreeing it and accepting it.

Q574 Lord Trimble: I am going to stay largely on the same topic as Baroness Symons. You are quite right to say that most of the opinions that have been expressed on this subject are that the primacy of the House of Commons should be maintained, and most of the time I am of the same view myself. But increasingly I am coming around to the idea that if we have a wholly or predominantly elected House, what is the argument in principle for limiting the functions of that elected House? Even though you have quite an elegant system to get what you call the new settlement in place—I note that the process is to be gone through before reform takes place and that the new, elected and legitimate House is to have no say in it—what happens if the new elected House just decides, irrespective of what might be the end resolution, that one day it will vote down a government Bill at Second Reading?

Damien Welfare: If I may, I will answer that in a second and comment on the first part of what you said. You asked why an elected or largely elected House should be constricted in the way that I am suggesting. My reply is simply that in almost all the systems that have been looked at—and we have had the benefit of evidence in relation to a number of them—that is what happens. There are elected Chambers, but one of them has executive authority and one has a revising role within a framework.

All I am suggesting is that there is an opportunity here to strike that framework—not to guess at or worry about what might happen in the way that some witnesses have suggested, but to describe the framework.

You asked whether the new House would want a role in relation to what the rules are. If the new House has been created within that framework and consensus, those who stand for election to it would be accepting the basis on which they have signed up to the deal, if you like. That is the basis on which the job has been offered to them. That is why, were the House then to start voting down Bills, not only would it be stepping outside the conventions—and you might take the view that there would need to be legislation rather than convention behind that; there is an argument for that—but essentially it would be stepping outside the political framework within which it had been created and thereby acting illegitimately. I very much doubt that an elected body would do that, particularly a new elected body, because it had been created with a job in mind and with a frame of reference and a political role that, if it was seen to challenge, would automatically put its actions outside the framework in which it had been created. It is a secondary Chamber and it would have been created in that way.

Q575 Lord Trimble: I have just two brief supplementary questions on the second point. The body would still have the legal capacity to do that.

Damien Welfare: If that was what the framework said, but the resolutions of the House would have been that it should not do so. For the sake of argument, the Cunningham committee said that if it were a Bill that had to any significant degree

manifesto support behind it, it would not be voted down at Second Reading, it would not receive wrecking amendments and it would be passed at Third Reading. That is what the Cunningham report says. So in relation to that sort of report, the House would be stepping outside what it had itself already agreed—

Lord Trimble: But it would still have the legal power to do so.

Damien Welfare: If that is what the framework said. If you were to go into legislation saying that it should not have the power to do so, going beyond what I have said, then that would be different.

Q576 Lord Trimble: Sorry, but a resolution or an agreed framework is not law. What is the law at the moment is that the House has the power to vote down Bills. In practice it does not do so, but it has that power. If it did exercise the power, it would be doing so lawfully. There may be political and all sorts of other consequences to it, but the framework is not law.

Damien Welfare: I am not arguing that it is law, I am arguing that it is within the sense that we have conducted politics in this country up until now—that is to say that a large part of it is dependent on convention. It is open to politicians to decide that the second Chamber should continue to rely on what are, if you like, agreed conventions which have been discussed and that that process would be carried into the new House. As I say, you can go beyond that and take the view that it is not strong enough. My own view is that it would be, because you are harnessing the consensus behind reform and the consensus behind the relationship between the two Houses that could be expressed and accepted publicly.

Q577 Lord Hennessy of Nympsfield: Could I ask you some questions about what the Lord Chairman called the "policed concordat"? Is your proposed conciliation committee going to be the same body that would look like a permanent commission on the constitution, or this part of it anyway, and would look at the changing geography of conventions and how the new system is bedding in? Is it the same group of people?

Damien Welfare: I had not envisaged it as the same group of people; I envisaged it as a committee of the two Houses separate from that which would look at the conventions.

Lord Hennessy of Nympsfield: So the conciliation one would be in permanent readiness for rows—the choreography of showdowns, as it were—and the other one would come in every so often to see how the landscape had changed and try to get a feel for the tacit understandings on which we operate.

Damien Welfare: In effect, yes, and to make a recommendation to the effect, say, that an issue had thrown up something which had not been thought about. The course of a Bill might throw up something which perhaps should be looked at. It would consider what the relationship between the two Houses should have been or should be for the future in a situation of that kind.

Lord Hennessy of Nympsfield: Is there a case in your model for making it the same group of people, because they would have been living every minute with the bumping and grinding between the two Houses, which no doubt will continue?

Damien Welfare: I had not considered that but the reason why I had not—and I do not say that there is not a case for it—is simply that you would envisage the conciliation committee perhaps being, for the sake of argument, the Leaders of the Houses or their representatives, the relevant Front Benchers who were involved in an issue, and perhaps someone else from one of the smaller parties who had been particularly involved in the Bill. It would be a group that was involved in a particular measure and might well be comprised of those who had to thrash out the compromise.

Lord Hennessy of Nympsfield: I see, so your conciliation committee would be a kind of gilded usual channel.

Damien Welfare: You may choose to characterise it in that way. I know that before Christmas you had evidence from the Australian Senators in which they described the process whereby a committee gets together and comes up with an answer. Doing it the way I have suggested is only one model. You could have a standing group of conciliators, it is true, but whether they would be the best people to map the constitution, I am not sure. However, I am not against the idea.

Q578 Lord Hennessy of Nympsfield: I have just a final quick supplementary question. In the movement that likes reforms in the other place, which in my personal view is terrific, there is a movement not to let the great offices of state and the usual channels dominate any more. Would it not be cutting against the new grain to have the conciliation committee as a gilded usual channel?

Damien Welfare: What one is looking for here is something that is going to be an acceptable outcome from the point of view of the Government, the House of Commons, the House of Lords and all the interests involved. It seems to me that the Government ought to have some sort of voice if their legislation is the matter of issue, and that the Opposition should have some sort of voice, assuming that it is principally they who have been opposing it. However, it may be some other group. But the group that has been involved ought to have some voice on the committee, even if it is more a voice of me speaking to you and the conciliators who decide separately. I would suggest that there needs to be a process that includes those who have been involved in the legislation.

The Chairman: Lord Trefgarne?

Lord Trefgarne: My point has been made, Lord Chairman.

Q579 Dr Poulter: I want to pick up on a couple of the points that you have made. You pointed out the issue of primacy and that people standing in elections accept implicitly the role that different elections to a House implies. You also made the point that since the 1970s and 1980s the House of Lords has evolved in its wish to flex its muscles, if you like, and obviously there was a change with the last reforms made by the previous Government. In terms of making sure that primacy is maintained, the potential is that over a period of years a House that is largely or fully elected might begin to flex its muscles more. Would it be useful in maintaining primacy to have a House that was 80% elected and 20% appointed, or 100% elected? Would it make any difference?

Damien Welfare: I need to distinguish my own view from that perhaps held by the majority of the supporters of our campaign, who I suspect would probably come down in favour of 100% rather than 80%. My own view is and always has been that, although I can see 100% working, the 80% split would work better for a number of reasons including the ones which the Government have put forward and others have put forward in the past. The independent element obviously affects the arithmetic and nature of the second Chamber, and brings into play a different strand of argument in terms of expertise. At the same time I am critical of expertise relied on in extenso for the House as a whole. For those reasons, I think that an 80% elected House would be less likely to develop the aggressive tendencies that some fear, and that would be a good thing. I am grateful for the way you put it; I think that if a House or a legislative body is constituted, people are invited to seek election to it with a particular role and status in mind. However, it is expecting a lot of their political acumen to step outside that status and make a success of trying to challenge it right from the start. It seems to me that the public reaction to that would be adverse in the extreme.

Q580 Laura Sandys: Obviously you are developing quite an elaborate process in order to resolve the problems that might arise in the future. We have found in a few of our discussions that, first, it is difficult for us to predict what those problems will be before they arise and, secondly, that conventions in the past have evolved through a conflict or crisis that needed to be resolved, and in a strange way that is what has kept the relationship quite dynamic and interesting and, indeed, constantly evolving.

Do you feel that the Parliament Acts and the more recent Fixed-term Parliaments Act offer the framework into which at a later stage conversation, debate and conventions can evolve when we see how the relationship between a 15-year-term elected Chamber works with a five-year mandate that is much quicker and more responsive?

Damien Welfare: If I have understood you correctly, implicit in our evidence is that the Parliament Acts would continue and, as the Government have put it, would form the underpinning at least of the legislative powers of the second Chamber in relation to primary legislation. That is an important building block or foundation for the discussion that I have tried to suggest might take place in some sort of Joint Committee, but that is only one structure through which it could happen. I also accept that, at least in part, conventions have evolved in relation to events and crises, and that is the idea of the permanent review, but setting the rules first so that you know what you are starting with. That might be thought to be an argument for keeping at least some convention in play rather than going all the way towards a complete set of Parliament Acts that govern the entire relationship. I could also see, either because it was thought necessary at the start because of the concerns, for example, that Lord Trimble has pointed to, or because that is how things evolve over a shortish period of time, that people want to get to the stage where it is specified in legislation. It is often said that we have an unwritten constitution, but quite a lot of our constitution is written down, for example, in the Parliament Acts.

Q581 Laura Sandys: What I am asking is whether the existing Parliament Acts represent enough security to establish primacy, or whether by going through yet another iteration, one is merely pre-empting a relationship that has yet to be cast.

