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Joint Committee on the Draft House of Lords Reform Bill

Draft House of Lords Reform Bill

Report

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Other written evidence

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The Joint Committee on the Draft House of Lords Reform Bill

The Joint Committee on the Draft House of Lords Reform Bill was appointed by the House of Commons on 23 June 2011 and by the House of Lords on 6 July 2011 to examine the Draft House of Lords Reform Bill and report to both Houses by 27 March 2012. It has now completed its work.

Membership

HOUSE OF LORDS	HOUSE OF COMMONS
Baroness Andrews	Gavin Barwell MP
Bishop of Leicester	Mr Tom Clarke MP
Lord Hennessy of Nympsfield	Ann Coffey MP
Lord Norton of Louth	Bill Esterson MP
Lord Richard (Chair)	Oliver Heald MP
Lord Rooker	Tristram Hunt MP
Baroness Scott of Needham Market	Mrs Eleanor Laing MP
Baroness Shephard of Northwold	Dr William McCrea MP
Baroness Symons of Vernham Dean	Dr Daniel Poulter MP
Lord Trefgarne	Laura Sandys MP
Lord Trimble	John Stevenson MP
Lord Tyler	John Thurso MP
Baroness Young of Hornsey	Malcolm Wicks MP

Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publications

The Report and evidence of the Joint Committee is published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at http://www.parliament.uk/lords-reform

Committee staff

The staff of the Committee were: Rhodri Walters (Lords Principal Clerk), Liam Laurence Smyth (Commons Principal Clerk), Eve Samson, and Eliot Wilson (Commons Clerks), Nicolas Besly, Antony Willott, and Ian Cruse (Lords Clerks), Christine McGrane, Committee Assistant, Melanie Moore, Committee Assistant, and David Burrell, Committee Support Assistant.

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List of other written evidence

Other written evidence

All-Party Parliamentary Humanist Group

1. The All Party Parliamentary Humanist Group (APPHG) brings together MPs and Peers from across the Parties and some with no Party affiliation. It does not take a position on Lords Reform as such but the issue of the position of the Church of England Bishops sitting in the House as of right is one that the Group has considered for some time. At the Group's AGM in 2010 it agreed that one of its priorities was to examine this issue further and make representations to the Joint Committee. In November 2010 the chair of the APPHG, the Rt. Hon. Lord Warner of Brockley, wrote to the Rt. Hon. Nick Clegg to detail some concerns the APPHG has with Bishops in the House of Lords. In light of the White Paper and Draft Bill which, regrettably, include proposals to retain reserved places for Bishops in the House of Lords, the APPHG would like to reiterate its position in this submission for the consideration of the Joint Committee.

2. The White Paper and Draft Bill make a number of specific proposals regarding how many places for Bishops should be retained in a reformed House of Lords, and on what basis. The APPHG does not consider that there should be any reserved places for Church of England Bishops—or any other religious representatives—in a reformed chamber and therefore limits this submission to setting out just two arguments for not retaining the privileged and automatic right for Bishops to sit and vote in the House of Lords. These are about equality and fairness to other religion and belief systems; and about the establishment of the Church of England.

3. In any reformed House of Lords—elected or part elected and part appointed—there are no grounds for reserving a set number of places for Church of England Bishops, even at a reduced number as the White Paper and Draft Bill propose. This privileged position would undermine the legitimacy of the reform by reserving a set number of places for one branch of one religion, all of whom would be men. This would be discriminatory in terms of religion and gender.

4. This is not to say that no Bishops in the Church of England should have a place in reformed chamber but this would have to be done on a basis that was equal to others and using the same transparent criteria. For example, should a reformed chamber only be partially elected—as the White Paper and Draft Bill propose—there is no reason why Bishops should have a privileged place in an appointments process compared with other religious leaders or representatives or indeed anybody else. The candidature would be dealt with on the same basis as any other appointed candidate.

5. The issue of Bishops sitting in the House of Lords is quite separate from that of the established status of the Church of England. Bishops sit in the House of Lords by virtue of the 1878 Bishoprics Act. The establishment of the Church of England rests upon Parliament's power over its legislation and the Sovereign's requirement as its Supreme Governor to be in communion with it. These are two quite separate issues as was made clear in the 1999 report by the Cabinet Office, *Modernising Parliament. Reforming the House of Lords*. Whether or not the Bishops sit in the House of Lords does not affect whether there could or should be an established Church of England.

6. The APPHG would be happy to provide any further information or clarification as the Joint Committee requires.

October 2011

Matthew Allen

With the encouragement of Lord Norton (see 'Lords Of The Blog': 'Stirring Up Apathy'; where I am 'Matt'), I submit the following ideas for the consideration of the Joint Committee. I do this as one ordinary member of the public; albeit one who finds the whole history of the Lords quite fascinating.

I shall begin by giving you the text of my alternative 'draft bill'. I shall then add a few 'explanatory notes', which will be chatty and colloquial in style, rather than academic, but will not contain any wild assertions, for all that. By way of introduction, I put it to the Committee that this bill of mine is less 'ambitious' than the government bill, but also less 'turbulent'.

An alternative draft bill ('House Of Lords Sitting Membership Bill'??) ……

1. "As from 1st January 2014, the total number of sitting members of the House of Lords shall not exceed 600, at any one time.

2. By the 1st June 2013, the clerks of the house will have compiled a list of those life peers who wish to continue sitting in the house from 2014 onwards.

3. By standing orders of the house, there shall also be a prior agreement about the maximum number of sitting members to be allocated for each party grouping. This will be proportionate to their pre-existing share of seats, among all life peers, but it may build in a slight bias in favour of the smallest parties, and shall have due regard for non-affiliated office holders, in this first instance. Crossbenchers shall be considered to be a 'party grouping' of their own, for these purposes.

4. It is expected that the total number of seats in the house held by the two largest parties shall be equal, or very close to equal.

5. If and where it is found that the number of peers on the clerk's list exceeds the allocated maximum for their particular party grouping, then the life peers of that grouping shall hold an election among themselves at the first opportunity, using the alternative vote system, whereby those who poll the fewest votes will be removed from the list.

6. This mechanism, in the first instance, only affects the position and privileges of life peers, and does not concern itself with the place of bishops, hereditary peers, or retired law lords in the house.

7. It is expected that around two thirds of life peers will continue to be sitting members of the house from 2014, by this mechanism.

8. This legislation does not affect the status of any peer in terms of their title and honour, nor is it concerned with any broader questions about the creation of new peers. It does, however, remove the automatic right of a life peer to sit and vote in the Lords, following the precedent set for hereditary peers in 1999.

9. After the January 2014 changes have been put in place, if a vacancy arises in the house, due to the death of a sitting life peer, then anybody who holds a life peerage, but does not have a seat in the house at that point, may put themselves forward to fill that vacancy. Where there is more than one person wishing to do this, the winning candidate shall be chosen by a vote of the whole house. Therefore, these by-elections shall not be determined by party groupings, as such.

10. As from January 2014, the same principle shall apply to any hereditary by-elections: all vacancies from that point onward shall be filled by a vote of the whole house".

Explanatory Notes: Relating to the 10 sections above

1. This puts the Lords 'ahead of the game' in slimming down its membership to 600, as the Commons will be of that size, in the next parliament. There is widespread agreement that the second chamber should not be larger than the first, and this is made all the more relevant by this time of cutbacks that we are going through now. 600 is, indeed, quite 'generous' in being able to keep on board both the committed frequent-attenders, and the more occasional attenders who are highly valued for what they do have to say, when they say it.

2. A simple matter of any interested peer registering that interest, along with a few basic details. Also provides ample time for each peer to consider the priority that s/he actually gives to the business of the house.

3. Each peer will need to choose what affiliation to be under, when registering. Non-affiliated office holders (eg, Lord Speaker) will be 'protected' in this process. As a side comment, the government's aspiration of making the Lords more 'reflective' of the general election vote could, of course, have been brought about by a reduction in numbers, rather than an increase in numbers!

4. **and 7:** I admit that my statistical methodology and/or maths will be a bit 'off' in places, here—but you should be able to follow my general drift about the likely and desired outcome. Using recent data from the Parliament website, this 'balancing act' actually works out remarkably neatly.

The grand total membership of the Lords now stands at 826. My bill provides for a reduction in the number of sitting life peers, in order to cap membership at 600. This means—one way or another—the departure of 226 life peers by 2014…..… I say, 'one way or another', because this cuts out the need for any agonising over whether there should be retirement ages, strengthened leaves-of-absences/ disqualifications etc.—The current grand total of life peers is 686. 226 out of 686 comes to about a third. This calls for the 'voting in' of two thirds of the current party groupings ('natural wastage' being too long-winded a contributing factor to take account of, here).

- 2/3 of Conservative Life Peers (170) = 113; Plus their 48 Hereditaries = CONSERVATIVE ('POST 2014') HOLD OF: 161
- 2/3 of Labour Life Peers (235) = 157; Plus their 4 Hereditaries = LABOUR HOLD OF: 161
- Of Lib Dems L.Peers (87) = 65 (smaller party bias in favour); Plus 4 Hereds = LIB DEM HOLD OF: 69
- Of Crossbench L.Peers (154) = 103; Plus 33 Hereds = CROSSBENCH HOLD OF: 136
- Leaving approx: 22 'OTHERS' (Preserving all the very small-party people, party-independents and non-affiliated officers; but losing 2 or 3 notably 'dodgy peers' who we won't bother to name here).
- POST 2014: ESTIMATED PROPORTIONS (out of 600) in %: CON: 26.8% … LAB: 26.8% … LIB DEMS: 11.5% … CROSS: 22.67% OTHERS: 3.67%.

5. A life-peer version of the first round of hereditary elections, in effect, with each candidate submitting a 75-word summary etc—and with the same outcome in mind, to wit: it will allow each group to postively identify who the most interesting and interested people are, among their ranks.

As a side comment, much mention has been made of the benefit of the Lords being complementary to the Commons, rather than competitive. At the same time, most people seem to welcome signs of the Lords becoming more assertive! I am of the opinion that a little more competition would be a good thing, insofar as it will not give any government an 'easy ride'. I suggest that the 'filtering' of the life peers in my bill, which would in itself be done in a very publicly transparent way, would give the 'chosen' peers a renewed sense of confidence in their handling of legislation.

6 and 10: I cannot see any advantage to our 'parliamentary life', in any sense of that term, in undermining the constitutional position of the bishops, retired law lords, or hereditary peers. The bishops exercise their function of providing a broader 'moral perspective' with care and responsibility. I would also contend that the house has already lost some of its 'weightiness' (in fact, and in the eyes of the public), by no longer having seats for active senior judges, and I would like to see the status of the 'law lord' restored, even if it was only for former supreme-court judges (granted this is outside the scope of my bill).

Finally, the 'exempted' 92 hereditaries are clearly people of high quality, with the particular distinction of making both regular and concise spoken interventions in the chamber. The historic problem of the conservative party being able to 'bus in' hundreds of 'backwoodsmen' has been dealt with. Entry to the house now requires the 'second hurdle' of a by-election. It is a working precedent. Note that my bill would make the whole house the 'electorate' for all future by-elections; thereby answering the specific complaint sometimes raised about the vanishingly small sitting-hereditary party-group electorates in the case of Labour and the Lib Dems, at the moment.

8. I suggest that this would represent a significant 'mind-shift' in the way a new arrival in the Lords would be regarded. Internally, UCL's 'House Full' report indicated a deepening dissatisfaction with the 'fractious atmosphere' created by having too many members in the chamber. Externally, the public perception is that various 'establishment/in-crowd' types are routinely gifted a comfy red seat, with all its associated prestige, public-platform influence and perks. The House Of Lords Appointments Commission has done little to dispel this feeling, since it is in itself something of a cosy quango. For all of the outstanding 'workhorses' and expert-analysts in the house, the 'currency' of the life peerage has been devalued by the numerous examples of the people who have awarded peerages for less-than-noble reasons; and/or by the people who have made little or no effort to engage in the serious business of the house. In the light of what I have just said, I also have to caution the house at this juncture that striking a self-congratulatory tone about the extent of experience and expertise among the peers does not come across at all well on the television! A quick glance through the back-stories of many peers often reveals that they have tried to enter the Commons, and failed. So there are 'consolation prizes' for political-party oldies in there already, and not much

would change, in that respect, were the government's proposals to come to fruition. In any event, experience and expertise are not the be-all and end-all; whatever happened to the broad-minded amateur, or the fresh-thinking youngster?

Prior to the 1999 Act, in what may have seemed like a piece of frivilous obstruction at the time, Viscount Cranborne expressed a concern about a having a house-full of members who, "owed their presence to the living rather than the safely dead". Those words turned out to have quite a prophetic ring to them when New Labour's 'Stage Two' reform never went ahead, and various murky tales came out about 'Tony's Cronies' and 'Cash For Honours'. My point is that introducing a 'second hurdle' for a peer, of having to be 'elected-into' the house would remove the 'sting' of the power of patronage, in precisely the same way that the hereditary by-elections have removed the sting of the power of birthright. There would be no need to break the link between the house and the peerage. New peers could be created at any time, in much the same way as now ~ but that would have no immediate impact on the capped-membership house. Therefore, no big influxes from a new government's favoured people, nor from the outgoing government's dissolution list. I hope you can see that, though my bill may seem to be 'tinkering' in nature compared to the government bill, it is not merely a 'holding operation', nor is it coming firmly down on the side of either the pro-government or anti-government voices, on the matter of Lords reform. I regret to observe a certain lack of imagination, in fact, in the way both of those positions are typically advanced. Making a big play of bringing in a similar mode of legitimacy to the Commons on the one hand (pro-Government); or focussing on the primacy of the Commons on the other (anti-Government) both overlook possibly the most crucial reason for having a second chamber at all. Democracy (the 'least worst' system) does not protect itself against ignorance, abuse, corruption, disregard for liberties or traditions, mass manipulation and short-term populism. It therefore needs something which is 'non-democratic' to act as a brake upon itself. Nonetheless, we need to be doing everything we can to make sure that this 'non-democratic' body will be held in high public regard. That is the key to appreciating the healthy developments which my bill would bring about—even though they appear to be fairly 'gentle' in nature, and they take care to 'go with the grain' of our history.

9. Recall from my notes on 4 and 7 the fair balance of 'allegiances' which would result from the life-peer elections, in the first instance. My bill seeks to sustain a sense of the house managing its own affairs; by 'co-opting' in the best of the bunch, as vacancies arise. The significant Crossbench presence should help to ensure that party loyalty would not count for all that much in future whole house by-elections. Imagine for a moment that this bill had already been in effect in 2010; and that a vacancy had arisen, which the likes of Michael Howard, John Prescott, and Paul Boateng were all interested in filling. I'm using three random examples of 'big hitters' in British political life here, who have received life peerages, to illustrate the enhanced sense of the 'winner' among them being recognised as the most deserving and valued 'new recruit'. He would have needed to have made a persuasive case (open for any member of the public to comment on, in advance), in order to secure the privilege of the seat in the Lords. It would no longer be possible for the media to portray him as having just 'strolled into' the house; and the very process of these elections would help to focus the minds of all Lords members as to just what their priorities are and should be, in the greater scheme of things.

30 January 2012

Correspondence between Chairman and Attorney General

Letter from the Attorney General to the Chairman

Thank you for your letter of 25 October attaching a copy of a letter from, and motion tabled by, Lord Morris of Aberavon. Lord Morris is of the view that the Committee and the House of Lords would benefit from the advice of the Law Officers on whether the Parliament Acts could be used to enact legislation which provided for a change of the composition of the House if the House refused to give its approval to such proposals.

In my view it is somewhat premature for the Committee to seek advice of this kind. The pre- legislative scrutiny being conducted by the Committee is far from finished. Accordingly no Bill containing the Government's final proposals has been introduced into Parliament. And, not least, there has been no rejection of these proposals by the House which would require consideration of the Parliament Acts.

In any event, I am not sure that it would be appropriate for the Law Officers to advise the House on matters such as this. As Lord Morris will no doubt remember well the Attorney General wears a number of hats. My role as legal

adviser to Parliament is residual and limited to the giving of advice in relation to the constitution of and the conduct of proceedings in the House, the conduct and discipline of members and the effect of proposed legislation. These restrictions are well established and reflect the risk of a conflict of interest between my role as adviser to Parliament and my primary duty to advise the Crown (that is, Her Majesty's Government) on legal questions. Accordingly, I do not believe that it is appropriate for the Law Officers to advise Parliament on issues relating to the Government's legislative programme.

Moreover the House is able to draw upon a large body of expert legal opinion. There is no shortage of previous Law Officers & Lord Chancellors, retired Law Lords and notable constitutional lawyers who will be able to assist the House in the consideration of this issue. Any advice I would give would just be that- advice- with no special standing in the House beyond any view expressed by any other learned member.

A copy of this letter goes to Lord Morris, the Advocate General for Scotland and Mark Harper.

7 November 2011

Letter from the Chairman to the Attorney General

I am writing in my capacity of Chairman of the Joint Committee on the draft House of Lords Reform Bill.

The Committee has received a letter from Lord Morris of Aberavon, a copy of which I attach. The letter should be read in conjunction with the motion which Lord Morris has tabled. lt appears in the Lords Business paper, without a day, and is in the following terms:

"Lord Morris of Aberavaon to move to resolve that this House instructs the Clerk of the Parliaments to seek the advice of the Attorney General on whether a Bill which provided for a change in the composition of this House, and in respect of which the provisions of section 2 of the Parliament Act I91 I had been complied with, would, having received Royal Assent, be an Act of Parliament and be capable of having legal effect. '

The Committee have agreed that I should ask you for any observations which you may care to make on the points made in Lord Morris's letter.

25 October 2011

Letter from Lord Morris of Aberavon to the Chairman

In my contribution to the debate on "Reform of the House of Lords" I quoted a number of Law Lords who had raised doubt as to how far one could define the subjects that were not amenable to change under the Parliament Acts.

1 concluded that "The weight of opinion, despite reservations and concerns, may well lead towards recognising a considerable supremacy for Parliament....The issue may be whether there are exceptional circumstances which are so fundamental that even a sovereign Parliament cannot act. Lord Hope had said "The courts have a part to play in defining the limits of Parliament's legislative sovereignty"."

This is the very issue that causes me concern- the possibility of the matter being litigated in the courts, probably to the highest level.

Inevitably this would lead to the perception of the politicising of the courts. As in the American Supreme Court the history, track records and expression of earlier views would be closely scrutinised whenever new appointments are made to the Bench. lt may never happen, but it is a danger that I would be most anxious to avoid.

Hence I am concerned to see the Law Officers' opinion, should you seek it, as I hope your committee will. My motion on the Order Paper for the House to debate the seeking of such an opinion still stands.

I have been asked who might be the respondent to any action. From memory in the absence of any other respondent, I believe the Attorney General takes on this role. This is what happened in the "Fox Hunting" case Jackson and others (appellants) v Her Maiesty's Attorney General (Respondent).

17 October 2011

Professor Reg Austin

Letter to Mr David Beamish, Clerk of the Parliaments, 8 Feb 2012

As you will see from the enclosed copies of our letters to the Deputy Prime Minister and to Dr Phillip Lee, the MP for Bracknell, we have a group in Bracknell which makes a study of Current Affairs,

The group has considered the possibilities for a reform of the House of Lords and has arrived at a proposal which, we hope, could effect a useful improvement to its ability to perform its function of advising and monitoring the proceedings of the House of Commons.

Our proposal, as outlined to the above recipients, suggests the involvement of a number of UK Professional Institutes to provide a proportion of members of the Upper House as a means of introducing members independent of the political parties and having the wisdom acquired from professional knowledge and experience of the several aspects of everyday life.

As suggested in the letters, the members would be chosen by elections held within the Institutes and be expected to serve for a fixed term after which a new member would be elected for a further term.

We have not yet received a reply from the Deputy Prime Minister. A reply was received from Dr Lee who, we feel, did not fully understand our proposal. Hence, one of the letters covers our reply to his response.

As we understand that members of the Public are invited to offer proposals directly to your Committee we are now so doing.

We would be pleased to receive, in the first instance, acknowledgement of your receipt of this letter (either by post or by email) and subsequently look forward to your Committee's comments on the value of our proposal. On behalf of the Group,

Letter to The Rt Hon Nick Clegg, Deputy Prime Minister, 14 January 2012

I have the honour to represent a Group in Bracknell which makes a study of current Affairs.

We are aware, of course, of your House of Lords Reform Bill, now in draft form and wish to put forward, to you, our suggestions for the appointment of new members.

The history of the introduction of a second chamber goes far back in time to Ancient Greece and was instituted to achieve a body that comprised members who were not elected by “mass electors”, were non-political and wiser than members of the “lower house”.

Thus the Second Chamber would be well qualified to “prevent the passage into law of ill- considered legislation”.

Our Group was unanimous in supporting the idea of a system that would meet the above stated “requirements” and provide a second house which is apolitical, with members not tied to any specific party. The Group believes that better legislation would be achieved by having a second House which will operate independently of party loyalty, and bring an improved representation of people in this country.

Thus we would suggest that the Statutory Appointments Commission could consider nominations for new members from Professional Institutes and similar national organisations.

In the UK there are a number of well-respected Professional Institutes to which belong members with great knowledge and between them have experience of all walks of life Business, Medical, Public Service, Science, Engineering, the Arts, Defence and Security, Transport, etc., etc.

There are in the order of 150 such Institutes, about 70% of them incorporated under Royal Charter.

To these might possibly be added such bodies as the Royal British Legion and the Women's Institute.

If a number of these Institutes were accorded a right each to elect a Member to the second chamber, then the aims of having elected, but non-political, members of wisdom and experience would be achieved. Each Institute would be required to elect a Deputy Member to be available to stand-in as necessary for the Member

The main question might be to determine which of the Institutes would be accorded the right, as some may be felt to be not entirely appropriate and others might be seen to introduce unnecessary duplication of the same knowledge area.

However that should not constitute an irresolvable problem

We commend this proposition to you and look forward to receiving your comments on it.

Letter to Dr Philip Lee MP, 6 February 2012

I write again on behalf of the Bracknell Current Affairs Group.

We appreciate the courtesy' of your reply, but rather feel that you have missed the point of our proposal.

Of course "people must be allowed to elect those who make the laws of the land", and this is one part of the reason for our proposal. The other part is to ensure that the level of knowledge and experience, of those elected, is improved from its present inadequacy.

We would like to think that the current opportunity to reform the House of Lords, or whatever it may *eventually* be called, gives the chance to improve the situation in at least one of the two houses. Thus the Upper House may become better qualified to advise the Lower House and to hold it to account.

We believe that there has been growing disillusionment with many, if not most, of the UK population with their representation in Parliament and the capability of our governments to manage the affairs of the United Kingdom in a knowledgeable manner.

In reality, the only opportunity for electors is to *vote* for candidates proposed and promoted by the main political parties whether they agree with the candidate's views or not. Voters generally vote for the candidate with whom they least disagree, rather than one whose policies are fashioned by the local electorate or concur with their own. There seems to be little real opportunity for a candidate to represent independent views to be elected.

Our concern is that unless a radically different approach is taken for the Upper House, it will merely become a replica of the Lower House with the continuation of the same self-interested party-politics and the current juvenile "Ya-boo" exchanges across the floor.

Our proposal would enable thinking people to elect members, independent of the political parties, through their Institutes which together cover all walks of life. Any member of the public can join an appropriate Institute whether it be the Royal Institute of British Architects (RIBA), or the Women's Institute and to vote for a candidate of their choice.

If there were more expertise and experience in government, many, if not all, of the several fiascos of the past 50 years might not have happened.

For example, thinking people as long ago as the 1970s foresaw the coming financial crisis with its associated demise of our high-tech industries with their exporting ability. The "Brain-drain" from the 1960s onwards was a direct result and indicator of the problem. Voices were raised but not listened to.

Another example is the lack of a national strategy on power generation for the future, in. particular the longer term. We are at significant risk of power cuts because individual generating boards are not co-operating to produce a national strategy.

You, we believe, may be an unusual Member of the House in having professional medical knowledge and experience of the operation of the NHS which should enable you to speak on those matters with some authority. How many other medical colleagues do you have in the House?

Further, how many professional Scientists, Engineers or Accountants, for example, sit alongside you?

We therefore urge you to take our proposals more seriously

9 February 2012

Ken Batty

Further to the request for written evidence to the Joint Committee on the Draft House of Lords Reform Bill I provide my views below. My interest is that I have a degree in politics, and follow political matters but I am not active politically.

I believe the House of Lords, as currently constituted, has two specific advantages lost in any attempt to make it elected to any degree. Firstly, being unelected it does not have the legitimacy of the House of Commons. An elected Lords would, when on a collision course with the Commons, claim a greater legitimacy than the current House and be more inclined to oppose rather than simply delay legislation. Secondly, because it is appointed, the membership of the Lords has a higher degree of expertise on many matters, is less filled with career politicians who have no other experience, and this provides insight and perspective not open either to the Commons or an elected Lords.

I believe the Bill as constituted has three major problems. Firstly, the use of a proportional representation system, such as STV, will inevitably lead to members claiming they are more representative of the will of the electorate than the Commons, elected by first past the post. Furthermore, the electorate recently expressed their satisfaction with the current electoral system and this seems like an attempt to introduce an unwanted system by a different route. Secondly, the link to a geographic constituency will undoubtedly lead to confusion among people as to whom they should take their grievances. At worst it risks one member being used as an appeal process to decisions given to the member in the other House—having secured no satisfaction with one representative the aggrieved constituent makes a fresh approach to the other. Thirdly, the idea that a reformed House should still have appointed Bishops is bizarre. If the Government believes that the Lord's should be reformed by allowing for election then the position of the Bishops is an anomaly. Furthermore, with church attendance so low, the Bishops are not an appropriate group to be appointed. . If the Government wishes to appoint people who are representative of what the people care about then they should consider members of the Premier League and the Retail Association. I am sure such a proposal is viewed as preposterous—but I would argue if the Bishops were not already in the House a proposal to add them would be treated with a similar degree of incredulity.

The Lords does need reform. The proposals from Lord Steel fix most of the issues. The Governments proposals merely create a whole host of new issues. There is no great demand for change and Government would be better served focusing its efforts on what the electorate cares about.

23 September 2011

Sir Stuart Bell MP

1. The effect of the Bill on the powers of the House of Lords and the existing conventions governing the relationship between the Lords and the Commons.

In constitutional law the term convention has been accepted to describe an obligation, whether it derives from custom, agreement, expedience or practice rather than arising from a formal agreement.

By their very nature conventions cannot be codified; if they were, they would no longer be conventions but codes. Such codes would become as statute law and any custom, agreement, expedience or practice which followed would require a change in the codes. Thus conventions that exist at the moment may evolve and are expected to evolve.

Lord Strathclyde, the Chancellor of the Duchy of Lancaster, in a debate in the Lords 17 May 2011, declared that 'the only basis for having an elected House would be to give this House greater authority to use its powers more assertively and effectively.' In the same debate, Lord Cunningham of Felling referred to a report entitled Conventions of the UK Parliament, a report unanimously approved by a House of Lords committee, unanimously approved by the House of Lords itself, and unanimously approved by the House of Commons. The report said, inter alia, that 'if this House, or part of it, were to be elected, and people had a mandate, it would be bound to call into question the relationship and the conventions operating between the two Houses'.

Indeed, the report went further and said in Paragraph 61:

'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.'

Lord Cunningham went on to look at the relationship between the House of Representatives and the Senate in the United States of America and between the Japan Diet's House of Representatives and House of Councillors. They moved to change their powers in the relationships, just as the Upper House in the United Kingdom with an elected mandate would seek to do, but with the most profound consequences for the governance and the constitution of their countries.

Lord Howarth of Newport pointed out 22 June 2011 that when the United States Federal Senate became directly elected, its Members serving longer terms—though not fifteen-year terms—the Senate became the senior House. He added that 'the United States legislature is characterised by permanent conflict and impasse, with the Executive unable to secure their preferred legislation'. This was dramatically shown this year when the Senate and Congress could not agree on measures to raise the debt ceiling of the Federal government until the last moment, troubling the financial markets and the entire global economy, and lowering the prestige of the United States in the world.

Lord Strathclyde declared 17 May 2011 that he fully expected the conventions and agreements between the House of Lords and House of Commons to change, to evolve and to adapt to different circumstances. He thought it would be very strange if they did not do so. Lord Strathclyde also thought that both Houses would be able to develop a mature relationship so as to retain the best of what exists now. It would mean a more assertive House of Lords with the authority of the people and an elected mandate. Lord Strathclyde did not say what he thought that mandate would be. Would candidates run on personal or party manifestoes? Would these manifestoes mirror those of candidates for the Commons?

2. Would they commit themselves to upholding the Parliament Acts?

Baroness D'Souza, speaking in the same debate 17 May 2011, declared as a cross-bencher that in her view the outcome of an elected House would be to give it more political power than it currently has. That would be the inevitable result of an elected House, or even a partly-elected House. Baroness D'Souza thought this would eventually result in the power of veto creeping into the Lords; otherwise what would be the reason for undertaking such radical change?

Baroness D'Souza declared:

'Power is, as we all know, a tricky area and will have to be thoroughly addressed and resolved by the proposed pre-legislative committee. The issue of powers is so fundamental and this is so radical a proposed change that it may be justifiable to rephrase the question of reform to one of whether the House of Lords is in fact necessary at all...I cannot be convinced that an elected House would do its work better than the present House'.

When the debate was resumed 21 June 2011, Baroness Lady Royall of Blaisdon, speaking on behalf of Her Majesty's Opposition, declared that the changes to the House of Lords as currently constituted, and its replacement by 'an elected Senate', will automatically affect the primacy of the House of Commons. This was supported by Baroness Taylor of Bolton on 22 June 2011, who declared in the same debate that the power of the Lords would increase and the power of the Common diminish in the event of the present Lords being replaced by an elected Chamber.

Lord Davies of Oldham acknowledged that the greatest weakness of the Draft Bill was its 'complete failure to identify the issue of powers'.

Lord Ashdown of Norton-sub-Hamdon declared that an elected Chamber would 'change the balance between us and the other Chamber. It will not challenge the primacy of the other Chamber, but it will challenge the absolute supremacy of the other Chamber—that is called check and balance'. There may be a contradiction in terms, or perhaps Lord Ashdown does not think them mutually exclusive, between challenging primacy or supremacy, but the important words are change and challenge. And when Lord Ashdown talks of check and balance he overlooks that it is the role of the Commons to hold the Executive to account. This would appear to be a further additional constitutional role of an elected Second Chamber, should this come about, in accordance with the Ashdown doctrine.

Concerns were expressed in the Commons when the House of Lords Reform Draft Bill was presented 17 May 2011 by the Deputy Prime Minister, Mr Nick Clegg. Mrs Eleanor Laing raised the question of the balance between the two elected Chambers. She asked how that balance of power would change. Mr David Blunkett asked whether a mandate given to the Second Chamber would reduce the mandate of the House of Commons.

Mr Sadiq Khan, on behalf of Her Majesty's Opposition, asked how the government proposed to deal with conventions. He specifically asked whether these conventions should be codified. Mr Khan returned to this on 27 June 2011 when he declared the inadequacy of Clause Two of the Draft Bill which simply referred to the primacy of the Commons. He referred to the Joint Committee on Conventions chaired by Lord Cunningham. He declared that Clause Two was 'inadequate and ignores the work done on rules and conventions by previous Committees'. Mr Khan further declared the new Joint Committee would have to recognise this fact and 'seek to open up the issue of powers and conventions; otherwise the reform process runs the risk of being fatally flawed'.

Mr Frank Dobson declared 17 May 2011:

'Surely, if it is to be elected, any self-respecting elected Members of the Upper House will not feel themselves bound by the customs and practice that have applied to an unelected Chamber—and we will thus get conflict between this Chamber and the Upper Chamber'.

In fact, it is because the Second Chamber is not elected that the conventions exist in order to avoid conflict between the elected and unelected Chambers.

Thus it is a perfectly reasonable convention that the unelected Chamber shall not hold up the legislation introduced by the government and emanating from the elected Chamber, even where such legislation was not proposed in a manifesto. The need for conventions would not survive if both Chambers were elected and they would need to be codified in a set of strict rules. If reform has been held up for a hundred years, as government spokespersons state, it was precisely because this conundrum could not be resolved.

The Deputy Prime Minister, in his responses 17 May 2011, referred to powers remaining the same as they reside in the Parliament Acts, but did not address the issue of conventions. Indeed, he sidestepped the issue by referring to the different methods of election and to composition, as if this resolved rather than enhanced the difficulties likely to arise with conventions. The Deputy Prime Minister further sidestepped the issue on 27 June 2011when again he fell back on a description of election and composition. He prayed in aid Baroness Quinn in the Lords who declared that Second Chambers 'generally live within their powers'. Neither Baroness Quinn nor the Deputy Prime Minister differentiated between powers as laid down by statute and those conventions which arise out of customs, agreements, expedience or practice.

This issue, however, must be resolved.

In his contribution on the floor of the House 27 June 2011, the Deputy Prime Minister declared that the reason why he supported the single transferable vote for elections to the Second Chamber is that it would provide this Chamber with greater independence from party control. This would equally challenge the control of the Executive to get its legislation through. The Liberal Democratic MP, Mr Tim Farron, is on record as declaring that Members elected in a different Chamber by the single transferable vote will have greater legitimacy than those elected to the Commons on a system of first-past-the post. The concept of conflict between two elected Chambers is clearly building up. Legitimacy and accountability go to the heart of any future struggle between an elected House of Commons and an elected Upper Chamber.

It shall have serious constitutional consequences if not addressed.

Mr Clegg made much of accountability on 17 May 2011, but where is the accountability when a Member elected to the Second Chamber is elected for fifteen years and cannot stand again? Governments are accountable because they face re-election at the time of a General Election. Members of Parliament elected for five years are similarly accountable. There can be no accountability when there are no plans for the elected Member to the Second Chamber to confront the electorate a Second time. The only accountability of an elected Member to the Second Chamber would be popular whim, powerful gusts of public opinion pushed by a frenzied media which belie all that a Second Chamber stands for, that is a period of reflection.

The Second Chamber would become the opposite of what it is now.

Long-standing opposition to an elected Second Chamber goes back to the early 1900s when a Liberal leader, Campbell-Bannerman, declared that 'to set up an elective Second Chamber would be to destroy the unique character of the House of Commons and introduce a new dissension into the heart of the constitution.' Jim Callaghan, who became Prime Minister, declared in a Tribune interview 20 June 1980, that an elected assembly would challenge the elected Commons. Constitutional law has long held that a reformed House of Lords based on the elective principle would inevitably come into conflict with the House of Commons: Wade and Phillips; Constitutional Law; Sixth Edition. Labour leaders Michael Foot and Tony Blair both believed an elected Second Chamber would come into conflict with the Commons.

This has held up any progress towards an elected Second Chamber for a century.

The present relations between both Houses of Parliament

The present relationship between the two Houses of Parliament is governed by statute and convention.

This is made clear in the House of Lords Reform Draft Bill. The statute consists of the Parliament Acts of 1911 and 1949 that provide the basic underpinning of the Parliamentary relationship. This reflects the supremacy of the Commons over the Lords. The statute provides that in certain circumstances legislation may be passed without the agreement of the House of Lords. It may be delayed for thirteen months. It is not intended that these statutes be amended in the event of their being an elected Second Chamber. There is an additional statutory bar on the Lords in that it has no powers over money bills. In the words of Nick Clegg, the Commons has the decisive right over supply.

The Summary of Proposals to the Draft Bill refers to the series of conventions which have grown up over a period of time and which govern the relationships between the two Houses on a day-to-day basis. These include that the House of Lords should pass the legislative programme of the government which commands the confidence of the House of Commons. Lord Ashdown of Norton-sub-Hamdon, however, put paid to this convention in his speech on 21 June 2011:

'(the Lords) does small things well, but is it constructed in a way that would prevent a Government with an overwhelming majority in the other place taking this country to an unwise and, as we now know, probably illegal war? No it would not because it did not. I cannot imagine that the decision to introduce the poll tax and the decision to take this country to war would have got through a Chamber elected on a different mandate and in a different period, or if there had been a different set of political weights in this Chamber from the one down to the other end.'

More modern-day parallels might have been cited, such as objection to tuition fees, reforms to the National Health Service, and the proposed introduction of elected Police Commissioners. How would an elected Second Chamber deal with these in the light of the Ashdown doctrine, supported by the Minister of State, Ministry of Justice, Lord McNally, who declared that an elected Second Chamber would have the right to say No to the Commons?

Lord McNally wished that the Lords had voted on the Iraq war. With two elected Chambers, would the will of the Commons be subverted? Would its will prevail? Would legislation be delayed? Would the government of the day get its way, not only in the Commons where it had a majority, but in an elected Second Chamber where Members have been elected on proportional representation, who declare they have a mandate from their electorate and feel accountable to them?

If an elected Second Chamber were to pursue the Ashdown doctrine, the second convention referred to in the Summary of Proposals would also be upended, that is the convention that whether or not a Bill has been included in an election Manifesto, the Second Chamber should think very carefully about rejecting a Bill of which the Commons has approved. There is a third convention, already mentioned, that the Second Chamber will consider government bills in reasonable time and a further convention which supports the financial privileges of the House of Commons. The Summary of Proposals makes it clear that it does not wish to codify these conventions but to leave them as they are, as defined in Clause Two of the Draft Bill.

The means of ensuring continued primacy of the House of Commons under the new arrangements

It is proposed to introduce for elections to the Second Chamber proportional representation. The stated aim is to introduce into the Second Chamber a diffuse number of elected representatives, not representing a government majority in the Commons nor subject to party control, as the Deputy Prime Minister has said. But on the basis of the Ashdown doctrine there would be inculcated into the heart of our constitution a conflict of wills between the two

Parliamentary institutions. The paradox of this is that existing conventions would not only have to be ratified but strengthened. They would have to be codified.

3. The essential aim is that the will of the Commons continues to enjoy primacy.

Given what would be a clear intention of an elected Second Chamber to challenge the conventions, in not authorising military action with which it might not agree, or with a poll tax which it did not agree, if this did not fall within the purview of the financial privileges of the Commons, the Commons would be required to assert itself through new powers:

— That a public bill originating in the House of Commons on which there was disagreement between the two Houses should be capable of being presented for Royal Assent at the end of a period of six calendar months from the date of disagreement provided that a resolution directing that it should be presented had been passed in the House of Commons.

— For this purpose, disagreement would be defined so as to cover the situation where a bill sent up from the Commons is rejected by the Second Chamber, where a motion that it should be read at any stage or passed is rejected or amended, or where the Second Chamber insist on an amendment which is not acceptable to the Commons.

— That the Second Chamber would have a period of sixty Parliamentary days in which to consider a public bill. If its consideration of a bill on which there was subsequent disagreement exceeded this period, the excess would count as part of the period of six months' delay following disagreement.

— Since it would be theoretically possible for the Second Chamber to destroy a disputed bill by postponing any overt disagreement until the end of the session, the bill should also be treated as disagreed to if after the sixty Parliamentary days the Second Chamber rejected a motion necessary to its progress or, in the last resort, if the Commons resolved that the bill should be so treated. A suitable period of notice would have to be given in the latter case.

— A bill would be capable of being presented for Royal Assent at the end of the period of delay, notwithstanding that this ran over a prorogation of Parliament and into a new session. Similarly, in the case of a dissolution, any bill which had been passed by the House of Commons and to which the Second Chamber had disagreed could be presented for Royal Assent in the new Parliament after the period of six months' delay had elapsed from the date of the disagreement.

— Where Royal Assent was to be given in the following session of Parliament, it would be necessary for the bill to be submitted within thirty Parliamentary days from the end of the period of delay after disagreement.

— Since there is little likelihood of conflict between a government and the Second Chamber on private bills and bills to confirm provisional orders, and since the quasi-judicial procedures on such bills would make it inappropriate to apply the Parliament Acts procedure to them, it is proposed to make no change in the present powers of the Second Chamber on private legislation.

— As regards secondary legislation, that is instruments which require approval by each House of Parliament as a condition of coming into force or continuing in force, if the Second Chamber rejects a motion for the approval of an instrument which had previously been approved by the Commons, and the Commons thereafter confirm their approval, the instrument shall be treated as approved by both Houses.

— The existing provision in Section 2 of the Parliament Act 1911 which excludes from the application of the Act any bill to extend the duration of a Parliament would be continued in relation to the new powers of the Second Chamber.

In order to be sure before the event that there can be no conflict between an elected Commons and an elected Second Chamber, in accordance with the Ashdown doctrine, present conventions would have to be codified into a new Parliament Act further limiting the delaying powers of the Lords to avoid a conflict with the Commons. Since the government has declared it is not its intention to codify conventions, such an Act would be required on the statute book before the Bill to reform the Lords is enacted.

Otherwise Parliament would be writing conflict and crisis into the heart of its constitution.

Addressing the so-called democratic deficit

Much is made of a so-called democratic deficit.

It is said that because the Commons is elected so, too, there should be an elected Second Chamber, and that without election the Second Chamber lacks legitimacy and accountability. Lord Ashdown in his speech to the Lords 21 June 2011 declared:

'the fact that we do not have democratic legitimacy undermines our capacity to act as a check and balance on the excessive power of the Executive backed by an excessive majority in the House of Commons'.

It is clear that, in accordance with the Ashdown doctrine, the reduction of the so-called democratic deficit and the extension of supposed democratic legitimacy amount to the creation of conflict and crisis within the heart of our constitution.

The role of the Second Chamber is as a revising Chamber, a Chamber that provides for informed debate, and by its delaying powers may lay a hand on the shoulder of any government, or seek to correct legislation that may be hastily prepared and introduced and ill-considered in the House of Commons. These are the correctives to the so-called 'excessive power backed by an excessive majority' in the House of Commons. In the view of Lord Howarth, there is democratic legitimacy in elections to the Commons. Where can there be a democratic deficit where the House of Lords defers to the democratic authority of the Commons? He declared that we have an advisory House of Lords and an elected House of Commons: asymmetrical bicameralism.

As Lord Lawson of Blaby pointed out in the debate on 21 June 2011, there is no lack of legitimacy in the fact that Members of the Bank of England's Monetary Policy are not elected, or Members of the judiciary. It might be added that the Police Commissioner for London is not elected.

The constitution of the United Kingdom consists of the Monarch, the Lords and Commons. If one is to say there is a democratic deficit in relation to a non-elected Second Chamber, and if one prays in aid bicameral Parliaments elsewhere that are elected, even though under Federal systems, why should the Monarchy not be abolished and replaced with a President, where in other countries Presidents are also elected? They might be executive or ceremonial but they are elected all the same.

No one suggests for a moment that the democratic deficit should extend to the Monarchy, but then why should it extend to the House of Lords which has accomplished its role as a revising Chamber, a delaying Chamber, a focus for well-informed debate, and an initiator of government legislation in order to speed up the legislative process, and where the Lords has already been subjected to reform with the introduction of life peerages and the removal of hereditary peers? Further reforms have been put forward by Lord Steel of Aikwood, some incorporated in the House of Lords Reform Draft Bill: a statutory Appointments Commission, ending by-elections for hereditary peers, permanent leave of absence and dealing with those convicted of serious criminal offences. All intended to improve the workings of the Second Chamber without dismantlement amounting to abolition.

It is said that all three major parties advocated a wholly-elected Second Chamber in their 2010 manifestoes. The Labour Party manifesto declared:

'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. We will consult widely on these principles, and on an open-list proportional representation electoral system for the Second Chamber, before putting them to the people in a referendum'.

The Labour Party in opposition has accepted that the cross-party Lords Reform Working Group did not have a substantive discussion on the powers of a reformed House of Lords, or how to deal with the conventions that currently govern the relationships between the two Chambers, and whether these should be codified. The Opposition has declared how the government planned to approach this important matter would be critical in determining any progress on the Draft Bill. The Labour Opposition wishes that a reformed House of Lords be based on clear principles so that a new Second Chamber can command public support as part of a renewed Parliament. Presumably, till further notice, the Opposition stands by its election commitment that there be a referendum on this.

For any major constitutional change, such as replacement of the House of Lords by an elected Second Chamber, elected either wholly or partially, a referendum would be required. It should not be overlooked that the Monarch is the third strand of our Parliament. Prior to the introduction of the Parliament Act 1911, the Monarch of the day invited the Prime Minister of the day to provide legitimacy for the Act by holding and winning a General Election. This the Prime Minister did. It would be within this spirit for so major a change not to be endorsed in the modern era by a General Election but certainly by a referendum. And whilst the Monarch acts upon the advice of her Ministers, the Monarch is able equally to give advice.

An Eighty Percent Elected Chamber

The Coalition government supports a wholly-elected Second Chamber but leaves open the option for a Second Chamber eighty percent elected. In an eighty percent elected Second Chamber, the appointed independent Members would be nominated by a statutory Appointments Commission and recommended by the Prime Minister for appointment by the Queen. Twenty Members would be appointed at the time of each election to the Second Chamber with the same term as elected Members. In an elected Second Chamber, the government proposes that there be up to twelve places for representatives of the Church of England.

The Lords is able at present in any debate on legislation, or in any general debate, to call upon an array of expert knowledge that is perhaps unique in any Second Chamber anywhere in the world. Lord Howe of Aberavon pointed out in the Lords debate 21 June 2011 that in a debate on the National Health Service in November 2001, nineteen speakers included two former deans of university medical schools, a practising dentist, a consultant obstetrician, a consultant paediatrician, a former GP, a former professor of nursing, a former director of Age Concern, and the President of Mencap. Lord Howe wondered what wider complement of expertise and analysis would a Second Chamber get if it were exposed to election.

The Church of England is by law established and twenty-six Lords Spiritual sit in the Lords by ancient usage and statute. The bishops hold their seats in the Lords till they resign their episcopal office. The Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester have the right to a seat in the Lords. The remaining twenty-one are the other twenty-one diocesan bishops having seniority of date of appointment. When such a bishop dies or resigns his place in the House of Lords is taken not by his successor but by the other diocesan bishops. In 1847 on the creation of the Bishopric of Manchester it was enacted that the number of bishops sitting in Parliament should not be increased in consequence. Similar provision has been made on the creation of subsequent new bishoprics, for example the Bishoprics of Southwark and Birmingham, created by Act of Parliament in 1904.

4. The Monarch is head of both Church and State.

Bishops sitting in the House of Lords are part of the Church-State relationship. Any abolition of bishops sitting in the Lords shall weaken that relationship. The bishops represent the fabric of society in the Lords; they represent some seventy thousand parishes throughout the land of England. They are often more in touch with the people than elected representatives. As Second Church Estates Commissioner, Mr Tony Baldry MP, has said the two Archbishops and ten senior diocesan bishops would bring 'considerable wisdom and expertise' to a reformed Second Chamber. The removal of bishops by the creation of a wholly-elected Second Chamber will be detrimental to the Church-State relationship, shall weaken the established Church, and shall lead to further calls for an ending to establishment.

A wholly-elected Second Chamber shall lead to the removal of expertise from the Lords which shall deprive the Second Chamber of wisdom based upon experience.

Election on a System of Proportional Representation

The Summary of Proposals to the House of Lords Reform Draft Bill indicate that the Coalition Agreement set out the government's commitment to a system of proportional representation for the elected Second Chamber. The system is designed to ensure the proportion of available seats won by a given party corresponds closely to the proportion of votes cast for that party at the election. Thus thirty per cent of the votes cast should win as close as possible to thirty per cent of seats available.

The declared intention of proportional representation is to create a result where no party shall have an overall majority in the elected Second Chamber. In the words of Mr Clegg, the Deputy Prime Minister, this would loosen party control of Members elected to the Second Chamber. As Mr Clegg stated on the floor of the House of

Commons 17 May 2011, Members to the Second Chamber would be elected according to a different voting system with a mandate entirely different from Members of the House of Commons.

There would appear to be two reasons why proportional representation is being espoused for elections to a Second Chamber:

— No overall majority is likely, thus loosening party control ;

— The system of election must be different to differentiate this from elections to the Commons.

The Coalition Agreement was entered into prior to a referendum on whether the electorate wanted to change the voting system to the House of Commons to the alternative vote from first-past-the-post. That referendum was resoundingly lost. The electorate voted against a change to the voting system. However, a change is now being proposed that goes to the heart of the unwritten constitution and places an elected Second Chamber in certain confrontation with an elected Commons where the two election systems are different.

The Deputy Prime Minister has said 27 June 2011 that there are already an array of different electoral systems that all co-exist: elections to the European Parliament, that used in London, and those used in devolved Assemblies. However, none of these have been tested in a referendum, as has the alternative vote, and none are at the heart of the constitution. And none bring a Second Chamber into conflict with the Commons. As Mr Sadiq Khan has said 17 May 2011:

'bearing in mind that the country comprehensively rejected the AV system two weeks ago, is the Deputy Prime Minister seriously suggesting that he should impose a system of proportional representation for the Second Chamber without consulting the electorate?'

Nor is it imaginary to state that two Chambers elected on two different voting systems will come into conflict.

It is worth repeating that the President of the Liberal Democratic Party, Tim Farron MP, has declared that those Members elected by proportional representation will have greater legitimacy than those elected to the Commons under first-past-the-post. This indeed is the tenor of statements from all leading Liberal Democrats, not surprisingly since on a system of proportional representation the party would have more seats and therefore more power in an elected Second Chamber that they are now able to muster in the Commons under first-past-the-post.

5. Conclusions

- The perception of conflict between two elected Chambers, each vying for supremacy, is the reason why reform of the Lords as now proposed has never come about in the last century.

- The House of Lords has been subject to reform and can be reformed again without being elected whilst maintaining its essential as a revising Chamber and debating Chamber and a Chamber where primary legislation may originate.

- The House of Lords Reform Draft Bill as it stands shall create perpetual conflict and crisis in the event a Second Chamber is elected by way of proportional representation where the Commons is elected by first-past-the-post.

- The Reform Bill introduced by Lord Steel and partially incorporated in the Reform Draft Bill would meet the need for Lords reform without disturbing the inherent balance within the constitution, that of Monarch, Lords and Commons, together with the place of the Established Church within that constitution.

- A reformed Lords along the lines of the Steel Bill shall not introduce potential crisis and conflict into the heart of the constitution, addressing a so-called democratic deficit that might lead in future years to the role of the Monarchy coming into question, and whether a democratic deficit should be addressed here too.

- A Second Chamber duly elected could only come into existence where all those conventions that now exist between Lords and Commons are codified, in an Act of Parliament that amends the Parliament Acts 1911-49, this to prevent conflict and crisis, and confirm the supremacy of the elected Commons.

- And not only must conventions be codified but they must be modified along the lines suggested in Section Three of this submission in order to ensure definitive supremacy or primacy of the House of Commons over the Second Chamber.

- If such codification did not take place the government's reasonable reliance on the convention that its legislation will not be held up in the Second Chamber would come into serious jeopardy where the government of the day was proposing unpopular but necessary measures, or measures that had not appeared in its manifesto.

- This would result in more falling back upon the Parliament Acts than hitherto.

- In any event, such a major change to our constitution, could only come about following a referendum:

    - Whether the electorate wishes the House of Lords to be replaced by a Second Chamber wholly-elected ;

    - Whether the electorate wishes the House of Lords to be replaced by a Second Chamber partially elected ;

    - Whether it wishes an election by first-past-the-post or proportional representation?

- That a wholly-elected Second Chamber shall deprive this Chamber of expertise and experience now available to the present Lords and which makes the Chamber the finest debating House in the world with its concomitant impact upon legislation being subject to review and amendment.

- That reform of the Lords may be achieved by adopting the Bill introduced by Lord Steel and other such streamlining reforms without disturbing the constitutional balance between Lords and Commons.

1 October 2011

Lord Bilston on behalf of an Ad-hoc Group of Labour Peers

I am writing on behalf of an ad hoc group of Labour Peers whose views on House of Lords reform range from unicameralists , those wanting a fully elected second chamber and those wanting only modest changes to the current system. We are however in agreement about our concerns about the current draft bill.

The British Constitution is not codified and has generally evolved over time resulting in the checks and balances that now exist. Our first concern is a very fundamental one—that any change of such significance as that proposed in this bill will fundamentally alter the balance of power between the components of our constitution.

Many general statements have been made about the need to preserve the supremacy of the House of Commons. We agree with that intention but this proposed bill does not achieve this. Any legislation which deals with only one branch of our legislation is short-sighted and denies the inevitable consequences for the balance of power between the two chambers. Statements about the supremacy of the Commons are no guarantee that this can be protected. Moreover there is a naivety that somehow the conventions of Parliament can be underwritten by assurances given. This cannot be the case and both Lord Strathclyde and Lord McNally that relationships between the houses will continue to evolve.

If, as suggested, the new second chamber is to have a democratic mandate then it is inevitable that its members would use that mandate and assert and demand their rights and powers. If the electoral system and timing is different in the second chamber from the Commons then either house could, at different times, claim a more legitimate mandate and use that as good reason for frustrating the will of the other. The inability of Ministers to answer basic questions about the role of the second chamber in relation to matters of supply, votes on military action, and the role of ministers, shows the potential for stalemate between the houses.

Before any detailed proposals are drawn up for numbers in a second chamber, method of election or transitional arrangements, fundamental decisions have to be made about the powers of and relationships between the two houses. This cannot be done without a proper examination as such changes are a reform of Parliament and not just a reform of the House of Lords.

The new arrangements for more frequent boundary changes for the Commons (to be every 5 years) will lead to less continuity in the Commons which will contrast with the security and experience that members ofthe second chamber will enjoy, and will make it less likely that the second chamber will defer to the Commons as now. Elections to give democratic accountability and authority will increase the power of the second chamber and that power can only be at the expense of the Commons and create and intensify rivalries between the two chambers. At present the second chamber always acknowledges the supremacy of the Commons and accepts its role as a revising chamber. This would not, certainly over time, be the case with an elected second chamber.We do believe that the proper democratic mandate is, and should remain with the House of Commons. That will be seriously threatened by the proposals in this bill.

We are also concerned about the scope for the courts to become involved both in the passage of the proposed bill and in future arbitration about the rights and powers of both chambers.

Members of the group have many other concerns but this question of the balance of powers is our paramount concern and we believe that legislation in advance of a proper examination of the role of each chamber would have far-reaching, and sometimes unforeseen, consequences as well as eroding the clarity of the democratic mandate of the House of Commons.

31 October 2011

Professor Hugh Bochel, Dr Andrew Defty and Jane Kirkpatrick

This paper sets out our views, as individuals, on a number of the themes on which the Committee has invited evidence. It draws, in part, upon the findings of, and other information gleaned from, two research projects undertaken by us over the past eight years, which so far have involved face-to-face interviews with around 110 MPs and 120 Peers.

1. **Size, composition and the electoral system**—the argument in the White Paper that 300 full-time members would be able to fulfil the same duties as the current average daily attendance of 388 has a clear logic to it and may be tenable. The proposal that only one-third of seats will be contested at each election, also has some logic and is comparable with other second chambers. However, particularly given the proposed length of terms, this is also likely to raise issues of legitimacy—would members of the upper House elected 10 years ago have the same claim to democratic legitimacy as those elected today?

Depending upon the electoral system, it also seems inevitable that elected members of the House of Lords would develop some form of 'constituency' ties and work, even if this is of a different nature from that of MPs. Moreover, in the event of STV being adopted, to achieve multi-member constituencies for the House of Lords, constituencies would be very large by traditional standards in the UK. The nature and demands of such work may therefore be quite different from that which MPs are used to. Similarly, a reformed Chamber may become even more open to the types of pressures with which MPs are familiar, with greater attention from pressure groups, other organised interests and the media, as well as demands for 'outreach' type activities. Whether 300 members could adequately fulfil all of those roles may perhaps be questionable.

2. **Women in Parliament** —given the apparent desire to increase the number of women in Parliament, the government might also wish to bear in mind that evidence appears to suggest that larger multi-member constituencies (five or more members) are of greater benefit in enabling the election of women and people from minority ethnic groups than are smaller constituencies (the use of STV in Scottish local government elections, for example, appears so far to have led to no improvement in the level of representation of women (Bochel and Denver, 2007)), and a floor of three seats may be inadequate for this. On the other hand there are consequent risks that the constituency link becomes much weaker in larger areas.

3. **Ministers**—the White Paper does not make clear whether there will be any limits, upper or lower, on the number of ministers who could be drawn from the House of Lords. The number of parliamentarians holding government positions, the so called payroll vote, has increased in recent years, and a number of bodies, including the Public Administration Select Committee (2011) and the Conservative Party's Commission to Strengthen Parliament (2000), have recommended a cap on the number of Ministers and Parliamentary Private Secretaries. While the number of members of the House of Lords in Government posts has always been considerably fewer than in the House of Commons, the size of the payroll vote in the House of Lords has increased in recent years and there are now more

Peers in Government posts than in the past (24 compared to 20 in 1979). Even without any increase this would represent a significantly larger proportion of a smaller House, but with the creation of an elected Chamber, and the increased opportunities for political patronage through the payroll vote that might involve, future Governments might be tempted to increase the number of Government posts in the House of Lords. If there were to be a significant number of Ministers drawn from the House, that might impact both upon the independence of the House and its ability to undertake its scrutiny functions.

4. **Appointed members**—the purpose of retaining an appointed element in a reformed House of Lords is not clear, and appears to be inconsistent with the overall rationale for reform. The statement in paragraph 13 that proposals for a wholly or mainly elected second chamber 'is the fundamental democratic principle' seems inconsistent. Presumably only a wholly elected chamber would be fully democratic?

The subsequent arguments about the role of appointed members reflect the main arguments for the existing House of Lords, which have been those associated with claims for the expertise and experience of its members and their independence. We have argued elsewhere that despite frequent claims that the expertise of its members is one of the distinctive features of the current House of Lords, that expertise is patchy, may be deficient in a number of key policy areas, and as members are appointed for life, is in some cases a diminishing resource. We would also question the assumption that elected members necessarily bring less expertise to the House than appointed members. Our research indicated that the greater access to resources, and the considerable research and case work of some members of the House of Commons, meant that in some important policy areas the elected members of the Commons had greater expertise than members of the appointed House of Lords (Bochel and Defty, 2010a).

Even if one were to accept the proposition that the expertise of the House is enhanced by the appointment of a significant number of crossbench Peers it is hard to see how the retention of sixty appointed members would ensure the presence of sufficient expertise and of the right type to make an effective contribution to the work of the House. Rather than relying on the creation of a body of expertise within the chamber through appointment, it might be appropriate to consider the provision of resources to enable elected members to develop expertise within the House, and a more systematic and widespread use of external expert advice and evidence, in order to support the work of elected members and committees.

5. **Representation**—the White Paper has little to say on the subject of representation. The notion that reform should make the House of Lords 'more representative' has, however, been a consistent feature of the various proposals for reform since 1997, although what exactly is meant by representation has not always been clear and the basis for improving the broad representative base of the chamber has altered over time, from the use of appointments to create a chamber which is representative of British society as a whole, or more representative of gender, ethnic minorities and other faiths, to one in which representation is based upon elections (Bochel and Defty, forthcoming). Other than the Church of England Bishops, the current proposals place the emphasis firmly on elections as the basis for representation. The White Paper does suggest that the use of proportional representation may facilitate the election of more women and we have commented on that above. However, the proposals do not say anything about improving the representation of other groups, such as ethnic minorities. Similarly, while earlier proposals for reform recommended the representation of a wider range of faiths, the White Paper refers only to the retention of Church of England Bishops. It is unclear to us why the Church of England should retain up to 12 places. The other established churches would have none, and other faiths would have none. In the contemporary world, including where there are significant questions of representation and fairness, it appears hard to defend such a proposition. The White Paper does not provide any rationale for this, and again it would seem to conflict with the fundamental democratic principle which is claimed to underpin the reforms. Perhaps most importantly, if the intention is to introduce lasting reform, some further consideration of the nature of representation desired in the reformed House would be likely to be advantageous.

6. **Resources**: Changes to the composition of the House of Lords will also have implications for costs, and for the resources available to members of the House. These appear to be somewhat under-explored in the White Paper. It is not clear what the cost implications of reform are, but it does perhaps imply that the creation of a smaller House and the shift from a system of non-taxable allowances to a taxable salary will have a relatively benign impact on expenditure. This needs more careful consideration and explanation. It is far from clear that the salary costs of 300 full-time members will represent a saving on the allowances which are currently paid, largely on the basis of attendance, to the 388 members who attend regularly. It is also suggested that salaries for members of the House of Lords would be set at a lower level than for members of the House of Commons, on the basis that they would not have constituency duties, yet as noted above, members of an elected House would indeed have constituencies, and

these would be larger and present new demands on members. There are also considerable resource implications involved in the movement to a House of 300 full-time members. At present there is considerable disparity between resources, such as office space and staff, made available to members of the House of Commons and the House of Lords, with many Peers relying on resources available to them through their personal and professional life outside the House. While a reduction in the size of the House of Lords is likely to result in some savings in terms of allowances and space in the parliamentary estate, the cost implications of providing support, presumably at least comparable with that available to members of the House of Commons, for 300 full-time members, is likely to be considerable. It is not our view that reform of the House of Lords should be viewed as a cost-cutting measure; indeed the House of Lords has arguably been under-resourced for many years, and a well funded parliament with extensive staffing and research facilities is vital to a healthy democracy. Therefore, the cost implications of reform require clearer explanation and should not be presented or implied to involve savings on the current system.

7. **Transition**—why have a transitional period, other than to reduce dissatisfaction among members of the existing House? If the system needs replacing, it should arguably be replaced as one, particularly given the at best erratic nature of House of Lords reform over the last one hundred years. It is pertinent to note that following the removal of the bulk of the hereditary Peers in 1999, the current House of Lords is already a transitional House. Consideration should also be given to a number of implications of the proposals for transition. For example, should the White Paper's option 2 for a transitional period be accepted the number of members would be very large. A transitional system might also lead to different 'classes' of member—those who have been elected, and those who have not. The former would be able to claim democratic legitimacy, while the latter would not.

8. **Vacancies**—the notion of substitutes for vacancies, rather than by-elections, does appear to have some underpinning logic. However, the idea that if a party is unable to find one of its previous candidates to take a seat it should lose it would seem to go against the fundamental democratic principle expressed elsewhere in the White Paper. There are so many factors that might militate against this happening successfully (people might move area, change jobs, might be unwilling to leave work for a relatively short period in the House of Lords, and so on) that it would seem to be an inappropriate stance to take. Indeed, given the electoral sophistication of political parties, in many instances it will be clear that they are unlikely to win more than, say, two out of five seats in a constituency, so that they might restrict themselves to only two candidates (see, for example, what happened in local elections in Scotland in 2007, where only in one ward did any party put forward a full slate of candidates). The idea of substitutes would mean that parties would almost be required to put forward candidates with no chance of them being elected, simply to have a substitute available should a successful candidate leave the House, for whatever reason.

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6 October 2011

Jonathan Boot

The White Paper is flawed in many respects it is not reforming the Lords it is abolishing it to keep the Deputy Prime Minister happy. The Government should drop the White Paper and take up Lord Steel's necessary and sensible Bill. The House of Lords works very well at present, in fact better than the House of Commons. Therefore the composition of the Lords should stay as an all appointed house and have no element of election in it, this also means the removal of the Hereditary Peers from the house. If only this Government like previous ones would realise "if it aint broke don't fix it". A strong democracy can work well with a mixed element of elections and APPOINTMENS!!!

If the Bill goes ahead and the Lords becomes a senate (an awful word), it would be more expensive loose its experienced and professional members, become more partisan, cost more and deliver a much worse service. In addition the Government is taking the parliamentary conventions and throwing them in the bin. Think again withdraw the White Paper and Joint Committee and go ahead with the Steel Bill.

22 July 2011

Philip Bradshaw

The Government has said it welcomes the views of members of the public. The following concerns reform of the House of Lords.

Background

1. Several points are widely expressed on radio and television by academics and politicians or in the comment columns and the letters pages of newspapers by journalists and members of the public.

These are:

- The decision making machinery of the lords should accurately reflect the political opinion of the electorate.
- The lords should be a 'revising' chamber and not challenge the authority of the Commons.
- To fulfil a revising function effectively, membership should have technical expertise in a wide range of specified fields.
- Members should not be 'career' politicians.

Problem

9. Most suggestions for the makeup of the lords are for different proportions of elected and appointed members. But they risk compromising either making decisions reflecting the will of the electorate (if the proportion of appointees is too high) or the technical expertise desirable for a 'revising' role (if the proportion of elected members is too high).

Proposal

10. A solution would be a lords in which:

a) All members are appointed by an independent appointments commission charged with ensuring membership overall has technical expertise in specified fields, and a sufficient spread of political opinion. All members (say 500 to provide the necessary expertise and political spread) may 'speak' and serve on committees.

b) Voting is restricted to a minority of members (say 100), nominated for each party, by all members taking that party's whip in the House, in proportion to the votes cast for the party in the most recent general election. No party receiving votes from less than 1% of the *total electorate* has a vote. The number of 'cross bench' votes is proportional to the proportion of the *total electorate* that does not vote in the election. (For an election in which Labour receives votes from 24% of the *total electorate,* Liberal Democrats 13%, Conservatives 25%, and Greens 2%, giving a turnout of 64%, the voting members of the Lords would include 24 Labour members, 13 Liberal, 25 Conservatives, 2 Greens and 36 cross benchers).

c) To avoid voting and non-voting members being considered 'first and second class citizens', voting membership could last a year (say) and be rotated through those holding each party's whip, with similar provision for cross benchers (and accepting the extent to which rotation is possible will depend on the number in the Lords accepting a party's whip and the number of voting members that party is allocated).

d) Prohibiting ex members of the Commons from entering the Lords, and restricting the length of time members can serve in the House (say to 10 years), would militate against 'career' politicians serving in the Lords.

Transition

11. Smooth transition to the new system could be achieved by gradual introduction of new appointees over a period of years equal to the period of office for members. For a 10 year period of office in a reformed Lords of 500 members the procedure is thus:

Current members of the Lords are divided into tenths according to length of service. The longest serving tenth retires and is replaced by 50 new appointees. This continues for 10 years when all members will have been appointed under the new system. Thereafter, 50 members leave each year and are replaced by new appointees.

12. Gradual transition means:

- Recent appointees to the existing Lords serve for a useful length of time in the new Lords before having to stand down.
- Knowledge and experience of parliamentary procedures amongst membership of the Lords as a whole is retained.
- The effects of teething problems in the new appointments system are minimised.

Advantages

13. This system for reform of the Lords has the following advantages:

(a) The Lords cannot legitimately challenge the Commons because its members are appointed.

(b) The decision making machinery of the Lords—the voting members—is based on proportional representation and reflects the political opinion of the electorate.

(c) Members have the spread and depth of technical expertise needed in a 'revising' chamber.

(d) The independence of the appointments commission fosters a Lords free from Government patronage.

(e) Excluding ex-members of the Commons, and a set period in office for Lords members, recommends the system to an electorate still disillusioned with career politicians after the MPs 'expenses scandal'.

Conclusion

14. A reduced House with members (500) appointed by an independent appointments commission for a limited term (10 years), and with a small voting membership (100) representing parties by reference to their proportion of the votes cast in the most recent general election, satisfies criteria for a reformed Lords frequently advocated in the media by people from all walks of life.

20 December 2011

London Buddhist Vihara

On behalf.of the Buddhist community in the UK, I would like to make the following views known to the Joint Committee. We are particularly concerned that there is a proposal to reduce the number of members who currently represent the faith communities of the UK (the Lords Spiritual) from 26 to 12. Although the present Lords Spiritual represent the Church of England, we feet' that, as the U.K. is now a multi-faith society, the reformed House of Lords, should more accurately reflect this change. It is vital that the Lords Spiritual should (in the words of the Archbishops of Canterbury and York) ensure that “there is a place at the table for the perspective of faith, and that through that presence the concerns of all those who profess a faith can be guaranteed a fair hearing in the legislative process”. If the Lords Spiritual are reduced in number to just 12 members, then the faith communities will have just a 4% representation in the new House of Lords. This can hardly be said to be guaranteeing a fair hearing in the way that we all would wish. In short, we feel that the Lords Spiritual should not be reduced in number but should more accurately represent the views of people of all faiths in the UK.

10 October 2011

Conor Burns MP

The program of reform for the House of Lords that is currently being pursued by the government is one which will severely harm the ability of this Parliament to work effectively. While reform is essential, it needs to create a house which will complement, rather than compete with, the work of the Commons in producing sound and robust laws. With this in mind these are some of the objections that I have to the current government proposals concerning reform of the Upper House.

Current proposals to create a new democratically elected 'senate'- style second chamber will give the Lords a mandate to challenge any of the work of the Commons. In the longer term the political composition of the Lords may not necessarily reflect the more fluent make-up of the Lower House. The natural conclusion of this is the advent of behavioural issues between the houses, and so it is with this in mind that I ask the committee to urgently review the following points:

1. **Problems created by election to the House of Lords**

The vision of an elected second House would undoubtedly strengthen it to equal, if not surpass the legitimacy of the Commons. Having been elected on a particular platform, new members of the Upper House would then possess the democratic mandate to pursue a particular ideological or issue-based agenda. This could not only give them the potential to frustrate the program of the government of the day, but lead to confrontation and political stalemate.

In addition the prospect of election could deter otherwise experienced and professional candidates from trying to become Members of this prestigious revising body. The current House boasts a wealth of ex-cabinet members and key government figures whose indispensable experience and unique insights enable them to astutely revise and scrutinise legislation. Were election to be a pre-requisite of office, there is little incentive for members retiring from government or other public service duties to stand in another election.

Moreover, the new provisions made for elected candidates could discourage ex-MP's, civil servant and heads of business and industry. If at least 80% of its members will have to stand for election and they will be paid c. £60,000 per year over a 15 year term, this will entail a likely income drop during the highest earning years of their lives in addition to the expectation that they will take on a full-time job for the next fifteen years. As a result of this it is highly likely that many of the better and more experienced candidates will be put off from applying.

Furthermore, election carries the risk of excluding independent candidates if future members of the Upper House were to seek the patronage of major parties to access the resources needed to campaign for election. This could mean that membership of the House of Lords could become inaccessible for independents without great personal wealth, women and minorities who have so far been typically better represented in the Lords than in the Commons.

As well as this, by introducing the mechanism of election the Deputy Prime Minister appears to imply that currently the House of Lords is undemocratic. In fact, when it is examined, Peers are appointed on the principle of double election, which is currently used by the three main political parties. The Prime Minister is not elected to run the country by the citizenry, but rather by his party, and it is then the country who selects the party. By this same principle, when the country elects the party, the party appoints peers to the Other Place, representing the wishes of the electorate through a transparent democratic process.

2. **Problems in the changing function and powers of the House of Lords**

In spite of the Draft Bill stating that the functions of the Upper House would remain the same, it is plainly inevitable that with a new mandate and strengthened consent, the new House would begin to challenge the Commons for supremacy and be entitled to functions from which it had previously been excluded. For example, the Bill does not consider the possibility that a Prime Minister could be drawn from this new House of Lords, with added legitimacy of proportional election and the further benefit of a 15 year term.

Over time the House of Lords has constantly evolved from a chamber which provided a check on the executive by its power to reject legislation to one which can still act as a check on the executive but does so through the detailed consideration of legislation and its scrutiny of administrative decisions by expert advice. The proposals in the Draft

Bill are designed to reverse this evolution as the addition of a democratic mandate to the role of the new members will embolden them to reject legislation, block policy and ultimately frustrate the program of government in a way that previous reform of the house has intended to stop.

What's more, constituencies will interfere with the current balance and work of the House since the idea of a representative House of Lords is at odds with its function of revision and scrutiny of legislation. If new members of the House are elected by constituencies then the primary work of the new members will be to represent their constituents by corresponding to them, taking up their cases and spending time in their constituencies. This will then take away vast quantities of valuable time from the new peers that would otherwise be devoted to the revision and scrutiny of legislation.

The current proposals fail to take into account the constitutional changes that will occur if the new House is given more power though election. No consideration appears to have been given to how it is that the relationship between the two Houses will be altered if the second chamber is given powers which make it more equal to the first chamber. There is no clear consideration of how the status of the new chamber will be relevant to the current conventions and statutes that govern the relationship between the Lords and Commons. The Bill erroneously imagines them as final, seemingly unaware that they rest on a series of assumptions in the absence of anything as totemic as a written constitution giving legitimacy to the Commons.

3. **Problems with the term length in the new House of Lords**

The Draft Bill proposes that a single non-renewable term of 15 years be the life-cycle of a working new member of the House of Lords. This is a seriously flawed concept as the idea of re-election is in place to make parliament more accountable, following the assumption that an MP will want to be re-elected and will thus work hard to represent their electorate before all other business. The Draft Bill deters future members from representing the people who elected them and indeed from working hard to review legislation full-time as the reform states.

4. **Problems with the electoral process of the new House of Lords**

The idea that voting in new members take place at the same time as a general elections, under a different electoral system, with staggered terms will lead to voter fatigue, confusion and ultimately a House whose make-up does not reflect the position of the Government , causing further behavioural issues. Holding a vote for both members of the Lords and the Commons on the same day, but using two different systems will undoubtedly cause confusion among an electorate who have already rejected a different voting system during this parliament.

Moreover in a parliament which had two houses that have been elected using two separate forms of voting could not be considered to function well. In fact, in spite of all of the Commons best historical efforts to repeal powers from the Crown and the Lords, this new legislation appears to offer them more power as new members who are voted using the Single Transferrable Vote System (STV) would logically be more democratically representative than the Commons and therefore have supremacy and higher legitimacy which runs in direct contravention to the current balance and functions of the two houses. The revising chamber having more power than the legislating one is simply illogical.

5. **Problems with the salary and allowances in the new House of Lords**

The current government proposals allocate the new members with constituencies, staff, salaries and offices. This is an idea which will cause great expense to the taxpayer, with no clear indication of how much the total cost of this new chamber will be and where it is that the money required for this project will come from. For example, based on the current staffing budgets of MPs (£115,000) and MEPs (£222,000) coupled with the fact that the Draft Bill seeks to allocate constituencies twice the size of current parliamentary ones, the assumption remains that staffing budgets for all 300 new members would be at least £200,000 each.

It is true that no one would 'invent' the House of Lords in its current form, but we are fortunate enough that without anything a totemic as a written constitution we are able to constantly evolve and develop all the organs of government into a coordinated and integrated Parliament.

However, I find that the proposals of the Draft Bill, when closely examined, lend themselves to the creation of a fractured, confrontational and unbalanced parliament that is not in the interests of the electorate or indeed the wider democratic community. I urge you to consider the points made above.

26 January 2012

Edward Choi

I would like to comment regarding the proposed House of Lords reforms. I believe that there should not be any radical reforms to the House of Lords. The House of Lords have been an important part of the British political (and legal) heritage for many years and is an important part of the British culture. Any reforms would destroy part of the English/British culture.

The House of Commons is already an elected legislature. The House of Lords and the monarch have long been a protection of the constitution, although lately that view has been largely disputed. Through most of England's history, England (and Britain) had succeed with the current structure. The focus was not solely on an elected parliament, but a combination of an elected house and other protections. A reform in the way the government is currently proposing seems to be "Americanizing" the British system. The American system is where everything (including judges) is elected, that is not the sole system every country should operate. There are, of course, positives and negatives to each system which should be analyzed. Preserving our culture, and keeping a system that works simply makes sense. It's a system where there is democracy and where there are protections in place.

Unlike the elected House of Commons, the term of peers in the House of Lords is longer. It allows peers to view issues long term, and not just with a view to the next election. Without elections, peers in the House of Lords would not be as focused on personal interests for the next elections, as does the House of Commons. That is important. The House of Lords can be used to correct the short-sighted House of Commons and provide some longer-term insight into matters, as does the monarch.

Should House of Lords reform go through, I would strongly recommend preserving Church of England representatives in the house. This nation is a Christian nation and had been that way throughout its history. Long battles have been fought to preserve this, and this tradition and protection should not be destroyed. I do not believe other faiths should be represented as the Church of England is the national religion. This view is in line with many other countries where a dominant religion is in place. Preserving and building upon our Christian heritage is important both culturally and spiritually.

29 November 2011

Lord Cobbold

I am one of those who believe that the House of Lords as presently constituted performs a valuable function made possible by the unique experience and expertise of its members, which is available for the scrutiny of new legislation while always acknowledging the ultimate supremacy of the House of Commons.

The House is in need of some reforms but the proposals in the draft bill amount to abolition rather than reform.

An 80% or 100% elected chamber or senate would inevitably threaten House of Commons supremacy and I find it hard to believe that individual members of the present House with their special experience and expertise would be keen at their time of life to stand for election to the proposed senate.

This is not to say that the present House is not in need of any reform. I strongly support Lord Steel's bill, the contents of which will be familiar to your Committee. There is only one area on which I would like to comment.

The bill calls for the size of the House to be reduced from its present level of around 800 to achieve a membership not exceeding that of the House of Commons. This is a major adjustment which would need to be spread over a transitional period of at least five to ten years. For the future, I do not believe that numbers of members can be managed on a voluntary retirement basis and I would favour a fixed period of service of 20 years.

20 October 2011

Lord Cobbold— Further written evidence

Further to my submission of 20th October I attach a copy of the Amendment I submitted to the Steel bill committee which suggests a possible programme for the reduction in numbers of existing members of the present House[1]. The atmosphere and character of the present House would be preserved during the transitional period.

26 October 2011

Joseph Corina

- I received a 1st class honours for a dissertation on House of Lords reform written at the Queen's University of Belfast. I have studied British Politics for six years and have been politically active for the same time taking a great interest in the constitution. I am making this submission as a citizen of the United Kingdom and all views expressed are those of myself.

Summary

- Constitutional change in the United Kingdom has historically handed power from a group or stakeholder that has too much to a group or stakeholder that has too little. The proposed reforms will take power from a chamber that uses soft power mainly amendment, that the elected officials find valuable and shift it to political parties that have a measly 15% trust rating among the public. **This is far from the Prime Minister and Deputy Prime Minister's claims that they are moving power from 'the centre to the people' as stated on page 5. They are moving power from others to political parties.**

- The Draft Reform Bill does not provide sufficient explanation as to how electing the House will improve its ability to effectively scrutinise, amend and improve legislation. Appointing only 60 members is not enough to cover the expertise the current House has and is neglecting the value of having part-time members of the House who continue to work, remaining in touch with the outside world, arguably unlike many elected politicians. The White Paper uses points 2 to 6 to articulate that the house would continue in the same role, it then uses points 7 to 141 spelling out the new plans with NOT ONE point on how an elected house would provide greater ability to fulfil its roles.

- The Reform of the House of Lords has been put together with political and ideological interests at heart and not with practical, logical ones. It is a shame that on the vital question of constitutional reforms, although the parties are in consensus on the issue, they still cannot think clearly about what is best for the country, instead choosing to further feather their own nests. This is shown in the second section explaining the ways in which the current reforms actually remove power from the people and give more to lobbyists and political parties.

Background

1. Changing the constitution of any organisation or state is a very serious and important change that must not be subject to party political posturing and it is vital that consensus be sought. This is reflected by the fact that many organisations require 2/3 of members present and voting to effect a constitutional change whereas for policy motions they only require 50% + 1.

2. If change is effected, the changing of the system of entry to the House of Lords will be the most fundamental and sweeping constitutional change that this country will have had since the Act of Settlement in 1701. With all three political parties in favour of at least a partly elected house, it is important to reflect on the fact that a large section of society would be wary of having two elected houses, dominated by the political parties, not least because of the brinksmanship witnessed in the United States during the summer of 2011.

1 http://www.publications.parliament.uk/pa/ld201011/ldbills/008/amend/ml008-i.htm

3. Throughout the course of the current debate, the Deputy Prime Minister has used the Parliament Acts of 1911 and 1949 as his historical background. Before one discusses the white paper and draft bill, it is necessary to understand the purpose of reform in the United Kingdom since 1215. There are five documents that are central to constitutional history since 1215, the Magna Carta [1215], the Bill of Rights [1689], the Act of Settlement [1701] and the first Parliament Act [1911]. Each act constituted a transfer of powers from a stakeholder in society that possessed too much to another that didn't have enough. The Magna Carta ensured that the nobles of the time had their grievances answered and, as they contributed to the kingdom, they received their rewards. The Bill of Rights in 1689 ensured that the crown, which until then had almost un-curtailed powers, was subject to the rule of law. In this document the foundations for British constitutional development were laid. Power was taken from the crown to the state an unheard of shift at the time of the document. The Act of Settlement in 1701 ensured provisions for an independent judiciary, putting the rule of law in the hands of an independent group rather than the whim of the monarch, a cornerstone of modern democracy.

4. As can be seen, the above acts provided for power to be taken from the crown to other stakeholders in society. By the 1900s, though, there was still an imbalance of power between the general public and the aristocratic class. In 1911, the Upper House was standing in the way of a number of bills which the elected government were trying to pass. In response to this and under the threat of a house flooded with Liberal peers, the Lords accepted that in future they would only be permitted to delay bills from the Commons and not to stop them altogether. This is a fundamental point to the current debate and one that is lost in the swathes of political posturing. The House of Lords in its current form does not constitutionally have the power to block legislation outright but only to delay it. Many claim that it stands in the way of legislation, 'killing it'. However it is not the Lords that in the majority of situations decide the fate of legislation but the government of the day that decides not to follow through with pushing legislation through the Lords. What is key is that the House of Lords cannot block legislation; it can only delay it rendering the argument of an unelected house 'blocking' blocking legislation invalid.

