



HOUSE OF LORDS

# Library Note

## **Possible Implications of House of Lords Reform**

The purpose of this House of Lords Library Note is to consider the possible consequences of House of Lords reform. An implicit assumption in the Note is that future proposals to reform the Lords will be based on a fully or mainly elected Second Chamber. The major focus of the Note concerns the impact of such reform upon the House itself, its relationship with the House of Commons and Government, but also with the electorate and society more generally.

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## 1 Introduction

The purpose of this Note is to consider some of the consequences of Lords reform. The major focus concerns the impact of reform upon the House itself, its relationship with the House of Commons and Government, but also the electorate and society more generally. It does not seek to offer a narrative of the history of House of Lords reform or a detailed outline of proposals and the debates they have engendered. This can be found elsewhere.<sup>1</sup> In exploring possible consequences of reform, the Note does draw on earlier proposals in as much as they suggest possible outcomes. However, it also relies on wider academic and policy forum work. The Note also starts with the position of the House of Lords as currently constituted, both in terms of composition and powers, and looks forward to what might happen if the situation was to change. Therefore it does not consider reforms that have already taken place, such as the move of the Law Lords to the Supreme Court and the implications of that reform.<sup>2</sup>

At the outset, it should be pointed out that the Note runs with the assumption that any future Lords reform is likely to lead to a fully or mainly elected Second Chamber. The House of Lords voted for a fully-appointed House when asked to vote on various options put forward in 2003 by the Joint Committee on Lords Reform and again in 2007 in response to options put forward by the Government.<sup>3</sup> More recent evidence has also suggested that though many peers are beginning to accept that constitutional reform is inevitable, many are still opposed to an elected Second Chamber. In June 2009, ComRes conducted a poll of 100 peers and found that only 9% supported a fully elected House of Lords and 18% a partially elected House; 48% favoured a fully appointed House.<sup>4</sup>

However, this Note is guided by the three main parties' recent General Election manifestos, the new Government's Coalition Agreement, and the general tenor of Lords reform debate in recent years.

The Labour Party's manifesto stated the following:

We will ensure that the hereditary principle is removed from the House of Lords. Further democratic reform to create a fully elected Second Chamber will then be achieved in stages. At the end of the next Parliament one third of the House of Lords will be elected; a further one third of members will be elected at the general election after that. Until the final stage, the representation of all groups should be maintained in equal proportions to now. We will consult widely on these

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<sup>1</sup> For a detailed chronological overview: House of Lords Library Note, *House of Lords Reform Since 1997: A Chronology (updated March 2010)*, (March 2010, LLN 2010/009). Parliament's website hosts further [House of Lords Library Notes](#), [House of Commons Library Standard Notes](#) and [House of Commons Library Research Papers](#) on aspects of Lords Reform.

<sup>2</sup> A consideration of this particular reform and what it might mean in the future can be found in House of Lords Library Note *The Appellate Jurisdiction of the House of Lords (Updated November 2009)* (November 2009, LLN 2009/010).

<sup>3</sup> While the Lords voted for a fully-appointed House in 2003, the Commons did not vote on the various options put forward. In 2007, in response to the Government's white paper (Cm 7027), the Lords again voted for a fully-appointed House, rejecting all other options; the Commons voted in favour of both a fully elected House and an 80% elected, 20% appointed House.

<sup>4</sup> ComRes, *Peers Panel Survey: An Independent House* (June 2009). The survey found that a fully elected House was not supported by the Conservative peers polled. See also: Andrew Grice, 'Peers line up to block House of Lords Reforms', *The Independent* (20 July 2009).

proposals, and on an open-list proportional representation electoral system for the Second Chamber, before putting them to the people in a referendum.<sup>5</sup>

This followed the former Labour Government's proposals for an elected Second Chamber as set out in its 2008 white paper on Lords reform, its plans within the Constitutional Reform and Governance Bill 2008–09 to remove the remaining 92 hereditary peers and announced intention to produce a draft Bill for “a smaller and democratically constituted second chamber”.<sup>6</sup>

The Conservative Party's 2010 manifesto contained the following commitment:

We will work to build a consensus for a mainly-elected second chamber to replace the current House of Lords, recognising that an efficient and effective second chamber should play an important role in our democracy and requires both legitimacy and public confidence.<sup>7</sup>

This followed on from their 2005 General Election manifesto in which they indicated that they would “seek cross-party consensus for a substantially elected House of Lords”.<sup>8</sup>

The Liberal Democrats in their manifesto said that they would:

Replace the House of Lords with a fully-elected second chamber with considerably fewer members than the current House.<sup>9</sup>

The Coalition Government's Programme, published on 20 May 2010, set out its approach to a reformed Upper House:

We will establish a committee to bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation. The committee will come forward with a draft motion by December 2010. It is likely that this will advocate single long terms of office. It is also likely that there will be a grandfathering system for current Peers. In the interim, Lords appointments will be made with the objective of creating a second chamber that is reflective of the share of the vote secured by the political parties in the last general election.<sup>10</sup>

Before the General Election, David Cameron had been reported as seeing Lords reform as a “third term” issue.<sup>11</sup> However, on 2 June 2010 he stated the following:

There will be a draft motion, by December, which the House can vote on. I have always supported a predominantly elected House of Lords, and I am delighted that agreement has been reached on the coalition programme... I hope that after all the promises of reform, this time we can move towards a predominantly elected second Chamber.<sup>12</sup>

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<sup>5</sup> The Labour Party, *A Future Fair for All* (2010), p 9:3.

<sup>6</sup> Ministry of Justice, *An Elected Second Chamber: Further reform of the House of Lords* (July 2008), Cm 7438. For a commentary on the white paper, the Constitutional Reform and Governance Bill and subsequent developments, see: House of Commons Library Standard Note, *House of Lords Reform: the 2008 white paper and developments to April 2010* (May 2010).

<sup>7</sup> The Conservative Party, *Invitation to join the Government of Britain* (2010), p 67.

<sup>8</sup> The Conservative Party, *Are you thinking what we're thinking? It's time for action* (2005), p 21.

<sup>9</sup> The Liberal Democrats, *Liberal Democrat Manifesto 2010* (2010), p 88.

<sup>10</sup> HMG, *The Coalition: Our Programme for Government* (May 2010), p 26.

<sup>11</sup> See *Financial Times*, ‘House of Lords to become elected body under Straw bill’, (15 March 2010). The article suggested that Cameron had suggested it was a ‘third term’ issue to appease his Conservative peers.

## 2 Conflict Between Two Elected Houses?

One of the key issues affecting the debate about reform of the House of Lords has been the possible change in its relationship with the House of Commons. In particular, attention has focused on what an elected Second Chamber might mean in terms of its increased legitimacy and ability to question the will of the other elected House.

Vernon Bogdanor, writing recently in *Political Insight*, made the following observations:

Because it lacks democratic legitimacy, it cannot act as a rival to the House of Commons or an alternative legislative chamber. It provides an essential component needed for effective government, the bringing of informed and expert opinion on the workings of the polity. From this point of view, the most important work of the House of Lords occurs not in its legislative committees.

An elected upper House, by contrast, would replicate the Commons with its confrontational politics and whipped majorities. It would be more powerful than the current House of Lords, because it would conceive of itself as being more democratically legitimate. For that very reason, it would make Britain more difficult to govern.<sup>13</sup>

A W Bradley and K D Ewing have also drawn attention to how a more legitimate second chamber might unravel the subtle relationship between the two Houses:

Democratic institutions suggest that the only credible solution is a wholly or largely elected (directly or indirectly) Upper House (perhaps one renamed as a Senate). But the difficulty with this is that it could end up with a House wholly dominated by the political parties and, depending on election results, with the same party in control of both the Commons and the Lords. In that case, there would be little prospect of effective scrutiny or revision of government business. Conversely, election could lead to a House with a majority different from that of the Commons, leading to the alternative result of stalemate or gridlock in the legislative process, with both Houses claiming a mandate for their actions and each claiming a superior mandate to the other. It is thus a curious paradox that a nominated House without an electoral mandate is able to produce a revising chamber which simultaneously provides a greater measure of independent scrutiny of government than the House of Commons, without at the same time unduly impeding or frustrating the implementation of the government's programme.<sup>14</sup>

They also argue that composition of the Second Chamber is closely tied to its functions:

Any proposal for the reform of the composition of the House of Lords ought logically to begin by asking what it is we expect the House of Lords to do and to tailor composition to function. If the purpose is to act as a restraint on government, the case for an elected chamber would be irresistible (provided election were guaranteed to produce a House with a different political majority from the Commons). If, however, the purpose is (as currently) that of revision and scrutiny, there may be a case for other methods of composition.

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<sup>12</sup> HC *Hansard*, 2 June 2010, col 426.

<sup>13</sup> Vernon Bogdanor, 'Shifting Sovereignties: Should the United Kingdom have an elected upper house and elected head of state?', *Political Insight* (April 2010), vol 1, no 1, p 12.

<sup>14</sup> A W Bradley and K D Ewing, *Constitutional and Administrative Law* (2007), p 186.

Similar points have been made by Lord Norton of Louth on his blog. He also points to the complex relationship between the two Houses, but also the wider constitution:

What is crucial is to start from first principles. That is, to determine what we expect of Parliament in our political system and therefore the role and relationship of the two Houses and their relationship to the other elements of our political system. Once we know what we expect of the second chamber as an integral part of our constitutional arrangements, then and only then can we start to determine the composition best suited to the fulfilment of that role.<sup>15</sup>

In particular, Lord Norton highlighted that under the current arrangements, the House of Lords will ultimately respect the will of the Commons, a situation that might change with an elected Second Chamber while also bringing other undesirable consequences:

The core accountability of the present system derives not only from the existence of the first-past-the-post electoral system but also the existence of asymmetrical bicameralism. There is one elected chamber, through which the government is elected and through which it is accountable to the electors. We have the benefit of a second chamber but without the divided accountability that would derive from having a second elected chamber. The House of Lords adds value to the political process by carrying out tasks that complement those of the elected chamber. It does not seek to challenge the electoral supremacy of the House of Commons. It can invite the Commons to think again, but ultimately the Commons is entitled to get its way.

If the second chamber was to be elected, it would be in a position to demand more powers than the existing House. It may not be co-equal to the first chamber but it would likely demand more powers than the existing House and be willing to exercise those powers. Election would change the terms of trade between the two chambers. There would be no reason why elected members of the second chamber would see the role of the chamber as a complementary one. There would be the potential for conflict between the two. This could lead to stalemate or more often to deals being struck. Such deals would be more likely to be to the benefit of parties and special interests than to the benefit of electors. There would be no clear line of accountability for what emerged or, indeed, what failed to emerge.<sup>16</sup>

In terms of addressing these difficulties, Meg Russell and Maria Sciara, writing in 2007, sought to set out the nature of the puzzle to be solved for those who want a House that is more democratic and yet not a challenge to the supremacy of the other House:

Essentially the job is to find a compromise that democratises the chamber without making it any stronger. This appears both logistically and tactically impossible.<sup>17</sup>

However, Russell and Sciara, suggest that irrespective of whether members are elected in the Lords, the Upper House has already become more powerful in ways that could be seen as positive and not necessarily as a threat to the Commons:

First, a chamber does not necessarily have to be elected in order to be strong—it can be enough to act with a certain level of public and elite political support...

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<sup>15</sup> Lord Norton, 'Missing the Point', (25 May 2010).

<sup>16</sup> Lord Norton, 'No to PR and an elected Second Chamber' (22 May 2010).

<sup>17</sup> Meg Russell and Maria Sciara, *The House of Lords in 2006: Negotiating a Stronger Second Chamber*, The Constitution Unit (January 2007), p 11.