Damien Welfare: There is a danger or there could be a criticism of trying to make provision for what may happen in the future before it has happened. At the same time, in setting out a set of rules and establishing a framework, you are conditioning what is going to happen. Are the Parliament Acts in themselves sufficient to deal with the range of things that might occur? No, they are not. That is why our evidence suggests a wider range of changes, perhaps simplifying the period of delay for Bills and, in particular, creating a power of delay rather than a veto for statutory instruments. That would make it less threatening and more usable, and less troublesome to a Government were it used. However, it would enable the second Chamber to express its view. Those sorts of limited changes could find their way into the Parliament Acts because they do not have to be done by convention. In putting forward something heavily weighted to a convention, I suppose I was concerned to try to offer something that respected the boundaries of parliamentary privilege if there were concerns over the role that the courts might otherwise be drawn into.

Q582 Mr Clarke: Lord Chairman, before I put my question, I wonder whether Mr Welfare would mind explaining to me—it may be my fault that I do not know—a bit more about his organisation. Is it a UK organisation? How did it come to be formed? What is its raison d'être?

Damien Welfare: Shall I say something first and then perhaps my friend would like to say something too? I am sorry—I thought that this had been made known to you. We are entirely within the Labour Party. We are quite a small group. We are a loose group of parliamentarians and party members who, since 2000 when we were formed, have pressed for a second Chamber that is wholly or partly elected. Therefore, quite a lot of our activities have been within the Labour Party but we were quite active in lobbying Parliament for the 2003 and 2007 votes. We made a submission in response to the White Paper in 2008 and we have made other submissions at other times. We have also had quite extensive discussions with constituency Labour parties—ordinary members, if you like—and Mr Zeichner has been closely involved in that. We also have a larger number of people who have signed up to a website at various stages expressing general support for the principle that we have put forward.

Mr Clarke: I am very grateful. Is your colleague coming in?

Daniel Zeichner: No. I am very happy for Damien to continue. He is very learned.

Q583 Mr Clarke: My question is quite simple. Can you think of any international comparisons for the model that you are promoting this afternoon?

Damien Welfare: It is difficult, isn't it, because there are very few other systems that rely as much as ours does at the moment on convention. In that sense, I think that it would be difficult to say that that were the case. It seemed to me that in what you heard about the Australian model there are some quite close similarities, albeit that that is set out more clearly in the constitutional arrangements. All that I have been

trying to do is, if you like, to suggest some gaps and fill in some of the powers and questions that might arise which did not necessarily rely on constitutional or legislative arrangements and which could be done by agreement between the two Houses. I think that Australia is the closest model, but I think that I would leave it at that, Mr Clarke.

Q584 Lord Rooker: I agree with Lady Symons that you have been far, far clearer than most of the witnesses that we have had, but there is one area where you are not clear in the paper and where you have not been as clear today as I think you ought to be. Are you in favour of codifying the conventions or legislating the conventions? You refer to both in your paper as if they are interchangeable and that has come out today.

Damien Welfare: I am sorry that that is not clear. It is rather like the word "supremacy", which I was going to come back to. What do we mean by it? Do we mean the ability of the House of Commons to flatten the House of Lords or do we mean something where there is a reasonable balance? It seems to me that codification can mean different things, if I may say so. If, Lord Rooker, you are asking whether I am in favour of setting out in legislative form the relative balance between the two Houses and the various powers and so on, I am not against that at all. In some ways, I think that a written constitution would be a good thing, but that is not the issue that is being raised or the position that we are in at the moment. I have tried to come forward with something that can be agreed between the two Houses, as I say, and therefore is largely a matter of convention. It could codify that to the

extent that it would write it down in one place. I have suggested an agreement between the two Houses that would set out their understanding of the relative balance between them and their powers. If that is codification, then yes, but I do not think that it is, as it is understood, because it would be for the Houses to determine how that then develops and not for anyone else to judge. In the sense of legislation, no, but in the sense of a coherent statement of the balance that could be agreed, yes.

Q585 Lord Rooker: Let me put it in the way that Lord Trimble did. Anything short of legislation is unenforceable. It does not mean to say that the following Parliament could keep to the same rules. If we legislate and get precision legislation, would you be in favour of the use of the Parliament Acts to do the legislation on the conventions?

Damien Welfare: I am not sure that I understood completely, but if this were all put into legislation—

Lord Rooker: If the conventions were put into legislation, would you be in favour of the Parliament Acts being used? That would effectively give massive security for the Government, because you only need a majority in the Commons. That is the point that I want to ask you about. Which way do we go, because that is the consequence?

Damien Welfare: Do you mean using the Parliament Acts to put through the package or do you mean give the Parliament Acts—

Lord Rooker: No. Go back to the Cunningham report. There is a set of conventions there and we all know what they are because we operate them. To get precision, you can write them down and, in getting the agreement of the two Houses, you do it

short of legislation. I am talking about getting precision and legislating for them in an Act of Parliament, if that was the process—and this avenue could be gone down—but where there could not be agreement between the two Houses on the setting in legislation of the conventions, would you be in favour of using the Parliament Acts to put the conventions on to the statute book in the first place?

Damien Welfare: In as much as they would at that point stop being conventions and become legislative rules, if it was thought at the time by the House of Commons in particular that there was consensus behind them, which I believe there would be—first to have reform and secondly to have a structure of that kind that gave a reasonable crack of the whip to the second Chamber but left the House of Commons with the final say—then, yes, I would not object to that if that is what it had to come to. But I do not myself believe that it has to come to that point, in as much as one can predict these things. I suppose that in part what I am trying to put forward is a way of trying to find an alternative path to that outcome based on agreement but within an acceptance that there is a considerable measure towards reform.

If you will allow me one more sentence, I think that it has been said that, because the three parties all said the same thing, more or less, in the last manifesto round at the last election, there is not a mandate for reform to proceed because it has not been tested. It seems to me, with respect, that that is not the position. What has happened is that the parties have moved towards public opinion over time to the point at which they consider that they are reflecting it. That is why they do so. It would seem to me

wrong to hold back at that point and to say that there is not a mandate when the parties are reflecting what they believe public opinion to be.

Q586 Oliver Heald: The proposals document says that there would be no constituency work for the elected Senators. There is considerable concern in the Commons about Senators meddling within constituencies of Members of Parliament. We spoke to the Senate in Australia, where each Senator has a number of Representatives' seats allocated to him or her, usually from another party, so that they are actively meddling with political purposes in the constituencies of the Representatives. In this set of proposals, there is this statement that there would be no constituency work, but how would you stop it? I notice that in your document you talk about three things. You talk about having a clear statement of the roles and functions of the two Houses and you talk about having a job description for Members of the new second Chamber. You also say that they should not have any money to do constituency work. How is this to be enforced—the job description and the statement that you are proposing—or is it unenforceable?

Damien Welfare: The statement that I am proposing is the one that I am suggesting should be agreed between the two Houses through resolutions, so in that sense it would be a matter of agreement and it would be something that both Houses had signed up to. How would you enforce there being no constituency work? I do not think that you can. I think that most of the other witnesses have said to you in some form or another—and I think that this is right—that you cannot stop people doing it. Peers already have people writing to them about particular concerns, usually, I

suspect, on policy issues rather than on matters to do with their drains and housing, if I can put it that way. I do not think that you can prevent that from happening, but I think that the constituencies would be so large that the likelihood of its being a practical proposition from the point of view of somebody who was trying to get their local problem sorted out is small.

Q587 Oliver Heald: On that point, that is what happens in Australia. The Senators are for a whole state, but the parties allocate part of the state that is not in their party's hands to the Senator and he goes there, waves the flag for his party, does constituency work and encourages support for his party in the House of Representatives by being a particularly active Senator in only part of the state. How would you stop that happening in a region?

Damien Welfare: I read the evidence. I took it to mean that the activity was more, as you say, political flag waving than necessarily taking up every single case—it might be a matter of resources as to whether they could do that. I have described what I call a job description rather loosely, but it is part of the idea of defining the roles and the purposes of the second Chamber. If there is nothing in it about constituency work or if it is made clear that this is a further route through which someone can go but it is expected that they will go to their MP first, who after all has direct access to senior Ministers in the Commons and so on, it seems to me that you create a culture in which the public expectation is not that that is what they are there to do. Then it seems to me that you need to engage with the parties, if this is what you want to do, to say, "Look, we need not to follow that particular example." I dare say that in

practice some of it would follow, but the concerns about MPs having a Senator from the same party or background trying to do their work for them is rather different from an MP saying, "Look, you may have gone to Senator X but I am representing you as MP Y from a different party. You may read into the fact that he is interested in your problem as well as meaning something more than that he is simply taking up your constituency concern."

The Chairman: I have three potential questioners. We are three minutes over time, so a minute each, please, for the three.

Q588 Baroness Andrews: You have followed the evidence very closely. What is your verdict on Clause 2?

Damien Welfare: Clause 2 as it stands is a statement of an aspiration. It is an understandable aspiration. The Government have, as I said, put in place certain structural features for the long term which are designed to try to produce that outcome. My own view, and this has been expressed many times in the Committee in different ways, is that more has to be done to answer the questions that Clause 2 raises. I have sought to do that in the evidence that we have put forward. We have not come on to what those changes might be, but they are in the evidence and are to do with the various powers that could do with moderate amendment.

Baroness Andrews: Many of our witnesses who are in favour of reform have used language such as, "Clause 2 is an absurd proposition." Whatever you have come up with, ultimately the clause is about constraining the powers of the new House of

Lords. Why do you say, therefore, in paragraph 13, "This would strengthen both Houses of Parliament"?

Damien Welfare: There is a question as to the powers relative to the House of Commons and there is a separate question of whether a Parliament that has the legitimacy of democracy behind both halves of it is in a position to stand to express popular will and to stand in relation to Government in a stronger position than the House of Lords with the House of Commons does at the moment. There is not a zero-sum game between the Commons and the Lords in the sense that, yes, it is necessary to deal with the concerns and fears over Commons supremacy and, yes, it is necessary to deal with any perception that something is being created here that is intended as a rival to the Commons, because it is not, but, once you have dealt with that in the ways that you might choose to do—we have suggested a number—you then have a position where Parliament as a whole has the legitimacy of democracy, which until now it has not had and which exists in every other two-Chamber system, bar one or two.