5. Today, part of the Liberal Democrat rhetoric stirs up ill feeling based on members of the Lords who have their seats due to birthright. This rhetoric is dishonest in that there are only 92 hereditary peers left. A seat in the House of Lords based on birthright is wrong. It is fact that your birth cannot be a validation of a person's ability to contribute to the expert debate in the Lords. That is the first point that there is real consensus on. Real consensus represents not just consensus of the political parties but around the country. The hereditary peers should be discontinued in a reformed house as, following the purpose of reform in the past, this would take power from a stakeholder in society that has unwarranted power.

6. Apart from the removal of the final group of hereditary peers, there is still much debate to be had on the future of the Lords. In the United Kingdom we have a bicameral parliament. The purpose of the House of Commons is to provide representation of the people via one member constituencies. This provides each citizen with an MP through whom they can voice their concerns and affect the political process. It is an agreed position that to have two houses that would serve the same purpose would be a waste of resources and would not be useful. So what is the purpose of the House of Lords?

7. The Draft Bill is completely correct in asserting the function of the Second Chamber as to "scrutinise legislation, hold the Government to account and conduct investigations."[2] The House of Lords is not a representative chamber and nor should it be, that is the purpose of the House of Commons. We are lucky to be in the unique position that we have a House that is largely un-politicised, that prides itself on reason over politics and on joined up thinking rather than political point-point scoring. The mature nature of debate in the Lords is spoken of proudly in comparison to the 'childish' bickering in the Commons.

8. The question that needs to be answered is not "how can we make the House of Lords more democratically acceptable?" but "In our democratic system, how can we ensure that the composition of the Lords is most consistent with the purpose that we have assigned to it?" If the purpose of the Lords was to provide a second, more proportional house to re-check legislation, election would be the correct answer, but this is not the case. At this point a comparison must be made. If one was to be appointing a new Chief Executive to a company, one would envisage having a free-thinking person with expertise in the area that the company operated who would scrutinise company policy and actions. If someone was to suggest that you elected a person to be CEO of a bank or a multi-national

2 Draft Reform Bill p.7

company they would be laughed at. "Apple has just elected its new CEO; he was a teacher and a trade unionist before he was elected to the position." It does not work. The system of selection does not fit the purpose of the position. So, to elect a House with the purpose of scrutiny based on expertise is absurd to say the least.

The Roles and Functions of a Reformed House

9. Before discussing the roles and functions of a reformed House, we must first understand what value the current House adds to the system of government in the UK. There are a number of functions of the House that are overlooked when debating the future of the Second Chamber. These are: the manner of debate in the House and the effect that politicisation of the house is having on the quality of debate; the wisdom and expertise of the membership of the House; the value of the committees of the Lords; the freedom that the Lords have, and use, to propose contentious bills or bills that there would be no political capital to be gained for a party by bringing forward. Finally, the Lords have the ability to slow down government legislation and force it to think again.

10. There is consensus that the Upper House is a revising and debating chamber. In its current form, debate is calmer and conducted in a more courteous and reasoned manner than in the Commons. Much of this is to do with the specificity of debate but also with the fact that there are many independent members who have earned their place in the House by carrying out high class research or serving in the public and private sector without being moulded by the Punch and Judy politics of the Commons. If the make-up of the House were to be changed to 80% elected the quality of the debate and the value and worth of the debate to the legislative process would be diminished. In his first year as Prime Minister, David Cameron elevated 171 people to the Lords. The majority of these were ex-MPs or office holders from the main political parties. It is widely noted through the Lords and the media the effect that this mass elevation has had on the nature of debate in the Lords. The political wrangling notable in the Commons is seeping into the Lords and beginning to push scrutiny to the side and replacing it with politics. If there were 80% elected politicians this destruction of reasoned debate would only be cemented.

11. The high quality of debate in the House is so due to the expertise and experience of the membership. These attributes are personified by the Crossbench Peers. Lord Adonis has argued that argued that the independent members don't affect the outcome of many votes in the Lords, very few of them vote and that for this reason the House is weak.[3] To use this argument is to look at the work of the Lords crudely and suggest that the only important work they do is on the floor of the house. The fact that the House is so large is not to be laughed at by comparing it to the North Korean and Chinese Congresses, they are quite different indeed. Whilst the average working number of peers is just below 400 a large amount of members do not turn up for many debates. This is important because the Lords do not receive a salary but only expenses for each day they work, this is cost effective. For example, why would we want an ex-head of MI5 to be paid full time to sit through debates on health and education when their expertise is not of use to these debates? This system allows for members to only be paid and spend time in the House when their expertise is relevant. Secondly, it allows for members to keep in touch with their field by continuing working. This is especially important in areas such as the sciences in which knowledge moves on very quickly. If an expert in the internet became a full time member of the Lords, their expertise would be out of date within the first few years of their tenure. Having only 60 independent members would not give the House the benefit of the variety of expertise that it currently enjoys and would severely diminish the ability of the House to perform its function of scrutiny and review. Finally, to suggest that the House is weak is to ignore the 'soft power' and influence that the house enjoys over the legislative process. As Viscount Tenby explained "The House of Lords is an amending chamber, it doesn't make laws, it amends them."[4] There are very rarely fights between the Lords and the Commons and out of an average of 2,500 amendments per session 97% are agreed to by consent and without a division, accepted by the commons with government approval. To reiterate, that means that on average 2,435 are accepted by approval and 65 are pushed by a division. That rate of agreement is unrivalled in the western world and something that we should be incredibly proud of. The amending chamber works and the statistics above would imply that there is a vast amount of legislation that passes through the Commons without the required scrutiny because of the pressures of elected office. It also suggests that Members of the Commons are grateful for the input of the Lords with such a high proportion of amendments being taken on board. The value that the Lords add to the legislative process is truly great and to implement such a sweeping change as is being suggested should be thought about very carefully.

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3 Intelligence Squared, *Verbatim Report: An Elected House of Lords Will Be Bad for British Democracy*, London, 2010, p.15

4 Viscount Tenby on *The Lord's Tale*, Channel 4, 1999.

12. The freedom of thought in the Lords, due to the lack of political party strangle holds on debates allows the House to gather vast quantities of expertise in a number of committees that do not exist in the Lower House. In the House of Commons the Select Committees are formed in line with government ministries. In the Lords they are established and disestablished based on current requirements or pressing issues. In terms of specificity, the Stem Cell Research Committee is a prime example, a committee that could not get the expertise required from the pool of elected politicians in the Lower House. Secondly, the European Communities Committee, made up of seventy members and seven sub-committees, is renowned around the European Union for its highly technical and extremely detailed research. Its regular reports on EU legislation are used by member-states across the Union and are far superior to those of the Commons committee which suffers from lack of time, interest and expertise. To elect an Upper House would leave many of the members of these committees unable to stand for election due to the physical requirements and with only sixty independent members to be selected for the proposed reformed House, many experts who supply their knowledge to this vital committee would be lost.

13. A final example of an extremely important function that the Lords fulfils that a politicised, elected chamber could not is that it forces issues onto the legislative agenda that, although they are important, provide either no political gain for the political parties or are too controversial for a political party to risk raising. A prime example of this was Lord Joffe's Private Members' Bill on assisted dying. His proposal brought the subject onto the political agenda and engaged both the pro- assisted dying lobby and the anti. The fact that the Lords considers every proposal suggested unlike the Commons and secondly, that Lord Joffe was free from party political and electoral ties allowed him to bring to the fore an issues that affects many people but that the elected House had failed to address.

14. It is vital that the above examples are remembered when we discuss the composition of the House of Lords going forward. The reformed chamber must fulfil the purpose of scrutiny and amendment and this purpose is the basis upon which we must create any new house. It has yet to be articulated by any party or lobby group how electing the Second Chamber will improve the ability of the House to perform its role. On the contrary I would suggest that it would hinder its ability to carry out its functions.

15. In order to legitimise the election of members of the Second Chamber there is one question that needs to be answered than until now has not been. **How does electing the House of Lords allow its members to fulfil the functions of scrutiny and amendment to a higher quality than is currently the case?**

The effect of the bill on the powers of the House of Lords and the existing conventions governing the relationship between the Lords and the Commons.

16. A problem with the government program for constitutional reform is that those composing it seem to believe that each part of our system is completely separate from the other integral parts. The voting system was put up for referendum without consideration of how this change would affect the other parts of the system. Lord Adonis asserts, "In a democracy, those who make the law should be elected. It is as simple as that." Unfortunately that is not the case. The relationship between the two Houses has not been sufficiently addressed in the White Paper. The British legislative system is one that has grown over 800 years. Never in the past has there been such a sweeping change as the one that is proposed in the Draft Bill. In promoting the reasoning behind an elected house the government has articulated that elections would bring 'democratic legitimacy' the House of Lords. However it is naive to look at the House in isolation. It is the political system as a whole that must maintain democratic legitimacy not each section individually. It is possible that quite the opposite could happen by having two elected chambers, that democracy could be hindered by having two separately elected houses. There are a number of issues to be addressed relating not only to the relationship between the two Houses but also the possible effects that such a vast change could have on the political system as a whole. They are the potential for gridlock between the two Houses, as we have seen recently in the United States, and also the potential power this gives to pressure groups and large vested interests, diminishing the power of the people. Secondly, the possibility that the Upper Chamber, with a more representative electoral system, may claim more legitimacy than the Commons and would begin, over time to call into question the legitimacy of the primacy of the Commons. Thirdly, the divided accountability that would occur as a result of having two separately elected houses could lead to a situation whereby, the elected second chamber could propose an unpopular bill that is eventually brought into law. For example, it could be brought in by the Conservative Party in the Lords and forced through the Commons which could have a Labour majority. If this occurred the people could vote Labour out of office in the Commons for being the government of the day when this bill was passed even though they were not the party responsible for the bill in the first place. Finally, and this is key to understanding the support of political parties for reform. By electing the second chamber it is not, as is claimed, moving power from the centre to the people, but moving net power from independent members of a house to the

three main political parties. It could be argued that the political parties, wittingly or unwittingly are deluding themselves if they believe that giving themselves more power over the British legislature is giving more power to the people.

17. There is, with two elected houses, the possibility for legislative gridlock. An Upper House with a majority opposite to that of the First Chamber could slow down legislation so much that it becomes unviable. As a House becomes more politicised it becomes more likely to flex its muscles within its powers. This fact was highlighted during the passage of the Parliamentary Constituencies and Voting Bill when filibustering was used by Labour Peers. If a Second Chamber becomes not only more politicised, but receives 'democratic legitimacy' due to a more proportional voting system, we could see a House that more and more causes the very real risk of legislative gridlock. This risk no more stark than when we examine the results of gridlock in the United States of America in the summer of 2011. At this juncture, there are a number of actors that can affect the legislative process by influencing members of the legislature. The most influential being the media and the £2 billion lobbying industry. If there is increased potential for gridlock between the two houses there is increased influence for lobbyists and decreased power for the voter, who does not exert influence at advantageous times of gridlock but only at time of elections. This would mean power moving further away from the people and closer to the lobbyists and the media.

18. It is a fact that the Single Transferable Vote (STV) is a more proportional system than the First Past the Post (FPTP) system used to elect the Commons. It is also a fact that the Parliament Acts prevent the Lords from stopping legislation and allows it only to delay it. However, in the current system it is widely recognised among member of the Lords and also scholars that because the Lords is not elected its members think long and hard before blocking legislation' preferring to amend and negotiate. The argument used for electing the Lords is that it is the most democratic thing to do. If democracy is the argument then, before long, members of an elected Lords will be crying democracy in another sense. They slowly use the fact that STV is more democratic than FPTP to assert their stronger legitimacy. It could be argued that the Parliament Acts defend against that but there is no one who can argue that members, sure of their superior legitimacy, will find other routes, before long, to undermine the Acts. An advantage of maintaining an appointed house in this case is that it acts to delay and not stop government legislation, being made to think again is not a situation that can be argued against. The end effect of this could be a realigning of power in which the Commons, the house elected by constituents to hold government ministers to account loses power to a more assertive house. This house may have members elected on a closed list system through which the people cannot decide who but what party gets elected. **It is vital that there is an open system of candidate election to stop yet more power moving from the people to the parties.**

19. The issue of divided accountability is well documented in Lord Norton's article, *Adding Value? The Role of Second Chambers*, in the Asia Pacific Review. Currently we do not have divided accountability to the electorate. It is undivided in the fact that if the voters do not approve of the government of the day, the government is voted out in an election and power shifts from the unfavoured party to the favoured one. The problem with divided accountability is that a party in the Commons that loses power may maintain a majority in the Lords. This could lead to a situation in which the newly elected government could not be in a position to rule due to a hostile Lords majority, a situation which could provide gridlock. This system will distort the simple system of politics that the people of the UK enjoy. It could be argued that the British people voted against complicating the political system with a vote against the Alternative Vote.

20. The election of the House of Lords will have a complicating effect on the political system. More importantly though it will move power towards the main political parties. A closed party list system is favoured by the parties because it leaves them at less risk to losing influence in the house. If there was to be an elected system in place, it must be the most open multimember constituency system to give the voters the most choice and power possible. For example, on a constituency level, a system the same as Northern Ireland's Stormont electoral system. In this system once a party has selected its candidates it is up to the electorate to choose in what order their candidates will place. **This system will mean that the parties will have to choose candidates with the electorate more in mind as it will be the electorate who chooses not the party who places first in the list.**

21. A vital point must be explored before concluding. In a pan-European survey conducted by Dalton and Weldon in 2005, *Public Images of Political Parties: A Necessary Evil?* This study found that, on average, over the preceding 10 years only 15% of people 'tended to trust' political parties in the UK. That is 85% who do not tend to trust political parties. That is a sad reflection on the political system on its own, but the fact that in the proposed Bill, the political parties will shift yet more power to themselves can only have a negative effect on the views of the public. **These approval ratings show that it is vital that changes are put to the public in a referendum.** After all it is the political

class that is only supported by a fraction of this country that is proposing the reforms. In order to win back the trust of the public after changing the number of MPs without a referendum it is vital to have one on the House of Lords.

Conclusions

- This paper asserts that constitutional reform in the United Kingdom has always been to take power from a stakeholder or group in society that has too much to a stakeholder or group that has too little; the purpose of reform should always remain so.

- The purpose of the House of Lords is to provide greater scrutiny, experience, revision and amendment to the British system and the House should be composed in a way that serves this purpose**. Form must follow function, the current proposals make no attempt to do this. The supporters of an elected house must articulate how ELECTION serves to improve EXPERTISE and SCRUTINY.** It should not be elected as there is already a sovereign, elected, democratic and political house in the Commons and to shift yet more power to the political parties would further reduce the dismal 15% tendency to trust ratings that the political parties currently sustain.

- Any constitutional reform in the United Kingdom should be put to a referendum. We are unfortunate that we do not have that right as our neighbours in the Irish Republic have. The political parties should lead the way in offering referendums as a way of improving trust and legitimacy. **Therefore there must be a referendum on any change in the composition of the House of Lords.**

- If there is to be an elected house. The system of election must be the most open, possibly a multimember open list as in Northern Ireland. This would give the most power in an electoral situation to the people and not a party hierarchy.

- It is correct for the remaining 92 hereditary peerages to be ended. Although the present holders should be grandfathered to help maintain the current manner of the house. Birth is as illegitimate as election for providing the expertise needed to proper scrutinise legislation.

- In a bi-cameral system there is no need for two elected houses, confrontation between the two only provides increasingly common junctures in which lobbyists may influence the political process shifting power from the electorate to those with money. If there are to be two houses the lower must serve to provide a government that produces policy and legislation, the higher must use its expertise and experience to scrutinise and help the lower house with its workload by amendment.

The Draft Bill has failed at providing a suitable alternative to the current House of Lords. As part of an unwritten constitution a sweeping change will have many unpredictable outcomes. There are many good characteristics and also many bad ones about the current house. However, we should seek to gradually change the house over time. The hereditary peers should be removed, a function of retirement should be provided for, the issue of the Bishops should be debated BUT REFORM SHOULD NOT BE RUSHED. The system as it stands is not broken, but it is also not perfect. However, under the current government reform is being rushed for political means and what needs to happen is a much longer debate about each individual characteristic of the Lords. Many will say that this will take too long. But to rush constitutional change is to treat the importance of the constitution with contempt.

8 January 2012

Counting Women In

The Centre for Women and Democracy, the Electoral Reform Society, the Fawcett Society, The Hansard Society and Unlock Democracy have formed the *Counting Women In* (CWI) campaign to address the lack of women in politics. We believe the under representation of women in Westminster, the devolved assemblies, and town halls around the UK represents a democratic deficit that undermines the legitimacy of decisions made in these chambers. Together, we will be campaigning to ensure women have an equal presence and voice within our democratic system.

1. **Democratic Legitimacy**

The House of Lords—the last UK legislative institution to admit women—has long been the subject of campaigns for reform. These have generally centred around democratic legitimacy in the sense of an unelected legislative body being an anachronism and therefore untenable for the future, but there are other reasons for viewing reform as both necessary and desirable.

a) The current House of Lords is heavily (78%) male, and almost all of the women members are life peers. At a time when the public increasingly expects legislators to reflect the make-up of the population, and as the general notion of what constitutes democracy continues to move from the delegative to the representative and participative, a Parliament in which a minority of the population is dominant both looks out of touch and lacks democratic legitimacy.

a) Reform of the second chamber offers a unique opportunity to create a strong and vigorous body capable of providing democratic leadership unencumbered by the weight of tradition and cultural expectation which weighs on the lower House. This opportunity would be enhanced by the inclusion of equal numbers of women and men, since it would enable the House to draw on the wider range of experience and approach increased diversity offers. As a result, the new House would be in a better position to deal more effectively with issues such as working hours, rights of petition, accountability, etc.

b) The under-representation of over half the population in the nation's legislature means that Parliament is failing to make best use of the skills, abilities and experience of all its citizens. As has been demonstrated in more than one study[5], the routes into the House of Commons have narrowed in recent years, but a reformed House of Lords with clear criteria for candidacy and a commitment to ensuring a diverse membership would be able both to open up new routes and secure access to the legislative process for a much more representative body of people drawn from across the population.

2. **Better Decision-making**

Apart from issues around social justice and democratic legitimacy, the most compelling argument for ensuring that women are present in numbers in any legislature is that they change the nature of the debate so that it takes the whole of the population into account in different ways. In particular:

a) There is a growing body of evidence, largely drawn from business, that women make a positive difference to the quality of decision-making. For instance, in a recent report[6] Deloitte found that 'In Europe, of 89 publicly traded companies with a market capitalization of over 150 million pounds, those with more women in senior management and on the board had, on average, more than 10 percent higher return on equity than those companies with the least percentage of women in leadership', and came to the conclusion that 'In reality, the question is not women or men, it's how to ensure women and men are working together in decision-making roles'.

a) The same argument pertains equally to the world of politics.

b) Research carried out by the Hansard Society[7] found that, despite the difficulties women face in institutional politics, they can and do bring issues to the table which may not otherwise be debated, or which might otherwise be considered to be of less significance. They thus have the effect of making the legislature more relevant to the whole population, both men and women.

Frequently quoted examples of this are work/life balance issues and childcare, which in the early nineties were generally considered to be exclusively 'women's issues' but are now accepted as being relevant to both sexes.

c) There are also other considerations. Women and girls benefit enormously from the education system, and go on to develop skills and expertise based upon that and their life experience. If they are largely excluded from

5 The most recent of these is *Pathways to Politics,* Durose, Gains, Richardson, Combs, Broome & Eason (Universities of Manchester and de Montfort) for the Equality & Human Rights Commission, 2011

6 *The Gender Dividend: making the business case for investing in women'* Pellegrino, d'Amato & Weissman, for Deloitte, 2011

7 *Women at the Top: Changing Numbers, Changing Politics?* Childs, Lovenduski, Campbell, for the Hansard Society 2005

national (and local) politics these skills are being under-used in terms of public benefit. Whilst it is true that in many respects the life experiences of men and women are the same, in some they are not, and to be truly effective the country's democratic institutions needs to take account of what the full range of people involved in them can offer.

3. **Opportunities for increasing women's representation within the Lords**

CWI welcomes the Government's proposals to use a fairer voting system such as STV or t he open list system, which provides more opportunity to increase women's representation within the Lords. The House of Lords Reform Bill provides an opportunity to bring about a step change in women's political representation and address the democratic deficit of the current gender imbalance in the House of Lords. CWI will be seeking measures within the House of Lords Reform Bill to this end.

The UK is now trailing in international league tables on women's access to positions of political power. At present just 22% of the Lords are women. A new, reformed Chamber must be representative of the population as a whole and be equally informed by the experiences and expertise of women and men. Government also has a legal duty to assess how measures for reform could promote equality between men and women and tackle discrimination. As we move towards reform of the Lords, the representation of women must be at the heart of the agenda.

If reform of membership of the House of Lords is implemented there are several options which could be adopted to ensure it is more representative in future.

Proportional Representation (PR) systems provide a fairer system of electoral representation, with political parties receiving seats in proportion to their electoral strength. Academic research classifies PR as a *facilitator* rather than a *guarantor* of better female representation[8], as no voting system in and of itself can guarantee gender parity in political life. While PR as a system has greater potential than other voting systems to improve women's representation and diversity, this can only be guaranteed in conjunction with additional positive action measures.

Where progress has been made in delivering more women into positions of power—both in the UK and internationally—the driver for this has been the implementation of positive actions measures, such as quotas, All-Women-shortlists, zipping or twinning shortlists such that women and men are equally represented, or reserved seats for women in appointment-only systems.

Positive action measures need not be implemented on a permanent basis. Instead they can be time-limited and regularly re-evaluated to gauge their utility and necessity. Given the longstanding dominance of men within politics, positive action measures can provide a boost to the change already in process. Positive action measures could be built into the legislation in different ways depending on the reform model that is finally adopted.

In relation to the elected element of a reformed Upper House, positive action measures should be integrated into the electoral system, requiring parties to proactively cast their net wider to ensure the selection of equal numbers of women and men.
In the event that a proportion of peers are appointed rather than elected, the Appointment Commission should be statutorily required to ensure the appointment of equal numbers of women and men.

4. **Principles for Reform and Recommendations:**

Counting Women In recommends that:

- Reform of the House of Lords offers a once in a generation opportunity to increase the presence and voice of women in the Upper House;

- A PR model has greater potential than other voting systems to improve women's representation and diversity, but this can only be guaranteed in conjunction with additional positive action measures;

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8 *Childs, 2008 as quoted in Evans, E & Harrison, L. Candidate Selection in British Second Order Elections: A Comparison of Electoral System and Party Strategy Effects, 2011.*

- The legislation should require the political parties to ensure the selection of equal numbers of women and men as candidates for election to the new Upper House;
- The Appointment Commission should be statutorily required to appoint equal numbers of women and men as peers in a reformed, hybrid House of Lords;
- Consideration should be given to the effect that the right of ministerial appointment and the allocation of 12 ex officio seats for Church of England Bishops—currently reserved seats for men—will have on equality and diversity of representation in a reformed Chamber.

1 October 2011

R C Dales

What the reform team is likely to recommend to the Joint Committee based on correspondence with the Reform team

The second column are responses to the recommendations

"The draft Bill breaks the link between members of the second chamber and the peerage. The peerage will revert to become an Honour."	Welcomed (and this would apply to the alternative reform)
"Provisions for cancelling or suspending membership"	Sensible
"Membership limited to 300 members"	Welcomed, and could be applied to the alternative reform
"Members will be elected."	Welcomed, but there is reference to "80 or 100%". Not wanted is a half-baked decision. There must be 100% elected.
"The reformed second chamber will inevitably be a political chamber" and "political parties will continue to have a central role to play"	This must be rejected. The public do not want two political cockpits, with squabbles from one being repeated in the other. What is required is a second chamber able to scrutinise proposed legislation objectively, what its effect will be on different sectors of the public and their interests.
"Members should be elected in thirds for a single non recurring period of 15 years. Staggering elections in this way make it less likely that one political party would gain an overall majority"	This envisages General Elections to the second chamber, the cost of which could be avoided by the alternative reform. The first election would be fought by candidates from political parties and it is most likely that the majority Party will be the same as in the Commons. After the next 15 years which Party will have a majority in the second chamber becomes a game of chance. There may be a change of Parties in the Commons majority. Or there may not. And after another 15 years the same applies and the more "chancey" is the outset. A new constitution should not be accepted if it is based on chance. It is astonishing that the Reform team would consider this.
"Members would be salaried and the arrangements should be broadly similar of those which apply in the House of Commons."	Here we go again! Was the Reform Team unaware that the financial situation in the Country is so parlous that Austerity must be applied severely? In addition to costly elections here is another commitment adding up to billions of pounds over a

	period. The public will object to what they will consider to be another "gravy train" for politicians. This factor alone is sufficient justification for the alternative reform.
"The Government considers that serving a single term with no prospect of renewal should enhance the independence of members..."	There can be no independence if members have obligations to particular Political Parties. The Reform Team seem to be trying to sell something which cannot be relied upon!
"The reformed chamber will be neither a mirror image nor a rival to the primary chamber, the House of Commons"	There can be no argument about which is the primary chamber, but it could well be a mirror image politically—see references to "chance " above. The only way to ensure it is not a mirror image may depend on the alternative reform.
"Members of the reformed chamber will be expected to be full time parliamentarians" and "will gain access to the data, knowledge and expertise via use of the Commons system."	Whatever reform is used, that access will be desirable but one would wish to know where the "expertise" is coming from and its type. Is any available on any subject? The alternative reform would be more sure to have expertise on tap, without delay which would doubtless be involved otherwise. If the Reform Team's idea of salaries etc for members of the second chamber, the members should indeed be prepared to work full time. But if the alternative reform operates time spent will depend on the incidence and nature of the proposed legislation.
The Reform Team appears to have based their deliberations on the findings of the 2000 Royal Commission on Reform of the House of Lords	This, from 11 years ago, is outdated. There have been too many changes globally and nationally. A financial depression now dominates, and austerity will have to be exercised over many years. The National Debt is beyond the safety limit. We are still borrowing excessively. Despite budget cuts and the resultant misery and especially when so many will lose their jobs, despite which Ministers continue to find millions of pounds for any emergency arising here or even overseas. Political influence has changed. A "Big Society" is now a base policy involving the public more in details of government but the Reform Team have not applied this. There are crises ahead which will require radical attention by Government eg on water management when global warming and climate change really affects different parts of this land. There is a surge in the numbers of aged. There has been excessive immigration. There is a likelihood of further loss of sovereignity if we continue in the EU. The NHS has additional problems and Community Hospitals are not being fostered. Instead, centralisation is taking away local services. A broken Society has to be mended. We have been over-committed in the Middle East. Our Defence Forces are under greater strain than they were 11 years ago. Too many jobs have been transferred overseas. Our vital manufacturing base has deteriorated further. It is necessary to discard that 11 years old Report and take a fresh look at the second chamber. This should contain all the skills, all the expertise,

	experience and knowledge available. It is not a chamber for a duplication of a political Commons.
Constitution of the Reform Team	Presumably this is composed of civil servants and politicians, both of whom are so entrenched in old procedures and constitutions that consciously or not these have continued to engage them. If their recommendations are taken up a once in a lifetime opportunity will be lost to create a second chamber giving effect to the Big Society principles, to ensure austerity, to utilise the best brains in the Country.

5 November 2011

James H Davies via his MP

I am writing as your constituent to express my concerns about the government's proposals on Lords Reform and specifically on the issue of Bishops sitting as of right in a reformed chamber. I urge you to make representations on my behalf opposing the proposals to the Deputy Prime Minister Nick Clegg MP, who is leading work on Lords Reform, and to the Joint Committee which is scrutinising the draft Bill.

The package of proposals on Bishops do not simply maintain the status quo but give even more privileges to the Church of England—some of which even the Archbishop of Canterbury, Rowan Williams, and the Archbishop of York, John Sentamu, have strongly opposed in their submission to the Joint Committee, stating that the Church of England did not seek exemptions proposed 'by the Government for the Lords Spiritual from the tax deeming provisions, the serious offence provisions and those on expulsion and suspension'.

Durs is the only democratic country to give seats in its legislature to religious representatives as of right, and I believe that having any reserved places for Bishops in parliament is unfair, unequal and against the aims of a more transparent and legitimate second chamber. The government's new proposals, which in effect create a new largely independent, and largely unaccountable, place for the Church of England in parliament, are unnecessary, and even the Church of England leadership think they go too far.

I urge you to make my concerns known in parliament in whatever ways you are able.

20 December 2011

Democratic Audit

About Democratic Audit

Democratic Audit is an independent research organisation, based at the University of Liverpool. We are grant funded by the Joseph Rowntree Charitable Trust to conduct research into the quality of democracy in the UK and are currently conducting the fourth full Audit of UK democracy. The previous three Audits, which assess the democratic performance of the UK using a set of generic 'search questions', were published in 1996, 1999 and 2002

Introduction and summary

The idea of an elected House of Lords is not new. For instance, reference is made to a 'popular' second chamber in the introductory text to the Parliament Act 1911. It is also an issue that has constantly been on the political agenda since 1997.

Democratic Audit believes that the House of Lords, as currently composed, suffers from a lack of democratic legitimacy; and that the proposals contained in the draft bill and the white paper in which it is enclosed address these concerns in a fashion which is it be welcomed, bringing the UK more into line with general international democratic norms. However, it should be noted that there is no single international democratic model for the composition—or indeed role and functions—of a second chamber (nor is a bicameral system the only possible structure).

The key points advanced in this submission are as follows:

- It is inevitable, in the view of Democratic Audit, that a second chamber possessing new democratic legitimacy will become more assertive and challenge existing understandings of Commons primacy. It seems appropriate that a democratically composed second chamber should wield its power more confidently. However, Commons primacy will remain in some form; and in international perspective the formal powers possessed by the second chamber—which will be unaltered by this reform—are not great.

- Reform may have consequences—both good and bad—for the effectiveness with which the second chamber performs its legislative and policy oversight functions.

- Some of the details of the reform raise particular democratic difficulties. They include the inclusion of ministers appointed from outside Parliament and representatives of the Established Church; and the retention of peerages as honours.

- We welcome the government's recognition that a proportional representation (PR) system is required for the electoral system used to choose the second chamber, and support the logic by which this decision has been reached. The choice between list PR and STV is closely balanced and probably as much to do with practicalities as anything. We would urge the government to consider the details of the electoral system further.

- Running second chamber elections alongside general elections is a sensible proposition.

- We strongly agree that the role of a reformed second chamber is to be differentiated from that of the Commons, and that the electoral system can play a part in achieving this. Long non-renewable terms, partial renewal by thirds, and a lack of a single-member constituency relationship, all work in this direction.

- We urge the government not to be too dogmatic about the size of STV constituencies. While 7 is probably a reasonable ceiling from the point of view of complexity, the results of the Scottish local elections show that smaller STV seats offer a fairly high degree of major-party proportionality and there is no need to insist on a rigid 5-seat floor.

- The draft Bill also asserts as if it were axiomatic that there should be, in the government's terminology, 'equally weighted votes'. This assumption needs to be examined.

- It seems unnecessary to establish as an additional institution 'an independent committee of experts' to create electoral districts.

- The government may wish to consider the practicalities of large scale STV elections using units as large as a middling-sized English region (or the whole of Scotland).

- The provisions for filling casual vacancies are a matter of some concern, and we urge the government to consider alternatives.

- In our view, it would be inappropriate for the Lords as an unelected chamber to be allowed to frustrate the will of the Commons, an elected chamber, in order to sustain the unelected nature of the Lords. While it is appropriate for the Lords to seek to block to its maximum ability Commons proposals that serve to compromise democratic values, this reform hardly fits into this category, since it involves democratising the second chamber.

- Other issues—including the name of the chamber and the remuneration of its members—are of second order importance and should not distract from more substantial matters of democratic principle.

We cover the various subject headings suggested by the committee, followed by some additional material. This submission does not deal directly with the likelihood of these proposals for House of Lords reform being successfully introduced.

We are happy to provide more information and evidence if required.

The role and functions of a reformed House

A more democratically legitimate second chamber
It is important, when considering these proposed reforms, to stress a central feature of their likely political and constitutional impact, if implemented.

In establishing a second chamber that is mainly or wholly directly elected, they will infuse it with democratic legitimacy which it has previously lacked.

This shift is rightly presented as the central justification for the government proposals. As the white paper puts it (para.13): 'The Coalition Agreement said that we would develop proposals for a wholly or mainly elected second chamber. This is the fundamental democratic principle'.

However, this change that will lead to consequences that are seemingly unintended, though not wholly unpredictable.

Eventually at least 80 per cent of its members will be able not only to claim that they are now democratically legitimate, but—rightly or wrongly—that they are *more* democratically legitimate than members of the House of Commons, since the second chamber will be elected on a more proportionate system than the Commons, and each member of the second chamber will represent a larger constituency of voters than MPs in the Commons (though as discussed below, there will not be the same direct link as with the First Past the Post system used for the Commons).

A more legitimate second chamber will surely become a more assertive one.

We consider the implications of this tendency for the principle of Commons primacy in the next section.

Legislative and policy oversight
The present House of Lords performs a valuable role in scrutinising legislation; and in investigating policy issues, in ways that the House of Commons may not.

Recently, for instance, the Lords has performed well in questioning some of the constitutional reform legislation introduced by the Coalition government, some of which seemed to suffer from being hurriedly devised and rushed through the Commons.

The Lords also has an important role in scrutinising secondary legislation—over which it possesses a (rarely used) power of veto, not subject to the Parliament Act—including through the Merits of Statutory Instruments Committee.

A number of Lords committees—such as the European Union Committee and its sub-committees; and the Constitution Committee—carry out, amongst other tasks, important wide-ranging thematic investigations.

The Lords also furnishes joint committees such as the Human Rights committee with valuable expert members.

It may be that the second chamber, if it became more democratically legitimate, could actually perform some of these tasks more assertively, to the benefit of the democratic system.

However, a case can be made that, with a shift towards a directly elected chamber, the personnel and ethos that made this work possible will be lost. It might be harder to attract experts to run for election; and a more party political environment might not be conducive to such activity.

But, if the democratic legitimacy issue is seen as of overriding importance, then this change—assuming it would occur—might be seen as secondary.

Moreover, ultimately the precise role and functions performed by the second chamber in such areas will be determined by the second chamber itself. Framers of the current reform proposals, if implemented, may impact—directly and indirectly, intentionally and unintentionally—upon the future development of the Lords, but they cannot wholly control it.

The means of ensuring continued primacy of the House of Commons under any new arrangements

The impact upon conventions

Commons primacy is a fundamental principle of the UK constitution, dating back a number of centuries. For instance, one of the sources of Commons privilege in financial matters is a Commons resolution of 1671 (for an assessment of these issues, see: Joint Committee on Conventions, *Conventions of the UK Parliament*, HL 256—I/HC 1212—I, 2005-06). It is worth highlighting three key features of Commons primacy as it presently exists:

1. It is founded in the respective possession and lack of democratic legitimacy by the Commons and the Lords.

2. It is upheld to a considerable extent by the observance of conventions, such as those facilitating the passage of government legislation through the Lords and the principle that the Prime Minister is always drawn from the House of Commons.

3. It has a statutory underpinning in the Parliament acts 1911/1949, which have the effect of giving the Commons the final word over nearly all issues.

Though they do not affect feature 3), the current proposals for Lords reform will inevitably impact upon Commons primacy as it is currently conceived, by altering feature 1) referred to above. This change will—as suggested above—lead to a more assertive second chamber which is likely to challenge some of the understandings referred to in feature 2). Constitutional conventions are not directly *legally* enforceable; and any *political* force they posses is dependent upon the extent to which there is general agreement over such issues as whether they exist at all and, if so, what is their precise nature. Even when there is a reasonable degree of consensus about conventions, it is in their nature that they can change over time—indeed this quality is held to be a strength by advocates of constitutional conventions.

The nebulous nature of conventions can be illustrated well by a consideration of the Salisbury-Addision doctrine. It arises from a 1945 agreement between the Conservative and Labour then-leaders in the Lords that Conservatives in the Lords would not obstruct legislation arising from commitments contained in the manifesto of the party which won the most recent General Election. It has come to be regarded by many, but not all, as a convention binding upon the whole House of Lords, which has developed in various ways over time. However, given the advent of a Coalition government in 2010, with no one manifesto on which to base its legislation, Salisbury-Addison's continued existence—at least for as long as there is not single-party government—is in doubt. There is also claimed to have devloped a more general convention that the Lords will not obstruct the overall legislative programme of the government.

Members of a mainly or wholly directly elected second chamber may decide either that supposed conventions such as Salisbury-Addison never existed as fully fledged conventions, or that they no longer apply to it, and become more obstructive towards government legislation. They may also decide they are not bound by any convention that the Lords display a strong aversion towards using its power to veto secondary legislation. Furthermore, they may operate in ways which cannot yet be governed by established conventions—for instance, in their relationship with constituents, who will also be constituents of MPs in the Commons—which might be seen as affecting the position of the Commons.

The view of the Coalition seems to be that it can introduce its intended changes to the composition of the House of Lords without indirectly encouraging changes or challenges to conventions. Clause 2 of the draft bill states that:

> *(1) Nothing in the provisions of this Act about the membership of the House of*
>
> *Lords, or in any other provision of this Act—*
>
> *(a) affects the status of the House of Lords as one of the two Houses of*
>
> *Parliament,*
>
> *(b) affects the primacy of the House of Commons, or*
>
> *(c) otherwise affects the powers, rights, privileges or jurisdiction of either*
>
> *House of Parliament, or the conventions governing the relationship between the two Houses.*

This provision in the draft bill is futile. It does not define these conventions—indeed, it probably could not do so, since if it did they would presumably cease to be conventions, through obtaining a statutory footing. At the same

time, the overall impact of the bill which includes this clause will be—as we have suggested—precisely to encourage the alteration that is ruled out in this particular part of it. Convention is by definition not a creature of legislation—though it has an informal relationship with it—and an Act of Parliament cannot achieve what the draft bill seems to be attempting here.

The tone of the white paper on Lords reform produced in 2008 (*An Elected Second Chamber: Further Reform of the House of Lords*, Stationery Office, Cm 7438, 2008), was perhaps more realistic. It stated that (p.5):

The current powers of the second chamber, the Parliament Acts and the conventions that underpin them have worked well. Given its electoral mandate, a reformed chamber is likely to be more assertive. The Government welcomes this. Increased assertiveness on the part of the second chamber is compatible with the continued primacy of the House of Commons, which does not rest solely or mainly on the fact that the House of Commons is an elected chamber whilst the House of Lords is not. (One aspect of the primacy of the House of Commons is the operation of the 1911 and 1949 Parliament Acts, which the Government does not intend to change.)

It seems to us reasonable that a wholly or mainly directly elected second chamber should be more assertive. Though it will be modified, Commons primacy will remain, particularly since it is not proposed to alter the Parliament acts. Prime ministers and most senior ministers, it can reasonably be expected, will continue to be drawn from the Commons for the foreseeable future. A slight shift in the direction of greater equality between the two Houses need not undermine the effectiveness of the democratic system and could arguably strengthen it through subjecting a government founded in a majority in the Commons to more effective oversight.

The size of the proposed House and the ratio of elected to non-elected Members

Size of the second chamber
The recent statutory provision for a reduction in the size of the House of Commons to 600 members at the next General Election was not based on a serious assessment of what was the appropriate figure within the constitutional and political environment of the UK.

Similarly, the figure of 300 for a second chamber seems suspiciously as though it has been chosen because it is exactly half the new Commons figure.

We note that the size of the House of Lords is presently nearly 800, substantially more than the Commons, and likely to grow further in future if the present reforms are not implemented. This issue may be regarded as meriting attention, if reform fails.

Ratio of elected to non-elected members
The white paper provides two options: a second chamber that is ultimately 80 per cent elected (which the Coalition states that it favours) and one that will be 100 per cent elected.

We note that even under the latter option, provision is made for ministerial appointments from outside Parliament to be recruited to the second chamber (who, in both scenarios, remain members of the chamber for as long as they are ministers).

If the principle of direct elections to the second chamber is accepted, then it could be seen as difficult to justify any unelected presence within the second chamber, except perhaps in a non-voting capacity, though even members of this sort would be able to influence proceedings.

It could be held that an unelected presence can provide qualities that might be lacking amongst elected members, such as expertise and independence from the party political system.

Yet such arguments, taken to their extreme, are anti-democratic. Moreover, they tend to stigmatise professional politicians and political parties, both of which, whatever flaws they may sometimes display, are seemingly indispensible components of a democratic political system.

We discuss the inclusion of bishops and ministers appointed from outside Parliament below.

A statutory appointments commission

A wholly elected second chamber could remove the need for an appointments commission.

However, assuming that some members will be appointed in a reformed second chamber (and will certainly be part of an unreformed second chamber), arguably it is desirable from a democratic perspective, and from the point of view of clarity, that the existence of the appointments commission is placed on a statutory basis.

There arises a difficulty here. Though commissioners would be appointed by the monarch, the mere fact of having a basis in an Act of Parliament would make the commission a parliamentary creation. Moreover, the white paper states that (para. 56): 'The Commission would be accountable to Parliament as its work would be overseen by the Joint Committee on the House of Lords Appointments Commission'.

There seems to be a potential conflict of interest if Parliament provides the legal authority for and holds to account a commission which regulates entry into Parliament. In countries with a codified constitution—which the UK lacks—it would be possible to provide for an appointments commission in the constitution, rather than in regular parliamentary legislation, perhaps avoiding this particular problem.

The electoral term, retirement etc

While they may help insulate members from party political pressures, single electoral terms of a likely fifteen years seem long by any standard. They are produced by the questionable decision by the Coalition to fix parliaments at five years, rather than four (or perhaps even three).

From the point of view of accountability, both the length of the term and its non-renewability are undesirable, since they mean that members are probably secure for a substantial period of time, and cannot be judged by their electors at a subsequent election.

While the government states it is interested in applying recall procedures to members of the second chamber as well as the Commons, how exactly such a mechanism would operate within the favoured STV system is unclear.

The electoral system preferred

We welcome the government's recognition that a proportional representation (PR) system is required for the electoral system used to choose the second chamber, and support the logic by which this decision has been reached.

Successive inquiries and analyses of the requirements of a second chamber electoral system have narrowed the effective choice between two systems, the Single Transferable Vote (STV) and some form of open list PR system. Both of these systems are capable of giving a proportional outcome and a wider choice of candidates for voters.

The choice between list PR and STV is closely balanced and probably as much to do with practicalities as anything. We would urge the government to consider the details of the electoral system further.

Timing of elections
Running second chamber elections alongside general elections is a sensible proposition. It is probable that results would reflect a similar division of public opinion to that of the general election outcome. Another system might result in exaggerated results arising from 'mid-term blues'. The draft Bill's point about mid-term elections disrupting the legislative timetable is reasonable, as is the contingency of not having a Lords election in cases where a second general election follows within two years of the previous one.

Differentiating the role of a reformed second chamber from the Commons

The white paper accompanying the draft bill notes (para. 32)

The individuals elected to the reformed House of Lords will serve a long term, and will inherit the important scrutiny role presently exercised by the House of Lords. Their role, and that of the reformed chamber, will be different from that of the House of Commons. For these reasons, it is important that the individuals are elected with a personal mandate from the electorate, distinct from that of their party.

We strongly agree that the role of a reformed second chamber is to be differentiated from that of the Commons, and that the electoral system can play a part in achieving this. Long non-renewable terms, partial renewal by thirds, and a lack of a single-member constituency relationship, all work in this direction. We agree also that closed list PR on the model of the European Parliament electoral system is not suitable for a scrutinising chamber because it gives the

party an inappropriate degree of control over which members will be elected, and does not provide personal mandates. STV and other forms of list PR accomplish this objective.

Electoral districts
Electoral districts are not a particularly critical aspect of the electoral system for the second chamber. Electoral districts are there to ensure that the chamber as a whole is a broadly representative national forum, but there is no sense, in theory at least, in which members are answerable to constituents or there as representatives of a particular area.

The 12 so-called 'Euro regions' are now fairly familiar electoral entities (their significance again underlined in the Parliamentary Voting System and Constituencies Act 2011 which urges but does not quite require that they are the foundation of the allocation of seats). The logic of using them as the basis for second chamber electoral districts is therefore strong—possibly stronger even than the draft Bill recognises.

Table 1: Entitlement by nation and region based on December 2010 electorate and Sainte-Laguë allocation

	80 per cent elected House (80 seats)	100 per cent elected House (100 seats)
Northern Ireland	3	3
Wales	4	5
Scotland	7	9
England	66	83
Eastern England	7	9
East Midlands	6	7
London	9	12
North East	3	4
North West	9	11
South East	11	14
South West	7	9
West Midlands	7	9
Yorkshire and the Humber	7	8

An advantage of list PR over STV in this instance is that it is easier to use larger electoral districts with list PR, and there need be no delineation of boundaries below the regional level.

Districting is an unsatisfactory aspect of the draft Bill; for instance paragraph 43:
The Government therefore proposes that the STV Electoral Districts are formed of the nations, and, within England, groups of administrative counties, taking the existing nine regions as the starting point, but allowing for districts to cross the regional boundaries where necessary to ensure a sufficiently proportional result. This will mean districts comprising around 5 to 7 seats in England. There will be a floor of three seats to ensure a proportional result in Northern Ireland, as is the case for the European Parliamentary elections.

We agree with the exception for Northern Ireland, but urge the government not to be too dogmatic about the size of STV constituencies. While 7 is probably a reasonable ceiling from the point of view of complexity, the results of the

Scottish local elections show that smaller STV seats offer a fairly high degree of major-party proportionality[9] and there is no need to insist on a rigid 5-seat floor. Allowing 4-member STV seats would mean that any region with an entitlement of more than four seats could be given a whole number of electoral districts within its region, without the need for complex and probably contentious electoral districts spanning regional boundaries. Insisting on 5-7 member seats would mean a significant number of regions with entitlements of between 9 and 11 members would have to be paired. A single departure for the region of the North East (if there are 80 members to be elected) allowing a three-member seat would not affect overall proportionality. We note also that the best-defined English region, London, might need to be paired if 5-7 is taken as an absolute limit. We therefore urge, if STV is to be used, the government to amend the desired size of constituency to 4-7, with exceptions for small regions (Northern Ireland and possibly North East) that may be permitted to have a single three-member seat.

Subdividing larger English regions using counties as the base unit is reasonable, although rather than 'administrative counties' the counties should probably include their 'hived off' unitaries (like Bournemouth in Dorset) and abolished counties such as Berkshire, Cleveland and Bedfordshire should be treated as whole units.

It seems unnecessary to establish an additional institution 'an independent committee of experts' to create electoral districts. The Boundary Commission for England is perfectly capable of subdividing England and allocating seats to districts. If there are 100 seats to be elected at a time, the Boundary Commission for Scotland will also need to designate two districts.

The draft Bill also asserts as if it were axiomatic that there should be, in the government's terminology, 'equally weighted votes'. This assumption needs to be examined, because though the United Kingdom may, according to legal orthodoxy, be a unitary state, it is also a multinational Union, including within it territories that could be seen as developing in practice in the direction of sub-federal level states. Most federal legislatures, particularly those with directly elected second chambers, tend to give some sort of weighting to 'small states'—the United States in a particularly extreme form, but the principle applies in Australia and in the indirectly elected Bundesrat in Germany.

The provision for further review of numbers of members for each electoral district is reasonable, although we note a problem. Population drift will probably cause the entitlements of sub-regional districts to move outside the 5-7 (or even 4-7) band over time and therefore unsatisfactory. We see no reason why sub-regional electoral districts should be locked in place once and for all.

By allowing larger numbers of candidates to be elected at a time, list PR would involve a greater degree of proportionality and representation of smaller parties.

Administrative issues with a regional STV election

The government may wish to consider the practicalities of large scale STV elections using units as large as a middling-sized English region (or the whole of Scotland). A list PR election, as with the European Parliament, can be readily counted manually in parallel by a number of local counting centres, which then report their results to a regional counting centre which aggregates all the completed results, operates the electoral formula (D'Hondt in the case of the European Parliament) and declares the votes for each party and which candidates are elected. This can easily be adapted for an open list PR election by requiring local counting centres to report the personal preferences cast by their voters to the regional counting centre.

Large scale STV elections are different, in that it is hard to see how it could be accomplished without the use of optical scan machine counting or voting by machine. Manual counting is impossible because the regional counting centre would need to determine the order of distributions of surpluses and exclusion of candidates and communicate them to the local centres, which would then have to conduct a manual count and report back the results to the regional centre. This process would be repeated perhaps ten times. With an electronic element, the problems would be minimised, but at a perhaps considerable initial cost.

The alternative to having every Returning Officer equipped with machines would be to regionalise the counting, as takes place with the London Mayor and Assembly elections which are counted electronically in three counting

9 *Lewis Baston The Scottish Local Elections of 3 May 2007 (Electoral Reform Society, 2007)*

centres. The implications for the electoral administration profession are considerable, and the practicalities look daunting if the government intends the first election to take place in 2015.

Electronic counting will certainly be necessitated if the method for the transfer of consequential surpluses chosen is the 'Weighted Inclusive Gregory' method as used in Scottish local government.

Vacancies

The provisions for filling casual vacancies are a matter of some concern, and we urge the government to consider alternatives. The proposed mechanism is that (explanatory notes to draft bill, para. 10):

A vacancy is to be filled temporarily by a Substitute Elected Member until the next House of Lords election (unless the vacancy arises six months or less before that election). If the former member who caused the vacancy to arise was affiliated to a political party, the vacancy is to be offered to the candidate from the same party who failed to win a seat at the most recent House of Lords election in the electoral district where the vacancy exists, but who gained the highest number of votes. Where the vacancy occurs before the former member's final electoral period, an additional seat will be contested at the next House of Lords election to elect a Replacement Elected Member who will serve for the remainder of what would have been the former Member's term.

The identification of 'the candidate with the most votes but not elected' is a potentially complex matter. A first preference count would be one possible measure, but it would occasionally produce peculiar results. It is probably more satisfactory, reflecting the overall views of the electorate more closely and more faithful to the principles of STV to use the final preference count, i.e. the total reached by the candidate in the last stage of the count before exclusion (or on the final count if not declared elected on the final count), which is the method the government seems to favour.

We agree that given the long terms of office, an interim appointment should not persist for more than the period until the next partial election. However, the method used to designate which candidate serves the short term is a rather crude one ('largest vote without being elected'). There is a fairer procedure to produce a ranked order result under STV devised by Colin Rosenstiel and used in internal Liberal Democrat elections. If the regular election is for 6 seats, one first counts a 6-member STV election with a quota of 1/7 of the total vote, declares those six elected for the long terms, and then counts a 7-member STV election with a quota of 1/8 of the total vote. The additional candidate elected serves the short term; one will need a contingency in case, as is possible in a small number of cases, there are candidates elected in 6-member but not 7-member STV.

An advantage of using a list system as opposed to STV is that it creates a simple route for filling vacancies by looking at the next most popular candidate on the list of the party whose seat is now vacant (the election results will create an unambiguous ranking of candidates whichever method of semi-open or open list is used).

Under STV, we recognise that the government's proposal avoids the flaws of by-elections, which will tend to be won by the predominant party in the region even if the vacant seat previously belonged to a party in the minority locally. This pattern can be observed in AV by-elections in Scottish local government and the Republic of Ireland.

However, the way in which party proportionality is maintained is questionable, because it involves a departure from the principle of STV that voters should determine where their preferences flow. It also depends on the assumption that there are two preferable alternatives.

A possible different approach is the 'count back' system in which the original election is essentially re-counted ignoring the candidate whose departure causes the vacancy. This system will tend to preserve the balance of opinion as originally expressed in the election. It also encourages parties, even if they only expect to elect one candidate in the electoral region, to stand multiple candidates to insure against losing a seat through casual vacancy. This in turn has the benefit of widening voter choice and increasing the chances of the election result producing an acceptable degree of gender and social balance.

Transitional arrangements

The three options offered on transitional arrangements involve variations in the extent to which the removal of existing members of the second chamber is front-loaded.

However, we note that, under any option, the second chamber will only reach its full elected component (either 80 per cent or 100 per cent excluding ministers) after three elections, that is, probably, by 2025.

It would be possible to discuss these options from the perspective of how valuable it is to preserve continuity and stability in the second chamber, with existing members transmitting their experience and working ethos to newcomers; and what kind of overlap would be required to achieve these goals effectively, if they are deemed desirable. From our perspective, option one seems reasonable.

However, transitional arrangements are probably more significant as a sweetener intended to secure compliance for reform from existing members, and their exact nature is more of a political judgement than one of constitutional and democratic principle.

It should, however, be noted that Coalition proposals at present (though the government is open to change in this area) provide for transitional members of the second chamber to be paid a salary, where previously they received none. While this arrangement would make them equal to new members, it may prove controversial.

The provisions on Bishops, Ministers and hereditary peers

Bishops
The Coalition proposes that there will be a maximum of 12 places reserved in the reformed second chamber for Church of England archbishops and bishops.

The proposed continued presence of Anglican bishops in a reformed second chamber by implication discriminates against other religious faiths, since no such provision is made for them—or indeed for individuals avowedly of no faith. Consequently this intended measure fails to recognise post-Second World work developments in UK society, including mass inward migration and declining religious adherence; as well as the longer-term presence of Roman Catholics within the UK.

Influenced by these concerns, the Royal Commission on the Reform of the House of Lords argued in 2000 (para. 15.9) that:

The Church of England should continue to be explicitly represented in the second chamber, but the concept of religious representation should be broadened to embrace other Christian denominations, in all parts of the United Kingdom, and other faith communities.

But how representatives of non-Christian faith groups, which are less hierarchical than the Christian churches, would be selected is unclear, and could perhaps inadvertently produce tensions within some communities.

Another option, for which there is much international precedent, would be to provide no specific representation for any faith group in the second chamber.

However, the perfect is often the enemy of the good in terms of Lords reform. If it is in the interests of assembling a consensus to see the Lords reformed to maintain a few bishops in the second chamber, that is one thing. But to increase their relative importance is quite another.

The proportion of members in the second chamber who are there because they are Church of England bishops would rise under the government's proposals for a part-appointed chamber. With a House of 792 peers at present, the 26 bishops are 3.3 per cent of the Lords; with 12 out of 312 the new chamber would be 3.8 per cent bishops. Among appointed members, 12 in addition to 60, as suggested in the draft Bill, would be 16.7 per cent. Whatever the arguments for a presence from the established church, it is strange to increase the relative importance of the Church of England.

12 out of 60 appointed positions going to the Church of England would also restrict the ability of other parts of society (including other faiths and denominations) to be adequately represented.

Ministers
The Coalition proposes that—even under the option of a supposedly fully elected second chamber—it would be possible to include government ministers, appointed to the chamber for as long as they remain ministers. At present

the draft bill provides for the Prime Minister to regulate this practice by order; though the government says it is open to the idea of including regulations on the face of primary legislation.

Placing extra-parliamentary ministerial appointments in the Second Chamber is democratically problematic.

If the introduction of directly elected members of the second chamber is seen as a desirable, democratising measure, then this allowance for unelected ministerial members would seem to contradict it.

Furthermore, it seems that these ministers will be able to vote in divisions, bolstering the position of the government in the second chamber. At present, there is no limit on the number of these ministers that may be appointed on the face of the draft bill.

We believe it could not plausibly be claimed that the functioning of government would be seriously undermined were it no longer possible to make these kind of extra-parliamentary appointments.

If an outside individual possessed expertise that was deemed essential, there exists provision to appoint them as advisers (perhaps on a special adviser contract), rather than ministers with executive responsibilities.

Moreover, it seems likely that the proposed reforms of the second chamber would expand the number of individuals in both houses who were, from the point of view of a Prime Minister, potential ministers, rendering less pressing the need to make appointments from outside.

For this reason there is a strong case for not allowing the introduction of extra-parliamentary ministerial appointments into the second chamber. It should probably also be made clear in legislation that ministers can only be drawn from Parliament—at present only a convention.

Hereditary peers
The proposed provisions for hereditary peers present no problems in the overall context of the Coalition proposals.

Other administrative matters like pay and pensions;

It is likely that some critics of these proposed reforms will focus on the claim that they will lead to increasing costs; and because they introduce a salary, rather than just an allowance, for members of the second chamber.

Our view is that issues of democratic principle should be determined first, with costs—within reason—being a subordinate issue. Members of the UK legislature should receive remuneration and other support appropriate to the important task they will be performing.

We would support an emphasis on central research support, shared by all members, to enable them to perform their legislative and policy oversight functions effectively. If the intention is to discourage engagement in constituency casework, then this kind of resourcing may help achieve this impact.

There may be grounds for exploring the possibility that members of the second chamber could be employed on a part-time basis. There may be advantages to its members having outside roles, though subject to careful regulation.

We note that the operating costs of the parliamentary estate will continue whether or not there is reform.

While they are not salaried, peers bring with them costs. There are more than double the number in the House of Lords than are intended to operate in the reformed second chamber. Furthermore, the number of peers is rising.

In 2000-2001, immediately after the removal of most hereditary peers, the figure was 683.

By 2011, though the increase was not continuous, the total was 789.

It can be assumed that this upward trend will continue if reform is not introduced.

There has also been an ever longer-term increase in the overall cost of the House of Lords, without direct elections being introduced (Dorothy Leys, Venetia Thompson and Patrick M Vollmer, 'House of Lords: Expense allowances and costs', House of Lords Library note, 10 August 2010).

In 1957-58, the overall expenditure of the House of Lords (all 2009 prices) was £3,044,000. By 1967-68 the figure had reached £5,408,000. For 1977-78 it was £10,391,000; for 1987-88 £23,234,000; 1997-98 £34,762,000. While there was a drop back from a peak of £125,675,000 in 2007-08 to £102,432,000 in 2009-10, the figure rose again to £111,655,000 in 2009-10.

Whether or not reform is introduced, this upward pressure is unlikely to vanish.

Relevant comparisons with other bi-cameral parliaments

There is no set model of how second chambers are composed and function. However international comparisons make possible certain tentative observations:

Many second chambers internationally are smaller in absolute terms and members per head of population than the House of Lords. For instance the US Senate has 100 members; the French Senate 343; the Australian Senate 76; the German Bundesrat 69. The proposed changes will move the UK closer to these kind of figures, though still leave it appearing relatively large.

The move away from an all appointed chamber and towards direct elections for the second chamber will leave the method of determining members of the UK second chamber less anomalous than it does at present.

However, direct elections are not the only means of determining the membership of second chambers. For instance, France uses indirect elections; while in Germany, the Bundesrat is composed of the state governments of Germany.

It is common for the membership of the second chamber to be determined in a different way to the membership of the first or 'lower' chamber.

Determining new members of a second chamber by stages, rather than in a single direct election (or other means of determining its composition) is an international norm.

Probable fifteen-year terms appear long.

In federal states, the second chamber is often composed in order to give representation to the state components of the federation. Such an approach would be problematic for the UK, particularly given that devolution has not been extended to England outside Greater London.

The UK second chamber is relatively weak in its powers when placed in internationally comparison. Under current proposals, even if existing conventions changed, the retention of the Parliament acts would ensure that this position remains.

Other matters relevant to the introduction of a largely elected House (e.g. name of a reformed House, referendum, applicability of the Parliament Acts etc.).

Name of reformed House
Ideally, it might be argued, the name of the second chamber should be altered, if these proposals are introduced, to reflect its new democratic status. The name 'Senate', mentioned in the white paper, might be appropriate.

But it is in keeping with UK constitutional practice for the name of institutions or offices to retain archaic labels. For instance, the Prime Minister still holds the post of First Lord of the Treasury, despite ceasing in practice to be directly responsible for the Treasury in the mid-nineteenth century.

Referendum
We believe that the most appropriate use of referendums is for major constitutional decisions. This reform certainly falls into such a category; and at the 2010 General Election the Labour Party proposed a wholly elected second chamber as part of a package of reforms upon which it would hold a referendum.

It could be held that since both Coalition parties included in their 2010 General Election manifesto proposals broadly similar to those now being put forward, that there has been endorsement by the electorate and that consequently no referendum is required. However, since all three main parties supported a mainly or wholly elected second chamber

in May 2010, most voters had in effect little option but to support a party with this outlook, and were not offered a real choice.

It certainly appears inconsistent that a change as significant as introducing an elected second chamber does not require a referendum; while a possible shift to the Alternative Vote for UK parliamentary elections did; and in future, even relatively minor changes to the position of the UK within the European Union may as well.

The lack of a consistent rationale for the holding of referendums can be seen as associated with the 'unwritten' nature of the UK constitution.

Applicability of Parliament acts
In our estimation it would probably be *legally* possible for the Parliament acts to be used to enact Coalition proposals for House of Lords reform (assuming the bill is not introduced in the House of Lords, in which case the Lords will possess an absolute veto). The express provisions of the acts seem to allow for this legislation to be forced through against the wishes of the Lords; and the acts have been used previously to bring about major constitutional change. Indeed the 1911 Act was introduced specifically with the intention of making it possible to pass legislation providing Home Rule for Ireland. While there might be a legal challenge to a Lords reform act passed using the Parliament acts, we doubt that it would be upheld: though of course, we cannot predict judicial decisions with absolute certainty.

There is a strong possibility that, if these proposals are to become a reality, the Commons will have no option but to use the Parliament acts, since strong resistance is likely in the Lords. The important question will then be not about legality, but whether it is *politically* appropriate to apply the Parliament acts. It will be for the government, and perhaps in particular the Prime Minister, to provide the answer.

In our view, it would be inappropriate for the Lords as an unelected chamber to be allowed to frustrate the will of the Commons, an elected chamber, in order to sustain the unelected nature of the Lords. While it is appropriate for the Lords to seek to block to its maximum ability Commons proposals that serve to compromise democratic values, this reform hardly fits into this category, since it involves democratising the second chamber.

Peerages as honours
Under the Coalition proposals, the link between the peerage and membership of the second chamber will be broken, and peerages will revert to being an honour (para. 23).

We believe that the government already has sufficient—perhaps excessive—honours at its disposal and does not need more.

We are particularly concerned that the proposals appear to leave open the prospect that members of both Houses of Parliament could be granted peerages as a means of securing support for the government.

Any bill brought forward should either abolish peerages altogether, or as a minimum rule out their conferral upon members of either House.

Local councillors
We note that local councillors are seemingly not excluded from membership of the second chamber. We believe it could be valuable both to central and local democracy for individuals to hold dual roles, and would be a much needed means of promoting the interests of local government and Westminster level. This possibility of dual membership also seemingly applies to other elected office holders, other than Members of the House of Commons.

10 October 2011

Lord Desai

1. I have been in favour of an elected House of Lords ever since I joined in 1991, if not before. I wrote a Fabian pamphlet on this topic along with Lord Kilmarnock in 1996. (*Destiny Not Defeat*, Meghnad Desai and Alistair Kilmarnock, Fabian Pamphlet 1996). I prefer 100 % elected House but will settle for 80 % if that is the majority view.

The two issues which I wish to address are the Primacy of the House of Commons and the Method of Electing Members for the Reformed House of Lords.

Primacy of the House of Commons

4. A principal difficulty with the present draft Bill concerns the Primacy of the House of Commons. Let me first say that in my view the primacy is a historical accident of the second chamber being unelected and unrepresentative. If the Second Chamber were to be elected—substantially or wholly—the primacy of the House of Commons cannot be taken for granted. Even asserting the primacy in the Bill as has been done in Clause 2 is not sufficient. In our unwritten Constitution, such a provision can be overturned by a future Parliament. Some lock-in device such as exists for the Septennial Act needs to be used. During the passage of the legislative and Regulatory Reform Bill 2006,lord Norton introduced an amendment characterising certain laws as 'a measure of constitutional significance' and introduced a Schedule listing such measures which were ring-fenced from any ordinary legislative procedure which could amend them or repeal them. Some such device may have to be used to guarantee the primacy of the House of Commons.

Method of Election:

5. The principal objections to an elected House have been that an elected House:

a) will challenge the House of Commons, especially if its members are elected by PR which many, though not everyone, think is more legitimate than First Past the Post (FPTP) which has been just lately confirmed by the Referendum as the chosen method for the House of Commons;

b) will not have the range and quality of the present part—appointed part—hereditary House. Mention is frequently made of the members of the Royal Society, the British Academy, the Medical faculties who are currently seating in the House; and

c) that those who do run for election to the new House will be not of the quality which there is in the House of Commons. This sentiment is often expressed in a general doubt about the quality of anyone who would run for the new House.

6. I would like to argue that these objections are not frivolous though at the end of the day I would not let them negate the validity of the reform. Yet it is possible to suggest a new method of representation which will at the same time preserve the principle of an elected House, make it representative but not allow it to question the primacy of the House of Commons.

7. The way to do this is to go away from the territorial basis of electing the House of lords members. By a territorial basis I mean any arrangement based on the electoral register and the locality of the voters with one member for every 78,000 voters as under the most recent legislation This is the basis on which the House of Commons members are elected. A European Parliament constituency is just a multi member version of this arrangement. Having PR and dosed or open lists does not alter the territorial basis of the elective principle.

8. The British citizen has many identities whereby he/she may be represented and not just residence. One very important one which has emerged in the last two decades is nationality.UK now consists of four nations:·England, Scotland, Wales and Northern Ireland. Three of them have devolved parliaments with varying powers While UK is not a federation, the national dimension does not have a formal representation anywhere. Of course, the difficulty is that the one non-devolved nation—England is too large a unit compared to the other three. It would be unfair on strict federal principles to give equal representation to each of the four nations. There is a way around this objection.

9. There are ten regions in England but they have been reluctant to choose regional autonomy. Yet we could use the thirteen constituent 'regions'—three devolved nations plus ten English regions as a basis for representation in the reformed House of lords.

10. If we are to adopt the region as a unit of representation, an important principle would be that each region has identical number of members regardless of population size. This will supplement the one person one vote and one member for 78,000 voters for the House of Commons. If the reformed House has 300 members then we can have, say, 260 or 20 from each region as elected from the region. If 400 then 27 per region gives us 351. The remaining seats can be filled in other ways which I come to below.

11. The election can be direct or indirect. It can be as in the election for Scottish Parliament on a top-up principle in the national election or at the time of elections for the European Parliament. The list must be for the whole region

rather than for separate constituencies. Another alternative would be to have indirect elections whereby locally elected members -local councillors in English regions, members of the devolved Parliaments in the three nations could elect the members after inviting candidates to run.

12. As to the objection about the high quality of scientists etc, professional societies—The Royal Society, the British Academy, BMA, TUC, CBI, the law Society, the Bar Council, could be the electorates from which a member each can be chosen. The final list of professional bodies will need debate but the principle will be that the professional body elects one of its own. If the 'regions' take up 260/351 seats, the remaining 40/49 could be elected from professional bodies. We have a precedent in Universities seats for the House of Commons which were only abolished after the Second World War

13. Thus we have an elected House of Lords where the majority are elected on a regional basis and a minority are elected from specialist bodies. This will allow The House of lords to perform a unique function representing regional interests as well as making specialist professional expertise available for legislation.

6 December 2011

Thomas Docherty MP

The case for a referendum

The overwhelming rejection of the AV referendum in May 2011 would suggest that the public is not enthusiastic about alternatives to the First Past the Post system of elections to Westminster. Furthermore it is reasonable that the public should be asked their view on such a radical change to the dynamic, and operation of the Upper House, to say nothing of the decision to create another 300 full-time politicians.

Restraining "mission creep"

During the debate in the Commons on the subject of Lords reform, MPs who favoured an elected second chamber were repeatedly pressed to explain if or how "mission creep" could be stopped. Although these MPs did agree it was a serious problem, it was noticeable that not a single one of these MPs was able to articulate a solution to the problem. It is clear from experiences in Scotland that once you have two sets of elected representatives who take differing views, it is impossible to prevent clashes over democratic mandates. Furthermore I believe that the public would not accept an argument that even though they had voted for elected members to represent them, they could not approach these elected members to seek assistance, for example with casework.

Unless the Government can demonstrate how it will guarantee that can be no possibility of mission creep, an elected second chamber is too risky.

Scotland

The Government has in the past couple of weeks announced two constitutional consultations involving the relationship of Scotland with the rest of the UK. If either proposed change were to be implemented (separation of Scotland or banning Scottish MPs from voting in legislation that the Government alleges does not affect their constituents) then it is only reasonable to assume that this should force a rethink of the size and rules of membership of the second chamber. For example in the latter scenario, I would assume that a ban on Scottish MPs would also be applied to Scottish elected Peers. However what is far more complicated is how would you define a "Scottish appointed Peer"?

Therefore until the two Scottish constitutional questions are resolved it would be only prudent to postpone implementation of any further changes to the House of Lords.

27 January 2012

Richard Douglas

Summary

- Current proposals do not give due consideration to the prospect of constitutional gridlock.
- The mantra of 'checks and balances' actually reflects a view that wishes to hamper government and undermine democracy, not improve it.
- Some alternatives are proposed, mainly to highlight shortcomings of the Government's proposals, and caution against their adoption.
- It is suggested that the Lords remain unelected, but be reformed—e.g. by creating two classes of peers, one with the right to sit in Parliament, one without.

Background

I do not represent any organisation, nor am I a specialist in constitutional affairs. I have some first-hand experience of the workings of Parliament, having worked as a committee specialist for the Environmental Audit Committee from 2006-09, in which capacity I was an Officer of the House of Commons. During that time I also supported a joint committee of both Houses, the Joint Committee on the Draft Climate Change Bill.

I am making this submission because I believe the prevailing debate concerning the primacy of the House of Commons overlooks an important argument. My concern is that, without greater thought, proposed reforms could undermine the democratic mandate of the Commons, and with that the idea of the state as acting in the public interest.

Primacy of the House of Commons

Most of the debate on the issue of primacy of the Commons focuses on the potential for legislative gridlock, should a reformed upper house be emboldened, through its democratic mandate, to challenge the Commons on equal terms. The responses to this tend to fall into two. One minimises this as a problem, by pointing to existing arrangements which limit the role of the Lords; these could simply be continued, it is said. The other says that gridlock would be no bad thing, if it represented the balance of opinion between two elected houses.

A characteristic example of the first is given in the 2007 white paper on Lords reform introduced by the then Leader of the House of Commons, the Rt Hon Jack Straw MP:

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.

It is hard to believe that this was introduced by a Leader of the House of Commons. Read it, and we find the suggestion that the primacy of the House of Commons does not rest solely on its democratic mandate! On what does it rest, then? On … its *terms of reference*. As though it were some university admin committee.

Let us ask the important question: who sets its terms of reference? On whose authority are the powers and role of the House of Commons decided? If it is not the democratic authority of the people, then … what are we saying? That the democratic authority of the people can be outranked by some other authority? No. The primacy of the Commons results from its being the elected will of the people. If the House of Lords were also to be elected, then there would be another version of the Commons. Or rather its authority would be the same, even if its initial 'remit' were different.

After all, by what logic are governments formed in Britain? Whichever MP can command a majority in the House of Commons is invited by the head of state to form a government. This is what makes the government, the government: that it commands a working majority of the representatives of the people's will. If an upper house were elected, then it, too, would represent the people's will. By what logic or authority would whichever party or parties which commanded a majority within it not be entitled to form the government? If the answer to this is that the Commons has a different remit, then it is saying that the government's authority is not primarily derived from a democratic mandate, but some other rules. If rules can be used to outrank the democratic mandate of one house,

what's to say there couldn't be other rules or conventions which outranked or undermined the democratic mandate of the other?

There appears to have been a certain amount of complacency among many MPs on this issue for a number of years. One can gain a further sense of this from a Public Administration Select Committee report on another iteration of these proposals, this time from 2002:

The Government, and some members of the Lords, have laid particular stress on the threat which would allegedly be posed to the pre-eminence of the Commons by a more legitimate reformed second chamber. 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.

The weakness in these arguments it that all the powers to rein in the Lords cited in the above paragraph hail from the authority of the Commons; when it says Parliament can decide what role the Lords should play, it means (as is currently the case) the Commons, with advice (conforming to its current role) from the Lords. The Parliament Acts, hobbling one house, are only tenable in a democratic age if the upper house is not democratically elected.

Embracing the prospect of gridlock

Another prevailing view, that which embraces the potential outcome of legislative gridlocks, is well represented by an Unlock Democracy policy briefing:

Some people are concerned that an elected second chamber would want to use its powers more than the current House of Lords and that this would create more gridlock. As long as it is clear which is the more powerful chamber and how the dispute can be resolved, as it is in the UK, then gridlock is not necessarily a bad thing. It means the second chamber is doing its job: examining proposals for new laws and asking the government to think again.

Why is this wrong-headed? There are three, related, reasons. One, it would potentially lead to a chronic condition in which the effectiveness of the government to take action were undermined. Two, this would potentially discredit politics and the idea of state action. Three, while a proportion of those advancing this as a view will be classical liberals who are suspicious of government, probably the majority will be left-wingers who believe in a strong and active state.

The mantra of 'checks and balances' tends to get invoked in the aid of this, the flirting-with-gridlock, view. Where does this come from? The ideas of Locke, and the example of America. These are, let us remember, the ideas of moneyed classes who want the state to protect them, certainly, but equally want to be protected from the actions of the state. They do not identify themselves with the state. They see it as an alien power. The checks and balances in the American constitution were designed, and have worked with great success, to hamper the ability of any government to act. Such checks on state power have not abolished the abuse of power. They have, primarily (and increasingly so in recent years), reined in the state from curbing the wealthy from exerting power over those below them. In so doing they have encouraged a widespread cynicism about politics—fostered, of course, by those who stand to gain from such disengagement.

There is an alternative to the Lockean conception of government: the Hobbesian. Thomas Hobbes viewed those controlling the state as being the embodiment of all the people who comprised it. The government thus acted with the authority of the people in everything it did. Hobbes's views have been characterised as totalitarian, as justifying untrammelled exercise of power, and removing any basis on which the individual could protest against abuse by the state. In another way, his ideas are intrinsically democratic, since he makes the entire basis of state authority the (even if conjectured) agreement of the people to be represented by it. The closer the state is to the people, and the more democratic participation there is, the stronger and more legitimate the state becomes.

It is, I would argue, by virtue of these ideas that MPs gain their status and authority (or what should be their status and authority). Irrespective of who they are as individuals, as MPs they are something greater. They are not simply

people who have happened to come first in some contest or other, even an important one. They are the representatives, the embodiments, of the people of their constituency; they speak and act in their constituency's name.

Under a Hobbesian concept of the state, it is a nonsense to create a second elected house of parliament. There aren't two peoples; there can't be two embodiments of the people. And if the second isn't an embodiment of the people, then the first isn't, either. At which point the idea of the state as acting in the people's name collapses; and you have instead the idea of the state as an alien thing, something run by professional politicians and civil servants for their own ends. An outcome which many on the liberal-left spectrum would surely deplore.

Whom is a second chamber for?

Most discussions of why we need a second chamber at all concentrate on the question of what it should *do*. Perhaps the right question to start with, however, is *whom is it for?* To ask this is to think about how we got here, why it is we have a House of Commons and a House of Lords?

To think about this is to remember that they were originally representing different *estates*, the gentry and then middle class (though always, to an extent, representing the common man), on the one hand; and the nobility and bishops, on the other. With the king above them. And how did the Commons come to achieve pre-eminence, first over the king, and then the Lords? Partly, of course, it's a reflection of the rise of the economic power of the middle classes from the seventeenth century onwards. But even more than this, it's because of the triumph of the democratic ideal. This dictated that governments would be formed by those parties which won *elections*; this dictated that the views and powers of elected representatives were greater than those of the unelected (and increasingly anachronistic) Lords; this dictated that the Lords accepted this state of affairs. As the democratic ideal has triumphed, so have all the old estates collapsed into one: the people. The Commons is the house which represents that estate, the people. The Lords has only survived because it has renounced its power.

Alternative proposals for an upper house

To pick up the question of whom might an upper house be for, we could begin by thinking about what other important interests are not represented, or not adequately represented, by the representatives of the people as a whole.

This could be different peoples, in the sense of the alternative local, regional, or national communities we all belong to in addition to that of British society as a whole. The logic here would suggest creating an upper house with representatives with an explicit mandate to ensure the Government were considering the interests of their region or nation. This could potentially be done by indirect election, possibly meaning membership were automatically extended to local authority leaders, MSPs, AMs, and NIAMs, or their delegated representatives.

They could also be the people as defined and divided by important social identities. The logic here would suggest an appointed house made up of representatives from a variety of interest and representative groups, including religious faiths, professional associations, unions, business groups, and scientific and cultural bodies.

Another set of interests could be the people of the past and of the future, whose memories and prospects would not always coincide with the interests of the people of the present. The logic here might suggest an appointed house with members selected for their distinguished contribution to British society, especially in an intellectual capacity.

A final, and certainly radical proposal, would be for the roles of the Commons and Lords to be reversed, with a Lords 100% elected under pure PR, out of which the government would be formed, and the Commons made into the revising chamber with an explicit mandate to represent local interests. Although almost certainly unpalatably radical for most, this idea would have clear logic on its side. At the moment, there is a deficiency in the ability of the Commons to represent the people's will: the electorate does not vote as one people, and it does not vote for the government, simply for individual, local representatives. In practice, of course, voters, especially at general elections, overwhelmingly do vote for whichever party they want to from the government (or to help keep a different party out of government). But it is an imperfect arrangement.

Some people advocate switching to PR to remedy this. One of the drawbacks of this proposal is that it would lose the link between constituents and their local MP. PR enthusiasts tend to address this by pointing to varieties of PR which still allow people to vote for and be represented by individual MPs. But these systems suffer from one of two flaws: either you have large, multi-member constituencies, in which the mechanics of the system are difficult to understand

and the link with a local representative is weakened; or you have a top-up system, which creates two classes of politician, those with a direct mandate (and casework), and those without.

For these reasons, I'd suggest retaining the essential structure and voting system of the Commons, but making the Lords elected on pure PR (voting for parties, not people), whose outcome would determine the executive. The Commons would then perform the role of scrutinising and revising chamber (though with greater powers than the current Lords), to which MPs as backbenchers, with personal mandates and high profiles, are well-suited. To help avoid gridlock it would make sense to elect MPs in tranches, say, a quarter a year (e.g. if general elections were made every four years).

Conclusion
All of these proposals are, of course, far too radical to be of any immediate use in the Committee's deliberations. I offer them by the way of criticising what *is* proposed, and to caution against its adoption—since a reformed Lords, with a democratic mandate, would be much harder to fundamentally alter, even if highly flawed.

My final remarks on the proposed reforms are that the proposals for election by STV are misguided, for reasons touched on above: the mechanics are impossible to explain on the doorstep, and the constituencies far too big for there to be any personal link. The White Paper even likens the system to European elections: but MEPs hardly have any personal link to their electorates. For this reason, elected members are likely not to have a personal mandate, and since unable to win a seat as an MP, be party apparatchiks, less able to provide scrutiny than the Lords today. The rest of the house would be made up of the entire leadership of minority parties: nothing wrong with their being represented in Parliament, but their interest would not primarily be in scrutinising legislation but grandstanding and campaigning.

A further reflection on the current proposals is that the majority of those voting will not particularly understand or care about the role of the upper chamber: most will simply vote for the same party they vote for in all elections, with some voting for a different party out of the knowledge that this election is less important and that party will never form the government (e.g. they might UKIP or Green, out of a sense that the main parties were not representing certain points of view). Either way, it will have an imperfect mandate: most will still just be voting for whom they want to form the government, with the rest not casting their actual first preference vote. Of course, one could try to minimise this by holding elections separately from general and national elections—but then turnout would likely be dismal.

I would suggest the best course of action would be to reform the current Lords, but leave it unelected. My main suggestion would be to reduce numbers, and make two classes of peers, one with the right to sit in Parliament, one without—so that those in Parliament were specifically chosen for that role, while others could still be honoured with titles for whatever reason, but did not have a parliamentary role. And, if we are going to retain Church of England bishops in the House, representatives of other faiths—and some philosophers—ought to be made members automatically.

Finally, I would suggest that consideration of a more radical reform of the Lords not be abandoned, but be subjected to more thought.

8 January 2012

Lord Dubs

I am sure you have been inundated with submissions so I shall make this very brief.

Like everyone else, I believe the functions of a second chamber should be resolved before its composition can be determined. As a minimum we need a new Parliament Act which works in both directions and procedures whereby subordinate legislation can be delayed for, say, three months, to make the Commons think again, once.

I contend that every appointment system is flawed. Therefore I believe the key point of an elected chamber is accountability and this means members being able to be re-elected and for shorter terms, coinciding probably with General Elections. Being elected for one lengthy 15-year term is therefore not satisfactory.

It is true that the Lords as at present composed has experts within it. However, as one real expert said to me, their expertise gets out of date as a member of the Lords ceases to be active in his or her field. In any case, experts tend only to take part in debates or Bills within their area of expertise, whereas a second chamber needs people who will do work on a wide range of legislation. The world's foremost expert on, say, nuclear physics, is no better qualified than the rest of us on unemployment, social security, foreign policy, immigration or the economy. Elected members would inevitably be engaged in a wide range of issues and legislation.

I think the maximum size of an elected house should be 300-350. The electoral system should be STV using the old European constituencies, i.e. 7 parliamentary constituencies electing 3 or 4 members each. That means a list system would be unnecessary. Titles should be abolished. Members of the second chamber should be entitled to vote in General Elections.

Above all, the supremacy of the House of Commons must be maintained and there must be some legislation or codifications to ensure that is the case.