[W]hat we see is that the departure of the hereditaries and, crucially, the new party balance, have boosted the Lords' sense of legitimacy and given it more confidence to challenge the government. This remains even despite allegations of cronyism in Lords appointments. Second, a stronger upper house does not necessarily mean a weaker lower house—indeed possibly quite the reverse. Although ministers try to present arguments as Lords versus Commons, the far more interesting dynamic is that of Parliament versus executive. The existence of the Lords as a serious longstop has given a greater confidence to MPs to extract concessions from ministers, and the greater rebelliousness of the Commons also acts to boost the power of peers. This inter-cameral partnership, if it continues and grows, could represent a real shift of power within the British Westminster system.<sup>18</sup>

Robert Hazell, writing in response to the Government's 2001 white paper (Cm 5291), questioned whether reform of the House of Lords in terms of elected members would threaten the pre-eminence of the House of Commons:

Second chambers in parliamentary systems of government on the Westminster model are invariably subordinate to the first chamber. It is in the first chamber that the government is formed, where the prime minister and all important ministers sit, where the government is primarily held to account, and where governments are tested on votes of confidence. This is the case whether the second chamber is elected, appointed or some mixture of the two. In all these respects the Commons is and will remain the pre-eminent chamber, whatever the composition of the House of Lords. Its pre-eminence is reinforced by the Parliament Acts, which enable the Commons to have the last word on legislation and on all money bills; and by the Salisbury convention, under which the House of Lords will not block or obstruct a manifesto bill.<sup>19</sup>

He argued that the notion demonstrated a “rather parochial Anglo-centric view”:

Three quarters of bicameral democracies have largely or wholly elected second chambers, and few suffer from such difficulties. The obvious exception is the US, which has an unusually powerful second chamber and is, in any case, not a parliamentary system. The US is not an appropriate comparator, but its experience has unduly coloured the UK debate.<sup>20</sup>

He went on to argue that many other second chambers had various safeguards built in so that they did not challenge the legitimacy of their lower houses:

Such design features include:

- a number of appointed members in the chamber
- all or some elected members to be chosen by indirect, rather than direct, election
- elected members to serve longer terms of office than lower house members do
- only a portion (typically half or a third) of upper house members to be elected at any election, so that lower house members always have a fresher mandate

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<sup>18</sup> *Ibid*, pp 17–18.

<sup>19</sup> Robert Hazell, *Commentary on the white paper: The House of Lords—Completing the Reform*, Constitution Unit (January 2002), p 9.

<sup>20</sup> *Ibid*, p 10.

- some regions (typically rural or geographically peripheral areas) to be over-represented in the upper house
- no ministers to sit in the upper house, to emphasise the government's stronger link to the lower house.<sup>21</sup>

Iain MacLean, also responding to the Labour Government's 2001 white paper, similarly thought that there were sufficient safeguards to ensure that an elected Upper House would not undermine the House of Commons:

The senate will not give rise to constitutional conflicts if the Parliament Act 1949 is retained. That preserves the situation in which the senate has a veto only in the last year of a Parliament. No constitutional crisis has arisen since 1911 from the House of Lords, with no democratic legitimacy, using this power. If a democratically elected senate exercises the same veto, it will have more legitimacy than the House of Lords. Therefore, a fortiori, there will be no constitutional crisis if the senate blocks legislation in the final year of a parliament.<sup>22</sup>

The Commons Public Administration Select Committee, in its consideration of Lords reform in 2002 and the possible threat to the House of Commons, observed:

We are satisfied that the Parliament Acts provide sufficient safeguards against that. The differences in powers between the Houses are already very clear. These have only to be identified for any argument on this point to be removed. The Commons can pass legislation without the consent of the Lords, after delay of about one year. But the Lords cannot pass legislation without gaining the consent of the Commons. The Commons only has to wait one month before passing a money bill without the consent of the Lords. Governments are formed, tested and held to account in the Commons. They have to retain the confidence of the Commons if they are to retain office. Only the Commons can make or break governments. We therefore do not believe that a reformed, more representative second chamber will pose a threat to that status. Moreover, our proposals are intended further to strengthen the distinctiveness of the second chamber, and so increase the effectiveness of Parliament as a whole.<sup>23</sup>

More recently the former Labour Government's 2008 white paper, *An Elected Second Chamber: Further reform of the House of Lords*, stated:

A reformed second chamber will almost certainly be more assertive than the current House of Lords, because it will be wholly or mainly elected... the Government welcomes the fact that where the House of Lords has serious concerns about proposed legislation, it gives voice to them. The Cross-Party Group on House of Lords reform considered that such assertiveness is unlikely to pose a risk to the primacy of the House of Commons. This primacy is currently based on the fact that the Government of the day is formed from the party or parties that can command a majority in the House of Commons. It is also based on the Parliament Acts and the financial privilege of the House of Commons. The Prime Minister and most senior ministers are also drawn from the House of Commons. A second chamber that is more assertive than the current House of

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<sup>21</sup> *ibid.*

<sup>22</sup> Ian McLean, *Cm 5291: The House of Lords—Completing the Reform: Response*, Nuffield College (2001), pp 3–4.

<sup>23</sup> House of Commons Public Administration Select Committee, *The Second Chamber: Continuing the Reform* (February 2002), HC 494, para 51.

Lords, operating against the background of the current arrangements for its powers, would not threaten primacy.<sup>24</sup>

And, importantly, given the above arrangements and the role of conventions, such as the Salisbury Convention (discussed below), the former Labour Government also proposed that “there should be no change to the powers of a reformed second chamber”.<sup>25</sup>

On the question of the impact of Lords reform on the operation of the Parliament Acts, Lord McNally, Minister of State at the Ministry of Justice, on 24 June 2010 stated:

The Government believe that the basic relationship between the two Houses, as set out in the Parliament Acts 1911 and 1949, should continue when the House of Lords is reformed.<sup>26</sup>

Finally, Donald Shell has argued that the question of conflict between the House of Lords and the House of Commons is a misleading one. He suggests that the real conflict is between parliament more generally and the government:

It is not the balance between Lords and Commons that needs urgent attention and correction. It is the balance between the executive and parliament. Commons and Lords need to play complementary roles in altering that relationship, ‘shifting the balance’. Making the executive more genuinely accountable through parliament to the electorate would help to restore the reputation of parliament, and the second chamber undoubtedly can have a part to play in this.<sup>27</sup>

### **3 An Elected Second House—Wither the Salisbury Convention?**

As discussed above, a number of conventions and practices exist which are currently seen to govern the relationship between the House of Lords and the House of Commons. Robert Rogers and Rhodri Walters have listed some of the main features of these practices which run alongside the legal strictures of the 1911 and 1949 Parliament Acts, mentioned above. These include the practice that “the Lords may not amend Bills ‘of aid and supplies’”, which include the annual Finance Bill and the Consolidated Fund and Appropriation Bill. It also includes the Salisbury Convention.<sup>28</sup>

The Salisbury Convention (or Salisbury Doctrine) has been perceived, along with other provisions, such as the Parliament Acts, as a method by which the current elected Chamber can ensure that its policies can be enacted:

The Salisbury doctrine, as generally understood today, means that the House of Lords should not reject at second or third reading Government Bills brought from the House of Commons for which the Government has a mandate from the nation.

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<sup>24</sup> Ministry of Justice, *An Elected Second Chamber: Further reform of the House of Lords* (July 2008), Cm 7438, pp 42–3.

<sup>25</sup> *ibid.*

<sup>26</sup> HL *Hansard*, 24 June 2010, col 205WA

<sup>27</sup> Donald Shell, *The House of Lords* (2007), pp 169–70.

<sup>28</sup> Robert Rogers and Rhodri Walters, *How Parliament Works* (2006), pp 244–7.

Since 1945, the Salisbury doctrine has been taken to apply to Bills passed by the Commons which the party forming the Government has foreshadowed in its General Election manifesto, being particularly associated with an understanding between Viscount Addison, the Leader of the House of Lords, and Viscount Cranborne (the fifth Marquess of Salisbury from 1947), Leader of the Opposition in the Lords, during the Labour Government of 1945–51.<sup>29</sup>

The former Labour Government was very concerned to stress the importance of the Salisbury Convention. Jack Straw, the then Leader of the House of Commons, in his evidence to the Joint Committee on Conventions, whose report was published in 2006, sought to underline its centrality. He argued that Governments:

must be assured that Salisbury-Addison will operate in respect of manifesto commitments because it is absolutely fundamental to the contract that is entered into between electors and parties... In addition to that, governments must be allowed to get their essential legislation which may not be in a manifesto through, without having to resort to the blunderbuss of the Parliament Acts.<sup>30</sup>

The Labour Government's white paper, *The House of Lords: Reform*, published in February 2007, though accepting that the Convention might be renamed, also highlighted the importance of a more legitimate Lords not challenging the supremacy of the Commons:

As ever, the United Kingdom's constitutional arrangements must be a careful balancing act. The 'extent' of the reformed House's legitimacy needs to be balanced against the principles of primacy of the Commons and the complementarity of the second chamber.<sup>31</sup>

However, a number of writers have questioned whether the Salisbury Convention and other conventions might need to be revisited if House of Lords reform proceeds. The late Lord Carter, writing in 2003, argued that these conventions were important as they were more subtle than the bluntness of the Parliament Acts, for instance, in ensuring that Governments could have their business considered without delay and that the elected Chamber would finally have its way. Though he thought these conventions had "more or less" held since 1999, he maintained that in terms of Lords reform:

Any consideration of composition must take the powers and conventions of the Lords fully into account if a reformed House is to play its proper part in scrutinising and revising legislation and calling the executive to account, while at the same time accepting the primacy of the Commons and the right of the elected government to deliver its programme of legislation.<sup>32</sup>

The Joint Committee on House of Lords Reform in its first report, published in December 2002, noted that the subtleties of the various conventions, including the Salisbury

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<sup>29</sup> House of Lords Library Note, *The Salisbury Doctrine* (June 2006, LLN 2006/006), p 1.

<sup>30</sup> Joint Committee on Conventions, *Conventions of the UK Parliament* (November 2006), HC 265, HL Paper 1212, p 29.

<sup>31</sup> Leader of the House of Commons, *The House of Lords: Reform* (February 2007), Cm 7027, pp 10–11 and 26.

<sup>32</sup> Denis Carter, 'The Powers and Conventions of the House of Lords', *Political Quarterly* (July 2003), vol 74, no 3, p 21.

Convention, could be questioned by an elected Upper House:

Taken together, these conventions govern the day-to-day relations between the Houses during a parliamentary session, contributing in a significant way to the overall effectiveness of Parliament as a place where business is transacted efficiently. The House of Lords could depart from any of these conventions at any time and without legislation, and might well be more inclined to do so if it had been largely (and recently) elected. But the continuing operation of the existing conventions in any new constitutional arrangement will be vital in avoiding deadlock between the Houses—which could all too easily become an obstacle to continuing good governance. We therefore strongly support the continuation of the existing conventions.<sup>33</sup>

These issues were also addressed by the Labour Peers Working Group on House of Lords Reform in its report *Reform of the Powers, Procedures and Conventions of the House of Lords*, published in 2004. They also were concerned that a reform of the House of Lords, especially in terms of its composition, might lead to a more assertive House that might depart from conventions, particularly the Salisbury Convention. They called for clarification of the Convention and for its formal adoption through resolution or by legislation if that was not possible.<sup>34</sup> However, the Cross-Party Report *Breaking the Deadlock* warned that “the current settlement on Lords powers has served us well for more than half a century, and should not be altered without careful thought”.