Baroness Andrews: Just finally—

The Chairman: The Bishop of Leicester now.

Bishop of Leicester: To save the Committee's time, I will pass this time.

The Chairman: In that case, Kay Andrews may ask her question sharpish.

Q589 Baroness Andrews: I was just simply going to say that in paragraphs 13 to 17 you give your account of the present lack of legitimacy of the House of Lords. I am very interested to know the sort of research that you have done that allows you to

say that the House of Lords in its current form and with its current expertise does not have that much impact, given that the sort of changes that it has effected, particularly in the pre-coalition House of Lords, have been perfectly evident to those of us who have been Ministers over the past decade.

Damien Welfare: Let me answer that very briefly. I am not suggesting that the House of Lords has not made changes, particularly in relation to the Labour Government, to which you are referring, Lady Andrews.

Baroness Andrews: I am referring to many aspects of government, not just local government.

Damien Welfare: No, I said the Labour Government.

The Chairman: Labour Government, not local government.

Damien Welfare: Undoubtedly, the House of Lords in its semi-reformed state from 1999 has been more active and has wrought more changes. I worked with the House of Lords in the 1980s and 1990s, pre-reform, when it was also possible to ring changes, but they were more difficult, because of the numbers and the structure. None the less, my submission to you is, with all due respect, that where those changes have come about—you have of course been experiencing them week by week—they have not come about because this is a House of expertise. That has not been the argument that has carried the day. It has been either a function of numbers or a function of numbers added with some other factor, such as time or some building political pressure behind an issue, such as the practicalities of trying to get something through. That does not amount to a second Chamber that has the

legitimacy and confidence to express its point of view on a day-by-day or week-by-week basis so that the Government responds to it in a democratic forum, or a second Chamber that occasionally carries its view because it comes with a democratic legitimacy behind it in what it is saying.

Q590 Lord Norton of Louth: I want to come back to the point on conventions and your definition of them. As I understand what you have been telling us, you want to see an agreement on a statement as to the relationships which would precede the creation of the new Chamber and which somehow would carry on to the new Chamber. Surely the key point is that Members of the new House would have to be party to the convention in order for it to be a convention, otherwise it is not. I am not quite sure, given the stress in your paper on electoral legitimacy, although you call it democratic legitimacy, how Members coming in and claiming that electoral legitimacy would necessarily feel bound by something that had been agreed by others before they had taken up their position.

Damien Welfare: No doubt if it were agreed, the political parties would be behind it and that therefore would influence what they would expect of their candidates and representatives. The candidates and the representatives would have stood for a Chamber—in an election that, by the sound of it, would have been conducted at the same time as a general election—that was expressly secondary. Statements would have been made on many sides, including no doubt by themselves under questioning, to the effect that they understood the role—they would be accepting the role for which they had been put forward. You have heard evidence that,

particularly if the elections were conducted on the same day, differential voting can be expected in that situation. I was not so keen on that, but I have come round to accepting that view. If the voters have expressed a different vote for the second Chamber from their vote for the first Chamber, that is because they expect different things of it. All those things are political expectations of the new Members that will condition what they will be able to do.

Lord Norton of Louth: But if they are elected in that way differently from the first Chamber in the way that you have just said, they would feel that they had the confidence to challenge it. I do not think that electors are going to be too concerned with conventions.

Damien Welfare: No, because the Members' role is to revise legislation, to scrutinise and so on. Their role is not to challenge the first Chamber and not so to exercise their powers that government becomes more difficult than is warranted in the way in which business is conducted, because processes and rules have been put in place to counteract that.

Lord Norton of Louth: But they are not rules.

Damien Welfare: If they are rules accepted between the Houses, then they are rules as far as the Houses are concerned.

Lord Chairman, I am terribly conscious that I have talked my friend out.

The Chairman: I fear that you have. I am sorry, Mr Zeichner, that we have not had a chance to hear from you.

Daniel Zeichner: Don't worry.

The Chairman: Thank you both for coming. The session has been very useful. It explored various routes that we had not fully explored before and I am grateful to you for coming. Thank you very much indeed.

Examination of Witnesses

Lord Cormack and **Rt Hon Paul Murphy MP**

Q591 The Chairman: Thank you very much for coming, Lord Cormack. You know what we are about. If you would like to make a brief opening statement, we would be delighted, otherwise we can launch straight into questions.

Lord Cormack: Thank you, Lord Chairman. On behalf of Mr Murphy and myself, I thank the Committee for inviting us. We would like to make a very brief opening statement and then to take any questions that you and your colleagues might have.

The Chairman: Before you do so, perhaps I may call on Lord Norton.

Lord Norton of Louth: I declare an interest as a co-chair of the Campaign for an Effective Second Chamber.

Lord Cormack: I am very glad that he has done that because I was just about to explain to the Committee that the Campaign for an Effective Second Chamber was founded by Lord Norton and me some 10 years ago. It consists of around 200 Members of both Houses drawn from all political parties and with a sizeable contingent from the Cross Benches in the House of Lords and with Bishop affiliates. We believe that we are a fairly representative group. We stand for the reform but not for the abolition of the House of Lords or for its replacement by something different. We are committed to the primacy of the Commons and to its unambiguous democratic mandate. We recognise that serious issues need to be addressed by those troubled by the dominant power of the Executive. We acknowledge that there is a

strong case for a thorough review of the distribution of power in a bicameral system—which House does what and how, and how it should be composed—and for an examination of the separation of powers. However, this draft Bill does not address these issues at all. It tampers with the delicate mechanism of our unwritten constitution in potentially disastrous ways and creates an agenda for confusion.

I should like to make two specific points, if I may. If we have a 100% elected second Chamber, Senate or whatever it is called, there will not be many independents in it. It will be elected mainly on party-political lines and the Cross-Bench element will virtually disappear. If, on the other hand, we have an 80% elected Chamber with 20% appointed, we would create a situation where the will of the elected could be frustrated by the non-elected. Last week we had a series of votes in the House of Lords which were effectively carried by the Cross-Bench votes. Had this been an elected House, there would have been the makings of some sort of constitutional crisis in that. I believe that, because of the conventions which were referred to in the previous session, we have a situation in the House of Lords where there is a recognition of the supremacy of the House of Commons.

The other point that I should like to make at this stage is that in a Bill which seeks to claim democracy as its hallmark, why is there no provision for the people to pronounce in a referendum? We are going to have a referendum in virtually every town and city in the country where there is a suggestion of an elected mayor. We are going to have a referendum if any changes are made to the European treaties. Last year we had one on AV, yet there is no provision for a referendum here.

I shall leave my opening comments at that. I know that Mr Murphy, who is a very distinguished Member of the House of Commons, has one or two points that he would like to make.

Paul Murphy: I do not want to repeat what Lord Cormack has said, but I shall raise two things for discussion. The first is that I have always been opposed to an elected House of Lords on the basis that it would be a rival to the House of which I have been a Member for a quarter of a century. I have not changed my views after what I have read of the Government's proposals. Ultimately, democratic legitimacy must lie with the lower House and the proposals set out here will threaten that.

The second point, which is more specific and was touched on in the previous evidence session, is the relationship between those who are elected to the Senate and those who are elected as Members of Parliament in the United Kingdom. I know from my experiences on two occasions as Secretary of State for Wales and as a Welsh Member of Parliament about the relationship between Assembly Members and Members of Parliament, particularly with those Members of the Assembly who have been elected by a different system. In Scotland and Wales, although I will confine my remarks to Wales, Members of the national Assemblies are elected either like we are in the House of Commons under the first past the post system or by a top-up PR system. I think that that has not worked. Having two categories of Member in the Assemblies means that they can claim different legitimacies. On the relationship between Senators and MPs, I point to the constituency aspect. From what we heard earlier, I know that the idea is that Senators will not have constituency matters to deal

with and will not do the same sort of thing as Members of Parliament. Pigs will fly, because the reality is that, when they are elected, Senators will be overwhelmingly party political. They would have been selected by their parties and, as a consequence, they will be representing the people. Moreover, as far as they are concerned, they would have been returned by a different method of election which they might well regard as more legitimate. I just cannot see a situation where there are high-flying Senators without any constituency work and whose job is simply to revise legislation. That is not going to happen; they will be party politicians the same as we are. I rather suspect that that is not the idea behind this reform of the House of Lords, but it simply will not work.

The final point I want to make by way of introduction is that we are not short of democratically elected people in this country. In my own constituency I can vote for my community councillor, my borough councillor, my Assembly Member under first past the post and my Assembly Member elected under the PR system. I can vote for myself, possibly for a Senator and for the Member of the European Parliament. I cannot be persuaded that we are not democratically represented in my part of the world.

Q592 The Chairman: Thank you. I should like to ask a fairly basic question. Do you think that an increasingly assertive House of Lords is a good thing or a bad thing? I wonder whether you agree with the proposition that at least part of the argument that you are putting forward, as I understand it, is that if it is elected it will become more assertive rather than less so.

Lord Cormack: That has been made quite plain in what the Leader of the House has said on the Floor of the House in answer to Questions: an elected House would indeed become more assertive. While I think it is right that our present House should use its powers to advise, to caution and to send things back and say "Think again", I believe that, in the end, in all but supreme constitutional matters, which are of course excluded from the Parliament Act, it should not have the power to override the House of Commons. If you had an elected Second Chamber, it would flex its muscles in a very real way and you would have the seeds for all manner of constitutional problems. Although the previous witness talked about codifying conventions and having laws, the fact is that no Parliament can bind its successor. Indeed, as a number of the questioners pointed out, this would be an agreement concocted between the present two Houses and it could not be binding on a Chamber that has not yet been elected.