20 December 2011

Electoral Commission

The Electoral Commission is an independent body set up by the UK Parliament. Our aim is integrity and public confidence in the democratic process.

Our principles for elections and party finance are:

- Trust
- Participation
- No undue influence

Our key objectives are to ensure:

- Transparency in party and election finance, with high levels of compliance
- Well-run elections, referendums and electoral registration

This submission sets out our initial views on the Government's Draft House of Lords Reform Bill and White Paper. The question of whether or not there are elections the House of Lords, and on what date they might take place, are clearly matters for Parliament. Our aim in providing this briefing is to advise the Committee of any issues or risks we believe are relevant to the delivery of the elections and should therefore be part of the Committee's consideration of the Draft Bill.

1. **Combination**

1.1 The intention is to hold a House of Lords election at the same time as a UK Parliamentary general election, but that only one-third of representatives would be elected at any one time. No Lords election would take place if a general election was called within two years of an election to both Houses.

1.2 We believe there continues to be a need for comprehensive research to be carried out in order to ensure there is a robust evidence base to inform decisions about the timing of future elections.

1.3 The Commission has previously noted that there are questions about the potential impact on voters that will need to be addressed where elections (especially new elections like these) are combined with others; the Commission has urged Government and Parliaments to look into this issue in more detail and is willing to assist where appropriate.

2. **Allocation of representatives**

2.1 The Draft Bill envisages new Lords constituencies being established. It is suggested that an independent committee of experts be formed to decide which counties should be combined to form these constituencies, with European Parliamentary regions used as a starting point.

2.2 Once established, the Commission would be responsible for allocating Lords to each region so as to produce the most equitable distribution. There would be a minimum of three Lords per region and the Sainte-Laguë formula would be used, as with the allocation of Members of the European Parliament (MEPs).

2.3 The Draft Bill also gives the Commission the responsibility to conduct a review after every third election to the House of Lords and, if necessary, to make a recommendation that restores equality as far as possible between the districts.

2.4 This would be done by ensuring the ratio of voters to representatives was as nearly as possible the same in all districts, using the Sainte-Laguë formula, which is widely accepted as the fairest way of conducting distributions of this kind.

2.5 The relevant Minister would be required to present the Commission's recommendations to Parliament in the form of secondary legislation, requiring the approval of both Houses. This process is similar to that already used for the European Parliamentary elections and the resource implications for the Commission are minor.

3. **Effective coordination of new elections**

3.1 An important factor in the delivery of well-coordinated and well-run polls will be clear legislation. We continue to highlight our firm recommendation following problems with the Scottish Parliament elections in 2007 that the rules relating to any elections must be clear from at least six months in advance. This is so that campaigners, Returning Officers and the Commission are not left with uncertainty about their respective roles and responsibilities and can undertake the necessary planning and preparation.

3.2 If the first elections are to be held on 7 May 2015 then all the rules must be clear by 7 November 2014. However, if the Commission is expected to complete a full assessment of how the Peers should be allocated across the country then primary legislation will need to be in place well before that so the Commission has the relevant powers, and sufficient time, to complete the review.

3.3 Thought will also need to be given about how to ensure that the underlying framework for the elections is in place to ensure a consistently good service for electors—particularly when constituencies will cover larger areas, which might include a number of different local authorities.

3.4 Individual Returning Officers would be responsible for the conduct of the poll within each constituency, but the Government should also consider what arrangements might also need to be put in place to ensure an appropriate level of coordination and consistency in administration between constituencies.

3.5 The Government should consider whether existing models for coordination and accountability—including the Convener of the statutory Electoral Management Board in Scotland, the Greater London Returning Officer in London or Regional Returning Officers for European Parliament elections—could be used for elections to a second chamber, or if there are other options for monitoring and intervention to ensure appropriate standards of performance if necessary.

4. **Implications for public awareness activity**

4.1 We note the proposal to hold the elections to the House of Lords under the Single Transferable Vote (STV) system.

4.2 As voters outside Scotland and Northern Ireland will not be familiar with the STV system we would consider that a public awareness campaign would need to be undertaken. This would serve two purposes: first, to raise awareness that elections are taking place and second, to provide voters with information on how to participate, to ensure that they are able to cast their votes with confidence.

4.3 The cost of a public awareness campaign will depend on the the level of activity undertaken. The Commission discusses its proposed campaigns with the Speaker's Committee each year, and seeks specific Parliamentary approval for funding on the basis of what the Committee agrees to.

5. **Political donations and spending rules**

5.1 The White Paper proposes that the controls on donations and loans to members of the reformed House of Lords, and on spending by parties and candidates in respect of elections to the reformed chamber, should be based on arrangements for MPs and elections to the House of Commons, subject to changes arising from the Government's intention to reform the rules on donations and party funding generally.

5.2 It is clearly sensible that the rules relating to elections to the reformed chamber should be consistent with those applying to elections to the House of Commons and other major elections. The existing rules on national campaign spending by political parties and non-party campaigners will presumably apply to elections to the reformed House of Lords in any event (subject to changes arising from the Government's reforms to the rules), since these elections will be held at the same time as elections to the House of Commons.

5.3 However, if the first election to the reformed House of Lords is to take place in 2015 as the White Paper proposes, it is important that the detailed rules that will apply to that election (and to the 2015 election to the House of Commons) are confirmed in good time before campaigning begins. This timetable needs to allow time for the Commission to prepare guidance for candidates and parties once the legislation is passed. We note that the Government has not yet brought forward proposals to reform the current rules, pending the completion of a review of party funding by the Committee on Standards in Public Life which is now expected to report this autumn.

5.4 It will take some time for any significant changes to the current rules to be developed, considered by Parliament and brought into force. There is the potential for much confusion if the Government seeks to reform the existing rules and to legislate for these new elections at the same time. We therefore ask the Government to set out a clear and realistic timetable for finalising the rules that will apply to the 2015 elections as soon as possible.

5.5 When it comes to consider the detailed spending rules for the reformed House of Lords, Parliament will no doubt wish to consider whether the rules that apply to other elections may benefit from amendment to reflect the specific nature of these new elections. For instance, if the new elections use the STV system provided for in the draft Bill, it may be appropriate to consider whether the current rules on candidate spending, which were developed in the context of 'first past the post' elections, should be amended to reflect campaigning tactics that are likely to emerge in high-profile STV elections, such as candidates using their campaign materials to promote others as second-preference choices.

12 October 2011

Fawcett Society

About Fawcett

The Fawcett Society is the UK's leading campaign for gender equality. Our vision is of a society where women, and our rights and freedoms, are equally valued and respected and where we have equal power and influence in shaping our own lives and our wider world.

- Raise awareness and change attitudes and beliefs
- Influence changes to legislation and policy
- Promote and support better practice
- Increase women's power and influence in decision making

For more information on Fawcett and our work visit www.fawcettsociety.org.uk

The Fawcett Society endorses the Counting Women In submission to the House of Lords Reform Joint Select Committee as well as those submissions put forward by the Centre for Women and Democracy, the Hansard Society, the Electoral Reform Society and Unlock Democracy.

Why Women?
Apart from issues around social justice and democratic legitimacy, the most compelling argument for ensuring that women are present in numbers in any legislature is that they change the nature of the debate so that it takes the whole of the population into account in different ways. In particular:

a) There is a growing body of evidence, largely drawn from business, that women make a positive difference to the quality of decision-making. For instance, in a recent report[10] Deloitte found that 'In Europe, of 89 publicly traded companies with a market capitalization of over 150 million pounds, those with more women in senior management and on the board had, on average, more than 10 percent higher return on equity than those companies with the least percentage of women in leadership', and came to the conclusion that 'In reality, the question is not women or men, it's how to ensure women and men are working together in decision-making roles'.

b) The same argument pertains equally to the world of politics.

c) Research carried out by the Hansard Society[11] found that, despite the difficulties women face in institutional politics, they can and do bring issues to the table which may not otherwise be debated, or which might otherwise be considered to be of less significance. They thus have the effect of making the legislature more relevant to the whole population, both men and women.

d) Frequently quoted examples of this are work/life balance issues and childcare, which in the early nineties were generally considered to be exclusively 'women's issues' but are now accepted as being relevant to both sexes.

e) There are also other considerations. Women and girls benefit enormously from the education system, and go on to develop skills and expertise based upon that and their life experience. If they are largely excluded from national (and local) politics these skills are being under-used for the public's benefit. Whilst it is true that in many respects the life experiences of men and women are the same, in some they are not, and to be truly effective the country's democratic institutions needs to take account of what the full range of people involved in them can offer.

Opportunities for increasing women's representation within the Lords
The House of Lords Reform Bill provides an opportunity to bring about a step change in women's political representation and address the democratic deficit of the current gender imbalance in the House of Lords.

The UK is now trailing in international league tables on women's access to positions of political power. At present just 22% of the Lords are women. A new, reformed Chamber must be representative of the population as a whole and be equally informed by the experiences and expertise of women and men. Government also has a legal duty to assess how measures for reform could promote equality between men and women and tackle discrimination. As we move towards reform of the Lords, the representation of women must be at the heart of the agenda.

If reform of membership of the House of Lords is implemented there are several options which could be adopted to ensure it is more representative in future.

Proportional Representation (PR) systems provide a fairer system of electoral representation, with political parties receiving seats in proportion to their electoral strength. Academic research classifies PR as a *facilitator* rather than a *guarantor* of better female representation[12], as no voting system in and of itself can guarantee gender parity in

10 *The Gender Dividend: making the business case for investing in women' Pellegrino, d'Amato & Weissman, for Deloitte, 2011*

11 *Women at the Top: Changing Numbers, Changing Politics?* Childs, Lovenduski, Campbell, for the Hansard Society 2005

12 *Childs, 2008 as quoted in Evans, E & Harrison, L. Candidate Selection in British Second Order Elections: A Comparison of Electoral System and Party Strategy Effects, 2011.*

political life. While PR as a system has greater potential than other voting systems to improve women's representation and diversity, this can only be guaranteed in conjunction with additional positive action measures.

Where progress has been made in delivering more women into positions of power—both in the UK and internationally—the driver for this has been the implementation of positive actions measures, such as quotas, All-Women-shortlists, zipping or twinning shortlists such that women and men are equally represented, or reserved seats for women in appointment-only systems.

Positive action measures need not be implemented on a permanent basis. Instead they can be time-limited and regularly re-evaluated to gauge their utility and necessity. Given the longstanding dominance of men within politics, positive action measures can provide a boost to the change already in process. Positive action measures could be built into the legislation in different ways depending on the reform model that is finally adopted.

In relation to the elected element of a reformed Upper House, positive action measures should be integrated into the electoral system, requiring parties to proactively cast their net wider to ensure the selection of equal numbers of women and men.

In the event that a proportion of peers are appointed rather than elected, the Appointment Commission should be statutorily required to ensure the appointment of equal numbers of women and men.

Many countries across the world use some form of quota arrangement to ensure the representation of women[1]. This includes the UK, in which the use of quotas by political parties is both legal and voluntary, which means that they are used by some and not others.

Many countries writing new constitutions or electoral laws include some form of quota requirements in them. Electoral quotas build the requirement for gender parity into electoral law and 47 countries worldwide use this mechanism, including Belgium (39% women), Portugal (27%) and Spain (37%). This provision works well where it is clear and enforced, and where the rules governing the implementation do not weaken the initial intention.

The reform of the House of Lords offers an unrivalled opportunity to ensure that gender equality and democratic legitimacy is at the heart of reform. Fawcett recommends that the final issue of legislation stipulates a minimum threshold for the number of men and women that should be represented in the Upper Chamber. For example, the legislation may wish to state that no one sex should constitute less than 30% of the Upper Chamber.

Selection Mechanisms

If proportional representation is to be used for elections to the new Second Chamber, political parties will find it much easier to select more women candidates. This is demonstrated not only by a comparison of the 2010 general election figures with those for the 2009 European elections (see table below) but by the results for all parties in the Scottish and Welsh devolved elections where 40% and 35% of the Assembly and Parliament respectively are female.

Party	% Candidates Women 2009	% Candidates Women 2010
Conservative	32%	24%
Green	42%	33%
Labour	49%	30%
Liberal Democrat	26%	21%
Totals	31%	21%

[1] See http://www.quotaproject.org/index.cfm, a website maintained by the International Parliamentary Union, the Institute for Democracy & Electoral Assistance, and the University of Stockholm.

There are a number of mechanisms open to political parties to use in list systems, but the most common are zipping (where men and women appear alternately on lists) and some form of quota (e.g., in Spain 40% of each party's candidates have to be men, and 40% women, but there is no stipulation regarding the order on the list, which is left to individual parties to resolve[13]).

In the end, increases in the numbers of women MPs can be achieved using most systems; what matters is the will of the political parties and the democratic institutions with which and within which they are working to create and drive change. Political parties have different traditions, structures and cultures, and need to be able to make their own arrangements for selection procedures, but if real improvements are to be achieved they need to be working with electoral systems that favour diversity as well as making the decisions necessary to ensure that they represent and reflect the communities they serve.

Principles for Reform and Policy Recommendations:

Fawcett recommends that:

- Reform of the House of Lords offers a once in a generation opportunity to increase the presence and voice of women in the Upper House;
- A PR model has greater potential than other voting systems to improve women's representation and diversity, but this can only be guaranteed in conjunction with additional positive action measures;
- The legislation should require the political parties to ensure the selection of equal numbers of women and men as candidates for election to the new Upper House;
- The final issue of the Bill includes a threshold stipulating that no sex should constitute less than 30% of the Upper Chamber.
- The Appointment Commission should be statutorily required to appoint equal numbers of women and men as peers in a reformed, hybrid House of Lords;
- Consideration should be given to the effect that the right of ministerial appointment and the allocation of 12 ex officio seats for Church of England Bishops—currently reserved seats for men—will have on equality and diversity of representation in a reformed Chamber.

12 October 2011

Frank Field MP and Lord Armstrong of Ilminster

A Representative House of Lords

1. The House of Lords Pre-Legislative Committee is considering the bill presented to it by the government. The Bill aims to make a fundamental change in the workings of our two chamber democracy.

2. The consideration of the Bill so far has been restricted to how to make the Lords in Bagehot's terms a more effective part of the constitution by a method of direct election. We believe this to be an immensely important consideration: but we also believe that direct election is not the only means of achieving representative legitimacy. For Parliament to restrict its consideration only to the form of direct election will result in the loss of a once in a lifetime opportunity also to consider a more fundamental issue that is implicit in Lords reform.

3. The British system of democracy rests, in part, on how the idea of representation underpins our freedoms. We believe that their Lordships should therefore also consider how the idea of representation might be made effective in a reformed House of Lords.

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13 With 37% women parliamentarians Spain are currently 14th in the global league table. The top three are Rwanda (56%), Andorra (54%) and Sweden (45%). The UK is 48th.

4. Much of the last government's time was spent on reforming our constitution. In none of the background papers, or in the subsequent debate, did any Minister set out what the principles are which underpin British democracy and how the proposed reforms would strengthen our democratic institutions. Yet much of our constitution has over the past decade been remodelled out of all recognition. Reforming the House of Lords offers the last opportunity to reform part of our constitution by principle rather than by mere fashion.

5. One of the most persuasive reflections on the operation of British democracy takes the twin principles of Representative and Responsibility as the operational axis to how freedom is operated and safeguarded in our system of Government. The operation of these twin principles have proved dynamic and politicians and theorists have given over time four working definitions to the idea of representation.

6. First, the term representative is used of someone who had been freely elected on the universal franchise and is dependent on his or her constituents for re-election. Second, the term representative can be viewed as an agent or delegate. Third, the term representatives signifies that a person is typical of the group that has elected them by mirroring the main characteristics and the views of the group that elects them.

7. There is a fourth meaning given to the term representative. From earliest times membership of the Commons was based on the idea of group representation, i.e. the individual in the Commons represented the whole of their area, and not just the very small number of people who had the vote. Indeed, the first squires called to Parliament were chosen on the basis that they would be able to speak for their whole area and, because of this, be able to enforce locally any taxation Parliament agreed. Members of the House of Commons were not therefore representing individual interests, in theory at least, nor simply the interest of the majority of voters. The representative of a whole area becomes effective when a constituency is engulfed in crisis. The local MP in such circumstances is expected to defend his or her patch, even if it means defying their government.

8. It could be argued that, while the members of the House of Commons came increasingly to be chosen by popular suffrage on a progressively wider franchise, and thus to be more democratically representative, the House of Lords continued to represent the great economic and social interests in society: the Church, the law and the landed and agricultural owners who for centuries exercised great economic and social power and influence.

9. The representation of groups is almost as old in our constitution as the representation of particular areas. And the idea of group representation continued to play one of the effective representative roles in our constitution right up to the sleaze crisis that engulfed the Major government when individual MPs were found to have taken money to represent outside interests the Commons. Following the goading by the Nolan Report the Commons, instead of expelling the offending Members, barred the professional representation of interests within its walls. This move was a violent assault on the richness that has been attached to the meaning of representation in our democracy. That is where the debate in the Commons rests for the moment.

10.The work of the Commons over the centuries had been deeply enriched by the group knowledge that has been brought to its proceedings, be they specialisms from doctors, trade unionists, teachers, lawyers, nurses and so on. Indeed it was not until after World War II that the universities of Oxford and Cambridge ceased to elect their own representatives to the House of Commons. All individuals who belong to such groups are now careful to the point of inaction not to represent their group interests. Not so in the House of Lords where such specialist knowledge is treasured. Given that the Commons has stripped out this form of representation from its proceedings, might not we strengthen it in our Parliamentary system and to do so by group elections, rather on the model of the old university seats, instead of what will become individual elections with the candidates chosen by the party whips? Might not this idea of group representation be the starting point for Lords reforms rather than trying to impose a form of election on the Lords which is most appropriate to the Commons?

11.A radical Lords reform could be based on seeking the representation of all the major legitimate interest groups in our society and of using the idea of the Big Society as a means of strengthening how representation works in our democracy. There would be a need to establish a reform commission with the duty to make recommendations for mapping out which group interests should gain representation, and at what strength. So, for example, the commission would put forward proposals on which groups would have how many seats to represent (for example) local authorities and voluntary interests, to represent women's organisations and interests, the interest of trade unions, employers, industrialists and businesses, and the cultural interest of writers and composers as well as the interests of the professions including, those involved in health and learning. The representation specifically of local authority associations would ensure that the different regions of the country would have voices in the upper

chamber. And so the list would go on with the seats for Anglican bishops shared with other denominations and faiths.

12.The commission's second task would be to approve the means by which each group elects or selects its own representatives. The commission should be encouraged to approve a diversity of forms of election. Some groups already elect their group representatives. Other groups might wish to adopt a form of indirect election. The commission's task should not be to impose a bog standard form of election.

13.The numbers of those to be elected as group representatives would be determined as a maximum proportion of the size of the whole House. If the maximum size of the House was set at 600 members—the same size as the new House of Commons—up to 400 might be elected as group representatives, thus allowing for up to 100 independent cross-bench members to be chosen by the commission as at present and up to 100 appointed by the Prime Minister. Each of the group representatives would be required to declare whether he or she would take a party whip or would sit as an independent cross-bench member. The Prime Minister's quota would provide a mechanism for adjusting the balance of the party political representation in the House, as well as for appointing former senior public servants such as Chiefs of Staff of the Armed Services and Permanent Secretaries.

14. Reform of the House of Lords along these lines offers this Parliament a last chance to rebuild within our system one of the key meanings that has until recently been given to the term representative. It would be a reform that resulted in giving legislative power to the Big Society which has historically acted as a bulwark against a too powerful state. The House of Commons would retain the primacy which it now enjoys, and which could be buttressed by conventions of the kind that already exist for that purpose. Thus the reform would strengthen our democracy without setting the Commons and Lords into a state of near permanent political warfare at Westminster and in the constituencies. And it would be a reform that might, for the first time, enthuse the electorate with the politics of constitutional change.

6 February 2012

Liam Finn

INTRODUCTION

1. I am a law undergraduate at the University of Cambridge. I take a significant interest in constitutional issues and wrote and published my first book, S*acking the Monarch—Why Britain must become a republic*, in 2010. My interest is rooted purely from a belief in the importance of constantly improving our democracy.

2. I have worked as an assistant chaplain at St. Mary's Sixth-Form College, Middlesbrough, and as a musician, playing in various bands and orchestras in both amateur and professional capacities. In the past, I have been heavily involved in charity and community work, particularly with regard to international development and immigration issues.

3. Though acknowledging my limited knowledge in these matters in comparison to professional commentators and academics, I wish to provide the committee and Parliament with some thoughts. Some of these ideas stem exclusively from my own long-held views and beliefs; others are from relatively-detailed research conducted over the past few months using the limited resources I have at hand. I sincerely apologise that a significant amount of the material gathered is unoriginal, perhaps even superfluous: it has been included to ensure that the full debate is covered to an adequate extent. I have quoted extensively from several sources and have sought to reference the provenance of each. I have aimed to provide a balanced and respectful account as far as I have seen possible.

4. It is important to consider two issues at the outset. The first of these is the fallacy that House of Lords reform is unimportant or that other "more important" issues should be prioritised. A cursory glance through the Commons and Lords debates on the draft reform bill demonstrates how frequently such an argument is propagated.[14] In

14 See, eg. HC *Hansard*, 27 June 2011, col. 646; and HL *Hansard*. 21 June 2011. Col. 1155.

response, it is valuable to note that it is by no means evidence of contempt for democracy to say that governance of a country is far more than just dealing with the issues raised by constituents on the doorstep.[15]

5. Frankly, the "priorities" claim is the last refuge of opponents of constitutional reform of any sort. It is an admittance that things can be done and, frequently, that things *should* be done, but forms an attempt to deflect attention for whatever reason, legitimate or intransigent. It is disingenuous to suggest that addressing the country's democratic deficit prevents the government or parliament from also addressing the budget deficit. We will always have economic, educational and environmental issues on our agenda; we need not have issues about our constitutional set-up constantly on the periphery. If House of Lords reform is so unimportant then why are the same people who criticise it as such so vociferous in their opposition, not only to the government's proposals but to the mere idea of an elected? An improved constitution will give us a better framework for dealing with health, defence and justice issues. A reformed second chamber is part of a better constitution.

6. The second crucial point to make is to attack the accepted wisdom that reform of the House of Lords is an almost impossible task.[16][17] According to this pessimistic theory, the only achievable reforms are small changes; big ideas are bound to fail. I do not accept this and I would encourage the joint committee to reject such cynicism. What has happened in the past is history. We now have an opportunity to deal properly and fully with the task of reform. I believe that the House of Lords Draft Reform Bill and this joint committee offer an invaluable opportunity to improve the UK constitution and our democracy. I beg the committee and the current Parliament not to jeopardise or jettison this remarkable chance for democratic renewal. Be bold!

7. Professor Vernon Bogdanor has said that "To achieve a 'popular' upper house will tax to the full the ingenuity of reformers."[18] Whilst I would not be so foolishly arrogant to pretend that the ideas in this memorandum are in any shape or form "ingenious", I hope that they contain some of the originality and imagination which Professor Bogdanor considers necessary. I certainly believe that the proposals address the major concerns of opponents to reform whilst achieving the democratic and efficient second chamber that this country deserves, more than 100 years since it was pledged.

EXECUTIVE SUMMARY

Recommendation as to the name of the reformed House of Lords:

1. The second chamber should be renamed the "House of Senators" and its members referred to as "senators".

Recommendations as to the role of the House of Senators

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15 If government were restricted to issues raised by the electorate on the doorstep then my own experience of canvassing for a political party would dictate that the state's range of activities should extend no further than matters of immigration and the public execution of MPs.

Andrew Griffiths said that by participating in the Commons debate on the draft bill he was breaking a pledge he had made to himself that he "would limit [himself] to those debates concerning a particular constituency issue, or where [his] constituents were particularly concerned." (HC *Hansard*. 27 June 2011. Col 672.) It is suggested to Mr Griffiths, with genuine respect, that he is not properly addressing his duties as a legislator in the UK Parliament by restricting his ability to participate in a range of debates. It is also submitted that he is mistaken if he believes that constitutional issues of such importance as the role and composition of the second chamber are not directly important to his constituents.

In addition, Mr Griffiths states that "Not one e-mail, either pro or anti, not one telephone call, not one letter and not one person attending my surgeries has brought the burning issue of Lords reform to my attention."Contrary to this no doubt honest claim, it should be observed that several campaigns over many decades have campaigned in favour of a reformed second chamber, not least the tens of thousands of people involved in Unlock Democracy, Power2010, STV Action, the Electoral Reform Society, Republic, the British Humanist Association and – in opposition to an elected upper house – The Campaign for an Effective Second Chamber.

16 Nick Clegg said in the House of Commons that "… history teaches us that completing the unfinished business of Lords reform is not without challenges. Our proposals are careful and balanced. They represent evolution, not revolution, and are a typically British change." (HC *Hansard*. 17 May 2011. Col. 157.)

17 Meg Russell has said "The reforms which have succeeded are the small reforms which were seen as relatively trivial at the time." Lord Hennessey of Nympsfield has commented: "There's only one certainty in any of this: that those who tamper with the House of Lords do so at their peril. It's like the Bermuda Triangle of the British constitutional system: people go into it and never come out again". (Interviews broadcast in: *Peer Pressure*. BBC Parliament. London. 22 May 2011.)

18 Bogdanor, Vernon. *The New British Constitution*. (Oxford: Hart Publishing, 2009.) P 172.

i) The primary role of the chamber should remain to scrutinise and revise legislation.

ii) Ministers and other members of the government should not sit in the House of Senators.

iii) Senators should have the ability to introduce private members' bills.

iv) In the absence of ministers, the sponsor of bills in the House of Senators which have originated in the House of Commons could be nominated by MPs. If the Commons chooses not to exercise this prerogative, any senator could nominate himself. In the event of multiple nominations, the senator who belongs to the corresponding party to the sponsoring MP should become the bill's sponsor.

v) Committees composed of Parliamentary and extra-Parliamentary experts should be established for the scrutiny of each bill. The sponsor of a bill in the House of Senators should give a "statement of compatibility" at the third reading, stating that the revised bill meets the recommendations of the committee or a recommendation that the chamber does not follow particular recommendations.

vi) The party whips should be abolished in the House of Senators.

Recommendations as to procedural matters in the House of Senators and measures to retain the primacy of the House of Commons:

i) S2(1)(b) of the Draft House of Lords Reform Bill stating that nothing in the bill "affects the primacy of the House of Commons" should be included in the final bill.

ii) The power of the House of Commons to terminate a government's term of office through a vote of confidence should be codified in statute, with a declaration that only the House of Commons, and not the House of Senators, has such authority.

vii) The Parliament Acts 1911-49 should be amended so as to also apply to legislation originating in the House of Senators.

viii) The Salisbury-Addison/Manifesto Bill Doctrine should be codified in statute.

ix) The House of Commons' privileges with regard to money bills and bills of aids and supplies should be retained but that they should be subject to the scrutiny of a House of Senators committee.

x) The monarch's royal assent prerogative should be abolished and Acts of Parliament should be certified by the Speaker of the House of Commons.

xi) The monarch's ceremonial duties in the upper house should be abolished.

Recommendations as to the committees of the House of Senators

i) A committee should be established for each field of state policy.

xii) A committee should be established to consider each bill after its passage through its second reading.

xiii) Committees should have the power to call ministers and civil servants to give evidence.

xiv) Committees should have the authority to make miscellaneous recommendations and reports to the House of Senators.

xv) An appointments committee should be established to nominate members of other committees, with the House of Senators approving or vetoing the nominations.

xvi) The Grand Committee and the Committee of the Whole House could be abolished.

xvii) The House of Commons could consider cooperating with or participating in the House of Senators' committees.

Recommendation as to the proposed retention of the Lords Spiritual.

i) There should be no reserved places for Church of England bishops—or any other religious figures—in the House of Senators.

ii) Recommendation as to the composition of the House of Senators:

xviii) All members of the House of Senators should be elected.

iii) Recommendations as to the electoral system employed

xix) There are sensible arguments in favour and against using staggered elections. I do not wish to make any recommendation as to this proposal.

xx) The UK should be divided into areas as numerous as the number of seats in the House of Senators.

xxi) Open primary elections should be held for each party standing for election in those areas.

xxii) The party should then rank these candidates on an open list.

xxiii) An election will then take place nationwide, treating the UK as one constituency.

xxiv) Seats should be allocated to parties in direct proportion to the percentage of the vote each has won.

Recommendations as to the term of office

i) If it is decided that all seats in the House of Senators are vacant for election at the same time, elections should take place at the midway point of a Parliament.

xxv) If it is decided that staggered elections should take place to the House of Senators, one round of elections should take place at the same time as elections to the House of Commons, with the second round of elections occurring at the midway point of the Parliament. In practice, this will mean that elections occur two years and six months after the most recent election to the House of Commons. With the proposed introduction of fixed-term Parliaments, this is likely to mean that senators are elected to serve for five years.

xxvi) There should be no bar on seeking re-election to the House of Senators.

xxvii) There should be no disqualification of former members of the House of Senators from standing for election as MPs at the next general election.

Recommendations as to the necessity of holding a referendum.

i) The proposals for an elected House of Senators should only take effect if they are accepted by the people in a referendum.

xxviii) A state-funded public education scheme should be launched prior to the referendum.

xxix) There must be no turnout threshold requirement ensuring the binding nature of the referendum.

Recommendations as to the cost of the reformed upper house:

i) It is not yet possible to calculate the cost of the House of Senators.

xxx) Though concern must be shown to ensure that the reformed chamber is as inexpensive as possible, the issue must not be used for matters of political expediency.

NB The above recommendations are based upon the retention of the primacy of the House of Commons. I am in a very small minority of people in that I do not wish for Commons' primacy. The constitutional set-up I would prefer is this:

- A directly-elected prime minister as head of state. The prime minister would be elected using a run-off system similar to the procedure used for the election of the French president: an initial round of voting would be held with a second round between the two highest-scoring candidates following, should no single candidate achieve more than 50% of the popular vote at the first stage.

- The prime minister would nominate secretaries of state and ministers for the departments of government. These individuals would require the necessary expertise for their respective field. Parliament would then either confirm or veto the appointment.

- The prime minister and other government ministers would face questioning in the House of Senators on a weekly-basis but would not have voting rights in Parliament.

- Parliament would be bicameral and consist of the House of Senators (the upper house) and the House of Commons (the lower house). The House of Senators would be elected using a pure system of proportional representation or the single transferrable vote system.[19] The House of Commons would be elected using the alternative vote system.

- The House of Senators would be the primary legislative chamber and would introduce government legislation; the House of Commons would return to its original role as a chamber of constituency representatives. The Commons, however, would retain legislative powers comparable to those now possessed by the House of Lords.

It is fully realised, however, that such revolutionary changed is unlikely to occur for many decades and as such, the proposals in this memorandum are based on the current constitutional framework of the United Kingdom, particularly with regard to the almost unanimous desire to retain the primacy of the House of Commons.

26 July 2011

Please note: this is the executive summary of a very long submission which can be found in its entirety on the Committee's website.

Federation of Muslim Organisations

I am writing with regards to the Federation of Muslim Organisation's (FMO) views in relation to the Government's proposals to reform the House of Lords.

The FMO has been established for over 25 years and serves as the umbrella body for almost 200 organisations in the multi-faith environment of Leicester, the UK's most ethnically diverse city outside of London. We work on a range of issues including education, youth, health, housing and inter-faith work amongst others. The Federation is run by an executive committee which is democratically elected bi-annually by the Federation's affiliates and is bound to operate in accordance with the constitution of the Federation. Adopting a professional, diligent, pragmatic and diplomatic approach has enabled us to gain the trust of the local community in a unitary, collective effort and has also led to us developing outstanding relations with our various faith and non-faith based partners. Indeed, such has been our success that we have been used as a frame of reference by many other organisations who have sought our consultation on a range of issues.

19 Considered in further detail in chapter VIII.

The Federation welcomes the opportunity to have an input on changes that will affect the way that the state of Britain is run. As an organisation that places a significant emphasis on promoting a dialogue between our community and with representatives of other communities we believe that we are well placed to offer a contribution to the consultation on House of Lords reform particularly the debate in relation to what factors need to be considered in the process of selecting Lords. In the ever changing social landscape of Britain, the decision to reform the House of Lords is a pertinent one as it takes into account the need for increased representation from currently under-represented communities. Whilst we recognise the need for reform, we feel strongly that there should be a process of tweaking the current system rather than a radical evolution. There is a wealth of experience in the House which must be retained by whatever means including membership of possible House of Lords expert groups.

We would like to bring to your attention some issues for your consideration in this consultation. One of the many issues that we have to contend with from our own community is the feeling that the political arena is often seen as being too London-centric with many feeling that the views of those outside London are not given due attention. The social makeup of certain cities such as Leicester requires representation which is at present insufficient. Members of our local community feel strongly that a city which is close to becoming the first majority-minority city in the country needs to be more proportionately represented in the political domain. I have no doubt that representatives from other significant metropolitan areas harbour the same feelings. As such, it is imperative that a wider net is cast so that new representatives in the House of Lords are drawn from a wide geographical base.

The process of selecting representatives from other faiths is a pivotal one and must be done in an engaging and effective manner that avoids tokenism and selects the most expert representatives. Any desire to choose religious clerics for these roles must be allied to a strict selection criterion to assess potential candidates' awareness and expertise with regards to local issues. This is because clerics may not necessarily have the same knowledge and awareness of local issues which community advocates possess. What the role of a Lord in the House requires is a wide specialism over many areas, especially in the area of inter-faith and inter-body dialogue that many of the religious clerical hierarchy do not engage in and have not had sufficient experience with. The training that is received by some such as Church of England clerics is not necessarily the training that has been received in a structured, uniform manner by clerics from other faiths. This is because the dynamics of other faiths are far more complex and in many cases more sectarian thus meaning that they do not enjoy the structured training apparatus that the Church of England possesses.

A combination of elected and appointed expert figures in the House is fundamental to the running of a potent Chamber. All members must possess a grasp of a wide range of local, national and international socio-economic political issues thus making it absolutely crucial that those selected for the House have a wide range of skills and abilities. To enable a successful recruitment process of such skilled experts it may be pertinent to create an independent appointments body to verify the candidates in terms of their track record, experience and commitment. Liaising with public bodies such as local authorities and the police will be central to the process of determining the suitability of candidates in terms of gauging their experience and expertise in dealing with issues in a calm and reasoned manner. The efforts of the Joint Committee must also avoid the clichéd approach adopted in other areas of public life, which is that of acquiring the voice of only one faith community and in doing so acquiring people who do not necessarily have proven experience of working positively on integration issues.

I appreciate the magnitude of the task that the Joint Committee has undertaken and I wish you the greatest of success in your efforts. Should you require any further assistance from me please do not hesitate to contact me.

27 December 2011

Lord Foulkes of Cumnock

I fear, like most previous reviews, this one will fall into the trap of principally considering the nature of the membership of the Second Chamber and how they become Members.

In my submission this is a misguided and narrow interpretation of the nature of the fundamental review is needed.

The review must be undertaken in a wider context, particularly in relation to its functions and how it relates to the House of Commons, but also in the context of constitutional changes which have taken place or are proposed.

It should also look at a process of reform and not just a one-off fix to satisfy the ambitions of a Deputy Prime Minister with no experience of the Second Chamber and, indeed, scant of the first.

In doing so I believe the Committee should consider both the long term ideal and the immediate changes which can help move smoothly towards that ideal.

I accept that in a democracy the legislature should be elected and, if there are two chambers, both should be elected.

There is a strong argument in favour of a uni-cameral system to avoid gridlock between the two chambers of a bicameral legislature. But there is also an argument that a second chamber can provide a democratic check on a first chamber controlled by a powerful executive.

In the UK we cannot afford not to consider what might be ideal, even if such exists, but must, like the man lost in Ireland searching for the route to Dublin, start from where we are.

We currently have a revising Second Chamber which, through Conventions, accepts the primacy of the House of Commons should ultimately prevail and so a form of appointment is not considered to be outrageous, although our form of appointment, without a ceiling and with relatively little scrutiny does stretch legitimacy and credibility to the boundary.

If the Second Chamber is to be elected it will take more powers upon itself and to deny this is to misunderstand elected politics.

However, my view is that we should agree a long term aim of an elected Second Chamber, but before that is put into legislation we need further detailed consideration of:

i) a)The relative roles and functions of the two chambers

ii) b)The machinery for resolving disputes between them

iii) c)The method of election to both chambers

None of this can be properly considered before the next election.

In considering their long term proposals the Committee should look in detail at other countries to see the relationship between the two houses and not rely on hearsay or polemic from those arguing for change.

Meantime the Committee should consider what short term proposals would improve the present position and not pre-empt its consideration of longer term reform. This should include:

i) a)Ending all rights of Hereditary peers to sit in the second chamber of the legislature

ii) b)The agreement of a ceiling in the number of members

iii) c)Arrangement for the retirement of members i) who attend infrequently ii) who volunteer to do so and iii) who attain the age of 80 during a session of Parliament

iv) d)A statutory Appointments Committee and a more transparent system of nomination for membership

v) e)A system of remuneration for secretarial support for those agreeing to take no outside public or private appointments

This arrangement would be agreed for this and the next Parliament on the understanding that longer term proposals for election would then be considered by this, or a successor Committee.

They could be introduced either through the Bill introduced by Lord Steel of Aikwood, currently before Parliament or by separate government legislation.

Member of the House of Commons 1979—2005

Member of the House of Lords 2005—present

3 October 2011

Simon Gazeley

Introduction
The issues the Committee has to consider are many and various, but there is one in particular on which I feel strongly and am qualified to comment. My submission is based on an interest extending over forty years in political and constitutional questions and on thirty-five years of membership of the Electoral Reform Society. I have served on the ERS Council and on its Technical Committee and have had several papers published in its technical journal. What appears below, however, represents my views only and is not necessarily the corporate view of the ERS.

Elections to the House of Lords
The White Paper confirms the Government's intention that the functions of the House of Lords and the way it interacts with the Commons should remain unchanged. The Government also intends that, in order not to replicate the Commons, the Lords should very seldom or never contain an absolute majority of members of one party. This implies that elected members are expected to exercise their own judgement; defiance of the party whip, while not perhaps being routine, would be expected to be a more frequent occurrence in the Lords than in the Commons.

Given these aspirations, it follows that elections to the Lords should be by proportional representation. Although the White Paper prescribes elections using the single transferable vote (STV), I have heard suggestions in the debates in the Lords and the Commons that some kind of party list system might be used instead. This would be wholly inappropriate; all party list systems of which I am aware have the defect that the voter can vote for only one party and has little or no influence over which of that party's candidates are elected. Under most list systems, most or all candidates are elected in the order in which they appear on the party list, regardless of the support that they may have as individuals; this gives the party machines an unjustifiable influence over the outcome. All list systems deny the voter the opportunity to support more than one candidate and therefore do not indicate the degree of support that the candidates have.

On the other hand, STV requires votes to be cast for candidates, not parties, and the voter is invited to indicate preferences for as many or as few candidates as he or she may wish. No doubt party considerations would play a large part in most voters' choices, but they need not do so, and in any event preferences are cast within as well as between parties. A candidate elected under STV has a personal mandate from the voters whose votes contributed to their election. A House elected by STV would therefore be more demonstrably representative of the opinions of the voters than one elected on a list system.

I therefore urge the Committee to stand firm for STV. Anything else would weaken the quality and the independence of the elected members.

15 August 2011

Andrew George MP

I write to register my support for parts, but not all, of the Government's proposals for Lords Reform.
Rather than repeat myself, I attach a set of appendices which set out my comments and points on this subject going back a number of years.

I support the proposal to end hereditaries, the constraint on patronage, the reduction in the number of peers, the proposal to limit the term of service, the confirmation that functions and power will be maintained and the confirmation of the primacy of the Commons over the Lords.

However, I am not convinced that reform of the Lords requires a complete antithesis as proposed by the 'form-before-function' advocates behind this Draft Bill. If anything we should seek to adopt a form which enables the second chamber to become less rather than more tribal (which is what this proposal would result in).

If we had adopted a sequentially logical method of approaching the question of Lords reform, as I have consistently advocated for at least the last decade, we would first decide what we want a second chamber for before considering

how its membership should be made up. In my mind any purpose, other than one to mirror all of the weaknesses of the Commons, would cause anyone to conclude that a wholly or partially elected chamber would be disastrous.

Although I am told by my Party colleagues that I should support the Government's policy, and am reminded that it is party policy, the logical consequence would be for us to go on and elect many other advisory, supervisory, and revisory public bodies—including the Judicial Appointment Commission etc—which demonstrates either the absurdity or inconsistency of this part of the reform.

12 October 2011

Lord Goldsmith QC

1. I regret that professional commitments overseas mean that I am unable to attend in person the hearing of the Joint Committee on the drafts House of Lords Reform Bill. I have prepared the following summary response to represent the oral evidence I would have given.

2. The Committee has expressed interest in my views on two questions:

a) Whether the Parliament Acts could be used to enact the draft House of Lords Bill without the assent of the House of Lords;

b) Whether there is any reason why the Parliament Acts could not be used by the House of Commons to enact legislation without the assent of the House of Lords if the House of Lords were to be elected .

QUESTION A; COULD THE PARLIAMENT ACTS BE USED TO PASS THE DRAFT LEGISLATION WITHOUT THE ASSENT OF THE HOUSE OF LORDS

3. This question raises the issue whether the draft House of Lords Reform Bill (or similar legislation) could become law if passed using the provisions of, and in accordance with the provisions set out in, the Parliament Acts 1911—1949 without the assent of the House of Lords. In other words could the House of Commons force through that legislation against the will of the House of Lords by following the procedures in the Parliament Acts.

4. In my view the answer is yes. This issue was, I believe, resolved by the decision of the House of Lords in R (Jackson & Others) –v- the Attorney General [2005] UK HL56.

5. This case, also known as the Hunting case arose in the following circumstances. The Hunting Act 2004 which outlawed hunting with dogs received the Royal Assent in November 2004. It had been enacted without the assent of the House of Lords pursuant to Section 2 of the Parliament Act 1911 as amended by the Parliament Act 1949. The Parliament Act 1949 passed by the post-war Labour Government had reduced the period of delay required between successive presentations of a Bill, and the number of those presentations, before the assent of the House of Lords could be dispensed with. The historical context of both Parliament Acts will be very familiar to the Committee and I will not therefore repeat it.

6. The 1949 Act had been passed using the provisions of the 1911 Act. The issue raised in the Hunting Act case was whether the 1949 Act could legitimately have been passed using the 1911 Act so as to amend itself. The claim was brought by supporters of the Countryside Alliance who opposed of course the Hunting Act. They argued on a variety of arguments that it was incompetent for the House of Commons to use the 1911 Act to amend the very Act itself. Rather they argued it was necessary to have the assent of the House of Lords to amend the1911 Act. They therefore sought a declaration that the Hunting Act, having been passed without the assent of the Lords but not in accordance with the original Parliament Act conditions, was not an Act of Parliament and therefore of no legal effect.

7. As well as being the nominal Defendant on behalf of the Government I argued the case before the three courts who heard the case: the Divisional Court (Maurice Kay LJ and Collins J); the Court of Appeal (Lord Woolf CJ, Lord Phillips of Worth Matravers MR and May LJ) and a 9 judge panel of the House of Lords (Lords Bingham of Cornhill, Nicholls of Birkenhead, Hope of Craighead, Rodger of Earlsferry, Walker of Gestingthorpe, Baroness Hale of Richmond and Lords Carswell and Brown of Eaton-under-Heywood. Each of the three courts rejected the Claimants' case and held that the Hunting Act was valid, though for somewhat different reasons.

8. What is particularly relevant for present purposes is that the argument included consideration not merely of the various arguments raised by the Claimants as to the nature of legislation passed under the Parliament Acts but also focussed on what limits, if any, there would be on the sort of legislation which could be passed using the Parliament Acts. In particular it was argued that the Acts could not be used to pass constitutional legislation or at least some sort of constitutional legislation. This was an issue that particularly in the Court of Appeal was tested by asking whether the Parliament Acts could be used to abolish the bicameral system altogether.

9. The decision of the House of Lords, in my view, clearly shows that the Acts may, as a matter of law, be used to effect changes to the composition of the House of Lords without their assent. Whether it would be politically or constitutionally desirable to do so is of course a different matter.

10. Though the members of the panel gave differing reasons for their decision all upheld the validity of the 1949 Act and therefore of the Hunting Act. I believe that the essence of the decision at least of the majority is that as a matter of construction set in the historical and constitutional context the Parliament Acts created a new and parallel method of enacting legislation so long as the express conditions laid down were complied with. It was not the case that there was some implied exclusion for constitutional legislation; indeed part of the very purpose of the 1911 Act was to legislate for Home Rule in Ireland and the disestablishment of the Anglican Church in Wales—both very important constitutional issues; and an amendment to make some carve out for important constitutional change had been rejected. Rather by passing the 1911 Act Parliament had ordained that "any Public Bill" (the words of Section 2) introduced could become an Act of Parliament and the words "any Public Bill" were to be read in their plain and broad meaning. Accordingly except for the express exceptions in the 1911 Act, in particular the prohibition on using the Act to extend the life of Parliament beyond 5 years, there was no limitation on the nature of the Bill which could be enacted in this way.

11. It would follow that an Act to change the composition of the House of Lords would clearly be a lawful and effective enactment if enacted using the Parliament Acts.

12. I am aware that some argue that the decision does not rule out the possibility of any limitation, for example, a limitation on abolition of the House of Lords itself. This argument is based on certain dicta in the case and the fact that the majority ruled that the Act could not be used to extend the duration of Parliament. It is not, however, necessary to examine that argument as any such limitation must be of very narrow ambit and could not apply to a change which dealt solely with the composition of the House.

QUESTION B; COULD THE PARLIAMENT ACTS BE USED IN RELATION TO AN ELECTED HOUSE OF LORDS

13. The second issue is whether the Parliament Acts could still be used in the same way in relation to a wholly or partly elected House of Lords as in relation to the present House.

14. The White Paper and draft Bill proceed on the basis that the existing situation would continue—this would be enshrined in Section 2 of the draft Bill which intends to provide that the changes will not affect the existing status. Nonetheless the assumption is explicitly that the Parliament Acts will continue to operate even if and when the House of Lords became an elected chamber (see the White Paper). If that assumption is not sound then it affects the way the legislation proceeds.

15. To my mind there appears to be at least a very strong argument that the Acts were not intended to operate in such circumstances.

16. In the historical context, the purpose of the Parliament Acts was fundamentally that they were passed in order to restrict the powers of an unelected House of Lords against the elected House of Commons. This follows from what we all know to be the case but it is most fully explored in the speeches in the House of Lords in *Jackson v AG* and particularly by Lord Bingham of Cornhill at paragraphs 8-10 in particular and Baroness Hale especially at paragraph 156. It is worth setting out that latter paragraph:

"The history is important because it demonstrates clearly the mischief which the 1911 Act was meant to cure. The party with the permanent majority in the unelected House of Lords could forever thwart the will of the elected House of Commons no matter how clearly that will had been endorsed by the electorate. At that time this could not be called a necessary or even desirable check on the over weaning power of a government which had the command of the House of Commons because there was no equivalent check on the party which had the command of the House of Lords. The

object was henceforth to ensure that the elected House could always get its way in the end. The United Kingdom would become a real democracy. The democratic element was reinforced by the reduction of the maximum length of a parliament from 7 years to 5 and the exception of a Bill to prolong the life of parliament from the 1911 Act procedure. The elected Chamber would have to submit itself to re-election at regular intervals." [emphasis added]"

17. Examination in more detail (as described by Lord Bingham and Lady Hale) of the historical context of the passage of the Parliament Acts and the resolutions passed by the House of Commons before them would demonstrate very clearly this point. In this connection it is worth recalling that the problem was as Roy Jenkins noted in Asquith 1964, 1967 paperback edition page 187 quoted by Baroness Hale at paragraph 144 of Jackson) "*It quickly became clear that the opposition leaders in both Houses were prepared to accord no real primacy to the elected Chamber.*"

18. This would lead to the proposition that the Parliament Acts were intended to apply only to the state of an essentially unelected House and were not intended to survive the creation of an elected House. That proposition indeed appears clearly from the terms of the recitals to the 1911 Act which are as follows:

... "Whereas it is expedient that provision should be made for regulating the relations between the two House of Parliament;

And whereas it is intended to substitute for the House of Lords as it at present exists a second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation;

And whereas provision will require hereafter to be made by parliament in a measure effecting such substitution for limiting and defining the powers of the new second chamber, but it is expedient to make such provision as in this act appears for restricting the existing powers of the House of Lords:"

19. The clear intendment of these words is that parliament (and it was the whole of parliament which passed the 1911 Act) did not intend that the provisions of the Act would apply to "*a second Chamber constituted on a popular … basis*." Further the Act clearly contemplated that when that came about it would be for the legislation at the time to make provisions "*for limiting and defining the powers of the new second Chamber*."

20. The question that arises is what the implications for the draft Bill would be of these considerations. I consider there to be three:

21. First, these considerations would at the very least provide to the new and elected House of Lords a moral justification for declining to give way to the House of Commons. It is unlikely, in my view, that any justification would in fact be needed because the elected member of the House of Lords would regard his or her own position as one which has democratic legitimacy and carrying a right therefore to oppose legislation he or she disagrees with. But these considerations would put to rest any argument that in failing to give way to the Commons was unconstitutional.

22. Secondly, there is a legal route by which effect could be given to that intention by holding, in accordance with a principle sometimes though not invariably applied that legislation must be interpreted in the context of the conditions at the time of its enactment, that the words "House of Lords" which appear in the operative sections of the Parliament Acts only refer to the House of Lords in its unelected form and that once it became an elected (or substantially elected) Chamber it was no longer the same "House of Lords" and therefore the provisions of the Parliament Acts would not apply to it.

23. This legal principle is not invariably applied —as explained by Lord Bingham of Cornhill in R (Quintavalle v Secretary of State for Health [2003] UKHL 13 at para 22- but this is likely to be a case where the principle would be appropriate to be applied.—see para 23 of the same case. See also the Australian case: the High Court of Australia *Corporate Affairs Commission (NSW) v Yuill [1991] HCA28: (1991) 172 CLR 319*

24. Whilst the application of this principle may be uncertain in the context of this Bill and the precise way the Parliament Acts operate this does at least give rise to doubt that the Parliament Acts, or at least all their provisions, would apply in the absence of clear Parliamentary enactment to that effect.

25. Thirdly, whilst it would be open to Parliament to legislate now to make clear that the Parliament Acts should operate in the same way in relation to an elected House the vague and general provisions of the proposed Section 2 including Section 2(1)(b) do not seem to me adequate for that purpose.

26. It is further my view, based on my experience as a member of the House of Lords and one time minister that the House of Lords is far more frequently persuaded to accept the Commons' view by acceptance of the argument that it (the Commons) has the democratic mandate, and the Lords has not, than by a belief that the Parliament Acts will be invoked. Irrespective of the strict application of those Acts the effect of having an elected House will radically change the relationship between the two Houses.

8 January 2012

Lord Goodhart QC

ELECTION OF MEMBERS

Those who object to the election of members to the House of Lords—whether 100 per cent, 80 per cent or some other figure—face a problem which has hardly been mentioned in debates, let alone argued. This problem is the allocation of seats to political parties.

The allocation of seats is, and for a long time has been, a matter for the Queen, acting on the recommendation of the Prime Minister. Until 1997, this was very much under the control of the Prime Minister. Mrs. Thatcher was notorious for her reluctance to appoint anyone other than Conservatives.

On winning the election in 1997, Tony Blair announced that the two main parties should have broadly equal numbers of members of the Lords, while the third party should have a "proportionate" share (a statement of some uncertainty). That principle has been accepted by the subsequent prime ministers, but there is absolutely nothing to prevent a future prime minister from going back to pre-1997 practices and giving priority to the appointment of members of the government party. This will be more tempting because of the increase in the political activity of the House since the House of Lords Act 1999 was enacted.

I believe, therefore, that it would be unacceptable to continue with the present system.

This does not, however, mean that all or any of the political members of the Lords must be elected. It would be possible to link the allocation of new political seats to the voting (*not* to the number of seats won) at the previous general election, either in the UK as a whole or, preferably, in each of the regions used for Euro elections. The allocation would therefore be determined by voting by the people, but the choice of the individual new members would be decided by the separate political parties, not by the people.

This seems to me to be a reasonable alternative to the system proposed in the draft Reform Bill, and one which will be more acceptable to the present membership of the Lords. It also reduces the argument that the Lords will become a challenge to the Commons, since the individual members will not have been elected by the voters.

TERMINATION OF SERVICE

It has long been my belief that membership of the Lords should have a time limit. A term of 15 years seems reasonable. The present right to life membership is a hold-over from the time of hereditary peers, who were entitled as of right to membership, and there is now no constitutional reason why life membership should be retained. Time limits are desirable for a number of reasons. These include:

i) Membership of the Lords is usually awarded to men and women who have either finished, or are well-advanced in their main careers. This gives them valuable knowledge and experience, but these have "use by" dates, and have reduced value as time goes on.

ii) By contrast, membership of the Lords is occasionally awarded to younger people. As matters now stand, a person aged 35 at the date of appointment could remain for 50 years or more, which is excessive.

iii) The need for reducing the membership of the Lords makes it desirable to reduce this length of service.

There is, of course, the question of limit to the service of present members. Serving members were, of course, removed in 1999 in large quantities. I do not think existing members should retain office for life, but I think that existing members should be entitled to remain until they have achieved 15 years of service, and probably longer in a few cases. (The actual date of departure should be the end of the session in which 15 years is reached).

I see no reason for the limitation of service of members appointed under Clause 21 of the Bill to less than 15 years in full. Why not allow replacement appointments to continue for 15 years, irrespective of general elections?

BISHOPS
The Church of England is of course the established church of England, though not of Scotland, Wales or Northern Ireland. But why on earth should establishment give Anglican Bishops and Archbishops a special right to vote in the House of Lords? Religious faith should not give members of any particular faith a right which is not extended to other people. If there continue to be appointments of cross-benchers, appointments could continue to allow individuals who are, or have been, office-holders in major faiths to be nominated for service in the House of Lords.

15 September 2011

The Green Party

1. The size of the proposed House and the ratio of elected to non-elected Members (the draft Bill gives options);

Every member of the House should be an elected member with no appointed members. We are content with the proposed size of 300 members, although this may be on the low side given the expected workload. 100% should be elected. While 80% elected would be better than the current 0% elected we strongly favour 100%.

2. A statutory appointments commission;

With 100% elected there is no need for an appointments commission.

3. The electoral term, retirement etc;

Consideration should be given to a 10 year term, with 50% of the House elected each time. There could then be the possibility of standing again to serve a second term. Electing 150 members each time, rather than 100, would allow a more proportional result.

On the issue of thirds vs halves—the proposal seems to be mostly based on transitional arrangements—thirds allows some of the current peers to stay in Lords for another 10 years in exchange for their support for the bill. However making a long term choice based on the transitional period isn't very sound.

4. The electoral system preferred (the draft Bill gives options);

We wish to see a fully proportional system. This would best be achieved by a single constituency for the country and elections using an open list system with the Sainte-Lague system used to allocate seats. Open lists ensure that the electorate can override the list order selected by the party. This places more power in the hands of the electorate. The Sainte-Lague system gives a more proportional result than the d'Hondt system used for the European parliament elections in the UK.

Should smaller constituencies be used then we would want them to be multimember constituencies large enough to ensure that elections are proportional, e.g. current Euro region boundaries, and that STV is used.

5. Transitional arrangements (the draft Bill gives options);

We wish to see an all-elected House introduced as soon as possible, ie immediately following the 2015 election. The proposed transitional arrangements will not achieve this until 2025. Instead 300 members should be elected in 2015 with 100 serving for 15 years, 100 for 10 years and 100 for 5 years. This would be similar to the process used for councils, that normally use rolling thirds, after an all-out election following ward boundary changes, with the higher placed candidates getting the longer terms. While this would not absolutely guarantee any continuity we would expect the main parties to include some of the current peers on their lists and so there would be some continuity.

6. The provisions on Bishops, Ministers and hereditary peers;

There should be no seats for Bishops or hereditary peers. In a multicultural society, a privileged position for the Church of England is inappropriate but neither would it be appropriate to provide additional reserved seats for representatives of other religions. Religion and politics should be kept separate. If bishops or leading figures from any other religion wished to sit in the second chamber, they should be allowed to seek election like any other candidate for public office.

We do not support the proposal that the Government should be able to appoint extra members to serve as ministers. This would override the result of the election by giving the governing party extra members who had not been voted in by the electorate. It would be open to abuse and accusations of cronyism, precisely the sort of thing that these reforms are supposed to end.

7. Other administrative matters like pay and pensions;

We agree that salaries, pensions, expenses, etc should be subject to similar arrangements to those for MPs.

12 October 2011

Lord Grenfell

The question of democratic authority

In their Foreword to the Draft Bill, the Prime Minister and the Deputy Prime Minister write that "The House of Lords performs its work well but lacks sufficient democratic authority", since "those who make the laws of the land should be elected by those to whom those laws apply." In other words, an unelected House of Lords cannot by definition claim the necessary legitimacy to legislate. This latter, very doctrinaire, position can and should be challenged. Why?

John Locke took the view that political legitimacy derived from popular explicit and implicit consent; that the government is not legitimate unless it is carried out with the consent of the governed. I entirely accept that, but I would argue that where the people are prepared to entrust a legislative function to a non-elected chamber of parliament, their consent to such an arrangement confers political legitimacy on that institution.

In an entry entitled *Political Legitimacy,* dated April 29, 2010, in the *Stanford Encyclopaedia of Philosophy,* the author, Fabienne Peter of Warwick University, observes that in contemporary political philosophy, not everyone agrees that democracy is necessary for political legitimacy. My own view is that it is not *always* necessary, and that the House of Lords is a case in point. I suggest that two of the several theories of political legitimacy explored by the author can usefully be considered when challenging the assertions in the Draft Bill's Foreword.

Under the theory of 'democratic instrumentalism', the definition of what is an ideal outcome provides the standard that determines political legitimacy. In other words, if democracy does not contribute to the identification and achievement of the best outcomes, it is not necessary for political legitimacy. Democratic instrumentalists argue that there is some ideal egalitarian distribution, and that the legitimacy of political institutions and of the decisions they take depends on how closely they approximate the ideal egalitarian distribution. For the democratic instrumentalist, and I quote from the Stanford entry:

"If sacrificing political equality allows for a better approximation of equality overall,

then this does not undermine legitimacy."

Applied to the House of Lords, this might suggest that the outcomes delivered by an all-hereditary House could in theory have passed the political legitimacy test. That does not in itself invalidate a theory based on the quality of outcomes. It does, however, raise the question of whether, in the contemporary political environment, quality of outcomes is alone a sufficient justification for declaring democracy not necessary for political legitimacy. In my view it is not a sufficient justification by itself, but it is an indispensable half of a whole claim to political legitimacy. The other half is found in the so-called 'rational proceduralist concept' of democratic legitimacy which holds that the fairness of the democratic decision-making process is not sufficient to establish the legitimacy of its outcomes. I find that persuasive but would add that 'fairness' is nonetheless indispensable to establishing that legitimacy.

In seeking to apply the concepts of 'democratic instrumentalism' and 'rational proceduralism' to the political legitimacy of the House of Lords, it seems to me that that legitimacy derives from a marriage of the two. The legitimacy of the Lords scrutiny and revising role depends on both a set of procedural values and on the substantive quality of its outcomes. Its deliberative decision-making procedures, recognising the supremacy of the elected chamber, coupled with the high level of expertise provided by its composition, ensure respect for procedural values and encourage high quality outcomes.

I return to my opening argument that where the people are prepared to entrust a legislative function to a non-elected chamber, their consent to such an arrangement confers political legitimacy upon it. It seems to me to follow that unless and until it chooses to withdraw that consent, the chamber enjoys that political legitimacy. The Foreword to the Draft Bill seems to suggest that there can be no political legitimacy where there is a lack of democratic authority. I question this assertion on the grounds that if the House can demonstrate its political legitimacy in the terms I have used above, a claim that it lacks sufficient democratic 'authority' must surely fall.

That said, can the House of Lords make a persuasive case to the public for the House's continued enjoyment of that consent? I argued in the chamber on 29 June 2010 (at column 1693) that such a case could be made.

"In simplest terms, the House of Lords seeks to meet the electorate's requirement that the legislation promised by the party that wins office is fashioned to the highest possible standard consistent with the will of the elected House, whose primacy we unquestionably acknowledge. With few powers to exercise, and rightly so, we Members of the Lords participate in the legislative process by drawing on our experience and applying our expertise to help ensure delivers to the people what it has the right to expect: high quality, implementable Acts of Parliament. It has yet to be proven to me that the fact that we are an appointed House disqualifies us from performing that crucial democratic function."

I still hold strongly to that view while readily accepting that others take a different view. It is precisely because there are different views on what constitutes political legitimacy that I find the failure of the authors of the Foreword to recognise the existence of any other view than their own very unhelpful and not at all conducive to the pursuit of a profound and informed debate on the future of the House.

2 November 2011

James Hand

Introduction

This submission is made in response to the Joint Committee on the Draft House of Lords Reform Bill's call for written evidence on the terms of the White Paper and draft Bill (Cm 8077). The White Paper holds that the reformed House should have the same functions and same powers (paras 6-7) as the existing House of Lords, while having injected into it the 'fundamental democratic principle' that it should be wholly or mainly elected (para 13); this being, in the words used in the Foreword, a "unique opportunity for our country to instill greater democracy into our institutions". The Draft Bill aims to do this through a series of convoluted provisions and transitional arrangements. The principal suggestion in this submission is that rather than setting out a package of proposals representing radical "incremental reform" (para 1), the government's aim of maintaining the status quo in terms of function and power, while addressing the desire for a more democratic house, could better and more simply be met through an evolutionary, yet swifter, reform.

In posing a choice between a wholly or mainly elected House of Lords (para 22), they are posing a potentially false choice. As outlined in House of Lords Reform: Many Anniversaries and a False Dichotomy? [2009] 4 Web JCLI, election and appointment are no more mutually exclusive states than election and hereditament. The successful 'Weatherill hereditaries' concept could be replicated with Life Peers (but with the proportion of cross-benchers fixed and the numbers of party peers changing according to, for example, either general or local election results). This could provide a combination of the benefits of election and appointment while mitigating some of the problems with both. A relatively minor evolutionary change to the membership of the House would be better attuned to maintaining the current position as to role and powers than a revolutionary one (which risks unintended, if not unforeseen, consequences from which clause 2 may prove little protection; a great advantage and weakness of conventions being that they can be subject to change and reinterpretation).

Size, Composition, Term and remuneration

While there is an argument for a salaried and full-time house to be smaller (not least to keep the costs down), the White Paper does not appear to address the value of full-time, as opposed to potentially part-time, members (beyond the statement in para 12 that "[t]he Government expects members of the reformed House to be full-time Parliamentarians") nor does it address, in any depth, the current attendance.

In the era of the fostering of the Big Society, it seems somewhat perverse to professionalise and severely narrow down a body of highly talented, experienced and cost-effective volunteers, with members not receiving the honour of a peerage but nigh-on £900,000 (at today's prices) in salary over their likely 15 year term (one term expected to be 3 x 5 year Parliaments with a salary greater than that received by members of devolved legislatures; paras 24 and 111).

A House allowing part-time members would not need to be salaried, would allow the members to retain their active links with the real world and better prepare them should they leave the House after a number of years (a 15 year hiatus in any career could be problematic unless members are expected to enter new careers, e.g. lobbying, after service).

A focus on average attendance, as in para 12, ignores the breadth of experience that the House has within it and the nature of averages. "300 full-time members" could conceivably be able to "fulfil the same range of duties as the current average daily attendance of 388" but they would not have the same experiences (both past and current) as, and are unlikely to be able to fulfil those duties to the same level as, a greater number of part-time members who attend when their expertise and interest are most of use. Based on the 2009/2010 attendance figures (and excluding those peers who died or were introduced in the period) the average peer attended 57% of the sessions (or 60% if those who did not attend at all are excluded). The average daily attendance of 388 must thus comprise very different people on different days and constraining the House to 300 full-timers excludes many more regular attendees than the juxtaposition of 300 and 388 suggests.

Under the evolutionary system suggested above (whereby life peers are elected by their fellows, with a fixed number of cross benchers and the parties' numbers varying according to election results, i.e. Weatherill (as amended) Life Peers), the virtues of part-time membership could be retained, the remuneration costs would not be increased and the size of the House could be capped at a higher level providing a greater range of representation. If a cut-off was placed at 300 based on the 2009/10 figures it would see peers who attended 73% of the time excluded whereas 500 would take the attendance down to 44% (of course there would be no cut-off as such as the life peers would be elected but it is an approximation of the lost experience at various sizes). Some form of cap on the size of the House is necessary for practical reasons and this system would provide for this—obviating the problem demonstrated by Hazell and Seyd (in 'Reforming the Lords: the numbers' [2008] *Public Law* 378 at 383) of keeping a House of Life Peers proportional through new creations.

Electoral System

The Weatherill (as amended) Life Peers system would meet the Coalition Agreement's commitment to a system of proportional representation for the reformed House of Lords as the number of party members would change proportionately to the election result used (e.g. most likely general election but could alternatively be local or European elections).

The Government's proposal to have STV elections on the same day as the general election risks confusion (as with the Scottish elections) and, while cheaper than holding the elections on a separate date, is unnecessarily expensive to meet the aim of proportionality which could be achieved far more cheaply by the method above. Furthermore, the above method is much simpler than the creation of further constituencies which will be almost but not fully co-extensive with the European regions (para 43).

Transition

The Weatherill (as amended) Life Peers system would not require any transitional arrangements; it could be implemented swiftly and could even be introduced as an amendment to Lord Steel's Bill (akin to the 1999 Weatherill amendment). The Government's three options have a shorter transition than that in the first option in the previous administration's last White Paper but it is nonetheless still a lengthy period. Option 2, as the White Paper notes, risks creating an even more unmanageable House than the current one and Option 3, given the desire to have a House of 300, seems a rather brutal cut (but not as brutal as the 1999 reform). Option 1 would seem the better option balancing the smooth running of the House with a wealth of continued experience but a larger, potentially part-time, voluntarily House would avoid such an elongated transition.

Ministers

The Government proposes that Ministers should only be drawn from the elected and transitional members, presumably because the appointed element are independent. However, in order to provide the flexibility of appointing ministers (which has been used to notably good—and less good—effect in recent years) they then propose that there will be ad hoc members who will have membership only for the duration of their ministerial appointment. A Weatherill (as amended) Life Peers system would not need such an ungainly provision as a similarly small number of peers could be created during a Parliament and then face election among their peers in what would be the usual way. Nor would it, as the Government's proposal appears to do, preclude the albeit rare possibility of independents acting as Ministers.

Conclusion

The Draft Bill arguably transforms the House of Lords into a democratically legitimate second chamber but does so at an unnecessarily high cost (both financial and experiential) and level of complexity. The Government could meet their stated aims through a simpler and faster change which could see many of the recognized virtues of the current House maintained, the fundamental democratic principle satisfied , the problem of a growing House solved and reform completed, not just under way, by 2015 (and quite possibly well before).

21 September 2011

Hansard Society

The Hansard Society believes the draft Bill is in many ways a missed opportunity; whilst the composition and form of election or appointment of members to a new second chamber are crucial, the Bill is also an opportunity to think about the powers of the House of Lords and whether these too should be revised in any way.

Powers

It is not axiomatic that electing a majority or all members of the Upper House will result in a future constitutional clash with the House of Commons due to Peers asserting an equal democratic mandate. The House of Lords has gradually become more assertive over the last decade but this has been largely in relation to the executive. The different electoral system, term lengths and limits proposed for the reformed Lords, coupled with the constitutional reality that it is the Commons from which the government is formed and where it must sustain confidence, should underpin the primacy of the Commons.

However, it should not be assumed that the current conventions that have circumscribed the role and powers of Peers previously will necessarily be accepted in the future should a reformed House be wholly or largely elected. The applicability of the Salisbury Convention has already been the subject of debate in recent years and particularly so since the formation of the coalition government and the merging of manifestos to create a programme for government. By their nature conventions change over time and have force only if their nature and intent are clearly understood and accepted and only for as long as those concerned are willing to observe them. Whether elected Peers in the future choose to do so may be dependent on specific political circumstances, the evolving relationship with the executive, and the changing tide of public opinion.

The Hansard Society has previously recommended that a comprehensive review of the legislative powers of the executive and Parliament be undertaken with a view to drawing up a concordat which clearly sets out where key powers lie, and clarifies the relationships between, and responsibilities of, the executive, the legislatures and the courts.[20] Such a review would embrace a study of the relationship between Westminster and the other legislatures in the United Kingdom, and with the courts and supra-national institutions such as the EU. Whilst not in any way underplaying the challenges that negotiation and adoption of such a concordat would pose, it would nonetheless be a very serious demonstration on the part of both Parliament and government that they recognise that the current way in which law is made is deficient; that they are committed to the process of reform; and that they are determined to

20 A concordat of this kind has also previously been recommended by the Conservative Commission to Strengthen Parliament in 2000 and the Power Inquiry in 2006.

ensure everything possible is done to assure the making of better law in the future. Reform of the House of Lords would provide the necessary impetus to undertake such work; codifying the desired conventions between the two Houses would establish a clear and shared understanding of the relationship between the Houses—for example, in relation to the extent of the Lords' delaying powers—and thereby ensure that it is more likely to be respected in the future.

The proposed full-time, 15-year term length for elected Peers allows for a long-term perspective. As such, consideration could have been given to what opportunities this long-term focus would provide to broaden the legislative and policy scrutiny work of the House of Lords and to ensure that any gaps in the scrutiny landscape are filled. For example, the Hansard Society has previously highlighted the weaknesses in financial scrutiny undertaken by Parliament. While continuing to respect the financial precedence of the Commons, a reformed second chamber could play a more active role in carrying out financial scrutiny, for example in the area of tax administration, following up recommendations of the Public Accounts Committee, and in the area of post-legislative scrutiny.[21] Similarly, the House of Lords could contribute to improved scrutiny of EU-related legislation.

Size, composition and term length

We contend that it is a basic democratic principle that the public should have an opportunity to elect and remove from office those who make the laws of the land. As such, the shift from what is now an appointed Upper House to one that is elected is one that we support. However, there are a number of unanswered questions and contradictions in the government's proposals that need to be addressed.

It is unclear how the Government has arrived at the number of 300 Peers to sit in a reformed Chamber (nor how they decided on 12 seats for the Church of England Bishops as opposed to the current 26). The size of the Chamber should be determined in relation to its role and function; there must be enough members to ensure that their roles—to debate, scrutinise and revise—can be carried out effectively. Previous proposals for House of Lords reform over the last decade have variously suggested an Upper House of between 350 and 600 members.[22] The draft Bill will provide for a Chamber that is significantly smaller. It may be that 300 members is sufficient, but this cannot be tested unless the government makes clear upon what basis it has reached this determination. At present, for example, there are 28 committees in the House of Lords (domestic and select committees) each generally with between eight and 12 members. Additionally, Peers are also required for service on joint committees of which there are currently 10 in existence. Of course, some members can serve on more than one committee but these figures suggest that more than two-thirds of the membership of a revised House will be involved in committee work. On top of this, time for legislative scrutiny and participation in general debates and question time must also be provided for. These figures would suggest that, particularly at key times in the legislative timetable, the capacity of the House might be stretched.

The proposal for a 15-year, non-renewable term does not sit with the principle that the public should have an opportunity to both elect and remove those who govern us; it provides for democracy but not accountability. A term of 15 years' duration might be said to be a justifiable compromise given the movement away from the life-long terms currently accorded peers. However, it is significantly beyond international norms; terms in other legislatures tend to be no more than eight years in length at most.

Nor can it be assumed that the independence of members will be enhanced because they will not face election. Although it is true that the House of Lords has become more assertive over the last decade, nonetheless this should not be overstated: on most issues those members aligned to a party in the current, unelected House will tend to vote with their party group. Members are freer to assert their independence than MPs—for example, because of the absence of whipping or the pressures that can be applied through local constituency party members—but on most issues they still tend to take their party's line. It is likely that the pre-disposition of members to vote with their party will therefore be at least as great, and probably more so, in a full or predominantly elected House regardless of whether or not the members face a future election. There is also a risk with the use of the STV system—which grants

21 See A. Brazier & V. Ram (2006), *The Fiscal Maze: Parliament, Government and Public Money* (London: Hansard Society), pp.57-59.

22 The Wakeham Commission recommended approximately 550 members; the 2001 White Paper proposed 600 members; the Public Administration Select Committee suggested 350 in 2002; the cross-party group on House of Lords reform opted for 385; and the 2008 White Paper recommended 435.

great influence to the party managers in relation to candidate selection—that socialisation into party norms and expectations will be reinforced very early on.

The government's proposals assume that the size of the constituency, the use of the STV system, and the long non-renewable terms, coupled with the different role and function of the House of Lords, will prevent newly elected Peers coming into conflict with MPs at a constituency level. These will certainly be ameliorating factors but it should not be assumed that Peers will not face pressures from the general public to provide a local constituency-style service and from their party to do the same in order to support and supplement party campaigning activity. There has been an explosion in the amount of constituency casework being dealt with by MPs in recent years and what the public generally say they want from their elected representatives is a 'local' focus. There is a risk that Peers will find themselves to be the next stop on the constituency casework conveyor belt, as constituents who cannot find satisfaction with one representative move on to another until they have exhausted all avenues. Evidence from Scotland and Wales, for example, would suggest that regional list members face an equally demanding case-load as that of constituency members; constraints on constituent access associated with large constituencies are also now readily transcended by online access to representatives via email and social media.

Appointments

The inclusion of appointed members in a reformed House is predicated on the value associated with the assumed independent expertise of many members of the current House. There is no doubt that many cross-bench peers do make an important and valuable contribution. However, what is meant by expertise and what range of expertise is desired in a reformed House—and therefore should be sought by the Appointments Commission in the future—should be subject to careful consideration and perhaps definition. Expertise suggests a degree of in-depth knowledge and experience in a particular area. However, expertise has a sell-by date; if members do not refresh and renew their knowledge and skills their expertise will not necessarily be current and therefore relevant to the work of the House. Moving to full-time, 15-year terms may not allow members to sustain their level of expertise if they are unable to practise their profession. The expertise of current members also applies to distinct, often niche areas of knowledge and experience and is therefore applicable to certain pieces of legislation but not necessarily the full gamut of legislation being dealt with in the House. Finally, recent research on the professional backgrounds of the current members of the House of Lords suggests that the expertise in the House is still drawn from a quite narrow range of specialisms, dominated by those from representative politics, the law, academia, business and finance. Expertise is much more sparse in areas such as planning and surveying, engineering and architecture, primary and secondary education, local government administration, and science (outside higher education).[23] If expertise is valued such that 60 members are to be appointed on the basis of expertise, then more detailed consideration should be given to what is meant by expertise, in what areas, and how this is to be sustained by members over the period of a 15-year term.

The differing qualities required of MPs and Peers

The government claims that the role and function of the Upper House—as a scrutiny and revising Chamber—should 'attract individuals with different qualities from members of the House of Commons'.[24] On this basis, to prevent Peers using their seats in the House of Lords as a launch-pad for election to the House of Commons, the Bill contains provisions for a time restriction to disqualify Peers from being elected to the Commons for a specific period after they cease to be members of the Upper House. However, the government does not propose that a similar restriction should be imposed on MPs to prevent them standing for election to the House of Lords. If the qualities that are sought in Peers are different from those of MPs—as the government's own argument explicitly suggests—then such a restriction would surely be equally desirable. While surveys of public attitudes suggest that the public support a shift to an elected Chamber, they do not want it to replicate the House of Commons. They want elections to the Upper House but do not want to vote for the current political class. Given that the proposed electoral system places significant influence in the hands of party managers, (as they will be able to exercise control over the composition and ordering of candidates on the party lists), such a restriction might therefore be a valuable mechanism to ensure that the membership of the Upper House remains demonstrably different from that of the Commons. As increasingly hollowed out institutions with declining membership and activist bases, this will, of

23 See M. Russell & M. Benton (2010), *Analysis of existing data on the breadth of expertise and experience in the House of Lords: Report to the House of Lords Appointments Commission* (London: Constitution Unit, UCL).

24 HM Government (2011), *House of Lords Reform Draft Bill*, Cm 8077, p.28.

course, present huge challenges to the political parties. However, it might serve to force them to think more radically about how, and from where, they recruit candidates for the House of Lords, thus providing the necessary catalyst to force the parties to do more to broaden the nature of representation.

Ministers

The Bill as currently drafted would confer on the Prime Minister an unfettered power to appoint as many ministers to the House of Lords as he or she might wish. The provision that requires these ministers to leave the House upon ceasing to hold ministerial office will ensure that the numbers do not accumulate significantly but, dependent on their number at any one time, they could, in certain circumstances, upset the balance of power within the House. Gordon Brown, for example, appointed nine such Peers to be ministers during his administration, some of whom served for only short periods of time. At present, 22 ministers outside Cabinet are based in the Lords. Previous proposals have suggested that a cap be placed on the number of ministerial appointments that can be in existence at any one time but the government proposes only that these should be of 'a limited number'. This issue should be revisited to provide greater definition and clarity as to what constitutes 'a limited number', thus guarding against the possibility of future abuse. Additionally, given the potentially controversial nature of this provision and the lack of scrutiny generally accorded to delegated legislation, the detailed arrangements to implement this should be set out in the Bill itself.

Women in Parliament[25]

The UK trails in international league tables of women's political representation. The proposed STV electoral model does have greater potential than other voting systems to improve women's representation and diversity. However, evidence from other legislatures (for example, in the Scottish Parliament) demonstrates that this alone is not a guarantee of such improvements nor of their sustainability; additional positive action measures are also required.

Reform of the House of Lords offers a once in a generation opportunity to increase the presence and voice of women in the Upper House. As such, the Bill should be amended to require the political parties to ensure the selection of equal numbers of women and men as candidates for election to the new Upper House and the Appointments Commission should be statutorily required to appoint equal numbers of women and men in the event that a hybrid House is agreed. Consideration should also be given to the effect that the right of ministerial appointment and the allocation of 12 ex-officio seats for Church of England Bishops—currently reserved seats for men—will have on equality and diversity of representation in a reformed Chamber.

Are the public interested in reform of the House of Lords?

If the Bill passes, a substantial public education campaign will be needed to inform voters about the role and function of the House of Lords and the process of election (and/or appointment) to it in the future. The Hansard Society's annual *Audit of Political Engagement* demonstrates that public knowledge about and interest in the issue of Lords reform is low. In 2010 only 14% of the public said they had discussed reform of the House of Lords with family or friends in the last year or so; it was eighth on a list of constitutional and political reform issues discussed, behind, for example, the EU, party funding, devolution and the electoral system. Twelve per cent of the public said they thought the House of Lords was elected and 14% said they didn't know.[26] Similarly, in the 2008 *Audit*, only 26% claimed to know 'a great deal' or 'a fair amount' about the issue of Lords reform. Thirty-six per cent said they were dissatisfied with how members of the House of Lords were chosen, 13% said they didn't know how they were chosen and 33% were ambivalent about the issue (neither satisfied nor dissatisfied). But only 16% said it was one of their top two or three priorities for constitutional change; much greater priority was accorded to reform of the Human Rights Act, party funding, membership of the EU, and the right of Scottish MPs to vote on English issues in the House of Commons.[27]

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25 The Hansard Society is a founding member of the new Counting Women In (CWI) coalition of democracy and women's organisations campaigning to improve the representation of women in British politics and public life. Other founding members are the Centre for Women and Democracy, the Electoral Reform Society, the Fawcett Society and Unlock Democracy. CWI has submitted evidence to the Joint Committee separately; our recommendations here reiterate those of the CWI coalition.

26 Hansard Society (2010), *Audit of Political Engagement 7: The 2010 Report* (London: Hansard Society).

27 Hansard Society (2008), *Audit of Political Engagement 5: The 2008 Report* (London: Hansard Society).

Additional reforms needed

There is a risk that in the debate about the long-term future of the House of Lords the opportunity to deliver tangible and important reforms prior to 2015 may be lost. There is much scope for improvements to the current size, composition and procedures of the House and these should not be forgotten. The core proposals contained in Lord Steel's Private Members' Bill, and the reports of the Leader's Groups on Members Leaving the House and on Working Practices should be implemented as soon as practicably possible. The latter in particular will provide for important changes in the way in which the House functions, enhancing its ability to carry out its legislative scrutiny function. The fact that the composition of the House may change significantly after 2015 should not be used as an excuse to allow the House to remain unreformed in the interim.

5 October 2011

Christopher Hartigan

Introduction

1. I am a member of the public with an interest in constitutional matters and Lords Reform in particular. I hope that my views will be considered by the committee and be found useful.

Representation of the people

2. In a modern democracy it is important that those who make the laws of the land should be the best people for the job. The principle that those who exercise power over our lives must be directly elected, some say, is a good principle. However I think such things should be taken case by case. Elected Mayor, Judges, police commissioners and now elected peers! Ministers of the Crown are not directly elected to exercise power but can still claim legitimacy and peers can also have that status without being directly elected.

3. The House of Lords performs its work well because of its makeup and independence but the government says it lacks sufficient elective democratic authority. The House of Lords and its existing members have served the country with distinction. Reform of the House of Lords has been on the agenda for more than 100 years it is said. But, considerable progress has been made in that time and nothing better has been found to replace it which remains true. The Government should be committed to cooperating with progress on these issues so that the House of Lords may be strengthened and may better serve and reflect the wider nation as a whole.