The Joint Select Committee on Conventions, which published its report in November 2006, considered a number of conventions, including the convention that the Lords consider government business in reasonable time and the Salisbury Convention, but also other practices such as ‘ping pong’ and the Lords’ ability to reject statutory instruments. It rejected the view that codification should be the way forward, instead preferring the adoption of resolutions to clarify and improve shared understanding between the two Houses. But on the possible impact of Lords reform, the Committee stated:

If the Lords acquired an electoral mandate, then in our view their role as the revising chamber, and their relationship with the Commons, would inevitably be called into question, codified or not. Given the weight of evidence on this point, should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again.<sup>35</sup>

The then Labour Government, in its response to the Committee’s report, accepted the Committee’s analysis, recommendations and conclusions, though Jack Straw, then Leader of the House of Commons, maintained that the “relationship and conventions identified by the Joint Committee therefore should apply to any differently composed chamber”.<sup>36</sup>

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<sup>33</sup> Joint Committee on House of Lords Reform, *House of Lords Reform: First Report* (December 2002) HL Paper 17, HC 171, paras 11 and 12.

<sup>34</sup> Labour Peers Working Group on House of Lords Reform, *Reform of the Powers, Procedures and Conventions of the House of Lords* (2004), p 2.

<sup>35</sup> Joint Committee on Conventions, *Conventions of the UK Parliament* (November 2006), HC 265, HL Paper 1212, p 76.

<sup>36</sup> HC *Hansard*, 13 December 2006, col 92WS. For further commentary on the Joint Select Committee on Conventions and debates around its work see: House of Commons Library Standard Note, *House of Lords: Conventions* (8 January 2007, SN/PC/4016).

The subsequent white paper, published in 2007, generally went along with this view:

The Government accepts that changes to the composition of the Lords will call the current conventions into question, and that, having brought forward these proposals for reform there will inevitably be debate about how the conventions might evolve.

The Government's view is that the current conventions are the right one for a reformed House to work with, certainly early in its life. There are those who suggest that reform of the Lords, and in particular the introduction of an elected element, will lead to the House of Lords seeking power over issues such as taxation, and a challenge to the primacy of the Commons. The Government believes that if this were to happen it would undermine the role and purpose of the House of Lords, and lead to the loss of much of what is valuable and successful about the current House. Crucially, it would start to erode a vital facet of the successful operation of the House of Lords—that it can invite a Government to reconsider its specific proposals without calling into question its authority to govern.

Although the primacy of the Commons is historically derived from its elected mandate, primacy no longer rests solely on this fact. Primacy is made real by the different functions exercised by the two Houses, and their different roles. The Government cannot govern without the support of the Commons, the Commons controls supply, and the Commons has the final say on legislation—this is how the primacy of the Commons is now expressed.<sup>37</sup>

The 2008 white paper essentially restated this position.<sup>38</sup>

However, some writers have also argued that some of the conventions are already coming under strain. Rogers and Walters, writing in 2006, argued that in terms of the Salisbury Convention, there was “some evidence (articulated mainly by the Liberal Democrats who no longer accept it) that the convention is losing some of its force”.<sup>39</sup> For instance in a debate in May 2005, Lord McNally, the Leader of the Liberal Democrats in the Lords, questioned its relevance:

I do not believe that a convention drawn up 60 years ago on relations between a wholly hereditary Conservative-dominated House and a Labour Government who had 48 per cent of the vote should apply in the same way to the position in which we find ourselves today.<sup>40</sup>

Lord Thomas of Gresford, speaking in the same debate, similarly thought it outdated. He thought that the Parliament Acts still ensured the overall supremacy of the Commons, while more generally “the Government should not rely on an outdated convention but should argue for their programme on its merits”. He also questioned whether a manifesto, “an advertising document containing various slogans”, could really be seen as an indicator of legislative proposals.<sup>41</sup>

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<sup>37</sup> Leader of the House of Commons, *The House of Lords: Reform* (February 2007), Cm 7027, p 20.

<sup>38</sup> Ministry of Justice, *An Elected Second Chamber: Further Reform of the House of Lords* (July 2008), Cm 7438, p 5.

<sup>39</sup> Robert Rogers and Rhodri Walters, *How Parliament Works* (2006), p 247.

<sup>40</sup> HL *Hansard*, 17 May 2005, cols 20–1.

<sup>41</sup> *Ibid*, cols 274–5.

Similar sentiments were expressed by some of the witnesses who gave evidence to the Joint Committee on Conventions. Professor Rodney Brazier, Professor of Constitutional Law, University of Manchester, for instance argued that the Salisbury Convention ceased to apply in 1999, when the majority of the hereditary peers were excluded from the House. Donald Shell, Senior Lecturer in Politics, Bristol University, thought that though the definition of the Convention was accurate and adequate, he did not view it as a true part of the constitution. Moreover, he saw it as “an understanding between party leaders in the House of Lords formulated to meet a particular situation, and an understanding which has endured so long as those circumstances have prevailed”.<sup>42</sup>

More recently, the election of a coalition Government, for some, has further weakened the Salisbury Convention. Dr Eamonn Butler, writing on his blog on the Adam Smith website, argued:

But on what manifesto was the present coalition government elected? There were two manifestos, with plenty of conflicts between them. The government might say that it quickly drew up an agreement, with each party dropping some promises but accepting others from the other side: but the electors never had the chance to vote on this compromise. So what authority should it have? Already, Labour peers are threatening to tear up the Convention and set themselves free to oppose coalition bills. In so doing, they only hasten their own demise. An opposing majority in an unelected House of Lords might be tolerable if it makes useful amendments and does not block legislation out of partisan spite. If they turn every issue into a party issue, though, people will start asking by what right do these appointed, mostly superannuated ex-politicians dare to interfere? It all increases the pressure for an elected House of Lords.<sup>43</sup>

The impact of Lords reform on the Convention therefore hinges on its continuance as an accurate description of the relationship between the two Houses, its desirability and its ability to withstand a more assertive Second Chamber. But, as Vernon Bogdanor speculates, the debate over the future of the Convention is also a metaphor for wider issues about power, its distribution and the uncertain context in which it currently operates:

A dispute about whether the Salisbury convention holds or is no more than a merely intellectual dispute, but in part a dispute about the proper locus of political power. There may thus be no wholly satisfactory way of determining who is ‘right’ in such disputes, since the answer may depend upon the balance of political power, and upon political vicissitudes and the state of public opinion. In Britain, it will often be the case that where conventions are concerned, the limits of the constitution tend to coincide with the limits of political power. Living as we do during a period of some constitutional ferment, it has become particularly difficult to predict the outcome of what is essentially a political struggle, and difficult, therefore, to discover a satisfactory solution to the problem of enacting, for example, the powers of the Lords on a constitution.<sup>44</sup>

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<sup>42</sup> Joint Committee on Conventions, *Conventions of the UK Parliament* (November 2006), HC 265, HL Paper 1212, pp 30–1.

<sup>43</sup> Dr Eamonn Butler, ‘The Future of the Salisbury Convention’, 8 June 2010.

<sup>44</sup> Vernon Bogdanor, *The New British Constitution* (2009), pp 229–30.

#### 4 Duplicating the House of Commons—A Loss of Expertise?

A number of commentators have also questioned whether an elected Second Chamber might merely duplicate the House of Commons, whilst leading to the loss of independently-minded peers, many of whom are experts in their chosen fields. Indeed, two writers, Dawn Oliver and Lord Bingham, have attempted to turn the debate back to one of an appointed versus an elected House, mainly on the basis that an appointed House of experts is preferable to one composed of elected whipped politicians.<sup>45</sup>

Other writers have more generally raised concerns about a possible loss of expertise. Edward Pearce, for instance, has recently observed that:

In any election for the Upper house, candidates will be chosen and promoted by party machines and voted for essentially by supporters of parties. It will palely reproduce the current Commons model...

The virtues of a good second chamber are those of intelligent contradiction, of debate continued beyond the lines of party militias. It requires bright, specialist knowledge in all the key fields of life and work. The life peer system has done this and not done it at all badly.

The present House of Lords breaks every rule of the pluralist hornbook, yet it passes the test of troubling the executive.<sup>46</sup>

More specifically, Pearce questioned replicating what he saw as the ascendancy of the political class in the House of Commons:

A great and expanding flaw in modern politicians is that they are precisely, often exclusively that—politicians. They have begun early at university, in party clubs, have worked in the outer office of a Minister, at party headquarters or at the elbow of an MP. They have never tied an artery, sat up with a company's books, sold a bond or plastered a wall. In an elected House, yet more politicians—hermetically professional, probably inferior—will fill the spaces required.<sup>47</sup>

Writing in *The Independent* in May 2010, Paul Vallely expressed similar sentiments:

The independence of the Lords is rooted in the nature of its membership. The modern peerage is made up of a huge range of expertise: scientists and surgeons, lawyers and landowners, businessmen and bishops, novelists and nurses, spies and former diplomats. Their title is a recognition of excellence or eminence in their field. This brings great skills and proficiency to policy issues, parliamentary committees of inquiry and the revision of laws. It offers considerable real life experience to counter the myopia of professional politicians.

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<sup>45</sup> Dawn Oliver, 'What is to be done about the House of Lords?' (2010), calls for a 'Commission for Executive Scrutiny', appointed by the Appointments Commission which "would provide for a gender, ethnic and party balance, and an independent or non-party aligned element of say 25%", whilst allowing the Appointments Commission to call for expertise in areas such as "commerce, the constitution, culture, defence, economics, education, European law and policy, families, finance, foreign affairs, health, human rights, manufacturing, IT, politics, science, social policy, sport and so on". Lord Bingham, 'How I'd abolish the House of Lords', *The Guardian* (23 October 2009), similarly put forward the case for a Council of the Realm based on needed expertise.

<sup>46</sup> Edward Pearce, 'An Elected Upper House and Other Fallacies', *Political Quarterly* (October–December 2009), vol 80, no 4, pp 497 and 499.

<sup>47</sup> *Ibid*, p 499.

But it also brings free-thinking and independence of mind which do not characterise the whipped party political process. Because of their age, in most peers ambition has been replaced by wisdom, which is why many of them are content to speak and vote only when their particular expertise is required. Their lifelong tenure ensures their independence. They are beholden to no party or lobby but conscience and commonsense. Not all fit such a description—some are there only because they have funded a political party or played tennis with a prime minister—but the description holds good of enough of them. Our House of Lords is *sui generis*. It ought not to work, but it does.

What would an elected second chamber be like? It is no use saying that existing Lords' members could stand for election; most wouldn't. They are past the time in life where they need to be endorsed or seen to achieve. They would retire to their books, telescopes and gardens. Their replacements would be career politicians, probably second-rank ones at that—young politicians en route to the Commons, superannuated local council cronies, and representatives of each party's grateful dead. It would be a place of seedy deals and the low politics of party whips. That is a notion attractive only to party managers who would breathe a sigh of relief at an upper house that would not rock the leadership's boat. The chamber which is supposed to be the final check on executive power would now be firmly within its control.<sup>48</sup>

Anthony King, academic and member of the Wakeham Commission, echoed the above and also suggested that an elected Second Chamber might be seen as odd when set against calls for a slimmer Commons:

The principal claim made in favour of a wholly or mainly elected second chamber is that it would be more "democratic" than the present House of Lords and so more legitimate. Against that, it is not explained how the members of such an elected chamber would be of higher quality than the existing members of the House of Lords or result in the UK being a better governed country than it is now.

It is also not explained why it should be desirable to add significantly to Britain's already large body of full-time, professional legislators: 650 at the moment in the House of Commons, 129 in the Scottish Parliament, 60 in the Welsh National Assembly and 108 in the Northern Ireland Assembly—an impressive total of 947. Even with the proposed reduction in the size of the Commons, the creation of an elected upper chamber would almost certainly push that total to well over 1,000. That would be a paradoxical outcome at a time when Britons are suspicious of party politics and politicians.<sup>49</sup>

Vernon Bogdanor also refers to the tension facing those who would like a more democratic and legitimate second House, but not composed of members with similar characteristics to those of the members of the other House:

The members of the Wakeham Royal Commission on the House of Lords, which reported in 2000, were told by many witnesses that the Lords should be elected. The witnesses were then asked whether they favoured an upper house which replicated the Commons... They of course did not. They wanted an upper house without party politicians which could continue to undertake the valuable work

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<sup>48</sup> Paul Vallely, 'The Lords is not perfect, but it works', *The Independent* (23 May 2010).