Q593 The Chairman: That may be, but I am asking a question about assertiveness. As I understand it, you are saying that, if it is unelected, it is good if it is assertive but, if it is elected, it is dangerous if it becomes assertive. I do not understand the distinction because it seems to me that, if you have a more assertive House of Lords, you will then have a more restive House of Commons. The chances are that that would make it more difficult for the Government and in a sense that would be good for Parliament, not bad for it.

Lord Cormack: There are more forms of assertion than this world dreams of. The fact is that you can have assertion which ultimately leads to a constitutional stalemate

because the House continues to send things back. You can have the sort of assertion that we are used to in the present House where the Members say "Think again" and perhaps "Think a second time" and maybe even a third time. But at the end of the day, the will of the elected House on matters such as welfare reform and health does prevail.

Paul Murphy: I suppose what would influence me as a Member of Parliament in the lower House in terms of changing my mind, if I am going to take part in a debate and vote as a result of amendments coming from the House of Lords or a Senate, I rather suspect that amendments sent back to the House of Commons which have been agreed by the sort of people who are currently in the House of Lords will have more weight on my decision-making than if they are sent back by a mirror image of the House of Commons simply because it happens to be elected.

Q594 Baroness Shephard of Northwold: I should like to refer to a point made by Mr Murphy. He said that an elected House would be a rival to the House of Commons. Our last witnesses and indeed other witnesses have asserted that there would be no rivalry between the two Houses on the basis of the proposals in the Bill. That is because if people were elected to the House of Lords, they would serve for 15 years and would have been elected under a different electoral system. I shall quote the last witness; he said that the public would come to understand that elected Senators basically can do nothing for them. I do not want to misinterpret the last witness and I am possibly out of order, but given that both Lord Cormack and Mr Murphy have been elected, as have a lot of people in the House of Lords, I would like

to hear Mr Murphy's comments on the proposition that the Bill should suggest that there are two sorts of elected Members but that they would deal with the same issues. Therefore the European Parliament analogy, which is often made, does not apply. Does Mr Murphy or Lord Cormack think that the public would come to understand that it was worth voting for someone who said that he could not do anything for you?

Paul Murphy: Not at all. However, first I shall deal with the 15-year term. If it ended now, it would have taken us back to 1996 or 1995. Huge political changes have taken place over that period, and it would mean that people in the Senate, not necessarily from the same party but from totally different parties, at the end of the day would be party people. The general public—if they think about these things at all, and I have to say that in 25 years in the House of Commons I have not had one letter or e-mail about the House of Lords; no doubt others have, but I have not—will want to go back to the fundamental reasons of why there is a second Chamber. I taught government and politics for a long time before I came into the House of Commons. I said that the second Chamber was deliberative, constitutional and a revising body—in those days it was judicial as well. Those functions are best performed by people with wisdom and experience, and who in my view are not elected, but nevertheless could have an influence on an elected Chamber by virtue of who they are. I rather suspect that people outside would actually welcome the idea that there is a careful, close and in some senses—not always, but then it should not always be—non-political look at legislation. But if a House of Lords or a Senate was overwhelmingly elected, it is

almost inevitable that it would look at issues from a party-political point of view. What is the point of having 300 extra politicians doing the same thing as the 600 in the House of Commons? I think that most people would agree with that.

Lord Cormack: The argument is absolutely right. You would have people who had been elected for 15 years who were not eligible to stand again. Where does the accountability go and how could they answer to their constituents? What mischief could they make in the individual Member of Parliament's patch if they chose to do so? Just think of the changes that have taken place if a group of Senators had been elected in 1992. There was a change of government and of ethos. This really is an extremely rash proposal, and one that should not see the light of parliamentary day.

Q595 Baroness Young of Hornsey: You argue in your written submission that democracy is not only manifested through elections and I think that that is right. My first question is this. Can you clarify whether the issue of legitimacy is better achieved through appointment or election? My second question is this. In the House as it is currently constituted, and as far as I can see in some of the suggestions that have been made for reform, do you agree that there is a strong bias in favour of older people in the House? That comes out through people having to be at the top of their profession and to be seen as eminent and as having achieved a certain amount. Do you think that is desirable and, if you do not, do you have any remedies for achieving a better age balance in the Chamber?

Lord Cormack: To answer your first question, we have an entirely legitimate system. In this country we have a constitutional monarchy where the head of state is not

elected and we have an independent judiciary where the judges are not elected—we refer to both of these points in our paper. We have a House of Commons which has what I have called the unambiguous democratic mandate and we have an assembly of those who, for all manner of reasons—their various degrees of expertise and experience and from a whole range of walks of life—represent many interests that are not always represented in the House of Commons. I think that we have a better ethnic mix in the upper House. Although what you say about the older Members has a degree of truth in it, you yourself, Baroness Young, are an example of the younger Members.

Baroness Young of Hornsey: It is a little bit sad if I am seen as an example of the younger Members, but thank you for the compliment. I am a pensioner.

Lord Cormack: As we all know, we have people in the House of Lords who are there for all manner of reasons and they are not all in their dotage. It is entirely proper to look at how one appoints people to the House of Lords. The Campaign for an Effective Second Chamber has always said that and has always stood for reform. It recognises that we have to face up to issues such as whether there should be a retirement age and what it should be. It recognises that we have to look at all these issues because if we are going to maintain, as I hope we will, an appointed second Chamber and continue to call it the House of Lords, it is important that there should be an even better recognition of the various elements in our society than there is at the moment. I believe that it is not too bad at the moment, but of course it is capable of considerable improvement.

Q596 Dr Poulter: I want to pick up on the point that you made about the politicising of potential Lords or Senators in the regions. That seems to be a very difficult argument to make since the regions involved would be extremely large and there would be very few representatives. Baroness Shephard said that this could not be equated to the role of MEPs, but as Members of Parliament we rarely see any activity on the part of our European representatives at the constituency level because they have such big regions to represent. I fail to see the logic in the proposal that Senators are in any way going to take on a constituency role, because they would have to represent massive regions, often comprising 50 or 60 constituencies.

Lord Cormack: Perhaps I could try to answer that question. First, the remit of a European Member is wholly different from the remit of a Member of Parliament. Secondly, a Senator would be a Member of the United Kingdom Parliament and would be dealing with precisely the same legislation and precisely the same things as the Member of Parliament. You have been a Member of Parliament for not too long, Dr Poulter, and I hope that you will be here for many years. I was in the other place for 40 years and Mr Murphy has been there for 25 years, and we know that it is impossible to please every constituent or deal with every issue to the satisfaction of constituents all the time. There would be an inevitable tendency to turn to the Senator and there would be an inevitable temptation, so far as the Senator was concerned, to get involved and put his or her name on the issue. I am sure that Mr Murphy would be happy to amplify that.

Paul Murphy: The Senators are going to be elected on a party-political platform. As soon as you have an elected body of any sort, whether it is the Welsh Assembly, the House of Commons or an elected Senate here in Parliament, the candidates will be selected by the political parties and they will be elected on a party platform. Presumably they will then work, as the Assembly Members in Wales work with us as Members of Parliament, in a party-political way. I am not saying that that is bad because I belong to a political party; I am simply saying that the difference in an elected Senate would be that the platform on which they would stand would be virtually identical to that of Members of the House of Commons.

Q597 Dr Poulter: I should like to make two points on that because there are clear distinctions. First, I think that you are slightly at odds with each other. At the moment, many Members of Parliament do not have an effective working relationship with MEPs because they represent such large regions. If Senators are going to represent the same regions, why would it be the case that we would have a working relationship with them? The second point is that it is a difficult case to argue. If you define clearly what someone is standing for the Lords for as opposed to what a Member of Parliament is standing for, it is clear that the more scrutiny-based role of a Member of the House of Lords would mean that they would not have a constituency-based role in the same way as a Member of Parliament. That would be accepted when they stood for election.

Lord Cormack: Well, Dr Poulter, you and the Senator for, say, Suffolk would be occupying the same building. You would be dealing with the same pieces of

legislation. You would be representing to a degree the same people. He may represent all the people of Suffolk and you would represent just one constituency in that county. But it is inevitable that there would be a degree of tension between you. I am absolutely certain that that would happen. In the early days, before they moved on to the list system, MEPs had constituencies. I happened to be a Member of Parliament in Staffordshire and the MEP represented most of Staffordshire and Shropshire. Although we were dealing with different Parliaments and different issues, there were clashes, some of which were well documented. But I believe that that would be as nothing to what would happen if we had two elected bodies in this building.

Q598 Dr Poulter: Is there not a clear distinction in that in those days Members of the European Parliament represented perhaps only eight constituencies, but here we will have regions of constituencies where a Senator from one party would potentially have to represent 60 constituencies. Unlike a Member of Parliament, that would be an impossible job to do on a constituency basis. We are talking about someone representing many millions of people.

Lord Cormack: Until you have finished with this Bill, we do not know precisely what their responsibilities would be. However, what we do know is that there are parts of the country now where the MEPs divide the territory up between them. I had one MEP who saw himself as looking after the interests of South Staffordshire when I was the Member of Parliament there. We had one very big clash over whether an airport should be built. I did not want it and he did. Just imagine how that could be writ large

if, as I say, both of the elected people are in this building and both are claiming a mandate—and perhaps, as Mr Murphy has said, with the Senators claiming a more legitimate PR mandate. Mr Farron, the President of the Liberal Democrats at the time of the AV vote, made a public statement to the effect that he was desperately sad that it had gone down the spout. Of course he was, and it could well be that the most legitimate body—I quote him more or less verbatim—would be an elected second Chamber. Given where he was coming from, it was an entirely legitimate comment, but it makes one think.