Elected/Appointed Peers / Patronage

4. I have watched with interest recent debates in the Lords on the purpose and reform of the House of Lords and it became clear that direct elections would destroy the foundations and valued functions of the House and that there was nothing better being proposed that could effectively take over its functions. An elected Senate is a very different institution and would probably need its function to be codified, a task which many believe would be almost impossible. Evolutionary reform allows the house and its functioning to continue to work. An elected house would cost many millions of pounds and would not produce the quality of service we receive from our present arrangements. I and many other people believe that an elected or partially elected House of Lords is not the best way to serve the British people or our Constitution.

5. Appointed peers allow a degree of party representation and a working availability together with a treasure of expertise and experience to be at the service of the nation. Threat of appointment of peers was used to force the 1911 Parliament act through. Today the government is appointing large numbers of peers under the name of rebalancing party numbers making the house more party centred. Such numbers are exacerbating the need for reform and it is more likely to cause the capsize rather than the rebalancing of the house. Patronage is seen by many as the executive influencing the legislature. It is already a part of the systems we have to live with. A person who even stands for election is subject to it. It is a concern in an appointed House. Most of it is clear and above board. The situation may be improved and safeguarded by such measures as Lord Steele's much needed proposal for the creation of a statutory appointments commission.

Complementing the House of Commons

6. The House of Lords works and makes an essential contribution to our way of life. Continuity and change are the hallmarks of the successful elements of the British Constitution.

7. The House of Commons is rightly the primary chamber because it is directly elected. The Queens ministers in a Government are not elected but are legitimate when supported numerically by the elected House Commons. This Might Change if there were two elected houses. Others hold power and are legitimate by appointment by proper authority like judges and peers etc. To increase peers legitimacy without challenging the primary authority it is necessary only to make them better reflect the will of the people expressed at the general election. Peers and MPs have differing functions and should complement each other not be in conflict. The House of Lords works well and should be enhanced not be abolished in favour untried and unbalancing theories. I do not believe that an elected or partially elected House of Lords is in the best interests of our British Constitution or the British people. It is also clear that this is the view of 80% (approx} of members of that house.

Effects of Draft Lords Reform Bill

8. This, in reality, is a draft bill for abolition of the House of Lords and its replacement by a Senate and this does not reflect the will of either House or the people and will only happen by party whipping and the use of the Parliament act of 1911. Is this really how the mother of parliaments should act? Major reform has not been successful in the past because it may well destroy the effectiveness of the House of Lords and make it a party political house subject the pressures that are already on the members of the Commons. The 'Possible Implications of House of Lords Reform' were accurately set out in Lords Library Note of 25th June 2010.

9. The draft bill will change the House of Lords from a place where it was desired that no one party will have a majority to one that is dominated by party politics as is the commons and where whips hold sway. Directly elected Senators would rightly claim direct representation from the people and rightly demand proportionate power. They might well be elected upon a manifesto the same as the commons, if so how can they freely scrutinise and revise what they have been elected on. If not their mandate puts them in legitimate opposition to commons members in overlapping constituencies. This is a recipe for conflict or subservience. Senators would have constituents to represent. (to whom they will not accountable by the ballot box) This put them in conflict with MP's who also represent them and are accountable. It might be argued that this conflict has not happened with MEP's but who know who they are or what they do! Constituencies for Senators are merely a convenience to elect individuals using PR and has no other real practical value but has many drawbacks.

Who would Senators be

10. Who would new Senators be? It is thought second rate professional politicians, possibly with ambitions to go to the commons or wanting to make a name for themselves but very different from current peers. Most current peers are ideal for their scrutiny and revising role, even those who were professional politicians before already have a track record of valued public service. These are not people who are seeking career opportunities or people who can be manipulated by the powers that be but those with wisdom and experience that are already highly valued. Very few would want to start a new career as a, 'greasy pole', Senator. These people would be lost to the nation and our constitution badly damaged.

Accountability

11. One of the reasons put forward for having an elected house is accountability. With a single fifteen year term they will never face the electorate again. Senators would not be accountable at all except perhaps to the much more powerful whips and the various enticements they use to get there business through in an increasingly party focused house. Were electoral terms to be changed there remains the problem of how they would remain independent of party electoral influences and how they could be really be accountable to the people in such enormous constituencies etc.

Why a Draft Lords Reform Bill

12. There are those in the past who on principal wanted to see the Lords Abolished like Michael Foot and those who didn't want any change like Enoch Powel who together talked out reform in the commons in the 1970's and as in the past, have prevented radical reform. However this draft bill is the product of political expedience by those with a, reform for reform sake, agenda and have a desperate PR political agenda too. These proposals will not improve, in fact it, will worsen the quality of law making in our parliament. These reforms are also said to be a part of the 'clean

up politics' agenda, but are, in fact, a desperate attempt to be seen to be doing something, a blatant attempt to find grounds for actions that are groundless. One would probably not invent what we have but it is ours and it has evolved to fit us and can continue to do. Why would we want to change it for a nice sounding, ill fitting, political 'spirit of the age' proposal that will destroy our constitutional heritage of checks and balances and can not work in the way that has been fruitful for us.

No Call for Lords Reform

13. This Draft bill, in this form, will not pass without using the Parliament Act 1911 and to use it would be supreme folly. I fear that the Salisbury Convention would not hold either.

14. However very valuable evolutionary change has already take place. Today there is no real clamour for Lords reform. In past decades the lords has become quite popular because of its stance of individual freedom and its wisdom in rejecting knee jerk reactions, political dogma and expedience. It is esteemed and thought to do a good job by parliamentarians and the people. The government are afraid even to let the lords own self reform bill pass, the Steele bill, as the fig leaf of their reforms demand would probably blow away.

Manifestos

15. The fact that elections were mentioned in the three manifestoes does not mean it is the settled view of a party, it is not, or the majority of members of a party agree with it or that the electorate want it either. It can be said that the fact that it was in three manifestos makes it clear that the people had no choice. It should also be remembered all three parties LOST the election. The Conservative proposal being the weakest of the three. There is no valid argument for an elected House of Lord from the manifestoes. If the government believe this is the will of the people then it should proceed on a free vote of their representatives or hold a constitutional referendum before such important changes are made.

Steel Bill

16. A majority of Lords recognise that there does need to be evolutionary reform even though they may each have a varying view of what might be done. The House of Lords has also tried to implement reforms itself as in the instance of Lord Steele bill, currently before the house, but government has not fully cooperated as might have been expected

17. The motion passed by the House of Lords in June 2010 should proceed full reform or at least be integrated into it: The motion that the House to approve or disapprove-

(a) a scheme to enable Members of the House to retire,

(b) the abolition of by-elections for hereditary Peers,

(c) the removal of Members convicted of serious criminal offices, and

(d) the creation of a statutory appointments commission.

Aim of Draft Bill

18. What is it that the Government draft bill seeks to achieve; continued stable conventions and working relationship between both houses? An electoral legitimate relationship that has proportional relationship with electors, a smaller house, a younger membership and possibly the retention of the wisdom and knowledge for which the house is rightly renowned. Lastly a house that works at least as well as the present one. This draft bill, as it stands, is not a vehicle that can deliver this and it needs fundamental revision of its first principle if it is to deliver any of these aims.

19. Below is my own view of what needs to be in the bill for a revitalised ongoing House of Lords that delivers most of the outcomes desired by the government. It does genuinely keep the relationship with commons unchanged. It gives voting power to 300 existing peers, The concept of voting and non voting peers is not new it was passed by the House of Lords in the seventies with regard to hereditary peers though opposed from the commons famously by the combined efforts of Michael Foot and Enoch Powel. This proposal allows all others life peers to remain and influence by speaking thus crossbencher expertise would remain unaltered. It uses the votes cast at ongoing General Elections for the Commons to be translated into a proportionally representative House of Lords reflecting all registered voters nationwide. This does not challenge or alter the relationship with the directly elected commons. With crossbench

representation, it should fulfil the desire that no one party will dominate the House of Lords. It does not interfere in the relationship of MP's to their constituents. It increases the constitutional principle on the 'Separation of Powers'. It modernise the chamber placing electoral legislative power in a smaller representative body of relatively younger life peers. It produces a voting body made up exclusively of Legislators while maintaining its lack of party pressures in the house. It maintains the existing working relationship between the two chambers and even reduce the overall cost of the second chamber.

20. This genuinely enhances electoral legitimacy that the government say the house must have. Such a proposal taken as a whole can deliver most of what the government wants without destroying our constitutional checks and balances. I believe it is a better way forward as it gives the government almost all that it wants and stands a better chance of forming the consensus than the existing proposal. But the government can't have it and direct elections too they are incompatible as are the draft bills aims with direct elections.

Summary of the proposals

Name
21. No change

Size
22. A reformed House of Lords should have 300 (400 might work better) voting members—The draft Bill allows for remaining non voting life peers as well as 12 Bishops and Government Ministers sitting as (speaking only/and possibly time only) members. The remaining hereditary peers will no longer sit in the House or be speaking only if the Steele formula is followed.

Functions
23. The reformed House of Lords would have the same functions as the current House. It would continue to scrutinise and revise legislation, hold the Government to account and conduct investigations.

Powers
24. No change to the constitutional powers and privileges of the House once it is reformed,

25. Nor to the fundamental relationship with the House of Commons, which would remain the primary House of Parliament. That primacy rests partly in the Parliament Acts and in the financial privilege of the House of Commons.

Electoral system
26. The 300 voting members of the house shall be selected from existing members who are Life Peers, under the retiring age for voting peers and are not ministers of the Crown or bishops or be hereditary peers. Each party or group may submit a list of candidates for election in order of preference. Once selected a member may not be removed from the list or the position on it except by change of proportion of peers through a general election, voluntary resignation, reaching the retirement age, becoming a minister of the crown, failure to carry out duties by censure of the whole House. Should these events happen the next peer on the appropriate list should take their place by party or group?

Separation of Powers
27. It is important to be able to bring people into office by membership of the House of Lords while in Government and for the house to be able to hold the government to account. However the separation of powers is a desirable principle for a sound constitution and therefore government ministers should not be voting members and may be time in office members only if not already a peer. The Law Lords (Supreme Court Judges) should have right to speak in the House while in office but should be none voting only.

Proportional Elections
28. Elections will take place through the General Elections to the House of Commons. It will use the total number of votes cast for all members of the House of Commons nationwide. The votes shall be proportionally distributed among the parties and groups. The resultant proportion shall determine the number of voting peers from each list of eligible peers. The resulting number of peers will reflect the registered voters who voted as a proportion of all register to vote. The resulting distribution of votes will give the number of peers elected representing the proportion of voters according to party or group who voted.

29. The number of registered voters who voted shall then be subtracted from the number registered of all voters and the resulting number shall determine the proportion of voting Crossbench Peers and bring the number of voting peers to 300. Crossbencher peers would represent those registered to vote but did not vote thus completing the proportional picture.

30. This electoral process will give a reflection of the whole nation and reflect the political party strengths in the General Election and allow continuing proportional representation at each subsequent General Election. It will also be a safeguard that no single party shall have a majority in the House of Lords.

Retirement
31. An age limit might be set for voting peers to allow for younger peers to reflect better a modern outlook. All other non voting peers might follow the recently past House of Lords motion upon retirement.

Church of England Bishops
32. There would be up to 12 non voting places for representative bishops of the Church of England.

33. And 12 mixed religious leaders of all faiths according UK population if a formula can be found that satisfies those groups.

Salary and Allowances
34. 300 (full time) voting peers) would receive a bounty and allowances. Members would also be entitled to receive a pension and the pension fund would be administered by the Independent Parliamentary Standards Authority (IPSA).

35. All other peers would receive expenses as at present but will no longer be eligible upon reaching the age when a voting peer must retire, except in exceptional circumstances or due to special responsibilities.

Tax status
36. Members of the House of Lords would continue to be deemed resident, ordinarily resident and domiciled (ROD) for tax purposes.

Disqualification
37. Members of the reformed House of Lords would be subject to a disqualification regime modelled on that in the House of Commons.

Sovereign
38. I would want to make one further point which is that 'The Queen in Parliament' must not be undermined in any way as this is at the heart of our constitution. The rights and traditions of the Sovereign in the House of Lords are to be respected.

Conclusion
39. It is my hope that the Joint committee will make wide ranging proposals that are in the best interest of the nation. The government may well insist upon the democratic facade without true regard for the best interests of the people. May I suggest that at least two proposals be made by the join committee based upon direct and indirect elections and the people be allowed to choose between them by referendum? That is building in a truly democratic choice. This is an important Constitutional matter, unlike FPP V AV; It is a proper use of referendum. The pressure of government whips should have no part in our constitutional formation. If a bill is to be introduced it must also proceed on a free vote in both houses and not subject to the balance of power of the day. It must be a work of Parliament not Government.

40. The current Draft Lords Reform Bill proposals would be a revolution tantamount to abolition in favour of new constitutional arrangements, nothing less, despite transitional arrangements, while the British way is evolution. Reform must not be driven by knee jerk reactions, political expedience or dogmatic despotism if the purpose and functions of the House of Lords are to work for the good of the people in the future. I hope that all members of Parliament of both Houses will not allow the executive to force its will upon them to the detriment of the Mother of Parliaments and the British people.

8 August 2011

Imran Hayat

First of all I would like to thank the Joint Committee in giving me the opportunity to provide evidence with regards to House of Lords reform. Although there will be many who will provide detailed proposals and evidence on how the reformed chamber should be structured as well as its composition, whether it should be fully elected or partially elected, my main focus to which I hope to draw the committee's attention to is the future of the Church of England Bishops in a reformed second chamber.

If the chamber were fully elected, the future of the Bishops would be very straight forward, that is to say they would lose their automatic right to sit in the reformed chamber as Lord's Spiritual and the privileges associated with it. If there were to remain an unelected element in the reformed chamber , then that would be a totally different ball game as there would be conflicting views on who should be entitled to sit in the chamber as unelected peers or *life senators*. The biggest confusion of all would be the future of the Church of England Bishops and the need for a Lord's Spiritual in a democratic institution that is supposed to represent the people of the United Kingdom as a whole and favour all races and faiths (including non-faith) not just one particular group or sect .

In the first instance one might suggest that a fully elected secular chamber with senators belonging to different ethnicities and faiths would easily solve the problem. Senators would not be representing any faith or group but would be representing their respective electoral regions though they would be free to practice their own faith or belief.

Unfortunately the present parliament is in turmoil over reform and there are many who oppose any change at all and try their best to delay and block any proposals through filibustering and other time wasting tactics. The three main parties do not have a clear position on Lord's reform especially when asked about the future of the bishops. Without any official policy from all parties, MP's and peers are free to do as they please and hence the turmoil and trench digging. In the last two years I have campaigned for the removal of the automatic right of bishops to sit in the chamber by virtue of their position and have challenged the leaders of the main parties about their views and that if the bishops continue to sit in a reformed chamber then other faiths should be allowed to sit in the chamber too by virtue if their position.

The main parties gave mixed responses to my proposals. The previous government's answer was unclear and misleading that although they believed in a fully elected chamber, should there be a partially elected chamber, then the Church of England bishops would have a right to sit in the House but as far as other faiths were concerned they had only consulted about it in the past and were not clear if they should include them. Lord Strathclyde replied to me personally on David Cameron's behalf and supported equal faith representation and mentioned at the same time that faith representation is important in parliament and about the Church of England's role through out parliaments history.

I wrote to him again in January last year (at the time very pleased and hopeful), asking him to reassure me that he would do his utmost in passing legislation or proposing clearer reforms that would include equal faith representation in the House of Lords. Sadly he did not reply and I felt a little bit disappointed as I was looking for real action and reassurance rather than mere sweet words as this issue was of great importance and a necessity for true democracy. One of David Cameron's representatives eventually wrote back to me and said that they were more concerned with the deficit right now rather than House of Lords reform (so much for change and fair reforms!). The Liberal Democrats replied by saying that they were committed to a fully elected chamber. However when my MP, Sheila Gilmore wrote to the Deputy Prime minister, his views as well as his party's had changed since the general election. He wrote personally to her stating that the government would retain a reduced number of bishops and that he acknowledged that there would be no reserved places for other faiths simply because the royal commission (2000) reported that other faiths and sects do not possess a hierarchal structure and that it would be difficult to determine who actually represents those faith communities. He also mentioned using the royal commission as a reference that if every faith or sect were to be represented then there would be a disproportionate number of peers representing faiths in parliament. He failed to mention however that the royal commission did support equal faith representation in parliament and suggested that parliament should find ways of overcoming the above obstacles. Having an appointments commission to determine and decide who actually represents the other faiths communities would be a good start. My MP also wrote to him my suggestion of temporarily removing the bishops from the Lord's until a

final decision can be made about their future. The Deputy Prime Minister did not reply to this proposal. (I have not attached copies of my letters and responses from the above parties including Nick Clegg's and Lord Strathclyde's letter as these were private correspondence and I was not sure it was appropriate to provide to the committee).

It is clear that from the above we can deduce that none of the main parties are seriously interested in real democratic and constitutional change and that once again the rights of minorities are pushed aside. I believe that a fully elected chamber would have prevented such discrimination and that if the bishops are allowed to remain at the expense of other faiths and humanists then clearly in the eyes of many the government as well as parliament as a whole has failed as an institution and as a way to export true democracy abroad. I believe that the very concept of state religions is unconstitutional and discriminating. I believe a reformed second chamber is one of many constitutional changes that need to occur in order for Britain to truly consider itself as a democratic and free country. The monarch is still the Supreme Governor of the Church of England which binds the monarch to the Anglican faith and incorporates the Church's position and role within the constitution. The monarch should represent all faiths and peoples and be permitted to choose any faith and marry anyone rather than someone from a particular sect. It is quite clear that the Human rights act and the European convention of Human rights does not extend to our own monarch and I am surprised amnesty international has not raised this with the government!

I would like to conclude that a fully elected second chamber where senators (about 300) sit in a *House of Senators* that represent electoral regions would be the ideal option for reforming the second chamber. The House of Lord's is a dated term for an archaic system of governance. However if there were to be an unelected element in the second chamber and if the bishops were to remain in the second chamber then there should be equal faith representation. I believe that life peers who are permitted to remain in the House after 2015 (after the first transition phase) should be known as life senators to distinguish them from elected senators who would simply be known as senators. The title 'Lord', Baron and Baroness should no longer carry any constitutional significance after that date. I hope the committee takes my views into consideration and that any real change should be one that promotes fairness and not appeasement as is the case with some parties.

12 October 2011

Professor Robert Hazell and Joshua Payne

Lessons from European Parliament elections about open and closed lists and STV

This note has been compiled by Joshua Payne, graduate of Essex University, with help from 30 academic experts across Europe. We are very grateful for their help

Background
As part of their plans for reform of the House of Lords, the coalition government are considering proposals on the electoral system for an elected second chamber (Cabinet Office 2011: 13-16). The principal choice lies within list systems of PR, including STV, open lists and closed lists. There is academic literature about the theoretical differences between these systems, but rather less about how they operate in practice. One of the best forums for studying how the different kinds of list systems work in practice is the European Parliament, which provides a wide range of different experience.

The EU stipulates that countries must use proportional representation, but there is immense variation within the broad category. Some countries (like Great Britain) use closed lists, in which voters can vote only for a party, not individual candidates. Some use open lists, allowing voters to choose between individual candidates. STV is a particularly open type of open list. Some countries use semi-open lists, restricting voters' individual preferences in different ways.

This note covers several aspects of how the electoral systems for MEPs work. The most important is how countries count individual and party votes; but it also covers gender balance, and by-elections. We make several arguments. First, political culture is the strongest determinant of how much voters utilise preferential voting, instead of simply voting for a party list. Second, the benefits of STV may be exaggerated. Third, division of the country into regions for voting by regional lists needs special care.

The note makes frequent reference to 'preferential voting', a feature of open list systems. A preferential vote allows an elector to choose between individual candidates of the same party, or to change the rank order in which they are

listed on the ballot paper. Voters can mark their preference in different ways, circling the names, marking them, or writing in the candidates' electoral numbers.

Closed lists

Closed list systems are those where the parties put forward a list of candidates in their own rank order, and where voters are unable to express any individual preferences. Given that voters can only choose a party, the voting procedure can be simple. Closed lists are used in France, Germany, Great Britain, Greece, Hungary, Portugal, Spain, and Romania (Estonia switched from open to closed lists for the 2009 election, but there are now moves to switch back. Finland has also seen demands for a switch from open to closed lists). The member states with closed lists elect just over half of the 736 MEPs. A candidate must appear high up in the party's ranking to obtain a seat. Just how high will depend upon the party system, i.e., the pattern of party competition and one party's chances of success relative to another.

Structuring choices

Even where preferential voting is possible, it is standard practice for voters also to have the choice of endorsing a party's list as a whole. Only in Finland are voters constrained by having a preference vote for a candidate and no other option. Studies have considered, as a central question, how often the preferential vote option is used (Seyd 1998: 4-6). This is affected by two other things: whether parties can present their candidates in rank order on the ballot paper; and whether there is a threshold. In most countries parties use their own rank order; but in Finland, Luxembourg and Cyprus names appear in alphabetical order. Likewise, the STV countries—Malta and Ireland—stipulate unprompted, alphabetical ordering.

Finland, Luxembourg, Italy, Latvia and Cyprus are at one end of the spectrum of open list systems, in that preference votes are fundamental to the count, but in all cases except the Finnish it is still possible just to select a list. In these five countries, those candidates who receive the most preference votes become MEPs. Each vote for an individual candidate becomes slightly more influential, in the contest between candidates of the same party, when more voters decide to back an entire list instead.

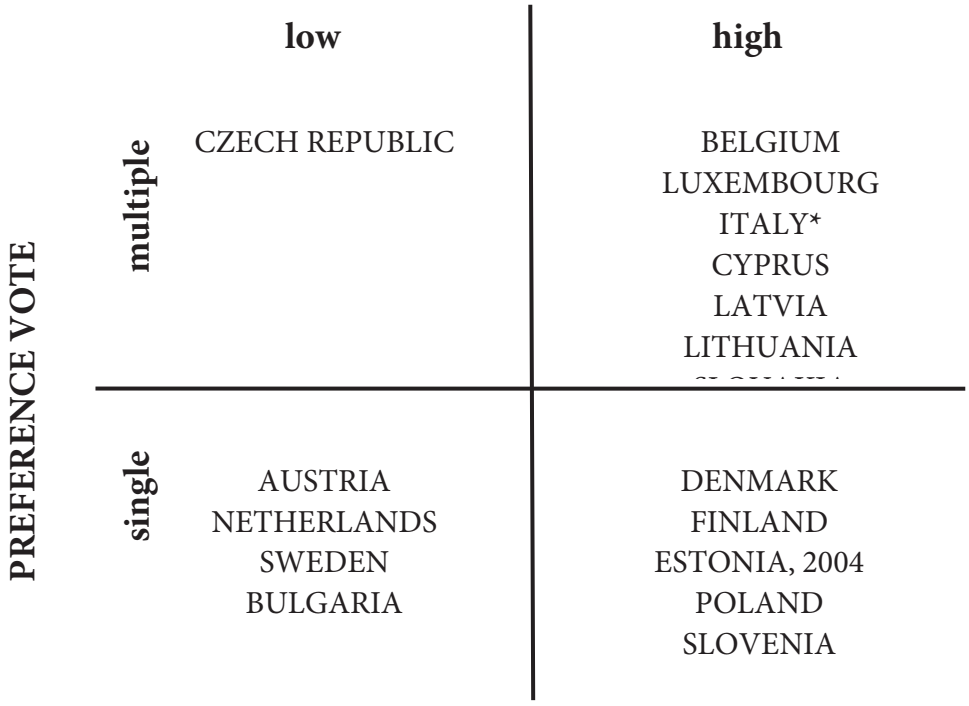
In other countries, preference votes are less powerful. One reason for this is a different counting method, which involves a threshold. A threshold for preference votes applies in the Netherlands, Belgium, Denmark, Sweden and Austria. For example, to achieve election as an MEP an Austrian candidate must obtain no fewer than 7% of the votes for their list. This use of restrictive rules is one factor which influences voters' ability to change the parties' rank order.

Overall, in Western and Northern Europe, it is uncommon for candidates to win a seat owing to preference votes upsetting the parties' rank order. In Austria, this applied to only one candidate in the two last European Parliament elections; in Sweden, to two candidates in 2009; and in the Netherlands, to three candidates in 2009. The Italian experience is more mixed, partly because there is no threshold for preference votes. The Danish system has a more restrictive threshold, yet Denmark also defies the overall pattern since it is more common here for voters to achieve a change of order. Political culture and socialisation play a strong role in determining how effectively voters can and will use preference votes.

Open lists

The majority of the EU member states use the open list system. They are more numerous than the closed list countries but smaller in size. Figure 1 below classifies them along two key dimensions. Voters can have a single preference vote, or more than one. The second dimension—'impact'—is a measure of how much electors can, as discussed above, disrupt a party's rank order (or express a meaningful choice where the order is alphabetical).

FIGURE 1: TYPOLOGY OF OPEN LIST SYSTEMS



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In Italy a voter can have 1, 2 or 3 preference votes, depending on the region they live in.

Previous studies have argued that open lists generally make little difference. Voters can still vote for a list as a whole, and previous studies have shown that many voters do (Seyd 1998: 4-6). But Seyd was only able to consider Western Europe. 2004 saw the entry of the Eastern European countries into the EU, and in these countries voters are considerably more likely to use preference votes. For example, in Poland, the second best position for a candidate to be is last on the list, rather than second. A large number of voters deliberately select the candidate least favoured by their party.

The experience of other East European states has been similar. In 2009 the Slovakian electorate made considerable use of its ability to disrupt the parties' order of candidates, "declassifying" candidates at the top of the list and moving up many of those in the lower positions (Henderson 2009: 10; Macháček 2009: 65). It is not safe to conclude that preferential votes are not worth giving to electorates because they might not use them. There is a big difference in the extent of their use between Western and Eastern Europe. Sometimes preferential votes are inconsequential as voters give them to candidates at the top of parties' rank order. This suggests that variations in political culture explain the differences -'culture' affects how much voters in a country trust parties' own decisions about their figureheads.

The Single Transferable Vote (STV)

European Parliament elections do not provide extensive evidence on the use of STV. There are only three cases to examine: Malta, the Irish Republic and Northern Ireland. Together, these countries elect only 20 out of the 736 MEPs. Under STV, voters indicate their favour for candidates by numbering them 1, 2, 3 etc. in order of preference. They can number all their preferences for candidates of the same party (very common in Malta), or split their numbering between individuals with different affiliations (more common in Ireland). One important issue is the number of candidates each party offers relative to the number of seats the party is contesting. In Ireland parties always put forward fewer candidates than there are seats available—usually one and occasionally two names, for three-member constituencies. In Malta, the two main parties each put forward roughly double the number of candidates relative to seats.

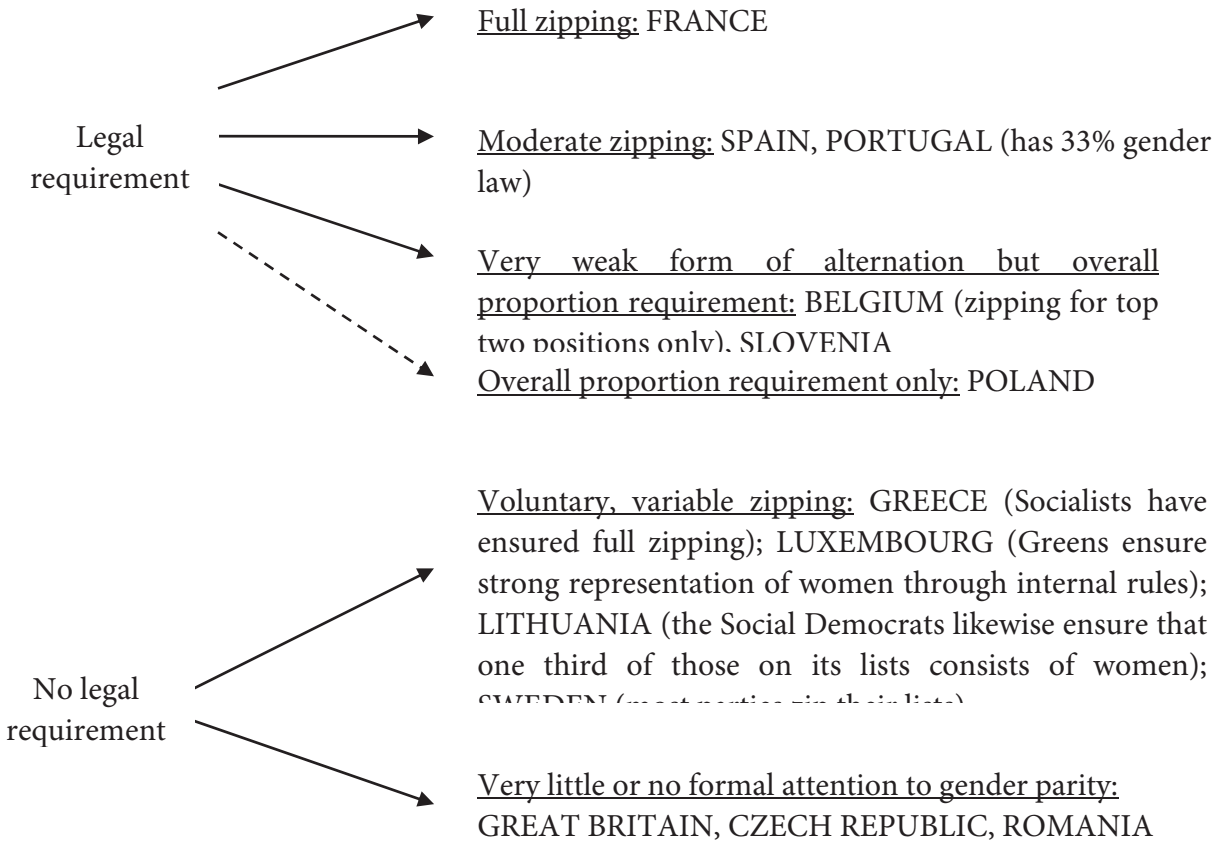
The Coalition government's draft legislation refers to STV and its operation at several points. Elections for a second chamber of 240 members will occur in rounds, with election in thirds, and division of the UK into 12 regions (Cabinet Office 2011: 15). The regions will not contain the same number of seats, but the average—80 divided by 12—is about 6.5 For European Parliament elections in the UK, which also use 12 regions, the average size of a region

is six seats (the smallest region has three seats and the largest has 10). In contrast, the Irish Republic divides itself into four regions, with three MEPs for each; Malta has five MEPs in a single national constituency, and Northern Ireland three. Large regions with more than three to five seats could lead to very long ballot papers, and lengthy counting procedures: especially if parties were to put forward double the number of candidates relative to seats. This could happen for two reasons. First, parties often compete with each other to provide the same breadth of choice of candidates to voters. Second, STV is based on votes transferring between candidates in rounds. As Malta's election results show when examined closely, the provision of a very wide range of candidates can be desirable for a party under STV, as long as there is infrequent 'split ticket' voting. Long lists of candidates would include 'sweeper' candidates whose real purpose would be to direct lower preferences to a party's key players.

'Zipping': ensuring equal representation of the genders?

The electoral data from the 2004 and 2009 European Parliament elections show that STV is unlikely to produce gender balance. In this respect, party list systems may be preferable. The list structure provides the possibility of alternating male and female candidates in a party's sequence ('zipping'). The data show that pure forms of zipping are rare, but that there are many gradations to ensure balanced representation: see Figure 2. Most countries do not impose stringent rules. The French have legislation to ensure a strict alternation of male and female candidates, but parties can choose whether the head of a list is male or female. Sometimes the parties make their own rules (as in Sweden for instance) and sometimes legislation imposes requirements about the overall proportion of women, independently from requirements about alternation.

FIGURE 2: GRADATIONS OF GENDER BALANCE ON LISTS



By-election arrangements

It is uncommon for countries to make provision for by-elections if an MEP no longer takes up a seat. The administration for by-elections is expensive, especially when they have to cover large geographical areas. The usual practice is for the candidate who has the next place on the list to take up the seat. Sometimes party lists have to include a number of substitutes. In Malta there is provision for a contest, but this involves redistribution of the votes for the candidate no longer in the Parliament. The most common practice is to utilise data from the previous election rather than initiate a new contest.

Number of regions, and length of party lists

Parties' willingness to put forward more candidates than there are seats is not only a feature of STV, but can also happen with open lists. For instance, in Lithuania, with 13 seats for MEPs, the legal rules stipulate that parties can put forward a maximum of double that number of candidates. All the parties competing in Lithuania seem to do this (Lithuanian Central Electoral Commission 2004). Once one party puts forward more candidates, other parties tend to follow suit, to keep up their image.

This links to regionalisation and the number of regional constituencies (see below). The government's proposals involve constituencies for STV which are probably too large, especially if parties were to offer more candidates than there are seats. One alternative would be more and smaller regions, with a slightly less proportional system. Smaller regions would retain the key strength of STV, which is the ability to make all votes count towards the election of a winning candidate. Another solution would be to limit the length of party lists.

Conversion formulae of votes into seats

Electoral systems use formulae which convert percentage vote shares into seats for each party. Such formulae are simply mathematical functions which convert one set of numbers into another. The D'Hondt formula, which divides the number of votes for each party by a series of divisors in rounds, is much the most common for European Parliament elections. Latvia and Sweden use the Sainte-Laguë method, whose basic concept is the same as for D'Hondt. The choice of the formula does not appear to interact with preferential voting. The majority of countries use D'Hondt, and this is irrespective of whether they are Western, Northern or Eastern European, or how much choice they give to voters.

Italy, Greece, Lithuania, Slovakia and Cyprus use the highest remainder method. They do not differ much from countries using divisor methods in terms of proportionality. But individual votes become more valuable in the final rounds of allocation, when small parties can compete convincingly with the 'remainder' piles of votes for larger parties, making it easier for 'minor' parties to gain seats.

Regions

The requirement for parties to win a strong vote share specifically within a region is unusual. This occurs only in Great Britain and France. In most cases entire nations form single constituency units. Spain is a single constituency for electing its 50 MEPs, as are countries such as Sweden and Finland. In Italy and Poland, there is division into regions for the purposes of fielding candidates and for counting preferential votes, but *party* success depends on the sum of votes across all the regions. In France, the government created eight regions as part of a plan to engage voters, but this has done nothing to arrest falling turnout. The electorate did not identify with the regional units.

Conclusion

The evidence shows in general that, under list PR with rank ordering in Western European countries, voters rarely succeed in altering the parties' rank order. Any preference voting needs good political knowledge about individual candidates, so many voters won't use this option. The UK is more likely to follow the Western European pattern. But differences in political attitudes and methods of counting votes can make it difficult to predict how much impact preference voting might have.

Too much consideration may have been given to STV. The advantages are not as clear as many people assume, and STV merges into open lists. The government's proposed constituencies would be too large for STV, especially if the parties were to offer more candidates than there are seats. A possible alternative could be the 'cumulative vote' system of list PR available in Luxembourg, where voters can give two votes to a candidate whom they particularly favour, and can also vote across party lines. A design where some preference votes have double the value of others could interest the electorate and aid contenders whom party hierarchies don't favour. But as with the wider debates about STV, a system which potentially favours party outsiders and independents is unlikely to find favour with the parties themselves.

1 February 2012

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Lord Higgins

The fundamental argument made in favour of an elected House of Lords is that it would make our political system "More democratic." This is implied falsely. Our system is already 100% democratic. That democracy rests in an elected House of Commons. Having the House of Lords elected would not increase democracy in the UK one iota.

What it would do is divide the democratic mandate between the two Houses and if, as the bill suggests, the second chamber were elected on the basis of PR the second chamber would (Mr Clegg appears to believe) have a firmer basis than the Commons.

Apart from the false "democratic" argument it is difficult to think of any advantage an elected second chamber would have over a House of Lords reformed on the basis of the "Steel" Bill.

SO, the first simple, time saving and economic recommendation the Joint Committee should make is that the Draft Bill should be dropped forthwith and the Government should take over the "Steel Bill" instead

It has however been asserted by some supporters of the draft bill that a change to an elected House of Lords is already the "settled view" of Parliament. This overlooks the fact that Mr Straw in advance of the vote in the House of Commons stated it would be an "indicative vote". lt was only after the vote it was said to be other than that.

Secondly, the votes themselves suggested that a majority of Conservative Members in the House of Commons did not agree with the Official Conservative policy and a majority of Labour Members did not agree with the official Labour policy. Disagreement between the respective front benches and back benches has been a feature of all debates. Despite protest, membership of the cross party committee referred to in the Foreword to the Draft Bill did not include any back bench members.

In considering the future of the draft Bill the Joint Committee will need to examine the extent to which it reflects discussion and agreement between the front and backbench members of the various political parties in both the Commons and Lords.

Finally the Joint committee will surely need to take into account the fact the composition of the House of Commons has changed substantially since a vote on House of Lords reform was taken. The present House of Commons has no "settled view" on the subject. But recent discussion on the Draft Bill suggests that the number against it has increased and is increasing.

The Joint committee will appreciate that while it is difficult to think of any arguments (other than the false democratic one) in favour of the draft bill there are many against it.

The Bill proposes there should be no change in the Powers of the proposed elected House of Lords or its relationship with the House of Commons. This is completely in conflict with the unanimous recommendations of the "Cunningham" Report on the Conventions between the two Houses (on which I served), That Report made it clear that the powers and other conventions would have to be adjusted if the House of Lords were elected. Regardless of this the Draft Bill proposes we go ahead and change the composition of the Lords before, consideration of the second chamber's powers and purposes. This is surely the wrong way round. The question of Powers needs to be dealt with before we legislate on composition.

The Joint Committee will be aware of the many other arguments against the Draft Bill including the loss of expertise and experience in the second chamber, the loss of Members' independence and the increased power of the whips, the increased cost to the taxpayer, even though the proposed size of the second chamber would be too small for it to fulfil

its role as a specialist revising chamber. Conflict between members of the two Houses in their constituencies and the danger of conflict and gridlock between the two Houses,

None of this is to say that the House of Lords does not need reform. On the contrary, the need for reform is urgent and ought not to wait. The Steel Bill has received an unopposed Second Reading in the Lords but it needs Parliamentary time. The Government should take it over without delay. It would be helpful if the Joint Committee puts this first on its agenda.

12 October 2011

Ralph Hindle

The purpose of the reformed House of Lords would be to contribute to good government in the present and future by building on past experience. All elections would be for life to allow for and encourage uninhibited debate on government policy and proposals.

Elections would only be required to replace members who died and these could be held once every year.

If the elections took place during the two weeks following Boxing Day it would be a good time for thought about such life long appointments whilst people's minds are naturally reviewing a past year and thinking about their own plans for future years.

Many have expressed views about how good government could be helped by talent and experience existing outside the realm of career politicians. Also an entirely new system for elections might help to overcome apathy about politics and the distrust of politicians.

Many organisations with large qualified paid-up membership of UK citizens such as BMA, TUC, ec^{UK}, FSB and others run internal election systems. These systems could be used as part of the democratic process to create lists of potential candidates for the annual national elections to the reformed House of Lords. In this situation candidates could be proposed by any number of organisations without being a member of any of them. The national candidate list of say twice the expected vacancies could be created by selecting those amassing the greatest number of votes from amongst the proposed nominations of candidates in preliminary elections run by such organisations.

A route would be opened for people with expertise and experience to make a contribution to government without needing any party political affiliation or desire to enter the House of Commons and they would represent a national constituency.

A reformed House of Lords created in this way is most likely to contain a wealth of expertise and experience and be independent of the House of Commons without challenging its supremacy other than by the potency of its debate.

Absence of party politics in the House of Lords should free-up debate and avoid the problems of government such as the situations that occur in America.

PROPOSAL FOR CHANGES.

This proposal for fundamental changes to the Draft House of Lords Reform Bill is based on the belief that the draft Bill will fail to achieve its objectives;

1. Effective democratic government appropriate for the twenty first century.

2. To make the Reformed House of Lords attractive to desirable candidates.

3. To remove party political interference to freedom of debate.

4. To encourage freedom of communication between members and electorate.

5. To reduce apathy among the electorate.

This proposal has the objectives;

1. To reduce opportunity for non democratic influence on electorate.

2. To make the Reformed House of Lords independent of political parties.

3. To encourage the growth of leadership.

Key changes proposed to achieve these objectives are;

1. Membership for life, full-time and part-time for some.

2. Elections at a different time to the Commons to avoid party political influences.

3. Elections every year to replace dead members, (plus those otherwise leaving)

4. Candidate lists created through existing voting systems within professional institutions.

5. No geographical constituencies—national elections by internet annually.

6. Maintain present number of bishops to be the only regional links.

7. Maintain present hereditary peers for continuity of historical perspectives.

8. No political appointments but maybe exception for Ministers;

9. No MP's or former MP's may stand as candidates for election.

These changes are not expected to alter;

1. The relationship between the Lords and the Commons.

2. The role or functions of the Lords.

3. The primacy of the Commons.

4. The preferred choice of an STV election system.

These changes are expected to reduce and simplify the content of the bill and speed the improvement of Government and enhance its fitness for the needs of this century.

12 October 2011

Lord Howarth of Newport

The test against which proposals to reform the House of Lords should be judged is, surely, whether they would be likely to improve the performance of Parliament. Over the years I have asked proponents of elections to the Second Chamber how and why the change they advocate would improve the performance of Parliament and I have never yet received an answer. In their Foreword to the White Paper the Prime Minister and Deputy Prime Minister say, "We believe that our proposals will strengthen Parliament." One looks in vain, however, for an explanation as to why this should be so. It appears to me that the reforms proposed in the White Paper would damage rather than strengthen Parliament.

Of course the Government put forward their case for an elected Second Chamber less on the basis that it would strengthen Parliament than on the basis that that it is unacceptable today that a Chamber of the legislature should not be democratically elected. The Prime Minister and Deputy Prime Minister say, "In a modern democracy it is important that those who make the laws of the land should be elected by those to whom those laws apply." This ignores, however, that the appointed House of Lords takes upon itself only to advise. The House offers its thoughts in debates and in the work of its committees, questions and holds Ministers to account, and proposes amendments to legislation. These are appropriate functions for an appointed House. Sometimes it may persist in reiterating its advice when it considers that an issue is of outstanding importance. But in the end the appointed House of Lords always defers to the elected House, because it recognises that in a democracy this is proper and necessary. So it is the

elected House of Commons that decides on legislation as well as supply. Nor is there any evidence of a frustrated desire amongst the electorate for an elected Second Chamber. Rather, there is reason to think that people do not want more elections and they do not want the establishment of another set of politicians with salaries, allowances and pensions. The rationale, in terms of a necessary democratisation of the legislature, for replacing the House of Lords with an elected Second Chamber is a red herring.

The White Paper contains much detail on mechanics: the system for election, transitional arrangements and remuneration. But it barely engages with the major and highly contentious constitutional issues as to whether an elected second Chamber is desirable in principle and what the implications would be for relations between the two Houses.

It is predictable that a wholly or even a mainly elected Second Chamber would be more assertive *vis-à-vis* the House of Commons. Any elected politician worth his/her salt would be bound to pledge himself when seeking election to champion his electors, to pursue the best interests of his country as he perceives them and to hold the Government vigorously to account. Democratic election would confer this right and duty. Legitimacy deriving from election would make inevitable a greater incidence and intensity of challenge by the Second Chamber to the House of Commons. I am concerned that creating an elected Second Chamber would lead to endless conflict and impasse between the two Houses. This would mean, as in the USA, that it would become much more difficult for the Government to secure its legislative programme. The spectacle of such conflict would also, I fear, be repellent to the public, who would become further disaffected from politics.

The statement in the White Paper on powers—"We propose no change to the constitutional powers and privileges of the House once it is reformed, nor to the fundamental relationship with the House of Commons, which would remain the primary House of Parliament", together with Clause 2 (1) of the draft Bill—is wishful thinking. At paragraph 30 the Government speak of their "aspirations for a reformed second chamber—that it should perform the same role as at present, but have a clear democratic mandate." The reality is that they can have one or the other of these, but not both. Elections will instigate a new dynamic with profound effects on the relationship between the two Houses. Of their very nature, you cannot legislate to perpetuate conventions, which are the product of a particular history and dynamic and whose acceptance depends upon their reflecting a particular reality, in this case the relationship between an elected and an unelected House. If you introduce radical change to that reality you cannot expect the same conventions to persist. The Cunningham Committee, whose conclusions were endorsed by both Houses, indeed foresaw this starkly and warned (in paragraph 61): "If the Lords acquired an electoral mandate, then in our view their role as a 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."

The Government recognise, in paragraph 9 of the White Paper, that the balance between the Houses is "delicate." Lord McNally, speaking for the Government (Lords Hansard, 22 June 2011, col 1376), went further when he acknowledged:

"What is clear is that the relationship between the two Houses has always evolved and will continue to evolve in the future."

We have seen how the European Parliament, the Welsh Assembly and the Scottish Parliament have all sought, relentlessly and successfully, to add to their powers.

It has to be anticipated that, in due course, an elected Second Chamber will challenge the financial privilege of the House of Commons. The rationale for Commons privilege is that it is the sole elected House. Indeed a Second Chamber elected under proportional representation is likely to claim greater legitimacy than the House of Commons elected under first past the post. The Parliament Acts will come under challenge. An elected Second Chamber would threaten the primacy of the House of Commons.

If such developments do occur, the present clear cut accountability of Government via the House of Commons to the people will become blurred and confused.

The Government intends, through Clause 2 (1), to entrench the present relationship between the two Houses. In truth there is no way, within our flexible, unwritten constitution, and with the doctrine of the omnicompetence of statute, to entrench any constitutional arrangements. In our present political culture politicians who find themselves

in Government, armed with a majority in the House of Commons, though perhaps with no more than a shallow knowledge of history, feel free to alter the constitution at whim, and in important recent instances without manifesto justification or consultation with the people to whom the constitution belongs or pre-legislative scrutiny. No constitutional "settlement" will be other than ephemeral. If the measures in the Bill the Government is putting forward are enacted by Parliament they could be superseded at any time thereafter by further legislation.

Supposing, indeed, that legislation were passed requiring that an elected Second Chamber should be limited to the exercise of no more powers than the existing conventions allow, what value would there be in the new elected House? A House of elected politicians whose role was merely to advise and who always deferred to the other House of elected politicians would have little, if anything, to contribute to parliamentary deliberation or action. Why would politicians of any merit other than meekness put themselves forward for election to such a House?

Aside from the effects of a competition for power between the two Houses, relations would also be likely to deteriorate in an atmosphere of mutual resentment as Members of each traversed each others' constituencies appealing to constituents and being appealed to by them. It was the prospect of something like this which lay behind the draining away of enthusiasm for regional elected assemblies among English MPs as they saw the experience of their counterparts in Scotland and Wales following devolution and the creation of the Scottish Parliament and the Welsh Assembly. In multi-Member constituencies as proposed by the Government for the Second Chamber there would be more rival representatives trampling over the constituencies of Members of the House of Commons.

Good relations and productive complementarity between the two Houses of Parliament are better secured by having an elected House of Commons on the one hand, representative of geographical constituencies, with all the vigour and authority which come from being elected and accountable, and on the other hand an appointed House with the strengths that come from experience, pre-eminent professional ability and expertise, and being more representative of the professional, cultural and ethnic diversity of the country.

The Government recognises the need not to create, in an elected Second Chamber, a pale version of the House of Commons, but it is at a loss how to avoid that. So, with no conviction, it proposes as an option a hybrid House, containing one fifth appointed Members, ignoring the obvious problems in mixing two categories of Member—elected and appointed—within one Chamber. It is unimpressive that Ministers, meeting for many months, should have failed to resolve the basic question as to whether a reformed Second Chamber should be wholly or partially elected.

The Government proposes to differentiate the electoral term for the Second Chamber, but by extending it to fifteen years and insisting that a Member may serve only one term, they ensure that, after all this upheaval in the name of democracy, there will be no accountability of Members to their electorates. The Government claim that these arrangements will underpin the independence of Members. However, democracy without accountability, power (even only a little power) without responsibility, is not worth having and may indeed be dangerous, encouraging corruption and abuse.

For this dubious "democratic" gain it is proposed to discard the strengths of the present appointed House of Lords. The existing House of Lords does have a representativeness different from that of the House of Commons, containing as it does peers who have achieved distinction in the upper reaches of various professions—the law, politics, academia, medicine, business, the arts, the armed forces, the police and so forth—as well as leaders of the Church of England and other faith communities. It therefore has a legitimacy that derives from the personal distinction and authority of many of its Members. The present House of Lords is diligent and acute in its scrutiny of legislation and the performance of its advisory role. The quality of its debates is frequently praised in the media and is appreciated by many in the country. Democracy is not the only source of legitimacy—as we see also in the authority of the judiciary and the development of common law.

Would a Second Chamber, whose elected Members owed their status as candidates to approval by the political parties and were subject to a more insistent whip than Members of the present House of Lords, with few or no cross benchers, have resisted the erosion of trial by jury and the extension of pre-charge detention, as the House of Lords has done in recent years?

The British constitution was traditionally praised by foreign observers for the effectiveness of its checks and balances. Many believe that the checks and balances within our constitution have weakened with the rise of the "elective dictatorship," and that reform should be directed to renewing checks and balances consistent with democracy. An

appointed Second Chamber, appropriately reformed, is more likely to be a judicious check on the executive than a Second Chamber elected on a basis of organisation by the political parties, more preoccupied with the party battle and more susceptible to party management.

It would be preferable for the Government to concentrate its reforming energies on improving the existing House of Lords. The choice is not between the *status quo* and moving to a wholly or mainly elected Second Chamber. Everyone wants reform. Key reforms to the appointed House are set out in Lord Steel of Aikwood's House of Lords Reform Bill: phasing out of the hereditary Members of the legislature, improved arrangements for retirement, and disqualification of peers found guilty of a serious criminal offence. These reforms are also proposed in the White Paper. The Government would be wise to proceed purposefully here where there is genuine consensus. These particular reforms will be necessary whether the Second Chamber is eventually to be elected or not.

The Government are right also to include in their proposals the creation of a statutory Appointments Commission. For so long as there are to be appointed members of the Second Chamber a Statutory Appointments Commission will be needed. It is not respectable that the existing Appointments Commission (admirable though its work has been) should be the creature of Prime Ministerial patronage. It ought to be legitimately constituted by statute, with its membership and terms of reference also approved by Parliament. Its task should be to enhance the representativeness of the Second Chamber in the sense of the term which I have used above. The draft Bill does not make clear the role of the SAC beyond its duty to make a certain number of appointments to a partially elected House in a manner consistent with the Nolan principles. Nor does it make clear the role of the proposed Parliamentary Joint Committee overseeing the SAC. These provisions are too vague.

Given the precedents since the referendum on membership of the European Economic Community in 1975, such major reform of Parliament as the Government now proposes, in either of the variants in the White Paper, could not properly be introduced without a referendum.

In the remainder of this submission I will comment on some more incidental aspects of the proposed reforms: the size of the Second Chamber, its political balance, its gender balance, and the system of elections to it.

A reformed House of 300 Members would, I think, be too small. The Government notes that average daily attendance in the Lords is at present 388 and that with 300 full time Members the workload should be manageable. But the existing House struggles to get through all the work entailed by the complexity of modern government and the ambitions of the legislative programmes of every Government. Besides, it would be a mistake to require that appointed Members should be full time. They should bring to the House their experience of a wider world and over a fifteen year term of full time membership their capacity to do this would rather largely diminish.

It is not stated whether any limit is intended to the number of Ministers the Prime Minister could appoint to the smaller Second Chamber. Would he be free to appoint a Minister to represent every Whitehall Department? Will Ministers in the Second Chamber be entitled to vote? Would not a free patronage for the PM in this regard enable him to tilt the political balance of the Second Chamber too far? Might not this make it more likely, contrary to the suggestion in paragraph 25 concerning staggered elections, that the Government of the day would have an overall majority? It is desirable that in a revising Chamber the Government of the day does not have an overall majority because Ministers then have to secure the assent of the House by reasoned exposition of their case, rather than being able to rely upon the party whip to secure a majority. Between 1999 and 2010 it was the case that no one party in the Lords had a majority over the other parties. This was good for the performance of the revising Chamber. Since the last general election, on the dubious newfangled constitutional doctrine that the make-up of the House of Lords should reflect the pattern of voting at the previous general election, the House has been packed with new peers who take the whips of the governing Coalition parties. That development has been in striking contrast to the Government's policy of reducing the size of the elected House of Commons, its professions of intent to reduce the size of the Second Chamber and its claim to see it as a virtue of the electoral system it proposes for the reformed Second Chamber that it would make it "less likely that one particular party would gain an absolute majority".

At paragraph 49 the Government says reform of the House of Lords is "an opportunity to consider how to increase the participation of women in Parliament." They also say that political parties have an important role to play in this. I would observe that the political parties, though paying lip service for many years to the desirability of a better gender balance within the House of Commons, have done disappointingly little to achieve it. The appointed House of Lords already has a better gender balance than the Commons, and a Statutory Appointments Commission, tasked to make progress on this, would be well placed to do so.

In discussion of the proposed STV electoral system for the Second Chamber the Government says "it is important that the individuals are elected with a personal mandate from the electorate, distinct from that of their party." This seems a forlorn hope. I fear that most voters in very large multi-Member constituencies, electing individuals to a House that is to exercise no real powers, will not know the individual candidates nor be particularly interested to do so. The Government acknowledges that there will be one Member elected to the Second Chamber for every 570,000 voters. Under STV the "surplus" votes of first preference candidates are redistributed to second and third preference candidates, who are likely to be even less well known to voters. A low turnout seems likely, and the complexity of the voting system may reinforce this.

25 October 2011

Lord Jenkin of Roding

1. This evidence addresses one issue only, namely, the different behaviour and characteristics of the two Houses when dealing with legislation.

2. Much of my work on legislation in the House of Lords has depended on working with outside bodies—local government, the professions, charities, NGOs and others. These bodies tell me that their representations to Parliament seem to be much more effective in the Lords than in the Commons. When I ask whether an issue was raised in the Commons, I have been told that it was raised but without much effect: when the issue came to a vote the whipping in the Commons ensured that the Government got its way. I was even told by one community group that they had tried to interest their local MPs only to be told that none of them, all Government Back Benchers, was prepared to table an amendment to the Bill.

3. When these bodies come to Peers they find that there are far fewer such inhibitions. Issues are pursued, either directly with Ministers, or in Grand Committee, or on the floor of the House; many Peers have no hesitation in speaking and voting against their Party Whips if they feel sufficiently strongly about that the issue.

4. Initially, I found this apparent distinction a little hard to believe; it did not accord with my own experience in the Commons (1964-87). But when I pressed the question I am told that, whatever it may have been like in my day, the discipline of the Whips in the House of Commons is now so tight and so pervasive that they find their representations, while certainly listened to with sympathy, too often do not result in amendments being passed.

5. I see two main reasons:-

a) In the Commons, the Government effectively controls the House. This control is exercised through the Government Whips who appear to have become increasingly powerful so that only the most determined, or maverick MP dares to fall out of line. MPs owe their election almost entirely to their Party affiliation and Party support; many Backbenchers are in Parliament hoping for office in the Government they support; so the temptation always to conform to the Party line when voting is strong. Moreover, elected Members have constituents to whom they are ultimately accountable and if they wish to retain their seats they need to secure their continued support.

b) By contrast, though there is a whipping system in the Lords it is much less compelling—there are no sanctions for ignoring the advice of the Whips. The great majority of Peers are not seeking office, but see their role as using their "seat, voice and place" as effectively as they can. The Government does not control the House of Lords and there is now a clear convention that no political party shall have an overall majority of seats in the Lords. Peers are therefore much readier to take up issues put to them by outside bodies and to speak and vote in support of those representations. For these reasons Governments—all Governments—suffer defeat in the lobbies, so requiring the other House to "think again". Peers do not have constituents to whom they owe their seats and therefore seem more disposed to take what one might describe as a national view of issues

6. An elected 'Senate' would quite quickly erode this valuable characteristic of the present Chamber; it would soon start behaving more like the elected House of Commons. Even if there were a bar on re-election after say 10 or 15 years, it is to my mind inconceivable that elected 'Senators' could maintain their expert, detached and national view of issues when they were in regular contact with those who had elected them. While a fixed term might appear to remove the temptation to toe the Party line, it is my view that it would do no more than reduce the temptation; it would not eliminate it.

7. For these reasons I believe that abolishing the present House of Lords and replacing it with an elected Senate would destroy what is one of the most valued and constitutionally important roles of the present appointed House, which is its independence, its expertise and its relative freedom from Party control. As such the present appointed Upper House is an essential counter-balance to the power of the elected House of Commons which of course must always have the final word.

8. Unless and until the House of Commons is reformed so as substantially to reduce its control by the Administration, the provisions of the Bill as drafted would have damaging consequences for the country.

22 September 2011

Bernard Jenkin MP

The House of Lords currently performs its functions well

The House of Lords currently performs its functions of revising and amending legislation well. Introducing a mainly elected upper house would put this at risk by reducing the expertise and diverse experience of the House of Lords, attracting political candidates who are similar to MPs and increasing the role of party politics. The enhanced role of party politics combined with the enhanced electoral legitimacy of the House of Lords would be likely to lead to a more confrontational approach and more clashes and deadlocks with the House of Commons, rather than constructive revision, scrutiny and advice. Alternately, where the same party or parties dominate both Houses, an elected House of Lords, far from holding the Government to account more effectively, would be more likely to 'rubber stamp' legislation due to party political loyalty.

House of Lords reform threatens the primacy of the House of Commons

The elected House of Commons currently has primacy over the unelected House of Lords. It can overrule the House of Lords, if necessary, under the Parliament Act. It is, however, very rare for the House of Commons to do this because the House of Lords understands that the House of Commons has primacy and will allow Government legislation to be passed. An elected House of Lords will challenge this principle. Given the preference of the Deputy Prime Minister and other advocates of House of Lords reform for alternative electoral systems based on proportional representation, which are included in the draft bill, and their disapproval of the First Past the Post system used to elect the House of Commons, some may argue that an elected House of Lords has greater democratic legitimacy than the House of Commons.

An elected House of Lords will reduce the number of independent peers

More than a quarter of the current members of the House of Lords do not take a party whip. This includes the Lords Spiritual and the much larger number of crossbench peers. They bring expertise to the chamber without being bound by party political affiliation. With an elected House of Lords, they would almost all be replaced by party political peers, and their expertise and additional perspective would be lost.

Introducing elected peers would be costly

House of Commons Library figures show that the average Member of Parliament costs the British taxpayer about £257,000 a year, whereas the average unelected appointed peer costs well under £100,000. Elected full-time peers will require more office space and staff, with costs more similar to those of Members of Parliament. The Deputy Prime Minister has indicated that the cost issue will be addressed by reducing the number of peers to three hundred. Yet this would represent a significant reduction in the expertise, experience and diversity of the current House of Lords.

There is little public demand for House of Lords reform

There is little evidence of strong public support for introducing an elected upper house. While opinion polls have indicated varying levels of support for House of Lords reform, this is not a priority for the overwhelming majority of voters. The Alternative Vote referendum indicated a distinct lack of enthusiasm for major constitutional reform.

The name 'House of Lords' should remain

The House of Lords is an historic part of the British constitution and reflects the history of the development of the English and then British Parliament. As the long as the chamber continues in its role, the name 'House of Lords' should remain. Alternative suggested names such as 'senate' have little historical resonance to the UK and are alien to the UK's tradition as a constitutional monarchy, rather than a federal state or a republic.

The number of Lords Spiritual should not be reduced

The presence of the 26 Lords Spiritual in the House of Lords reflects the fact that the Church of England is the established Church and, as such, is an integral part of the constitution. The draft bill proposes a reduction in the present number to twelve. This would have very little practical effect on the operation of the House of Lords, since it is extremely rare for more than a very few Bishops to be in the House of Lords at any one time. They operate a roster for attending the House of Lords. They also specialise in subject areas, so an appropriate subject specialist will be present at appropriate debates. A reduction in their numbers would increase the burden of attendance onto far fewer people, and reduce the ability of Bishops to develop specialist knowledge in subject areas. It would mean that fewer Bishops benefit from the experience of their duties in the House of Lords. It is hard to see any advantage in this, since the Lords Spiritual take great care not to abuse their collective position in any way. Were the Church to be disestablished, then there would be every reason to remove them altogether, but that is not what is proposed.

Proportional representation should not be introduced in the House of Lords

The Government proposes the use of the Single Transferable Vote for elections to the House of Lords. This is a much more complex electoral system than that used for the House of Commons. The multi-member electoral districts would also be much larger than parliamentary seats, so there would be little direct connection between the elector and the elected peer. These multi-member districts would therefore be likely to give the central headquarters of political parties, rather than local branches, control over candidates, strengthening the dominance of party politics in the legislature—hardly a popular or positive development.

The Alternative Vote referendum showed the level of public opposition for replacing the First Past the Post electoral system with a more complex one. The Single Transferable Vote would represent an even more radical change.

House of Lords reform should be subject to a referendum

It has become accepted that any major constitutional change in the UK should be subject to a referendum. The proposal to change the electoral system for the House of Commons to the Alternative Vote was subject to a referendum, as were the arrangements for the establishment of devolved institutions in Scotland, Wales and Northern Ireland. It would be perverse for a wholly different House of Lords to be established, with a new electoral system, without the electorate of the UK being directly consulted. Such a major change to the UK constitution, and to the relationship between electors and Parliament, should be subject to a referendum. Without a referendum, these reforms will lack legitimacy. The failure to offer a referendum demonstrates that the Government has no faith that these reforms would prove popular. It is highly likely that a referendum would result in a rejection of the proposed reforms.

27 October 2011

Lord Judd

A significant part of the public disenchantment with, and even alienation from, the political process seems to me to be because, rightly or wrongly, politics has become perceived as a closed profession with an increasing number of MPs and peers having too little in depth, prolonged experience in their lives other than politics. There is a widespread sense that the system does not relate to life as it is out there. Surely a reality of an open society is that it comprises a matrix of different interests and dimensions: professions; skills; religions; trade unions; industries and commercial services; ethnic communities; N.G.O's; law and the administration of justice; etc. It is how these interplay that enables society to function (or not function!)

A relevant parliamentary system should surely include a place where these different dimensions are represented with their particular experiences and perspectives. This, I suggest, should be the role of an advisory "think again" scrutinising Second Chamber—one that could also initiate debate on issues not yet featuring in the legislative agenda of the Commons. In whatever is ultimately proposed it would be tragic if the opportunity to enrich the relevance and

quality of parliament and our democracy were inadvertently missed. The key challenge is how membership of such a Second Chamber should be decided. Just to repeat the method for the Commons with numerical/constituency elected members would not, in my view, meet the challenge. In saying this, of course, I take it for granted that the power should be with the Commons: the Second Chamber should be a consultative and advisory body. I fear a conventionally elected body in the existing mould of parliamentary elections would be an own goal.

The name for the Second Chamber matters a great deal. It would surely be a nonsense to go on calling it the House of Lords. The whole point is that it should represent the matrix of society as it is; and it is high time that what the place is called and how its members are described made clear that it is a vital working place and not a setting for social elitism. "Lord" and "Lady" foster ambiguity about it all—or worse.

I raise one more issue. It seems to me to be beyond comprehension that we can justify going into the future with just one denomination of just one faith guaranteed representation. As a practising Anglican I understand the feeling about history and the anxiety about establishment; but to leave things basically unchanged would be highly provocative—not least to non-believers and humanists. Britain is a rich mix of differences. Incidentally, my wife brought me into the Church of England from my English nonconformist and Church of Scotland background. The Church of Scotland is the established church of the land but it has no corporate representation in parliament either in Edinburgh or in London.

25 September 2011

Michael Keatinge

The order of thinking should be:

1. Agree what are the purpose and functions of the second chamber.

2. Consider what are the personal qualities, expertise and experience in members of the second chamber which will best meet those functions.

3. Establish a means of selection and appointment which will provide those people.

4. Fine-tune the process so as to achieve public confidence and respect for the resulting chamber.

It would appear that the process currently set in train has started with stage 4 and given scant concern to Stage 1. It is therefore entirely back-to-front. Scrutiny of the draft bill needs to put this straight.

Supporting comment is as follows:

1. Agree what are the purpose and functions of the second chamber.

1.1 The primary purpose of the second chamber is to scrutinise legislation, deploying expertise and experience so that the wider effects of the legislation and, particularly, undesirable side-effects, may be recognised.

1.2 A secondary purpose is to provide a counterbalance when the House of Commons gives undue precedence to short-term considerations, passing fashions or party priorities. The second chamber should be entitled to question draft legislation if the content has not received proper public consideration, either in an election campaign (but recognising that some lesser matters are slipped into a manifesto with little public discussion) or by other consultation.

2. Consider what are the personal qualities, expertise and experience in members of the second chamber which will best meet those functions.

2.1 Members who will fulfill these functions must have, corporately, a mix of genuine expertise which will cover the great majority of the issues to be considered; and also a wide experience of life outside politics. They should be in a position to deploy their expertise and experience free of party-political or other partial loyalties.

2.2 It is unlikely that anyone under the age of 30 would have the required wide experience and maturity. The minimum age should therefore be set high.

2.3 Since the task requires current expertise, members should be encouraged to continue with active engagement in their professional occupations, rather than becoming full-time politicians.

3. Establish a means of selection and appointment which will provide those people.

3.1 Experience with public appointments shows that few of the people whom we really want for such tasks will stand for election. They have already proved themselves in life and have no need to prove them again. They need to be asked to serve. In the past there was a pattern in which a man (and it was generally a man) would make his mark in commercial or professional life, then stand for Parliament relatively late in life. But in current practice, those who stand for election are generally using this, at least in part, as a means of making their mark. Such a pattern will not produce the people whom we need in the second chamber.

3.2 A member of the second chamber needs to be free, as far as possible, of party pressure. This will always be difficult, as the management of the business of the chamber will probably mean some degree of party organisation, but we must not use a form of appointment which will emphasise party loyalty. The draft bill attempts to encourage independence by means of a single 15-year term, eliminating the need to campaign for re-election. However, the proposed mechanism of enormous multi-seat constituencies would mean that effective candidacy would require substantial funding. This will probably come either from large personal resources or, more likely, from party support. Most elected members would therefore have, from the beginning, a loyalty to the party which had provided the means of getting elected.

3.3 It is a fundamental aspect of the House of Commons that a Member of Parliament has a commitment to his or her constituency, is known to the voters, and often builds up considerable personal support. This was a feature of the 2010 election, where the personal vote of a sitting MP saved seats which one might expect to have been lost. But in the second chamber, a member will be acting more on his own experience than as a representative of a constituency. There is therefore no need to replicate that personal responsibility in the second chamber; indeed it will be impossible with the size of constituency that is proposed. But without the personal representation, most people will vote for the party rather than for the individual candidate.

3.4 All the indications are, therefore, that most elected members of a second chamber would basically be party members. We do not want this.

4. Fine-tune the process so as to achieve public confidence and respect for the resulting chamber.

4.1 The ethos behind the draft bill assumes that election by the wider public is the only valid means of providing public confidence. This assumption does not stand up to examination. We may note that, while there is often criticism of a decision on the grounds that: "It is not democratic," there is equally frequent criticism on the grounds that:"It is not independent." We should seek to develop different strengths from the two chambers, rather than making one a pale reflection of the other. There is a strong case that, with one chamber emphatically "democratic," the other should be "independent."

4.2 Democratic accountability can be achieved at a second degree. If an Appointments Commission commands public respect and confidence, then the appointment itself commands the same respect.

4.3 It is important for public confidence that members of the second chamber should be seen to be contributing actively. As noted above, members should not become full-time politicians, but should be encouraged to continue active involvement in their professions. However, they should make a significant contribution to debates and committee work, not just to listening and voting. It is necessary therefore to provide a mechanism for members to retire either voluntarily or if they fail to maintain a minimum level of activity.

4.4 This should in itself limit the size of the chamber without a formal cap, though the Appointments Commission probably needs to be given a target range of numbers.

The main reason for the current excessive size of the Lords lies in the rash of new appointments to rebalance the parties after each change of government. But if the Appointments Commission does its job effectively, there will

always be a political balance in the chamber. Therefore there should be no need for a large influx after each General Election.

Conclusions:

- There is no compelling benefit from adopting election to the second chamber;
- There are a number of reasons why an elected chamber will not give us the results we require;
- Reform should be limited to removing those who do not now actively contribute to the business of the chamber; and to measures to ensure the credibility of the Appointments Commission.

24 August 2011

Simona Knox via her MP, Kelvin Hopkins

I am writing as your constituent to express my concerns about the government's proposals on Lords Reform and specifically on the issue ·of Bishops sitting as of right in a reformed chamber. I urge you to make representations on my behalf opposing the proposals to the Deputy Prime Minister Nick Clegg MP, who is leading work on Lords Reform, and to the Joint Committee which is scrutinising the draft Bill.

The package of proposals on Bishops do not simply maintain the status quo but give even more privileges to the Church of England—some of which even the Archbishop of Canterbury, Rowan Williams, and the Archbishop of York, John Sentamu, have strongly opposed in their submission to the Joint Committee, stating that the Church of England did not seek exemptions proposed 'by the Government for the Lords Spiritual from the tax deeming provisions, the serious offence provisions and those on expulsion and suspension'.

Ours is the only democratic country to give seats in its legislature to religious representatives as of right, and I believe that having any reserved places for Bishops in parliament is unfair, unequal and against the aims of a more transparent and legitimate second chamber. The government's new proposals, which in effect create a new largely independent, and largely unaccountable, place for the Church of England in parliament, are unnecessary, and even the Church of England leadership think they go too far.

I urge you to make my concerns known in parliament in whatever ways you are able. I know that you listen to your constituents and really hope that you will debate this issue in Parliament.

20 December 2011

Pauline Latham MP

I feel that the reforms that have been outlined in the proposals are unnecessary, and could damage the current system of the Upper Chamber, which we all acknowledge to be extremely effective.

My first concern lies with the proposal to have an elected House of Lords. It has been said by various parties on a number of occasions that those who make the laws of the land should be elected by those to whom those laws apply. However, I do not believe that enough consideration has been given to the practicality of this. The current system is well acknowledged to work superbly, and the most important feature that enables the Upper Chamber to work in this way in which is does is the expertise contained within the House of Lords. I am extremely concerned that should we lose the ability to appoint Peers to the House of Lords, then we could lose out on an enormous amount of expertise, which would otherwise be provided by an extremely diverse set of experienced people. The House of Lords is currently made up of many specialists in the areas of academia, health, business, the services, and many, many more. With such specialist talent, it is highly unlikely that these people would be likely to stand for election. Even if the Bill allowed for 20% of Peers to still be appointed, I believe that this would still greatly jeopardise the composition and expertise contained within the House of Lords.

I firmly believe that an elected House of Lords would threaten the primacy of the House of Commons, instead of complimenting it, as it does under the current system. This would be a particularly difficult issue to resolve, because of the largely unwritten constitution that we have in the U.K. Furthermore, I believe that this reform is flawed in

respect that it will politicise the Chamber of the House of Lords. Not only would it make it harder for Cross-Benchers and Independents to be elected, but it would also mean that particularly at election times, party-politics could come into play and be taken into account on the basis of re-election. One of the advantages in the way that the Lords currently works is that it complements the work of the Commons without forcing Peers to consider the implications that their actions might have upon their re-election. It is inevitable that party-politics does come in to play in elected chambers on some occasions, and I think that it would be a disaster to force this upon the Lords.

In terms of the process of election to the House of Lords, this is something that must be considered in detail. The running of elections is hugely expensive, and an elected House of Lords would of course have a significant increase in the amount that the taxpayer would have to contribute. There would be difficulties with considering where candidates would stand, and constituencies would have to be drawn up. The proposed time frame of a term under a reformed House of Lords stands at fifteen years; which in my opinion is far too long. Somebody aged between 55—60 is unlikely to be selected for their term of office until they are 70 -75, meaning that the whole composition of the House of Lords would be down to people with less experience of life and the outside world.

Another concern that I have is electoral exhaustion. Currently, the United Kingdom is asked to vote in general elections, local elections, referenda, European elections, Parish Council elections, as well as assembly elections in devolved countries. I would be concerned that asking people to vote in another election would drive down voter turnout further.

There is one suggestion that I would like to make when it comes to the reform Bill, and that would be the insertion of a power to allow the removal of a Peerage, should a Peer be convicted of committing a crime. I do not think it is correct that Peers, or indeed Members, should be allowed to retain a title when convicted of a criminal act.

12 October 2011

Council of the Law Society of Scotland

GENERAL COMMENTS

The Council of the Law Society of Scotland is the statutory regulator of solicitors in Scotland. In terms of section 1 of the Solicitors (Scotland) Act 1980 the Council has the objects of the promotion of the Solicitors' profession in Scotland and the promotion of the interests of the public in relation to that profession. Accordingly the Council is concerned to contribute to the process of legal and constitutional change and to monitor legal developments.

The Council has considered the White Paper entitled "House of Lords Reform Draft Bill". The Council has the following comments to make:-

INTRODUCTION

The Council takes the view that many aspects of the reform of Parliament and in particular reform of the composition, role and powers of the House of Lords are political issues on which Council cannot have a view.

However there are some considerations which ought to be taken into account when proposing reform of the House of Lords. In particular, there are many aspects of the work of the House which should be preserved and not affected by reform.

THE BASIC MODEL
The Council is of the view that the present bicameral system works reasonably well. It ensures that the unwritten UK constitution is provided with a system of checks and balances.

The White Paper "House of Lords Reform" (Cmnd 3799) published in 1968 stated there were seven functions of the House:

i) its appellate role (abolished by the Constitutional Reform Act 2005);

ii) its role a forum for debate;

iii) its revising role in relation to Commons' bills;

iv) its initiating role in relation to legislation;

v) dealing with subordinate legislation;

vi) scrutiny of the executive; and

vii) the scrutiny of private legislation.

Reform of the House has been debated recently through a number of White Papers and consultations and legislative debate.

The White Paper "Modernising Parliament—Reforming the House of Lords" (Cm 4183) analysed the role of the House of Lords as being legislative, deliberative, interrogative and judicial.

The Royal Commission Report, *A House for the Future* (Cm. 4534) published in January 2000, proposed that the House should basically be a revising and advisory chamber intended to complement but not to undermine the House of Commons. It proposed that the House should be a majority appointed House, with a statutory Appointments Commission answerable to the House; and responsible for nominating all appointed members of the House, including those from the political parties.

The Government White Paper, *The House of Lords—Completing the Reform*, (Cm 5291) published in November 2001. The White Paper endorses the Royal Commission's vision of the role and importance of second chamber and accepts broad framework on membership. In particular, it accepts that the House should continue to be 80% appointed and that the Appointments Commission should be moved on to a statutory basis.

Furthermore, the House of Lords Act 1999 provided for the removal of the sitting and voting rights of the majority of hereditary Peers and established a mechanism for retaining 90 hereditary Peers through a process of election. In May 2006, the Government supported the establishment of a Joint Committee to examine the conventions governing the relationship between the two Houses of Parliament. The then Government also set up cross-party talks on House of Lords reform. The consensus reached in these talks was reflected in the White Paper published in February 2007 [*The House of Lords: Reform. The Stationery Office. (2007) (Cm 7027)].*

Although other legislatures in the context particularly of written constitutions can operate within a unicameral framework and fulfil many of these functions other structures and procedures are invariably constructed around the single chamber in such constitutions such as presidents or heads of state with powers to reject legislation and constitutional courts with extensive powers to nullify legislation. Single chamber legislatures may also need far reaching pre-legislative consultation procedures.

The arrangements under the Scotland Act 1998 and the Constitutional Reform Act 2003, giving a role to the United Kingdom Supreme Court and under the Scottish Parliamentary procedures for a consultative and investigative role for Parliamentary Committees reflect the need to supplement a unicameral legislature by creating processes to ensure adequate scrutiny of legislative proposals and enacted legislation.

Given that there would be a need for alternative structures in any case the Council takes the view that the existing bicameral nature of Parliament should remain.

The Council is of the view that the House of Lords fulfils a useful function in assisting the House of Commons to hold the Executive to account. The House of Lords given its non elected basis is necessarily the subordinate partner in this enterprise. That does not imply that the House does not have an important role to play. The very fact that the House is not subject to the same political pressures which apply in the House of Commons means that a more dispassionate view can be taken of the actions of the Executive. Time can be allowed for the raising of issues which could be lost in a House of Commons setting and the expertise of Peers can be directed into areas of the Executive's activity which may not receive similar scrutiny in the House of Commons.

The Council notes that the Government intends to retain the name "House of Lords" at least for pre-legislative purposes.

In the Council's view there is no particular concern about the name of any reformed chamber. Suggestions such as "Senate" or "Legislative Council" are well known but carry certain historical and constitutional inferences which may

not be entirely appropriate for the reformed chamber. "Second Chamber" or " Upper House" may be more reflective of the nature of the reformed body. On the other hand, some may consider that the retention of the existing name emphasises historical continuity and signifies elements of the development of the constitution and democracy in this country.

ROLES AND FUNCTIONS

Legislation

The House of Lords is a valuable revising chamber but there are factors which inhibit its capabilities. Some of these relate to its composition, others stem from the constraints put on the House and the provisions of the Parliament Acts. It is these latter issues on which the Council to concentrate.

The Council has had many experiences with legislation which has been substantially amended during the course of its passage through the House of Lords. Sometimes amendments proposed by the Opposition or by Cross bench Peers have had success in the House of Lords which they did not enjoy in the House of Commons. Frequently the Government takes advantage of the opportunity presented by the passage of the bill in the House of Lords to make changes either as a result of further consultation or political reassessment. The locus poenitentiae, or chance to think again, which the House of Lords provides in relation to legislation should not be underestimated. It is very useful for all parties.

When bills are introduced in the House of Lords they frequently undergo a process of debate and examination which is informed and productive. Improving amendments especially to law reform bills are a feature of Lords scrutiny. The Council has been involved in many such measures by suggesting amendments and commenting on bills. Even if amendments are not achieved in the House, Ministerial statements which could be employed for the purposes of interpreting legislation in terms of Pepper v Hart [1993] A.C. 593 can be extracted in debate. This can be as useful as securing amendments.

However Peers are hampered in this work by a general lack of resources. Inadequate, crowded accommodation and insufficient support, barely offset by helpful library staff, restrict the ability of Peers to contribute to debates. The efficiency of the chamber would be dramatically improved if more resources including adequate meeting rooms, up-to-date communications facilities, such as e-mail and internet access and improved secretarial facilities were more widely available. In this connection, Clause 59 of the draft bill makes provision for the House of Lords allowances scheme. If properly established and funded this will enhance the ability of peers to contribute to the work of the House. However, if the current limitations continue to impair the House's efficiency in an environment where not all Peers who are entitled to attend do so, the problem will only be exacerbated in a reformed chamber where attendance is increased.

The Parliament Acts constrain the powers of the House of Lords. Under this legislation the Lords must pass without amendment any bill certified by the Speaker as a money bill within one month of its being sent to the Lords. Money bills are those which seek to raise taxes, impose charges on the Consolidated Fund, supply, deal with appropriation, receipt, custody, issue or audit of public accounts, or the raising or guarantee of loans. Money bills do not include those relating to local taxation. The Lords only has power to delay other bills except those to which the Parliament Acts do not apply, for example a bill to extend the maximum duration of Parliament beyond five years, local and private legislation and public bills which confirm provisional orders. The Parliament Act procedures have only been used sparingly since their enactment principally because the Lords accept the democratic mandate which the House of Commons hold.

The Council is of the view that the role of the House of Lords in relation to primary legislation is a necessary aspect of parliamentary scrutiny.

In relation to secondary legislation the Council is of the view that an enhanced role for the House could include operating as a clearing house for Orders in Council, regulations and other forms of delegated legislation. It should be possible to amend secondary legislation. At present secondary legislation cannot be amended, it can only be approved or rejected. Due to constraints imposed by convention rejection is very rare and there is consequently little that can be done to change subordinate legislation once it is introduced. The creation of procedures to allow the amendment of subordinate legislation should be considered.

Scrutiny

The Council is of the view that the House's role in scrutiny of the Executive is a most important one. The substantial expertise of Peers ensures that the debates in the House are of high quality and recognised authority. Any change in the functions of the House should preserve this quality. For example, the work done by House of Lords Select Committees or Joint Committees is distinct from that carried out by House of Commons Committees. Because House of Lords Committees are not identified with the work of particular Government departments these committees can take more strategic overviews and comment on strategic issues.

The House plays a substantial part in holding Ministers to account. The Council supports the existing framework where Government departments are represented in the House and where Ministers can be questioned both in the Chamber and in Committee. If the existing procedures continue there would be no need for Ministers in the House of Commons to be able or to be required to attend to answer questions.

The revised chamber could take a more active role in dealing with EU policy and legislation. A structure which could allow liaison between the House and the EU Commission and EU officials would be particularly useful especially given the need for early representations to be made if EU proposals are to be affected. This is especially important following the Treaty on European Union's role for national legislatures. A liaison group between the House and MEPs would also serve to maximise the contribution of the revised chamber. The Council does not believe however that a structure which would give MEPs a specific role in the revised chamber would be appropriate.