<sup>49</sup> Anthony King, 'But will we be better governed?', *Daily Telegraph* (18 May 2010).

currently done by the House of Lords. Yet, in every modern elected upper house, elections are organised by political parties and run by professional politicians.<sup>50</sup>

In a wider sense, Donald Shell, drawing on Bagehot's notion of Parliament 'teaching the nation', has also suggested that because of its expertise and independence the House of Lords is uniquely placed to play an educational role:

A healthy democracy needs informed debate at its centre... Both chambers might do this, but the populism involved in competitive party politics inhibits the extent to which informed opinion can be the driver of debate in the Commons. A second chamber with expertise and experience of a more varied kind can help to serve the public in a different way.<sup>51</sup>

Ian McLean, however, earlier this year questioned whether elected members of a Second Chamber would necessarily mimic colleagues in the Commons. He wondered whether the electoral system used might avoid this happening:

The elected senators should sit for a single non-renewable term of perhaps three parliaments. A third of the house would be elected at each election, from the UK's 12 standard regions, by proportional representation. Nobody would be eligible to move directly from either house to the other. Senators thus elected would not be clones of anybody. Elected by proportional representation, they would not disproportionately come from one side—but on average the Commons would always be the more recently elected house, and could claim supremacy on that basis. Senators would be immune to deselection threats from their party whips because they would not be reelected anyhow. The quarantine rules would deter career politicians and would bar retired or dismissed MPs.<sup>52</sup>

Others have also wondered whether this notion of House of Lords' expertise is exaggerated. Hugh Bogel and Andrew Defty, writing earlier this year, acknowledge that in some areas there is a reservoir of expertise within the House:

There is no doubt that there is a great deal of expertise in the House of Lords. Many Peers are respected experts within their chosen fields, and the quality of debates in the Lords can be very high. Several factors have served to create and sustain this level of expertise. The system of appointing individuals to the House of Lords, both party peers and Crossbenchers, has brought into Parliament a large number of talented individuals from a diverse range of backgrounds. Once in the Lords, the way in which the House operates provides the potential for members to maintain their expertise, principally by allowing, indeed encouraging, members to maintain a professional life outside the Lords, and by not expecting Peers to take on the demands of representing a constituency.<sup>53</sup>

However, in other areas the authors are more sceptical:

The absence of a constituency, which many Peers consider to be beneficial in terms of allowing them time to develop their knowledge, is in some cases, such as social policy, a barrier to the acquisition of the kind of detailed knowledge and

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<sup>50</sup> Vernon Bogdanor, *The New British Constitution* (2009), p 171.

<sup>51</sup> Donald Shell, *The House of Lords* (2007), pp 166–7.

<sup>52</sup> Ian McLean, 'Shifting Sovereignties: Should the United Kingdom have an elected upper house and elected head of state?', *Political Insight* (April 2010), vol 1, no 1, p 13.

<sup>53</sup> Hugh Bogel and Andrew Defty, 'A Question of Expertise: the House of Lords and Welfare Policy', *Parliamentary Affairs* (January 2010), vol 63, no 1, p 82.

first-hand experience on which MPs frequently draw. Moreover, the opportunities for Peers to develop their expertise within the House are limited. The lack of research facilities, particularly compared with the House of Commons, means that the principal ways by which Peers sustain their expertise is by retaining a professional life outside the Chamber, which may limit their ability to contribute to the work of the House in other ways. In contrast, the direct and sustained access to constituents, coupled with the relative wealth of resources available to MPs, means that in some fields at least, the House of Commons may be considered the more expert chamber.<sup>54</sup>

On this basis, the authors conclude:

If 'expertise' is to be an important consideration in the make-up of parliament, and if it is to be used to legitimise the retention of an appointed House, or some appointed element, then a much clearer understanding of what is meant by expertise is required.<sup>55</sup>

Earlier this year, Meg Russell and Meghan Benton conducted a survey on behalf of the House of Lords Appointments Commission, which sought to analyse a range of existing data to evaluate the breadth of experience and expertise within the House of Lords. They found:

The professional area data shows some unsurprising results: the largest single group in the House is those with a "representative politics" background, principally as former MPs; the legal professions are also well represented. Less well known are the large numbers of peers with business and finance backgrounds, or backgrounds as academics. Areas which appear less well represented include architecture and engineering, transport, non-higher education, the leisure industry, science and local authority administration. There are very few peers with manual trades backgrounds.

At the level of jobs some of the same trends are seen. In addition there is a seeming lack of surveyors, planners and in particular peers with links to environmental protection. Most scientists in the Lords come from academic rather than other backgrounds. There are relatively few former schoolteachers (particularly of younger children). Relatively few peers have strong backgrounds in international organisations. Some of these groups look less well represented still once peers attendance is taken into account. Unsurprisingly more junior jobs are underrepresented—though many peers may have held such jobs early in their careers, but by now have accumulated more major experience in senior positions which means that their earlier experience is not visible in our figures.

The data on specialisms again shows some similar trends for example in terms of architecture, engineering, environmental protection and education. Other gaps appear to include public health and some scientific and medical specialisms such as psychology. As above it is a matter of subjective judgement where the most important gaps appear or what the most appropriate balance should be. When attendance is taken into account some of these gaps become more evident and others, such as psychiatry and mental health, are added.

All of the data in this report is also presented broken down by political party/group. The trends seen are generally unsurprising. For example most

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<sup>54</sup> *ibid*, p 83.

<sup>55</sup> *ibid*.

former trade unionists are Labour, the Conservatives have strong representation from the private sector and from agriculture, and the Crossbenchers have strong representation from the legal professions (despite the departure of the Law Lords), the civil service and the Armed Forces. We finally show some data on the backgrounds of former MPs, applying more lenient rules in order to take greater account of experience as ministers, shadow ministers or select committee chairs. This shows, for example, that there are relatively large numbers of former MPs with backgrounds in economic policy, defence, foreign affairs and education, but relatively fewer with backgrounds in agriculture, housing, health and culture, media and sport.<sup>56</sup>

## 5 Duplicating the House of Commons—A Loss of Independence?

A number of writers have noted that the House of Lords has a degree of independence amongst its members, which distinguishes it from the House of Commons. Lord Norton, for example, has suggested that this is a complex matter. He notes that Peers do tend to vote along party lines. However, this is because of cohesion in terms of similarity of thought or ‘tribal loyalty’ within party groups rather than through the sorts of discipline employed by Whips in the Commons. This has interesting consequences:

Peers are able to operate free of the constraints on and incentives available to the party leadership, activists and voters in other countries. There are no institutional, or behavioural, explanations for this cohesion. Members enter the House predisposed to vote for their party and they do so. Because the government enjoys no majority in the House, it is vulnerable to defeat. It therefore has to work hard to carry the House with it. What this entails is not necessarily persuading members individually of the value of their case but rather persuading the parties in the House: members will follow the cues of their party leaders. The whips serve to facilitate cohesion but are not the cause of it.

Because of weak whipping and a lack of carrots and sticks, Peers are therefore free to think and vote independently, even though they often follow party lines through emotional or intellectual commitment to a particular party. This, Lord Norton argues, also allows peers to share a collective ethos which encourages interaction amongst members on a non-party basis.<sup>57</sup> Emma Crewe has also noted the existence of ‘tribal loyalties’ amongst Peers in parties within a context of party factions and weak disciplinary sanctions. She too found that despite ideological differences between colleagues within parties and groups, peers did tend to present a united front on party lines. However, though dissenting Peers may “no longer gain the ear of ministers or colleagues” or not be “taken seriously”, she pointed out that they could still vote against their party without fear of the consequences facing MPs.<sup>58</sup> This freedom and ability to use independence of thought, and its affect upon the Government, could therefore be threatened if a reformed House was subject to strong whipping.

A key element in support of the notion of the independence of the House of Lords is the position of the Crossbench peers, who have no party allegiance and who, if the House

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<sup>56</sup> Meg Russell and Meghan Benton, *Analysis of existing data on the breadth of expertise and experience in the House of Lords: Report to the House of Lords Appointments Commission*, Constitution Unit (March 2010), p 5.

<sup>57</sup> Philip Norton, ‘Cohesion without Discipline: Party Voting in the House of Lords’, *Journal of Legislative Studies* (2003), vol 9, no 4.

<sup>58</sup> Emma Crewe, *Lords of Parliament: Manners, Rituals and Politics* (2005), p 130–60.

were to be fully elected, would in all probability disappear. The Crossbenchers' [homepage](#) sets out the nature of this independence and the role that Crossbench peers play:

They are known for their independent, non-party-political stance. Many have valuable specialist knowledge covering a wide variety of fields. This is particularly apparent in the range of topics and interests addressed by individual Crossbenchers in debates in the House. All House of Lords Committees will also have Crossbench members often with a significant depth of knowledge and expertise in the work their committees undertake.

Due to their independence Crossbenchers do not adopt any collective policy positions. They speak in debates and vote in Divisions as individuals. On most policy issues it would be rare if all Crossbenchers who voted were only found to be supporting one side in a Division. There is no process of whipping for the Crossbenchers.

Meg Russell and Maria Sciara, writing in 2009, considered the role of the Crossbenchers and the qualities that they bring to the work of the House of Lords. They argue that the Crossbenchers play a number of important roles in the House of Lords:

Apart from more measurable contributions, the Crossbenchers can be seen as playing four important more general roles in the Lords. Individual Crossbenchers may act as expert opponents, honest brokers or catalysts on controversial policies, and the group overall is sometimes described as being like a jury to whom the politicians in the chamber appeal.<sup>59</sup>

The latter role has a particular influence on the manner in which debate takes place:

The presence of the Crossbenchers can be seen as crucial to the well-known 'less partisan atmosphere' and (sometimes disputed) high quality of the debate that exists in the House of Lords in comparison with the Commons.<sup>60</sup>

Though Russell and Sciara argue that the concept of 'independence' itself is quite elusive, because "no agreed definition exists on what qualifies individuals to sit as independents", they do maintain that what matters is balance within the Crossbench ranks. They note that criticisms by some that Crossbenchers were 'Tories in disguise' have been diminished by the public and voluntary sector backgrounds of newer appointed Crossbench peers. They conclude that the "unparalleled" presence of such a large group of parliamentarians is dependent on a non-elected appointments system:

At the normative level, policy makers in the UK have generally agreed that maintenance of a large number of Crossbenchers is desirable. But this presents genuine policy problems. One requires accepting that some members will remain unelected, as an electoral system delivering high levels of independent representation is unlikely to be found. But even if this is accepted, it is a challenge to find members who will attend parliament regularly without the pressure and the support provided by a party whip.<sup>61</sup>

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<sup>59</sup> Meg Russell and Maria Sciara, 'Independent Parliamentarians En Masse: The Changing Nature and Role of the 'Crossbenchers' in the House of Lords', *Parliamentary Affairs* (2009), vol 62, no 1, p 44.

<sup>60</sup> *ibid*, p 46.

<sup>61</sup> *ibid*, pp 48–9.

Jonathan Freedland, writing in the *Guardian* in May 2009, agrees that independent members are important and acknowledges the issue of the supremacy of the Commons, but wondered whether that still produced an argument to counterbalance arguments about democracy:

This fundamental principle—that, in a democracy, the people elect those who govern them—should trump all others. Yes, electing members of the second chamber creates complications in our specific constitutional set-up. Those complications—wouldn't an elected "Lords" threaten the primacy of the Commons? Wouldn't we lose the independence and wisdom of the current upper house?—have held back reform for at least a century.