Paul Murphy: I think that in some ways there would be a certain remoteness about a Senator. I shall take my own country of Wales where we would be likely to have 10 or a dozen Senators. I do not know how they would be regionally distributed, but what is absolutely clear is that the political parties in Wales, whichever one it might be, would ensure that the Members of Parliament and Senators were elected on the same basis. They would be the same sort of people and would be selected from the same sort of selectorate. There is nothing wrong with any of that, but it is not necessarily what a second Chamber is all about. In my view, that is the difference.

Q599 Baroness Symons of Vernham Dean: Lord Cormack, you said in your introductory remarks that you were committed to the primacy of the Commons. This is the fundamental issue that we are struggling with. Were there to be an elected second Chamber, can you think of any way that you would regard as legitimate of safeguarding the primacy of the House of Commons?

Lord Cormack: No. I cannot think of any way you can guarantee that. The campaign to which I have referred, and which has now been meeting for 10 years, has often wrestled with this very issue. We do not believe that it is possible to ring-fence the primacy of the House of Commons if you have an elected second Chamber.

Q600 Lord Trefgarne: Would you not agree that primacy is a moveable feast? For example, even today there is equal primacy over secondary legislation, in that the House of Lords can reject statutory instruments in the same way as the House of Commons. If the House of Lords in its new senatorial guise became largely or wholly elected, it would certainly seek, and no doubt progressively achieve, more primacy or less subservience.

Lord Cormack: I am sure that it would. Indeed, you make my case for me when you talk about secondary legislation, on which at the moment the House of Lords generally practises a self-denying ordinance—although there was a case three years ago, before I entered the House, when a measure on casinos was rejected by the House of Lords. A few weeks ago there was a suggestion that a Motion moved by Baroness O'Cathain might result in a similar defeat, but she did not press her Motion to a vote because it was clear that the general opinion of the House was that she should not do so. However, if you had an elected second Chamber with the same powers as the present second Chamber, there would be a very real temptation on the part of elected Senators to fight such legislation, particularly if they felt that an issue was not going to play well in their own territories—be those counties or regions or whatever. You would have an adjustment of the relationship between the Houses. As

I said in my opening statement, there is a case for looking at all these things in the round, but you should first decide what each Chamber is going to do. You have to get form and function in the right order, as we point out in our paper. That is not the case with this Bill, which takes certain things for granted. Baroness Andrews asked about Clause 2, which states the matter as if it would be absolutely fine and dandy. However, I honestly do not think that it would be. Another point is that one of the Bill's more bizarre proposals is that the ministerial Members, whom the Prime Minister of the day would have the opportunity to appoint to the House of Lords or Senate, would be in the second Chamber for just as long as they were in office. You put them in and, when he sacks them or they resign, out they will go. There is no quantifying of how many of those people there will be. It really is not very well thought out. Even if one wants, as some do, to have an elected second Chamber—and I respect that view—this Bill is not the vehicle for achieving an efficient one.

Lord Trefgarne: If you have an elected, or largely elected, second Chamber, will it not consider itself more legitimate and exercise its existing powers to the limit and soon be campaigning for more?

Lord Cormack: Indeed.

Q601 Gavin Barwell: I thank Lord Cormack for putting the case against reform in perhaps its purest form. For me, regarding the suggestion that the current House is entirely legitimate and that party leaders should be able to put those who fund their political parties into Parliament or bump an MP up into the House of Lords so that they can put one of their apparatchiks into that constituency, personally I do not

consider that entirely legitimate. However, I am grateful for the note that you submitted to the Committee, which challenges the underlying thinking behind the Government's proposals.

I would like to pick up on point 3 in your note, where you say that one of the premises on which the Bill is based is that "That those who make the law should be elected". You then draw the perfectly reasonable distinction between a Member of the House of Commons, which ultimately makes the law, and Members of the second Chamber. However, you sort of suggest that Members of the second Chamber are really only equivalent to civil servants and parliamentary draftsmen. Obviously, those people draft legislation at the instruction of Ministers, whereas there is a big difference, I hope you would agree, between a Member of the second Chamber and a parliamentary draftsman—

Lord Cormack: Yes, but I think—

Gavin Barwell: Let me just very quickly finish the question. It seems to me that one of the principles of democracy is that people should have an equal say on the laws of the land, and that is why we are against things like rotten boroughs. Would you not agree that someone who is appointed to the second Chamber has a much bigger say in the laws of this country than the average constituent who voted for me?

Lord Cormack: Of course Members of the second Chamber have more say than the average constituent—that is self-evident—but that paragraph does not seek to equate them with civil servants, advisers and lobby groups or anything else. All that it says is that there are many people who take part in the lawmaking process and the

House of Lords of itself does not have the power to initiate and enact law. Again, that is self-evident. With great respect, I do not think there is anything misleading in that paragraph.

Regarding your other comments with which you introduced your question, I agree with you on many of those points. Of course neither I nor the Campaign for an Effective Second Chamber is seeking to suggest that all is for the best in the best of all possible worlds. Of course we believe that reforms are necessary. Of course we believe that it is necessary to look at methods of appointment. If I may voice a particular personal view, I agree with you very much that somebody should not be in the House of Lords—if this has happened—purely on the basis of giving donations to a political party, although of course it is perfectly possible for somebody to be both an innovator or thinker and also a donor. Those things are not mutually incompatible.

Q602 Mr Clarke: I welcome this discussion, and I believe that Lord Cormack and Paul Murphy have given us some very interesting insights into the kinds of things that we are expected to decide on. I hope that they will forgive me if I say that I know what they are against but I am not terribly sure what they are for. Do you think that the situation as it exists at the moment should stay? Are you really arguing for the status quo?

Lord Cormack: No, we are not, and I am sorry if that has not come across sufficiently. In the paper that we submitted, we talk about the attributes of the present House of Lords and about the things that can be reformed and improved—I referred in one of my earlier answers to such things as retirement ages and the number of Members. I

cannot answer for the group by saying that the House of Lords should have 300, 400 or 500 Members. I believe that 300 is far too small, and I believe that the argument in the paper that on average 388 Members turn up per day is a fallacious argument, because the same people do not turn up every day—some people come for certain things, and some for others. However, I believe that one should, over a period, aim for a defined number. The group does not have a view on that, but my personal view is that the total should be somewhere between 450 and 600—probably nearer the smaller number than the larger one—but that should be achieved over a period. After all, even with this Bill, we are talking of a period between now and 2025. It should be very possible, with proper restraint and sensitivity, having regard for people's contributions and all the rest of it, to reach a situation whereby by that time you have a defined number, you have a retirement age and so on.

There are many things that can and should be done but, if I may say so, there are also many things that can, should and indeed must be done in the House of Commons to balance the position vis-à-vis the Executive. There is a real case for a Joint Committee of both Houses to look at the balance within our constitution. This piecemeal approach is not really in the interests of the House of Commons or in the interests of the country. At the end of the day, you are dealing with an extremely delicate mechanism with the British constitution. When you start taking this bit out—as with taking out a piece of a well-constructed watch or clock—all sorts of unforeseen consequences can follow. The one law that we have been repeatedly successful in passing in this country is the law of unintended consequences.

Paul Murphy: I agree with that. I particularly agree with the proposal that Lord Steel has consistently put forward in the House of Lords for major changes to the way in which the House operates.

Lord Cormack: And I would say that the Steel Bill, as Lord Steel would readily attest, came out of discussions in the Campaign for an Effective Second Chamber.

Q603 Lord Tyler: Lord Cormack, is an example of one of the reforms that you would support a retirement provision? Given that the Library of the House of Lords said that, at the last count, four Members were under the age of 40 and 19 Members were over the age of 90, exactly how do you think that reform should be implemented?

Lord Cormack: With determination and sensitivity. One has to recognise—you know these people as colleagues, as I do—that there are people in the House of Lords who are fairly well advanced in years but who make an outstanding contribution to our deliberations. There are some in your party, some in mine, some in the Labour Party and some on the Cross Benches. We both know who they are and I am not going to mention names any more than you would, but we know they are there. That is why I said that one thing we could accept in this Bill is the timescale of 2025 and work towards a situation where you would indeed have a defined number—the number you have been trailing in your recent interviews, or maybe not. We also have a retirement age, which might be 80 or 85, I do not know. People are living longer and people are making contributions. We also have rules about people appearing in the House of Lords and being able to discharge their parliamentary functions. All these

things are entirely legitimate for us to discuss and we should be seeking to move towards that situation, as I said earlier, with determination and sensitivity.

Q604 Lord Tyler: I think that you have illustrated how invidious a piecemeal approach is. Perhaps I may ask another question, which both of you might like to answer. You have both put great emphasis on the importance of preserving the primacy of the House of Commons and, as a former Member of the Commons, I accept and endorse that. What exactly do you anticipate if, in the 2012-13 Session, the Government come forward with an improved Bill as a result of our efforts around this table? Would your advice to your colleagues be that they should recognise the primacy of the Commons, should the Commons support that Bill, and that they should accept it at Second Reading, seek to improve it and not vote against it at Third Reading?

Lord Cormack: I shall be very interested to hear what Mr Murphy has to say in response, and he has a little time to think about his reply. I will be very clear on this. I made the point earlier that on matters of supreme constitutional importance the situation is rather different. I do not believe that the Parliament Acts would be able to apply, as they do at the moment, to an elected House of Commons and an elected Senate. That is because the Parliament Acts came into being to regulate the position between the two Houses that we have—the House of Commons and the House of Lords. It would be entirely legitimate for the House of Lords to challenge a Bill if it did not feel that the constitutional integrity of our system was being upheld. But you are tempting me into the hypothetical because it is clear that no one can make a

definitive statement on this without knowing what is before us. In certain circumstances it would be entirely legitimate to resist, but in other circumstances it would not. However, we need to know what we are dealing with. Your Committee will no doubt be telling us in due course, but we also need to be assured of the unanimity of your Committee, because that, too, has to be taken into account. If your Committee comes up with an absolutely unanimous recommendation, that is one thing, but I think it might not. We will see.