The revised chamber could also enter into bilateral or multilateral relations with the Upper Chambers of other EU Member States. The pooling of common experience and the resultant exchange of views could improve the efficiency of the House especially in relation to EU law and policy.

The revised chamber could also enhance its role in relation to other aspects of international law. Special attention could be given to World Trade Organisation matters or to proposed treaties which could result in new international obligations for the UK.

Finally, the revised chamber could assume a liaison with the structures of devolved government to ensure the free flow of information between Westminster and the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

It should not be forgotten that the United Kingdom Parliament still has important legislative functions in relation to Scotland in the context of UK legislation on reserved areas under the Scotland Act 1998 (and will continue to do so in the context of the current Scotland Bill). The revised chamber will therefore have to continue to be aware of developments in Scotland and will have to take account of Scottish interests when legislating on reserved areas. Adequate arrangements will be needed to ensure that there are sufficient Peers from Scotland in attendance in the House. Consideration will also have to be given to the proper resourcing of these Peers (see the comments at Clause 59 of the draft Bill above).

Powers

The Council is of the view that any change to the House should have as one of its aims legislation which is clear and which gives prominence to the House of Commons as the elected chamber. If the second chamber were to be given a greater degree of democratic legitimacy it would be necessary to review the relationship between the two Houses of Parliament. In particular the Salisbury Convention would require to be revisited. At the very least it should be committed to legislative form. It may be that reducing the time by which the second chamber can delay primary legislation under the Parliament Acts would be sufficient to signify the prominence of the House of Commons. However extending the advantages of the Parliament Acts to government bills which have begun in the Lords could convey the impression that such measures are of equal importance to the government of the day as those which are introduced in the Commons. This could be a recipe for confrontation between the Houses.

Composition

The issue of composition of the House of Lords is essentially a political matter. However it is possible to agree with the broad range of characteristics which members of the reformed chamber could exhibit as follows:-

- greater democratic legitimacy, but not to the extent that the Chamber could challenge the pre-eminence of the House of Commons;

- a greater degree of independence of the Executive and of political parties than the House of Commons;
- a non-partisan approach;
- recognised expertise in a range of areas;
- breadth of experience, involving at least a proportion of people who are not professional politicians;
- a long-term perspective;
- being representative of the nations and regions of the UK;
- having access to knowledge and experience of the EU;
- legal knowledge;
- being representative of a range of faith communities;
- being more representative of society as a whole than the present House of Lords.

DETAILED COMMENTS ON THE DRAFT HOUSE OF LORDS REFORM BILL

Part 1—Composition of the House of Lords
The Council has no comment to make on this point as the balance between elected, appointed, spiritual, ministerial and transitional members of the House is a political issue.

Part 2—Elected Members
The Council is of the view that the term for elected members in Clause 6 may be too long. A ten year term may be more appropriate.

Part 3—Appointed Members—term
The Council is of the view that the term for appointed members in Clause 19 may be too long. A ten year term may be more appropriate.

Clause 16—The House of Lords Appointment Commission
The Commission's membership should reflect the nations and regions of the UK. A former member of the Commission should not be appointed and should not seek election to the House of Lords until five years have elapsed, since he or she was a member of the Commission.

Part 4—Lords Spiritual
The Council is of the view that provision should be made to ensure the representation of other faiths as well as the Church of England—otherwise the Council has no comment to make.

Part 5—Ministerial Members
Clause 34—Ministerial members
Clause 34(7)(e) provides the Prime Minister with the power to make an order concerning the disqualification of persons who are or have been ministerial members from being members of the House of Lords under another description. This should not be a matter for subordinate legislation but should be included in the Bill.

Part 6—Transitional Members
The Council has no comment to make.

Part 7—Disqualification
Clause 36—Disqualification from being an elected member
Clause 36(1) details the disqualification conditions. The conditions are broad but do not include conditions relating to mental Health detentions or Guardianship Orders. The Council is of the view that the conditions should be re-examined from this perspective. Clause 36(f) provides that disqualification follows if a person has been committed of a serious offence which is defined in Clause 47. There is a mismatch between the offence disqualification for membership of the Appointments Commission and this provision which should be resolved.

Clause 38—Disqualification from being an appointed member
Clause 38(1) details the disqualification conditions. The conditions are broad but do not include conditions relating to mental Health detentions or Guardianship Orders. The Council is of the view that the conditions should be re-examined from this perspective. Clause 38(f) provides that disqualification follows if a person has been committed of a serious offence which is defined in Clause 47. There is a mismatch between the offence disqualification for membership of the Appointments Commission and this provision which should be resolved.

Clause 46—Meaning of "insolvency order" etc
The Council has no comment to make.

Clause 47—Serious offence condition
The Council has no comment to make.

Clause 50—Relief from disqualification: serious offence condition
The Council does not agree with this clause. The electorate is entitled to expect that its legislators have not committed serious offences. It should not be at the discretion of the House to determine whether this ground of disqualification should be disregarded.

Clause 53—Members of the House of Lords disqualified from being MPs
The Council agrees with this clause.

Part 8—General provision about Membership
Clause 56—Expulsion and suspension
The Council is of the view that it should be a specific offence for a person to refer to him or herself as member of the House of Lords when he or she is not a member.

Clause 60—Tax status of members
The Council is of the view that this clause should take into account the prospective provisions relating to the Scottish rate of income tax contained in Clauses 28—32 of the Scotland Bill.

CONCLUSION

The House of Lords fulfils many useful functions in the United Kingdom's constitution. The process of reform will need to take account of the need for enhanced democratic accountability, the desire for greater efficiency and the changing constitutional structure of the United Kingdom.

4 October 2011

David Le Grice

Purpose of the Upper House and need for elections
The purpose of an upper house as I see it is so that its members can concentrate on legislation without having to worry about constituency work and since they have such direct and considerable influence over legislation more so than that which some people like to accuse trade unions big corporations and media moguls of having, it makes sense that they have some sort of democratic mandate.

It may prove beneficial if the Upper House were given the power to work with the government to improve finance bills. If this caused concern over primacy then the House of Commons could be given the power to vote to proceed on finance bills without the Upper House's consent without any waiting period.

That said, I think maintaining the primacy of the House of Commons is only important because people have decided it is, the first parliament act at least was intended as a quick fix and was never meant to apply to an elected house. To my mind the best way for the differences between the government and the Upper House to be resolved would be through referendum or for a bill to be delayed until after an election although I'm not sure whether such a change would be considered.

Appointments
If there are to be any appointments to the upper house then the appointments commission would have to make sure that it appoints people from as diverse a range of backgrounds and expertise as possible and that no background has noticeably greater representation than any other as that would make the house bias on certain issues; I currently get the impression that a disproportionate number of peers are businessmen for example. I'd personally prefer that all members had a mandate at any rate.

Bishops
I don't understand why the bishops should remain; they are just as much an anachronism as hereditary peers as they would not be there by virtue of being English Anglican Bishops and not elected or chosen independently on merit. I can't think why the established church needs to send people to speak let alone vote in the upper house and I shouldn't think that there is anywhere else in the world (except perhaps Iran but I haven't checked) where this is the case. Furthermore reserving seats for Church of England bishops in the legislature amounts to four types of discrimination, these being discrimination based on nationality (No bishops representing Scotland, whales or northern Ireland), religion, sexuality (No practising homosexuals) and gender. It's not as is you'll go to hell for removing the bishops from the Upper House.

The church can always make representations to parliament and the government and if necessary a member of the upper house can be appointed to liaise with them as I believe is done in the House of Commons.

Ministers
It would be very undemocratic to allow the prime minister to appoint members to the upper house and the limit may become seen as a target by some administrations if they had any trouble with the upper house.

It would not be a problem if they were not entitled to vote or could speak and introduce legislation without being members of the Upper House (but still members of the government) as is the case in some other legislatures such as the Danish Parliament; apart from being more democratic this would also avoid placing unnecessary restrictions on the prime ministers ability to choose ministers.

Vacancies
It would be completely wrong if someone were elected by voters largely based on their party affiliation only for them to be replaced on death or retirement by someone from another party.

Irish and Northern Irish MEP's will produce a List of people to succeed them should they die or retire and I think the same system should be adopted here.

Electoral system
I think the constituency sizes proposed are too small electing close to seven people would be just about ok especially with STV though I would prefer the number were closer to twenty (though this would require open lists and thresholds). I especially don't like the idea of having three seat constituencies' and am not too keen on four seats either. Neither size delivers terribly proportional results in European elections (in Whales, the North east and Northern Ireland) as the parties represented have the same number of seats each and they don't allow representation for all major parties. Indeed a three seat constituency in Northern Ireland would prevent nationalist representation by shutting out the SDLP. Smaller constituency's also make the electoral process more intimidating because there would be more attention and pressure placed on a parties candidates if only one or two were likely to win and they may need to campaign within the major shopping areas of major population centres.

I think it would be especially important to have larger constituencies if an open list system were used as more votes would otherwise be wasted on vote surpluses and minor parties under such a system. Alternatively one could consider the proposed reforms to the Finnish parliament which has open list districts but their seats would be assigned to make the to ensure representation was in line with the national vote, such a system would of course need national and or constituency thresholds to be imposed. Another alternative would be to have vocational constituencies which people would join when they register.

I also think that the minimum number of three seats if adopted should only be permitted if national boundaries necessitate it in boundaries should be redrawn if a constituency's allocation is reduced to this number due to population changes.

Of course in order to have more seats in some Celtic constituencies them one would have to elect more of the houses members have a larger house than proposed, elect in halves instead of thirds or over represent them; I personally wouldn't mind any of these though preferably not the later.

If the the committee parliament or the government is tempted to have more than 300 members in the Upper House for this or any other reason (the average attendance is close to 400 at the moment) then I say do it even if some complain as you can't put a price on democracy.

Ballot papers for Upper House elections will need to be randomized and possibly candidates listed by party. This is especially important for STV but it would also allow simpler ballot papers for an open list as there would be no need to provide an option of voting for a party and encourage people to express their opinions of the candidates before them. Whichever system is used it would be a good idea to switch to the same one for European elections both to trial it and so that voters can get used to it.

10 October 2011

Andrew Le Sueur

Please find attached six memoranda from first year LLB students studying public law at Queen Mary, University of London. Encouraged by the Study of Parliament Group, students were set as their first written assignment the task of producing a submission to the Joint Committee. The six attached are a sample of those which received first class marks and the submission is made with each student's consent.

Memorandum from Cecilie Rezutka

INTRODUCTION

In reforming the House of Lords, it is vitally important to maintain its independence. This element is an essential prerequisite to the Chamber's institutional function to be a forum of debate, to scrutinise primary and secondary legislation and to hold ministers accountable.

1. Why the Ratio of the Appointed Members Should Be Increased

1.1 Independent members have always played an important role in the House of Lords and currently, the third largest fraction in the House of Lords is the Crossbenchers.[28] Leading political experts emphasise that it is they who by exhibiting a form of expertise and outlook, different from the elected politicians', have been providing for a balance in the Chamber preventing it from becoming a mirror image of the lower house[29] and contesting its primacy. Due to the independents' bolster, no party can have a majority in the House of Lords so that the Chamber is less likely to become either the "rubber stamp"[30] of the government or an "opposition Chamber"[31], thus accounting for a constructive instrument of scrutiny. I therefore submit that the model of a hybrid Chamber be adopted.

1.2 Appointing 20% of the members as independents is in my opinion not fully sufficient to constitute an effective balance and elections to the House of Commons have produced very few independent MPs[32]. Likewise, there is no reason to assume that the elections to the House of Lords will produce any significant number of independents. The ratio proposed might therefore not be strong enough as to uphold the fundamental basis of the Chamber's system, creating a political imbalance.

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28 Parliament,< http://www.parliament.uk/mps-lords-and-offices/lords/lords-by-type-and-party/>accessed23 October 2011.

29 M Russell, *Reforming the House of Lords* (1st edn, Oxford University Press 2000)248, 299.

30 Great Britain, *The House of Lords: Reform*(The Stationery Office (TSO) 2007)27.

31 Russell, *Reforming the House of Lords: reform* (n 2) 299.

32 E.g. only one in the 2010 andtwo in the 2005 UK General Elections.

1.3 Whilst enhancing the principle of a democratically legitimate Chamber, the number of appointed members of the House of Lords could be increased from the proposed 60 to 100, in order to act as a fully sufficient bolster to the 200 elected members as set up by the Draft Bill[33], who have a party political background.

2. Advocating a Hybrid Chamber

A reformed House of Lords should be a Chamber "with which [the public] identify and which also meets high standards of performance"[34].

2.1 Identification with the reformed House of Lords

2.1.1 The concern commonly expressed in respect of a mixed Second Chamber questions its unity.[35] With the democratically elected members deriving their legitimate basis from the support of the electorate, how can a constructive collaboration be enabled? In my opinion, the Draft Bill provides an ideal framework.

2.1.2 Firstly, by commanding the House of Lords Appointments Commission to make public and to regularly review its criteria for nomination[36], the Draft Bill enlarges the degree of transparency and clarity and enables the public to understand the basis on which a member has been appointed. Furthermore, its politically diverse composition[37] makes the Commission an independent and unbiased body capable of assessing candidates competently against its criteria of nomination and making recommendations to the Prime Minister.

2.1.3 Secondly, members are to be recommended by the Commission "on merit on the basis of fair and open competition"[38].

Rendering outstanding services to society, which will be traceable by the public, will offer a sufficiently democratic background and will constitute a legitimate basis for the appointed members. Recent appointments by the Commission have led the media to call those appointed "People's Peers"[39] to demonstrate the identification of the public, thus accepting their legitimacy, while on the other hand there was some press criticism that the "People's Peers" were not "ordinary" enough.[40] I regard this criticism as inappropriate. The selection on the grounds of ordinariness rather than on merit renders the established democratic basis void. It is their merit to society as a whole which makes the appointed apt for the duty, not the belonging to a class of "ordinary" people. Furthermore, a high standard debate clearly has its source in the independent educational and experiential background of its debaters.[41]

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33 House of Lords Reform Draft Bill, May 2011, s 1(3).

34 A Kelso, Reforming the House of Lords: Navigating Representation, Democracy and Legitimacy at Westminster, *Parliamentary Affairs,* (vol. 59, No.4, 2006) 566.

35 Russell, *Reforming the House of Lords: reform*(n 2, 4) 325.

36 House of Lords Appointments Commission, *Criteria Guiding the Assessment of Nominations for Non-Party Political Life Peers,* <http://lordsappointments.independent.gov.uk/selection-criteria.aspx>(last updated: 18 April 2011)accessed23 October 2011.

37 The House of Lords Appointment Commission comprises one member of the three largest political parties each, three without any political affiliation and the Chair.

38 House of Lords Reform Draft Bill, May 2011, s 24 (1).

39 House of Lords, *House of Lords Briefing, Membership: Types of Member, Routes to Membership, Parties & Groups,* (2009), 3.

40 BBC News <http://news.bbc.co.uk/hi/english/static/in_depth/uk_politics/2001/open_politics/lords/peoples_peers.stm> accessed 28 October 2011.

41 Parliament, Report of the Leader's Group on Working Practices, *Holding the Executive to Account,* s 20. <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldspeak/136/13605.htm>

accessed 25 October 2011.

2.1.4 The Commission is already bound to promote politically independent candidates.[42] [43] I would therefore consider it to be appropriate for the Draft Bill to contain a clause formally committing the Commission to encouraging gender and religious diversity as well.[44] This incorporation into the Bill would further increase the identification with the people although not making any controversial specifications from the outset.

2.1.5 Through the framework set out by the Draft Bill, it is evident that both the elected and the appointed members of the House of Lords would originate from different, but both democratic foundations.

2.2 A Chamber for "Meet[ing] High Standards of Performance"[45]

2.2.1 In order to maintain the members' "independence of mind"[46] to ensure a continuingly high standard and freedom of speech, I suggest that a minimum age requirement of 35 years be imposed on both elected and nominated members. This will make it more likely that new members of the House of Lords have a considerable degree of experience of life and a well-established occupational background.[47] They will be of a sound character and more inclined to make their voice heard rather than submitting to populist or party views. Not only will this enable a detailed scrutiny of legislation, but it will also enable a constructive contribution to the law-making process on the part of the members of the reformed House of Lords.

CONCLUSION

The reform of the House of Lords should improve its deficiencies and adapt it to the requirements of our time and the modern values of our society. Therefore, democratisation has to take place providing for large parts of the Chamber to be elected. This measure, however, should not undermine its well-established functional framework. A hybrid Chamber with a one third ratio of appointed members will create a balanced, legitimate and solid institution. To further increase public identification with the Chamber, the Appointments Committee should be obliged to encourage gender and religious diversity. Finally, I submit that a minimum age requirement of 35 years be imposed on all members to maintain the Chamber's high level of expertise and independence.

Memorandum from Dimo Manov

1. Reform of the House of Lords has been on the political agenda of the ruling parties for more than a decade now; but with the House of Lords Reform Draft Bill published by the coalition government, a conclusion to this saga appears to be in the foreseeable future. This memorandum sets out to examine two of the key aspects of this Bill, namely the size and the electoral system of the reformed House of Lords. It is essential that we analyse these aspects while keeping in mind the government's intention to 'instil greater democracy'[48] into the second chamber, as well as the principle that the House of Commons is the pre-eminent chamber. I will briefly explain the government's proposals and argue that the most appropriate option is an indirectly elected upper house without any appointed members whatsoever.

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42 House of Lords Reform Draft Bill, May 2011, s 24 (1).

43 The House of Lords Appointments Commission, <http://lordsappointments.independent.gov.uk/selection-criteria.aspx>(last updated: 18 April 2011) accessed 23 October 2011.

44 Kelso, *Parliamentary Affairs,* (n 7)565.

45 A Kelso, *Parliamentary Affairs,* (n 7, 16) 566.

46 Russell Reforming the House of Lords (n 2, 4, 8) 301.

47 Great Britain, *The House of Lords: reform* (n 3) 45.

48 HM Government, House of Lords Reform Draft Bill, 2011, p. 6

2. The government's proposal to reduce the size of the House of Lords falls in line with the global tendency that the upper house should be smaller than the first one. Commentators often regard this as a beneficial factor which facilitates debates, improves the work of committees and makes the members work more closely by creating a less adversarial atmosphere. [49] While this change in the composition of the chamber will generally improve the quality of the work done by it, there appear to be some fallacies with the proposed inclusion of 60 appointed members and 12 Bishops. The idea of a mixed chamber involves having groups of members who enjoy different degrees of democratic legitimacy. This creates the risk that a vote carried by a group with a lesser degree of democratic legitimacy would be seen as less valid. [50] This used to be the case with the votes of the hereditary peers, which were regarded as having less weight than those of the life peers, as the latter group was considered to be more legitimate. Another problem with a mixed chamber might occur if the elected members are equally split between their party allegiances. In that case, all the power would be in the hands of the appointed members who lack the legitimacy of their elected colleagues. Therefore, a wholly elected second chamber appears to be the more appropriate option.

3. Another important element of the composition of the reformed House of Lords is the voting system by which members will be elected. Currently, the House of Commons is elected using first-past-the-post voting, which is not a proportional electoral system and which facilitates a majority government. Thus, it would seem sensible if the second chamber was elected via a proportional system, such as the Single Transferable Vote since this is likely to result in no party having a majority. Consequently, the second chamber will represent different interests from the House of Commons. Distinct composition is often seen as one of the three essential features of an effective second chamber[51]—the other two being power, which Denis Carter points out is already considerable,[52] and perceived legitimacy, which will eventually be achieved by the introduction of an element of election. There is a major obstacle to the use of a proportional voting system, however. In order to preserve the primacy of the House of Commons, the principle of representation of the second chamber has to be of lesser validity than the one used for the first one.[53] If this is not the case and the second chamber is elected by some form of a proportional representation, should there be a clash between the two chambers, the House of Lords will demand that they should prevail, because they are even more legitimate than the lower house, which is elected by the presumably less representative first-past-the-post voting system. In addition, it is questionable whether a directly elected upper house, particularly one elected on a proportional system, would be satisfied with remaining subordinate to the House of Commons for long.[54] The directly elected second chamber of the Czech Republic is an example of an upper house with relatively weak powers; however, the situation there has proven to be unstable with Senators demanding similar powers to the members of the lower house.

4. For these reasons, an indirectly elected second chamber representing territory, as opposed to individual voters, would be more appropriate because it is less likely to challenge the government and will give the devolved governments formal access to the legislature. [55] This is particularly important in times when devolution has taken place and turned the UK into a 'quasi federal'[56] state, as this may help to hold it together. Moreover, the distribution of seats in second chambers based on territorial representation would be very useful in retaining the primacy of the House of Commons, as it is generally the case that an equal number of seats is given to each territorial area regardless of its population. This 'reinforces the less democratic and more subservient nature of the upper chamber'[57] and in that way, makes it less likely that it will be considered more legitimate than the first one. In the case of the UK, election of the members of the reformed upper house could be carried out by assembly members, and where assemblies do not exist the electoral college may consist of councillors. Meg Russell also suggests the use of a

49 Russell, M. (1999), 'Second Chambers Overseas', The Political Quarterly, 70, p. 412

50 Bogdanor, V. (1999), 'Reform of the House of Lords: A Sceptical View', The Political Quarterly, 70, p. 380

51 Russell, M. (2003), 'Is the House of Lords Already Reformed?', The Political Quarterly, 74, p. 314

52 Carter, D. (2003), 'The Powers and Conventions of the House of Lords', The Political Quarterly, 74, p. 319

53 Bogdanor, V. (1999), 'Reform of the House of Lords: A Sceptical View', The Political Quarterly, 70, p. 375

54 Russell, M. (1999), 'A Directly Elected Upper House: Lessons from Italy and Australia', London, Constitution Unit, p. 11

55 Bogdanor, V. (1999) Devolution in the United Kingdom, Oxford, Oxford University Press, p. 285

56 Hazell, R. (1999), Constitutional Futures, Oxford University Press

57 Russell, M.(1999), 'Representing the Nations and Regions in a New Upper House: Lessons from Overseas', London, Constitution Unit, p. 14

mechanism which will guarantee that the political balance mirrors that of the region at the last general election. Perhaps another argument in favour of this system would be that it decreases voter fatigue by reducing the number of elections.

5. In conclusion, whereas creating a proportionally elected second chamber might result in it being more democratic and representative, this will put at stake the pre-eminence of the House of Commons. Therefore, choosing indirect election as the method of gaining entry into the reformed House of Lords is the more appropriate option, as it will ensure the primacy of the lower house while still making the upper house more democratic and representative than at present.

Memorandum from Iulia Miruna Anghelescu

1. This submission is concerned with clause 2 of the House of Lords Reform Draft Bill, entitled General Saving and it aims to analyse the impact of the reform on the prerogatives of the Lords. The view I take is that it would be highly problematic to reconcile the new, more legitimate composition of the Lords with the existing restrictions upon its powers. The existing conventions and the prospects of development are also approached from this perspective. Lastly, I am of the opinion that the function of the Lords to act as a chamber of experts should be preserved at all costs, which again constitutes a delicate issue under the provisions of the Bill.

SUMMARY OF EVIDENCE

2.1. The primacy of the House of Commons is supported by democratic legitimacy and should by no means be contested.

2.2. However, the reform is likely to have as a consequence an increased difficulty in exercising this primacy, as a result of powers of the Lords being inevitably increased.

2.3. It would be for the Lords and the Commons to decide whether they wish to maintain the existing conventions or not, not for the Bill to make such provisions.

2.4. Ultimately, the functions of the Lords, which are of great importance to Parliament, would be under threat of not being as well performed as in the past, with the introduction of elected members.

EVIDENCE

3.1. Is the House of Commons still to remain the primary Chamber?

3.1.1. Lord Windlesham wrote in 1975 that the House of Lords "should not attempt to rival the Commons. Whenever it has done so in the past it has failed"[58]. The desire that these powers should remain unchanged is perfectly understandable. Most Bicameral systems are defined by one main chamber proposing legislation and a second one, scrutinising the bills proposed by the other, not rivalling it. "The House of Lords is not suddenly going to change all that. It will always accept the primacy of the elected House. It will always accept that the Queen's Government must be carried on."[59]

3.2. Are the powers of the Lords likely to remain unchanged?

3.2.1. Historically, the main claim which entitled the House of Commons to be the more legitimate of the two chambers was its composition. The elected members were (and still are) considered to be direct representatives of the populace. It was precisely this aspect of composition which justified the status of the House of Lords as a Second Chamber having less power than the Commons. It would therefore appear as contradictory to claim that there would be no change in power once the composition has been considerably altered. It follows that, once the House of Lords is constituted on a more legitimate basis, a tendency to voice disapproval or to scrutinise Bills more often seems to be the inevitable consequence, even if the Commons still remain the primary Chamber.

58 Politics in Practice (London, Cape, 1975) 137

59 Lord Strathclyde, Politeia Lecture, Redefining the Boundaries between the Two Houses, 30 November 1999, pp 8-9.

3.2.2. The House of Lords has adopted a policy of self-restraint, choosing to censure itself, as a non-elected House. However since the House of Lords Act 1999, "the Lords have become much more assertive, and more willing to reject secondary legislation."[60] This clearly shows the effect of increasing the legitimacy of the House of Lords and suggests that the possible outcome of the Lords being reformed would be similar in the case of primary legislation, only that the impact would be much greater.

3.3. How would the Salisbury–Addison convention evolve under these circumstances?

3.3.1. "There is a deeper philosophical underpinning of the Salisbury Convention which remains valid. This arises from the status of the House of Commons as the United Kingdom's pre-eminent political forum and from the fact that the general elections are the most significant expression of the political will of the electorate."[61] Indeed, the practicality of this convention is not to be challenged.

3.3.2. Nevertheless, Viscount Cranborne acknowledged in 1996 that were the Lords to be reformed, the House might choose to renounce the doctrine[62]. It is therefore their "choice" what they would wish to do after the reform. In my view, the government cannot impose the applicability of an uncodified convention in an Act of Parliament. A convention is by definition a mutual agreement, exercised by the parties because they feel it is the right way, under the specific historic or political circumstances. My suggestion would therefore be that the reference to conventions, as appears in paragraph (1) subparagraph (c) be struck down from the Bill.

3.4. *What would be the functions of the Lords?*

3.4.1. The Lords may not be representative of the people stricto sensu, as being elected by the people, but they are representative as a class of experts, being therefore able to represent the country's interests by making use of their expertise. One example is their activity related to scrutinising EU legislation. "Because of the system of nominating to life peerages men and women of eminence, the Lords contains experts in almost every field of European Union activity (…). The scrutiny provided in the House of Lords European Union Select Committee, (…) has proved to be perhaps the most effective in the European Union." [63] This reputation of professional excellence would be under serious threat should part of the members be elected, as they would mainly be politicians, lacking specialist knowledge in other fields.

3.4.2. Ultimately, reform is meant to be synonymous to improvement. The improvement is not only achieved by increasing democratic appearances, but also (and most importantly) by increasing efficiency. Loss of expertise should not be the price paid for democratising Parliament.

CONCLUSION

4. Even though the need for reform is acknowledged, the fact that, for one hundred years, Governments have been reluctant to "finish" Mr Asquith's business is illustrative of the delicate problems such a reform would pose. Whatever the course of action might finally be, I am of the opinion that the Lords should preserve their main function as a chamber of experts, for that is most relevant contribution they can make to Parliament. Although the Bill expressly states that this would be the case, past evidence appears to show the contrary.

Memorandum from Benik Reef

SUMMARY OF EVIDENCE

Bishops in the House of Lords are unrepresentative of public opinion and multicultural Britain.
The draft bill is reinforcing an outdated system by continuing to provide automatic seats for Church of England Bishops.

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60 Vernon Bogdanor, The New British Constitution (Hart Publishing 2009) 151

61 Wakeham Report (January 2000)

62 Politeia Lecture, 4 December 1996

63 Vernon Bogdanor, *The New British Constitution* (Hart Publishing 2009) 166

EVIDENCE

1. I wish to put forth my opinion that there should not be "reserved places for Church of England Archbishops and Bishops"[64] in the House of Lords Reform Bill. I shall put forth my argument as to why this should be amended with the support of various relevant academic authorities.

Representation

2. The first issue in regards to Bishops in the House of Lords is that of representation. It might make sense for the Bishops to be representative of both the public and of religion as a whole. However, it is clear that they fail to be representative of either and should therefore no longer be automatically included in the second chamber on the grounds of this assumption. It would be inaccurate to suggest the public supports reserved places for Bishops in the House of Lords. An ICM poll taken in March 2010 conclusively reflects this view. The poll showed that when asked; "Do you think it is right or wrong that some Church of England Bishops are given an automatic seat in the House of Lords where they can vote on laws?"[65] 74% of those surveyed believed it was "wrong." Even more interesting is that 70% of those surveyed who identified as Christian believed it was "wrong". The survey findings do not imply that if elected the Bishops are "wrong" to have a seat, rather that it is not right for them to get their seat automatically. The ability for those who are a named Lord Spiritual or an ordinary Lord Spiritual to bypass democratic elections or fair appointment systems entirely should be removed from the bill. This provision is simply not supported by the general public and therefore cannot be representative of the will of the electorate.

3. As representatives of faith it would be reasonable to assume that the Bishops in the House of Lords are representative of the UK's religious beliefs. However this is not the case. Due to Britain's growing multiculturalism it is no longer accurate to represent only one faith in the UK legislature and claim to be representative of religious belief in the UK as a whole. Philip B. Kurland stated that "Religious freedom must mean that whatever special place on religion may have in the eyes of God, all religions are equal in the eyes of the law."[66] Applying this principle to the UK legislature, it is clear that religion is far from equally represented. Only the Church of England is represented in the positions of Lord Spiritual. The Constitution Unit at University College London addressed this issue of religious representation in a study in 2002 by stating; "It is widely acknowledged that the representation of only one religious group in a multicultural Britain is outdated."[67] In respect of this it is clear that providing automatic seats to Church of England Bishops only is religiously unrepresentative. Anna Harlow, Frank Cranmer and Norman Doe described this as "privileged representation" and "that the presence of bishops in the House of Lords violates [Kurland's] principle"[68] as mentioned above. Ultimately this amounts to a system which is biased towards one religion to the extent where it no longer represents the UK population's diverse religious beliefs. The House of Lords Reform draft bill offers an opportunity to amend this system but instead has failed to do so. Either religious leaders across all faiths should be appointed fairly (and perhaps proportionally) through the House of Lords Appointments Commission[69], elected, or there should be no formal place for religion in the second chamber. It would be contrary to tradition for the latter option to be implemented but it is fully within reason to implement either election or appointment by committee, given that the mechanisms are already provided for in the bill. This approach is supported by the report given by the House of Commons Public Administration Select Committee, which quoted by Frank Cranmer, John Lucas and Bob Morris in 2006 stated; "It is of course the case that distinguished senior figures in the Church of England (and other religious bodies) will be considered for membership of the second chamber through the appointment process (and they should be free to stand for election). This appears to us to represent the fairest approach. (House of Commons 2002: 35)"[70] Ultimately, the provision of automatic seats to Church of England Bishops is neither representative of the will of the public nor representative of multi-faith Britain.

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64 House of Lords Reform Bill, Page 22

65 http://www.ekklesia.co.uk/content/survey_on_bishops_icm.pdf; Q.3; page 12

66 P. Korland, "*The Religious Clauses and the Burger Court*" (1984) 34 *Catholic UK Review* 1, 3, quoted in R. Ahdar and I. Leigh, "*Religious Freedom in the Liberal State*" (Oxford: OUP, 2005), p.14

67 The Constitution Unit, University College London, "*Comparative Study of Second Chambers*" (London: University College, 2002), p.35, quoted in Cranmer, Lucas and Morris, "*Church and State*" (2006), p.21.

68 Anna Harlow, Frank Cranmer and Norman Doe, "*Bishops in the House of Lords: a critical analysis*" P.L. 2008, Aut, 490-509

69 House of Lords Reform Draft Bill; section 16; page 10

70 Frank Cranmer, John Lucas and Bob Morris, "*Church and State: A mapping Exercise*" (April 2006)

Outdated System

4. The second issue regarding the place of Bishops in the House of Lords provided by the draft bill is that it merely reinforces an outdated provision which holds little practical relevance. This is a common theme that runs through most, if not all, academic literature on the presence of Bishops in the House of Lords. Janet Lewis-Jones described the UK as the "only Western democracy in which the church still has seats in Parliament"[71] This out of place provision in our modern world has been described as anachronistic[72] or an anachronism.[73] It is even apparent to some Bishops inside the House of Lords who were interviewed by Anna Harlow, Frank Cranmer and Norman Doe that this is the case. One of which viewed the presence of bishops as "more decorative than [they] like to think"[74] It is clear that the provision for Bishops should be amended in order to bring the House of Lords into the 21st Century, with many political commentators and perhaps some Bishops in agreement on this. There is no reason why tradition should compromise the legitimacy of the second chamber.

5. Overall, it is apparent that the provision of automatic seats given to Church of England Bishops set out in sections 26 and 27 of the Draft Bill is in need of amendment. Whilst Archbishops and Bishops of the Church of England may have a right to sit in the second chamber they should not be given this privilege automatically. They should have to be subject to the same formal appointment committee process or stand for election as any other member. The mechanisms for these appointment procedures are provided for in the draft bill. There is a strong case against Bishops having a place in the House of Lords entirely on the grounds that they cannot claim to be representative of the public or Britain's variety of religious faiths.

Memorandum from Mrs Kim Variş

This submission will concentrate on the Government proposal that in an 80% elected reformed House of Lords, there would be up to 12 places assigned for representatives of the Church of England. I oppose this measure for the reasons outlined.

1. Executive Summary

1.1 The stated aim of House of Lords reform is to make the House of Lords visibly more democratic. Providing automatic rights for Church of England representatives to sit as ex-officio members, is in principle, contrary to this aim.

1.2 The historic right, in the form of the Bishoprics Act 1878, for certain representatives of the Church of England (namely the two Archbishops and the Bishops of London, Durham and Winchester) to sit in the second chamber is acknowledged. Repeal of this law would be required to sever the entitlement and it is recommended that this forms part of the second transitional period.

1.3 Removal of guaranteed places for Church of England representatives in the reformed House will not lead to the exclusion of moral or ethical considerations from debate or banish input from religious representatives in legislative discourse.

2. Outline

2.1 In clause 1 of the draft Bill there is provision for gradual reduction in the number of Lords Spiritual. As Bob Morris[75] asserts "It is not about the number or proportion of bishops themselves but whether the legislature should have any corporatist component." To preserve places as of right for any group within the House of Lords is to place them in a privileged position which is at odds with the aims for a more democratic second chamber. In his article on the "high" establishment he cites the UK as the only "sovereign democratic legislature that retains automatic religious representation as of right." The current model is not one that has been widely upheld and there is now real

71 Janet Lewis-Jones, "*Reforming the Lords: The Role of the Bishops*" (1999)

72 Morris (ed.), "*Church and State in 21st Century Britain: The Future of Church Establishment",* 2009, p.239

73 Frank Cranmer, John Lucas and Bob Morris, "*Church and State: A mapping Exercise"* (April 2006)

74 Anna Harlow, Frank Cranmer and Norman Doe, "*Bishops in the House of Lords: a critical analysis*" P.L. 2008, Aut, 490-509

75 The Future of High Establishment Ecc. L.J. 2011, 13(3), 260-273

scope to improve upon it. As Javier Garcia Oliva[76] suggests in his article on the relationship between Church and State "Our democratic credentials are more important than loyalty to the past"

2.2 Wider involvement of representatives of other faith groups through reserved places in the House of Lords does not improve the democratic position. As pointed out in the article *Bishops in the House of Lords: A critical analysis*[77], from a study in 2002 by the Constitution Unit at UCL, the practicalities of widening religious representation in a reformed second chamber would be problematic. Singling out representatives of the other main religions to take up positions may prove divisive and could potentially lead to a sense of further marginalisation amongst some excluded religious groups.

2.3 The statutory consequences necessary to remove the Lords Spiritual who hold a named office as outlined in clause 26 has already been recognised. With regard to the first and second transitional periods identified in clause 28, the following changes are recommended. That in the first transitional period the number of Lords Spiritual is confined to the five who hold the said named offices by law. As part of the process of the second transitional period, the repeal of the law in this area should be reviewed and if enacted would end the places apportioned to representatives of the Church of England in the reformed House of Lords. As Morris says, changes to the relationship between Church and State do not require "some single, climactic intervention (for example, disestablishment) but, rather, an intelligent process of mutual adjustment."

2.4 In her article *The place of representatives of religion in the reformed second chamber*[78] Charlotte Smith points out that "there are already many adherents of different faiths sitting in the second chamber. These individuals do not divest themselves of their faith and religious values upon entering the House." Members of the reformed House of Lords, be they appointed or elected, will by nature of the pluralistic society from which they come have religious and spiritual persuasions of various complexions or none at all. In a civilised society a broad spectrum of views is desirable to enhance debate. It is not only appointed religious representatives who are equipped to provide this moral or ethical direction.

2.5 From the results of a questionnaire answered by Bishops in the House Of Lords, Anna Harlow reported in her article (as above) that the respondents unanimously stated that their diocesan work took priority over their Lords work. At the time of the questionnaire none were House of Lords Committee members. Understandably, for some, their work commitments placed a constraint on their House of Lords activity. The contributions of the Bishops to debates however, is generally appreciated and well regarded from within the House as mentioned by Baroness Berridge during the House of Lords Reform debate on 22nd July 2011 "I am impressed by the Lords Spiritual, who bring a sense of service to their community and a spiritual, moral and ethical perspective that enhances the independent nature of debate"[79] as well as by many external commentators outside of it. In a reformed House, Bishops would have more time available to provide valuable expertise and insight to legislative discourse via committee forums, along with other religious representatives. It would also remain the case that retired bishops could stand for election or be appointed under the new system. The difference being that in these instances contribution would be based on credentials rather than as under the previous system—purely by virtue of their position.

2.6 In summation I will use the words of Frank Crammer[80] in his paper on Church State relations in the United Kingdom "Although the political debate surrounding establishment has ebbed and flowed, the experience of the last twenty years would suggest that successive governments have not regarded the radical reform of church-state relations as a high priority and that evolutionary change is much more likely than drastic surgery." The main point is that the special position that the representatives of the Church of England hold must be given further serious consideration within the framework of the reform proposals if the ambition of greater democracy in the new House is to be achieved.

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76 Church, State and establishment in the United Kingdom in the 21st century: anachronism or idiosyncrasy P.L. 2010, Jul, 482-504

77 Bishops in the House of Lords: A critical analysis P.L. 2008, Aut, 490-509

78 The place of representatives of religion in the reformed second chamber: P.L. 2003, Win, 674-696

79 Hansard 22nd June 2011: Column 1345 to 1346

80 Church State relations in the United Kingdom: a Westminster view Ecc. L.J. 2001, 6(29), 111-121

Memorandum from Daniel Shintag

Summary

1.1. In pursuance of the objectives stated in its Programme for Government,[81] the current administration has set out the tentative details of a reformed House of Lords in the *House of Lords Reform Draft Bill*,[82] in reaction to which I am pleased to present a number of comments and suggestions, as summarised below:

1.1.1. Despite the perceived importance of conferring democratic legitimacy upon the upper house, one should not neglect other core issues such as the exact significance of the upper house's role, and how an elected membership may influence it.

1.1.2. Having established that the upper house's unique role lies in undertaking scrutiny and providing sound, non-partisan advice, and that, as such, it differs markedly from the lower house, one must cautiously weigh the pros and cons of changing its composition in such a profound manner.

1.1.3. Further democratic reforms are likely to be a constant source of friction between the two chambers. In order to preserve its distinctive role, the House of Lords should be reformed into a wholly-nominated body, whose members will be appointed based on objective selection criteria of merit and public distinction, and who will represent the broadest possible spectrum of professional and cultural life and expertise.

Evidence

A Stronger House?

2.1. Conventional theory claims that legitimacy comes with election,[83] a position which, in recent times, has given rise to an apparently 'unBritish' drive to alter the House of Lords' mainly-nominated composition,[84] and to introduce an upper house whose member body is mainly or wholly elected. These intentions have been set out in the *House of Lords Reform Draft Bill*, under the assumption that this will increase the upper house's democratic legitimacy[85] and strengthen Parliament as a whole.[86]

2.2. It has been argued, however, that the House of Lords, in its post-1999 form, has already become more assertive and more confident.[87] Moreover, further democratic reforms will likely lead to an even stronger and more active upper house[88] and to clashes between the two chambers: the proportionally-elected Lords could claim that they are more democratically 'valid' than the MPs in the Commons, elected via the 'first by the post' system.[89] Hence, a PR voting system is likely to become a burden on the Commons, as the Lords gradually become more confident in their better democratic mandate.

A Weaker House?

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81 Cabinet Office, *House of Lords Reform Draft Bill* (White Paper, Cmd 8077, 2011) 5

82 House of Lords Reform HL Draft Bill (2010-12) 8

83 Meg Russell, 'A Stronger Upper House? Assessing the Impact of House of Lords Reform in 1999 and the Lessons for Bicameralism' (2010) 58 Political Studies 866, 869. For competing political theories about demarcating and quantifying the strengths and weaknesses of upper houses, see also Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (Yale University Press 1984); Arend Lijphart, *Patterns of Democracy* (Yale University Press 1999); George Tsebelis *Veto Players: How Political Institutions Work* (Princeton University Press 2002)

84 Lord Cooke of Thorndon, 'Unicameralism in New Zealand: Some Lessons' (1999) 7 Canterbury Law Review 233

85 *Draft Bill* (White Paper) (n 1) 29

86 ibid 6

87 Hugh Bochel and Andrew Defty, 'Power without Representation? The House of Lords and Social Policy' (2010) 9(3) Social Policy & Society 367, 368-9

88 Vernon Bogdanor, 'Reform of the House of Lords: A Sceptical View' (1999) 70(4) The Political Quarterly 375, 377

89 ibid 375; the Draft Bill (n 2) s 7(3) provides for a Single Transferable Vote system for the reformed House of Lords

3.1. Additional to the possibility that an elected House of Lords may claim greater legitimacy than the House of Commons, the introduction of a mainly or wholly elected element to the upper house could also dilute its influence on several fronts.

3.2. First and foremost, an elected membership will blur the lines between the Commons and the Lords in terms of member composition[90] and self-perception: replacing appointed members by politicians might create a clone of the Commons.[91] Secondly, an all-elected upper house will pose a serious disincentive for non-political experts and professionals, many of whom may not wish to join the grim fandango of popular elections.[92] In the case of a mainly-elected upper house, the percentage of apolitical bright minds is likely to drop significantly.[93] Consequently, the wide variety of expertise currently available through the House of Lords will itself become decimated, in correlation with the significantly cut number of appointed members. Thirdly, the disappearance of said expertise will severely hinder the reformed House in fulfilling its most important tasks: scrutiny and expert, non-partisan advice.[94]

3.3. Some doubts exist about the actual breadth of expertise available in the House of Lords. For example, peers are not always deeply knowledgeable about their own party's policies and forthcoming legislation; many are seen to be disconnected from real-life problems experienced by constituents;[95] and, indeed, expertise in various areas may be found in the Commons too.[96] Nevertheless, there appears to be support for the view that the House "has an alternative and more broadly-based perspective on the development of public policy."[97]

Important Questions

4.1. I have tried to devise appropriate solutions to what has been called the "Upper House Paradox",[98] by answering a few crucial questions:

4.1.1. Has the Government actually conducted research into the perceived public legitimacy of a so-called 'House of Experts'?[99]

4.1.2. Is it wise to focus solely on democratic legitimacy (which is already given full and legitimate representation within the primacy of the Commons), thereby losing the distinctive advantages offered by an all-nominated House?

4.1.3. Is it reasonable to sacrifice expertise and alternative viewpoints for the sake of electoral appeal, without consideration for any other broader issues?

4.2. As Russell suggests, perhaps a change in perception is needed, for "legitimacy can be influenced by other factors aside from democratic election, including party balance."[100]

Recommendations

5.1. Guided by the above questions, I would recommend the following measures.

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90 Lord Bingham of Cornhill, 'The House of Lords: Its Future?' [2010] PL 267

91 Gavin Phillipson, '"The Greatest Quango of Them All", "A Rival Chamber" or "A Hybrid Nonsense"? Solving the Upper House Paradox' [2004] PL 352, 353

92 Bingham (n10) 268-9

93 Bogdanor (n 8) 379

94 Bingham (n 10) 268

95 Hugh Bochel and Andrew Defty, 'A Question of Expertise: the House of Lords and Welfare Policy' (2010) 63(1) Parliamentary Affairs 66, 78-9

96 ibid 81

97 Phillipson (n 11) 358

98 ibid 352

99 See Russell (n 3) 876 and footnote 17 for public survey results about the current House of Lords

100 ibid 882

5.1.1. Firstly, the Government should backtrack from its emphasis of democratic legitimacy as the sole criterion for a reformed House and instead adopt a more comprehensive standpoint, as befits the mores of our era. In this "antipolitical age",[101] with faith in politicians at abysmally low levels,[102] the public is highly likely to accept that scrutiny and control of the Government and the Commons may be exercised by an upper house populated by members who have different, broader perspectives as well as no political aspirations.

5.1.2. Subsequently, the Government should consider an upper house which is even smaller than the reformed House as envisaged by the Draft Bill, a House that would operate mainly in the form of small, task-oriented committees (thereby greatly expanding the role of the current select committees), comprised solely of persons nominated based on distinction and public merit.

5.1.3. Finally, the criteria used by the appointing body must be broad enough to include as many experts from as many different professional and cultural fields as possible, so as not to leave the reformed House in the hands of "lawyers, company directors, former MPs and academics" and address the lack of "doctors, social workers, teachers and farmers".[103]

12 December 2011

Mr Harry Lees via his MP, Andrew George

I am writing as your constituent to express my concerns about the government's proposals on Lords Reform and specifically on the issue of Bishops sitting as of right in a reformed chamber. I urge you to make representations on my behalf opposing the proposals to the Deputy Prime Minister Nick Clegg MP, who is leading work on Lords Reform, and to the Joint Committee which is scrutinising the draft Bill.

The package of proposals on Bishops do not simply maintain the status quo but give even more privileges to the Church of England—some of which even the Archbishop of Canterbury, Rowan Williams, and the Archbishop of York, John Sentamu, have strongly opposed in their submission to the Joint Committee, stating that the Church of England did not seek exemptions proposed 'by the Government for the Lords Spiritual from the tax deeming provisions, the serious offence provisions and those on expulsion and suspension'.

Ours is the only democratic country to give seats in its legislature to religious representatives as of right, and I believe that having any reserved places for Bishops in parliament is unfair, unequal and against the aims of a more transparent and legitimate second chamber. The principal objection to the Lords Spiritual is having clergy sitting ex officio in parliament. The government's new proposals in effect create a new, largely independent, and largely unaccountable, place for the Church of England in parliament. That these are so outrageous and unnecessary, is just another reason to object to proposals for retention of automatic seats for Bishops.

20 December 2011

Dr Julian Lewis MP

Introduction

1. Whenever the topic of House of Lords reform is discussed in the Commons, there is little or no suggestion that an elected Second Chamber would discharge its duties more proficiently or more efficiently than the existing House of Lords. Instead, it is asserted as a self-evident truth that, in the 21st century, all parts of the Legislature must be elected. It is at that point that the arguments for making this change run into trouble.

101 Russell (n 3) 882

102 'Trust in Professions 2011' (*Ipsos MORI / British Medical Association*, 27 June 2011) <http://www.ipsos-mori.com/researchpublications/researcharchive/2818/Doctors-are-most-trusted-profession-politicians-least-trusted.aspx> accessed 30 October 2011; John Curtice and Alison Park, 'British Social Attitudes 26th Report—Latest Report on Trust in Government' (National Centre for Social Research, April 2010) <http://www.natcen.ac.uk/media-centre/press-releases/2010-press-releases/british-social-attitudes-26th-report--latest-report-on-trust-in-government> accessed 30 October 2011

103 Emma Crewe, *Lords of Parliament* (Manchester University Press 2005) 35; Donald Shell, *The House of Lords* (Manchester University Press 2007) 66; both works referenced in Bochel and Defty (n 15) 79

Would an elected Upper House be regarded as subordinate to the House of Commons?

2. There seems to be consensus that the Second Chamber should continue to be subordinate to the Commons and should also continue its primary function of revising and improving legislation. However, if the whole point of electing the Upper House is to give it democratic legitimacy, then the argument for recognising its status as subordinate immediately disappears. This can be avoided only by giving it *less* democratic legitimacy than the Lower House; but, if it is unacceptable to have an undemocratic Second Chamber in the 21st century, it is difficult to see why it should be acceptable that such a Chamber should be subject to only an inferior brand of democratic legitimacy.

3. Thus, during debates at the Commons, advocates of electing the Upper House try to justify its proposed subordinate status by relying on the fact that, under the scheme proposed, the Peers or 'senators'—once elected—would not be subject to democratic accountability by having to fact re-election in the future. This is frankly as incoherent as it is inconsistent.

4. In fact, those Members of the Coalition Government most strongly in favour of an elected Upper House—namely, the Liberal Democrats—face an additional paradox arising from the intention that the members of the Second Chamber would be elected by means of proportional representation. It has been instructive to observe the Deputy Prime Minister attempting to maintain that a Second Chamber elected by PR should and would be regarded as subordinate to a House of Commons elected by first-past-the-post.

5. There can be little doubt that the more democratic the Second Chamber is made to be, the more likely it is to cease to be seen as subordinate to the House of Commons. Indeed, there may well be circumstances under which it would be claimed that the elected Second Chamber had a greater democratic mandate than the Commons.

What type of person would sit in an elected Upper House?

6. Given the need to fight and win elections, the same factors which exclude almost all Independents from winning a seat in the Lower House would now remove most of them from the Upper House too. People who had been brought into the legislative process because they had achieved expertise and distinction in their specialist fields could no longer participate. The fighting and winning of elections is largely the prerogative of professional politicians. I have no doubt that many people who decided to leave their previous careers in order to become MPs might have risen to the top of their professions if, instead, they had remained within them. One of the sacrifices one makes when becoming a professional politician is to abandon that prospect.

7. There may well be Members of the House of Commons who could have become eminent professors or brilliant brain surgeons, but the fact that they had this unfulfilled potential cannot compare with the presence, in today's House of Lords, of *bona fide* experts who turned their potential into reality. That such expertise will be lost is recognised by those proponents of an elected Second Chamber who suggest that perhaps 20 percent of its Members could continue to be appointed. This would mean a grand total of 60 out of 300 Members—a proportion ill-equipped to substitute for the vast body of specialised knowledge, for example, from the arts, from the medical profession, from the higher Civil Service, from the military, from the legal profession, and from the Church, with which the House of Lords is currently endowed.

8. Effectively, at a time when the House of Commons is reducing its membership by 50, the Second Chamber would introduce up to 300 new party politicians to Westminster. If the Second Chamber is genuinely regarded as subordinate to the Commons, it may also be expected that the more able and ambitious professional party politicians will seek to win a seat in the Commons and will regard election to the Second Chamber as a second-best outcome.

Will Members of an elected Second Chamber be as independent-minded as the existing House of Lords?

9. The answer to this is No—for two reasons. First, as already indicated, elected Members will have to affiliate to political parties in order to have a reasonable chance of electoral success. Many independent-minded people will be extremely reluctant to do this. Secondly, it is highly likely that a Second Chamber of professional party politicians will be subject to the Whips far more rigorously than is currently the case.

10. Ironically, the principal argument used by supporters of an elected Second Chamber to contend that a degree of independence will continue, is that its Members will not have to worry about facing re-election. Thus, the only guarantee that they can give of any continuing independence is in direct proportion to the most undemocratic aspect of the proposed new régime.

What else will be lost as a result of replacing the House of Lords with an elected Second Chamber?

11. As well as a great range of expertise and a high degree of independent-mindedness, the tremendous opportunities given by the present system to amend legislation for the better will largely disappear. Voting in the Second Chamber will become much more tightly organised and disciplined. The result of this will be the mechanical rejection of amendments—no matter how compelling the case for them—just as happens on a weekly basis in the highly structured House of Commons.

12. I speak here from personal experience: in the second half of the 1980s, I was a researcher to the late Lord Orr-Ewing and several other Peers. On three occasions I was able to promote amendments to important Bills which would not have had the ghost of a chance of succeeding if introduced by Backbench Members in the House of Commons. When these amendments to the Trade Union Bill of 1984, the Education Bill of 1986 and the Broadcasting Bill of 1990 were introduced and debated in the House of Lords, however, votes were won on the strength of the argument and the effect of this, in each case, was to concentrate the mind of the Government so that, when these Bills returned to the Commons, either the amendments were allowed to stand or alternative changes were made to meet their essential points. None of this would have been possible if the Upper House had been as tightly controlled as the Lower House was then—and as an elected Second Chamber would be in the future.

What other disadvantages would apply to an elected Second Chamber?

13. Given that there will be 600 elected MPs in future and 300 elected Members of the Second Chamber if it is reformed, it follows that—under PR—each Member of the latter will be associated with a limited number of Parliamentary constituencies. This is a very different situation from the large number of House of Commons constituencies theoretically covered also by each Member of the European Parliament. I strongly suspect that elected Members of the Second Chamber—whether they liked it or not—would find themselves being approached by constituents from the limited number of seats which they supposedly represented. If they got involved in constituency cases, or indeed in local issues generally, this would cause tension and friction with the relevant constituency's own MP. If they refused to get involved, however, this would cause justifiable resentment on the part of the people who elected them. In the worst days of industrial confrontation, more than 30 years ago, the term 'demarcation dispute' was never far from the headlines. This is precisely what would happen, with a vengeance, when an elected Member of the Second Chamber trampled on the toes of Members of the House of Commons.

Conclusion

14. It is hard to see how an elected Second Chamber will be any more qualified or any better equipped to amend and improve legislation than the MPs in the Lower House where it originated. In the Second Chamber, expertise would disappear, independence would be much reduced, and the opportunity to win changes in legislation on the strength of the argument, rather than of the party machine, would all but cease to exist. There would be issues of primacy, legitimacy and demarcation between the Members of both Houses: often the result would be friction or even deadlock.

15. So adverse would the effects of an elected Second Chamber prove to be that there is a credible case to be made for having no Second Chamber at all, rather than one which led to such outcomes. Nevertheless, by sensibly adjusting our existing appointed House of Lords (for instance, with arrangements to ensure minimum acceptable levels of participation) we could keep in being a system with which there is no perceptible public dissatisfaction and which admirably serves our legislative process.

8 January 2012

Martin Limon

There is a need to thoroughly reform Britain's archaic parliamentary system not just the House of Lords. The United States with a population of 312 million people has 535 members of Congress (100 Senators and 435 Representatives) to represent their needs. In the UK there are 650 members of the Commons and 789 members of the House of Lords to represent the needs of 60 million people. The 'over representation' at Westminster is both inefficient politically and wasteful economically since there is a financial cost to the taxpayer in paying MPs salaries and expenses and in paying the expenses and allowances of the Lords.

Devolution of power to Scotland, Wales and Northern Ireland has revealed just how flawed the present system is. Why is it that Scotland, Wales and Northern Ireland have their own assemblies but England does not? Why is it that the Scottish Assembly is able to grant 'privileges' to its citizens that are denied to the English who have no assembly: examples

i) Scottish students attending Scottish universities pay no tuition fees but English students going to English Universities have to pay £9000 a year.

ii) Residential care for the elderly in Scotland is free but the elderly in England have to sell their homes if they need residential care.

iii) Bridge tolls (eg. Forth Bridge) have been abolished in Scotland but not in England (eg. the Humber Bridge).

Britain needs a written constitution with national assemblies for all the constituent nations of the UK (including England). At Westminster there should be an English Assembly (on the lines of the Scottish Assembly) for purely English domestic matters and a UK Parliament for areas like foreign policy, UK taxation, EU affairs and UK defence.

An elected House of Lords would be unnecessary if the reforms suggested above were implemented. It is affront to democratic principles that in the 21st century there should be an unelected House of Lords at all. Why should any peer have a say in the passing of legislation when they have not been elected by the voters of the UK? It is fundamentally wrong that many who sit in the House of Lords owe their presence there to the patronage of the government. For too long the House of Lords has been seen as a way to reward people for 'loyal service' in the House of Commons or elsewhere. Many people were horrified that the former Speaker of the House of Commons (Michael Martin) was made a member of the House of Lords after his attempts to 'cover-up' the MPs expenses scandal. Why should John Prescott have been made a 'lord' simply because of his service as a member of the House of Commons; he had spent most of his career as an MP criticising the House of Lords and calling for its abolition!

I would like to see the complete abolition of the House of Lords as a prelude to having a written constitution (as mentioned above) with clearly defined powers for:

i) Assemblies in England, Scotland, Wales and Northern Ireland.

ii) A UK Parliament for UK issues of defence, EU affairs, foreign policy etc.

However as in interim measure I would support the idea of a **wholly elected 'revising chamber' of Parliament** composed of one hundred directly elected representatives. These should be chosen at the same time as the General Election that elects the House of Commons.

Lord Lipsey

The government's plans for an elected House of Lords might be expected to cost £433m in the 2015-2020 parliament alone. This is the equivalent of 80,000 hip replacements[104] or the salary for 21,000 nurses for a year.[105]

In the first year of the change alone, the Exchequer will face an additional bill of some £177 million**.**

Details of Lord Lipsey's calculations are attached. They are based on the policy outlined in the government's White Paper "House of Lords Reform Draft Bill" Cm 8077, published in May, and on official sources. Costing these proposals requires additional assumptions, not included in the White Paper. However where such assumptions have been made they are explained in the notes.

Cost of Lords Reform:

	Year 1 (£millions)	Parliament 2015-2020 (£millions)
1. Cost of salaries and pensions for elected peers	8	40
2. Cost of salaries and pensions for transitional peers	44	220
3. LESS saving on existing Lords expenses	19	95
SUBTOTAL:	33	165
4. Office staff costs for peers	31	155
5. Cost of election for new peers	113	113
TOTAL:	£177 million	£433 million

Notes

1 & 2. Salaries are calculated as half-way between current MP and MSP salaries (£65,738[106] and £57,520[107] respectively) as provided by Cm8077, Paragraph111: "the level of salary for a member of the reformed House of Lords should be lower than that of a member of the House of Commons but higher than those of members of the devolved legislatures and assemblies". Pensions based on present cost of Commons pensions reduced pro rata for lower Lords salaries.[108]

***3.** Based on expenses and daily allowance claims in the House of Lords for the latest available quarter (1st October—31st December 2010) and under the new system of allowances.[109] An average cost per-member-per sitting of the House in the*

104 Average cost to the NHS of a hip replacement is £5,500. Source: http://www.bbc.co.uk/health/physical_health/conditions/artificialhips1.shtml, accessed 20-6-2011.

105 Based on pay guidelines published by the NHS. Source:

http://www.nhscareers.nhs.uk/details/Default.aspx?Id=766, accessed 20-6-2011.

106 Source: House of Commons Library Note, Members' Pay from April 2011 (30 March 2011, SN/PC/05837, http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-05837.pdf)

107 Source: Scottish Parliament, Frequently Asked Questions, "How much are MSPs paid and what are their allowances?", accessed 13 June 2011, http://www.scottish.parliament.uk/vli/publicinfo/faq/category4.htm

108 Source: House of Commons Library Note, Parliamentary Contributory Pension Fund (28 September 2010, SN/BT/1844)

109 Source: http://www.parliament.uk/documents/lords-finance-office/2010/members-financial-support-201011-Q3-v1.pdf(accessed, 17-6-11)

quarter is used to calculate the expenses of the House in an average year (the last full year had 142[110] sittings) and for the current 828 members.[111]

***4.** This is based on the assumption that each elected peer has staff and other costs of two-thirds of what the average current member of the House of Commons claims and that transitional peers will incur only one-quarter[112] of MPs' expenses for staff etc.[113]*

***5.** The mid-point of the Government's latest estimated cost for the AV referendum in May 2011.[114] This does not include the possible outlay for the electronic voting system under STV, which has been estimated at £90-130 million.[115]*

These calculations are based on published data, and on the assumptions set out in these footnotes. All figures are rounded to the nearest £1m. Some of the calculations rely on historic data, and must therefore be taken to be the best available approximations. Estimates are mostly cautious: eg no allowance is made for the extra costs of setting up new offices for new and existing peers (estimated by IPSA at £6000[116]) or for any transitional arrangements which may be made for existing appointed peers when they leave the Lords.

8 September 2011

Lord Lipsey—further written evidence (1)

1. The purpose of the House of Lords is to scrutinise legislation, especially legislation which the Commons has not had the time properly to scrutinise; to hold the Executive to account from a less partisan perspective than exists in the Commons; to create and sustain a core of men and women of knowledge and experience with a duty to contribute to public debate in Parliament and outside; and to act as an ultimate backstop to prevent a temporary Commons majority riding roughshod over Britain's constitution and its people's liberties. It is emphatically not the purpose of the House of Lords, in all normal circumstances, to usurp the authority of the Commons and the government it sustains.

2. The positive functions listed are likely best to be discharged by an essentially appointed and not a largely elected house. An appointed house can also be relied on not to pursue a challenge to the elected house too far, too often.

11 October 2011

Lord Lipsey—further written evidence (2)

The electoral system for the House of Lords

As I argued in my first memorandum to the committee, to introduce election to the House of Lords would be wildly expensive; and as I argued in my second memorandum, it would be a bad idea anyway. This memorandum however addresses a third and discrete point on which I suspect the Committee will receive less evidence. If there is to be election to the second chamber, should the electoral system used be, as CM8077 "on balance" proposes, the Single

110 Source: http://www.parliament.uk/mps-lords-and-offices/members-allowances/house-of-lords/holallowances/hol-explanatory-note-200910/ (accessed, 17-6-11)

111 Source: http://www.parliament.uk/mps-lords-and-offices/lords/ (accessed, 17-6-11)

112 One-quarter is a conservative estimate for Members' costs. It amount to approximately £38,000 which is in the range of the yearly salary for a Personal Assistant Secretary in London which is from £33,000 to £52,000 depending on age and experience (source: http://www.mysalary.co.uk/average-salary/Personal_Assistant_Secretary_8948, accessed 20-6-2011).

113 Source: http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomm/685/685.pdf (pg 40, accessed 17-6-11). MP expenses calculated as per head average of total expenses spending in 2009-2010.

114 In a question in the House of Lords, the cost was placed between £106m and £120m. Source: Hansard, Col WA338, 18 May 2011.

115 Source: 'No to AV' campaign literature, http://votemay5th.notoav.org/documents/the-cost-of-AV.pdf , pg 2 (accessed 17-6-11).

116 Source: House of Commons Library Note, Members' Allowances from April 2011 (15 April 2011, SN/PC/05938, http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-05938.pdf)

Transferable Vote (STV)? My qualification to opine on this subject is that I was a member of the Jenkins Committee on electoral reform, and have retained an interest in matters psephological ever since.

STV is a system which dates back to John Stuart Mill and the electoral reformers of the 19th century. More recently, it had the support of the Electoral Reform Society in its days under Enid Lakeman, La Passionara of STV,and, in more muted form, since she departed for the Great Constituency in the Sky. Its central purpose was to ensure that elections were decided by the qualities of individuals rather than by the selections of parties, and that is not a negligible consideration in its favour in appropriate circumstances. In the days when the Lib Dems were the party of people in sandals, that party too was converted to STV. The choice of STV in the white paper is a sop to the Lib Dems in the coalition.

STV does fulfil one important criterion for the electoral system for the second chamber: that it should ensure a house whose membership is more proportional to the strength of the parties in the country than is the membership of the House of Commons. However, a number of other electoral systems similarly satisfy that criterion. Is STV the right one to go for?

Most students of electoral systems would now agree that the choice of the appropriate system depends on the functions of the body to whom elections are being made and not just on the abstract virtues and vices of the systems themselves. For this reason, there have emerged in the UK a variety of systems. So, for example, first-past-the-post, endorsed in May's referendum, provides geographically based representation, which also maximises the (nevertheless diminishing) chances of a single party controlling the Commons. London's mayor, where an individual has to emerge who has wide support, uses SV. STV is the emerging system for Scottish local government, where the aim is to get responsive local representatives. Top-up additional member systems are used for the Scottish and Welsh assemblies, to reflect their more plural politics. Regional lists are used for Europe.

Why not STV for the Lords? The simplest answer is to study what happens in the Republic of Ireland in elections for the Dail. The most significant contest is often not that between the parties, since a number of each party's candidates will be returned in any case. The real contest is between individual candidates from each party, who compete with each other to demonstrate that they would provide the best service to their electors.

Such competition may or may not be a good thing for an assembly such as the Dail. Competition—in these cases between elected and list members—has been a bone of contention in both Scotland and Wales. But just because elected members do not like does not mean it is bad for constituents who can shop around with their complaints and demands just as they can shop in Tesco or Sainsbury's.

However it would not be a good thing for an assembly such as the House of Lords. For how would the various candidates for election compete between themselves? Well of course by offering individual constituents and groups of constituents boons whereby they could distinguish themselves from, and show themselves superior to, other candidates. There will be Labour (stop-the-housing-development) candidates competing with Labour (stop-the-hospital-closure candidates) competing with Labour (free-parking-for-all) candidates.

In a toxic paradox, the choice of STV combines ill with the 15-year term limit. In the run-up to their election, would-be peers will be incentivised to prioritise constituency work, hold surgeries, and court local voters. In all this of course they will be competing with local Commons members for voter attention. However, once elected they will have no further incentive to serve local voters as they cannot run for election again. Some, will no doubt find that they have other pressing and urgent tasks to fulfil than those that they promised their voters they would fulfil, Others, thinking that it would be immoral to promise voters one thing and deliver another, will continue to try to offer a full constituency service.

This effect of STV would lead to increased competition between MPs and members of the second chamber. It will lead to peers focussing on tasks they are not being elected to fulfil—social work for constituents—and so neglecting tasks they are being asked to fulfil, as members of a more reflective chamber and one with the essential task of legislative scrutiny.

So what instead? Top up lists is a possibility, but it would mean half or more of the members of the second chamber would have geographically defined constituencies with demands for the social work function too. Regional or national lists are another possibility, though they perhaps should be semi-open lists which give voters the chance to amend the order of preference of candidates suggested by the parties.

More radically it could be decided that, even with elections, the present balance of the two houses should be retained. One House, the Commons, should have a representation which continues to be based in geography. The second chamber should have a representation on a different basis. One clear contender for this would be election, perhaps indirect election, of members from particular civil society institutions: from business, from medicine, academia, the arts and the law. If this were adopted, and it is beyond the scope of this memorandum, to explore the pluses and minuses in more detail, we should at least retain one important virtue of the current second chamber: that its members are chosen on a completely different basis from members of the Commons and one that does not tempt them too frontally to challenge the Commons' ultimate authority.

But, since we already have a second chamber chosen on a basis distinct from that of the House of Commons and one which avoids competition in geographical areas, might a more robust way forward not be simply to drop the idea of elections for the second chamber altogether?

11 October 2011

Lord Low of Dalston

1. The question of function is prior to those of powers and composition. The principal function of the House of Lords is to act as a revising chamber. Though mindful of the many other issues on which the Joint Committee is seeking evidence, I just want to address one question—how to achieve a composition which is most appropriate for a revising chamber. It is submitted that the qualities required are more those of expertise and experience than the more nebulous quality of representativeness, and that these are more likely to be secured by a system of appointment or selection than one of democratic election. It's more like choosing the best person for the job—the person whose skills and experience best match those required—than electing someone to represent you.

2. That being the case, I would be relatively content for the method of recruiting to the second chamber to remain broadly as it is. But it is argued that there is a problem of legitimacy. I think this is more a matter of perception than reality. The bases of legitimacy mentioned in the last paragraph are not inherently better or worse than one another, they are just different. Whether they are better or worse depends on the purpose for which they are being employed. It is my contention that a method of appointment or selection is more fit for purpose if it is the members of a revising chamber you are selecting. However it is clear that the idea of election has gained a certain momentum, and it is the purpose of this submission to suggest a method of recruitment to the second chamber which, if an alternative to the present system is to be recommended, would combine many of the attractions of a system of election with those of appointment by formalising and greatly broadening the appointment process.

3. But first, the inappropriateness of the present system of election for Parliamentary elections using geographical constituencies, even if modified—perhaps especially if modified—to incorporate an element of proportional representation, cannot be emphasised too strongly. It would tend to throw up the same kind of career politicians who stand for the Commons and not those with the kind of expertise and experience being sought for the second chamber. The Lords would soon become more politicised and lose some of the qualities for which it is currently particularly valued: No single party holds sway there, members are more independent-minded, and debates are, as Wakeham put it, "less adversarial, better tempered and better informed" as a result. If the same system were to be used as is used for electing the Commons, the Lords would tend to duplicate the Commons and thus not add value. There would for the first time be the possibility of "turf wars" at constituency level between MP's and peers, and if a different system of election were used, especially if it involved an element of PR, the Lords could soon begin to rival the Commons' primacy.

4. I would propose a system of electoral colleges covering the main branches of civil society—what might be termed "constituencies of expertise"—the law, medicine, the arts, sport, education, the armed services, business, trades unions, the third sector and so on. They could nominate direct to a reformed House of Lords or, as I believe happens in Malaysia, they could submit their nominations to a statutory appointments commission which would make the final selection. The latter method would probably be preferable in order that nominees might be independently and impartially vetted to ensure that they are fit persons to be appointed. The commission would have the task of determining the constituencies of expertise and which organisations should have nominating rights within them. They should also validate against agreed criteria the procedure which nominating bodies employed for arriving at their nominations. The new system could be phased in in much the same way as the Government proposes for its system based on elections. The constituencies of expertise would nominate a third of the candidates to which they

were entitled every five years until they reached their total entitlement. They would then continue to nominate a third of their entitlement as a third retired every five years in order to achieve a system of staggering or rotation.

5. I have not gone further in elaborating my proposal here without knowing whether it is likely to evoke any interest, but it would not be difficult to do so if there were to be a positive response either from the Joint Committee or from Government, when questions such as the size of the House and the number of constituencies would have to be gone into. The most authoritative indications to date have not been very encouraging: The Wakeham Commission was initially attracted, but gave up in view of what it regarded as insuperable practical difficulties. The Constitution Unit at University College London have been similarly dismissive. But I think there is more to be said for the proposal than these authorities allow. Sir John Major gave his support to the central idea behind constituencies of expertise when he spoke to crossbench peers a couple of years ago. When challenged on grounds of practicality by a member of the Wakeham Commission, he said he wasn't convinced. He said he didn't think it could be beyond the wit of man to come up with a workable scheme, and neither do I. Take the question of determining the constituencies of expertise. The House of Lords Library has a classification of peers between 1958 and 2008 in 19 categories (see appendix 1). We could do a lot worse than use this as a starting point.

6. There is more interest out there than it seems people are aware of. In 2008, Frank Field MP produced a pamphlet entitled "Back from Life Support: Remaking Representative and Responsible Government in Britain" which adumbrated a scheme along very similar lines to that advocated in this submission. Although it is still very sketchy and has to some extent been overtaken by events, I attach the key extract at appendix 2.

7. The organisation Respublica has advanced proposals for a scheme which is a third elected, a third appointed from civil society and a third nominated by political parties. This would have the disadvantage of a hybrid model in creating what would almost certainly be seen as two tiers of members, with implications for the legitimacy of close votes where the appointed members appeared to determine the result. But I mention it to draw attention to the diversity of thinking which exists as an alternative to the Government's which deserves to be taken account of. I have also received a number of thoughtful submissions from members of the public urging an alternative to the traditional election in traditional constituencies.

8. I am also aware that the Joint Committee has received two further submissions in a similar vein—from John Smith and Martin Wright. My ideas are closer to those of Mr Smith than those of Mr Wright, which I think create another complex layer of administration in trying to bring the general public into voting, ask too much of voters and for these reasons do verge on the impractical. But the submissions of Mr Smith and Mr Wright do enable me to make a couple of other points:

8.1 I have deliberately spoken of "expertise and experience" as the qualities which qualify a person for membership of the second chamber. By experience I really mean experience of government, and this is important. There is some tendency for people to speak as if the ideal House of Lords would be a politician free zone. I do not take that view. I think the peers who come to the House after a career in politics, often at the highest level, contribute a vast amount to our debates and we would lose it at our peril. It is just one of the many merits of Mr Smith's proposal that he recognises this and in fact proposes a "Parliamentary College" twice the size of all his other colleges except his General College.

8.2 We should not delude ourselves that a system of the kind I am suggesting makes universal suffrage in nominating to the House of Lords possible. But in being much more broadly based and diversified than the present appointments process it goes much further in the direction of popular involvement than anything we have known to date.

9. I hope the Joint Committee will give serious attention to the unsuitability of "traditional" electoral systems for populating the House of Lords and to proposals for alternatives based on the "constituencies of expertise" idea, and that it will have things to say about them should a system of election be decided upon. I can only speak for myself of course, but I should be happy to come to meet the Committee to discuss the proposals contained in this submission if that were thought to be helpful, and it seems to me that a session involving Messrs. Smith and Wright as well as myself could well make a very useful session.

Appendix 1: Categorisation of Peers

The following 19 categories are used to classify existing peers in the House of Lords Library Note Peerage Creations, 1958-2008 (LLN 2008/019)

Background	Description	%
Finance	Banking, insurance, accountancy etc.	3
Industry	Senior position in the manufacturing or service industries	11
Media	Senior executive position in television, radio, newspapers, publishing, advertising, public relations or other media organisation	4
Land etc.	Landowner or farmer	1
Academic	Academic (including scientists but excluding those specialising in law or engineering etc. —see below)	7
Teaching	Teacher or other worker in the education sector (not higher education)	1
Medical	Medicine, nursing and associated professions	3
Military	Serving member of the regular armed forces	2
Civil Service	Senior diplomat or civil servant	5
Legal	Judge, solicitor, barrister, or academic specialising in law	5
Journalism etc.	Journalist, writer or broadcaster	1
Engineer etc.	Engineer, architect, surveyor or similar (or academic specialising in these areas)	1
Arts	Musician, or visual and performing arts	1
Voluntary	Voluntary or charitable work	3
Trade Union	Trade unionist	4
Local government	Local politics or administration	4
Other public sector	Public sector position not covered above (includes membership of quangos)	3
Politics	Member of parliament or involved in political activity (but not at a local level only) 39	
Other	Miscellaneous (including widows of prominent persons, and retiring senior church figures) or no stated occupation or activity	3

Appendix 2

Extract from "Back from Life Support: Remaking Representative and Responsible Government in Britain"

By Frank Field MP

"There is general consent that the lords should be elected, but the Government is understandably anxious that an elected body may begin seriously to challenge the supremacy of the Commons.

"Here then is a three point programme of reform. The first is that the powers of the Lords should be enshrined in legislation and a key point of that legislation should be to formalise the position of the Lords as an inferior chamber in power to those exercised by the House of Commons. Second, in such legislation, a revised Lords needs to be given clearly the powers that Bagehot gave to the Monarch. It should have the right to be consulted, the duty to advise and similarly be charged to warn the Commons on proposed legislation. Third, the Lords should become the depository once again of group interests in our legislative system.

"Until recently two groups interests were formally represented in the Lords. The Lords of Appeal form the first group. This group is to be moved from the Lords into a UK supreme court. Existing members, who are life peers, will remain in the House, but new Lords of Appeal will not be made life peers. The loss of this legal expertise in probing and amending legislation will be huge. The other group represented in the Lords comes from the 26 Anglican bishops who by virtue of their office have seats in the upper chamber.

"The representation of these two groups should become the prototypes for increasing group representation in our society. A radical Lords reform would be based on seeking the representation of all the major legitimate interests in our society. There would be the need, of course, to establish a reform commission whose duty would be to begin mapping out which group interest should gain representation, and at what strength. So, for example, the commission would put forward proposals on which groups would have seats to represent women's organisations and interests, the interests of trade unions, employers, industrialists and businesses, the cultural interests of writers, composers and communicators, the interests of the professions including those involved in health and learning. The representation specifically of local authority associations would ensure that the different regions of the country have voices in the upper chamber. And so the list would go on with the seats for Anglican bishops shared between other denominations and faiths.

"The commission's second task should be to approve the means by which each group elects or selects its own representatives and would then have the duty to review the lists. The commission should be encouraged to approve a diversity of forms of election. Some groups may involve the whole of the membership in a selection process. Others might adopt a form of indirect election. The commission's task would be to ensure that, whatever method is proposed, it is one with which the overwhelming majority of the members are happy."

Lord Lucas

1. I think that the House of Lords is in need of reform, at least along the lines of the Steel Bill, and I suspect that the Draft Bill is the only one which is likely to pass Parliament before the next election. However, I think that the present Draft Bill would result in a much weakened House of Lords, or one engaged in political combat with the House of Commons—with such a radical change it is not possible to predict the outcome.

2 This submission explores the scope for amending the Draft Bill to produce an elected House of Lords which would retain the virtues of the present house, and would be unlikely to challenge the Commons.

3. My proposed amendments to the bill are:

3.1 Membership of the new House should be (say) 600 part-time members rather than 300 full-time. This has a radical effect on the character of those likely to seek membership, requiring in effect that they have reached a point in their careers where they have command of their time. Lord Tyler waxed eloquent at our last debate on this subject, and I support everything that he said then:

"Parliament as a whole benefits from having a proportion of Members who retain an active involvement in other walks of life...

Given the relatively long but one-term limited service, it would be difficult to recruit candidates who were prepared to be full-time parliamentarians while they were not able to take part in other activities and go back to another career.

[In a house of 300 full time members] it will be quite difficult to get diversity-indeed, even gender balance-in the membership of this House. If only 80 Members are elected in each tranche there will be relatively small multi-Member seats and it will be quite difficult to get the sort of diversity and gender balance that I know many Members of your Lordships' House wish to have."

3.2 At a general election any political party wanting to gain seats in the upper house should publish an ordered list of people whom it would intend to appoint, and their curriculum vitae.

3. Together, I think that those two changes to the Draft Bill would produce a house that could reasonably be called elected, would have a composition close to the current house with a reasonable chance of preserving its virtues, and that would be most unlikely to challenge the Commons for supremacy.

4. The magnitude of the change overall would be small enough for us to be reasonably certain of how the House would behave, and how well it would perform its functions.

5. Once these changes had bedded in, moves to more direct election methods could be made gradually and incrementally, without the dangers of catharsis that the Draft Bill courts.

6. I have a number of other suggestions which I think would you add to the effectiveness of the above proposals.

6.1 Electors should be able to tick a box for the party that they supported for the upper house election on the basis of the published candidate lists, rather than their preference being inferred from their choice of MP.

6.2 Each party should have one list for the entire UK—this makes it much easier to produce the balanced lists that Lord Tyler talks about, and removes all formal geographical links, making campaigning impossible (and thus not off-putting to good candidates) and removing the threat (to MPs) of double representation. The implied (by the mechanics of regional elections in the Draft Bill) threshold of ~10% of votes cast to achieve any seats in the upper house should be made explicit. Parties that only field candidates in a restricted region of the UK should be able to elect for the 10% hurdle to be calculated in respect of that region only.

6.3 The potential blow to a candidate's esteem resulting from allowing their name to go forward and then they're not being elected should be softened. The likelihood of rebuff could be reduced by allowing parties only to put forward names for a proportion of the seats that they were likely to be awarded (on the basis of the votes at the previous general election) (say two thirds or a half); this would also allow space for unannounced senior appointments after an election.

6.4 New members would not all join the upper house immediately, but their appointments would be spread throughout the period of the parliament. This is not an essential feature of my scheme but it allows resignations, deaths and ministerial appointments to be dealt with more smoothly than the proposals in the Draft Bill. It avoids a hiatus in the spirit and behaviour of the house resulting from a sudden influx of new members, which would provide a quinquennial opportunity for the house to decide to challenge the Commons, and I think that it works better with part-time members as it allows some of them time to rearrange their lives to accommodate membership of the house.

6.5 In a five-year Parliament, 20% of new members would join in each year. If a party member resigned or died, he would be replaced by a member sitting for the remainder of the retiring member's term, if this was over eight years, or 15 years plus the remainder of the retiring members term if eight years or less. If a crossbench member resigned or died they would just be replaced by a new member sitting for a 15 year term—the crossbenches do not have the same incentive to game the system as parties, and it is not of great consequence if the number of crossbench peers to be appointed varies from year to year.

6.6 Inclusion of a candidate in a party list at the previous general election should be all that is required by way of quality control of membership, but if a party wishes to appoint someone who was not on such a list, and for all crossbench appointments, the Appointments Commission should certify that the candidate is of suitable quality.

6.7 Part time should not mean 'when I feel like it'. There should be a clear job specification including an attendance requirement, with resignation the default course of action if it could not be complied with.

6.8 Members should be paid. The rate of pay should be determined by the SSRB. As part-time members I see no justification for catering for second homes, indeed members from outside London should be encouraged to spend time away from the capital. Expenses should be limited to reimbursement of vouchered travel and accommodation costs within a specified limit and evidenced by invoices. We should avoid IPSA.

6.9 Members' pay should incorporate an allowance for staff of, say, half a man year. Actual staff costs would be a matter between the member and the Inland Revenue. It might be appropriate for the house to run an internship scheme, providing young people with a basic income and experience of working in Parliament, and making such interns available to members in exchange for reimbursement of salary costs.

6.10 Transition arrangements should immediately reduce the size of the house to the agreed limit, and provide for existing members to retire evenly over the next 15 years. I suggest that this is done by the voting system used in the 1999 hereditary peers election. I would also encourage peers not to put themselves down at all for the new house by offering those do not the possibility of converting their life peerage into a hereditary peerage.