It is not impossible to devise an election method that would preserve what people admire, ensuring the new second chamber does not comprise party hacks, and still has access to the wisdom of elders. But what comes first in a democracy is the right to elect—and remove—those who govern us. It is long past time that we demanded it.<sup>62</sup>

But the question of democracy also raises the issue of legitimacy as a concept, in terms of what it means and upon what sources it draws. Donald Shell has therefore argued that the notion that elections necessarily confer legitimacy may be questionable as "legitimacy is primarily a quality afforded by others to an institution" and that in terms of the Lords it could also be said to rest on "having relevant expertise and experience and perhaps personal distinction".<sup>63</sup>

A number of alleged scandals which have occurred over the last few years involving peers have also caused some to question the notion of independence. The *Independent*, for example, though acknowledging much of the important scrutiny work that the House undertakes, argued for greater transparency in terms of lobbying:

There have been several recorded instances of peers handing their Westminster passes, intended for researchers, to lobbyists. And how many of us were aware before this week that 145 of the 743 members of the Lords are engaged in paid consultancy work? Most of these peers are doubtless offering innocent political advice for their services, rather than altering legislation in their clients' interests.<sup>64</sup>

The House of Lords responded to these issues by issuing a new code of conduct, which maintained the previous prohibition on paid advocacy and tightened the rules on lobbying.<sup>65</sup>

Because there has been an apparent tension between democratic legitimacy on the one hand and the need for expertise and independence on the other, many of the proposals for reform have opted for a mainly elected House, based on long non-renewable terms (usually between 12 and 15 years), but with a small independent appointed element. The former Labour Government's 2008 white paper, which suggested an 80:20 mix, was thus fairly typical of other proposals, in suggesting that there might be a split between mainly elected peers and their independently appointed colleagues.

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<sup>62</sup> Jonathan Freedland, 'A New Politics: Elect the second chamber', *The Guardian* (21 May 2009).

<sup>63</sup> Donald Shell, *The House of Lords* (2007), p 164.

<sup>64</sup> *The Independent*, 'We must preserve what is best of the House of Lords' (28 January 2009).

<sup>65</sup> See House of Commons Library Standard Note, *Regulations of standards of conduct in the House of Lords* (7 April 2010, SN/PC/04950) for a commentary on how the House of Lords responded to the issue of lobbying and paid advocacy.

## 6 A More Representative House of Lords?

A number of contributors to the debate about House of Lords reform have wondered whether an elected House will affect its representativeness. Such authors have argued that a fully or partly appointed House offers greater scope to ensure that different groups and sections of society are represented.

The First Report of the Joint Committee on Lords Reform, which was published in December 2002, noted the following about the advantages that an appointed House could confer if such appointments were independently scrutinised:

An appointed House could more easily be made representative both of sections of society (ethnic groups, sexes, etc.) and of the regions. It would be the responsibility of the new statutory body, the Appointments Commission, to ensure that such representativeness was achieved. It is essential that a revamped Appointments Commission should itself be seen to be independent and to gain widespread support for its difficult but important work.<sup>66</sup>

Similarly, writing in October 2006, the Cross-Party Working Group on House of Lords Reform, while noting that direct election would be more democratic, stated:

It would be difficult to ensure that the principles of representation of the racial and gender mix in the UK and the representation of religious opinion were met, unless strict rules were in place when individuals stand for election. Equally it would be difficult to see how representation of the Bishops would continue or how the Prime Minister of the day could continue to make the limited number of appointments as under the current arrangements.<sup>67</sup>

The Government's 2007 white paper also argued that an all-elected House would make it "very hard to ensure that the principles of representation of the racial and gender mix of the United Kingdom, and the representation of religious opinion, were met".<sup>68</sup>

However, the assertion that an appointed House will necessarily lead to greater diversity has to be treated with some caution. In the case of ethnicity, Operation Black Vote would seem to suggest that the House of Lords is more diverse in terms of black politicians than its elected counterpart.<sup>69</sup> However, in terms of gender, though more women entered the House of Lords after 1999, current figures suggest that proportionately both Houses are almost in line, with the House of Commons being slightly more representative.<sup>70</sup> Christina Eason notes that if one considers that the removal of the hereditary peers in 1999 doubled the presence of female peers overnight from 8.8% to 15.8%, the subsequent increases across the following decade have been "nominal".<sup>71</sup>

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<sup>66</sup> Joint Committee on House of Lords Reform, *House of Lords Reform: First Report* (December 2002), HL Paper 17, HC 171, p 22.

<sup>67</sup> Cross Party Working Group on House of Lords Reform (October 2006), p 8.

<sup>68</sup> Leader of the House of Commons, *The House of Lords: Reform* (February 2007), Cm 7027, p 30.

<sup>69</sup> Operation Black Vote's [website](#) lists 13 MPs as being black, compared to 38 black Peers.

<sup>70</sup> After the May 2010 General Election, 21.9% of MPs are women compared to 20% of Peers. See House of Commons Standard Note, *Women in Parliament and Public Service* (May 2010).

<sup>71</sup> Christina Eason, 'Women Peers and Political Appointment: Has the House of Lords Been Feminised Since 1999?', *Parliamentary Affairs* (2009), vol 62, no 3, pp 399–417.

Another criticism of the current House is that it is not regionally representative. In 2008, the New Local Government Network published a report which was critical of the House in this respect:

In this paper we illustrate the disproportionate representation of London and the South East in our legislature and the unfairly diminished voice that many parts of England have in the second chamber at present. Local communities should have a fair share of influence within our legislature and this is a cornerstone principle which has been overlooked for too long.<sup>72</sup>

The regional representativeness of the House of Lords has been a key part of many of the proposals put forward since 1999. Generally, rectification of this perceived problem has been seen in terms of electing regional members through different types of proportional representation systems. For instance, this was the case with the Wakeham Commission, and the various Government white papers submitted since 1999.<sup>73</sup> The notion that an elected element of a reformed House could make the House more representative is also contained within various other proposals.<sup>74</sup> On this basis, one likely consequence of a fully or partially-elected House would be one that was more regionally representative.

Despite the overall composition of the House of Lords, some of the appointments of the House of Lords Appointments Commission, which was established in 2000, may indicate the ability of a non-elected selection process to increase diversity. This is a point that the current Chairman of the Commission, Lord Jay, has been keen to make:

The Commission has recommended 51 people for peerages since its first list in 2001. Two of those 51 have since died so there are 49 active Appointments Commission peers in the House of Lords; that is about 28% of the total of 183 independent cross-bench peers, which means that more than 70% of the cross-bench peers have not gone through this route. Of those 51, 37% are women, 22% are from ethnic minorities, and 8% are disabled. That is a greater degree of diversity than the current composition of the House of Lords and that reflects the remit of the Commission, which it takes seriously, to ensure the House is more broadly representative of Britain's diversity.<sup>75</sup>

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<sup>72</sup> New Local Government Network, *Lords of our Manor? How a reformed House of Lords can better represent the UK* (September 2008), p 3. According to their analysis, about 41% of peers came from London and the South East, compared to 3% for the East Midlands, 2% for the North East and 4% for Wales.

<sup>73</sup> The Wakeham Commission (Cm 4534) put forward three models of how this could be done, though the majority of the Commission favoured a system by which regional members would be elected by thirds at the same time, largely using the election method for UK MEPs, albeit with a 'partially open' list system of PR. The 2001 white paper (Cm 5291) called for a proportion of members to be "elected to represent the nations and regions within the UK". The 2007 white paper (Cm 7027) thought that the most appropriate method of election generally was an "open regional list system". Though the 2008 white paper (Cm 7438) was agnostic about the type of electoral system to be used (eg FTTP, AV, STV, or Open List systems), it stressed that an elected House should be more representative of the UK as a whole.

<sup>74</sup> See for instance: Kenneth Clarke, Robin Cook, Paul Tyler, Tony Wright and George Young, *Reforming the House of Lords: Breaking the Deadlock* (2005), p 18; Andrew Tyrie et al., *An Elected Second Chamber: A Conservative View*, Constitution Unit (July 2009), p 5.

<sup>75</sup> Lord Jay, 'The House of Lords Appointments Commission: Past, Present and Future', Constitution Unit Seminar (22 October 2009). Lord Jay made similar comments when speaking before the House of Lords Select Committee on the Constitution; see their report: *Meeting with the Chairman of the House of Lords Appointments Commission* (April 2010), HL Paper 109, p 8.

However, others have argued that a properly devised electoral system could ensure a more diverse mix than the House as presently constituted. The *Power Enquiry*, which was published in March 2006, and which sought to understand political disengagement and produce various proposals for political reform, stated:

In our deliberations on the Lords, we concluded that the best way a reformed chamber could rebuild engagement with the public was to ensure it was independent of the party tribalism and patronage that is such a feature of the Commons, and which alienates so many citizens from their MPs. The key to this, it was felt, was to employ an electoral system that would allow as wide and diverse a set of candidates as possible and give members of the Lords a reasonable security of tenure to ensure independence from the predations of the whips.<sup>76</sup>

## 7 Religious Representation in the House of Lords

One particular aspect of the debate about representation in the Lords is the position of the Bishops and the wider issue of religious representation. If the House were to be fully elected this formal representative element of the House would cease and it might be more difficult to ensure that religious viewpoints more generally are reflected.

ComRes conducted two surveys in 2009 of 100 peers on a range of issues connected with the House of Lords and included several questions on religious representation within the House and on the specific question of the place of the Bishops. ComRes found that of those asked, 54% agreed that the House “should reflect the religious make up of the country as a whole”, with 33% disagreeing, while 59% disagreed that religious representation in the House of Lords should be phased out.<sup>77</sup> On the question of Bishops: 45% of the peers thought that there should be no change; 34% thought that Bishops should only be sitting in the House if representatives of other Christian denominations were allowed the same right; 18% said that Bishops should only be able to sit in the House of Lords if other faiths were represented.<sup>78</sup>

In considering what the impact of this might be, it is perhaps worth considering initially the arguments that have previously been put forward for such representation. The Wakeham Commission, for instance, argued that there was a place for religious representation in a general sense:

In considering whether the faith communities should have specific, explicit representation, we do not in any way imply that they are the sole source of philosophical, moral or spiritual insight or that their insights are necessarily more valuable than those contributed by people without a religious faith. In the reformed second chamber, as in the present House of Lords, individual members will bring their own deepest convictions to bear, whether their basis is religious or secular. Any formal representation for religious bodies should be seen as an acknowledgement that philosophical, moral and spiritual insights are a significant factor in many debates and that a variety of such contributions is welcomed.

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<sup>76</sup> *Power: An Independent Inquiry into Britain's Democracy* (March 2006), pp 150–1.

<sup>77</sup> ComRes, *Peers Panel Survey: An Independent House* (June 2009).

<sup>78</sup> ComRes, *The Future of the Bishops in the Lords* (January 2009).

Religious belief, however, is an important part of many people's lives and it is desirable that there should be a voice, or voices, in the second chamber to reflect that aspect of people's personalities and with which they can identify.<sup>79</sup>

Though the Wakeham Commission argued that a reformed House should 'embrace' other Christian and non-Christian groups it put forward specific arguments for the continuation of an 'explicit' presence for the Church of England:

Some 50 per cent of the population of England are baptised members of the Church of England and it is the Christian denomination to which they claim to belong and with which they identify, regardless of the regularity of their church attendance. The Church serves the whole of England through 13,000 parishes. It runs 5,000 primary schools (accounting for 25 per cent of all primary school children) and some 200 secondary schools. It is also the established Church in England, connected in a variety of ways to the Queen, who is its Supreme Governor, and to Parliament.