Paul Murphy: My fear is that, whatever emerges in legislation, if in the end there is a majority elected House of Lords, it is inevitable that it will challenge the supremacy and the primacy of the House of Commons. My experience tells me that new democratically elected bodies almost inevitably want to increase their powers. It has happened in Wales and I agreed with that proposal; indeed, the Lord Chairman of this Committee had a lot to do with it. It is happening in front of our eyes in Scotland, where there is a huge debate on independence. I have not the slightest doubt that, if we had a majority elected Senate, eventually the Senators would want to flex their muscles. They would argue that their legitimacy was greater. If there were different parties in the different Houses, there would be enormous difficulties. Those are the problems that I think we will face. What I will say, though, is that whatever happens during the passage of any Bill through both Houses, it would have to have the legitimacy of public agreement through a referendum.

Lord Cormack: That is something on which Mr Murphy and I are absolutely at one. It is clearly the case that you cannot argue that there is a constitutional case for a

referendum on Much-Binding-in-the-Marsh having an elected mayor but no case for the people of this country deciding whether their second Chamber should be elected or not. So if a set of proposals finally emerges, the ultimate sell should be with those who used to elect Lord Tyler and me and who currently elect Mr Murphy.

Paul Murphy: And then the debate should go to the country.

Q605 Lord Tyler: Can I ask one supplementary question of Mr Murphy? Did you in any of the elections since 1997, but more specifically in 2010, tell your electors that you did not agree with your party's policy on the reform of the House of Lords?

Paul Murphy: The party's policy changed during the course of those years and it is quite difficult to remember what the policy was as the years went by. But I have to say that not a word was said by me or to me about the House of Lords. It simply was not an issue. That is the point of a referendum, of course. If we feel that this is a hugely important issue for the people and if Parliament decides accordingly, there will be an opportunity for everybody to air their views and then eventually, just as we have had extra powers granted in Wales by referendum, that could happen so far as the powers of the House of Lords are concerned. But you would not see it in my manifesto.

Lord Cormack: And of course in any referendum it is important that people are told about the cost of the new Chamber.

Q606 Ann Coffey: Members of the House of Commons are under intense scrutiny by the press, while the House of Lords is less so. Perhaps the reason for that is that the House of Lords is not seen as central to making law in the same way as the House

of Commons is. One of the good consequences of that kind of close scrutiny by the press is accountability and things being transparent. Do you not think that a good outcome of having a wholly or partially elected House of Lords would be the scrutiny of the press that would accompany that development? Do you agree that that would be helpful to the overall democratic process?

Lord Cormack: I think that your question is based, if I may say so, on a false premise. The House of Lords has indeed been scrutinised by the press over the past couple of years. I do not know whether they are still there or not but, much to my sadness and that of others, some Members of the House of Lords have been sentenced to terms in jail—

Ann Coffey: I was not talking about them.

Lord Cormack: They have been given as much publicity as any of the expenses scandals in the Commons. I believe that the House of Lords is just as open and subject to press examination, but the fact that the press do not always choose to report it as extensively is, I think, the public's misfortune. I say that because the quality of debate in the House of Lords is often extremely high. That is one of the reasons why I am absolutely persuaded that it would be sad if we got rid of an institution that, by accident of history and a degree of incremental reform in 1958, 1999 and so on, has resulted in a House where no party has an overall majority, where there is more accumulated wisdom and experience than in any other second Chamber anywhere in the world and where the quality of the debate, whatever the

subject, is exceptionally high. It is a pity that the press do not look at the House of Lords a little more closely; I wish that they would.

Ann Coffey: If you will excuse me, I was not actually talking about the expenses scandal by way of example. I was talking about normal reporting and the close scrutiny of what people say and who the people are who are saying it.

Lord Cormack: That is what I just said

Ann Coffey: Yes. You said that it is a pity that the press do not report the House of Lords. I wanted to suggest that an elected or partially elected House of Lords would be seen by the press as important to the legislative process and would bring about those things that you yourself desire.

Lord Cormack: May I answer that? In an elected second Chamber, what the press would not see in a health debate is some of the most eminent physicians and surgeons in the country taking part in it. In an elected second Chamber, what the press would not report about a debate on defence would be the fact that former Chiefs of the General Staff and so on were able to take part.

Q607 The Chairman: Only in a wholly elected House would they not be able to see that. I am sorry, I do not want to join in the argument too much, but you have provoked me on this one. I find the idea that the 20% of Cross-Bench Members proposed by the Bill are going to sit there supine, not taking part in debates on subjects of which they have intense and detailed knowledge, extraordinary. Of course they will take part. If the doctors are sitting on the Cross Benches and the rest of the House is elected, of course they will participate, and so will the generals.

Lord Cormack: Lord Chairman, I think that you have jumped in a little too quickly. In a 100% elected House, what I have said is absolutely right, but in an 80% elected House, you have the disadvantage—this is a point that I made earlier—that the 20% appointed element would be regarded as second-class Members. They would have the right to vote but they would not have been elected. I believe that a hybrid House, with all the possibilities of Governments being defeated by non-elected Members, would be constitutionally extremely dangerous.

Q608 Oliver Heald: You have raised the concern about regional Senators interfering in particular House of Commons parliamentary constituencies. This is something that was referred to when we had our video link with Australia, where the Senators who are elected for the state apparently have allocated to them a number of Representatives' constituencies, where they actively take part with political purposes. This is something that Paul Murphy suggested might have happened in Wales with the list Members interfering or doing work in constituencies of Assembly Members who were elected for those particular constituencies. A way of tackling this, which has been suggested to us by the Campaign for a Democratic Upper House—the previous witnesses—is to do three things. The first is to have a clear statement of the roles and functions of the two House backed up by agreed resolutions in each House; secondly, not to give the Senators any money for doing constituency work, so no allowances; and, thirdly, to have a job description for Members of the second Chamber saying that they are not allowed to do constituency work, or words to that effect. I just wondered whether you felt that that would work.

Paul Murphy: No, I think that it is a load of nonsense. It does not reflect the real world in any respect. When I say "constituency work", I am not necessarily talking about taking up Mrs Jones's back kitchen, although that sometimes happened with MEPs taking up individual issues like that. I am talking more about the politics of the region or area and the issues of the day. That is fine, but it is presumably not the role of an elected Senator. The role of an elected Senator is to revise, deliberate and do all the things that the House of Lords now does. I cannot see this working. It is different in Australia, where there is still a problem, but you can understand how it works in a federal system, where the Senators have a specific role to represent their states or provinces in a federal Parliament. Our Parliament is a unitary one, although I personally think that there is a case for somehow dealing with Scotland, Wales and Northern Ireland within the House of Lords, but that is another issue. Elected, party-political Senators in any part of our country will be party politicians. That is what they are there for. The idea that they will keep their noses out of this or that issue is just absolute tripe.

Lord Cormack: I could not put it more strongly. The only other point that I would make, Mr Heald—and Mr Murphy is completely correct—is the one that I made earlier. No Parliament can bind its successor, so I do not think that whatever cosy agreement was arrived at would stand the test of time.

Q609 Lord Hennessy of Nympsfield: Do you think that a referendum is the only way to solve—"solve" is probably the wrong verb—or settle the question of the Lords for a couple of generations? If there is consensus in the country, it may well be that

we cannot go on like this. It has absorbed a phenomenal amount of energy and time since 1911 and, although it is a tremendous diversion for constitutional buffs like me and my great friend Lord Norton, it surely cannot go on like this. Do you think that a referendum is a desirable way to do it?

Lord Cormack: If any Bill emerges from this Committee that commands great support and goes through both Houses, I think that there has to be a referendum. My own view is that at the end of the day that probably is the best way of solving it, but it is difficult to say much at the moment in that context, because it is a hypothetical situation. Your Committee has not made a report to either House yet and we do not know how the Houses will react to whatever report you make. But at the end of the day I think that, yes, probably a referendum is necessary.

Paul Murphy: There is no question about that. In my view, certainly since the late 1990s, all the major constitutional questions have been resolved by a referendum—obviously Northern Ireland, Scotland, the recent increased powers in Wales and, of course, the alternative vote. It seems to me that if those things can have a referendum, surely the way in which our Parliament is organised should also be subject to a referendum. To be perfectly honest, I see great benefit in the public debate that will be held about it. You can have as many opinion polls as you want; it depends on the questions that are asked and all the rest of it and there is no debate. A referendum would generate a proper debate and people in the country could make their minds up. It would also obviously give legitimacy to the solution.

Lord Cormack: This is an issue that the Campaign for an Effective Second Chamber is addressing. We have not produced a paper on a referendum but I think that we may well do so at some stage, although I am speaking very much personally in answering your questions.

Lord Hennessy of Nympsfield: Do you think that it would be wise to wait until the Scottish question has been settled? It is a first-order question—a constitutional question with bells on.

Lord Cormack: Absolutely, yes. I think that that would be extremely sensible. To gum up the machine with two major constitutional issues, for one of which there is great public demand and interest and for the other there is no public appetite or demand, would be injudicious, to put it mildly.

Q610 John Stevenson: The White Paper and draft Bill from the Government are about composition, not about powers. Effectively, it could be argued that the Government are saying, "We accept that the new House of Lords will only have the powers that already exist, which are very extensive. We also accept that an elected House of Lords is likely to be more assertive and to use those powers." Would you not agree that that would be a good thing for parliamentary democracy? It is a good thing to challenge the Executive more and we should move away from being an elected dictatorship towards being far more of a parliamentary democracy. At the end of the day, if there is a conflict between the two Chambers, as a matter of law the 1911 Parliament Act gives primacy to the House of Commons.