6.11 I see no objection to the possibility of reappointment for a second term. There will be little enough of it. What party leader, faced with a chance to appoint someone to the upper house, will not most naturally turn to someone fresh and new, of his own choosing, rather than an old warrior with fifteen years accumulated bad habits? It will only happen in cases of great merit.

5 September 2011

Lord Luce

I am a supporter of the Campaign for an Effective Second Chamber and of their submission to the Joint Committee on the draft House of Lords Reform Bill.

I have only one additional point to make. The Coalition Government have made it clear that, in proposing a largely Elected Chamber, there is no intention on their part to change the current powers and responsibilities of the House of Lords as a Revising Chamber. However the Government has not demonstrated how an Elected Chamber would perform these responsibilities better than a reformed Appointed House. I should make it plain, as I did on Second Reading, that I am in favour of a substantially reformed Appointed House of which the Steel Bill incorporates some of the required provisions for reform.

May I ask the Joint Committee to give priority to a full analysis as to whether a reformed Appointed House or a substantially Elected House is best equipped to carry out the current powers and responsibilities of the House of Lords? I suggest that this is the salient aspect that needs assessing by the Committee before any other proposals in the draft Bill are examined.

14 October 2011

Lord Maclennan of Rogart

In a recent five-year period 40 per cent of the amendments to legislation passed by the House of Lords against the initial wishes of the government were ultimately accepted by the government. Such outcomes have rarely been subjected to criticism and, no doubt, justify the accolades of the present Prime Minister and his Deputy that "The House of Lords works well…and its existing members have served the country with distinction." The question, which must, therefore, be answered about the Coalition Government's proposed changes in the composition of the House of Lords, is: "How will the proposed new second chamber work better than the present one?"

1. The central thrust of constitutional reform over the past decade or so has been to redistribute power and to strengthen the checks and balances of our Parliamentary democracy. The continuance of this process is the real opportunity to be pursued in pushing forward further Parliamentary reform, including the reform of the composition of the second chamber. As the proposals stand, however, they would fall far short of securing these purposes.

2. The paradox at the heart of the Coalition Government's proposals is the assertion that "the powers of the second chamber and, in particular, the way in which they are exercised should not be extended." What, then, is the point of the proposed changes? The compliment is paid to the House of Lords that it has "served the country with distinction". Its "lack" to which the Government draws attention is "sufficient democratic authority"; but it is proposed that the Lords, having been given sufficient democratic authority, must do no more and do it no differently.

3. The over-riding purpose of reforming the House of Lords should be to enhance its capability, and that of Parliament as a whole, to serve the public needs. An interactive dialogue between two chambers of Parliament allows issues considered in one to be raised in the other; mistakes and oversights can be recognised before legislation is enacted.

Parliamentary workload

4. There is another compelling argument for giving legitimacy by direct election to the second chamber and that is to enable the workload of Parliament to be spread across the two chambers. The House of Commons is heavily over burdened. The advent of IT has added greatly to the accessibility of MPs whose duties are, properly, seen as being to represent every interest touched by Government and the public authorities. The increase in the constituency workload is matched by an increase in MPs' direct engagement in oversight of the executive through membership of the growing number of departmental and other standing committees of the House. The increase in the volume of legislation brought to Parliament also bears down heavily on its Members and the consequent increasing practice of

timetabling legislation in the Commons does result in matters being less considered there and, not infrequently, passed to the Lords without full scrutiny of all clauses of bills. The time is surely ripe to acknowledge that spreading responsibility, even primary responsibility, across two elected chambers would help to ensure better governance by enabling both Houses of Parliament to focus their attention and, in combination, to scrutinise more effectively the wide spectrum of public decision making. There might, for example, be sense in retaining the primacy of the House of Commons over money bills but also in giving primacy to the second chamber to scrutinise legislative proposals from the European Union. Either chamber could oversee prerogative powers of appointment and treaty ratification.

5. Regrettably, these opportunities are not opened up by the Coalition Government's proposed reform of the House of Lords. Indeed, they are explicitly blocked. The Coalition "does not intend to amend the Parliament Acts or to alter the balance of power between the Houses of Parliament."

Thus, even the delaying power of a second elected chamber would not be increased. It must be doubted that an elected second chamber would agree to play second fiddle for long. It can be reasonably anticipated that, just as there has been continuing tension between devolved governments and central governments over the distribution of power between them, there would be conflict almost immediately about the limited scope of the second chamber's powers initiated by those legitimately elected to serve in it. For example, the conventions that have normally constrained the House of Lords from rejecting secondary legislation, which has been approved by the House of Commons, would be seen for what they are—conventions capable of being overturned. The proposed bill does not resolve questions of the relationship between the two chambers. It could entrench conflict and perhaps strengthen the arguments for abolishing the House of Lords altogether. One only has to look to Scotland, where the SNP has become—in Lord Hailsham's phrase—an 'elective dictatorship' (it has an overall majority in the Scottish Parliament) with no effective check upon its executive power to realise the danger in Westminster moving towards a unicameral system.

Size and composition

6. The public is unlikely to welcome the election of more than one thousand representatives to the two chambers of the Westminster Parliament. That would result from the addition of 350 elected members of the reformed second chamber, as adumbrated in earlier proposals, to the existing membership of the House of Commons. That would far exceed the size of bicameral legislatures in many larger countries. The Senate of the United States and the Bundesrat of the Federal German Republic are highly effective bodies both with substantially smaller full-time membership. The relatively small size of those chambers would seem not to diminish their standing.

7. To command attention the improved chamber needs to be eminent as well as legitimate. A smaller reformed chamber with real and discrete powers should more readily attract the calibre of candidate required to improve the quality of governance. In Germany the upper chamber has approximately 11 per cent of the membership of the lower chamber. In the United States the upper chamber has approximately 23 per cent of the number of the lower chamber. For the United Kingdom with its smaller size perhaps the proportions might fall nearer the lower end of the range to, say, 15 per cent, or 111 members. Such a change would, of course, directly impact upon the capability of the reformed chamber to replicate the full scope of work of the House of Lords. First, as in the present House of Commons, new members would mostly be generally informed rather than particularly experienced, and there would inevitably be many issues for consideration beyond the direct knowledge of any of the members. Second, elected members will be representative of their electors and must take account of their views. But given constraints on time, the delegation of constituency work to appointed staff would be unavoidable, expensive and probably not wholly satisfactory to the public. Arguably, the proposed duration of an elected term—15 years—also diminishes the extent to which an elected member of the second chamber will be truly accountable.

8. The future of the United Kingdom is now in question, and the reform of the upper house presents an opportunity for binding its four constituent nations more closely together. A reformed House of Lords will, of course, be elected, but the example of the US Senate could provide a model for giving Scotland, England, Wales and Northern Ireland more equitable representation and thus addressing the problem that representatives from England will always dominate in an elected chamber.

9. Those who advocate the election of the second chamber must face up to the huge changes which it would make to the performance of its roles. The inescapable loss of expertise and experience, which would flow from the abolition of a deliberately appointed chamber, ought to be addressed by those of us who favour an elected second chamber. The dilemma is how to retain for Parliament as a whole the advice of the senior, meritorious, knowledgeable and widely

experienced people who have justified the recent work of the House of Lords in the UK's democratic decision-making.

A Council of State

10. A possible contribution to answering this conundrum would be to recognise the case for the appointment of a Council of State comprising a membership drawn from those who are recognised to have achieved eminence and who have made a contribution across a wide range of positions in civil society. The role of the Council of State would be, in particular, to provide for pre-legislative scrutiny, possibly including hearings, on government legislation. It might also engage in post-legislative scrutiny to offer advice on outcomes. Their input into legislation would be provided for in the timetabling for the consideration of bills, but the role would be advisory, including proposing, or offering advice on, amendments, but with no power of decision or to obstruct the will of either elected chamber.

11. Sitting on a continuing basis, such a Council of State would have an identity and the gravitas to draw public and parliamentary attention to issues and possible resolutions of problems which otherwise might not be considered in the hurly-burly of political life. To keep the Council refreshed there should be a rolling membership, which should be properly staffed and remunerated. The term of appointment, however, should be long enough to ensure stability and continuity of operation. The late Lord Bingham, in a recent book, *Lives of the Law: Selected Essays and Speeches: 2000-2010* (Oxford 2011), suggested something very similar, although he called it a 'Council of the Realm'.

The virtue of evolutionary constitutional change is often extolled by British commentators. The package of proposed reforms of the House of Lords gives little real hint of the direction towards which the UK's Parliament might tend. It might indeed, due to its ineffectuality, lead to unicameral government. In other countries such as Sweden and New Zealand this is now the norm. But such a development in the UK with our propensity to promote central control, fortified by an electoral system which does not tend to spread power across parties, could lead to a dangerously unchecked presidential system.

Lord Robert Maclennan is co-chair of the Liberal Democrat Parliamentary Policy Committee on Constitutional and Political Reform.

21 December 2011

Dr Helena McKeown

1. SUMMARY This evidence builds on the evidence calling for part time members of the House of Lords submitted by the Programme for Popular Participation in Parliament of which I am Deputy Chairman. It proposes that each of the 312 seats proposed by the Government should be job shared by between four and ten members amounting in total to 2 whole time equivalent, thereby allowing the House for 80 hours a week throughout the year. Hence between 1248 and 3120 members would make up 624wte filling 312 seats in a House sitting for 80 hours a week throughout the year.

2. I am Dr. Helena McKeown. I am a medical practitioner in general practice. I am a social liberal and a member of the Liberal Democrat Party. I have held various offices in the past in Salisbury City Council and both in the past and currently in the British Medical Association and the Transport and Health Study Group. However this evidence is personal and is unconnected with any of those offices.

3. I am Deputy Chairman of the Programme for Popular Participation in Parliament. This small organisation which seeks to promote part time membership of Parliament has given evidence to your committee.

4. In that evidence it has asked the committee to maintain the House of Lords as a House of part time members.

5. It has said that this could be done by creating a larger number of seats but making them part time or it could be done by providing for the 312 seats proposed by the Government to be job shared.

6. It was not appropriate for PPPP as an organisation to go further than this. It exists only to advocate for the availability of part-time seats in Parliament and does not have any specific policy on any other aspect of reform of the House of Lords.

7. However I am submitting personal evidence suggesting how this might be implemented.

8. PPPP's evidence drew attention to various options. Those options were intended to stimulate debate as to how an elected House containing part time members might be constituted and to point out that it opens a much wider range of options than a full time House.

9. This evidence contributes to that debate.

10. It is possible to exploit the wide range of possibilities that part time members open up and to balance them so as to create a more balanced chamber thereby representing a wider range of interests and providing diversity of democratic mandate. I am aware that my Chairman Dr. Stephen Watkins will be giving evidence to that effect.

11. However I think it is better to have simplicity. The Government proposals of 240 elected seats, 60 appointed seats and 12 faith seats meets that requirement for simplicity. I would simply replace the number of seats with whole time equivalents so that one seat could be two half time members or five seats sitting for one day a week.

12. It is possible to have more members elected, each of them part time, or to have seats jobshared. I think jobshared seats would be simpler as it does not require complex proxy systems.

13. I would have a House of Lords which sits for about twice its current number of hours per year, partly by sitting for longer each day and partly by sitting on Saturdays and during the recess. To fill 312 seats it would therefore require 624 wte members. If each of these wte is made up of several part time members then it would be a House that has more members than at present, not fewer. 312 seats would each be jobshared by 2wte made up of between four and ten members (ie ranging from 8 hours to 20 hours per week). Therefore between 1248 and 3120 members would make up 624wte filling 312 seats in a House sitting for 80 hours a week throughout the year.

12 October 2011

James Moore

There is a lot of concern and mistrust of the political agenda surrounding the changes being considered to the House of Lords.

There are many people who deserve and aspire to receive honours and titles. By abandoning the Lords in its current format, we are reducing the ability to recognise people who have done something for the good of society in favour of people who have served a political party.

The argument that there is no expertise in the Lords is totally baseless (unless meaning expertise in party politics). I believe the opposite is actually the case.

The type of people who deserve the honour of sitting in the Lords and who will be expert in a certain field may well be the type that would not choose to stand for elected office. By making it wholly elected, it will attract more typically party-affiliated politicians who will be obviously more influenced by their party needs rather than the needs of the county.

The current system also guarantees that minority groups such as faith, charity, scientific groups can be represented by one of their own who has a long and respected career outside politics. The alternative will be the need for more specialist lobby groups to replace their lost influence.

So in reality election will not widen the likelihood of people to get in to the Lords, it will actually narrow it and create a more party-tribal atmosphere.

In light of the scandals over lobbying and the ability of governments to be selective with advice during consultation processes it is essential that interested groups have a direct influence in the legislative process.

Party politics is a dangerous thing when it comes to creating inclusive government. It's almost unheard of to find that more than 40% of people support a particular party. But we can break down that barrier by including people such as non-affiliated peers and the sovereign around whom there can be a sense of unity and common purpose as there is less political agenda. Life membership allows a freedom to do what is right in the long term without undue party influence.

To the argument that the current system is failing (with for example the appointment of Jeffrey Archer) then the same can be said of the electorate's choice of MPs. It is equally possible to remove any particular Lord who proves unsuitable on a case-by-case basis, allowing a committee of members of the Lords to do this themselves.

The continual constitutional changes which essentially increase the influence of party-politics cause disillusionment in the electorate and it partly this that drives low electoral turnout and also reduces people's national cohesion, which taken to it's logical conclusion will lead to a break up of the UK (the SNP do well off this). The obsessive demand to change the institutions of the country, imply that there is nothing more important for politicians to do with their time.

At best, nothing of real importance in the life of the UK will improve with this change. There will be an inevitable increase in the cost of running an elected House of Lords.

Electing will simply increase party-political influence which if the party in power is in control of the Lords, there will be almost no way to slow down controversial legislation, or if they are not in control could mean years of not getting any major Bills through at all. It would be untenable to allow the Parliament Act to remain in place if the Lords were elected.

If the argument is purely about making it democratic, then this will put the Sovereign in a very difficult situation and she will inevitably come under more direct attacks if the Lords are changed in the ways proposed. It also raises questions around the democratic credentials of the EU in its actions in forcing a second treaty referendum in Ireland and in the action that has been taken against Greece or the unelected government that has had to be brought in Italy after the failure of the democratically elected one.

If party politicians were genuinely interested in real democracy, they would seek to allow direct elections for all government ministerial positions independent of elections for Parliament. This would create a much more democratic process than seeking to have direct influence over the House of Lords.

At worst case, all peers (hereditary or life) should at least still be allowed to speak in the Lords, even if not to vote and should be invited for ceremonial occasions.

I appreciate that these views are very unfashionable among MPs, but I hope that you will consider the benefits of the current system, allowing common sense to prevail and that we can all learn to live with the imperfect, but well balanced system that we currently have.

Penny Mordaunt MP

How the draft Bill fulfils its objectives

The Draft Bill does not explicitly state an objective. The Foreword quotes from the Coalition's Programme for Government, 'We will establish a committee to bring forward proposals for a wholly or mainly elected Upper House 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.' To this extent the mere existence of the Draft Bill can be considered a mark of success, and it does indeed suggest single, long, terms and a grandfathering system.

Beyond the objectives established in the Programme for Government it is left to the reader to divine what the Bill's authors seek to achieve by its eventual enactment. The only discernable over-arching objectives are to ensure that Britain is a 'modern democracy' in which 'those who make the laws of the land should be elected by those to whom those laws apply', and to 'move power from the centre to the people'.

'Modernity' for its own sake is no sort of objective at all, and I invite the committee to consider the state in which we would now be if each successive generation of politicians had sought to sweep away what had come before in the name of modernity. It should be noted that under the conventions which currently obtain to ensure the primacy of the House of Commons (conventions which the Draft Bill aspires to protect, and a subject to which I will return) no law can be passed without the assent of the democratically elected representatives of the people. As such it is hard to see what 'the people' gain from the proposed reforms, whilst it is very evident what will be lost. In these

circumstances readers of the Bill cannot but infer that the objective is not the enhancement of our democracy, but an assault on an institution to which the Bill's promoters are ideologically and irrationally opposed.

The Draft Bill lauds the referendum on the Westminster voting system as a means of 'moving power from the centre to the people', and yet, and despite the fact that the people told politicians on that occasion that the status quo was preferred, there is no facility by which the public can voice support for the House of Lords as it is currently constituted. Is this respect the Draft Bill can only fail the sophistic measure of success which is meeting its own objectives.

I will address narrower objectives relating to specific clauses below.

Powers and functions of the House of Lords, the relationship between the House of Commons and the House of Lords, and the primacy of the House of Commons

The Draft Bill does not seek to alter the powers of the House of Lords, but leaves conventions in this respect to operate as happens currently. This is right and proper; however, the sub-clause on maintaining the primacy of the House of Commons reveals the flawed thinking and lack of awareness of history which lies behind the entire enterprise.

'(1) Nothing in the provisions of this Act about the membership of the House of Lords, or in any other provision of this Act—

(a) affects the status of the House of Lords as one of the two Houses of Parliament

(b) affects the primacy of the House of Commons, or

(c) otherwise affects the powers, rights, privileges or jurisdiction of either House of Parliament, or the conventions governing the relationship between the two Houses.'

Parliament cannot bind its successors or be bound by its predecessors, but it behoves every politician to recognise that he is but a temporary placeholder, that he has a duty as a custodian of our unwritten constitution and that it ill-becomes any politician to presume a perspicacity which has eluded previous generations. Our unwritten constitution allows for evolution to meet pressing needs, as has happened on numerous occasions in the past, notably during the Glorious Revolution, with the Great Reform Act and its successors, and the Parliament Acts. Promoters of the Draft Bill must explain what great constitutional crisis they seek to avert. The Deputy Prime Minister has confirmed to the House of Commons that House of Lords reform is 'not a pressing need' (Hansard, 5 July 2011: Column 1349), preferring to see it as 'an enduring need'; however, he could only define that need in terms similar, but different in one key respect, to those found in the Draft Bill, 'those who shape the laws of the land should be held to account by people who have to obey the laws of the land' (Hansard, 5 July 2011: Column 1349). This is an argument of change for the sake of change; a lazy argument invoking the will of the people without any supporting evidence. As explained above, the democratic element of Parliament, the House of Commons, represents the will of the people, and its will cannot ultimately be gainsaid by the House of Lords—once that principle is recognised any argument predicated on 'modernity' or 'better democracy' is fatally undermined. Would promoters of the Bill claim that Britain is not a democracy? I hardly think so.

The failure to observe the true nature of the constitution is evident in the Bill's insistence that the primacy of the House of Commons could, and should, endure once there is an elected Upper House. The only reason that the Parliament Acts have legitimacy, the only reason that the House of Commons can legitimately claim the power of the purse, is because it is elected in contradistinction to the House of Lords. It might be that under the provisions of the Bill this arrangement would continue for a time, but it will matter little that the Parliament Acts and what must surely be the House of Lords Abolition Act are on the Statute Book when an elected Upper House is in accord with popular opinion in opposition to the will of the House of Commons. When that scenario occurs, and it surely will, a constitutional crisis will ensue as the traditional and proper forces of the constitution begin to be felt. The position of the Commons will only be weakened by the reduction in the number of MPs and the concomitant increase in the 'payroll vote' as the number of ministers remains the same. When a government of whatever stripe whips through an unpopular measure and asserts its cherished primacy against an elected Upper House it is inevitable that the latter, with the weight of popular support behind it, will push back. It will do so with a mandate achieved through a system of proportional representation which according to many of the very people promoting the Draft Bill is a better and

more democratic system of election. This situation will create the agency for change which is absent from the current debate and will provoke calls for further reform.

It must be understood that an elected Upper House would not simply fill the void left by the abolished House of Lords. The House of Lords has a settled and accepted view of its position in the constitution, a new House composed of elected members could not be expected simply to conform to that view.

Before any challenge to the primacy of the House of Commons is deprecated we should consider why it is such a worthwhile principle. The value and legitimacy of the convention is that the Commons is the elected House, from where the majority of ministers are by convention drawn and whose support must be maintained if a government is not to fall. If the Upper House were an elected chamber, why should these conventions endure? An elected Upper House could assert with some force that it would be the chief instrument by which the government is held to account, citing once again the increased ease with which the government could get its business done in the Commons following the Parliamentary Voting and Constituencies Act 2011. The House of Commons will increasingly be regarded as the domain of the executive which must be held to account by the Upper House. The promoters of the Bill must accept that to change the composition of the Upper House is to inevitably change the dynamic between the two Houses.

Electoral term of an elected Upper House

As was suggested in the Programme for Government, the Draft Bill proposes single, long, non-renewable terms for elected members of the new Upper House. Terms of 15 years would be staggered with a third of members elected at successive elections.

In the passage on the electoral term, the Draft Bill proposals recognise that members of the Upper House should have a 'distinct role' from that of MPs, that the House should show independence of thought, and that if people of quality are to be attracted that they must be allowed to sit for a substantial period of time. Under these criteria it is hard to see why there is any talk of reform at all, but they do hint that the authors of the Bill are alive to the challenge an elected House could pose to the Commons—a suspicion confirmed by the reason for proposing staggered elections, 'the reformed House of Lords would never have a more recent mandate than MPs'. It is as though the Bill's promoters are fighting a rearguard action against their own creation. Evidently the ideology of change and the cosmetic appeal of modernity came before consideration of the realities and consequences of the reform they propose. We are entitled to wonder what the point is of giving members of the Upper House a democratic mandate only with the same instrument to seek to undermine that mandate. The Bill implies that a mandate is devalued over time and that a mandate more recently received is superior. On that basis our concern should not be with creating a two tier structure in the Upper House but a four-tier system, as the most recent members will assume an elevated position. If that notion is rejected by the Bill's supporters then they cannot contend that the Upper House's older mandate is less valid than that of the House of Commons. That a mandate delivered almost fifteen years previously is accepted as valid by the Bill's proposers is demonstrated in the suggestion to use the results of the last election in the relevant constituency to fill vacancies in the Upper House. In these circumstances, the fact that staggered elections would mean 'the Government of the day would be unlikely to have a majority in both Houses' would only reinforce the sense that it is the Upper House's responsibility to challenge the executive in the Commons.

A third of members would be elected every five years at the same time as general elections. The Draft Bill does appreciate that in our Parliamentary system governments can fall before the end of their term, even if the original draft of the Fixed Term Parliaments Bill did not. Should elections to the House of Commons be necessary before the next Upper House elections are due the Bill proposals confirm that the term of the latter would not be cut short. What is not explained is whether the members of the Upper House next due to leave would have their term extend to the next general election, and the other tranches their terms by the same period of time, or Upper House elections will forever be out of kilter with those to the Commons.

Perhaps the chief irony of the proposals on the term to be served by members of this new Upper House is that they will be non-renewable. The principle seems to be one of democratic election but not democratic accountability, and consequently we must ask whether the Deputy Prime Minister will oppose the Bill as it stands, for as was mentioned above he thinks that 'those who shape the laws of the land should be held to account by people who have to obey the laws of the land' (Hansard, 5 July 2011: Column 1349).

There is no clearer evidence of the motives for this Bill than the contradictory and self-defeating proposals on terms.

Electoral system

The Bill proposes the use of the Single Transferable Vote to ensure that members of the Upper House have a direct mandate as individuals but on a proportional basis so that the mandate is distinct from that of Members of Parliament.

As has been said above, the use of a proportional system would propagate further debate about the validity of PR and First Past the Post. Each House could make an argument that it has a superior mandate based on the system used to elect it.

Even though STV has large multi-member constituencies members of the new House would still rival Members of Parliament and challenge their relationship with constituents. If an MP does not agree with a constituent, or a whole tranche of constituents on a polarising matter, the immediate recourse will be to go to the elected members of the Upper House who sit for the area. This will provide fuel for a challenge by the Upper House to the House of Commons. It is naive to pretend that this will not happen.

The Bill proposals might naively assert the benignity of STV in terms of the relationship between the two Houses, but the pretence that STV will ensure independence from the party control inherent in list systems is simply disingenuous. Members might be elected as individuals, but those individuals will represent parties and the mechanism by which they are chosen would be completely without Parliament's control. Current appointed members must be vetted by the Statutory Appointments Commission, of course.

Transitional arrangements and Statutory Appointments Commission

Option 2 and Option 3 for transitional arrangements are contradictory. Is it important to have the value of experience in the chamber or to have fewer members? Option 1 seeks a middle way, but all options would create tiers of members and encourage elected members to claim superiority over their fellows. In any case, all options are unacceptable in that they include the introduction of an elected element to the House of Lords to which I object absolutely.

The Statutory Appointments Commission is an acceptable method of appointment and should be considered as part of the reform of a non-elected House of Lords.

Ministers

The terms proposed make sense under the Bill's own rationale but are unacceptable in that they allow for election to the Upper House.

Hereditary Peers

I am content with the arrangement which obtains under the House of Lords Act 1999.

The Established Church

The established Church of England should continue to be represented in the House of Lords. The Bill's provisions on the Lords Spiritual, as with those on ministers, conform to the internal rationale of the Bill, but are unacceptable in the broader context of the reform debate. I advocate the retention of the right of the holders of the titles of Archbishop of Canterbury, Archbishop of York, Bishop of Durham, Bishop of Winchester and Bishop of London to sit in the House of Lords on an ex officio basis along with 21 other Bishops of the Church of England.

To remove the Lords Spiritual from the House of Lords would be an attack on the very heart of the constitution.

Pay and Pensions

There is an assumption made by the Bill's authors that the public support elections to the Upper House—obviously so as no referendum is to be held. It is debatable whether there would be support for the creation of another tranche of salaried politicians.

Other bi-cameral systems

Direct comparison with other nations' institutions can be misleading. The British constitution has evolved over centuries, drawing from the nations which combined to form it. The institutions of nations which have been founded, or re-founded, at a definitive point in time with a written constitution following some great crisis or violent upheaval can be of little relevance to us. We should also be wary of comparisons with polities in which the separation of powers is more pronounced—the presence of the executive within the legislative branch in the British constitution renders such an exercise of limited value, unless a much wider reform is proposed.

Name of the reformed House

The present generation of politicians has no right to cast aside centuries of tradition merely because it suits the personal view of some among it of a 'modern democracy'. The notion that the peerage would 'revert to being an honour' is unfounded as the concept of the peerage has always had a Parliamentary connotation—it would be an innovation to break the link entirely.

Though the name House of Lords has been used throughout the Bill for want of another, the terms included within the Bill indicate that it would not be maintained once elections were made. As members of the peerage would be eligible for election to either House the name of the House of Commons would also be questioned. Together or individually the renaming of either House would be wanton constitutional, and cultural, vandalism.

Ceremonial traditions

The ceremonial traditions of the House of Lords and those of Parliament which occur in the House of Lords chamber should be maintained in every particular.

Referenda

I do not necessarily advocate a referendum on the matter of reform of the House of Lords, but I do note that the refusal to offer one is at odds with the principles the Bill's promoters advocate and is in contrast to that held on the less significant constitutional matter of the voting system for Parliamentary elections. I have been advised by the Minister of State by letter that the Government has no definition of an issue which warrants a referendum or the circumstances in which referenda should be held. The Minister continued that it is for Parliament to decide which issues are put to the people in a referendum. This does beg the question of how it was possible for the Government to decide to advocate a referendum on the voting system, and does nothing to dispel the notion that the Bill represents the worst of coalition politics.

I close by urging committee members to remember that the constitution and centuries of tradition are not the play things of transient politicians, but should be respected and cherished.

12 October 2011

Muslim Council of Britain

Introduction

1. The Muslim Council of Britain (MCB) is an inclusive umbrella body that represents the interests of Muslims in Britain and is pledged to work for the common good of the society as a whole. It was founded in 1997.

2. The MCB is made up of major national, regional and local organisations, specialist institutions and professional bodies. Its affiliates include mosques, educational and charitable bodies, cultural and relief agencies, women and youth groups and associations. At present it has over five hundred affiliates.

3. The Muslim Council of Britain is a non-partisan organisation that does not endorse any political parties. But we do have a duty to encourage greater political participation amongst Muslims, and in helping Muslims make informed choices.

4. MCB's specialist work is undertaken at a committee-level, and this submission is based on consultations involving members of its Legal Affairs and Public Affairs Committees. The MCB welcomes this opportunity to comment on the Coalition Government's white paper and draft bill on the reform of the House of Lords.

Background

5. Muslims are a community with a sense of the sacred, believing that a civilised society depends on the strength and preservation of sacred values. It is for this reason we respect the leadership role of the Church of England in the matters of faith. It is on this basis that in the wake of the Satanic Verses affair of the early 1990s our community did not call for the abolition of the law of blasphemy which affords protection to the Anglican faith1[117] . Similarly the MCB does not covet the historical pre-eminence of the Church of England in English law and in our unwritten Constitution.

6. The MCB is committed to supporting measures that promote a socially cohesive and genuinely pluralistic society free from all forms of discrimination. Muslims are the second largest religious community in the UK but stand under-represented in both the Lower and Upper House. The political parties have much more work to do in mentoring and encouraging Muslims with political ambitions. Similarly there is no dearth of Muslims who have a record of public service and who are capable and willing to contribute in the highest political and democratic institutions of this country.

Substantive Response

7. The MCB is concerned that the proposals for an elected Upper House will adversely affect the checks and balances on power that is currently in place. If the majority of members of the new Lords are elected on party lines, then the level of scrutiny and debate on legislation will be reduced if a single party holds the majority in both Houses. The 80/20 allocation of elected/appointed members should therefore be reconsidered. There is also a risk of stalemate in legislative process if a more assertive Upper House claims equal authority by virtue of same popular electoral mandate as the Commons, which should retain primacy in the legislative process.

8. The Lords presently provides a mechanism for the men and women of distinction and wisdom to contribute to national affairs, without dependence on any party political machinery because they have largely eschewed ambitions of gaining political power. This arrangement has evolved over many years and after much experience and should not be jettisoned for change's sake.

9. The Lords' capacity for expert oversight and impartiality has been affected by the disqualification of the 12 Law Lords from sitting or voting since October 2009. Moreover newly appointed Justices to the Supreme Court no longer have the right to sit in the Lords.

10. The proposal now to reduce the number of Lords Spiritual from the current 26 to 12 will be disastrous because there will be practically a further reduced voice for the spiritual and moral dimension in formulating new law or influencing public policy.

11. To reflect the diversity and plurality of modern Britain and to add to complement the Lords Spiritual, there should be representatives of the country's minority religious communities2[118]. If this principle is accepted, then clearly further reflection is needed on the modalities for such appointments. However, this should not be difficult to formulate as all major religious communities have well developed national representative bodies which can provide the link. MCB would be pleased to present specific proposals in this regard for our community.

12. A strengthened 'voice of faith' within the heart of British governance will go some way in addressingthe various corruption scandals that have befallen both Houses in recent years thus eroding public confidence.

13. The MCB does not have a view on whether the Peers should be appointed for life or the duration of three Parliaments. However it questions the requirement for Peers to be full-time parliamentarians—this may exclude

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117 For example, see 'Muslims and the law in multi-faith Britain – Need for Reform', UK Action Committee on Islamic Affairs, Autumn 1993; p.39

118 The generally accepted main minority faith communities are: Buddhist, Hindu, Jewish, Muslim, Sikh e.g. in the National Census

senior figures e.g. vice chancellors of universities—who can provide essential expertise and knowledge to bear on debate.

14. The right of Peers to sit in the House of Lords and play a role in the shaping of legislation by virtue of inheritance is an anachronism and the MCB would support the gradual reduction of hereditary peers from an Upper House.

15. In conclusion, we are supportive of this consultation in terms of providing the space for faith and community organisations to offer feedback on the reshaping of our constitutional hierarchy.

20 October 2011

National Assembly for Wales

Letter from Rosemary Butler AM, Presiding in response to Lord Richards letter of 17 January 2012:

I am grateful to you for your invitation to express, on behalf of the Assembly, any views about the proposals set out in the draft Bill. You will appreciate, of course, that the tight timetable referred to in your letter means that it has not been possible for me to carry out the kind of soundings that I would normally have wished to carry out, or to refer the issue to one of the committees of the Assembly for inquiry and report, which would have been the ideal.

I am sure that your Committee will also appreciate that my views are solely directed at the possible impact of the bill on the Assembly as an Institution. The political parties represented in the Assembly will have their own views on the proposals generally. I cannot, as Presiding Officer, speak for them.

My views are based on the continuing importance, under current constitutional arrangements, of the working relationship between the House of Lords, as one of the two houses of Parliament, and the Assembly.

Even where Bills considered by Parliament do not deal directly with devolved subjects, they almost always contain provisions whose impact on Wales, including indirect impact on devolved subjects, are of significant interest to Assembly Members.

The coming into force of Part 4 of the Government of Wales Act 2006, extending to the Assembly legislative competence in relation to the whole of the devolved fields of government, is relatively recent. It is therefore unclear to what extent Westminster will still be legislating, with the agreement of the Assembly, on devolved matters. But based on the Scottish experience there is bound to be a significant volume of such legislation, with the result that the House of Lords will continue to be scrutinising provisions on some matters relating to Wales that would normally be the subject of Assembly legislation.

Subordinate legislation is sometimes made jointly by United Kingdom Ministers and Welsh Ministers and may be subject to parallel scrutiny by the Assembly and by Parliament, through the Joint Committee on Statutory Instruments.

Section 109 of the Government of Wales Act 2006 provides a mechanism by which the extent of the legislative competence of the Assembly may be amended by Orders in Council which require the approval of both houses of Parliament.

You will also be aware that the Secretary of State for Wales has established a Commission, chaired by Paul Silk, to consider issues to do with the financial arrangements for devolved government in Wales as well, in due course, as more general issues relating to the powers of the Assembly and the Welsh Government. It seems very likely that there will therefore be the need, at some stage, to further amend the Government of Wales Act 2006 to give effect to recommendations arising out of that process.

All these factors demonstrate that under current constitutional arrangements the good governance of Wales involves a continuing partnership between the Assembly and the House of Lords which, in turn, demands that House of Lords be constituted in a way that acknowledges the particular needs of Wales.

Although the current constitution of the Lords does not do so in a systematic way, there is nevertheless an obvious pool of knowledge of, and expertise in, the affairs of the Assembly amongst the current membership of the House of Lords. One current Assembly Member, Lord Elis-Thomas and three former Assembly Members, Lord German,

Lord Wigley and Baroness Randerson, sit in the Lords and you, yourself, of course, have huge knowledge of these matters through your chairmanship of the Commission whose recommendations led to the 2006 Act under which we now operate.

Whilst the preponderance of the members of the House would, under the proposed reforms, be directly elected, so that a proportionate level of representation from Wales would automatically be achieved, the same would not necessarily be true of other classes of members. The 12 Lords Spiritual would, by definition, be drawn exclusively from England. In theory, the same could also be true in relation to the 60 appointed members.

If an effective partnership between the Assembly and the House of Lords is to be ensured then there is a strong case for seeking to ensure an appropriate level of Welsh representation amongst all classes of membership of the House of Lords. This would require the process for appointing members including, perhaps, the membership of the proposed House of Lords Appointments Commission, to have regard to the needs of Wales.

How this aim might be achieved is a matter which the Committee may wish to consider. It would be going beyond my remit to put forward any detailed suggestions. But I believe that there are precedents for this kind of safeguard, for example in paragraph 10(4) of Schedule 12 to the Constitutional Reform Act 2005, in relation to membership of the Judicial Appointments Commission, whose selection panel:

"must select persons for appointment as lay members (including the chairman) with a view to securing, so far as practicable, that the persons so appointed include at any time at least one who appears to the panel to have special knowledge of Wales."

May I thank you once again for the opportunity to express a view on behalf of the Assembly in relation to the work of the Committee. I look forward with interest to reading the Committee's report in due course.

25 January 2012

The National Secular Society

1. The National Secular Society (NSS) is a not-for-profit non-governmental organisation founded in 1866. It promotes the separation of religion and state, and seeks a society where law and the administration of justice are based on equality, respect for Human Rights and objective evidence without regard to religious doctrine or belief.

2. We welcome the opportunity to respond to the Draft House of Lords Bill. The NSS takes no position on the question of whether the reformed upper chamber should be wholly or mainly elected. Our response focuses solely on the role of bishops in the House of Lords. We attach as an appendix the report we prepared on Lords Reform in relation to the current review.[119] It was sent to the Deputy Prime Minister Rt Hon Nick Clegg MP, The Cabinet Office and the House of Lords Reform Team in December 2010. We ask that this be accepted as supporting evidence to our submission.

3. The NSS promotes secularism as the best means to create a society in which people of all religions or none can live together fairly and cohesively. A key objective of the NSS since its inception in 1866 has been to oppose all forms of religious privilege. We are therefore very disappointed by the Draft Bill's proposals to provide continued places for bishops of the established Church in a partly appointed House.

4. We argue that the retention of reserved places for Church of England bishops in a reformed House of Lords is grossly undemocratic; the bishops' only qualification is not personal merit, but that the Church appointed them. On the strength of this, they are able to argue strongly and vote for the Church's self-interest—whereas in other walks of life, those with a vested interest generally abstain from voting for matters where they have a self-interest[120]. Their continued presence is also a manifestation of the disproportionate, entrenched power and privilege of the Church.

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119 Lords Reform: Why religious representation should be removed from the House of Lords http://www.secularism.org.uk/uploads/lords-reform.pdf

120 For example Lord Avebury pointed out in the Education Bill debate where the bishops were obstructing some relaxation of mandatory Collective Worship that it was no coincidence that England and Wales are the only countries with mandatory

5. Academic research commissioned by the National Secular Society reveals that the United Kingdom is unique among Western democracies in having ex-officio religious representation in its legislature, a fact confirmed by Lord Strathclyde in a PQA: "The House of Lords is the only legislature that includes ex officio representation of clerics".[121] The vast majority of Western democracies have abandoned all links between Church and State, with no discernible adverse consequences.

6. Independently published research shows long term and steepening decline in church attendance. Normal Sunday attendance in Britain is projected by Christian Research[122] to drop by 2020 to 4.2% of the population, less than 1% of which is attendance at the Established church. These statistics cast doubt on claims that the bishops speak for any significant constituency, indeed perhaps even for those in Anglican pews. Since the trend away from organised religion is predicted to continue, the role in Parliament of any religious representatives will become increasingly irrelevant and unjustifiable. Nor should it be overlooked that the bishops are all male and middle class, and almost exclusively white. And none are from dioceses in Wales, Scotland or Northern Ireland. We also reject the self-serving idea they promote that they provide a moral perspective on matters of ethical importance on behalf the religious and non-religious alike, regardless of their location.

7. In March 2010, a survey conducted by ICM Research[123] showed that three-quarters of the public and 70 per cent of Christians believe it is wrong for bishops to have reserved places in the House of Lords.

8. The results of the Consultation Responses from the *House of Lords — Completing the Reform* (2001) showed an overwhelming majority against Church of England bishops sitting as of right. It concluded: "Calculating on the basis that those who want an all-elected house do not want bishops (or anyone else) sitting as of right gives an 85% majority against the formal representation of the Church of England.

9. It is vitally important that the reformed Second Chamber should not have any specific religious representation whether *ex-officio* or appointed, whether of Christian denominations or any other faiths. The presence of religious leaders amounts to double representation of religious interests as many temporal peers already identify themselves as being religiously motivated.

10. We are therefore pleased that the Draft Bill contains no proposals to extend religious representation in the Lords to other denominations/religions. The NSS believe such a move would not only be unworkable and unpopular, but it would also carry a high risk of creating resentment in minority communities that are already sensitive to discrimination, were they not to be represented. There is a real slippery slope problem in that there is no obvious point at which to stop extending representation—and there will be pressure from sub groups within minority religions. The more faith groups acceded to, the less representative the slimmed down second chamber would become.

11. If proposals were made to extend religious representation to other faiths through the appointments process, there are serious questions about the extent to which such leaders would be representative of the group they purport to represent. Opinion polls conducted during the Pope's visit to the UK in 2010 showed that Catholic bishops are at almost complete variance with Catholics on the same social issues where they seek most strongly to exert their influence. Only 4-11% of Catholics polled agreed with the bishops' position on contraception, homosexuality and abortion.[124] Similar arguments would equally apply to minority faiths' leaders. Within religions, there is a whole spectrum of belief and practice. Treating such groups as homogenous can be particularly detrimental for women and sexual minorities.

12. In line with proposals for a reduction in the size of the second chamber, the Draft Bill proposes that the number of reserved places for Church of England archbishops and bishops should also be reduced, from 26 to a maximum of

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(daily) collective worship in community schools and that the House of Lords is the only legislature with *ex officio* clerics. HL Deb 18 July 2011, cGC372.

121 HL Deb, 1 July 2011, c484W

122 Source: Religious Trends 7, 2007/2008 publ by Christian Research derived from Table 12.6.2

123 http://www.ekklesia.co.uk/content/survey_on_bishops_icm.pdf

124 YouGov / ITV Survey Results, Sample Size: 1636 Catholic Adults, Fieldwork: 31st August—2nd September 2010

12. In an upper chamber of 300 members this represents an increase in the proportion of bishops. The NSS regards this as unacceptable. We note that the Wakeham Commission sought in 2001 to justify a reduction by ten of the number of archbishops and bishops on the manufactured and grossly inaccurate basis of the Church's claimed "membership" of 25million, based on baptisms. The Church's actual membership is one twentieth of this number. In any event, if size-of-membership were a valid criterion for seats in the Lords, many other organisations (religious and non-religious) could equally claim such privilege.

13. The Draft Bill proposes that the Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester retain their right to hold a seat in the House of Lords as of right under the Bishoprics Act 1878. The Government proposes that the remaining 7 places would be selected by the Church of England. We regard this as a disturbing development and maintain that the Church should not gain any greater freedom over the appointment of its nominees.

14. We are concerned that such a proposal could herald the introduction of specifically appointed bishops—in effect full time professional lobbyists not just with access to ministers but with power to call them to account—who would be expected to intervene much more than the present bishops and create a new voting bloc. It is likely they could at times hold the balance of power. Under such circumstances this undemocratic group might be able to dictate the parliamentary agenda and therefore be in a position to make their own demands, particularly on contentious social issues.

15. We are also very concerned about the exemptions proposed by the Government for the Lords Spiritual from the tax deeming provisions, the serious offence provisions and those on expulsion and suspension. This proposal would mean that in the most serious of matters, bishops will be accountable to the Church rather than Parliament. We oppose this unjustifiable privilege and recommend that if seats are to be reserved for bishops in a reformed House, they should be accountable to Parliament in the same way as other members.

16. We believe that the proposals contained within the Draft Bill concerning the Church of England bishops represent a missed opportunity for real modernisation and enhanced democracy. Britain is already the only western democracy left that reserves seats for clerics in its Parliament—elsewhere only theocracies have such arrangements. The proposals for their retention will inevitably give rise to calls for representation to be extended to other denominations or faiths—a move we regard as deeply undesirable and entirely unworkable.

17. We therefore urge the Committee to reject the Draft Bill's proposals to retain the Bench of Bishops. With a view to creating a more democratic chamber, we ask the Committee to ensure that reserved seats for Church of England Bishops are completely removed from the House of Lords.

15 November 2011

Appendix

The compelling arguments against religious representation in the Lords on the grounds of practicality, democracy and equity are expanded upon in our report *Lords Reform: Why religious representation should be removed from the House of Lords.* http://www.secularism.org.uk/uploads/lords-reform.pdf

Jesse Norman MP

It is widely recognised that the House of Lords needs reform. The House of Lords Reform Draft Bill correctly describes the House of Lords as "a vital part of our constitutional arrangements". But the Lords as an institution is not working as well as it should, and there is a clear case for thoughtful reform, covering issues such as the ending of elections for hereditary peers; the introduction of retirement ages; a more independent process of political patronage; and removal of peers who have committed serious criminal offences. A more radical approach would also separate the award of a peerage from membership of the upper house. The present Bill covers all of these areas.

However, there have also been serious concerns about the proposal in the Bill to make the Lords into an elected upper House. Critics have claimed that election will change the membership and method of selection of the upper house, and its powers and functions. On this view, what emerges will not be a revising chamber, as at present, but a House of Commons writ small. The additional legitimacy of the new upper chamber as an elected House will

encourage it to oppose the Commons; the conventions between the Houses will fundamentally change; and the constitutional balance of the past 100 years will be undermined, and perhaps destroyed.

It is thus of great constitutional importance that the Joint Committee review these issues, and seek to address them. In particular, there are several key matters which I would request the Committee to examine, and take expert advice and if necessary evidence on:

i) Whether the changes to the second chamber are likely to affect the status of that chamber as a House of Parliament or the existing relationship between the two houses (White Paper, para 7).

ii) What the status will be of the relevant conventions and statutes governing the relationship between the new Lords and the Commons. The Bill incorrectly regards the conventions and statutes as constitutionally final, without recognising that they themselves rest on assumptions about the relatively greater legitimacy of the Commons, assumptions which the Bill if enacted would undermine (para 8).

iii) Whether 300 is an appropriate number of members for the new Upper House; and in particular, whether the 60 appointed members will be sufficient to cover the range of expertise and skills currently commanded by the Lords (para 16).

iv) What the likely effectiveness will be as a revising chamber of a wholly or partially elected upper house. The Deputy Prime Minister said in testimony to Lord Pannick (Select Committee on the Constitution, 18 May 2011) that no external research had been taken on international experience in this area. This gap needs to be filled

v) **How many times and under what circumstances the existing House of Lords has rejected an amendment or a bill, only to accept it later on the basis of the greater legitimacy of the Commons.** The Deputy Prime Minister did not answer this important question in testimony to Lord Goldsmith (Select Committee on the Constitution, 18 May 2011). Again, this gap needs to be filled.

vi) **Whether a member of the new chamber could in principle become Prime Minister (or a Cabinet minister)**; whether this should be democratically acceptable; and if not what measures should be included to prevent it from occurring. The Bill does not consider this possibility at all. Yet it is evident that the modern convention that the PM should be drawn from the Commons will be thrown into doubt by an elected Upper House. This raises the further possibility, for example, that a PM from the Upper House with a 15 year term could have entirely different priorities to those of a Cabinet drawn from the Commons.

vii) Whether and to what degree any of the party manifestoes in the 2011 election in fact supported the specific proposals contained in the Bill; or whether any proposals were specifically ruled out at any stage by the parties.

viii) What the total likely cost will be of the new house. The new members will be elected by constituencies that are twice the size of existing parliamentary constituencies. This means their constituency expenses are likely to be significantly higher than those of MPs, perhaps even than MEPs (who have relatively small postbags). The staffing budget for an MP is £115,000, and for an MEP, £222,000. How high will or should the staffing budget be for the members of the new Upper House? What about other budgets?

ix) What electoral spending limits are likely to be applied to the new members' constituencies. This issue is of obvious importance to the democratic process. The limit for MEPs is £45,000 per person during the long period of the election. What will or should it be for the new members of the upper house?

x) What the status of women and minorities will be within the new house. In the recent past the Lords has been more representative of women, ethnic minorities and disabled people than the Commons. It is therefore possible, even likely, that an elected upper house will revert to levels of representation of women seen in the Commons. Is there relevant domestic and international experience which bears on this issue?

xi) Whether the proposed changes may deter good candidates from trying to become members of the Upper House. The Bill does not consider this issue at all. Yet at least 80% of its members will have to stand for election; they will be paid c. £60,000 per year over a 15 year term, likely to fall during the highest earning years of their lives; they will be full-time; and they will be expected to make a 15 year commitment in advance. It is very likely, therefore, that many of the better candidates will be put off from applying.

5 October 2011

North Yorkshire for Democracy

The following is a response intended for the Government consultation on House of Lords reform, to be included by Unlock Democracy in their compilation of responses (for which, thanks). House of Lords reform has been discussed within North Yorkshire for Democracy, but the following views have not been endorsed and should be seen as an individual contribution.

An opportunity for higher resolution, higher fidelity, representation of the electorate in the system of government.

The design of the reformed House of Lords presents an opportunity for better representation of the public which seems, unfortunately, to have been met with a singular lack of imagination. There are perhaps those whose vision for unlocking democracy goes no further than extending the extremely low resolution two party system, with its choice of just two political package deals, by giving a significant voice to a third and perhaps a fourth party.

Our paradigm for democracy is the ancient Athenian model, with direct participation of all citizens, allowing each a separate vote on every question. This may be considered impractical for our size of population, and might well have been so for Athens had it chosen to include non-citizens in the process. It might also be argued, in both cases, that there is not the degree of interest, or the leisure to reflect and become informed, for the general population to be involved in the detail of government. (Alternatively one might argue about cause and effect between not being consulted and not being interested).

For us, general participation on single issues is limited by practicality to very occasional referenda, and even then the practicality and effectiveness are questionable. One path that is open to us is to greatly increase the number of package deals on offer, giving each voter a better chance of finding a close match to his or her own position. Another is to break down the full range of political issues into a small number subject domains. Having a separate vote on each domain would allow the voter a large number of possible vote combinations, again allowing a much closer match to his or her own position.

The role of the House of Commons places major constraints on the way it is elected and operates. It has to support a single government, making it desirable that it be dominated by a single party bound by a single manifesto. It traditionally has a local constituency link, greatly limiting the range of positions which are likely to gain representation and fixing in advance the number of members to be returned. The House of Lords serves to complement the Commons, or in counterpoint to it, avoiding some constraints on its election and operation. Indeed it is rather important, with the introduction of an electoral mandate for the Lords, that there are very clear differentiators which prevent the two houses becoming rivals for the same role. Not serving to underpin the government allows the design of the Lords a greater flexibility which can be exploited in making it more representative.

System of Election

Better representation means returning members whose positions cover as wide a range and as fine a granularity as possible. Some may object that this would let in 'extremists'. But this misses the point. Democracy is not about the competence of the voters or the acceptability of their views. It is about inclusion and choice.

Achieving greatest variation suggests using a proportional system with as large a constituency as possible (i.e. a single, UK wide, constituency). Having within this a Party List system, even an open one, would tend to undermine the chances of individual positions being considered on their merits and could result in a large proportion of members being bound to conform to a group line on most issues.

Rejecting party lists, however, leaves a major problem of getting the voter to make informed and considered comparisons among a large number of individual candidates. He/she may be prepared to put in the time and effort to order his/her 1st and 2nd choices meaningfully, but it may be the allocation of the 53rd and 54th places which actually counts. To overcome this we need to look outside the box of conventional PR systems, such as STV, with their (in this case very long) listing of preferences followed by complex and to some extent arbitrary post-processing. (They take us very usefully beyond the effective 2 candidate limit of FPTP, but not into the hundreds.)

We can exploit the fact that there is no correct number of seats (the figure of 300 is an arbitrate one) and no constituency link driving that number. This allows us to define in advance the quota or threshold number of votes to win a seat. This can be based on the desired number of members and the expected turnout, but with no great problem arising if the outcome is different. As some people don't want a House of Lords, this actually affords an additional dimension of democratic choice, the option of returning fewer members.

We also have scope to use Internet voting, from home (at no greater loss of secrecy than with the postal vote system), from the public library computer network, or via computers in the conventional polling stations. This offers a system in which votes cast can be counted in real time. Coupled with the predefined quota, this would allow the system to recognise when votes for a candidate have reached that figure and stop accepting votes for that (now elected) candidate. (It would also warn voters to wait for confirmation that their vote has been accepted if they have tried to vote for someone who is close to the quota).

The significance of this is that the voter need only choose one of the currently remaining candidates and not concern him or her self immediately with hypothetical transfers of the vote if their candidate does well enough to be elected without it or badly enough to be eliminated. The options facing the voter may well not be the ones he/she had thought seriously about before the polls opened, suggesting the need for more time to consider them. Unlike elections to the House of Commons (determining the incoming government) there is no pressure to get most of the results out quickly. There is no need for a deadline within hours or days of the start. Voters can be allowed to cast their votes, or to transfer them if their candidate is languishing short of the quota, at their leisure.

Nor is there a need to take the transfer process out of the voter's hands. If large numbers of votes remain with candidates who are not returned that represents a choice on the part of the voters.

Extending the process over days and weeks allows media attention to focus on the remaining candidates. This enables the choices made among the large number of options to be well informed and considered to an extent which would not be possible if they were made simultaneously.

There is of course some significance in the choice of whether to vote early or vote late. There may be some small tactical advantage in voting late and a considerable psychological advantage in voting early. But, importantly, that choice is made by the voter.

These innovations are offered not for the sake of innovation but so that the election of around 300 members can represent that many individual options rather than a small number of clone types in varying quantities.

Multiple (Parallel) Upper Chambers

We shall be electing representatives to speak and vote on our behalf in debates across the whole range of public affairs. If you could choose the person most suitable to represent you in each debate it seems highly implausible (unless you hold very stereotypical views) that you would choose the same person for each and every debate. Such a degree of choice may be impractical, but suppose we categorise these debates into half a dozen different subject domains, with some debates perhaps falling into more than one domain. Might you not want a different representative for each domain? Would that not potentially give closer representation of your views? Here we are seeking to design from scratch the most appropriate system for House of Lords. Why would you choose not to make it as representative as possible?

In a single 300 member chamber 300 different positions can be represented. Consider instead 6 parallel chambers of 50 members each, with each chamber dedicated to its own particular subject area. For a voter who considers one member in each chamber to be representing him, that amounts to 50 to the power 6 possible combinations. That's enough to represent a unique position for each UK voter. (In fact it's enough to represent a unique position for each person in the world, even if the population doubles.)

Under such a system we would no longer need to sacrifice our position on other subject domains in order to have influence on the domain which is currently of greatest importance to us. Everyone could have equal influence on all domains. This moves us on from sectional politics where single issue and often vested interest voters can dominate.

A fully or mainly elected House?

While it is of course desirable to bring wisdom and expertise to bear on issues of state, it is highly questionable whether these things exist in a pure form, independent of political philosophy or perspective. Even if they do, we could hardly rely upon those making appointments to a reformed House of Lords to be without such perspectives or vested interests. Even if we could assemble a selection of pure experts on a range of subjects, any topic discussed is likely to fall within the specialist field of only some of them. It is hard to see the special significance or virtue of their aggregate voting upon an issue which is outside the expertise of most.

A case can be made for the elected members of the reformed House of Lords to have easy access to the knowledge and opinions of some who are unlikely to seek or gain election to the House. But that is not to say that the views of these people should be weighed directly in the voting and decision taking of the House. If there are appointed members they should be non-voting members. But this role could equally be filled be guest speakers nominated by the House itself.

Tenure of Members

As pointed out by UD, 15 years seems rather a long time to go without renewal of mandate. Mandatory retirement after a single term seems unnecessary when it is possible to let the electorate decide.

Naming

It would be possible to keep the name House of Lords without its members being titled as 'Lord'. After all, members of the House of Commons do not carry the title 'Common'.

Northern Ireland Assembly

Letter from William Hay MLA, Speaker in response to Lord Richard's letter of 17 January 2012:

Thank you for your letter of 17 January inviting the Northern Ireland Assembly to make a submission to the Joint Committee in relation to the Government's proposals for reform of the House of Lords.

I have considered the Draft House of Lords Reform Bill and can confirm that the Northern Ireland Assembly will not be making a formal submission to the Joint Committee in relation to this matter. However, this does not preclude Members of the Northern Ireland Assembly, either as individuals or on behalf of their political party, responding with their views on the contents of this Bill. With this in mind, I am arranging for a copy of your letter, and my response, to be circulated to all Members of the Northern Ireland Assembly.

I wish you every success in your deliberations on the Draft House of Lords Reform Bill.

26 January 2012

Gavin Oldham

Summary

This submission addresses how to provide the second chamber with a long-term mandate under a system where the majority of members would be elected. My proposal is that, *when people are presented with their voting form for the second chamber, they should be asked to vote on how they would like the country to be in 50 years' time.*

This approach, when combined with a rolling election process, may well also provide a solution to the vexed issue of the relative positioning of the Commons and the new second chamber, as each would have its own democratic remit. The Commons would retain the primary authority as short-term and current issues must always be dealt with by

priority, but the fact that scrutiny would be based on the impact of proposals as they would affect the long-term would be very re-assuring for most people, and particularly for those with children and/or grandchildren.

Proposal

This is the legacy that the mother of parliaments has bequeathed on our children and grandchildren:

- Debt, in such huge volumes that it has crippled the financial system;
- Global warming, driving species into extinction and threatening the lives and livelihood of many millions of people;
- A systemic breakdown in family formation and cohesion, graphically illustrated in the Children's Society's 'Good Childhood' reports.

In my search for an explanation I even came to question in my mind whether one-person, one-vote democracy had some responsibility for this. For example, there will always be far more voices calling for more public expenditure than getting on with wealth generation. And the worst damage is most evident in the world's oldest democratic countries.

But if the cause is short-termism, we must have trust in the people to address it: not least because the benefits of one-person one-vote democracy for social stability and shared responsibility are so great that we need to look to rare opportunities such as this for democratic improvement rather than any alternative approach—although co-operation in the United Nations has much to commend it.

This is why the reform of the House of Lords is so important. It is almost certain that the large majority of members will be elected in future, and this is our opportunity to look for a re-balancing in favour of the longer term.

Our generation has an ability to influence the lives of its successors which far outweighs any generation before us. In this respect it is worth noting that one of core values of our established Christian faith is to love our neighbours as ourselves. This 'great commandment' applies as much to loving our neighbour of the future as our neighbour of to-day: and especially when we can influence their lives so much.

So I propose that, when people are presented with their voting form for the second chamber, they should be asked to vote on how they would like the country to be in 50 years' time, so that:

- those standing would fill their manifestos with messages of stability and hope for the future;
- the second chamber would review business passed to them by the House of Commons on the basis of how it would affect those children and young people who have no vote, and indeed generations yet unborn.

We <u>can</u> trust the electorate to make this call if they are given the guidance. We should therefore lift our eyes to the horizon and take a more strategic view of the opportunities afforded by reform of the second chamber. The big issue is to enable a second chamber which provides the long-term checks and balances to offset the short-term nature of political cut and thrust. I hope we will therefore trust the electorate to vote for the well-being of future generations, so that they too may have cause to give thanks for their lives.

Please note that I have not addressed the term in office question, but this proposal may complement a longer period in office of at least 10 years. I would however suggest a rolling process electing say 20% bi-annually so as to further draw the distinction between the two houses.

I would be pleased to discuss this further if you so wish.

15 February 2012

Alice Onwordi

Here are my views on the Lords Reform Bill:

- The House of Lords should be wholly elected. It is the most democratic solution and everyone who has an influence in the upper house should be democratically accountable.
- It should be pared down to 300 at the first stage, otherwise it will just lead to lots of delays and wrangling at each stage.
- There should be no privileged place for bishops or other faith groups. If they want to have a seat in the reformed house they should stand for election.
- Bishops should not be exempt from the discipline in the House. They should be subject to the same standing orders which can expel or suspend other peers.
- The peers in the reformed house should maintain the same responsibilities. Primarily to review legislation. They should not be allowed to vote on Commons legislation as they should be in position where they are removed from it. How can they reflect on Commons legislation with impartiality if they have voted on it?
- The Lords should get rid of the ermine robes etc. It just makes the Lords look more remote. It should look like a reformed house.
- All candidates standing for election should contest a constituency.
- A reformed House of Lords should remove the hereditary peers at the earliest opportunity. At the first stage. That will be the biggest signal that things will change.

5 September 2011

Norman Payne via his MP Annette Brooke

I have been contacted by one of my constituents, Mr. Norman Payne, who has written to express his concerns about the Government's proposals on Lords Reform and specifically on the issue of Bishops sitting as of right in a reformed chamber.

My constituent holds that the present proposals on Bishops do not simply maintain the status quo but give even more privileges to the Church of England, some of which even the Archbishops of Canterbury and York have strongly opposed in their submission to the Joint Committee, stating that the Church of England did not seek exemptions proposed 'by the Government for the Lords Spiritual from the tax deeming provisions, the serious offence provisions and those on expulsion and suspension'.

Mr. Payne writes that the United Kingdom is the only democratic country to give seats in its legislature to religious representatives as of right, and he believes that having any reserved places for Bishops in Parliament is unfair, unequal and against the aims of a more transparent and legitimate second chamber.

The new proposals, which in effect create a new largely independent and largely unaccountable, place for the Church of England in Parliament, are unnecessary, and even the Church of England leadership, think they go too far.

My constituent has asked that I pass his views to you and I shall also be sending a copy of this letter to the Joint Committee.

24 November 2011

Lord Peston, Lord Barnett and Baroness Gould of Potternewton

We must start by saying how much we appreciate the difficulty of the Committee's task especially with the need to maintain objectivity.

It is by no means clear what the objects of the draft bill are. One purpose of the Committee must be to establish what they are and to assess them.

The authors of the Bill have not thought through the central problem of the powers of the House of Lords (HoL), let alone the more difficult one of the relationship between the two houses. It is obvious if a substantial elected element is included in the new HoL; they will demand more powers and will not regard themselves as subservient to the Commons. All this will be complicated if a non elected element (not least the bishops) remain.

Our central view of a reformed house is that it should be wholly appointed. In addition, a much smaller house is needed. We recognise that it is not easy to devise a way of getting from here to there, especially as the powers that be continue to create more life peers. This is a task that the Committee itself must undertake.

If the new HoL is wholly appointed, its central role must be one of scrutiny with powers and conventions much the same as now. This is the only way that the House of Commons can retain its primacy.

It is naive to believe that future Prime Ministers would give up their power to appoint new peers.

As an example of the nonsensical nature of the draft bill is the fifteen year electoral proposal. No possibility of re-election means there will be no accountability.

Since we do not favour elections, the electoral system is irrelevant. What is relevant is the devising of a system of moving to a smaller appointed house, and a workable retirement scheme for this house. We understand that the Government has already declared that there should not be a financial incentive for existing life peers to retire. **If** they wish to be taken seriously on this aspect of their proposals, they should think again.

No priority should be given to bishops or other religious leaders; their membership should be decided on individual merit and usefulness like every member. Obviously, there will be Ministers appointed in the HoL. Existing hereditary peers should stay but not be replaced. Appointed peers should continue to receive allowances as at present, adjusted by a suitable index to maintain relative real value.

If newly appointed peers later on are to be encouraged to retire later on, then consideration of a financial incentive scheme cannot be avoided.

For the appointed house we favour the Parliament Acts will still apply. For an elected house they will be irrelevant.

11 October 2011

Professor Gavin Phillipson

Introduction

1. I am writing this memorandum as a Professor of Constitutional Law who has published widely on this topic, and taught it for over 15 years at both undergraduate and post-graduate level. I also have expertise in the area of anti-terrorism legislation, in relation to which the relative performance of Lords and Commons when engaging in legislative scrutiny is illuminating. I wish to address the issue of the respective balance of appointed and elected members left open by the Bill and White Paper and in particular to argue in favour of the hybrid elected /appointed House.[125] I am concerned in particular to address what I believe is the simplistic view, which now appears to be gaining ground, that if 80% elected is 'good' than 100% is 'better'. My key purpose is to defend the idea of a hybrid House, with at least a 20% appointed independent element, from those who argue in favour of fully elected chamber by showing that it is not a poor compromise but rather a better intellectual solution.

The problem

125 I draw in particular on my article '"The greatest quango of them all", "a rival chamber" or "a hybrid nonsense"? Solving the second chamber paradox' (2004) *Public Law* 352.

2. I have summarised the way in which all the main options for reform call forth equally virulent criticism, as follows:

'an appointed House is derided as a giant quango, representing rule by an elite, lacking an democratic legitimacy and ultimately ineffectual. A wholly elected chamber, on the other hand, is objected to on the basis that it would produce a clone of the commons, that could become its rival, thus producing the danger of legislative impasse and destroying the clear line of democratic accountability between parliamentary government and the people that is said currently to exist... Finally the seemingly obvious compromise, a mixed elected/appointed House, is scorned as a "hybrid nonsense" that simply represents a failure to decide the issue one way or the other and would be crippled by internal divisions between its elected and appointed members and the different degrees of legitimacy each would claim.'[126]

3. Disagreement over the proper composition of a reformed House springs from the fact that politicians and commentators tend to emphasise only one key quality that a new chamber should have: thus those in favour of an elected House urge that democratic legitimacy must be overriding; those favouring an appointed House stress the importance of the House being able to make a distinctive contribution from the Commons in terms of providing independent and non-partisan scrutiny of legislation. In this memorandum I will suggest that when a balanced set of criteria, drawn from analysis of second chambers overseas, are applied to the problem, and the necessity of certain trade-offs accepted, then the hybrid solution emerges as the best one in the UK constitutional context. I believe that Parliament got this question broadly right in the report of the Public Administration Select Committee[127] some years ago (hereafter 'PAC'). While a 60/40 elected/appointed House would probably be the optimum balance, an 80/20 elected/appointed House would be hugely preferable to a fully elected House.

4. In this memorandum I do not discuss the possibility of a wholly or mainly appointed House as such a reform is not suggested by the White Paper and nor is it supported by any of the three main political parties. I do however believe that leaving the House wholly appointed would fail to cure the main problem it has had for many years that much of its excellent policy work, including its proposed revisions to legislation, goes to waste because of its perceived lack of legitimacy. As Donald Shell has put it, the UK has for some time been working under a system of "de facto unicameralism",[128] mainly because of the conventional limits upon the exercise of the House's powers, which stem from its perceived lack of legitimacy.

5. However, I also believe that if no agreement on radical reform to composition can be reached, the current House would be considerably enhanced were Prime Ministerial patronage to be appointed and an independent statutory Appointments Commission to take over the appointment of new members to the House. If necessary, this reform can and should be carried out even if no other change can be agreed.

Evaluation: key criteria

6. There is general agreement that the reformed House will continue to carry out the same functions as the present House, and that is what the White Paper proposes. Meg Russell, in her authoritative comparative analysis of second chambers overseas, has identified three factors as crucial for judging the likely effectiveness of a second chamber.[129] As summarised by the PAC,[130] the reformed Lords should have the following qualities: *distinct composition; perceived legitimacy; adequate powers*. Parliament's previous Joint Committee on Lords reform[131] arrived at five key criteria, that I believe command wide acceptance: legitimacy; representative-ness; no domination by one party, independence and expertise. In substance, it is suggested, these coincide with the first two of Russell's criteria: representative-ness goes to legitimacy, while independence, freedom from party domination and expertise are all qualities that render the Lords distinct from the Commons. Moreover, the broadly agreed functions of the second chamber—particularly its special role in relation to technical scrutiny and protection of human rights and the constitution—reinforce the

126 Ibid, at 353

127 Fifth Report, H.C. 494-i (2001-2002).

128 Shell, D. 'The Future of the Second Chamber' (2004) 57(4) *Parliamentary Affairs* 852, 855.

129 M. Russell, *Reforming the Lords: Lessons from Overseas* (Oxford: OUP, 2000) esp. pp. 163-164 and 250-254.

130 *Op cit*, para. 8.

131 *Constitutional Reform: Next steps for the House of Lords*, H.L. 17 H.C. 171 (2002-03).para 3.

claim that the reformed chamber should seek to maintain those qualities of relative independence and expertise that are particularly suited to these types of scrutiny, in contrast to the partisan culture of the Commons.

7. Distinct composition for the House, as well as enabling it to perform the particular scrutinising role that all agree it should have, also ensures that the second chamber makes a worthwhile addition to the legislative scrutiny carried out by the first. Thus it is also vital to ensure that the party balance in the chamber is different, and more proportional from that in the Commons, to prevent one-party domination, and ensure that the House has an alternative and more broadly-based perspective on the development of public policy. Russell's research clearly indicates that while Government control of the second chamber can render it too weak and Opposition control too likely to result in deadlock with the first chamber, the option of no overall control, is "the most effective option;"[132] "a powerful upper house which is controlled by forces independent of government can help create a form of consensus politics which results in better political outcomes in the longer term."[133] The proposed STV electoral system would be likely to achieve this in practice. The use of First Pass the Post would *not* be suitable for the second chamber, as likely to produce either Government or Opposition control.

8. The third criterion for an effective second chamber is *perceived legitimacy*. As the PAC put it: "In order to use its powers, the new chamber—unlike the existing House of Lords—will need to be seen to have legitimacy, and be able to carry public support."[134] What counts here is *percieved* legitimacy: in other words, a perception in the minds of the public and the government that the power and position of the House are justifiable in a democracy; without this, the House will lack the confidence and extra-parliamentary support to oppose the government effectively. In a democracy, the starting point is that political power must derive from the people, via election, though this is a matter that will be explored further below, in the context of the detailed arguments about the merits of the balance between appointed and elected members.

A general objection to all mixed Houses.

9. The Royal Commission, successive White Papers and the PAC have all recommended a mixed House; however opposition to it continues, as the quotation above indicates. Determining the force of this objection, is, however, crucial: if any form of mixed House is rejected on these grounds, then the only options left will be the polarised positions of a wholly elected or wholly appointed House, ruling out any form of compromise.

10. There appear to be two main strands to the objection. The first main argument is the so-called "Strathclyde paradox:"[135] "If election is so good, why should the public not elect *all* our political Members? If it is bad, why elect any at all?"[136]. This piece of apparent logic has gained considerable support in the Lords. It is however flawed because it rests upon the false premise that electing members is straightforwardly either good or bad. Thus those we believe that election is 'good' believe that 100% elected is better than 80% elected. In fact, if the three criteria for an effective second chamber noted above are borne in mind, it becomes apparent that election to the second chamber has some advantages and some drawbacks. Election *is* "good" in terms of legitimacy: if there were to be *no* elected members, this would prevent the House from having sufficient democratic legitimacy to assert itself effectively against the Executive-dominated Commons. **However, the issue of the composition of the Lords does not rest solely upon legitimacy.** As canvassed above, in addition to being legitimate, it should also be distinct from the Commons, more independent from party control and have the expertise to aid it in its sometimes highly technical work. Once these factors are considered, we can see why we might not want *all* the chambers members to be elected, desirable though this would be in terms of legitimacy: such a course of action would preclude the appointment of members who would add expertise, independence and thus distinctive value to the House. Having different classes of members—in other words a hybrid House—ensures that these different requirements are *all* met. These arguments show why, on a balanced view, the majority-elected solution comes out as the best one. In contrast, the so-called Strathclyde paradox only has any force if it is assumed that reform of the Lords is to be judged by one criterion alone.

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132 Russell at 299.

133 *Ibid*, at 164.

134 *Op cit*, para. 8

135 After Lord Strathclyde, then Conservative Leader in the Lords.

136 H.L. Deb. col. 830 (22 Jan 2003).

11. The second, and only plausible objection is that originally voiced by Professor Bogdanor:

"A mixed chamber would contain members enjoying different degrees of democratic legitimacy. The danger then is that any vote carried by a group with a lesser degree of democratic legitimacy will be seen as less valid than a vote carried by a group with greater democratic legitimacy…Who elected you? would be the cry directed at the hapless nominated members whenever they carried a vote against their elected colleagues." [137]

> This point has been echoed in Parliament by some of the more thoughtful objectors to a mixed House. However, the extent to which this would be a problem for a hybrid House has been much too readily assumed and three points may be made against it.

12. First of all, the reaction of the elected members to such an eventuality is a matter of speculation. As Russell has pointed out, only two chambers out of 58 bi-cameral legislatures world-wide have a substantial amount of appointed members in the second chamber, so there is little evidence from which to predict with any confidence the dynamics of such chambers.[138] If a mixed House had been approved by both Houses of Parliament on a free vote, and so had received all-party endorsement, it would be difficult for elected members to carp at the presence and influence of the non-elected members which Parliament itself had agreed should be there.

13. Second, there are ways of minimising the problem. Both the Royal Commission and the PAC[139] recommended that in a mixed House everything should be done to ensure that all members enjoy parity of esteem, whether elected or appointed. Thus as the Royal Commission put it:

> Once members have arrived in the chamber, by whatever route, they should so far as possible serve the same terms, benefit from the same allowances and facilities and be treated in all respects identically.[140]

This very clear recommendation has been completely ignored by many of the opponents of mixed House in Parliament.[141]

14. Finally, the proponents of this view miss a simple, but crucially important point: if the elected members constituted a large *majority* of the House, as the White Paper envisage, then the elected could never be defeated by the un-elected; thus the danger Bogdanor foresees would simply never materialise. A 20% un-elected contingent simply could never defeat an 80% elected one.

15. Moreover, it is unlikely that any given issue would split the two groups of members squarely down the middle as Bogdanor suggests. In nearly all cases, there would be bound to be some elected members (particularly perhaps Liberal Democrat and non-partisan party members generally) siding with their independent colleagues. This would preclude the isolation and exposure of the un-elected members.

16. However, a modified version of this objection, that could still apply where the elected members were in a majority, was advanced by Lord Butler, former Cabinet secretary, in debate:

Let us envisage that on a controversial issue the government of the day and the opposition parties are in conflict, but one side has a small majority which is overturned by the votes of the minority of appointed Members. If we have accepted election as a necessary condition for legitimacy, where is legitimacy then?[142]

17. It is clear that in such a case, there would be no straightforward clash between the elected and the un-elected, as Bogdanor envisages. But the only response to Butler's question, "where would legitimacy be then?" is that legitimacy

137 V. Bogdanor, 'Reform of the House of Lords: a Sceptical View' (1999) 70(4) *Political Quarterly* 375.

138 "Second Chambers Overseas" (1999) 70(4) *Political Quarterly* 411, 417.

139 *Op cit*, paras 98-99.

140 *A House for the Future*, Cm 4534, para 12.5.

141 See, e.g. H.L. Deb. col. 648 (21 Jan 2003), Lord Sheldon: elected members "will still claim a greater legitimacy with secretaries, research assistants and offices." "Imagine the ill-feeling if you have a hybrid House and elected Members get salaries and appointed Members do not." (*ibid*, col. 649 (Lady Saltoun). See also the similar fears of Baroness Seccombe, *ibid,* col. 653 and of Lord Gilbert, *ibid*, col. 818 (22 Jan 2003).

142 *ibid*, col. 770.

should be seen as a condition for the House as a whole: if it has a majority of elected members, it is House in which the democratic will can always prevail and thus a legitimate institution. Moreover, if the situation Butler envisages were to materialise, it seems plausible to believe that the public would view with relief the sight of the squabbling parties having the odd issue resolved by the dispassionate intervention of independent experts. Moreover, it is ironic that this objection is nearly always made by those who favour a wholly appointed House. Such a House, when it disagrees with the Commons, precisely pits the appointed, as a body, against the elected Commons, and therefore raises in a far more stark and extreme way the problem at issue.

18. It is possible therefore that a mixed House *could* raise some legitimacy issues in this way, but this does *not* provide, as Bogdanor and others suggest, a conclusive argument against such a chamber. Rather it may represent the only real drawback in what is otherwise the best solution to a notoriously difficult problem; a drawback to be balanced against the numerous advantages to be discussed below.

Why not a wholly elected second chamber?

19. In contrast to the position under the Blair government, it is the 100% elected House that has now emerged as the main rival to the hybrid option in the current proposals. The arguments in *favour* of such a House are clear and straightforward: that a democratic mandate should be the only way to political power in a democracy and that the greater legitimacy and so potency such a House would have would give it a much more prominent voice in the policy-making process.

20. Many of the arguments *against* such a House are equally familiar. In essence they stem from the basic contention that, if proposals for a wholly appointed House tip the balance too far in favour of distinctiveness at the expense of legitimacy, a wholly elected House would do the opposite. Proposals for such a House strike a bad balance between the three criteria discussed above, because, while such a House would have very strong legitimacy, its distinctiveness would be almost entirely lost. A wholly elected House would face the loss of the distinctive expertise that, as discussed above, renders it such an effective scrutinizer of legislation and policy.

21. Coupled with this loss would be the certain removal of the current House's relative independence from party, with the resultant danger that the second chamber would merely duplicate in character the Commons and thus add little to the legislative and scrutinising functions carried out by that House. While the second chamber, if elected by PR, would still have a different party balance from the Commons, essentially, we would have another chamber exclusively made up of professional politicians. This would give us a narrowly-based, rather than a pluralistic House and one that, though elected, was, paradoxically, not very representative of the concerns of the people: as Shell has pointed, out, in contrast to the strongly partisan character of British MPs, "the overwhelming majority of [the electorate] have at best no more than the weakest of party allegiance.[143] Representation of different interests from those of the lower chamber is one of the classic functions of a second chamber, as is the injection of more independent viewpoints in otherwise "party-dominated Parliaments."[144] Moreover, experience has shown that it is extremely difficult for independent candidates to gain election; even under a PR system, it may be expected that the political parties would retain their stranglehold on the second chamber. Independent members would become a rarity, as in the Commons. At a stroke, this would remove the distinctive contribution made by the cross-bench Peers at present.

22. What may be added to these familiar arguments are perspectives gleaned from the respective performances of the Commons and the Lords in dealing with the large number of anti-terrorism Bills introduced into Parliament under the last Government. The response of both Houses to the 2001 Anti-Terrorism, Crime and Security Bill, introduced into Parliament in response to the perceived greater threat from international terrorism following the attacks on America on 11 September 2001, was particularly striking. The behaviour of the Commons in relation to this Bill, one of the most draconian pieces of legislation brought before Parliament in peace-time in this or the last century, was sobering, especially for the enthusiasts for a wholly elected second chamber as the guardian of our liberty. Whilst the Lords passed a series of important amendments to the legislation, ameliorating at least some of its worst aspects, the Commons passed a Bill some 124 pages long, which partially abrogated habeas corpus, and made

143 D Shell, "The Future of the Second Chamber" (1999) 70(4) *Political Quarterly* 390, 393.

144 See M. Russell, "What are Second Chambers for?" (2001) 54 *Parlt. Aff*,.442, 443.

the UK the only country in Europe to derogate from Article 5 of the ECHR, in just 16 hours; of the 135 clauses of the Bill, precisely 86 were debated in the Commons.[145]

23. Despite powerful reports from the Joint Committee on Human Rights,[146] warning that the Bill as drafted, almost certainly violated the ECHR, the Commons imposed not a single amendment against the Government, and then, as and when instructed to by Government Whips, obediently and repeatedly overturned Lords amendments intended to safeguard human rights and keep the proposed new powers within reasonable, internationally-endorsed limits. Although there were small back-bench rebellions, in general, party discipline was rigidly maintained. The Common's spineless performance in relation to this Bill caused one respected commentator, Hugo Young, to remark: 'In a long record of shaming fealty to whips, never have so many MPs showed such utter negligence towards so impressive a list of fundamental principles.'[147]

24. In the light of this experience, it is suggested that anyone with a concern for basic civil liberties should be deeply concerned at the prospect of a second chamber that more or less replicated the Commons dealing with such a Bill. While a chamber elected by PR rather than first past the post would be unlikely to contain an absolute government majority, the often close rapprochement between Labour and Conservatives on anti-terrorist and crime-fighting measures, due to the electoral imperative to appear "tough on crime", would mean that the combined, whipped Labour and Conservative members would probably be able to drive through such legislation with little difficulty.[148] For those of us, therefore, who care about civil liberties, and who would like to see such legislation given particularly close and penetrating scrutiny by Parliament, the retention of a strong independent element in the Lords is vital.

25. Against this argument, it could be pointed out that, as Russell's research has established, wholly-elected second chambers overseas tend to take a more deliberative view of legislative measures, be less partisan and show greater concern for human rights and constitutional issues than their respective first chambers; governments are also more likely to concede amendments in second chambers, partly because, in the less confrontational atmosphere that is characteristic of them, such concessions appear less like political defeats. Reasons for this include a combination of longer terms of office and a greater average age of the members, and the fact that such chambers usually have no power to unmake governments and generally lesser powers over legislation than the lower House, resulting in the imposition of less strict party discipline.[149] These factors, then, tend to result in "mature and deliberative parliamentary chambers with a less adversarial atmosphere."[150] It could therefore be argued that the concern expressed in the preceding paragraph, that a directly elected second chamber would have had little more ameliorating impact on the Anti-Terrorism Bill than the Commons, is overdone.

26. This argument, however, fails to take account of the unique constitutional arrangements and political culture of the UK, which, it is suggested, make the addition of independent members to its reformed second chamber of peculiar, compelling importance. Not only does the UK constitution offer no judicial protection against unambiguous legislation that abrogates fundamental human rights[151]—unusually amongst Western democracies—but there is no need for special majorities in Parliament or referenda in relation to such legislation,[152] so that, legally speaking, the overall constitutional arrangements of the UK, including its protection for fundamental rights, can be altered as easily as the dog-licensing laws. I**n short, within such a political and constitutional context, it is uniquely important that the *composition* of the UK's second chamber must guarantee the presence of members who will instil a particularly strong culture of mature, objective, and long-termist scrutiny of the wisdom and**

145 See H.L. Deb. vol. 629 col. 1533, (13 Dec 2001), Baroness Williams.

146 Second Report, H.C. 37, H.L. 372 (2001-02); Fifth Report, H.C. 51, H.L. 420 (2001-02).

147 H Young, 'Once lost, these freedoms will be impossible to restore' *The Guardian,* 11 December 2001.

148 See e.g. the analysis by F. Klug, K. Starmer and S. Weir: "Civil Liberties and the Parliamentary Watchdog: the Passage of the Criminal Justice and Public Order Act 1994" [1996] 49(4) *Parlt. Aff.* 536,542.

149 Russell, *op cit*, p. 103-104.

150 *Ibid,* p. 103.

151 Under the Human Rights Act 1998 such legislation remains of full effect, even if declared incompatible by the Courts(s 4(2)and public authorities may act under it: s 6(2).