More generally, a majority of us acknowledge that the presence of the Church of England bishops in the House of Lords has served a wider purpose than simply protecting or recognising the established status of the Church of England. The Church of England bishops' position as Lords of Parliament reflects the British history and culture of seeking to heal religious conflict and promoting ever greater religious tolerance and inclusiveness. The way in which the Church of England's representation in the House of Lords has been manifested over at least the past 100 years has served to acknowledge the importance of philosophical, moral and spiritual considerations—not just religious ones—in the conduct of public affairs. And that representation has been acknowledged by leaders of other Christian denominations and faith communities as providing a voice in Parliament for religion in general, not simply for the Church of England. A majority of us accept the force and the continuing validity of these points. For some of us, the presence of the Lords Spiritual is a sign that Governments are in the end accountable not only to those who elect them but also to a higher authority.<sup>80</sup>

The Labour Government's subsequent white papers, published in 2001 and 2007, proposed that the Church of England's formal presence should remain. The 2001 white paper therefore argued that:

The Government acknowledges the force of the Royal Commission's proposition that religious representation helps in the recognition of the part that moral, philosophical and theological considerations have to play in debating political and social issues. It agrees that the Church of England should continue to be represented formally in the House.<sup>81</sup>

However, the 2001 white paper did not accept the formal recognition of other religions. The 2007 white paper thought that there should be fewer Bishops and that the Church of England might be "given the legal flexibility to decide itself which Bishops should sit in

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<sup>79</sup> Royal Commission on the Reform of the House of Lords, *A House for the Future* (January 2000), Cm 4534, p 151.

<sup>80</sup> *ibid*, p 152. The report recommended that 16 places should be assigned to the Church of England, 5 to other Christian denominations and 5 to the representatives of non-Christian Groups.

<sup>81</sup> Cabinet Office, *The House of Lords: Completing the Reform* (November 2001), para 83.

the House, rather than being determined on seniority". However, it retained the view that:

It is important that faith communities are represented in the House of Lords. The Church of England, as the established Church, enjoys a special status in social and political life in England and more widely around the United Kingdom. This has long been recognised even by people who are not themselves Anglicans.

The 2007 white paper also acknowledged the place of other religions:

It is equally important that a reformed House of Lords reflects the wider religious make-up of the United Kingdom, though the formal nominated representation of particular faith groups may not be possible.

The Government will look carefully at how the views of those of faith and those of none can be represented in a reformed House of Lords. This will of course only be realistically possible if there is a significant appointed element in a reformed House.<sup>82</sup>

More recently, the Bishop of Croydon, though not a member of the House of Lords, set out on his blog what he thought would be lost if the Bishops ceased to sit in the Upper House:

Bishops might either stay or go in the inevitable reforms of the House of Lords. It is also possible that if they stay their numbers will be reduced. I doubt if we will weep either way—we'll just get on with it like we always do. But I would still argue that bishops of the Church of England are often better informed and better experienced in the realities of all levels of our society than almost any elected politician or unelected Lord. They have representation on the ground in the parishes of the country and know the realities that the clergy and churches live with every day of every week of every year as they serve their local communities. That knowledge—not subject to any electoral advantage—gives a voice in our legislature to all sorts of people who otherwise have no voice.<sup>83</sup>

By the publication of its 2008 white paper, the former Labour Government had changed its view on the place of the Bishops within the House of Lords, as it moved towards supporting a fully elected House:

The Government proposes that there should be no reserved seats for Church of England Bishops in a wholly elected second chamber. It also proposes that if there is to be an appointed element in a reformed second chamber, there should be a proportionate number of seats reserved for Church of England Bishops. These seats would not count towards the proportion to be filled following nomination or application to the Appointments Commission. The Church of England would be invited to consider how it would in future select Bishops for membership of the second chamber.<sup>84</sup>

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<sup>82</sup> Leader of the House of Commons, *The House of Lords: Reform* (February 2007), Cm 7027, pp 47 and 28.

<sup>83</sup> The Bishop of Croydon (Nick Baines), 'Against the Grain' (14 March 2010).

<sup>84</sup> Ministry of Justice, *An Elected Second Chamber: Further reform of the House of Lords* (July 2008), Cm 7438, p 46.

However, the automatic place of the Bishops and of religious views more generally is actively opposed by some. Polly Toynbee, journalist and President of the Humanist Society, has set out the case as follows:

If some non-elected places are reserved for the holy men and women of the faiths, their position becomes even more anomalous than at present. This is one of the world's most secular societies, where only 7% ever go to church in a year, only 1.9% on any Sunday. By what logic does religion deserve a reserved space, where votes are tied to outside instructions?

Bishops in the Lords hold great sway over matters of life and death, most recently in organising to prevent right-to-die reform—against the will of 82% of voters. They helped engineer an exemption in the equalities bill to allow religious employers to discriminate against gays and others, though they run a third of all schools and increasing numbers of state-financed services, from hospices to care homes and day centres. Ed Balls, inexplicably, allowed religious schools to opt out of most sex education: children in religious environments probably need open discussion most.

The idea that faith offers some missing moral dimension to politics is offensive. All politics is about moral choices. As individuals there are good, wise and clever people of all faiths and none. Let the religious stand for office alongside everyone else, with no reserved benches that honour their office and their dogma instead of their individual qualities.<sup>85</sup>

Iain MacLean, responding to the Labour Government's 2001 white paper, questioned the notion that the presence of the Bishops had always been progressive and tolerant:

Contrary to the claim in the Royal Commission Report (Cm 4534, 15:9), the presence of the Church of England Bishops in the House of Lords has not always promoted 'ever greater religious tolerance and inclusiveness'. A dispassionate historian would have to say that until the 20th century it did just the opposite. Between 1893 and 1914, the Bishops voted en masse against Irish Home Rule and Welsh Disestablishment. As they were disestablished in Ireland in 1869, it is hard to see how they felt entitled to vote at all on Home Rule; and in Wales, their denomination was a small minority sect. If faith communities are to be represented in proportion to size, then the Church of England should have approximately 21% of those seats. Nothing in Cm 4534 nor in the white paper explains why the ex officio representation should remain.<sup>86</sup>

The Commons Public Administration Select Committee in its report on Lords reform published in 2002, said that the continuation of the tradition of an ex officio religious membership in the Lords was an "anachronism" and that it should end, though clergy might be appointed within a more general policy of diversity.<sup>87</sup>

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<sup>85</sup> Polly Toynbee, 'Goodbye to the Bishops' *The Guardian* (15 March 2010). The Humanist Society's position on the Bishops is set out in more detail in: The Humanist Society, *Religious Representatives in the House of Lords* (March 2010).

<sup>86</sup> Iain MacLean, *Cm 5291: The House of Lords—Completing the Reform: Response by Iain MacLean, Professor of Politics, Oxford University* (2001).

<sup>87</sup> House of Commons Public Administration Select Committee, *The Second Chamber: Continuing the Reform* (February 2002), HC 494, para 159.

However, the call for a more diverse religious representation in the House of Lords, especially if formal, has been seen as problematic on a number of grounds. Janet Lewis-Jones, for instance, has pointed to a number of practical problems. Firstly, she notes that the Bishops themselves are not “in any sense “representative” of the Church of England”. The Church of England “does not choose or vote for its bishops: they are appointed by the Crown on the advice of ministers” and as such “does not choose or vote on which 26 of the 43 diocesan bishops should go to the House of Lords: they sit by seniority”.<sup>88</sup> In terms of other Christian faiths, she notes that some denominations would see themselves as being compromised by a formal involvement with the state, while the Catholic Church does not permit its priests to be members of secular legislative bodies. In terms of other religions she argues that the problem is often one of no central authority or organisation representing the religion concerned, citing Buddhism, Hinduism, Islam and Sikhism. In the case of the Jewish faith, she maintains that the Chief Rabbi’s authority is not recognised by all Jewish congregations, though he is generally perceived both outside the Jewish community and within it as the public religious representative of the totality of British Jewry.<sup>89</sup>

A recent House of Commons Library Standard Note on the subject of religious representation in the House of Lords indicates that subsequent pronouncements by various religious groups in response to a Government consultation were mainly in accord with the above. For instance, the Bahai community thought that “the identification of people who are genuinely representative of their faith communities can be far from easy for some communities”, whilst including “representatives of some faiths and not of others could be invidious”. The Network of Buddhist Organisations stated that in the UK there were “both ancient ones and more modern Western forms of Buddhism” which meant there was “no formal means whereby a choice could be made as to who might fill such a role”. The Board of Deputies of British Jews were concerned that appointing somebody to speak on behalf of a diverse community could be divisive. Such groups appeared to suggest that the best way forward was a general diverse religious representation that was not formal.<sup>90</sup>

## **8 The Church of England and Lords Reform—Disestablishment?**

Some commentators and politicians have claimed that the removal of the Bishops might lead to the disestablishment of the Church of England or change the nature of the relationship between Church and State. Janet Lewis-Jones, writing in 1999, argued that:

The presence of the bishops in the House of Lords is neither a necessary nor a sufficient condition for its [the Church of England’s] status as an established church, but it is a significant element in establishment in England. Church and State are entwined in complex ways in the fabric of the nation and can be said to bestow some legitimacy on each other.

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<sup>88</sup> Janet Lewis-Jones, *Reforming the Lords: the Role of the Bishops*, Constitution Unit (June 1999), p 7.

<sup>89</sup> *ibid*, pp 10–11.

<sup>90</sup> House of Commons Library Standard Note, *Religious representation in the House of Lords* (26 October 2009, SN/PC/05172), pp 14–15.

Removing the bishops from the House of Lords would not of itself affect the established nature of the Church, but it might trigger a debate on disestablishment.<sup>91</sup>

The Wakeham Commission was also concerned about such potential problems:

The Church of England may legislate in respect of certain issues, although its Measures are subject to approval by both Houses of Parliament. While there is no direct or logical connection between the establishment of the Church of England and the presence of Church of England bishops in the second chamber, their removal would be likely to raise the whole question of the relationship between Church, State and Monarchy, with unpredictable consequences.<sup>92</sup>

Similarly, the Cross-Party report, *Reforming the Lords: Breaking the Deadlock*, which was published in 2005, acknowledged the potential issues that removal of the Bishops might cause:

We believe that there are strong arguments for ending the formal representation of the Church of England in the second chamber. But this is a matter on which there are firmly held beliefs, not least in the Church itself. Removing the Bishops would end a 900 year tradition, and represent a symbolic change in the relationship between the Church and the state. This is therefore more than a matter of House of Lords reform alone.<sup>93</sup>

The Commons Public Administration Select Committee's report, *The Second Chamber: Continuing the Reform* (2002), disagreed with the view that the removal of the Bishops would lead to disestablishment:

If we are serious about equipping Britain with a modern Parliament and constitution, it is time to modernise this aspect of our constitution too, and to bring to an end formal representation of the church in Parliament. This need not lead to disestablishment: there is, as the Royal Commission acknowledges, no necessary connection between the establishment of the Church of England and places for its Bishops in the second chamber. Disestablishment in Wales in 1920 led to the disappearance of Bishops from that country from the House of Lords.<sup>94</sup>

The former Labour Government's 2007 white paper reached a similar conclusion:

There have in the past been arguments about the disestablishment of the Church of England. There is little steam behind such arguments today, and, in any event,

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<sup>91</sup> Janet Lewis-Jones, *Reforming the Lords: the Role of the Bishops*, Constitution Unit (June 1999), pp 6–7. She notes for instance: the relationship between the General Synod and Parliament, by which the former can propose Measures to be laid before and considered by the latter; the recognition by the state of the Ecclesiastical Courts; the crowning of the sovereign by the Archbishop of Canterbury; the two Archbishops' membership of the Privy Council. See also: R M Morris, *Church and State in the 21st Century* (2009).