Lord Cormack: It may give primacy to the House of Commons at the moment, because it deals with the House of Commons and the House of Lords as they currently exist and as they have evolved, but there are legal minds far more eminent than mine who say that they do not think that the Parliament Act would apply to a wholly different second Chamber.

John Stevenson: May I just interrupt on that? When the 1911 Act was passed, women did not have the vote and not all men had the vote, so, if you were to take your point of view, you could argue that the Parliament Act would not apply now.

Lord Cormack: No, but the Parliament Act of 1911 was of course superseded by the Parliament Act of 1949, which is the one that we are really dealing with. That is the one that reduced the power of delay to one year, as you well know. There are those who argue, and this is a legal matter, that the Parliament Act could not and should not apply to two wholly different assemblies from those for which it was designed. The very important question that you asked at the beginning is the one that we all, wherever we sit in either House, should be addressing: given that we do not have a separation of powers in this country, how do you maintain a system where the Executive is drawn from the legislature and at the same time adequately hold within the elected Chamber the Government to account? I think that you would only be muddying the waters if you had a second Chamber also elected with an attempt to curb its powers in the way that this Bill suggests. That is an issue that you and your colleagues on the Committee will obviously be wrestling with as you come to your conclusions.

Paul Murphy: Incidentally, when the Chamber is as it is, although we both agree and the campaign agrees that it should be changed, agreements, conventions and even laws certainly would be followed, but the whole situation changes when people are elected to it. You can have all the agreements and conventions in the world, but realpolitik takes over.

Q611 Bishop of Leicester: We can deal with this very briefly. I wonder whether I could invite you, with your combined 65 years in the House of Commons, to speculate as to whether there might be a comprehension deficit among some MPs about the functioning of the House of Lords and, if so, whether that matters. Also, what could be done about it?

Lord Cormack: That is an extremely good and pertinent question. I am very conscious of the fact that, although I had been a regular visitor to the House of Lords and had many friends in the House, and I knew it pretty well, I have inevitably got to know it a great deal better over this last year or more that I have been here. I have been become increasingly conscious when I talk to friends in the House of Commons—not just those who have been recently elected—that there is not enough interchange between the two Houses. There is not a sufficient appreciation by each of the other. That is why I have always been an advocate of Joint Committees. I sat on one or two myself during my time in the House of Commons and I am glad that this is a Joint Committee looking at these extremely important issues. We ought to find more ways of working together as parliamentarians at the two ends of the Corridor. There is indeed a lack of appreciation and understanding, although that is not

exclusively the preserve of one House or the other. I would like to see much more interchange.

Paul Murphy: I agree entirely with that. I endorse the point that Lord Cormack made about Joint Committees. I sit on one or two and I think that they perform a remarkably good function. I also think that there is a role for Ministers in the Government, too, in dealing with the House of Lords in an improved way. I certainly made it my business when I was a Cabinet Minister to ensure that I talked with many Members of the House of Lords who had an interest in the subject for which I had responsibility. I am not quite convinced that that is done enough. The more interchange there is either between Ministers and Lords or between MPs and Lords, the better.

The Chairman: Thank you very much indeed. I thank you both for coming. It has been a helpful and revealing session and we are grateful to you. Thank you.

Lord Cormack: Thank you very much indeed.

Examination of Witness

Baroness Hayman

Q612 The Chairman: Thank you very much for coming, Lady Hayman. I am sorry that we are a bit delayed, but you have been listening to the proceedings so you know why. I hope that you will accept my apologies for keeping you waiting. Would you like to make a brief statement before we start the questions? Indeed, perhaps it would be a good idea if you did.

Baroness Hayman: Thank you, Lord Chairman, and I thank the Committee for allowing me to give evidence and for being understanding about the fact that I did not feel able to submit written evidence on the timetable set by the Joint Committee, given that I had a period of self-imposed purdah on talking about House business after leaving my position as Lord Speaker. I feel that the new year has empowered me to speak more frankly and I am grateful for the opportunity to give evidence today.

Could I start with some fundamentals about my own position? I believe that the House of Lords does an important job as a revising Chamber well but that it could do the job better and needs to change. I believe that the period since 1999 has seen some stalling in change, partly because of the difficulty of resolving the sorts of issues that have been discussed around election. I also believe that there are ways in which we could go forward. Picking up on one of the points made earlier, I do not think that the case against election is automatically a case against reform. My experience of living through many attempts at reform—this is not a term of art, but perhaps all-

singing, all-dancing reform, if I can put it that way—has been that trying to do everything often ends up in doing nothing. So I hope to have the opportunity today to talk about some of the areas where it is possible to build if not unanimity then consensus, which in a sense would clear away the undergrowth for resolution of an issue that, as the past hour and a half has clearly demonstrated, is fundamental and deeply divisive: whether election would destabilise the relationship between the two Houses in a way that was detrimental to the performance of Parliament as a whole, and I am committed to improving the performance of Parliament as a whole.

A huge number of the issues that are dealt with in the White Paper and the Bill need speedy action. Let me start with the size of the House. As it is at the moment, the size of the House is unsustainable; that is a quite a neutral word. The White Paper cites, as was mentioned earlier, an average daily attendance of 388. That is not the current figure but one taken for the 2009-10 Session. The current figure, for which I asked the Information Office today, is an average daily attendance of 493. There were six votes in the three months up to 31 December 2011 in which more than 450 people voted, the highest total being 592. We are operating with a size of House that does not function properly and which I think is indefensible. We need to do something about the size of the House and I believe that we could get agreement on that.

I believe that it would also be possible to get agreement on the balance between independent Peers and party-political Peers in terms of proportion. It would be possible, although as I look around the table I think not easy, to get agreement on the view that the hereditary principle should not play any part in the future

membership. I also believe that it would be possible to agree to end the link between the honours system and membership of the second Chamber. All of this is in the White Paper.

I think that it would be possible to deal with the issue of time limits for appointments—that is, time-limited appointments. It would be possible to deal with the establishment and remit of the statutory Appointments Commission and with provisions for retirement and exclusion. If we did those things and cleared that undergrowth, the issue of whether what you gain in democratic legitimacy from election outweighs what you lose in terms of experience and expertise could be considered, as well as focusing democratic accountability in one place—the clarity that we have at the moment and the complementarity of the two Houses. We have had a lot of conversations about referendums. That is an issue which could be put in a referendum. But at the moment there are so many issues that it would be very difficult to focus the public debate on how to go forward.

Lord Hennessy said that it cannot go on like this. My fear is that it can go on like this. My gravest concern, whatever my views on the proposals in the White Paper and the Bill, is that out of this will come not an elected House but a messy debate that ends up with no progress whatever and what I consider to be a House of Lords that is not improving its performance as a parliamentary Chamber because we are not making any incremental progress. When I look at my own political lifetime, I remember that I went to secondary school at a time when there was not a single woman in the House of Lords. If I look at the transformation during the timeframe of my political lifetime, I

can see that there is an enormous opportunity for continuing that evolution. I know that many people think that it is some sort of strategy to avoid any change and to talk about a two-stage approach. I honestly do not believe that that is so and that it would be easier and quite possible to focus on the question of whether the party-political Peers of the Houses of Lords are elected or appointed on the recommendation of their party leaders as a freestanding issue when you have dealt with all the other things. Earlier someone asked us to say not just what we are against but what we are for, so I have risen to that challenge.

Q613 The Chairman: Thank you very much. Perhaps I may pursue one of your points, which is the size of the House. You are clearly of the view that the House is much too big and I suppose that, if there is going to be a set of new creations, it will obviously be that much bigger. You say that we can deal with that, but how would you actually reduce the size of the House?

Baroness Hayman: We have to do several things. We could start with a moratorium on new Peers. The second thing would be that in the future we would have term appointments. The third is that we have to come to some sort of agreement on the size of House that we want to see and then see what that size would mean for the party groups and the Cross Benches. Those groups would then have to take on the responsibility of reducing their numbers.

The Chairman: I see. For the sake of argument, let us take the figure that has been in the press recently, that of 450. To reduce the House down to 450, you would have to get rid of about 400 Peers. How quickly would you want to see that done?

Baroness Hayman: My preference would be not to do it overnight, but I am not quite on the same timeframe as the White Paper of waiting until 2025. You could do it over five to 10 years.

The Chairman: I am advised that it would need legislation in order to do it.

Baroness Hayman: Yes. My shopping list involves legislation.

Q614 Lord Tyler: I wonder whether you could go a little further in your interesting analysis from your new vantage point of the way in which the House is currently working. We all accept that the active membership is between 400 and 500. That of course means that 200 to 300 do not come regularly, which is quite interesting. Could you comment on the fact that the majority of those who are active—particularly those who do not just vote but are active all day, every day—are, like me, semi-retired politicians? We are a very political House. The idea that you may have gathered over the past couple of hours, that we are somehow totally independent of party and never take any notice of our Whips, might seem a little rose-tinted from your vantage point. Is that a fair comment?

Baroness Hayman: It depends on whether you like politicians or not. Let me just pick up on the point that just under 500 Peers are active. The average daily attendance is 493, but it is not the same people every day. A lot more people than that are active, so the scale of the problem, as the Lord Chairman has pointed out, is substantial.