152 See the table in M. Russell and R. Cornes, 'The Royal Commission on Reform of the House of Lords: A House for the Future?' (2001) 64 M.L.R. 82 at 86, which shows the special powers over constitutional legislation of the second chambers of the legislatures of Australia, Canada, France, Germany, Ireland, Spain, Italy, Japan, Switzerland and the USA.

necessity of any such changes, in a chamber insulated to an extent from the short term political considerations which generally drive governments and political parties. A fully elected second chamber would be unlikely to provide such members in sufficient numbers to make a difference; it is suggested that it would for this reason not be a chamber apt for the UK constitution.

Programme for Public Participation in Parliament

SUMMARY

1. We are an organisation which advocates that Parliament should contain not only full time politicians but also part time politicians who combine legislative involvement with a life outside politics.

2. We do not believe that Parliament will be enhanced by diminishing its links with business, the professions and civil society.

3. We do not believe that the country needs 300 more full time politicians.

4. We ask the committee to maintain the House of Lords as a House of part time members.

5. This could be done by creating a larger number of seats but making them part time or it could be done by providing for the 312 seats proposed by the Government to be job shared.

6. The evidence contains a section listing the benefits of part time Parliamentarians.

7. It also contains a section listing various options and ideas which a part-time membership could open up.

8. We do not choose any specific option but our Chairman and Deputy Chairman will each be giving personal evidence advocating an option.

EVIDENCE

9. PPPP is a small organisation committed to the principle that full time politicians should constitute a smaller proportion of the legislature and that there should be better options available for those who wish to combine legislative involvement with a life outside politics.

10. The Government's proposals for reform of the House of Lords will phase out 788 part time members (whole time equivalent 388wte), many of them with extensive experience of business, the professions or civil society, and replace them with 300 full time politicians plus 12 Lords Spiritual.

11. We do not believe there is any significant body of opinion in this country which believes that Parliament could best be enhanced by diminishing its links with business, the professions and civil society.

12. We do not believe that there is any significant body of opinion which believes that this country needs another 300 full time politicians.

13. It is amazing therefore that there should apparently be a significant degree of support for a proposal which embodies both of those propositions. The explanation for this widespread acceptance is, of course, the belief in an elected house. Most of those who support the proposal accept that these two propositions would be foolish in isolation, but believe they are worth accepting in order to have an elected house. Most of those who oppose the proposals do so because of their opposition to one or other or both of these two propositions rather than to elections per se. There are some people who actually do not want elections, usually in order to preserve the pre-eminence of the House of Commons, and others who do want full time politicians precisely because they crave a chamber elected by proportional representation to challenge the House of Commons, but these groups are not the mainstream of debate. To that mainstream we put forward the idea that the difficult choice they are debating is a choice that needs not be made. We can have an elected house without it being composed of full time politicians.

14. This evidence falls into three parts. The first is a description of the benefits of part time Parliamentarians. The second discusses some technical issues connected with the procedure of the House if it has part time members. The third sets out our request to the committee.

BENEFITS OF PART TIME PARLIAMENTARIANS

15. The following are the main benefits of making provision for part time Parliamentarians. This section is closely based on the evidence we have previously given to the Speaker's Conference in another place.

16. It reduces the currently very unpopular concept of politics as a distinct profession.

17. It would make it easier for peers to combine membership of Parliament with domestic responsibilities and child care. As women still bear a disproportionate burden of domestic duties and child care this would benefit women. This is one of the main reasons that part time work and job sharing have been promoted in other areas of work and it should form part of the solution in Parliament as well. The success of job sharing and part time work in enhancing the role of women has been especially notable in the medical profession.

18. It opens up links between the Westminster Village and some of the other worlds that make up our society

19. It makes it possible for peers to inform their contribution to Parliament with current experiences of life in industry, business, the professions, the public services, childcare or local communities.

20. It makes possible three new forms of full time political service which would augment the links between national government and local government, civil society and political thinktanks making Parliament once again the prime focus of political debate.

21. work divided between Parliament and local government

22. work divided between Parliament and campaign groups

23. work divided between Parliament and political research

24. It would increase Parliament's access to expertise as professionals decided to combine professional practice with political service.

25. It solves the second jobs issue. There would be no justification for full time MPs having second jobs, but no basis to question part time peers doing so.

26. The following sets out some additional options that it would open up for the arrangement of the House. We do not specifically advocate any of these options, as our evidence is directed solely to advocating part time membership. We merely point out that these options are available.

27. If members are not expected to attend every session there is no reason why the House should only sit for such periods that one member could attend every session. It could meet from 9am to midnight; it could meet Monday to Saturday; it could meet for the whole year without a recess.

28. Seats could be shared between a group of people. For example instead of 60 appointed members it would be possible for all life peers to share 60 seats.

29. It would make it easier to introduce youth representation. For example 10 seats could be shared between the members of the UK Youth Parliament.

30. Some members, especially non-voting members, could have a very limited commitment, essentially no more than a right to attend and speak occasionally. This might be suitable for life peers who choose to be inactive but could also be conferred on various offices and organisations

31. It would be possible to have non-voting members who were available to act as proxies for absent voting members. This would make it possible to have a substantial appointed element in a House which, so far as voting membership is concerned, was entirely elected.

SOME TECHNICAL ISSUES

32. There are two ways to cope with voting if there are part time members. One is to have part time seats and a proxy system. The other is for members to jobshare full-time seats. The latter is less flexible in terms of attendance but is easier.

33. If members have differing degrees of commitment it may be necessary to weight their voting power accordingly so that instead of every member having the same number of votes, each whole time equivalent has the same number of votes. This issue only arises if part time seats are created. If full time seats are jobshared the issue doesn't arise.

34. There may be occasions when the number of members wishing to attend exceeds the capacity of the House. On those occasions members who do not intend to contribute to the debate but simply to listen to it and vote could be allocated to overflow meetings, which need not be in London, Indeed with appropriate telecommunications they could be in the members' homes. Again this issue only arises with part time seats not with jobshares.

SOME OPTIONS

35. One option would be to implement the Government's proposals but with 300 wte (whole time equivalent eg two half time members or five members each attending one day a week) rather than 300 full time members.

36. The 60 appointed seats and the transitional seats could be split amongst the life peers who would identify their own mechanism for deciding who would attend for each day or part day.

37. The 240wte elected seats could be made up of 600 members each 0.4wte (two days a week). This would make it easier to use STV with quota properly.

38. If members are part time so that not every member attends every session the House could meet for twice the length of time that it currently does and have 600wte instead of 300wte.

39. To secure youth representation a number of seats could be shared between the members of the UK Youth Parliament

40. There is scope for some of the seats to be filled by citizen's jurors selected by lot sometimes to serve for a week or a few weeks, sometimes to serve on all the occasions that the House is debating a particular Bill .selected to serve for a few weeks.

41. Part time seats in the House of Lords could be combined with seats on local authorities thereby linking local and national government. Possibly the ancient title of aldermen could be revived for these seats.

42. 60 voting seats could be shared between life peers in place of the 60 appointed seats in the Government proposals. However if a wholly elected House is desired life peers could organise themselves into lists and voting take place, perhaps concurrently with European elections, to allocate 60 votes amongst the lists. The votes allocated to the lists would be shared between the peers on the list. Peers could be on more than one list (for example a scientist sitting as a Conservative peer might well appear both on the Conservative list and on a science list). If a list failed to gain any votes peers who were only on that list would be purely non-voting.

43. To strengthen the crossbench and cross-party lists and allow lists that were rooted in civil society

- voters would be able to vote for, say, five lists
- the law should specifically disapply, for this election only, any rule that a party may have preventing its members supporting opposing lists
- the laws restricting the fielding of candidates by charities and by trade unions should also not apply to this election.

44. A further modification of the above would be to allow lists that were sponsored by organisations to propose new candidates for peerages, perhaps one or two per list, to be effective only if the list wins a seat (this criterion to increase to 10 seats if the organisation if is a political party)

45. Another option would be to retain the current structure of the House as a non-voting membership but with provision for them to act as proxies for voting members who are absent because they are full time.

46. If life peers are to be retained either sharing the 60 seats which the Government proposes should be appointed, or as non-voting members who could take part in debates and could hold proxies for absent voting members then as life peers resign, die or elect to take only a limited role, there could be greater clarity about the role of the political parties and the House of Lords Appointments Commission in filling the non-voting seats that cone free and additional options for filling them, such as allocating them to organisations or to offices or appointing people for one Parliament only or only for the period that they hold a Ministerial appointment.

47. Provision could be made that the non-voting membership must include a certain number of people from certain categories of expertise (eg public health expertise, historians, economists).

48. The representative peers that currently represent hereditary peers could be replaced with non-voting seats allocated to be elected by professions or groups (eg a number of seats to be elected by chartered engineers, a number by Fellows of the Royal Society, a number by registered medical practitioners). In this context a number could be retained to be elected by those who own large amounts of land or hold aristocratic titles. This would not be inappropriate if the seats were non-voting and if it did not stand alone.

49. If a wholly elected house is desired and it consists of 300 seats but meets for twice the number of sessions that one full time member could be expected to attend and it therefore needs 600 wte those 600 seats could be allocated to the new Parliamentary constituencies and divided into five mini-seats of 02wte elected by STV with quota. Candidates who wanted to sit for more than 0.2wte would be free, when they have gained the quota, to elect to remain in the count to win more than one mini-seat.

50. Elected seats as well as non-voting seats could be held by organisations rather than individuals. Those organisations could have a number of individuals available to deploy on different days. To the extent that the organisations holding the seats are political parties this would give them a number of seats shared by a group of people. Membership of that group could be used in the same way that the House of Lords is now used—to bring in experts, to allow retired politicians to continue to contribute or to make provision for Ministerial or front bench appointments from outside Parliament (replacing the current specific provision for that in the Bill). To the extent that they were not political parties civil society would be directly represented.

51. Voters could elect an electoral college which would then choose members by a competitive appointments process. This would benefit individuals who have a significant contribution to make but are not attracted by electoral processes, which has been an important group in the current House. It would also permit specific types of expertise to be specified as essential in a number of seats eg public health experts, persons qualified in public finance, economists. (The alternative way of doing this would be to have specified numbers of seats for specified types of expertise and elect them nationally in a single constituency for each type using STV with quota, so that the whole of the UK population elected, for example, three historians but it would probably lead to too many separate elections)

REQUESTS

52. We ask the committee to maintain the House of Lords as a House of part time members.

53. This could be done by creating a larger number of seats but making them part time or it could be done by providing for the 312 seats proposed by the Government to be job shared.

54. It is not appropriate for us as an organisation to go further than this but two of our members, Dr. Stephen Watkins and Dr. Helena McKeown, our Chairman and Deputy Chairman, will be submitting personal evidence suggesting different ways that this can be achieved.

11 October 2011

Dr Alex Reid

This submission is based on an assessment, which I have undertaken as an interested member of the public, of the 603 pages of written evidence, and the oral evidence, which has been submitted to the Joint Committee. This submission is also published in expanded form, with supporting material, at www.lordsreform.org.

Where there is agreement

The evidence submitted to the Joint Committee shows almost unanimous agreement on three points:

a. The House of Lords is doing a useful job, scrutinising and revising draft legislation, and on occasion delaying legislation to give Government the opportunity to think again.

b. The current balance of power between Commons and Lords is about right.

c. The composition of the House of Lords suffers from some defects, which should be rectified. It has become too large (809), the hereditary Peers should be phased out, and arrangements for suspension and expulsion of Peers should be introduced.

Where there is disagreement

However, there are two matters on which the evidence shows strong and widespread objection to the Government's proposals:

a. The proposal to move from an appointed House of Lords to one which is largely or wholly elected is seen as presenting two serious dangers:

Balance of power between Commons and Lords. The present balance of power between Commons and Lords, which is widely seen as satisfactory, rests on conventions not codified in law and on the self-restraint of an unelected House of Lords. A directly elected House of Lords, whatever the electoral system, would be likely to become much more assertive. This would lead to conflict rather than complementarity between the Houses, and potential gridlock as sometimes occurs in the USA. An attempt to prevent this by codifying the conventions into law would have the disadvantage of setting arrangements into concrete; it would also risk drawing the courts into disputes between the two Houses. This would complicate the current relationship between Parliament and the judiciary, and could also lead to legal delays impeding the work of Parliament.

Loss of expertise and independence. A largely or wholly elected House of Lords would be dominated (as is the Commons) by career politicians who had worked their way up through political parties. There would be fewer eminent people with substantial experience of the world outside politics. This would be a serious loss in terms of expertise and judgement. Also career politicians are more likely to be subservient to the party whips, thus reducing the currently somewhat independent character of the House of Lords.

b. The proposal for House of Lords members to move from being part-time and unpaid (receiving only a per diem allowance) to being full-time parliamentarians with salaries and pensions is seen as having two serious disadvantages:

Aggravating the loss of expertise and independence. The move to full-time salaried employment would reinforce the appeal of the House of Lords to career politicians, and would reduce its appeal to people who have, and wish to retain, an involvement in the wider world outside politics.

Cost. At a time when there is a compelling necessity to focus on value for money in the public sector, the creation of 300 or more full time jobs for professional politicians in the House of Lords, at an additional cost of perhaps £25m per annum, is difficult to justify.

The Government case

In its foreword to the White Paper, the Government does not put forward any argument that the proposed changes would improve the effectiveness or efficiency of the House of Lords. The only argument put forward for the changes is one of democratic principle. To quote:

'In a modern democracy it is important that those who make the laws of the land should be elected by those to whom those laws apply. The House of Lords performs its work well but lacks sufficient democratic authority'.

The Evolution Option

At first sight there is a binary choice—between the status quo (without democratic legitimacy) and a largely or wholly elected House (with all the risks and disadvantages set out above).

I believe there is a middle way, which merits serious consideration, and which I refer to as the Evolution Option. This would be a House (of say 540) with a minority (say 25%) of Independent Members appointed as at present, and the majority (75%) being appointed by parties in numbers **pro rata to the party's share of vote in the last General Election**. There would, as the Government proposes, be a single 15 year term, staggered so that one third of seats became vacant every five years. Hereditary Peers would be phased out, and all members would continue to be part-time and unpaid receiving only a per diem allowance as at present.

The Evolution Option would go a long way to meet the Government's desire for democratic legitimacy, because the number of party-affiliated members from each party would be exactly pro rata to the parties' share of vote in the last General Election.

It is important to make clear that each batch of vacant seats would not be allocated to parties pro rata to share of vote. That approach, which has been suggested by some, would not produce proportionality overall. Indeed it could easily result in a party which had just won a General Election ending up with fewer seats in the Lords than the party that had just lost.

Under the Evolution Option each batch of vacant seats would be allocated to parties in such a way as to produce proportionality overall. In the event that one party lost more than a third of its share of vote between elections, exact proportionality could not be achieved. However that is most unlikely. In the last 50 years no major party has lost a third of its share of vote between elections. Even if that does occur in the future, a highly proportional result would still be achieved, with exact proportionality likely after the following General Election.

The Evolution Option substantially increases democratic legitimacy, but it does so in a modest, incremental way which would greatly reduce the risks associated with the directly elected approach. Instead of costing more it would cost less.

The reduced cost arises because the present remuneration arrangements would be applied to a smaller number of members; also there would be no cost of additional elections.

Bishops and Ministers

Of those submitting evidence who express an opinion on the matter there is a majority view that it is inappropriate for Bishops to have seats as of right in the House of Lords—particularly since some Bishops could (alongside other faiths) be nominated as Independent Members by the House of Lords Appointments Commission. The majority do not object to the proposal that the Prime Minister should be able to nominate some Ministers to serve as additional members of the House of Lords for the duration of their ministerial tenure; but there is a widespread view that their number should be statutorily limited to say six. To maintain party proportionality, the Evolution Option would not allow those Ministers to vote.

How the Evolution Option would work

With a reduced house of 540 there would be 135 Independent Members, comprising 25% of the whole. This is a reduction of just over 10% on the current 152 Crossbench Life Peers, which could probably achieved by voluntary retirement. In addition to reducing the number of Independent Members to 135, the House of Lords Appointments Commission would need to allocate them to three equal groups of 45 each, who would have further terms of 5, 10 and 15 years respectively. This could be done, for example, by assigning the longest terms to those who have served for the shortest period.

If reform is to be achieved before the next General Election in 2015, the allocation of the 75% of seats to parties would be based on the share of vote in the 2010 General Election. The table below shows the increase or reduction in party-nominated Life Peers that would be needed for each party, based on the share of vote in the 2010 General

Election. If the transition date to a reformed House is after the 2015 General Election, then the allocation would be based on share of vote in the 2015 General Election.

Party	*Current Life Peers*	*Seat entitlement after 2010 Gen Election*	*Change*
Conservative	170	149	-21
Labour	235	120	-115
Liberal Democrat	87	95	+8
Other parties	10	41	+31
Total	502	405	-97

Under the Evolution Option, it would be for each party to decide how to select their additional (or reduced) nominees. Each party would also need to decide how to allocate their nominees into thirds, having terms of 5, 10 and 15 years respectively. Thereafter it would be for each party to decide how to select its nominations for future vacancies allocated to it.

Suppose hypothetically that at the 2015 General Election the Conservative and Labour shares of vote are reversed, with the other shares of vote remaining the same. The way in which exact proportionality would be maintained under the Evolution Option is shown below:

Party	*Share of vote in 2010 Gen Election*	*Seats after 2010 Gen Election*	*Share of vote in 2015 Gen Election if Con & Lab reversed*	*Continuing members (two thirds)*	*Total entitlement to seats after 2015 Gen Election*	*Allocation of vacancies after 2015 Gen Election to achieve this*
Con	36.1%	149	29.0%	100	120	20
Labour	29.0%	120	36.1%	80	149	69
Lib Dem	23.0%	95	23.0%	63	95	32
Other	11.9%	41	11.9%	27	41	14
Total	100%	405	100%	270	405	135

24 January 2012

Jim Riley

There is no reason that the electoral districts elect the same number of members at each election. Since the House of Lords is envisioned as having a continuing membership, each electoral district could be represented by its proportionate share of members, even though it had more or less than that share at any particular election.

It is analogous to the election of the US Senate, where each State has 2 senators, but only elects one senator in 2 out of 3 elections.

Let's say that an area is entitled to 13/240 of the elected members. This is 4.33/80 of the members chosen at any election. Rather than electing 4 members every election, and thus having a total of 12 members, and being permanently underrepresented, it could as easily elect 4, 5, and 4 members at successive elections, and have 13 members, its proportionate share.

This also avoids the need to tinker with electoral district boundaries. Rather than adjusting the boundaries so that an area has 12/240 or 15/240 of the total electorate simply to permit election of the same number of members at each election, the district could remain fixed, with the numbers elected varied to reflect the actual share of the population.

Imagine an area entitled to 12.6/240 of the elected members, or 4.2/80 of the members chosen at any election. That is to say, they should have 4 members elected at most elections, but a fifth member elected every fifth election. This would be calculated in the following manner:

Election	**Entitlement**	**Elects**	**Error**
1st	4.2	4	0.2
2nd	4.4	4	0.4
3rd	4.6	5	-0.4
4th	3.8	4	-0.2
5th	4.0	4	0.0
6th	4.2	4	0.2

The entitlement at any election is the number of members based on the proportionate share of electorate plus any residual apportionment error carried forward from the previous election. The number of members is the entitlement rounded to the nearest integer. The residual error is the difference between the entitlement and the number elected.

Over 25 years, or 5 elections, the electoral district would have 13 members for 15 years, and 12 members for the other 10, or an average of 12.6 members.

The calculation could be made based on the electorate prior to each election. If the relative share of the electorate was increasing, the election of a fifth member would become more frequent. If the relative share declined, then the election of a fifth member would become less frequent.

While independent rounding would result in each electoral district maintaining its share of the whole elected body, it would cause a small variation in the overall size of the body. So that instead of 240 elected members, there might be 241 or 237. I don't see this as a problem. 240 was likely not chosen because it was the perfect number, but seemed a reasonable number and was politically viable.

If it was determined to be of importance that precisely 80 members be elected, then the number elected in each district could be calculated using the Sainte-Laguë method. If a district that was entitled to 4.6 members, failed to secure a fifth member, then it would have a residual error of 0.6 carried forward to the next election. If a district that was entitled to 5.4 members were to secure a sixth member, then it would have a residual error of -0.6 carried forward.

Some electoral districts may have an entitlement of less than 9 members (3 per election). This would be the case if Northern Ireland were an electoral district. This can be handled by first apportioning the minimum number of electors to Northern Ireland, and then apportioning the other 77 members based on the other electoral districts share of the Great Britain electorate. If there are other small electoral districts, a similar adjustment would be made.

There might be a concern that a district that regularly elected two of four members for a larger party, may still only elect two members in elections where the electoral district elects five members total. But this is an artifact of STV. If there are 4 members elected, a party with 35% popular support can only elect 25% or 50% of the total. If they elect 2 of 4 they are somewhat overrepresented. If they elect 2 of 5, or 40%, this is much closer to their popular support.

Vacancies can also be handled by a system of variable apportionment. Rather than using a complicated system of recounting ballots, or awarding a seat to a best loser, simply let the seat remain vacant. Each electoral district would have a minimum of 9 members, so a vacancy or two would hardly leave the voters unrepresented on a body intended to be a scrutinizing and revising body, rather than a governing body.

And then compensate the electoral district for the period of the vacancy. For example, if there were a vacancy two years into a 15-year term, an additional 13/15 would be added to the residual error. At the next regular election, this would generally result in election of an additional member for a full 15-year term, filling the 10 remaining years of the vacancy, the 3 years where the seat was vacant, and 2 years based on the districts electorate.

If a vacancy occurred in the last year of a 15-year term, then 1/15 would be added to the residual error. Typically, this would not result in additional representation, but would eventually result in compensation due to an extra member being elected sooner rather than later.

3 October 2011

Lord Rowe-Beddoe

I have some points for consideration by your Committee. Like some colleagues in the House, I was appointed upon the recommendation of the Appointments Commission under the "People's Peers" scheme, i.e. not upon the recommendation of any political party. Should future legislation produce a 100% elected Upper House, then clearly Independent Crossbenchers like me would be excluded from seeking election for reason of insufficient financial and organisational support.

A fully appointed House (but with reduced numbers) may be considered undemocratic but it certainly is legitimate—as has been the case for some 900 years. Surely the question to be considered is: "Does the House fulfil its function effectively in the governance of our country?"

A hybrid House cannot be a solution since the vote of an elected person would be perceived to be worth more than that of someone appointed; and a conflict will surely arise on the overriding issue of Commons supremacy. I do not believe that the actual effects of a partially or fully elected chamber are wanted by the House of Commons. There is no "settled view". Many MPs known to me have expressed strong opinions to the contrary. To quote Professor Vernon Bogdanor in *The Times* (18 August 2011),· not only will "the primacy of the Commons ... come under challenge", but "the draft Bill by contrast would transform the Lords from a revising to an opposing chamber."

Statements that have been made in regard to manifesto commitments in support of the draft Bill are incorrect, despite Coalition claims. For example, the manifesto of the main Opposition party specifically referred to a referendum being held following wide consultation on their proposed staged changes.

In conclusion, if abolition is truly desired (as the draft Bill infers) by the House of Commons (certainly I am totally unaware of any movement for reform from the electorate), then I respectfully submit that you would not, so to speak, start from here.

Since my schooldays I have had impressed upon me the virtues of an unwritten constitution. However, continuous changes to it (both minor and major) are increasingly made, with the majority of people blissfully unaware of them. Perhaps we should focus instead on the creation of a written constitution which will be a matter for extensive consultation, communication and public awareness, and referendum (one or more). The outcome of this would mean all members of the executive and legislature becoming transparently accountable to the people we represent, either directly or indirectly.

31 October 2011

Mark Ryan

1. My name is Mark Ryan and I am a Senior Lecturer in Constitutional and Administrative Law. I have a particular interest in matters of constitutional reform with a specialism in the reform of the House of Lords. My submission represents my personal view on the 2011 House of Lords Reform Draft Bill and in no way represents the view of my employer Coventry University.

2. The Draft Bill. The House of Lords Reform Draft Bill 2011 is to be welcomed as all major constitutional measures should be subject to pre-legislative scrutiny as a matter of standard legislative practice. The period of approximately eight months for the Joint Committee to undertake its investigation appears to be appropriate and this is in direct contrast to the limited time allocated to the Joint Committee on the Draft Constitutional Renewal Bill in 2008.

3. The House of Lords Reform Bill, if enacted, will have profound implications for our uncodified constitution (after all, the constitution cannot be altered in isolation without having secondary effects reverberating elsewhere). In view of this, it is proposed that legislation should be passed for a United Kingdom-wide referendum be held to approve (or reject) the changes proposed by the House of Lords Reform Bill either before it is introduced into Parliament as a fully-fledged Bill or as a post legislative referendum with the Act containing a sunrise provision making its activation subject to public endorsement. It appears inconsistent that it was deemed constitutionally appropriate for a referendum to take place in 2011 on a change in the electoral system for the House of Commons, but seemingly not for one on an issue which is arguably more significant, that of introducing the *principle* of election into the second chamber. There is clearly, however, no appetite from the Coalition Government for a referendum on this issue.

4. A second justification for a referendum is based on the concern that in the United Kingdom, constitutional reform has been far too Parliamentary–centric and introspective without any real reference to engaging the wider public (in this sense the establishment of this Joint Committee is to be warmly welcomed). In point of fact, in September 2011 the author lodged an e-petition on the HM Government website calling for a referendum to take place on the House of Lords Reform Draft Bill as to whether the reformed upper House should be fully or largely elected.

5. Powers and primacy. The Draft Bill does not propose to alter the powers of the second chamber and instead assumes that the legal and political powers which currently govern the relationship between the two chambers will be transposed to the context of a reformed House. In terms of legal powers, there is an argument to be had that the 'democratisation' of the second chamber should result in it being granted additional legal powers. The House of Commons should retain primacy as the dominant chamber owing to the fact that the Government is largely drawn from it and that it also grants Supply. There is clearly a case, however, for amending the Parliament Acts and increasing the period for which the newly reformed (elected) second chamber could delay legislation in order to reflect its new found democratic and legitimate status. In any event, the House should retain its power to veto Bills extending the life of Parliament, but given that one of the chamber's roles is to act as the guardian of the constitution, this veto should also be applied to major constitutional Bills. The author readily concedes that in some cases this may be a fine judgement, but one which is not insurmountable.

6. In terms of the political relationship between the two Houses, given that constitutional conventions rely on the self-restraint of members and historically relate to the context of an unelected House, it is contended that newly elected members in a reformed chamber will not necessarily feel constrained to abide by them. Instead, it seems clear that these new elected members will in practice be more aggressive and assertive in their dealings with the Commons than members of the House of Lords are at present. The reality is that today, in practice, both Houses ultimately work collaboratively together (as demonstrated recently in the compromise agreed in respect of the post legislative scrutiny arrangements of the Fixed-term Parliaments Act 2011). It is not fanciful however to suggest that newly elected members, emboldened by their democratic credentials (but lacking any corresponding additional legal powers), could prove to be practically and strategically obstructive in terms of the arrangement of parliamentary business sought by the Government of the day.

7. Role. There is a general consensus surrounding the role and functions of the second chamber. As noted above, however, its particular role in protecting the constitution should be enhanced by extending the ambit of the Parliament Acts to empower the House to veto major constitutional Bills which it considered contrary to the principles underpinning the constitution.

8. Size. The size of the House is clearly a matter of political judgement and assessment, although the figure of 300 members as proposed by the Bill does appear to be somewhat low. The overriding considerations regarding size are twofold: Firstly, the second chamber should be smaller than the lower House (in common with international experience). Secondly, the number finally agreed upon must be capable of performing all the tasks and functions required of the second chamber. In particular its ability to scrutinise legislation effectively and serve on committees must not be compromised by insufficient members.

9. Ratio. In terms of the elected members, the Bill provides two options of 100 per cent elected and 80 per cent elected and these correspond with the 2007 votes (although of course they ignore entirely the corresponding votes in the Lords). In reality the ratio between the elected and appointed members (i.e., for example, whether the chamber should be 60 or 80 per cent elected) is relatively insignificant compared with the principle of whether the House should be hybrid or wholly elected. In short, the difference between a fully elected and a hybrid chamber is not a question of degree, but instead fundamentally one of kind. For example, a hybrid chamber raises issues of dual and competing membership and also whether a mixed House is an inherently unstable settlement (i.e. whether over time

it would lead inexorably to a fully elected chamber). It is not surprising therefore that the Coalition Government and the Draft Bill have not resolved the issue as to whether the House should be wholly or largely elected. As noted above, the author has lodged an e-petition on the HM Government website calling for a referendum on this precise issue. After all, the mandate theory is problematic here given that the two parties in the Coalition had different manifesto commitments on the issue (the Conservatives pledged a hybrid House whilst the Liberal Democrats advocated a wholly elected chamber).

10. Appointments Commission. If there is to be an appointed element then an independent statutory Appointments Commission will be necessary and it is constitutionally apposite, as proposed in the Bill, that it be accountable to Parliament and not the executive. In this context, it may be useful to draw upon the experience and debate that has surrounded the various incarnations of Lord Steel's House of Lords Reform Bill.

11. Term. The electoral term of 15 years appears to be an excessive period (amounting to three Parliaments under the Fixed-term Parliaments Act 2011). There is clearly an issue of democratic accountability with such a long term, as accountability ultimately of course, only comes with *re-election*. In any event, with such a long term there must be some provision for the recall of members by the electorate. Elections must also be staggered in cycles.

12. Electoral system. The issue of the electoral system is clearly very contentious and it is something which cannot be divorced from the electoral arrangements pertaining in the Commons. On the assumption that, as a result of the 2011 referendum, the first past the post system will continue to operate in the Commons for the foreseeable future, it follows that this system cannot sensibly be used for the second chamber. In order to make the second chamber more representative and prevent one party from dominating it, it would appear that the most appropriate electoral system to use would be a form of proportional representation.

13. Transition. The transition to a fully reformed chamber will be problematic and the issue has hardly been helped by successive governments which, whilst advocating reform of the chamber, have simultaneously bloated the House by adding life peers at regular intervals. As a result, it is suggested that no more appointments be made until the shape and form of a fully reformed House is agreed upon. It is inevitable that the transition will be a lengthy process. Two issues arise in particular: Firstly, the Bill does not specify how those members who will leave the chamber will be selected. It seems sensible to leave these arrangements to the House to decide. Secondly, there is clearly an argument to be had that as life peers have been appointed for their lifetime, these individuals have a constitutional legitimate expectation of remaining in the House until they die (unless they choose to retire under the Bill). Indeed, there may be some constitutional indignity in the spectacle of removing 'reluctant' life peers from the chamber when they were appointed on the expectation that it was for their lifetime.

14. The hereditary peers have always been scheduled to be removed at Stage Two of Lords reform as a result of the compromise agreed in 1999, however there may be some debate as to whether this should occur at the beginning of Stage 2 (i.e. May 2015 with the first elections) or at the end (i.e. 2025 with the last tranche of elected members).

15. Ministers. There is an argument that there should be no minsters in the second chamber in order to secure a purer separation of powers between the executive and the legislature (or at least one half of it) and to make the House distinctive. In practice, however, it appears necessary that ministers should continue to be drawn from the second chamber in order to pilot Government Bills and also provide direct accountability of the Government to Parliament.

16. Nomenclature. The name of the reformed chamber would appear to be merely of symbolic value only, and therefore the term Senate and Senators would appear apposite.

17. International comparisons. The lack of a codified document and higher fundamental constitutional law make comparisons with the constitutions of other countries somewhat difficult. In fact in one way this makes the point that it is even more important that the Parliamentary arrangements for passing legislation—and holding the executive to account—are robust and efficacious given that, unlike other countries, our courts (other than in the context of the European Union) are unable to challenge legislation passed by Parliament (which of course is typically controlled by the Government of the day).

27th September 2011.

Chief Rabbi, Lord Sacks

Introduction

1. The House of Lords is a fine institution in need of reform. In this submission I focus on one feature only of that reform—the appropriate role and composition of the "Lords Spiritual" in a morally and spiritually diverse society. The argument is set out in the following stages. First I give a brief Jewish perspective on state and society. Then I suggest its relevance to contemporary Britain. I next consider the role of the Church of England and the existing Lords Spiritual. I end with a proposal for broadening the composition of this group.

State and Society: A Jewish Perspective

2. The contribution of ancient Greece to our views of government is well known. Less well known is the influence, through the spread of Christianity, of the Hebrew Bible. Yet it was the Hebrew Bible—through the writings of such thinkers as Hobbes and Locke—which laid the foundations of modern, limited, constitutional government. In the words of Lord Acton, "the example of the Hebrew nation laid down the parallel lines on which all freedom is won".[1]

3. Three features of the biblical vision are especially germane to contemporary political-philosophical debate. The first is a distinction between **state** and **society** –and thus between political and civil institutions. The state is brought into being by a social **contract** (I Samuel 8—where monarchy is created at the request of the people). Society is brought into being a social **covenant** (between the people and God at Mount Sinai; Exodus 19-20). Covenant is prior to contract. Right is thus sovereign over might, setting moral limits to the state. This is the origin of the concept of human rights.

4. The second is the **division and separation of powers**. In biblical times this was tripartite—kings, priests and prophets. Functionally, kings represented the institutions of state. Their tasks were defence and the maintenance of the rule of law. Priests were the religious establishment. Prophets were those who mediated between the immediacy of kingship and the eternity of priesthood. Their task was to read history in the light of destiny. They are the earliest known social critics.[2]

5. The third insight follows from the previous two. The institutions of state, for Judaism, cannot stand alone. They are predicated on society, which itself depends on the health of certain institutions: families, schools, communities, and the moral bond which links us to one another and to past and future generations. This is the covenantal, as opposed to contractual, dimension of our common life. It was the particular role of the prophets to insist that it is moral rather than military or economic strength that ultimately determines the fate of nations.

6. This proposition was put to the test. In the first and second centuries CE, after a series of disastrous confrontations with Rome, the Jewish people lost its Temple, sovereignty and land, and thereafter existed only as a diaspora until the rebirth of the State of Israel in 1948. For almost 1800 years Jewry survived, not as a nation-state, but as a series of communities whose central institutions were the home, the school, the synagogue and the moral-spiritual code of the Hebrew Bible and its later elaborations. Judaism is thus an unusual example of a civilisation that has existed, for the greater part of its history, without the instrumentalities of a state, by virtue only of the strength of its civil institutions.

7. These insights have taken on a new salience with the revival of interest in **civil society**. There are eras in which the keyword of politics is the **nation state**. There are others in which attempts are made to minimise the state and emphasise the **individual**. There are yet others—ours is one—in which people recognise the limits of both the state and the individual. The one is too big, the other too small, to solve certain problems. At such times, **intermediate institutions** such as the family, the educational system, and the community, occupy centre-stage.[3] These have always been at the heart of diaspora Jewish life. This is not to claim universal validity for Jewish approaches to these issues. It is simply to say that a Jewish voice has a contribution to make to debate and reflection on contemporary society.

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[1] Lord Acton, *Essays in the History of Liberty*, Indianapolis, Liberty Press, 8.

[2] Michael Walzer, *Interpretation and Social Criticism*, Harvard University Press, 1987.

[3] A full analysis is set out in my *The Politics of Hope*, London, Jonathan Cape, 1997.

Society: A Collective Conversation

8. How then to apply a covenantal perspective to constitutional reform? Societies change. One of the most profound changes in the West has been the move from society conceived as a monolith (one nation, one religion, one culture) to society as an arena of diversity. This began in the wake of the European Wars of Religion and has continued ever since, progressing from **toleration** to **emancipation** to **liberalism** to **pluralism**. But what binds a plural society? What sustains a sense of the common good? What legitimates institutions when morality itself seems pluralised and relativised?

9. One way of thinking about such questions is to reflect on the concept of authority. There were times when authority was predicated on the possession of power inherited (monarchic) or delegated (democratic), revealed truth (ecclesiastical), or wealth (aristocratic). These divisions are still reflected in the British constitution—in the form of the Sovereign, the House of Commons, and the Lords Spiritual and Temporal. The lacuna in this constitutional framework is a locus of authority appropriate to a plural society.

10. Individuals enter the public square in two ways. The first is **as individuals** with needs, aspirations and rights; in a word, with interests. In democratic societies, politics is the institutionalised resolution of conflicting interests—aggregated in the form of political parties. The home of this process is the House of Commons.

11. But individuals also enter the public square **as members of families, communities, and moral and spiritual traditions**—institutions in which the "We" has primacy over the "I". These institutions are vital to our sense of identity. If they do not have a voice, people are left with the feeling that the public arena excludes some of their deepest commitments.[4] They are also the matrix of motives such as altruism, moral obligation, duties to society, respect for tradition and guardianship of the environment which can be marginalised in the adversary culture of political debate. They belong to the *covenantal*, as opposed to the *contractual*, dimension of society.

12. In a plural society, by definition, moral authority does not flow from a single source. Instead it emerges from a conversation in which different traditions (some religious, some secular) bring their respective insights to the public domain. The conversation can take many forms. Most are informal. By contrast, the significance of public, and especially parliamentary, institutions is that they are the **formalised arena** of public conversations. One of the questions to be asked of any set of constitutional arrangements is: what is the nature of the conversations they allow and encourage to take place?

13. One type of conversation is particularly important to a society that is diverse and undergoing rapid change. It concerns such questions as these: What kind of society do we seek to create and with what kind of citizens? What behaviour and which attitudes do we wish to encourage or discourage, and by what means—legislative or other? This is the **ongoing moral conversation** fundamental to the long term project of society. The state of moral thinking at any moment frames the environment of legislation and reaches into attitudes and dispositions far beyond the reach of legislation. It colours individual action and influences the direction of many groups throughout society.

14. This kind of conversation constantly takes place *within* groups (churches, synagogues and other religious and voluntary associations). However, it does not necessarily take place *between* groups. Yet there must be an arena where different groups meet if there is to be a **public moral conversation**—if, in other words, institutional reality is to be given to the idea of society as a "community of communities".[5]

15. The significance of this conversation does not lie solely in the conclusions it reaches. It has two other consequences. The first is that the mere activity of bringing together diverse individuals and groups to reflect on moral issues is vital to sustaining a **shared language of values**. This is especially important when there is no longer an agreed locus of moral authority in society. Without a public arena of moral debate, a plural society rapidly fragments into a series of interest groups advocating their case in the minimalist vocabulary of "rights". This encourages conflict while eroding the richness of language within which a nuanced resolution might be reached. The classic case is the issue of abortion in the United States.

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[4] See particularly the recent works of Yale law professor Stephen L. Carter – *The Culture of Disbelief, The Dissent of the Governed, Civility* and *Integrity*. Carter is one of several who have argued that the principled secularity of public debate in the United States alienates many, even most, citizens from the political process.

[5] See J. Sacks, *The Persistence of Faith*, pp. 84-94.

16. The other is **enlistment**, and this depends on the inclusivity of the conversation. A conversation that draws the many traditions represented in society into debates about its future, enlists those groups into the project of the common good. It provides them with "voice"—and "voice" is essential to loyalty,[6] that is, to a sense of ownership.

17. Unlike debates framed by conflicting interests, those generated by diverse traditions do not necessarily aim at the victory of one side over another. They may aim simply at mutual enlargement and the creation of a shared vocabulary of concern. A concept drawn from inter-faith relations is relevant here. Whereas in the Middle Ages encounters between faiths were marked by **disputation** (public trials in which Jews were invited to hear the truth of Christianity demonstrated), today they are characterised by **dialogue**. Dialogue does not aim at the victory of truth over falsehood, but at a shared process of speaking and listening in which we come to see ourselves as persons-in-the-presence-of-the-other. Shorn of its specifically religious connotations, dialogue is an appropriate model for an essential element in the public conversation. It emphasises what we share. Its premise is that we are enriched, not diminished, by diversity. It teaches us to speak to those we do not seek to convert but with whom we wish to live.

18. In short, a covenantal perspective on constitutional change directs our attention to the deliberative processes in state and society. These must include not only an arena in which conflicts of interest are resolved, but also one in which our several moral and spiritual traditions meet and share their concerns and hopes. The health of a free and democratic society is not measured by representative institutions alone. It is measured by the strength and depth of the public conversation about the kind of social order we seek to build.

Constitutionalising the Conversation

19. The appropriate home of covenantal conversations is the House of Lords. That is part of the role of a deliberative Second Chamber.

20. At present, in Britain, the public moral conversation is under-institutionalised. There is no arena that brings together the great faith traditions, along with the other sources of moral influence and wisdom in society. Such encounters as take place are random, spontaneous and disconnected. They have no official standing. They are usually reactive, and give rise to the phrase "moral panic". This is a lost opportunity. Ideally, Britain should have, within in its deliberative assemblies, a forum for ongoing moral commentary on both legislative proposals and developments taking place in society. This should be large enough to have a voice, but not so large as to constitute a veto. That would be at odds with parliamentary democracy.

21. Historically, the moral and spiritual voice of society was taken to be the Church of England. Hence the twenty-six bishops who comprise the "Lords Spiritual". At some stage, from the 1960s onwards, an attempt was made to find an alternative voice that would better represent a secular society. The preferred option (by way, for example, of Chairmanships of Royal Commissions) was often a professional philosopher, especially one working in the Bentham-John Stuart Mill traditions of utilitarianism and libertarianism. It was assumed that these traditions were best suited to the search for the right in a post-religious age.

22. Both models had great virtues and were right for their time. Ours, though, is a different time with different needs.

23. Christianity remains the majority faith. The Church of England remains the established church. These facts should continue to be reflected in a future Second Chamber. In my 1990 Reith Lectures I defended the existence of an established church in these words: "Our current diversity makes many people, outside the Church and within, feel uneasy with that institution. But disestablishment would be a significant retreat from the notion that we share any values and beliefs at all. And that would be a path to more, not fewer, tensions."[7] Establishment secures a central place for spirituality in the public square. This benefits all faiths, not just Christianity. It invests national occasions with an aura of sanctity, which is to say, a sense of the presence and sovereignty of God. This is the best defence against totalitarianism, the absolutisation of human rulers and institutions.

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[6] A. O. Hirschman, *Exit, Voice, and Loyalty*, Harvard University Press, 1970.

[7] *The Persistence of Faith*, 68.

24. Each nation charts its own route to freedom, and that becomes part of its history. The United States found it in the Jeffersonian separation of Church and State. Britain found it in successive acts of emancipation and liberalisation, alongside an established church charged with the burden of generosity toward others. Throughout the twentieth century, Britain has remained a tolerant society while anti-semitism was rife in continental Europe, from the Russian pogroms to the Holocaust. The Church of England is part of that tradition of tolerance—and is more likely to remain so as an established church than if it were disestablished and turned into a more sectarian organisation.

25. Christian representation in the Lords should be broadened. To some extent this has already happened through the presence of the late Lord Soper, and now Baroness Richardson. However, the absence of a Catholic representative is conspicuous. Catholicism is part of the mainstream of British life. Catholic emancipation took place in 1829. It may be that there are compelling theological reasons for Catholic bishops not to take part in the Lords. If so, that fact must be respected and honoured. If not, a Catholic bishop—preferably the head of the Catholic Church in Britain—should certainly be included.

26. So too should representatives of the non-Christian faiths. Today they form a vital part of the text and texture of British society. Each has an important contribution to make to public debates and civic involvement. Their presence is essential if these groups are to feel that they belong and have a valued presence in the public square.

27. In this respect it is important to distinguish two things which are sometimes confused—the *defence of interests* and the *articulation of principle*. Minorities in Britain can be seen under different rubrics, as ethnic groups or as faith communities. "The Asian community" is an ethnic description. "The Sikh community" is a religious one. Sometimes ethnic and religious categories coincide, but they remain different ways of envisaging group identity. An ethnic group has interests it must defend. A religious group has principles it must expound. I have doubts as to whether ethnic groups as such should be represented in a Second Chamber. It is the task of Members of Parliament to defend the interests of their constituents, whatever their ethnicity. This is better than creating, in effect, a set of pressure groups in an Upper House—thus encouraging the view that only Asians can defend Asians, and so on. Certainly both Houses—indeed all national institutions—should be ethnically diverse. But there is a difference between diversity and representation. Minorities should be represented among the "Lords Spiritual" as faith communities, not as ethnic groups.

28. The principle is simpler than the practice. It is hard to define a faith community. Not all faith communities are formally organised. Some contain multiple strands and denominations. Many have no generally recognised national leader. Some leaders serve for relatively short periods, and are thus unable to provide the kind of long term presence a sustained conversation needs. There are no abstract principles that would yield an agreed formula for representation. Each is fraught with difficulties and is likely to raise conflicting passions and disappointed expectations.

29. Fortunately, the British constitution has never proceeded on the basis of abstract principles. The best approach is modest, informal and gradualist. Not simultaneously but over the course of time, other religious figures should be added to the Second Chamber, on the recommendation of the Prime Minister, using existing methods of scrutiny and consultation. Broadening the religious spectrum in the Upper House should be a background objective, not a formal programme, and membership should *be ad personam*, not *ex officio*. Those chosen should become Life Peers, so as to encourage continuity of contribution.

Conclusions and summary

30. There is a vital role to be played by a more broadly conceived "Lords Spiritual". Reform of the House of Lords is the appropriate opportunity to create it. The Archbishops and Bishops of the Church of England should continue to be the majority presence as representatives of the established church. They should be augmented, over the course of time, by a small group of individuals drawn from the other Christian churches and from the major non-Christian faiths. Such a group would add greatly to the moral authority, imaginative reach and inclusive character of the House of Lords. It would constitute a forum in which the several faith traditions—so central to the identity of many Britons and to the collective memory of mankind—join their voices to the deliberative process of dialogue and debate through which a society renews itself and frames its collective future.

Lord Sacks has been Chief Rabbi of the United Hebrew Congregations of Britain and the Commonwealth since 1991. He holds fifteen honorary doctorates and currently holds Visiting Professorships at King's College, London and Birkbeck College, University of London.

Earl of Sandwich

I have been in the House for 16 years and I cannot remember a single year of real stability, not one year in which I was able to look forward to remaining in the House and enjoying the privilege of membership. First there was the sword hanging over the hereditary peers, but soon afterwards it was dangling over life peers as well, and since 2000 we have all been threatened by a succession of committees and proposals or draft Bills.

My key point is that, while public opinion is tested in the media, our legislature should not remain, year after year, the constant target of our own members and parliamentary critics. It must be allowed to function. People must be able to look forward with some confidence if they are going to win the confidence of the nation and even more important, to perform efficiently all the duties in front of them.

This may sound like a cry for the status quo, but I have played a minor part in previous Bills and am on record as a moderate reformer. I would like to see incremental change. I am a supporter of the Steel Bill in its original form, and I attend meetings of the Campaign for a more Effective Chamber. I have strong views about the size of the House and would like to see a proper retirement scheme.

The atmosphere in the House today, during Lord Grocott's question about numbers, confirmed my impression of a lack of enthusiasm for wholesale reform, and this was borne out by the tone of Lord Strathclyde's responses.

I very much hope the Joint Committee will appreciate that it is in their power to end this process at the earliest opportunity and to recommend to the Government that whatever proposals they come up with are realistic, in the sense that they will actually come to fruition.

27 October 2011

Donald Shell

I offer the following comments on the White Paper and draft Bill, recognising that these exclude many areas of concern. I hope they may be of some interest and possible assistance to the members of the Joint Select Committee.

Strengthening the Second Chamber and strengthening Parliament.

The crucial test for any reform of the House of Lords is whether or not such reform can reasonably be expected to contribute to strengthening Parliament as a whole in relation to the Executive. The argument for a largely elected House was frequently made in the past because it was felt that the Government could always dismiss the views of an unelected House too easily, and frequently did do so. The Conservative Party Home Committee in 1978 recommended a two-thirds elected House (elections by thirds for nine year terms) precisely because the existing House was unable to resist what Lord Home called "mandated majority government" and what Lord Hailsham characterised as "elective dictatorship".

Matters do look somewhat different today. There is more evidence of MPs collectively seeking to "shift the balance" of power from the Executive towards Parliament (Eg, the select committee system; the Wright Committee reforms). And MPs generally appear less submissive to the party Whips than a generation ago. Furthermore the House of Lords has become a gradually more assertive institution from the 1960s onwards and more particularly since the 1999 Act.

If the process of strengthening Parliament is to continue, while this may primarily be a matter for the House of Commons, the second chamber can and should play a complementary role. In the long run it may not be able to do this if it remains an entirely appointed House (as at present) whatever changes may be made to the machinery for appointment.

Many have argued that a largely elected House would inevitably rival the Commons and indeed could threaten the "primacy" of the Commons. This is a danger, but I believe one that can be guarded against partly by ensuring a clearer statutory embodiment of the limitations on the powers of the second chamber, and partly through ensuring that it is elected on a completely different basis.

Elections to the Second Chamber

Taking the latter point first the draft Bill proposes exactly this. Elections by thirds, for lengthy single terms, on a regional basis, by STV are all factors that ensure the future second chamber will have a very different dynamic to that of the Commons. Combined with the retention of an appointed element they ensure the House will be unable to claim an electoral mandate in the way that a Commons majority can.

Fifteen year non-renewable terms have been much criticised as negating the accountability of elected members. While accountability to the public is one aspect of democracy this has to be balanced against other principles. Party Whips may be fearful of the consequences of having members who serve lengthy single terms, but if this ensures a greater independence from the party Whips, it could well be argued that such a pattern of election will enhance the personal responsibility of elected representatives to their own values upon which the electorate have passed judgment at the time of their election.

The proposal to have fifteen year terms is in part driven by the decision to link elections to those for the Commons, within the new context of fixed five year parliaments. However the draft Bill contains the proviso that if a general election occurs in the first two years of the lifetime of a parliament this will not trigger elections to the second chamber; rather the length of term of those elected will be extended. This could result in members individually having a term of up to 21 years. I think this is definitely too long.

The arguments for tying elections to the second chamber to elections to the Commons are that a higher turnout can be anticipated, and that having this electoral (and appointment) cycle would avoid the possibility of having a change in the personnel involved in scrutinising legislation in one chamber mid-way through a parliamentary session. I don't think either of these arguments are convincing.

While the convenience of the electorate should be one consideration in devising an electoral system, it is by no means an over-riding factor. Holding elections for both Houses on the same day would probably result in elections to the second chamber being eclipsed in terms of campaigning by elections to the Commons.

Having some change in the legislators handling particular Bills at one end of Westminster mid-way through the passage of a Bill may impose some difficulties but could also be beneficial in refreshing the process by which the Bill is being scrutinised.

An alternative would be to elect members of the second chamber by thirds on a three year cycle for nine year terms. Such elections could take place simultaneously with local elections for most of the electorate. If this alternative was adopted it might well be considered reasonable to allow individuals elected to serve a maximum of two terms. This would slightly re-balance the electoral system from independence towards accountability.

Powers of the House

The intention embodied in the draft Bill is that the primacy of the Commons should be undiminished, and more broadly that the role of the House of Lords should be unchanged by the Bill. For this reason the Bill does not address the powers or functions of the House. I can understand this approach but I think it is mistaken. The draft Bill has aroused considerable concern because of the fear that it will result in a second chamber that undermines the primacy of the first chamber.

The present relationship between the two Houses is governed by the Parliament Acts, by Standing Orders relating to the financial privilege of the Commons, and by Conventions. The possibility of codifying the Conventions involved was considered by the Cunningham Committee which rejected the idea, though the Committee did recognise that if the composition of the Lords were to be altered the present conventions may no longer hold.

I agree that conventions cannot be codified in legislation. To attempt to do so would be to impose rigidity on rules which depend for their effectiveness on their flexibility, and their capacity thereby to change and adapt to meet new situations. If conventions were codified in legislation they would cease to be conventions.

However, I do think that the concern over primacy could in part be met by a re-formulation and extension of the Parliament Acts. The delay on primary legislation is 12 months from the date of first second reading of a Bill in the Commons, and excludes Bills introduced in the Lords. This should be replaced with a stipulated period (say six months?) from a declared date of disagreement (perhaps after two rounds of ping pong?),invoked by a vote in the Commons initiated by the minister in charge after exhausting whatever efforts to secure compromise between the Houses s/he had considered appropriate. This should be made applicable to legislation originating in either House.

The Lords veto over secondary legislation should be replaced with a right to delay such legislation for a short set period (I would suggest three months).

A non-legislative motion passed on division in the Lords should (as now) have no power to prevent or delay Government action.

Embodying these changes in new legislation would help to reinforce the principle of Commons primacy. This would also make the role of the second chamber in exercising power more transparent and less clumsy. Doing this would obviate the need for elected legislators in the second chamber to compromise the integrity of their House by feeling pressured into giving way against their own better judgment. This would improve parliamentary accountability to the public by making clearer to the electorate at large when a serious disagreement between the Houses had taken place and how power had been exercised to resolve this.

An Appointed Element

One of the distinctive and I believe very valuable features of the existing House is the way party politicians mingle with those whose expertise and achievements lie in areas utterly different from politics. The House of Lords has brought into Parliament many people in recent years who have made considerable and distinctive contributions to the work of parliament but whose career backgrounds have lain outside of politics. If the cross bench element were lost then the role the House was able to perform would certainly change. As has been widely pointed out this element is unlikely to attain membership of the House through election.

I am therefore a strong supporter of a mixed membership House. The draft Bill proposes a 20 per cent appointed House. I think this is a minimum and would have preferred a higher proportion of appointed members, say one-third.

Some commentators have expressed anxiety that a House composed of elected and appointed members would prove problematic. I don't think this will be a significant problem; it is worth noting that throughout its history the House has had diverse forms of membership: Lords Spiritual and Lords Temporal; peers by creation and peers by succession; life peers and hereditary peers. Having both elected and appointed members serving the same terms and under the same conditions of service is I think important, as is the need to set out clearly the reasons for having appointed as well as elected members.

The Bishops

I think it is unwise to retain Bishops as ex officio members in a smaller and more professional House, not least from the point of view of the Bishops themselves. The difficulties of their position will be aggravated by the fact that five of the twelve places kept for Bishops will be taken by the two Archbishops and London, Durham and Winchester, thus imposing a much heavier burden on the remaining seven than is currently borne by the 21 senior diocesan bishops who are members. Contributing in a sustained and responsible way to the work of a professionalised House overwhelmingly composed of full-time members will be difficult for serving Bishops all of whom bear major responsibilities within their dioceses.

But even if the Bishops themselves deny this and make heroic efforts to contribute to the work of the House, the fact remains that their presence in the House is widely perceived as anomalous because they represent one Church from only one of the four constituent parts of the United Kingdom.

It has been argued that removing Bishops from the House is tantamount to disestablishing the Church of England. But this is a mistaken view. There are many different strands to "Establishment" and these have frequently been adjusted in the past; removing Bishops from the House would be a further such adjustment. There are many models for an established church which can certainly continue to exist without the presence of Bishops in Parliament.

The overall size of the House

The Government has argued that it wishes the reformed House to continue with its present role. I think this will be difficult in a House reduced to 300 members; it would be unfortunate to launch a reformed House unable to scrutinise legislation as thoroughly or one that had to curtail the select committee work at present undertaken. One reason for fixing a low membership is probably to limit the financial cost of the House, but it may be better to

recognise that hitherto the costs of the second chamber have been artificially low because it has been a quasi voluntary body.

Government ministers

I think it is a mistake to give to the prime minister of the day the right to appoint ministers whose membership of the House would begin and end with their ministerial appointment. Personally I would exclude this possibility altogether, but if it is allowed a low limit should be placed on the permissible number of such appointments.

Donald Shell

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John F H Smith

A Reformed House of Lords: appointed or elected?

A response to Mark Harper MP, Minister for Constitutional Reform on the *Church* Times article, *Create a House of Talents*, 13 May 2011 and the Electoral Reform Society seminar on the reform of the House of Lords, 15 June, 2011.

Summary
This paper examines the case for an elected House of Lords, and the claims it could cause constitutional conflict between the upper and lower chambers; could create a House of professional politicians; could deter suitable candidates and political parties from choosing them; and could politicise the House. It concludes that election is not suitable and proposes an appointed chamber with appointments being made by specialist electoral colleges under the umbrella of an Appointments Commission with a wider remit. In doing this, it addresses Lord Wakeham's reservations in this area. The proposed procedures will be relatively simple to establish and will remove the whiff of political and prime ministerial patronage from selection and appointment. They will produce a House that is expert and reflective of the nation's expertise and skills, and is more fairly representative.

1. Background

1.1 You recently responded, via my constituency MP, Nick Boles, to my *Church Times* article, *Create a House of Talents*, on the reform of the House of Lords; and on 15 June addressed the Electoral Reform Society seminar at the House of Lords, at which I was present. I should like to comment upon some of the interesting points you made in both.

1.2 At the Electoral Reform Society seminar you restated the government's commitment in the draft bill to the strategy of a largely or fully elected upper chamber. However, towards the end of the afternoon Lord Lowe asked a most pertinent question. He thought you had constructed a fairly 'firm box' round the government's proposals, but noted a general perception of flagging on the question of reform. He therefore asked if the proposed Joint Committee might accept some thinking 'outside the box'. Your reply, though not unequivocal, gave some hope in that direction. I should like to follow up along this line of thinking.

1.3 I suggest that in the very specific circumstance of selection for the House of Lords, election might not be the best method; others may be more suitable. Of course, no one would disagree with your statement that 'in a modern democracy it is important that those who pass legislation should be chosen by those to whom the legislation applies', but detailed examination and experience shows in some specific instances general statements may not present the whole picture. The concept of election has achieved such an elevated status that anyone who even wishes to examine it objectively, is looked at askance. But I feel this is exactly what we need to do in this case. That all three major parties supported the principle of an elected House of Lords in their manifestos does not automatically mean that rigorous thought or examination was given to the evolution of the statements, or even that it is right and appropriate for the situation.

1.4 I should therefore like to examine the case for election in this particular circumstance, and suggest an alternative as to how we might build on current practice to yield a result that is perhaps fairer and more democratic and representative.

2. The function and composition of the House.

2.1 The function of the House and the method of selecting its members cannot be separated. The House is a revising chamber, scrutinising—sometimes hastily prepared—bills coming up from the Commons. It is therefore a house of experts representing the skills and talents of the nation. Identifying such experts to carry out these tasks should be the foundation upon which the method of selecting members should be based. This is in stark contrast to the primary legislative chamber, the House of Commons, which, as you say, must 'be chosen by those to whom the legislation applies.' Scrutiny is a fulltime job for members and members should not be distracted by other concerns, such as constituency duties.

2.2 Equally important are the limitations placed on a revising chamber so that it does not challenge the supremacy of the elected lower chamber. In practice these limitations have arisen historically, and largely as a result of the House of Lords being an unelected chamber. They have led to the evolution of a series of control mechanisms that have gradually defined and refined the relationship between the two houses; the most important over the last century being the Parliament Act of 1911 (1949), and the Salisbury Convention.

2.3 The Lords has an important role in moderating the actions of the Commons if it is perceived to be getting out of step with the feeling of the nation. Considering that the House is unelected, this function is quite intangible, but the House seems to do it very well. During the 1980s it was seen as the only opposition to Mrs Thatcher's Conservative governments and their large Commons' majorities, and after 1997 was not afraid to stand up to Tony Blair's huge Labour majority, even when under virtual sentence of death. Despite the calls for reform, the function of the House remains sound; it is the composition that needs revising.

2.4 At the beginning of the second decade of the 21st century a Damoclean sword still hangs over the House and no one would claim the situation is satisfactory. Yet, while the hereditary peers have been removed, an equally unfair system of appointment seems to have crept in unnoticed over the last ten years. An increasing number of peers have been created largely through Prime Ministerial patronage—117 in less than a year since May 2010—and this 'has had negative effects on the functioning of the chamber.' [153] Yet, it can still be claimed that the House of Lords has 'more expertise in more fields than any other legislature in the world' and its debates 'less adversarial, better tempered and often better informed than in the Commons.'[154]

2.5 This is the complexion we need to retain and we need a house that is 'broadly representative of British society'.[155] Lord Wakeham (**10.3**) admirably defined the sort of people we need to fill the House: breadth of expertise and experience; an ability to bring philosophical, moral or spiritual perspectives to bear; personal distinction; freedom from party domination; a non-polemical style; and the ability to take the long view. But we have to ask:—

3. How will an elected House fulfil these requirements?
3.1 I should like to consider this matter under the following headings; whether election would:

3.2 cause potential constitutional conflict between two houses of equal authority;

3.3 create a House of professional politicians;

3.4 deter suitable candidates;

3.5 politicise the House and deter parties from choosing suitable people as candidates;

3.6 cause distortions and unintended consequences by trying to squeeze in certain requirements.

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153 *House Full: Time to get a grip on Lords appointments,* M Russell, (UCL, The Constitution Unit, April 2011), p. 3.

154 *Westminster, Does Parliament Work?* John Garrett, 1992, p. 168.

155 *A House for the Future, the Report of the Royal Commission on the Reform of the House of Lords,* (hereafter *Wakeham*), Cm 4534, 2000, Recommendation 62.

3.2 Concern has been expressed over the potential conflict, even constitutional crises, that might be caused between the two houses if election conferred equal authority on them. All are agreed this would be an undesirable situation (e.g. **Wakeham, 11.6**) and it has led to various proposals to diminish the risk: staggering elections; using a different electoral system for the House of Lords; appointing a percentage of members. It is claimed that staggered terms 'would mean that the second chamber could never claim an electoral mandate which was as contemporary as that of the House of Commons' (**Wakeham 11.7**); while using the Single Transferable Vote (STV) for elections 'would distinguish it from the more decisive political contest for the House of Commons'(**Wakeham 11.7**).This is mere wriggling in the face of one insurmountable obstacle: whatever the voting method or the timing of elections, it does not overcome the fact that each house will have the authority of its electorate, and if the electorate is the same, then so will be its authority. Staggered elections could also bring additional problems. Experience from the Commons has shown that when holding mid-term elections, the country tends to react against the party in power. Staggered elections therefore could easily produce an upper house antipathetic to the lower, with the risk of direct conflict between two houses of equal authority. (Conversely, holding elections at the same time would tend to produce an upper house of the same political complexion as the lower; the very thing we wish to avoid—the House of Lords being a pale reflection of the House of Commons, with the undermining of its vital role of standing up to the Commons when necessary.) Also, grave doubts were expressed at the ERS seminar that in the light of the result of the AV referendum, the chances of introducing STV for the upper chamber elections would be severely reduced. A partially elected house brings its own problems, for as Wakeham concluded (**11.7**), 'There would be a tendency for observers to attribute greater political weight to the views and votes of the elected members than to those of non-elected members.' These problems would be circumvented if election were put aside and another method of selecting members chosen.

3.3 The theory of election is fine, even noble, and certainly democratic; but practice does not always live up to theory. Because of strong party dominance in the Lower Chamber—the beginnings of which can be traced back to the mid-17th century—the House has evolved into one of professional politicians. With the moves towards universal suffrage this tendency has increased dramatically during the 19th and 20th centuries. This is no bad thing, for decisive government could not be carried on without it, but it does have an effect upon how elections are conducted. Elective practice has reflected the greater party control whereby the party machine chooses the candidate, and is often done by small party committees behind closed doors. Candidates tend to come from a fairly narrow spectrum of society, even narrower today with the relative decline of the trades unions, resulting in a House of professional politicians, with a preponderance of lawyers. We may vote democratically, but we are voting on a very restricted choice. We wish to avoid the House of Lords becoming a 'home for professional politicians', and Wakeham (**Executive Summary 11; Chptrs. 3.14; 11.8**) also points out its dangers.

3.4 It is agreed that the sort of member the upper chamber is seeking is expert, non-adversarial, not bound by party politics or simple popular messages (**e.g. Wakeham: Recommendations 63-68**), but it is this very sort of person who will be deterred by the elective process we know today. It needs a certain sort of person to enter the political ring to stand for election. Elections can be tough competitive free-for-all bouts favouring the combative, aggressive and politically ambitious over the quieter non-adversarial person. While we are seeking a wide range of skills in the Lords, these do not necessarily encompass political brawling. The hurly burly of the hustings will almost certainly be a deterrent to the sort of person the Lords is seeking, as will having to speak along party lines or simplify complex questions for media sound-bites—the very opposite of the qualities we need. Wakeham (**12.7**) went as far as wishing to 'discourage the politically ambitious from seeking a place in the second chamber.' Current electoral practice is therefore a deterrent to attaining the desired composition of the Upper Chamber.

3.5 It is almost inevitable that election will cause the House of Lords to become more politicised, for political parties will dominate and elections will be fought on a party political basis.[156] Subsequently, party discipline will have a much greater hold over members than at present. The consequence will be that not only suitable people be deterred from standing by the procedures they will have to undergo to get elected, but political parties will be biased against choosing them. They know such candidates will fare badly against experienced political opponents and are not going to risk losing seats in this way. The existence of safe seats allows the Commons to get round this problem, and this system would almost certainly be utilised for the Lords. However, it will decrease the number of seats available to 'suitable' candidates, and members will be still subject to more party discipline than otherwise. One may justifiably ask, why build such a weakness into the system if we are thinking reform afresh?

156 *Wakeham* (11.8) admits as much: 'Elections can only be fought effectively by organised political parties.'

3.6.1 There have been a number of proposals as to how elections might take place for the Upper Chamber, but with each there come unintended consequences. For example, in an elected house candidates will have to stand in constituencies, and constituencies will bring constituency duties. Apart from setting up a potential field of conflict with the constituency work of MPs, this work will be a distraction from the fulltime job of scrutiny that is the Lords' main purpose. Constituency work is an important part of an elected member's duties and a good record plays a significant role in re-election campaigning. It is to prevent such considerations getting in the way of their real job that has led to the current proposal to limit members of the upper house to non-renewable single term 15 year appointments. Therefore, because of election we are at risk of losing valuable members from the upper house at the end of 15 years. Party Lists, using the whole country as a single constituency would solve this, but while overcoming the constituency problem it would detach the elected members from their voters. Also, after the bitter experience of the AV referendum, there is little hope the country would stomach such an innovation. The problem would not arise at all if another method of selection were chosen.

3.6.2 Retaining the Anglican bishops in a completely elected House will be an anomalous blip and distort the situation. In an 80% elected House it will also stand out as a point of difference and have an influence on the size and, perhaps, the composition of the rest of the 20% appointed members—and that is not considering the problem of whether the bishops are to be part of the 20% or in addition to it. This sort of contortion in submission to outside pressure is allowing one small part of the system to unbalance the whole, rather than letting the parts flow logically from the whole. In the system proposed later in this paper Faith and the Anglican bishops will be an integral part of the system, rather than a distortion and extraneous blip.

3.7 Unfortunately we are left with the conclusion that election is a mantra, conferring no advantage, but introducing a number of complications that will alter the nature of the house and have long term consequences. It will deter the very people we wish to attract, and the system will be biased against choosing such people. Wakeham (**11.6**) actually states, 'Very few independents, if any, would secure election, even using a highly proportional system such as Single Transferable Vote (STV).' Politicising of the House will detract from its expertise and therefore weaken its function. Already, and as noted above[1], the large number of political appointees over the last ten years, which has dramatically increased during the last year, is having an effect on the quality of debate in the House.

3.8 The proposals in the second half of this paper set out a system that avoids the danger of politicising the House; maintains, even strengthens, its primary function of scrutiny and examination, and also maintains its position as a chamber that ultimately has to defer to the directly elected House of Commons.

4. How we might achieve a fairly selected House

4.1 Notwithstanding its shortcomings, we have today a house of experts that, despite party affiliations, is remarkably non-partisan and able to carry out its specialised functions of scrutiny and revision. We need to continue this and above all maintain a House fit for purpose. Our tradition in Britain—in politics, history and philosophy—has been one of pragmatism and empiricism: gradual evolution rather than revolutionary change. We tend to build on what we have, feeling that reform should remedy existing defects, rather than risk losing current virtues or introducing unforeseen consequences. For the reasons set out above, these are exactly the risks we face in creating a wholly or largely elected Upper Chamber. Tweaking the existing system and purging its faults seems a way forward that avoids these complications.

4.2 For centuries the composition of the House was by hereditary entitlement and appointment is a fairly recent phenomenon, after 1958 in fact. Therefore, arguments for appointment are not based on tradition and mere resistance to change, but on fitness for purpose. There is perhaps not so much opposition to an appointed House as may be imagined. Given the presumption for election, it is amazing that in 2003, upon a series of free votes, 43% of MPs in the House of Commons voted for a fully appointed Upper Chamber[157]; and this was under a Labour government! (And the 75% majority for it in the Lords should not merely be dismissed as interest.) Even Professor Iain McLean, the speaker at the morning session, and seemingly no friend of appointment, admitted on questioning that 'an unelected house might provide greater expertise than an elected one'.

157 *The House of Lords: Reform*, (Cm 7027, 2007), p. 17.

4.3 In my submission to the Wakeham Commission[158] and in my *Church Times* article I take the position that if we want expertise and a broadly representative assembly, we should go to the experts. I proposed the idea of a House of Lords appointed via a number of specialist expert electoral colleges, and two general colleges. You make the point in your letter to Nick Boles that Lord Wakeham noted the 'practical difficulties' of a such systems 'based upon the representation of various organisations and professional bodies' but, with respect, I must point out that in my submission I had already dealt with most of Lord Wakeham's objections before he made them.

4.4 In my proposal the electoral colleges might represent science, the arts, faith, academia and education, industry, agriculture and the countryside, finance, law, medicine, culture, the media, trade unions and so on; and two further colleges would allow the appointment of politicians (with the patronage of the Prime Minister severely restricted) and persons from any walk of life, who may or may not come under the aegis of a specialist college. I was not being prescriptive, but suggested 16 specialist colleges, plus the two general ones (each double the size of a specialist college), that between them could appoint a 300, 450, 600 member House, or a House of any size. However, there is no reason why the colleges should be of the number and size I suggested. For example, the two general colleges, that I have called the Parliamentary College and the General College, could be of different sizes, and the specialist colleges could vary in size, reflecting the size or importance of their particular field in the community.

4.5 My main point was that each specialist college should represent a whole field, in which the various disciplines within that field cooperated to form the college. Every field of activity by its nature is wide ranging and the sheer variety within it would be a guard against the overweening influence of any one section. For example, in a health and medicine college, the interests of consultants would be balanced by the interests of the GPs, in turn balanced by the nursing professions, balanced by healthcare workers, balanced by the specialist medical disciplines, balanced by the health managers, and so on; and in, say, agriculture, the disciples of agri-chemical farming would be balanced by the organic farming groups and other bodies looking after the welfare of the countryside. Such variety could not be a 100% defence against sectionalism, but it would provide a huge tempering and be much better than the mechanisms we have under the present system. Additionally, the large number of colleges, made up of independently minded people, would be a further balance against vested interest that got through in any particular college. My proposal left details to the colleges themselves, on the premise that the goal of appointing nominees to the House of Lords would be a great incentive to the various institutions within any field to participate and cooperate with each other. And in many areas the bodies from which the colleges would be drawn have years, in some cases centuries, of experience behind them. The creation of such electoral colleges would be well within their competence. Procedures within the various colleges for making appointments could, again, be left to each college, and could range from the relatively informal to the extremely formal. The safeguard is the scale and diversity of the system. The necessity for expert bodies within each field to communicate and co-operate with each other to establish and operate their respective electoral colleges could well have the positive spin-off of better communication within their fields, which can only be of general benefit. The costs of such a system would not be great, for once the system was established and the initial spurt of appointments over, the pressure for colleges to meet frequently would diminish, and therefore administrative costs would fall. There is no reason why these should not be largely borne by the participating bodies themselves; again the assurance of representation in national government being an incentive.

4.6 As pointed out in 3.6.2, the Church of England bishops are an example of compromise in the present government proposals, and it looks as if some, at least, will remain in the Lords. But in the system I propose, faith representation would be integral to the system and could perhaps become the model for the future. There is a case for having a college devoted to appointing faith representatives on the same terms as the other specialist colleges, so that religious leaders could continue to widen debate by bringing moral and philosophical perspectives to stand alongside the political, economic and financial judgments of other groups. I suggested that over half the college should comprise Church of England representatives (bishops, clergy or lay), and the rest made up from other Christian denominations and other faiths, e.g. Roman Catholics, Non-Conformists, Jews, Muslims, Hindus, Buddhists, etc. in proportion to their numbers in society. I suggested a larger representation for the Church of England on the grounds that it is the historic and Established Church in England; that the numbers of Anglicans are grossly underestimated if only judged by electoral rolls and regular attendance, while ignoring the large numbers who use the Church for the significant events in their lives; and that CoE representation will already be experiencing a reduction. As we are already half way there in the current proposal in keeping the Anglican bishops in the reformed House, the Faith (i.e. interfaith) College could become a test piece to set the ball rolling.

158 Published in *Wakeham* as submission 1377.

4.6.1 Professor Iain McLean pointed out at the ERS seminar that three Christian denominations (I believe the Roman Catholics, Church of Scotland and Baptists) indicated they would decline to take up any offer of an interfaith college; the Roman Catholics on the grounds that their ordained clergy were forbidden to sit in any legislature. The Roman Catholic case, at least, is easily answered, for a Church does not consist merely of its ordained members.

4.7 I did not favour separate colleges for appointing members from racial minorities, disability groups, the old or similar, for in this respect they are members of the wider community and should be appointed from the already existing colleges. However, it would be of positive benefit for the *Appointments Commission* (described below) to let it be known there was an expectation that members of such groups would be appointed in proportion to their numbers in society at large. Special interest groups, which range from the all embracing, such as the Green Movement, to the extremely specific, present a difficult problem, but I do not think they could each merit a separate specialist college. Such interests could be represented, either via the General College or come up through the Parliamentary College.

4.8 The two colleges I have termed the 'Parliamentary College' and 'General College' would work somewhat differently. At present many retiring MPs are elevated to the Lords, and while this system has been abused over the last ten years, there is no reason to discontinue it. Indeed, there is every reason to commend it, (as long as the politicians do not dominate the House) so the country can continue to benefit from the wide experience of these politicians. However, I would support any move to widen the selection process, via an electoral college, to remove the dominating patronage of a current prime Minister. I take no strong stand on ministerial representation in the upper chamber and would be happy with membership that was coterminous with office, or non-membership with a right of presentation or audience.

4.9 With the relatively large number of specialist colleges there would be a need for coordination and I suggested an overseeing body with a wide ranging role: issuing general guidelines on composition, elections and appointments, and making recommendations on, say, representation of minorities, regional representation, special interest lobbies, etc. It would also keep a general eye on the whole process, for example, advising a college that the House was short of a particular specialism. One important function would be to act as a forum of appeal for the colleges or individuals within them. A major long term part of its remit would be to advise on the creation, expansion, reduction of colleges to keep up with changes in society. It is inevitable we shall not get the process absolutely right in one go; therefore, the provision allowing the overseeing body to tweak the system when up and running will be most important. I now feel that this body and the General College should be one and the same, so it would be a coordinating and overseeing body as well as the equivalent of an *Appointments Commission*.

4.10 There are large numbers of ordinary people who have much to contribute to national life that may not belong to a professional or academic body, or a trade union; and to cater for them I suggested the establishment of a General College (called in my Wakeham submission, the People's College). This college should, I now suggest, be the same as the coordinating body for the specialist colleges; but its method of making appointments would be different. I suggested that the names of suitable people, nominated by anyone, would be dealt with regionally by the Lords Lieutenant of the counties and forwarded to the General College/*Appointments Commission*, who would judge, select and then appoint. The forwarding process would be similar to that used in the honours system.

4.10.1 It may or may not be desirable to have separate branches of this college in Wales, Scotland and Northern Ireland to ensure the appointment of numbers proportionate to their populations. (The specialist colleges, with the members of their constituent bodies spread throughout the country would naturally also represent the regions in their appointments.) Hereditary peers should qualify for appointment to the reformed House of Lords via the General College on the same basis as anyone else.

4.10.2 It should therefore be possible for any suitable person in the country to be appointed to the new House of Lords, either through the college which represents their specialism or the General College. This would seem to be more democratic than the current practices of selecting candidates for election to the House of Commons, via small party committees behind closed doors.

4.11 To form the specialist electoral colleges at the beginning of the process I envisage areas of expertise within a particular field coming together to apply to establish an electoral college. Each proposal would be scrutinised by the *Overseeing Body/Appointments Commission* to ensure composition accurately reflected its field, and its proposed method of selecting members was fair and representative. The *Appointments Commission* would also be charged

with the task of identifying disciplines or fields that hadn't spontaneously assembled themselves into proto-electoral colleges. The composition of this *Appointments Commission* would be crucial. In the first instance, it might be appointed for a limited period in the same way a *Royal Commission* is appointed. When the system was established, membership would lapse (but with no bar to reappointment) and the *Commission* reappointed, so that the electoral colleges themselves could have an input into membership.

4.11.1 Wakeham (**11.20**) in discussing a similar body felt it would have 'a difficult and unenviable task', but here I think he was answering possibly less thought-out schemes. Defining the remit of the *Appointments Commission* more closely, i.e. its acting as the General Electoral College, a coordinating/overseeing body, and an advisory body for the colleges with the power to tweak the system and keep it up to date with the changes in society, would make its establishment a positive and exciting challenge.

4.12 Wakeham was 'sympathetic to the aims behind such proposals [i.e. for electoral colleges] ... these people could be expected to have a range of expertise and experience from outside the world of politics and be broadly representative of British society in its various manifestations' (**11.18**). He also felt they 'could reasonably claim a considerable degree of democratic legitimacy and authority.' However, he finally rejected the concept as a method of 'indirect election', and detailed his objections (**11.17-25**)

4.13 What deterred Wakeham as much as anything was choosing from the huge range of expertise and specialist bodies that exist, and seeing the vast differences in practice within them? However, persuading the various disciplines to come together in the way I suggest largely overcomes his fears, and also his anxieties about undemocratic internal processes and unrepresentative cliques grabbing power; while the General College answers his disquiet over 'disenfranchising those people, often the relatively disadvantaged, who do not belong to a recognised professional or vocational group (**11.23**).' Wakeham's most fundamental objection (**11.24**), that people shouldn't be considered 'merely the sum of their "interests"', and that 'no system of vocational or interest group representation is able to accommodate this fundamental fact', is surely a misunderstanding and turns the whole case on its head. The electoral colleges proposed here will be composed of some of the most learned and intelligent people in the country, and it is this very sort of person who tends to have the widest of interests; Wakeham himself admitted that they were 'broadly representative of British society in its various manifestations'. Such people, as well as speaking for their professional expertise, will therefore be able to speak equally authoritatively on family life, football, DIY, gardening, travel and charity work (just to quote Wakeham's examples). Surely, this is a strength rather than a weakness.

4.14 I am not being prescriptive about the proposals I have put forward, for there are others that put the function of the House of Lords at the core; e.g. Phillip Blond, Director of ResPublica, who suggests a tripartite House, one third each nominated, appointed and elected[159]; or Martin Wright, former Director of the Howard League for Penal Reform, who suggests a series of electoral colleges nominating candidates who are then put out to election.[160] My aim is to stimulate thinking to avoid sleepwalking into reform because we can see no further than the dictum that election is the only democratic means. It is also to ask for an objective examination of the whole matter of reform so that election and its ramifications can be examined critically as any other concept.

4.15 I advocate an appointed Upper Chamber only because of its function as an expert revising chamber, where the presence of a cross section of the country's skills and expertise is essential in reviewing proposed legislation. I consider that election will not result in a House that will fulfil this function best. Ironically, I feel my selection proposals for the upper chamber to be much fairer and democratic than the current politically dominated selection processes used for the House of Commons. They will certainly produce a selection of candidates from a much wider spectrum of society.

4.16 Because election is seen as the only way forward, I suspect that current policy is to make it fit at all costs, with the consequence that awkward provisions, such as 15 year single term appointments, have inevitably crept in. The proposals described in this paper will circumvent most of the problems introduced with an elected House. Naturally, I should not propose them as a system for the primary legislative Lower Chamber, and I am not advocating undoing the 1911 (1949) Parliament Act (which, incidentally, could easily unravel itself if an elected House were introduced).

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159 http://www.bbc.co.uk/news/uk-politics-11994302

160 Published in *Wakeham* as submission 1591.

5. I should welcome your response to the more detailed proposals set out here, and also request that a copy of this paper is forwarded to the Joint Parliamentary Committee set up to examine the proposals for Lords' reform. I am willing to appear before the Committee to explain the ideas put forward here in greater detail.

19 August 2011

Appendix A

Create a House of Talents

John Smith believes there is a better way than direct election to make Parliament's second chamber more representative.

CONSTITUTIONAL reform is in the air, despite the outcome of the Alternative Vote referendum. Even if AV had been approved it would have had little impact compared with proposals to reform the House of Lords.

The details released so far suggest an 80% elected House, but this is hardly surprising. The word election has become a sacred cow, and carries with it the same emotional appeal as "liberty", "freedom" or "peace". In this case, however, its use has obscured any real consideration of what an elected House of Lords would actually look like or achieve.

Even in its present terminally wounded state, the Lords performs a valuable constitutional function. It is a revising chamber that does not undermine the authority of the elected House of Commons, and can act as a moderator and brake on the actions of the Lower House. During the 1980s, it was seen as the only real opposition to Mrs Thatcher's large Commons majorities, and after 1997 was not afraid to stand up to Tony Blair's huge Labour majority, even when under virtual sentence of death.