<sup>92</sup> Royal Commission on the Reform of the House of Lords, *A House for the Future* (January 2000), Cm 4534, p 151.

<sup>93</sup> Kenneth Clarke, Robin Cook, Paul Tyler, Tony Wright and George Young, *Reform of the House of Lords: Breaking the Deadlock* (2005), p 23.

<sup>94</sup> House of Commons Public Administration Select Committee, *The Second Chamber: Continuing the Reform* (February 2002), HC 494, para 158.

any profound change in the status of the Church must be in the first instance for the Church itself.<sup>95</sup>

The Humanist Society also questions the view that the removal of the Bishops would mean disestablishment:

Even if we were to accept that that the presence of Bishops as of right were a manifestation of modern establishment (which it isn't), it still would be only one of the manifestations of establishment. Even if Bishops' automatic right to a place in the Lords was removed, all other features of establishment would remain in place—the role of the state in ecclesiastical appointments, the relationship between the church and the head of state, the power of the ecclesiastical courts, the existence of an ecclesiastical committee in Parliament, the jurisdiction of the Judicial Committee of the Privy Council over ecclesiastical appeals; all these and the many other features of establishment would go untouched. To claim that the removal of Bishops would equate to disestablishment of the Church of England is misleading.<sup>96</sup>

In terms of what disestablishment might mean for the Church of England, in December 2008, the Archbishop of Canterbury offered a measured view:

Because I grew up in a disestablished Church; I spent ten years working in a disestablished Church; and I can see that it's by no means the end of the world if the Establishment disappears. The strength of it is that the last vestiges of state sanction disappeared, so when you took a vote at the Welsh Synod, it didn't have to be nodded through by parliament afterwards. There is a certain integrity to that.

At the same time, my unease about going for straight disestablishment is to do with the fact that it's a very shaky time for the public presence of faith in society. I think the motives that would now drive disestablishment from the state side would be mostly to do with... trying to push religion into the private sphere, and that's the point where I think I'd be bloody-minded and say, 'Well, not on that basis'.<sup>97</sup>

The *Sunday Telegraph* was more forthright in its opposition to disestablishment:

We oppose it not because we imagine the Church of England to be the only valid or worthy religion in Britain: far from it. But the Church of England has for centuries played a unique role in British cultural and political life. The Archbishop of Canterbury is formally enshrined as the moral conscience of the state, a role that can sometimes be as deeply vexing to politicians as it is welcome, but that always bears the stamp of a long-held authority. Indeed, with growing co-operation between the faiths, the Archbishop of Canterbury is ever more likely to raise issues of pressing concern to a number of British spiritual leaders, and not simply members of the Church of England.<sup>98</sup>

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<sup>95</sup> Leader of the House of Commons, *The House of Lords: Reform* (February 2007), Cm 7027, p 28.

<sup>96</sup> The Humanist Society, *Religious Representatives in the House of Lords* (March 2010), p 10.

<sup>97</sup> James Macintyre, 'Interview: Rowan Williams', *New Statesman* (18 December 2008).

<sup>98</sup> *Sunday Telegraph*, 'Faith must always have a voice in the citadels of power' (21 December 2008).

## 9 Little House, Big House?

Reform of the House of Lords will also raise questions concerning the size of membership and of cost. Before the removal of the majority of the hereditary peers in 1999, the size of the House's membership was over 1000, though substantially fewer attended on a regular basis. The current size of the House is around 750 members. The cost of the House of Lords in 2008/09 was about £104 million.<sup>99</sup>

Proposals have tended to call for a smaller House as the ideal, but have often included transition arrangements, which would allow some or all current members to remain for life, or for a lengthy period, at which point they would be replaced by newer peers (elected or appointed).

The Wakeham Commission suggested a House of about 550 members. However, it saw a phased introduction of newer peers (appointed and elected) with many life peers deemed to be members for life or if newly appointed life peers before the reforms took place allowed to stay for a 15 year period. The Commission called for better secretarial support, more office space and improved financial support linked to attendance and roles within the House. This would be in a context whereby "all members of the second chamber should so far as possible serve the same terms, benefit from the same allowances and facilities and be treated in all respects identically, in order to minimise the risk of 'mixed membership' problems".<sup>100</sup> Such changes would "not be on the cheap", though the Commission argued that it would not cost more than an extra £5–6 million a year, with overall running costs still a fifth of those of the Commons.<sup>101</sup>

The former Labour Government's 2001 white paper called for a figure of 600 members. The Commons Public Administration Committee report in 2002 favoured a membership of about 350, though it thought that this "would be very much the upper limit of the acceptable range".<sup>102</sup> It also called for a review of the House of Lords' research and other resources, as well as of payment for members of a reformed House.<sup>103</sup> The Committee called for the remaining hereditary peers to leave the House as soon as reform was enacted, while the life peers would leave in three stages tied to general elections.<sup>104</sup>

The Cross-Party group on Lords Reform in its 2005 report believed that the second chamber should be significantly smaller. It too believed in a gradual transition of three tranches every 4 years. This would see the membership fall from over 700 now to 593, 489 and 385, as the current membership was gradually replaced by the newer peers.<sup>105</sup>

The Labour Government's 2007 white paper suggested a figure of 540 members, but after lengthy transition arrangements (perhaps lasting until 2050). Such arrangements would see life peers slowly replaced by newer peers (either appointed or elected), while

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<sup>99</sup> See House of Lords Library Note, *House of Lords: Expense Allowances and Costs*, (20 November 2009, LLN 2009/009), which offers current and historic data on the total cost of the House of Lords, but also on levels of peers' expenses and allowances.

<sup>100</sup> Royal Commission on the Reform of the House of Lords, *A House for the Future* (January 2000), Cm 4534, p 117.

<sup>101</sup> *ibid*, pp 118–20 and p 147, pp 167–8.

<sup>102</sup> House of Commons Public Administration Select Committee, *The Second Chamber: Continuing the Reform* (February 2002), HC 494, para 168.

<sup>103</sup> *ibid*, paras 174 and 177.

<sup>104</sup> *ibid*, paras 196–200.

<sup>105</sup> Kenneth Clarke, Robin Cook, Paul Tyler, Tony Wright and George Young, *Reform of the House of Lords: Breaking the Deadlock* (2005), pp 41–4.

the Government was undecided about whether to remove the hereditary peers outright. The white paper acknowledged that according to its modelling the maximum size of the House during this transition would be 751, which could “create difficulties in terms of office space for... many active members”.<sup>106</sup> In terms of cost, the white paper thought that until proper proposals were brought forward it was difficult to speculate. However, it noted that there would be one-off set up costs for a Statutory Appointments Commission, if there was an appointed element, alongside costs for running elections. Moreover:

The levels of remuneration are likely to be affected by a change in the size of the House, and will of course be affected by changes to the way that members of the Lords are paid. There may be a requirement for additional staff in Parliament to support a reformed chamber. A reformed House will certainly cost more than the current House.<sup>107</sup>

The 2008 white paper argued that the size of a reformed House of Lords should be significantly reduced and should be smaller than the House of Commons, with costs being maintained or reduced. It argued for a final membership of 435 members. However, as with previous proposals the white paper addressed transition issues. It put forward three options regarding existing members in relation to newer members (elected or appointed):

One is to allow all life Peers to continue to be members of the second chamber for life, but for hereditary Peers to leave when the third group of elected members arrives in the reformed second chamber. Another is for all existing peers to leave when the third group of elected members (and any appointed members) arrives. This would be the first point at which there would be a full complement of new members. The third option provides for existing peers to leave in three groups, each coinciding with the arrival of a group of new members.<sup>108</sup>

Option one would not reach the end total of 435 members until after 2050, with the total numbers of peers peaking at 787 towards the end of this decade, still over 700 by 2025 and over 500 by 2038. Option two would reach the end total of 435 at the beginning of the next decade, reaching a peak of 787 in 2017 and remaining at over 700 members by 2018. The third option saw a more rapid decline in membership, with membership falling straight away, reaching the figure of 435 by the end of the decade.<sup>109</sup> In terms of costs, it addressed the issues of salaries. In the case of new members (elected or appointed) it argued that because the “responsibilities of members of a reformed second chamber would be less than for members of the House of Commons... their salaries should be no more than those of members of the devolved legislature and assemblies” and would be considered by the Senior Salary Review Board.<sup>110</sup> However, it argued that this might not be the case for existing life peers. The white paper also considered the costs of elections (up to £43 million) for elected members and the establishment (£1.5 million) and maintenance of a statutory Appointments Commission. The white paper also proposed that because new peers would not have constituents, their need for research and support services would not be the same as their counterparts in the Commons.

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<sup>106</sup> Leader of the House of Commons, *The House of Lords: Reform* (February 2007), Cm 7027, pp 44 and 50.

<sup>107</sup> *ibid*, p 54.

<sup>108</sup> Ministry of Justice, *An Elected Second Chamber: Further reform of the House of Lords* (July 2008), Cm 7438, p 73.

<sup>109</sup> *ibid*, See Charts 8.1, 8.2 and 8.3, pp 77–80.

<sup>110</sup> *ibid*, p 71.

Though no specific details were given, the Coalition Agreement announced in May 2010 between the Conservatives and the Liberal Democrats stated that proposals for Lords reform, to be produced by December 2010, would be likely to involve a “grandfathering system for current Peers”. This suggests that whatever proposals are brought forward later this year, there will be a transition period, similar to those discussed above. As previous proposals have suggested, this raises questions about: how big the membership may be at any one time (ie during the transition and after); what this will mean in practical terms (eg office space, services and resources); and what the overall costs will be in salaries and allowances, but also in terms of running elections and establishing and maintaining a statutory Appointments Commission.

The issue of space within the House of Lords has already been raised in the context of the current membership and plans for the introduction of new members in the current session. Lord Stoddart of Swindon recently referred to overcrowding in the Lords chamber and asked what plans the House of Lords Administration and Works Committee had for an intake of new peers.<sup>111</sup>

## 10 Relationship with Citizens and Voters

Another key issue that commentators and policy makers have considered if members of the House of Lords are to be elected is the question of what this would mean for voters, citizens and MPs.

For instance, in February 2005, a Cross-Party group of MPs published a number of proposed reforms, which included the call for a majority of the House of Lords to be elected. However, in discussing how such members should be elected, they noted:

If most members of the second chamber are to be directly elected, it is very important that they are chosen by a system that is distinct from that used for electing MPs... We believe that it is also important that the electoral system used for the second chamber does not encourage its members to compete with MPs over constituency work. It is the job of the MP to represent his or her locality—the representative role of members of the second chamber should be separate and distinct.

All of this points to members of the second chamber being elected to represent large geographic areas, and the most obvious means of doing this is to use the electoral boundaries of existing ‘nations and regions’.<sup>112</sup>

This had also been a concern of the Wakeham Commission, when considering how the regionally elected element that it proposed should be selected:

We want the regional members, in particular, to act as a voice for their regions. We do not want them to be constantly looking over their shoulders at either their electorates or their regional party organisations. Electoral accountability should,

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<sup>111</sup> HL *Hansard*, 24 June 2010, col 205WA. In response, the Chairman of Committees, Lord Brabazon of Tara, said that the Administration and Works Committee would consider these issues at its next meeting on 29 June 2010.