Lord Tyler is absolutely right to say that there are a lot of party-political Peers who are active. I am a superannuated Commons politician from a very long time ago. It is interesting that the appointments process encourages the appointment not only of

people who have lived their lives in party politics but also of those who have party affiliations and commitments but who have not lived their lives in politics. This is the issue of expertise, if not independence. Whether it is PD James or Melvyn Bragg, people come in as political appointees, but their lives and the experiences that they bring to the House are not purely party political. That is one of the subtleties of the House that I believe would change because, as it has been put to me, what is the difference between the Prime Minister or the party leaders nominating their list and the party apparatus nominating its list? But I believe that the current culture encourages a wider range of people to come in as party-political appointees. We then get to the issue of age and whether being past ambition frees up most people in the House of Lords in terms of independence in their political activities.

Q615 Lord Tyler: Perhaps I can take this one step further. I think that you would also recognise, from your much longer experience in the House than mine, that the occasions when expertise leads a Member who has been party appointed or belongs to a party group to vote against his or her party are relatively limited.

Baroness Hayman: They are limited. I am glad that you asked me that because I want to take up an issue that was raised earlier. It was asserted that when there are government defeats in the House of Lords, it is not because of expertise but because of the numbers. Over the past five years I made a lot of visits to schools to talk about the House of Lords. The example that I always gave was the proposal to abolish the post of Chief Inspector of Prisons. The reason why it was defeated in the Lords and why the Commons did not attempt to resurrect it was because it was Lord

Ramsbotham, an ex-Chief Inspector of Prisons, who led a revolt of people who had worked in the criminal justice system. I believe that it was that which made the Government change their mind. In many cases I think that it is more about influence than assertiveness.

Yes, people obey their Whips. However, I am tempted to say that I led one rebellion in the whole of my political life. It was on the issue of control orders and a sunset clause for them. The Parliament Act would not have done a lot of good with that because of the time lag. The sunset clause would have applied after a year. We won with an overwhelming majority against some of the—I will not say "blandishments"—threats of my own Whips at the time. It went to the Commons and came back, and we won again. However, I stepped back the second time. The role of the House of Lords is to ask the House of Commons to think again. We asked once, and we asked twice. I then said, "That is it. I am done here". I have to say to the Committee that if I had had any sort of electoral mandate in that situation, I would not have stepped back. So I think that the assertion in Clause 2 of the Bill is nonsense. You can then have an argument about whether you want that to happen, and the benefits of it, but to pretend that it would not happen is, I think, a nonsense.

Q616 Laura Sandys: You are extremely experienced in the political system and how the House of Lords works. I welcome the points that you have made about reform because I am sure we all agree that both Houses should look at a lot of things in terms of reform in order to be more effective. However, what is interesting is the diffidence of those in the House of Lords about being more assertive and exercising

greater power. As we have heard from people who have presented their views to us, the House of Lords probably has more extensive powers than any other second Chamber, but in some ways it self-restricts. It appears that you think that that is good, which I find fascinating. My position is that Parliament should be more assertive. We need not necessarily just greater capacity against the Executive, which is the constant issue, but much greater assertiveness and capacity against pressure groups and people running campaigns that we do not have the capacity to counter. On the basis of being more assertive and taking the full powers that are offered to the second Chamber, are you inhibited by the lack of democracy and the lack of election? Because you are not elected, but regulate and self-restrict, do we have a weaker second Chamber?

Baroness Hayman: Self-evidently, we have. We have reached an accommodation between the two Chambers that they should not be rivals; they should be complementary. I absolutely did not have to stop voting against the Government the third time around, but I did so because I respect the sovereignty of the lower House. I am not sure that I see Parliament coming together in that rose-coloured way: becoming stronger for having two elected Chambers—elected on different mandates and with different roles. I fear the problem, which has been discussed already, of clashes between the two Houses. I also fear a blurring of democratic accountability. At the moment, when a government proposal is either overturned or goes through, the electorate can make their judgment in a general election for the lower House. That is where the democratic accountability and power flow. Who do you vote

against if it was the House of Lords that blocked a piece of legislation rather than the House of Commons? We have clarity about where democratic accountability lies. I recognise that people take this in different ways. I want to see a more influential House of Lords because it is respected and because that is more justifiable than it is at the moment, but I do not want to see a more powerful House as against the House of Commons.

Q617 Laura Sandys: Perhaps I may pick up on two small things. Each Parliament has its own nature and characteristics. This House of Commons has been much more "rebellious" than any other. Do you not feel that there is a change in the dynamic which also requires a change in the House of Lords? Parliament is possibly evolving into something more assertive, and that offers the House of Lords an opportunity to change. Again, however, is it not inhibited from doing so by its lack of a democratic mandate? May I quickly add one other thing? Among all the other terminology that we need to look at, I am interested in the term "lower House", which is interesting given that the Commons is meant to have primacy. When you are communicating externally, I think that that is a problem. There is also an issue when it is said that there is only expertise in the House of Lords, but we have a lot of doctors, medical professionals and people in the judiciary, including lawyers. We are creating a differentiation that is sometimes not totally fair on the House of Commons.

Baroness Hayman: No, and I would not like to undermine the expertise and experience or, indeed, the value of the House of Commons. What I felt when I was a Member of the House of Commons was the extraordinary thing that, as a friend of

mine used to put it, you have been anointed by the popular vote. That is very, very special. It trumps expertise or whether you are a doctor, a scientist or anything else. You have the enormous privilege and responsibility of representing your constituents. That is a unique position.

Q618 John Thurso: I say "Hear, hear" to that. Lady Hayman, in my judgment you have set out brilliantly why the current House of Lords is simply insupportable and I thank you for that. You and I will disagree about election, so I will park that. What you have done is to set out an alternative, which is for an appointed House, with our looking at the numbers, terms of 15 years and so on—all the issues on which we may be able to reach consensus. If we are able to come to a consensus on those things and then the only question left is whether Members should be elected or appointed, and if those who believe from the bottom of their hearts, as I do, that election is the preferable route but they are prepared to compromise and go with appointment for the time being, why can we not move to that within 12 months, as we did with the hereditaries? The 800 of us who were surplus to requirements took our P45s with a hop and skip and left.

Lord Rooker: A hop and a skip?

John Thurso: Actually, I recall that we tottered off with a glass of bubbly wine and a canapé. Why can we not just get on with it? If we have 500 or 600 people who are absolutely brilliant, as has been the evidence to date, and we decide that 450 is the right number, why do we not just make the changes in 12 months and have done with it?

Baroness Hayman: My recall of the hop and the skip is slightly different from yours, but let us not quarrel about that. I expect that the answer is that I have become rather sentimental. I can see the argument for moving more swiftly on reducing the numbers than I have suggested. It could be done, and I think that we have to make progress on it. I hope that I have not suggested that the House of Lords is "insupportable" at the moment, which was the word that you used. I said that it is unsustainable. The pressure is becoming overwhelming. As a parliamentarian, I find it offensive that there is seating in the Chamber from which you cannot speak or make an intervention. I do not think that that is right. There are a lot of things that we need to make progress on.

The House is still doing a respectable job within its current remit. I spent five years talking about second Chambers and meeting people from other second Chambers. They are bemused as to how we have got to where we have, but they are very respectful of the work that the House does. Indeed, I think that the issue of the legitimacy of the output of the House is one that we should look at, as well as the legitimacy of how people become Members, which I think could be improved and made more open by a statutory Appointments Commission with its remit being made public, and so forth.

Q619 John Thurso: I agree with you and I would never question the quality of the work of either the House itself or the Members of the House. It has always been my regret that the Commons does not actually listen very often, which is the real problem. What I am driving at here is a different point. The theory is that, if you elect

through tranches, it would act as a form of indoctrination into the better ways of the House of Lords. If, on the other hand, you decide to go for appointment, you will not need that because you already have the people there. Given that, is there any argument other than—not wishing to be too brutal to colleagues—saying, "Gone to appointment, chosen 450, now each party can work it out," as we did with the hereditaries? Is there any argument other than being quite brutal and saying, "We have decided to have 450 Members by appointment. Let's just get it over and done with"? What is to stop that?

Baroness Hayman: There is nothing to stop it. One of the difficulties, I have to say, has been created by the appointment of 110 new Peers in the past 12 months. It means that some people would have a very short period of time in the House. That is why the reality of where we are and the people who are here has to be looked at. It makes it more difficult but not impossible.

Q620 Baroness Symons of Vernham Dean: These are intriguing possibilities. I am very grateful to you for making the clear distinction between influence and assertiveness. You have drawn an important point to our attention. I also agree with the point that being sustainable is different from what is supportable. Let me bring you back to your original ideas about how one might clear away the undergrowth. There may be all sorts of arguments about the exact size of the House, the balance between independent Peers and party-political appointments and, indeed, the hereditary principle, but most of those—save the difficulties for some of our colleagues—would not cause too much trouble. However, I would like to ask you

about retirements. We know that 19 Peers are aged over 90, yet whenever one gets anywhere near a sensible discussion about a suitable retirement age, naked self-interest rears its head as usual. I just wonder whether you have given any thought to what a suitable retirement age for the Lords would be. One of the things that I feel strongly about is the attendance record. We may see different Peers on different days, but it seems to me that if the House sits for only 140 days a year, a minimum requirement should be that Peers attend for 50% of the time. That is not a desperately onerous requirement. I wonder whether you have given any thought to those sorts of limiting factors which would help in winnowing out what I agree is a House of Lords that at the moment is just too big and rather unwieldy.

Baroness Hayman: I have thought a lot about it and have had some difficulty in coming to very clear conclusions. I was taught as a student that hard cases make bad law, but when you see the contribution made in the House by a limited number of Peers who are in fact very elderly, it is difficult simply to set an age limit. I think that the same is true in the Commons. I would go for the basic situation of having a term limit of service. One of the issues is about current expertise and that that may not be the case over time. But I believe that there needs to be some sensitivity and flexibility around this issue.

The Chairman: There is a Division in the Commons and I fear that we are about to become inquorate. Thank you very much, Lady Hayman. I am sorry that the meeting has been shortened by a Division.