<sup>112</sup> Kenneth Clarke, Robin Cook, Paul Tyler, Tony Wright and George Young, *Reform of the House of Lords: Breaking the Deadlock* (2005), pp 26–7.

in our view, be the province of the House of Commons and be the justification for that House's supremacy.<sup>113</sup>

More recently, Vernon Bogdanor has also raised a number of issues relating to an elected House of Lords in terms of voters and citizens. He questioned whether such elections would garner enough interest and lead to low turnouts:

If the elected upper house had fewer powers than the House of Lords, or even perhaps if it had the same powers, there would be a danger that few would bother to vote in elections to it. This danger, which bedevils local authority and European Parliament elections, must be a very real one. Elections for the Mayor of London and the London Authority yielded, in 2000 and 2004, a turnout of just 34%, and in 2008 a turnout of 45%, even though the mayoral election attracted candidates with a high public profile; and the functions of local authorities are rather clearer than those of the new upper house would be. Elections to the upper house would, in addition, be unlikely to attract candidates with a high public profile; such people would probably still prefer to enter the Commons in the hope of becoming ministers.

The vote in the House of Commons in March 2007 undoubtedly created a new political climate in favour of a 'popular' upper house. But an upper house elected on a low turnout and peopled with anonymous nonentities whose only qualification is long party service would be likely to devalue democracy rather than improve it.<sup>114</sup>

Paul Valley, writing in *The Independent*, also expressed concerns that elections for a Second House might lead to voter fatigue, whilst undermining elements of the arrangements that underpin the supremacy of the Commons:

And what of the electoral cycle? Mr Clegg is said to favour a Senate in which members sit for 15 years. A third would be elected every five years. Presuming those elections would be mid-way through the newly-fixed five-year Commons cycle, that would subject Westminster to periods of barely two years between elections, a paralysing process. But even if they coincided they would alter the political dynamic. At present the 1911 Parliament Act limits the blocking powers of the upper house on the ground that an unelected house should not prevail over an elected one. But if both houses were elected there would be no logic in opposing the repeal of the Act since both houses could claim equal legitimacy. That opens the way to the deadlock of the United States bicameral system.<sup>115</sup>

There have also been concerns about the specific impacts that alternative voting methods might have in terms of voter choice and the control central party machines might employ. These issues have run through several of the Government's white papers on Lords reform.<sup>116</sup>

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<sup>113</sup> Royal Commission on the Reform of the House of Lords, *A House for the Future* (January 2000), Cm 4534, p 119.

<sup>114</sup> Vernon Bogdanor, *The New British Constitution* (2009), p 171.

<sup>115</sup> Paul Valley, 'The Lords is not perfect, but it works', *The Independent* (23 May 2010).

<sup>116</sup> For instance, the 2007 white paper (Cm 7027) dedicated nearly a whole chapter to the advantages and disadvantages of different electoral systems (pp 30–9); the 2008 white paper (Cm 7438) similarly devoted many pages to the consideration of this issue (pp 22–39).

Vernon Bogdanor has summed up the matter as follows:

If the electoral system for the new house were to be based on Westminster constituencies, there would be some danger of members of the upper house competing with MPs in representing their constituencies, and MPs could not be expected to welcome such competition. It would be difficult for two representatives to represent the same constituency on a nearly equal basis. If, however, the electoral system were to be based on a regional party list system of proportional representation, as with the European elections, it would be difficult for independent minded candidates to secure election. Nomination for a high position on a regional list by one of the major parties would be a near-guarantee of election. Thus, the electoral process would turn into a species of nomination. An open list system, whereby there was some choice of candidate, might not prove much more effective since few of the candidates in large regional constituencies would be known to the voters, and so it would be difficult for voters to choose between them on the basis of genuine knowledge.<sup>117</sup>

Simon Jenkins has recently argued along similar lines:

The voters would choose which party predominates, but not who would be elected. That decision would go to those chosen by the parties to be at the top of the list: the usual suspects, former ministers, friends of the leader, loyal servants and party donors, the last comprising 10% of Labour peers under Tony Blair. The whips would enjoy new weapons to bring into line recalcitrant members of the Commons, denying those hoping to retire to the Lords a place on the list, and also denying existing lords seeking re-election. When the late Dai Morris, a Welsh MEP, angered his whips in 1999, he was punished by being demoted to the bottom of the election list and thus condemned to lose his job.

Senatorial systems elsewhere display many alternatives to party-list election. The US Senate delivers independent-minded members from a territorial base, but they exert power over legislation and are rightly elected. In other places second chambers are chosen functionally, from a range of professions and interests, or indirectly via local democratic institutions. Already the House of Lords contains, formally or informally, representation from clergymen, lawyers, civil servants, academics and soldiers, mostly sitting as crossbenchers.

Of course voting legitimises democracy. But it is not its be-all and end-all. British democracy has atrophied over the past half-century because it has centralised and concentrated power on Westminster. Were the Lords composed, say, of elected council leaders and mayors from across the land, it would correct this bias and be a good idea. But MPs will never pass such a reform since it would exclude them from jobs.<sup>118</sup>

Meg Russell, writing in early 2009, noted that there was a slight irony that after years of debate over whether a reformed House of Lords should be elected or appointed there now appeared to be agreement on election, but not on which method should be employed. She set out the differences between the main parties in 2009:

The government itself is curiously quiet on its preferred electoral system (perhaps as a result of known disagreements on its own backbenches), and the white

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<sup>117</sup> Vernon Bogdanor, *The New British Constitution* (2009), p 171.

<sup>118</sup> Simon Jenkins, 'Clamour for an elected Lords is not about democracy, but grabbing power', *The Guardian* (11 June 2010).

paper [2008: Cm 7438] instead presents a range of conflicting options. The Liberal Democrats have consistently supported proportional representation for a reformed House of Lords, as they do for the House of Commons. The Conservatives, however, disagree. As their spokesperson Nick Herbert said in response to the white paper, they would 'strongly resist any move to introduce an electoral system based on proportional representation'. The options canvassed therefore include first past the post and the alternative vote (AV), as well as two forms of PR: the single transferable vote (STV) or a list system. In this respect the debate seems to have moved backwards rather than forwards. Not only is the disagreement between the Liberal Democrats and the Conservatives a fundamental and intractable one, but many campaigners outside parliament would be completely opposed to reform based on a non-proportional system. If the purpose of the second chamber is to act as a modifying influence on executive power in the Commons, rather than to be the creature of either the government or the main opposition (threatening, in turn, to create either a rubber stamp or gridlock), PR is essential.<sup>119</sup>

However, she suggested that:

Faced with a choice between a reformed chamber elected by first past the post, or the appointed but proportional chamber we have currently got, the status quo far better provides for the kind of consensual decision making desirable to counterbalance exaggerated government majorities. Many committed reformers on the Labour benches in the Commons, as well as most Liberal Democrats, would therefore see it as preferable.

She argued that these disagreements about electoral methods perhaps underlined continuing concerns over whether a fully elected House could provide an independent element, with elections more likely to provide for party nominees.<sup>120</sup>

However, more recently, Meg Russell has also raised another issue. She has drawn attention to the possibility of electoral reform for the House of Commons, which has implications for House of Lords reform. She notes that reform of either House cannot be considered in isolation from the other:

If we look at Commons and Lords reform together, what many campaigners (Lib Dems included) ask for doesn't actually make sense. They want proportional representation (PR) for the House of Commons and an elected House of Lords. But the Lords also would be elected by PR (under Lib Dem plans both chambers using the single transferable vote). This would lead in some ways to the opposite of pluralism, making the composition of Commons and Lords extremely similar. Yet bicameralism only works if there is a healthy degree of friction between the chambers, which depends on them having contrasting compositions, particularly in partisan terms. For the same reason the Tories' proposal of majoritarian electoral systems for both chambers is also absurd.

So PR makes sense for one chamber, but not for both. Which then should it be? If the Commons used STV but the Lords some kind of majoritarian system a single party majority in the upper house could potentially block the policies of a broader, and more widely supported, coalition in the Commons. That is the danger if the "opposition" party controlled the Lords. But if one of the government

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<sup>119</sup> Meg Russell, 'House of Lords Reform: Are We Nearly There Yet?', *Political Quarterly* (January–March 2009), vol 80, no 1, p 121.

<sup>120</sup> *Ibid.*

parties was in control the second chamber would offer virtually no resistance at all. Both scenarios are deeply undesirable.

The alternative is to retain a majoritarian electoral system for the Commons, and instead introduce PR for the Lords. This would retain features that defenders of the present system hold dear: notably the strong geographic link between MPs and their constituents, and the ability (at least sometimes) to form majority single party governments. Alongside this, in a PR-elected upper house, a wider range of voices would be heard: forcing the government to negotiate its policy with representatives genuinely reflecting the electorate's majority view. This would develop naturally from the system we have now, where the Lords' makeup is relatively proportional: much more so than the Commons. But electing the second chamber would give greater moral authority, and thus greater negotiating strength.<sup>121</sup>

As noted in the Introduction to this Note, the Coalition Agreement signalled that the Conservatives and the Liberal Democrats had agreed that they would “establish a committee to bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation”.

## 11 The House of Lords and Wider Constitutional Reform

As the end of the last section illustrated, some writers on House of Lords reform have noted the impact that other constitutional reforms, such as electoral reform for the Commons, may have on the Upper Chamber. Mark Glover and Robert Hazell, in an introduction to a collection of essays on possible constitutional futures, published in 2009, argued that the constitution in general was in a state of “flux”. This was due to the “piecemeal” manner in which constitutional reform had proceeded across the previous decade:

Even ten years on the British public and its politicians remain reluctant to view the constitution in the round. This is partly because the Blair government was reluctant to provide any overall narrative and partly because it was hesitant over many of the changes, so that its actions appeared sometimes contradictory.<sup>122</sup>

They, and the authors of the essays they introduced, suggest that the consequences of many of the reforms introduced in areas such as devolution, the Human Rights Act and the new Supreme Court, were still working themselves through, often in ways not foreseen. Moreover, they suggested that additional reforms, such as those for the House of Commons and the executive, could introduce even more uncertainty.

Matthew Flinders has similarly pointed to the lack of coherence within Labour's constitutional reforms, arguing that they were often ad hoc responses to specific problems, “with little appreciation of how reform in one area would have knock-on consequences for other parts of the constitution”. However, he also suggested that the Conservative Party did not have a “definitive statement or paper outlining its position in relation to all the main areas of potential change” and that more generally the “British

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<sup>121</sup> Meg Russell, ‘How to square the electoral reform circle’, *The Guardian* (10 May 2010).

<sup>122</sup> Mark Glover and Robert Hazell, ‘Introduction: Forecasting Constitutional Futures’, in Robert Hazell (ed), *Constitutional Futures Revisited: Britain's Constitution to 2010* (1999), p. 3.

political elite are not schooled or socialised in an environment that takes constitutional thinking and constitutional engineering seriously".<sup>123</sup>

In 2003, Vernon Bogdanor argued that the "unique constitutional experiment" enacted by the previous Labour governments has led to a constitutional "half-way house". This, he maintained, had seen a departure from Dicey's evolved 'historic' and Bagehot's 'worldly pragmatic' views of the constitution to one that was incomplete and uncertain.<sup>124</sup> Writing in 2009, he reiterated his view:

There is a sense of incompleteness about the constitutional reforms since 1997, an uncertainty about their final direction. Constitutional reform has been a process rather than an event, and so far it is an incomplete process.<sup>125</sup>

What such analyses suggest is that reform of the House of Lords will not take place in a vacuum. This in turn may make it hard to predict what impact changes to the Upper House will have because of the changing constitutional landscape around it.

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<sup>123</sup> Matthew Flinders, 'Conserving the Constitution? The Conservative Party and Democratic Renewal', *Political Quarterly* (April 2009), vol 80, no 2, pp 249 and 257.

<sup>124</sup> Vernon Bogdanor (ed), *The British Constitution in the Twentieth Century* (2003), pp 718–19.

<sup>125</sup> Vernon Bogdanor, *The New British Constitution* (2009), p 230.