A GENERAL principle is that any reform should remedy existing defects and create something better. This principle is undermined if, in the process, current virtues are thrown away. Few would deny the need to make the House of Lords more representative, but, before opting for direct election, we should examine what the House currently contributes to modern political life, and then try to reinforce its positive aspects?

Of course, the composition of the House is wholly undemocratic, even now, after the departure of most of the hereditary peers. Reform is necessary, but against this, it has been said of the House of Lords that it has "more expertise in more fields than any other legislature in the world". We lose this strength at our peril, and direct election could very easily threaten it.

The sort of maturity and wisdom we seek for members of the Second Chamber does not sit easily with the elective process as we know it today. Ambition, power-seeking, and a career structure all have an effect on the way elections and electioneering are conducted. And when elections are over, salaries, party organisation and whipping come into play. The hurly burly of the hustings can be a deterrent to the sort of candidate that the Second Chamber is seeking: thoughtful, precise, non-adversarial, and not bound by party slogans or simple popular messages.

Elections give an elected body the authority of its electorate, and if this is the same electorate that elects the House of Commons, the Lords could justly claim parity, causing real constitutional problems.

Furthermore, electing both Lords and Commons at a single General Election would tend to produce Houses of a similar political complexion; while electing them at different times could fall prey to the habit of the nation reacting against the party in power. The first scenario could undermine the Lords' vital role of standing up to the Commons when necessary; whereas the second could produce direct conflict between two Houses of equal authority.

The proposed mixed system of appointment and election is also not a satisfactory solution. It risks creating tiers of members perceived to be of different value depending on their method of appointment.

BUT, if direct election is not the answer, how might we proceed? First, we need to ask what we really want from a reformed House. The Royal Commission on the Reform of the House of Lords (*Wakeham Commission, 2000*) tackled this question admirably, but unfortunately its conclusions undermined its own analysis.

We certainly need a house that is "broadly representative of the whole of British society", but also one that truly represents the nation's expertise, is independently-minded, and is a place where debates can continue to be "less

adversarial, better tempered and better informed" than in the "other place". It is also essential that we have a revising chamber that will not cause a constitutional crisis every time it opposes the House of Commons.

To obtain expertise and achieve a broadly representative assembly, one solution would be to go to the experts themselves. The UK is well provided with professional, learned bodies and other organisations that together represent a cross-section of the skills and expertise that the country possesses. Why not ask each area to establish an electoral college to choose the most appropriate people to sit in the House of Lords?

Such electoral colleges would be in a pre-eminent position to identify members with "a wide experience outside the world of politics, an ability to take the long view and bring a philosophical, moral or spiritual perspective to debates, and to be non-polemical and free from party domination" (*Wakeham*). We might therefore see electoral colleges representing science, the arts, academia and education, industry, finance, law, medicine, culture, the media, trade unions and so on.

If we took this approach, each college would already have the institutions in place from which to manage appointments. For example, an electoral college representing the medical professions might be made up of electors appointed by the BMA, the nursing profession and a wide range of other health-care organisations. The principle of bringing together specific groups within an overarching discipline would be applied across the board.

The seeds of such a move could already be in place. The Church of England has persuaded the government to retain some Anglican bishops (though many fewer than before), recognising that the expertise they bring to debates is too valuable to lose.

We could go further, however. Certainly, retain the bishops, and, as representatives of the Established Church, even keep them in the majority; but broaden faith representation via an interdenominational and interfaith college. Religious leaders would, therefore, continue to widen debate by bringing moral and philosophical perspectives to stand alongside the political, economic and financial judgements of other groups.

The aim here is to establish a principle rather than to prescribe actual electoral colleges, and some colleges might have to operate differently. One might be established to appoint politicians to the Upper House who have finished their time in the Commons, so that we can continue to gain from their political experience; while a larger general college might provide the opportunity for people not belonging to a professional body or trades union to sit in the Lords. This would ensure a voice for areas of society that currently feel unrepresented.

Such a system would be inexpensive to establish, and could be largely self financing, with contributions from the institutions comprising each electoral college. Such would be their number that the cost to each would be small, and, of course, with the added incentive of getting a voice close to central government.

Each electoral college could decide for itself the mechanics for appointment, though working within broad guidelines. This is not the place to be precise in specifying individual colleges or numbers, but 16 "specialist" colleges appointing, say, 15 members, and the parliamentary and general colleges appointing 30 each, would result in the Government's recommended House of 300 members. But an electoral-college system could cater for a House of any size.

SUGGESTIONS of this sort were rejected by the Wakeham Commission as "indirect election", with the implication that they were elitist and undemocratic. But is this so? The aim is to get the best people chosen from all levels of society, and broadness of approach would be a guiding principle in establishing the electoral colleges.

It is hard to accuse a system of being elitist when individuals from any walk of life could be appointed, and come from a much wider spectrum of society than candidates who currently stand for election to the Commons.

We wish the House of Lords to be an expert, advisory and revising chamber, so why not devise a way of choosing the best people to sit in it? The chamber, though it can initiate legislation, ultimately still has to defer to the elected Lower House.

By getting the best people from a multiplicity of sources, we would achieve a House of Lords that could continue its positive place in the political life of Britain, yet be truly representative of its best talents. That has to be better than having a constitutional crisis every time one House comes into conflict with the other.

John F. H. Smith is an architectural historian and Fellow of the Society of Antiquaries. Many of the suggestions here are presented in greater detail in his submission (1377) to the Royal Commission on the Reform of the House of Lords, (Wakeham Commission, Cm 4534, 2000).

The above is how the article appeared in the *Church Times* of 13 May 2011 with the exceptions of:

the original subtitle has been retained rather than the contradictory one the paper inserted;

CT omitted 'had' from the second line, 1st para., after 'AV'

I have reinserted '*and Fellow of the Society of Antiquaries'* in the tailpiece.

The original overall title was, *What do we want from a reformed House of Lords?*

Appendix B

Nick Boles, Esq, MP
House of Commons
Westminster
London, SW1A 0AA
19 August, 2011

Thank you for forwarding a copy of Mark Harper's letter to me. I did not expect any change in his opinion, though I am a little disappointed that, despite his handwritten protestation of careful reading, he did not seem to grasp some of the arguments in my paper. I was particularly disappointed by his pointing out the reservations Wakeham had made about schemes such as mine; especially as I had deliberately addressed these concerns in my paper. There was also a misunderstanding in his thinking that my proposed system would necessarily destroy the political nature of the House. On the contrary, it caters for it. I was careful not to be specific about the relative sizes of the electoral colleges (last sentence, section 4.4), and what I term the Parliamentary College could easily have a much larger presence in the reformed House under my system.

While Mark Harper's defence of election is perfectly valid, I am sorry he was not able to admit that in the case of House of Lords reform a number of negative consequences will inevitably result from it. But as a committed spokesman for a stated government policy I suppose I could not expect more.

I am grateful for his statement that members of the reformed House will not have constituency duties, though this poses problems in its own right. If you remove constituency responsibilities from elected members, whether they are peers or not, it will tend to separate them from their constituents. Would this not undermine one of the fundamental principles of an elective democracy? It would also be a another example of section 3.6 in my paper, where I make the point that fiddling around with the system to accommodate election will cause distortion and bring about unintended consequences.

However, I am also grateful for his giving me details on how to make a submission to the Joint Committee on the Draft House of Lords Reform Bill. This I have done.

Thank you for the assistance you have given me in this matter.

St Philip's Centre

I write to offer a contribution from St Philip's Centre in relation to the Government's proposals to reform the House of Lords.

St Philip's Centre is a charity set up in 2006 and is rooted in the multi-faith environment of Leicester, the UK's most ethnically diverse city outside of London. We have a sustained, professional track record of promoting positive community relations through our religion & belief training, interfaith dialogue groups, social action activities and organisation of community events. We resource the operation of the Faith Leaders Forum which is chaired by the Bishop of Leicester, Rt Revd Tim Stevens and our Centre Director, Revd Canon Dr John Hall, is the chair of the Leicestershire Inter Faith Forum. We are members of the Inter Faith Network UK and connected to a vast range of representative organisations which work with different faith communities. St Philip's Centre was formed as part of the Church of England's Presence and Engagement initiative and so has a wealth of experience in this regard too. We therefore believe that we are well placed to offer a contribution to the consultation on House of Lords reform particularly the debate in relation to the representation of faiths other than the established church.

I pay tribute to the work of the Bishops in the House of Lords and this experience should be retained where possible in the new arrangements. Their contribution is a critical ingredient in our democracy and the Church of England has played an important role in providing a platform for other faiths to engage with public life. The current Near Neighbours project, delivered through the Church of England's parish networks in four areas of England is a prime example of this.

There are a number of issues to bear in mind in this consultation. The House of Lords' role to offer a check and balance to our system of government is critical. Whilst recognising the need for reform, I acknowledge that there is a wealth of experience in the House which must be retained through other means including membership of possible House of Lords expert groups. An effective chamber must include a healthy portion of elected but also appointed figures who are experts on the ground.

With this in mind, it is vital that any faiths representation in the revised House of Lords, is done in an engaging and effective manner and not tokenistic. There may be an urge to fill some of the places for other faiths with religious clerics. I would warn against this because quite often, community advocates have a much better grasp of local issues than the clerical hierarchy. The Joint Committee must resist the temptation to simply appoint those who in their view are the nearest equivalents to Bishop's in the other faiths. The reason being that the dynamics of other faiths is much more complex than this including in many cases, the absence of clear structures.

The role of a member of the House of Lords will also not only include participating in debates on religion but other vital areas such as health, education, law and order, the economy and foreign affairs. Therefore people with a wider range of skills and abilities are required if we are to have an effective and high quality chamber.

Another important point is to consider the creation an independent, expert appointments body which itself proposes nominations and indeed invites nominations for possible candidates. The body should also verify the candidates in terms of their track record, experience and commitment. It may be helpful to acquire references from public bodies such as local authorities and the Police to determine the suitability of nominated candidates particularly in relation to their work with faith communities other than their own and also working across internal schools of thought and/or sectarian divides. All too often in public life, there is a tendency to acquire the voice of one faith community which inevitably results in the acquisition of people who are not rooted on the ground, possess a sectarian view however subtle, do not have a strong track record of working positively on integration issues and a poor grasp of wider issues.

The Joint Committee should reflect closely on the geographic spread of members. Those who are London based or work for national 'representative' organisations often have an advantage. Once again this needs to be avoided.

For there to be an effective second chamber, the proposed reduction to 300 members needs to be reconsidered. The new chamber needs at least the same numbers as the House of Commons because their Lordships would not only represent territories across the UK but also communities of interest. Therefore in order to have a robust and challenging chamber, numbers must not restrict the possible benefits of input and experience. However, this does not preclude as stated earlier, the creation of a new, 'lower-tier' of membership through select committees where members of the House of Lords could be joined by expert practitioners to scrutinise legislation. This may be a method to ensure that there is a continuous expert contribution to our democratic system.

I applaud the efforts of the Joint Committee to undertake this immensely significant task and offer my assistance in whichever manner that is required.

10 January 2012

Lord Sudeley

In Lords Reform we have recently been landed with the adolescent thinking of Clegg's Bill. In all the discussion which has followed the eviction of most of the hereditaries in 1999 there has I believe been quite insufficient consideration of how the Cranborne Deal allowed this tragedy to happen; or for that matter of all the sound old arguments which lie so easily to hand for the re-instatement of the hereditaries. Enclosed therefore is my modest attempt to remedy this deficiency, appropriately published in the *Quarterly Review* which from the early 19th century has been an organ for the expression of the Old Tory as opposed to the Whig political point of view. It is a long time since I abandoned the shades of my ancestor Charles Hanbury-Tracy, elevated to the peerage as Lord Sudeley at Queen Victoria's Coronation less on the consideration of the merit he deserved of being Chairman of the Commission which selected Barry's design for our new Houses of Parliament than for the support which he could give to Melbourne's shaky Whig administration.

The format of the Quarterly Review required me to shorten my original version rather drastically, so I am putting as written evidence to Lord Richard's Joint Committee those important points which I had to leave out- why bishops as well as judges should be left in the House of Lords; how no douceur was offered to the evicted hereditaries of the kind which is given to retiring MPs or to those of long service in industry; how legally with the eviction of most of the hereditaries the Government was skating on very thin ice; and the hard evidence we have of corrupt new life peers charging money to the pressure groups they represent as happens in Russian Parliaments.

Professor Jonathan Tonge

Note on the author
Jonathan Tonge is Professor of Politics at the University of Liverpool. He has produced 15 books on British, Northern Irish and Irish politics, along with over 50 journal articles and book chapters. Professor Tonge chaired the Youth Citizenship Commission established by the 2007-10 Labour government, established to better connect young people to politics. He has been Chair and President of the Political Studies Association of the UK. Professor Tonge was Director of the Economic and Social Research Council's 2010 Northern Ireland Election study. A full academic biography can be found at http://www.liv.ac.uk/politics/staff-pages/j_tonge.htm

Introduction
This evidence is submitted in response to a personal request for a submission, received from the Clerk of the Joint Committee on the Draft House of Lords Reform Bill on 24 November 2011.

I was asked to outline how the use of the Single Transferable Vote has impacted upon:

- the composition of the Northern Ireland Assembly;
- its diversity;
- public participation in voting;
- the extent to which voters give support to candidates outside
- their 'main' political party; and
- the chances for independents to get elected.

I provide some commentary on each of these aspects, as follows:

1. **The composition of the Northern Ireland Assembly**

1a) The use of STV offers fairly impressive proportionality in terms of the relationship between party first preference vote shares and seat shares in the Assembly. Table 1 indicates the degree of proportionality of the Assembly in terms of proximity of party vote shares to Assembly seats.

Table 1: Party first preference vote shares and seats held in the Northern Ireland Assembly 2011

Party	First preference vote share %	Assembly seats	Assembly seat share %
DUP	30	38	35
SINN FEIN	27	29	25
SDLP	14	14	13
UUP	13	16	15
ALLIANCE	8	8	7
GREEN	3	1	1
TUV	3	1	1
INDEPENDENT	2	1	1

1b) This proportionality is even more important in the Northern Ireland case than for other legislatures, given the region's troubled political history. It is essential that both of the main communities (i.e. Unionist and Nationalist) receive Assembly representation appropriate to their electoral mandate.

1c) Moreover this broadly proportional representation within the Assembly determines the number of Executive places and committee chairs held by parties, under the d'Hondt formula, which takes account of the total votes won in relation to number of Executive seats (the increasing divisor as parties are allocated ministries or chairs). The Executive is required by law to be cross-community in composition.

1d) The turnover of Assembly members is fairly high. 25 of the 108 Assembly members elected in 2011 were new. At the previous election in 2011, 29 members were newly-elected.

1e) STV was deliberately chosen for Northern Ireland to ensure a high degree of proportionality in a divided polity. It has operated there since 1973, long before the establishment of the Northern Ireland Assembly under the 1998 Good Friday Agreement. Alternative have been considered, but have been deemed unsatisfactory. These alternatives are:

1f) *Party list STV*. The public are able to choose individual candidates under the PR-STV system used. During the troubled early years of the Northern Ireland Assembly, with the Ulster Unionist Party divided over the merits Good Friday Agreement, some commentators advocated party list systems, to allow the parties to choose the candidates, with electors only voting for parties. Party leaderships would then 'insert' their preferred candidates into the Assembly according to the party's vote share, eliminating 'mavericks; or hardliners. This is not a desirable method, in that ideally electors ought to be able to rank candidates as well as parties. If applied to elections to the House of Lords, it would lead to the domination of elections by party machines.

1g) *Alternative Vote (AV)*. This would require single member constituencies, with the successful candidate achieving 50 per cent +1 of the vote to be elected. It would have the advantage in Northern Ireland of requiring candidates to appeal across the ethno-national divide for support in constituencies where there was a fairly equal mix of Unionists or Nationalists. However, such areas are uncommon and single member constituencies would arguably lead to the under- (or non-) representation of the minority community. Moreover, AV would be very disproportional and would require small constituencies to create a sizeable Assembly.

1h) *Additional Member System (AMS)*. The Scottish and Welsh models would mix FPTP and regional lists. This is less likely to produce the high level of proportionality evident under STV and would lead to underrepresentation of unionist or nationalist minorities in parts of Northern Ireland.

2. **The diversity of the Northern Ireland Assembly**

2a) The binary divide between Protestant-Unionist-British and Catholic-Irish-Nationalist and the need to ensure adequate representation of both traditions has tended to absorb attention at the expense of a focus upon other aspects of diversity. Ethnic minority communities are very small, albeit growing, in Northern Ireland. The first ethnic minority candidate was elected in 2007 (for Alliance) and she remains the solitary representative drawn from an ethnic minority.

2b) The most striking under-representation is that of women, who formed only 17 per cent of candidates in the 2011 Assembly election. Table 2 highlights the lack of Assembly representation for women and compares this to the position under the Additional Member System used for elections to the Scottish Parliament and National Assembly for Wales. The Northern Ireland Assembly under-representation of women is worse than that found in the House of Commons, where women form 22 per cent of the legislature.

Table 2 Women's Representation in the Devolved Parliaments and Assemblies, 1998-2011

% Women as % of elected body	1998/99	2003	2007	2011	Average
Northern Ireland Assembly	13	17	17	19	17
Scottish Parliament	37	40	33	37	37
National Assembly for Wales	40	50	47	43	45

2c) Tables 3a and 3b indicates the gender breakdown in terms of candidates and those elected, within the five main parties, to the Northern Ireland Assembly in 2007 and 2011.

Table 3a Election of Male and Female Candidates from the five main Northern Ireland Assembly parties, 2007

Party	Males elected	Females Elected (and as % of party's elected representatives)	% Female candidates fielded by party as % of all party's candidates	% Female candidates successful as % of total female candidates	% Male candidates successful as % of total male candidates
DUP	33	3 (8%)	13	50	83
SINN FEIN	20	8 (40%)	24	45	71
SDL P	12	4 (33%)	40	29	57
UUP	18	0 (0%)	3	0	49
ALLIANCE	5	2 (40%)	39	29	42

Table 3b Election of Male and Female Candidates from the five main Northern Ireland Assembly parties, 2011

Party	Males elected	Females Elected (and as % of party's elected representatives)	% Female candidates fielded by party as % of all party's candidates	% Female candidates successful as % of total female candidates	% Male candidates successful as % of total male candidates
DUP	33	5 (13%)	16	71	89
SINN FEIN	21	8 (28%)	31	73	88
SDLP	11	3 (21%)	14	75	46
UUP	14	2 (13%)	11	67	56
ALLIANCE	6	2 (25%)	32	29	40

NB The three other candidates elected—one Green, one TUV and one Independent were all male.

2d) As can be seen, the percentage chances of election for women candidates fielded in 2011 improved markedly on the 2007 position. Within the largest two parties, male candidates have been more likely to be elected than female candidates, but this was not true of other parties in 2011. The percentage of women elected, at 19 per cent of the Assembly, was slightly higher than the percentage of women candidates fielded.

2e) There is some evidence that party vote management is more likely to facilitate the election of male candidates at the expense of women candidates fielded by a party. Controlling for other factors, electoral preferment for male candidates is marginal. There is no evidence of women candidates being less likely to receive lower preference vote transfers, controlling for party.

2f) Evidence from the Irish Republic's deployment of STV has been contradictory. One study suggests that, controlling for other factors, male candidates are 2 per cent more likely to be preferred, but this is contradicted elsewhere.[161]

2g) The specific workings of STV in Northern Ireland are not responsible for the dearth of representation of women, relative to the Scottish Parliament and Welsh Assembly which utilise the Additional Member System (AMS) and regional lists. However, central or regional control of party lists of candidates under AMS allows greater opportunity for a more appropriate gender balance of candidates to be imposed by party leaderships.

2h) Given that peers are not representing a constituency, Regional List systems might be a mode of election under STV for the House of Lords. If parties exercised strong controls in terms of diversity, including gender, in selecting the candidates for party lists, it is possible that the legislature formed under STV could be representative.

2i) In Northern Ireland, under STV, party selection of candidates is localised. Women have been consistently under-represented as candidates for the Unionist parties, where an informal 'tradition' of male dominance and gender division of roles has been perpetuated. This position is less acute amongst nationalist parties and amongst the non-bloc aligned Alliance Party. There is no logical electoral barrier deterring parties from selecting women candidates.

2j) The lack of gender diversity/equality stems from attitudinal issues within some political parties—which might at worst be seen as antediluvian and at best be seen as a legacy of male dominance—rather than as a product of systemic failings associated with STV. The problem is thus largely one of party candidate 'supply' rather than systemic failings attributable to STV. The problem of women's under-representation under STV is also seen in the Irish Republic, where women's representation has never exceeded 15% in Dail Eireann, again through party disinclination to select women candidates.

161 For the 2 per cent claim, see Schwint-Bayer, L., Malecki, M. and Crisp, B. 'Candidate Gender and Electoral Success in Single Transferable Vote Systems', *British Journal of Political Science*, (2010) 40.3, 693-709; For the neglible gender impact claim, see Laver, M. Galligan, Y. and Carney, G. (1999) 'The Effect of Candidate Gender on Voting in Ireland', *Irish Political Studies*, 1999, 14, 118-22.

2k) Institutional barriers within the Northern Ireland Assembly may also be evident, in that a 'male culture' dominates, potentially deterring women candidates, although this is unproven and requires further research.

2l) The 2010 ESRC Northern Ireland election survey found that only 2 per cent of the electorate disagreed with the proposition that 'there ought to be more women elected to the Northern Ireland Assembly'. Ten per cent believed that 'a woman candidate will lose votes'. Thirty-eight per cent believed that parties should use quota systems to bolster the number of women candidates, with only 4 per cent disagreeing, but the largest single category of respondents neither agreed nor disagreed with the proposition.

3. **Public participation in voting**

3.1 Turnout in Northern Ireland elections has been relatively healthy in all forms of election and there is little variation according to type of election. As Table 4 shows, turnout under STV for Northern Ireland Assembly elections average has been respectable for the range of contests under that system. Assembly and local elections yield turnouts comparable with those for First Past The Post (FPTP) for Westminster elections held in Northern Ireland.

Table 4 Average turnout by election type in Northern Ireland, 1998-2011

Election	Voting system	Average Turnout (%)
Assembly	STV	62
Council	STV	61
European	STV	51
Westminster	FPTP	63

3.2 Table 5 shows that turnout under STV for Northern Ireland Assembly elections is higher for those conducted under AMS for the other devolved legislatures (and the Assembly is less powerful than the Scottish Parliament). It would be considerably over-claiming for STV to suggest that high turnouts are consequential upon the deployment of STV. What can be said however is that there is no evidence that STV deters electors, compared to other electoral systems.

Table 5 Average turnout in devolved elections 1998-2011

Election	Voting system	Average Turnout
Northern Ireland Assembly	STV	62
National Assembly for Wales	AMS	43
Scottish Parliament	AMS	53

3.3 It should be noted that turnout is falling sharply in Northern Ireland elections (down 9 per cent from 2007-11), but this may be due (ironically) to the calmer political atmosphere rather than knowledge deficit in respect of the voting system. Turnout also fell at the last FPTP election.

3.4 Over 80 per cent of votes are used to elect the six members representing each constituency. There is considerable voter choice, with 14 parties fielding candidates in 2011 and 218 candidates standing (both these figures fell from 2007).

3.5 STV does not eliminate wasted votes. Nationalist votes in, say East Belfast, or Unionist votes in West Belfast are invariably wasted, as are many for candidates beyond the main parties. Nonetheless there is high vote utility.

3.6 Voters in Northern Ireland are uncertain over whether it would ever be desirable extend STV to Westminster elections. Asked in the 2010 Northern Ireland election survey whether 'the voting system for Westminster elections should be changed from FPTP to STV', only 24 per cent supported the idea, although a majority of respondents were undecided.

3.7 One aspect of STV in Northern Ireland which has elicited much criticism has been the length of Assembly election counts. These have taken two full days on each occasion, due to a) the nature of STV and the need to transfer votes b) verification of ballots c) staff absences and d) poor procedures.[162] This has been frustrating for the electorate and for candidates and care needs to be taken in the event of any STV election to the House of Lords that appropriate procedures are in place to effect a speedy counting process, to maintain interest in outcomes. There is also a need for clarity in terms of the provision of information to the public regarding the transfer of lower preference votes from elected and eliminated candidates.

3.8 The government should consider carefully whether to hold any STV election to the House of Lords at the same time as an election or referendum requiring a different system of voting. The 2011 elections required 3 ballot papers (Assembly and Council, both STV) plus the AV referendum ballot paper. The number of Assembly spoilt ballot papers in almost doubled from 6,382 in 2007 to 12,369. This higher figure in 2011 represented almost 2 per cent of ballots and was three times higher than the figure for the 2010 general election in Northern Ireland, when only one election took place. Almost half of spoiled ballots were ineligible because more than one first preference had been entered.

3.9 The use of different electoral systems on the same day, if STV is deployed for contests to the Lords on the same day as local or general elections, might also add to the length of count. The Northern Ireland STV experience suggests that the count is lengthy regardless. As noted above, the 2011 Assembly election count was accompanied by a) an AV referendum count and b) a local election count which began after the Assembly count. This required separation of ballot papers.

3.10 Despite impressions to the contrary, the 2011 count, although far too long, was not actually greater in length than the 2003 and 2007 Assembly counts, which were also accompanied by local election counts.

4. **The extent to which voters give support to candidates outside their 'main' political party**

4.1 In Northern Ireland the vast bulk of votes remain 'in-bloc'. Voters tend to give lower preference votes to other candidates from the same party for which they expressed their first preference. Where this does not occur, voters are very likely to transfer their voters to the other parties within the unionist or nationalist bloc. This is shown in Table 6, examining the first and most recent Assembly elections.

Table 6 Lower preference vote transfers, Northern Ireland Assembly elections 1998 and 2011

Party	1998	1998	2011	2011
	To other candidates from same party	To Unionist candidates	To other candidates from same party	To Unionist candidates
DUP	81.2	97.8	73.8	96.8
UUP	73.9	90.5	73.6	96.2
		To Nationalist candidates		To Nationalist candidates
SINN FEIN	75.1	88.4	76.6	94.1
SDLP	84.9	85.1	73.8	86.6

162 http://www.electoralcommission.org.uk/__data/assets/pdf_file/0012/141222/NIA-election-report-final-web-no-embargo.pdf

4.2 As can be seen, there is very little sign of electoral thawing in Northern Ireland, in terms of propensity of Unionist first preference voters to offer lower preference transfers 'across the divide' to Nationalist candidates. Nationalist voters are similarly disinclined to transfer to Unionist candidates.

4.3 The continuing rigidity of Northern Ireland's ethnic divide in fostering such electoral polarisation may make it a poor guide to the propensity of voters to switch to other parties under STV. A better indication of the likelihood of voters to switch party allegiances down a ballot paper may be found in other STV contests, such as Scottish local elections.

5. **The chances for independents to get elected**

5.1 The dominance of ethnic bloc voting alignments and of the parties identified with those blocs mean that it is difficult (Alliance apart) for non-nationalist or non-unionist independent candidates to be elected. The main four unionist and nationalist parties provided 62 per cent of candidates in 2011, with Alliance candidates providing a further 10 per cent. Smaller parties and independent candidates comprised the remainder.

5.2 Only one Independent was elected in 2011; likewise in 2007.

5.3 Fifteen independent candidates stood in 2011, with only one elected (who was a previous Assembly member).

5.4 The best-performing independents tend to be those who have been previously elected to the Assembly, but have been deselected by a party or resigned. Indeed half of the first preference votes awarded to independents in 2011 went to such 'retread' candidates The number of independent candidates fielded represented a big drop from the 28 of 2007, partly reflecting the dominance of the main bloc parties.

5.5 Importantly however, it would probably be far less difficult for independents to be elected in a less ethnic-aligned and party-dominated system, given the large number of candidates (6) elected for each of the 18 constituencies, requiring a low quota of votes (one-seventh of votes cast, plus one vote; 14.3 per cent).

5.6 The financial barrier to independent candidates standing for the Northern Ireland Assembly is lower than in the other devolved nations, with only £150 having to be lodged. This is returned if the candidate achieves one-quarter of the constituency quota. A £500 deposit is required for the equivalent elections in Scotland and Wales. 56 candidates lost deposits in the 2011 Northern Ireland election, but three-quarters of total candidate deposits were returned. The issue of the size of deposit for candidates for the House of Lords may be an issue requiring consideration if 'frivolous' candidacies are to be deterred.

6. **Summary of findings and recommendations**

STV has provided a highly proportional Northern Ireland Assembly, in terms of the legislature's composition reflecting the choices of electors. On these grounds, it seems reasonable to recommend its use for elections to the House of Lords.

Healthy turnouts have been recorded under STV in Northern Ireland elections, comparable with those under FPTP Westminster contests and better than devolved elections under AMS. Lack of knowledge of STV has not been a factor cited by non-voters as a reason for not voting. Spoilt ballots are uncommon. Again, these factors provide reassurance in terms of prospective use for elections to the House of Lords.

Point 6.2 notwithstanding, use of different voting systems on the same day is inadvisable. The number of spoilt ballots rose appreciably to over 12,000 when STV Assembly and Council elections were held on the same day as the AV 'Yes/No' referendum.

6.1 The legislature elected under STV in Northern Ireland has produced the greatest gender imbalance of any legislature in the United Kingdom. However, this owes little to STV and much to party selection of male candidates. Whilst candidate selection is clearly a matter for the parties, the issue of representativeness ought to weigh as heavily as proportionality.

6.2 One of the few aspects in which STV has struggled for credibility in Northern Ireland has been in respect of the length of election counts. Adequate provision would need to be made for elections to the

House of Lords to prevent 48 hour counts, which are regarded as unsatisfactory by candidates, electors and electoral workers alike.

6.3 Other STV contests in less polarised polities should be used to judge the propensity of voters to switch party allegiances in lower preference votes. Northern Ireland is still very divided electorally and may be untypical in the way in which lower preferences remain largely 'in-party' and, if 'straying' at all, remain overwhelmingly in-bloc. Electoral Spring, if defined as widespread cross-community voting, has yet to arrive in the region.

6.4 Independents struggle to be elected to the Northern Ireland Assembly due to the party and ethnic bloc loyalties of the electorate. Those independents elected or polling well sometimes have clear previous party/bloc association. However, the low quota (only 14.3 per cent of the vote) in multi-(six) member constituencies required for election means that it ought not to be unduly difficult for independents to be successful. Multi-member regional contests for the House of Lords, conducted in a less partisan environment than that in Northern Ireland, could offer the prospect of independents being elected.

5 December 2011

Dr Colin Tyler

Please accept the following submission to the Joint Committee on the draft House of Lords Reform Bill. I write as a specialist in democratic theory, who has taught at various British universities since the early 1990s.

The Draft House of Lords Reform Bill is premised on the claims made in the Foreword to the White Paper that the Bill is necessary in order to render the second chamber more democratic. This is offered as if the claim is self-evidently true. There is nothing self-evident about the claim. It is eminently contestable. If the claim is not valid, then the Bill rests on unstable foundations.

The conceptual points seem straightforward. Parliament is democratic to the extent that its pronouncements and actions (crudely, the laws it makes and the policies it pursues) are determined by the electorate through the decisions of the representatives they chose at properly-constituted and authorised elections. To the extent that such a process of determination is not reflected in Parliament's subsequent pronouncements and actions, then Parliament fails to be fully democratic. The crucial point in the context of Lords reform is that what matters is that the outputs of Parliament can be traced to the will of the electorate as expressed through their representatives (as just described). Where these outputs enact something different to that will—or where they do not enact what the electorate will—then Parliament is not acting democratically.

To the extent that Lords reform will give the Lords parity with the Commons, it will divide sovereignty within Parliament, thereby making it harder for Parliament to act at all. (Witness the recent and on-going problems with the US budget). Consequently, democratising one part of Parliament (the Lords) will reduce the democratic character of the whole (Parliament). And ultimately it is the democratic character of Parliament that matters, not the democratic character of its constituent parts considered in isolation from each other.

Obviously, it depends on how one thinks of Parliament. Yet, as you can infer, I have very great concerns that, as with any complex institution, it is easy to focus on the parts while forgetting the whole from which they gain their function and worth.

I am often struck by the fact that many who support Lords reform seem to wish to address these problems. However, always the solutions they propose are palpably inadequate, often smacking of a desperate wish that 'democracy' meant something different.

Of course, another option would be to abolish the Lords completely. The resulting unicameral system *would* be more democratic than the present system, but very possibly recklessly so. After all, how much more havoc could both Thatcher and Blair (and many others) have reaped had they not been held in check to some degree by the Lords?

5 October 2011

John Wainwright

I wish to respond to the consultation exercise which you have initiated regarding proposals for the reform of the House of Lords. (In making this brief submission, I confirm that I am a British citizen resident in the UK at the above address.) In particular I wish to comment on **Part 4** entitled **'Lords Spiritual.'** I do so as a private individual and not on behalf of any official body or campaigning organisation. As regards my own background which may be relevant in this area I am a graduate in Theology from King's College, London, and additionally have had many years experience teaching RE and PSHE in various state Secondary schools. Currently I am a voluntary worker, including in my local church.

Although there will be differences of opinion between members of the Committee as to the as to the merits or otherwise of retaining Lords Spiritual, just as there are among the public at large, I nonetheless welcome the implied recognition of the valuable contribution they may make to debates within the Chamber and to those enquiries and deliberations which precede them. Historically the Church has been involved not only in such matters as Education, Health Care, and Prison Reform, but also in promoting higher standards of employment through leadership in Industry and the Trade Union movement. The Church with its emphasis on the intrinsic worth of every human being, irrespective of class or ethnic background, combined with a concern to foster community values and reconciliation between different interest groups has a message which is as vital today as when our national institutions first began to take shape. The Church at its best, whilst very aware of the need to encourage sustainable productivity, also recognises, not least because of its international contacts, the importance of responsible stewardship of the environment in all its forms, especially during a period of climate change and social upheaval. For Christians, and I would suggest for people of other religions represented in our national life, because of their inherent commitment to justice, Faith can never be just a private matter, it must always have practical implications both in regard to the promotion of just legislation and also in terms of listening and compassionate service.

However, whilst appreciating the recognition of the Faith dimension I regret that the new proposals lack the imagination and insight of the **Wakeham Committee** a decade ago. The latter proposed not only the retention of seats for certain Anglican bishops, including the two Archbishops, but also suggested the appointment of representatives from other denominations, as well as representatives from other Faith communities. This concern does not arise from any bias against the Church of England. Indeed, my theology degree was awarded by a college with an Anglican foundation and my own wife is a communicant member! However as many in the Anglican Church have graciously acknowledged the Church of England only represents a proportion of Christians and in this ecumenical era it is time, indeed some would say time is overdue, that the contribution of adherents from the Catholic and Free Churches, including the so-called Black Churches, was given greater affirmation. From within the Christian community more broadly based appointments could be made on the advice of bodies like Churches Together in Britain and Ireland and the Evangelical Alliance. Furthermore, need all such appointments come from the ranks of the clergy? In the case of the Roman Catholic church they could not do so anyway. Surely there are many lay people who would have appropriate qualifications and probably more time to devote than the clergy! One does not want to end up with mere token representation.

Finally, in a reformed Chamber so far as **Standing Orders** are concerned there would seem to be a good case for broadening the nature of the **prayers** which begin each session. Quite rightly such prayers include petitions for the Queen and Royal Family but why not incorporate prayers related to the business of the day or for members who might be ill (subject to their consent, or that of their family, of course) or thanksgiving for the life of a deceased member or former member? Naturally there would have to be sensitivity and the avoidance of obvious partizanship. Such an approach would make intercessions far more relevant to a greater number of people and I would suggest more appropriate for the Twenty-First century.

Thank you for the opportunity of being able to make this submission and I shall naturally be interested in your response

25 October 2011

Dr Stephen Watkins

1. SUMMARY This evidence builds on the evidence calling for part time members of the House of Lords submitted by the Programme for Popular Participation in Parliament of which I am Chairman. It calls for the House of Lords

to sit for twice its current number of hours per year both by sitting for longer each day and on Saturday (amounting to 80 hours per week) and sitting through the recess. It proposes that there should be 312 whole time equivalent non-voting seats filled by modestly reforming the current membership of the House of Lords and 312 whole time equivalent elected voting members. This amounts to twice the number of whole time equivalents proposed by the Government because the House would sit more and therefore each seat would be 2wte. Non-voting members could hold proxies for absent voting members. The various whole time equivalent seats would be divided between a number of people elected from diverse democratic mandates. Specifically 100 voting seats would be filled by about 1,000 members called aldermen elected to serve one day a fortnight in the House of Lords and also to serve on their local council, 96 voting seats would be filled by 240 senators elected in the way the Government proposes but for two days a week, 12 voting seats would be filled by 30 people elected by faith groups, 5 voting seats would be shared by the members of the UK Youth Parliament, there would be 27 citizen's jurors at each session and 100 voting seats would be divided between the non-voting members by a list system election structured to favour cross party and crossbench lists.

2. I am Dr. Stephen Watkins. I am a public health doctor. I am a libertarian socialist and a member of the Labour Party. I have held various offices in the past in the Medical Practitioners Union and the Socialist Health Association and both in the past and currently in the British Medical Association and the Transport and Health Study Group. However this evidence is personal and is unconnected with any of those offices.

3. I am Chairman of the Programme for Popular Participation in Parliament. This small organisation which seeks to promote part time membership of Parliament has given evidence to your committee.

4. In that evidence it has asked the committee to maintain the House of Lords as a House of part time members.

5. It has said that this could be done by creating a larger number of seats but making them part time or it could be done by providing for the 312 seats proposed by the Government to be job shared.

6. It was not appropriate for PPPP as an organisation to go further than this. It exists only to advocate for the availability of part-time seats in Parliament and does not have any specific policy on any other aspect of reform of the House of Lords.

7. However I am submitting personal evidence suggesting how this might be implemented.

8. In this evidence the abbreviation wte means "whole time equivalent". For example 5 members each attending one day a week amount to 1wte, as do two members each attending for half the time. If the House meets for double the time that a full time member could be expected to attend then one seat amounts to 2wte.

9. PPPP's evidence drew attention to various options. Those options were intended to stimulate debate as to how an elected House containing part time members might be constituted and to point out that it opens a much wider range of options than a full time House.

10. This evidence contributes to that debate.

MY PERSONAL PROPOSALS

11. It is possible to opt for a simple system, perhaps of the kind that might have been implemented for full time members, and then modify it by introducing jobshares or by increasing the number of people elected. This approach has the advantage that it is easier to understand. I am aware that my Deputy Chairman, Dr. Helena McKeown, favours this option and will be giving evidence accordingly.

12. Another option is to exploit the wider range of possibilities that part time members open up and to balance them so as to create a more balanced chamber. This is the approach I have taken in this evidence. I believe that it offers a more balanced membership representing a wider range of interests and, most importantly, a range of different forms of democratic mandate varying in the extent to which national political parties will be able to influence them.

13. The PPPP evidence listed various options. In this evidence I give one example, the one that I personally would choose, for balancing these various options.

14. One of my considerations has been that nobody has ever criticised the quality of debate in the present House of Lords—they have only criticised its democratic mandate.

15. I would have a House of Lords which sits for about twice its current number of hours per year, partly by sitting for longer each day and partly by sitting on Saturdays and during the recess. To fill 312 seats it would therefore require 624 wte members. If each of these wte is made up of several part time members then it would be a House that has more members than at present, not fewer.

16. I would suggest that the 624 wte should be made up of 312 wte elected members who would be voting members and 312 wte unelected members who would be non-voting members but would be able to hold proxies for absent voting members. Every vote cast in the House would therefore derive from a democratic mandate, but at the same time the current House with its high standards of debate and its considerable expertise would be retained.

THE VOTING MEMBERS

17. In suggesting the ways to elect the voting members I have had regard to the desirability of ensuring that there are a significant number of cross benchers and also of ensuring that the party members operate in a milieu which is not that of the Westminster Village and its associated think tanks.

18. I suggest that the 312 wte be made up of

- 100 wte made up of about 1,000 members who would be elected to a seat (usually 0.1wte—eight hours on one day each fortnight) in the House of Lords linked to a seat on a local council, with the title alderman. This would link local and national government and would ensure that those holding these seats operated in the milieu of local community politics rather than of Westminster.

- 96 wte made up of 240 members who would be elected in accordance with the Government's proposals for election for single terms of 15 years from regional constituencies using STV with quota. These would be elected in three tranches of 80 and would each be 0.4wte (eight hours on each of two days a week). They would be called senators.

- 12 wte made up of 30 elected Lords Spiritual each 0.4wte

- 10 wte made up by sharing 5 seats amongst the members of the UK Youth Parliament (because the jobshared seats would be filled all the time by one of its jobshare holders without needing recourse to non-voting members as proxies each such seat would amount to 2wte)

- 54 wte made up by having at any given time 27 citizen's jurors selected by a random process. Some jurors would attend on specific dates and times for which they were selected. Others would be selected for a particular Bill and would attend on each occasion that that Bill was being considered.

- 40wte made up of 100 seats divided between the non-voting members according to an election held by the list system concurrently with alternate European Parliament elections and organised so as to encourage crossparty and crossbench lists. There is an interesting question of how many wte this amounts to. On the one hand as seats filled on a rotating basis each seat is 2 wte so there is 200wte here. On the other hand as these seats are filled by people who also hold non-voting seats it is arguable that it is 0wte. I have assumed that the need to fill the list seats will add to the attendance of non-voting members by about 20% so I have counted these as 40wte.

PROCEDURAL ISSUES

19. Voting should be on the basis of 1 vote for each 0.1wte. Thus an 0.1wte alderman would have 1 vote, an 0.4wte senator would have 4 votes, a jobshared seat that would be filled all of the 2wte that the House sits would have 20 votes, except for the list seats restricted to non-voting members which would have 10 votes (mainly to achieve balance—it would give this form of electoral mandate about the same voting power in total as aldermen and senators). Voting members who were absent could appoint proxies but there would be a limit of 30 votes on the number of votes that a member could hold.

20. When the number of members wishing to attend exceeds the capacity of the House members who do not intend to contribute to the debate but simply to listen to it and vote could be allocated to overflow meetings, which need not be in London, Indeed with appropriate telecommunications they could be in the members' homes.

21. I will discuss the arrangements for elections in a later section

THE NON-VOTING MEMBERS

22. Initially the non-voting members would be the members of the current House and during the transitional period of two Parliaments before the elected membership is complete they would not be entirely non-voting as they would be able to allocate the voting seats yet to be filled amongst themselves as in the Government proposals.

23. Currently the House's attendance pattern is the equivalent of 388wte. 312 wte non-voting seats in the permanent proposed membership plus 40 wte allowed for the list seats plus 56 wte transitional voting seats to represent the senators to be elected in 2020 and 2025 means that it would need 408wte members in the 2015 Parliament. This is not grossly out of line. Indeed some decline in attendance is likely if members feel no compulsion to attend on occasions when they do not intend to speak and do not hold a proxy so it is possible that there is scope for some additional appointments.

24. Over time as existing members reduce their activity the non-voting membership should be reshaped so as to consist of

- 75 wte appointed by political parties. These could be made up of life peers, Ministerial members, and members appointed for only a single Parliament. It would be up to political parties how many individuals shared these seats but they would need to agree the level of activity expected of each so that they could match those appointed to the number of wte. The number of wte allocated to each party should be proportional to its average support over elections held in the last 15 years.

- 75 wte life peers appointed by the House of Lords Appointments Commission, mainly crossbenchers. Each appointment should include an agreement about the expected level of activity so that the number of wte can be calculated and these would be reviewed periodically

- 1 wte shared between a number of offices of state that should have the right to participate in debate when they have distinctive professional contributions to make. These should include the Chief Medical Officer, Chief Nursing Officer, Chief of the Defence Staffs, Comptroller and Auditor-General, Ombudsman, Local Government Ombudsman, Health Services Ombudsman, Commissioner of the Metropolitan Police, Poet Laureate, Controller of the Queen's Music, Lord Chamberlain, Earl Marshal, Cabinet Secretary, Court Jester (an office that should be revived) and Governor of the Bank of England.

- 75 wte representatives of organisations chosen by the House of Lords Appointments Commission to represent the range of civil society, like the CBI, TUC, BMA, Academy of Medical Royal Colleges, RCN, Council of Engineering Institutions, Bar Council, Law Society, Royal Society, Royal Academy, Royal Institute of British Architects, Women's Institute, National Trust, CPRE, Liberty, Amnesty etc. Each appointment should include an agreement about the level of activity so that the number of wte can be calculated and these would be reviewed periodically. Persons appointed by these organisations would be known as "representatives" and would place the initials RP after their name.

- 74 wte made up of 370 representatives, each 0.2wte (attending for eight house on one day a week), elected by or appointed from particular professions or economic groups. 10 members could be elected by and from amongst each of the following professional groups:- registered medical practitioners, nurses, allied health professionals & chartered environmental health officers, social workers, chartered civil engineers, chartered mechanical engineers, chartered electrical engineers, other chartered engineers, Fellows of the Royal Society, qualified architects, solicitors, barristers, chartered accountants, qualified public finance accountants, registered teachers, academics of the rank of senior lecturer or above in the natural sciences, academics of the rank of senior lecturer or above in the social sciences, academics of the rank of senior lecturer or above in disciplines other than the natural or social sciences, and University Vice Chancellors. 5 members could either be elected by and from amongst the members of their discipline or alternatively appointed by the House after advertisement and competitive interview from each of 8 disciplines which have particular relevance to the whole range of issues

before the House—historians, economists, public health specialists, academic experts in Government and politics, constitutional and human rights lawyers, organisational psychologists, social and behavioural psychologists, and experts in the interpretation of scientific evidence for policy purposes (including two statisticians, two academic experts in social policy and one scientist). Organisations of various types involved in the economic world would also elect representatives with ten representatives being elected by each of the following groupings of organisations:- FTSE200 companies and private companies of equivalent size, smaller companies that are still larger than SMEs, small and medium size enterprises, mutual organisations and social enterprises, large registered charities, trade unions of over 1,000,000 members, trade unions of between 100,000 and 1,000,000 members, smaller trade unions, and farmers. Holders of large landholdings or aristocratic titles could also form a group electing 10 members. 30 members could be chosen in some way by and from amongst those engaged in the arts, entertainment, media and sport. 10 members could be elected by and from amongst those honoured by the Crown or included in recognised lists of achievement and standing such as Who's Who, Debrett's People of Today, recognised Rich Lists and recognised celebrity lists.

- 12 wte Lords Spiritual, made up of 8wte allocated to the General Synod of the Church of England (4wte to the House of Bishops and 2wte to each of the other Houses), 1wte to other Christian churches, 1 wte to other Abrahamic religions, 1wte to other religions and 1wte to secular faiths like humanism and Marxism.

ELECTION METHODS

Senators

25. Senators would be elected by STV with quota from regional constituencies as proposed by the Government.

Aldermen

26. District councils and their equivalents would be allocated aldermen in the ratio 1 session of 0.1wte per 65,000 population.

27. In councils with between 3 and 7 sessions STV with quota would be used and the number of sessions rounded to the nearest whole number. One alderman would be elected for each session. These aldermen would also have a seat on the council.

28. In councils with 1 or 2 sessions entitlements would be calculated over a group of councils so that one alderman was elected for each Council and the remaining seats used for additional top up sessions for proportional representation by the AMS system. The top up seats would be allocated to parties. They would be allocated firstly to candidates who were runners up in the election in a council which, if considered alone, would be entitled to 2 sessions and secondly to candidates who were runners up in a smaller council. As between two or more such candidates priority would be given to candidates where the party in question is underrepresented on the council in question. These rules apart prioritisation would be order on the party list. If it was necessary to go beyond candidates who were runners up then the seats allocated to those aldermen on their local council would be non-voting, although their seat in the House of Lords would be voting.

29. No Council would have more than 7 aldermen. Instead if a council is larger than 500,000 population its Leader (or elected Mayor), its Chief Executive and its ceremonial head (ie Mayor in a council which does not have an elected Mayor) would be members of the House of Lords for 0.1wte. If a Council is over 1,000,000 population each of its 7 aldermen would be 0.2wte (one day a week). Over 1,500,000 and this would move to 0.3wte (three days a fortnight) and over 2,000,000 to 0.4wte (two days a week).

30. A small number of councils would have an entitlement which rounded to the nearest whole number is 0 sessions because they are smaller than 32,500 population. They would be entitled to one alderman of 0.05wte (about one day a month). In the case of the City of London this seat would be held by the Lord Mayor.

31. It would left to councils to decide the terms of office of aldermen (but this must not be less than 4 years nor more than 12 years), whether they are to take place at the time local government elections take place or whether they are to be concurrent with Parliamentary elections or with European elections and the years in which the elections take place if they are to be at the local government date. All aldermen in each council would need to be elected together so that proportionality can operate and in councils which are grouped for AMS purposes the terms of office and dates of election would need to be the same.

List Seats

32. These elections would take place concurrently with alternate European elections starting in 2018.

33. Non-voting members would organise themselves into lists.

34. 100 voting seats would be allocated to lists by the d'Hondt system. Those at the top of the list, to the number of seats won, would become voting members but other members on the list would be available to deputise for them.

35. Peers and representatives could be on more than one list (for example a scientist sitting as a Conservative peer might well appear both on the Conservative list and on a science list). If a list failed to gain any votes peers and representatives who were only on that list would be purely non-voting.

36. Lists could be named after organisations that sponsored them or after some common interest shared by those on the list or after the peer or representative leading the list.

37. To strengthen the crossbench and cross-party lists and allow lists that were rooted in civil society

- voters would be able to vote for, say, seven lists
- the law should specifically disapply, for this election only, any rule that a party may have preventing its members supporting opposing lists
- the laws restricting the fielding of candidates by charities and by trade unions should also not apply to this election.

Elected Lords Spiritual
38. These elections would take place in two parts. Firstly voters would be asked to indicate their faith and denomination concurrently with alternate European elections starting in 2023. 30 seats each 0.4wte would be allocated to groupings of religions, denominations and secular faiths such as humanism based on these indications. Some time later and separately from any political election an election would take place to those seats by STV with quota with voting taking place at places of worship for the religious group concerned at times appropriate to the groups in question. At this stage candidates would need to be members of the religious group in question. Everybody would be free to vote in one of the religious groups only and would receive a poll card which they would surrender when they vote.

12 October 2011

David White

I would like to support the Election of the House of Lords (To be renamed the United Kingdom Senate) It should have 200 Members Elected in 10 Member Constituencies using the Single Transferable Vote elected by halves every 5 years. Members should have a ten year term. Senators should be allowed to have a Regional Office out of which they will all work. They will be allowed to represent Constituents from this office and from their Westminster Office. This will ensure minimal costs.

New Parliament Act to be created which replaces 1911 and 1949 Acts.
The Act should state that the House of Commons will originate all legislation and shall send Bills to the Senate for approve.

House of Commons is by simple Majority at all stages

	Senate
Approve Bill	Simple Majority
Amend Bill	Simple Majority
Insist on Amendment	50% +1 Senator (If Senate insists a second time then a Resolution Committee will be formed to seek a resolution)

The Senate may insist a further four times before a vote of 66%+1 Senator is required to continue.

If not achieved

The Bill will be passed for Royal assent after six months.

If achieved then the Bill will be frozen for six months and reconsidered by both Houses.

If the House of Commons insist the Bill will be passed for Royal Assent after a further six months if the Senate cannot gain 66%+1 Senator.

The Senate will have a Veto on all Secondary Legislation if 50% +1 Senator in the Plenary.

The Senate may veto Ratification of a Treaty if it votes for a Referendum.

Ministers in the Senate

Secretaries of State should not be Senators, not should Ministers but a new role of Senate Minister should be created for each Department. Deputy Senate Ministers may be appointed if the workload requires. The Leader of the Senate and the Government Chief Whip shall be of Cabinet rank and the Attorney General may sit in the Senate.

House of Lords "Expertise" & Bishops

It cannot be right a House of Parliament to be unelected and unaccountable to the people of the Country and no matter how benevolent and expert they feel. I do not think it appropriate for the Church of England Bishops to sit in the Senate.

Senate Committees

A Experts Panel should be created to appoint 5 Members to Senate Committees for their "Relevant Expertise" which must be up to date and reviewed. Bishops (with voting rights) will be appointed to a Senate Committee which will deal with Church of England Measures.

Supremacy of the House of Commons

I do not support the notion that the House of Commons, is supreme but the people are supreme and the rigour of a Parliament in which negotiation and debate between Houses is common then better legislation will be created if the process is created which allows the House of Commons to have their way after a certain period.

Senator Terms and Standing for the House of Commons

Senators should be allowed to stand for re-election but shall be debarred from standing for the House of Commons for two general Elections after leaving the Senate.

NO term limit.

Transitional Arrangements

Lords should be able to sit in the Senate with speaking rights until 1st May 2020 and shall lose their voting rights on 1st June 2015. Lords shall be enabled to attend the Parliament and shall have access all areas except the Senate Chamber. A Pension of £20,000 per year shall be paid to all Members of the House of Lords who retire before 1st September 2014(except Bishops). Retired Lords (prior to 1st September 2014) will keep their rights to access facilities of the House of Lords for five years. Except for offices, stationary, allowances, the Chamber and Library. This may be reviewed if it interferes with the operation of the Senate.

1 November 2011

Craig Whittaker MP

I am opposed to the draft Bill for the following reasons:

1. Function of the Reformed House of Lords

Every other Government reform has started with the core premise and function. This one does not. There has been no fundamental review of the function of a reformed House of Lords. How can this be a true reform if the prime purpose has not been decided or even looked at?

2. STV

The Government has recently spent in the order of £100m, on a referendum on whether people of the UK want to use the AV voting system. The result of which was an overwhelming 70% said 'NO'. Not content with this, the government proposals totally ignore the wishes of the general population, at a cost of £100m, and totally defy their wishes to bring in STV. I accept that we have forms of election other than FPTP in the UK, however to suggest STV so soon after the referendum smacks of a government not listening.

3. Salary and Expenses

The draft Bill recommends that an elected person to the reformed House of Lords would have less salary and not much need for expenses than those of an MP. Currently because of no geographical location, it is fair to say that the work load from a Constituency basis currently for a Lord is 'zero to very few'. My experience shows that in my 10 months (Full financial year) of Parliament as an MP, my office dealt with over 39,400 pieces of communication (c24, 000 emails, 9,600 letters, and 4,800 telephone calls) as well as 2,183 Constituents cases. This being the case, there is no reason to suggest why an elected member from the House of Lords would not deal with similar amounts of workload as the reforms would allocate them geographical locations—or constituents. This being the case, the cost of the 'Reforms' would far exceed those anticipated.

4. Numbers

The proposals would suggest a number of 300 There seems to be no evidence to suggest that this number would adequately be able to carry out the would adequately be able to carry out the work of the House of Lords. On the basis that the Lords will continue with the same function as they currently do a well as take on the responsibility of constituents; this number seems too low and without clear evidence to suggest otherwise, this figure seems too plucked out of the air. On the basis of approximately 300 currently carry out the work on a daily basis there is no movement to account for loss of 'specialists' in the House nor the huge increase in constituency work. A figure closer to 450 seems to b more realistic. On this basis, the cost massively increases from the current cost.

5. % of House Elected

The premise that having an elected House is democratic, why 80%? Why not 51%, 60%, 70% or 75%? On the basis that 80% is democratic (which is where the draft starts from) where is the evidence to suggest that the proposed percentage of elected members is correct.

6. Ministers

Currently the Prime Minister or Shadow Leader of the house can appoint Ministers from the current membership. Under the proposals, only the Prime Minister can appoint 'Limited amounts of Ministers', to the House as an addiction to those elected. There are no limits on this proposal which would appear to be un-democratic.

15 September 2011

Christine Windbridge

General comments

Rationale

Most independent reviews and studies agree that some reform of the House of Lords (HoL) is needed. Common among the conclusions are a reduction in numbers, removing hereditary peers, and strengthening the HoL Appointments Commission.

It appears that the committee responsible for this Draft Bill has taken these recommendations, with others, and bolted on the concept of a mainly (or wholly) elected second chamber in the name of democratic authority solely. I would be surprised if evidence is available that suggests the public are so consumed by an unelected HoL that they will gladly pay an unknown amount to enable a second chamber of elected party members to scrutinise the best efforts of the first chamber of elected party members.

By fixating on elections at all cost, by looking only in one direction and disregarding 100 years of its own history, it is unsurprising that this White Paper is heavy on procedure but light on reasoning.

Unicameral vs. Bicameral
There is no better advocate for a bicameral system than this Draft Bill. It is of a standard that no one could be left in doubt that a second chamber, with a specific remit to scrutinise and revise, remains vital.

Elections
No evidence is offered that demonstrates the public benefit of a bicameral system in which both chambers are elected. Indeed, the general public have yet to show any sign of great interest in the notion that the HoL should be reformed, let alone elected. (Hansard records that, as of 18 August 2011, there have been 65 responses from the public to this White Paper.)

Should the public notice, they might be puzzled that the proposed form of democratic authority removes by-elections due to the system of PR, removes the right to an HoL general election if the HoC has more than one in two years, and provides that the will of the second chamber be ignored, as and when. It is reasonable to ask what calibre of candidate will be attracted to these terms, and why anyone should vote for them.

Electoral System
At the top of the proposals, a key feature is the imposition of a different voting system for the HoL to that used in the HoC. Clearly, this was hurriedly inserted after the results of the referendum on AV were known; perhaps the Liberal Democrats should be asked how they square their manifesto pledge to introduce STV for HoC elections with their White Paper commitment to STV in the HoL.

Mandate
From the start, misleading statements purporting to have a popular mandate have emanated mainly (but not uniquely) from the proponents of the Bill. Below are the relevant quotes of the 2010 manifestos from the three major parties, and from the Coalition Agreement:

"We will let the people decide how to reform our institutions and our politics: changing the voting system and electing a second chamber to replace the House of Lords…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…We will consult widely on these proposals, and on an open-list proportional representation electoral system for the Second Chamber, before putting them to the people in a referendum. "

The Labour Party Manifesto 2010

"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."

The Conservative Manifesto 2010

"Replace the House of Lords with a fully-elected second chamber with considerably fewer members than the current House."

Liberal Democrat Manifesto 2010

"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."

The Coalition: our programme for government

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Yet, the foreword to the White Paper claims:

"At the last election, all three main political parties were committed to reform of the House of Lords."

This is disingenuous.

In a parallel approach, the term 'settled will' of Parliament has been bandied around despite the lack of a vote in this Parliament for HoL reform. If left unchallenged, a worrying precedent will be set that gives a Government implied consent to cherry pick results from a previous Parliament.

Salisbury Convention
It is my understanding that the Salisbury-Addison convention does not apply to a coalition agreement although, as Baroness D'Souza noted in November 2010, conventions can develop.

The proposals include 12 seats reserved for bishops. Since they are in addition to the 300 seats reserved for other Members the target of an 80% elected HoL can never be met, whether a Government chose to appoint Ministers outside of the 300 or not. Of course, this would apply to 100% or any other ratio. Moving such Members to the appointed component would not only dilute this element but would necessitate re-writing large parts of the Bill.

The Salisbury convention should not apply to this Bill as it stands.

Costs
No estimate is offered for the increased running costs of a new HoL and the timing of this Bill is completely out of step with the prevailing mood of the public, facing severe cuts and general uncertainty, and coming straight after the debacle of Parliamentary Member's expenses.

It is inconceivable that MPs will wish to be associated with this Bill if they value their seats.

Observations on specific proposals

The aims of this Bill may be summarised thus:

- At least 80% of House of Lords (HoL) members must be elected;
- The system of HoL elections must be different from House of Commons (HoC)
- The number of members will be set at 300;
- All members will receive pay and pension benefits in addition to the existing system of allowances;
- The Government fully endorses the existing role, functions, responsibilities, and status of the current HoL and seeks to retain these benefits.

Below, specific details are considered on most of the individual proposals (though sometimes grouped), in the same order as they appear in the White paper, bearing in mind the aims above. Proposals that are devoted to procedure have generally been passed over.

Functions, and Powers (Items 2-6, and 7-11)
The Government indicates that there should be no changes to existing functions and powers of the HoL.

Although democratic eligibility is the Bill's central plank, the less than democratic conventions and relationships between the two Houses are to be retained, in order to preserve the predominance of the HoC. In particular, Item 8 explicitly warns the existing HoL not to reject a Bill which has been endorsed by the HoC, "…whether or not a Bill has been included in a Manifesto…" , a reference to the Salisbury convention.

Size and Composition (12-23)
The increasing number of Members in the HoL has come under some fire, as exemplified by Meg Russell, UCL Constitution Unit, in her paper, "*House Full: Time to get a grip on Lords appointments",* April 2011. Along with 18 other renowned experts in the field one of her researched recommendations was to set the overall number to 750 Members, and so the Government's arguments used to set the number to 300 are curious.

For every person who criticises the size of the HoL, at least one other will criticise the lack of real world experience in the HoC. The proposal used recent figures to show that the average daily attendance was 388, roughly half of the existing total, leading to a guess that 300 would be "about right" given that the new intake would be full-time. By using back-of-an-envelop arithmetic the value of having the current wide range of experience and expertise will be reduced rather than concentrated. Is it the intent of this Bill to rely on the wisdom of the HoC, or bring in external advisors, or hope that voters operate as a hive and choose the best of the diverse every time? And what does full-time mean, given that their time-table correlates largely to the amount of business of the HoC? Will Government be under an obligation to set a maximum amount of legislation per session? Will wash-up's be the norm rather than the exception, a device of weakness rather than strength?

Item 22 specifically asks for views on the balance of elected and appointed members. A wholly elected HoL is not available due to the inclusion of Church of England bishops (Item 91).

Term, and Timing of Elections (24-25, and 26-27)
Democracy requires some form of individual accountability which is difficult to achieve if Members are permitted to serve only a single term. A term is defined as three 'normal' Parliaments, an implied total of 15 years, in order to attract able people, and to reduce the chance of a Government having a majority in both Houses. Item 25 assumes that an overall majority would be undesirable in the HoL: between 1979 and 2010 there was one change of governing

party in the HoC, with more landslides than simple majorities. Together with the landslide rejection of AV an overall majority is demonstrably popular.

However, a Parliament may not last five years. In addressing this issue (Item 27), skipping elections on the basis of unfairness to Members reads as the needs of Members should override the wishes of voters. If there are consecutive short Parliaments the composition of the new HoL is much less likely to meet other criteria of the Bill, such as is suggested in Items 25 and 26.

Item 56 indicates that appointments by HOLAC will only be recommended after the results of elected members are known. Currently, the time between recommendation and appointment is indeterminate, and Item 59 proposes that this will not change. Common sense would suggest rather than leave the chamber short of Members, that those due to be replaced stay on until all appointments are resolved. However, this could create new problems in cases of suspension or vacancies, and the exact date when a Member would be eligible to stand for election as an MP.

Electoral System (28-34)
This section, taken together with others, is a tangle of contradictions in relation to the status of new Members: it is not clear if they will be representatives of a district or representatives of the HoL. Item 30 discusses the 'democratic mandate' while Item 32 stress the importance of a 'personal mandate'. (Item 111 also denies that Members will have constituency duties, but Item 52 does not want voters to be under-represented.) Item 32 also expresses the desire that political allegiances should be secondary to that of candidates yet Item 28 states that PR systems are "designed to ensure" the PR of parties. Item 33 dismisses other PR systems because STV gives more power to the voter but elsewhere (Item 8, for example) there are many instances where the Paper makes clear that a vote for HoL elections will carry less weight than a vote in an HoC election. Returning to the intention that Members should be full-time in Westminster, we might assume that, after all, Members will not directly represent their voters, an interesting interpretation of democratic authority.

It should be noted that if Members are representatives of districts, this will introduce the HoL to new concepts, such as the West Lothian question at a time when the Act of Union could be vulnerable, and issues over party membership including how Sinn Fein should be accommodated.

The conclusions in Item 34 are the written equivalent of a Gallic shrug.

Women in Parliament (48-49)
Although there is evidence to support the claim that women are more likely to be elected under PR than other voting systems, many more could be in Parliament now if there was genuine will from those who have the power to appoint. It is a pity that the 'opportunity to consider' doesn't appear in the Bill; taken together, Items 55 and 59 rather suggest the opposite.

Franchise (50-51)
On the back of this response, I would like to widen the discussion to investigate the disenfranchisement of British ex-pats after an arbitrary 15 years away from the homeland. Most ex-pats have no intention of discarding their passport simply to vote in another country. There are several non-contentious ways of resolving this bit of British idiosyncrasy.

Transition (69-86)
Item 11 acknowledges that a 'delicate balance' currently exists between the two Houses, one that has evolved over their time yet transition will progress over three elections, between six and 15 or more years (if Item 27 remains unchanged). However, the consequences of several short Parliaments from 2015 are not addressed and since, in the event that this happens, we could assume that the country would be, at the very least, unsettled.

Hereditary Peers, Church of England Bishops (87-103)
The arguments presented for retaining or abolishing reserved places in the HoL are inconsistent with modern values and laws of equality. If there is a constitutional issue which causes bishops to be excepted then their right to vote in the HoL should be removed.

No provision is made should the Church of England change its own rules which may impact further on this Bill's generous permit to self-select.

Remuneration, Salaries, Allowances, Governance, Pensions, Tax (104-124)
Since it is not clear whether new Members will be representatives of a district or the HoL, it is not clear whether new Members should have a lower, higher, or the same salary and conditions as MPs (Item 111). By extension, whether new Members will be entitled to an allowance for second homes will depend on whether they have responsibilities to their district.

There is no indication as to the future of Cranborne money and the possible extension of the more lucrative Short money to cover both Houses. The choice of the electoral system will have an impact.

Expulsion, Resignation, Recall (125-139)
Item 131 intends there to be no time limit for suspension of a Member, presumably on full pay. No reason is given to change the existing rules. It is not clear if time under suspension would be counted towards a Member's allotted term.

Disqualification—140-150
Item 141 allows for a convicted person to become a Member if they served up to and including one year in prison only. Rehabilitation must continue to be one of the primary aims of justice yet this clause is contentious for a number of reasons.

- it makes no distinction of the crime committed—a sentence of up to two years (assuming 50% time served) covers too wide a range of criminal acts
- there is no provision for disqualification during the licence period
- there is no provision on special cases such as IRA convicts
- Presumably, HOLAC would be expected to gain knowledge of past criminal activity before recommending appointments, as Item 55 sets out:
- Since 2001 HOLAC has made recommendations on merit and against set criteria which include personal qualities of integrity, independence and the highest standards of public life.
- but similar information would not be available to the electorate.

There are likely to be other issues but this small selection should be sufficient to include safeguards that put the public first, not the candidates. At least two other options are available: disqualify for all criminal convictions regardless of time spent in prison or not, or provide that candidates must publicly declare all convictions prior to election or appointment.

The Explanatory Notes (461-473) discusses some of the points above, and considers the impact of the European Human Rights Regulations but I disagree with the conclusions. In particular, by qualifying a convict based only on time served rather than the crime plus time served ignores the whim of the judiciary.

My personal preference is to give HOLAC or voters the responsibility of testing qualification by ensuring candidates declare all wrongdoing, both civil and criminal, prior to selection. Non- disclosure would result in automatic suspension or recall.

7 October 2011

Michael Winters

Executive Summary

There are three main 'themes' in this paper:

A. The impact of party loyalty in the House of Lords should not be increased merely as a result of Lords Reform. Indeed it might preferably be reduced.

B. The proposed reduction of the membership of the Lords — to 300 in the case of the elected members — is too severe. It would change their style and working practices, and it unlikely that merely 300 members would be able to perform their duties as well as would be wished.

C. A consideration of the timing, the preparations and the voting practices at General and By-Elections in the Lords.

General Intentions

1. I am completely in agreement with the general intention that the style, the procedures and the influence of the House of Lords ("the Lords") should, for the most part, continue as at present. This general intention colours all the comments made in this paper.

2. My second most important general intention is that the influence of the party system in the Lords should continue to be not so great as in the House of Commons ("the Commons"). At the present time, in order to be able readily to reach decisions, the Commons have a party-driven eyeball-to-eyeball confrontational system (much to the anguish of the Speaker on the occasion of 'Prime Minister's Questions'). By way of contrast, the Lords are able to exert influence by introducing cross-benches, by having a significant proportion of the membership who reject party affiliation, and accordingly by having a more 'shoulder-to-shoulder' style of debate, less dominated by 'the party line'. Indeed it not uncommon for a loyal party member to abstain or even to vote against the party's official view.

Number of Members

3. At present I believe that there are 650 members of the Commons and I have recently been told by the House of Lords Reform Team that there are over 800 members of the Lords. It has been decided that the number of Commons members should be reduced by nearly 10% to 600. What would therefore be a reasonable number of elected members of the Lords to have in the future, bearing in mind the declared intention of continuing unaltered the present duties and working relationship between the two Houses? Reducing the number of Lords' members in proportion to the reduction in the Commons gives a figure of about 750. Allowing for the intention of having a number of appointed members brings the figure for elected members down to about 650. The figure of 600, the same as for the Commons, seems to be the natural choice.

4. It is difficult, therefore, to see how a figure of 300 could be considered; it is tantamount to be saying that the existing membership has been working only at half-strength. Certainly there have always been a number of peers who have been 'non-working', and who have become members of the Lords only through heredity. Many of these have already left, and the current reduction in numbers is, I believe, primarily aimed at the remainder. It can be seen, moreover, that over recent years whenever the relationship between the two Houses has been under review, reference has been made to the supremacy of the Commons over the Lords, and the necessity for it to be maintained. The opportunity is then taken to nibble away at any apparent advantage held by the Lords over the Commons. On this occasion it may be thought to be more a gulp than a nibble.

5. In absolute terms, what number of members would be chosen as being able properly to scrutinise each item of legislation which has originated in the Commons? This 'nominal' figure needs to make allowance for absences due to sickness, resignations, holidays etc., as well as time for research, re-education and so on. Finally, the first primary intention is that the 'style' of the Lords should continue much as before. Considering the matter afresh, it would be difficult to believe that the number '300' would even be a possibilty. Even a reduction from 800+ to 600 seems severe, and one which might influence the general mood and style of the House.

6. Personally, I believe that a chosen nominal figure lower than 600 would make the Lords 'inefficient' in its work of scrutinising and improving the draft legislation initiated by the Commons, and would also change the general relationships and style of working in the Lords. However, this may well not be the final choice on the matter, so in the later section of this paper, which is concerned with the practical arrangements for elections, I put forward alternative plans for 600, 450, 360 and 300 members.

Frequency and Timing of Elections

7. It is proposed that (in order to reduce costs) General Elections in the Lords should be held at the same time as those in the Commons. I think that this would be a mistake. The 'business' of a Commons General Election is, to a

very significant extent, based on the battle between the parties. It permeates every aspect; how the candidates describe themselves (even to the colour of their rosettes); the voting papers; the analysis of the results; the reports and comments of TV and the press; the composition of the new government, and so on. If the Lords General Elections were held on the same dates, it would be inevitable that the results there would similarly be analysed by party. However, I firmly believe that the influence of party membership should not be increased in the Lords as a result of Lords Reform. Indeed, I would prefer that there should be some reduction in 'party' influence.

8. In detail, it is proposed that partial (ie 'staggered') General Elections should be held every 4 years, that these would not be varied by a possible variation in the timing for the Commons, and that to reduce costs they should be held at the same time as other elections. The question is — how could these desired elections take place at a time other than at the same time as General Elections in the Commons?

9. Fortunately, such 'staggered' general elections are held every 4 years (on the first Thursday in May) to elect County Council councillors, and it would seem entirely reasonable to synchronise with them. It would also be possible to synchronise with the county councils not only General Elections but also (again on the first Thursday in May) Bye-elections which had resulted from death or resignations which had occurred more than 6 months before that date.

Practical Details for Elections

10. There are 600 constituencies for the MPs of the Commons. For Lords elections, and assuming that there are to be 600 elected members of the Lords, these 600 Commons constituencies would be 'clustered' into 200 Lords Constituencies ("LC"), each of which would have 3 Lords MPs.

11. In every fourth year, on the first Thursday in May, one of those three Lords MPs would stand down, and there would be a staggered General Election. (at which the standing-down MP could stand for re-election, provided that he has not already served as a Lords MP for 12 years. Furthermore, any MP would be required to stand down when he has served as a Lords MP for 12 years.

12. In each intervening year on the first Thursday in May there would be a by-election in each LC where there had been a vacancy for more than 6 months. .

13. Physically each LC is enormous. To assist the electorate in having information regarding the candidates, and also to give an independent non-party candidate a reasonable opportunity for election, the Returning Officer would produce a booklet, in which each candidate would be given two pages (1200 words?) to describe himself. A copy of this booklet would be sent to each household. In the booklet, the relevant political party (if any) of each candidate would not be listed in the Contents Page, but could be mentioned by the candidate in his own two pages. This booklet would be financed out of the candidates' deposits, the remaining balance being returned to the candidates after the election.

14. The above paragraphs are based on the assumption that there would be 600 Lords MPs. The following shows the figures for alternative numbers.

Number of Clusters	Number of constituencies in each Cluster	Total number of Lords MPs
100	6	300
120	5	360
150	4	450
200	3	600

Voting System

15. Currently it is proposed that 'Proportional Representation' would be introduced for Lords Elections. I feel that this particularly inappropriate, firstly since it results in some individuals becoming members not as a result of the votes of the electorate, but because of the choice made by the party hierarchy. Secondly it increases the influence of

party loyalty during the normal working of the House. Finally it becomes difficult if not impossible for independent candidates to be elected.

16. In order to concentrate the electorate's attention on the individual rather than the party, I would prefer the 'Alternative Vote' system to be used. However, I recognise that this unlikely to be acceptable to people generally because of the recent disappointing discussion and referendum on the subject.

17. I would prefer a much simpler version of the AV method. I have seen it used in practice, but I am afraid I do not know its name, if indeed it has been given one! Voters are asked these 2 very simple questions:

A. Here is the list of candidates. Who would you like to be elected?

B. If he became too ill to be elected, who would be your second choice?

The first choices would get a count of 2, and the second choices a count of 1. All very simple and easily understood.

18. Perhaps the Appointments Commission might be authorised and instructed to 'try out' various systems in the next few elections, so that the final decision could be taken with the benefit of experience.

8 October 2011

John Wood

I attach a paper which demonstrates that the proposals in the draft House of Lords Reform Bill are unsatisfactory, even by the Government's own criteria, and that the only acceptable method of selecting members for the reformed second chamber is random selection from the electoral roll. In essence, this is because random selection is the only method of selection that is capable of meeting the four key principles expounded in the white paper 'An Elected Second Chamber: Further reform of the House of Lords' (Cmd 7438). I present the relevant principles below, with the important requirements italicised for clarity:

- members of the second chamber should be elected on a different representative basis from members of the House of Commons;
- members of the second chamber should be able to bring independence of judgement to their work;
- the second chamber should take account of the prevailing political view amongst the electorate, but also provide opportunities for independent and minority views to be represented.

Full details of why random selection is the only method of selection that can satisfy these requirements are in the attached paper.

A further reason for preferring random selection is that such a chamber is a microcosm of the UK electorate and thereby enhances the capabilities of the chamber to fulfil its three essential roles: to research, review and revise proposed legislation. Such a chamber possesses a property that no other method of selection can provide: an unrivalled breadth and depth of understanding of the UK population's needs and of the effect of legislation, proposed or revised, on the population. This breadth and depth of knowledge and experience also act as counterweights to the increasing professionalisation of party politics, which has led to members of the House of Commons coming from an narrow range of politically active families with a limited range of life experiences. Again, further details on these features are in the attached paper.

Finally, whatever options for reform are considered desirable, it is essential that the UK electorate has the final say in a referendum, which should involve selection from a list of options (including random selection) rather than merely a simple yes or no to a pre-determined choice. Reform of the House of Lords is a major constitutional change and requires the endorsement of the UK electorate. After the recent referendum on the relatively minor matter of the Alternative Vote, it would be invidious if the UK electorate were not offered a referendum on the much more important question of reform of the House of Lords.

Random Selection for House of Lords Reform

The white paper 'An Elected Second Chamber: Further reform of the House of Lords' (Cmd 7438) presents four key principles for reform of the House of Lords:

i) members of the second chamber should be elected on a different representative basis from members of the House of Commons;

ii) members of the second chamber should be able to bring independence of judgement to their work;

iii) members should serve a long term of office; and

iv) the second chamber should take account of the prevailing political view amongst the electorate, but also provide opportunities for independent and minority views to be represented.

This paper demonstrates that random selection from the electoral register is the only method of selection that is capable of meeting all these four principles. Two later sections present additional evidence that random selection enhances the ability of the second chamber to perform its roles and helps to counteract the deleterious effects of the increasing professionalisation of politicians.

The Four Key Principles

The third principle in the list above is not relevant to the comparison considered here, so discussion is confined to the other three principles. Relevant phrases in the restated principles are highlighted in bold to indicate the points for the discussion.

- Members of the second chamber should be elected on a **different representative basis** from members of the House of Commons.

Different representative basis?

Elected members will, by and large, belong to the same political parties that are represented in the House of Commons, will have similar political views and will have been selected as parliamentary candidates because of those views. Even if they are avowedly independent and are not subject to party whips, their views will therefore be similar to those of members of the House of Commons and, consequently, they will not add much value to the legislative review process. The representative basis of this method of selection is merely a slight variation on the method used for the House of Commons and is hardly different at all. Appointed members will, to some extent, bring different perspectives on legislation because of the varying skills and experience for which they are selected. However, their selection will still be subject to political choices, even if only to ensure political neutrality, and controversial selections are likely to be avoided, thus limiting the range of opinions brought to the chamber. Elected and appointed members will predominantly have the same personal characteristics as current members of the House of Commons and life peers, who are all mainly male, middle aged and middle class, with heavy representation of the journalistic and legal professions, again limiting the difference in representative bases between the two chambers. By contrast, random selection from the electoral register is clearly a different representative basis, in the widest possible sense, and it ensures the greatest possible variety of views and opinions, skills and experiences, many of them not currently represented in Parliament and not likely to be represented under the draft Bill's proposals.

- Members of the second chamber should be able to bring **independence of judgment** to their work.

Independence of judgment?

As discussed above, elected members will, at the very least, be constrained by the policies of the political parties they belong to, especially as their adherence to these policies would have been an important criterion in their selection as parliamentary candidates. Appointed members, too, will be limited in the independence of their views because of their appointment process, which will have taken their political views into account. An example of this lack of independence can be seen in the USA Supreme Court, whose nine judges are appointed for life and are, nominally, completely independent of any external influence. However, their actual appointment is highly charged politically, with the result that judges appointed by Republican presidents tend to have similar views, judges appointed by Democratic presidents tend to have similar views and these two sets of views are often different. Because of this political bias in the appointment process, able, independent-minded Supreme Court candidates who are not obviously conservative or liberal tend not to be appointed, thereby restricting the range of independent thought in

the Supreme Court. A similar effect would apply to a reformed House of Lords whose members are elected or appointed. Only random selection from the electoral register guarantees complete independence of judgment between the selected members, both during and after the selection process, with the result that it provides a much wider range of views and opinions than is possible from the election and appointment processes.

- The second chamber should take account of the **prevailing political view** amongst the electorate, but also provide opportunities for independent and **minority views** to be represented.

Prevailing political view?
As noted above, elected and appointed members' political views are constrained by their membership of political parties, their specific skills and experiences and the processes by which they are selected. They are therefore unlikely to respond quickly to changes in the prevailing political view amongst the electorate and the process proposed in the draft Bill for regular, partial replacement of members in the chamber will improve this only to a limited degree. However, members chosen by random selection from the electoral register are, in microcosm, the electorate. This will ensure that the legislative process responds quickly, even immediately, to changes in the prevailing political view amongst the electorate.

Minority views?

Again, as noted above, the processes of electing and appointing members, as described in the White Paper, are not effective in ensuring representation for minority sections of the population or, indeed, for minority political views in general. It is possible to make these processes more effective in this regard by actively promoting the election or appointment of sections of the population deemed to be inadequately represented but this is subject to three major defects:

- it is dependent on the political parties and the appointments commission encouraging the selection of members from under-represented sections of the population—this is by no means guaranteed;

- it can only improve representation for those sections of the population deemed to be under-represented but cannot guarantee fair representation for these sections of the population and cannot guarantee that other sections of the population, not subject to special treatment, are fairly represented;

- members selected as representing particular sections of the population will be constrained in the views and opinions they can present by the perception that they should represent those particular sections in aggregate, thus limiting the range of views being expressed under the pretence that any particular section of the population contains a uniformity of opinions.

Only random selection from the electoral register can guarantee that all sections of the population are fairly represented and that there are no constraints on the expression of minority views, whether within or between different sections of the population.

Roles of the Second Chamber

The white paper (Cmd 7438) specifies the three roles of the House of Lords as: "scrutinising legislation, holding the executive to account and investigative work". Random selection from the electoral register would enhance the second chamber's capabilities in all these roles, as described below.

Scrutinising legislation

For social and economic legislation that affects the daily lives of UK citizens, the members of a randomly selected chamber would be able to assess the specific effect of proposed legislation on themselves, their family and friends. This would provide a deeper and broader assessment of the legislation on the UK as whole relative to the assessment possible by an appointed or elected chamber, whose members would come from a much more narrowly defined section of the UK population and would not be able to provide as deep and accurate an assessment of the effect of the legislation on other sections of the population.

Holding the executive to account

As well as enhancing the capability to assess the effects of proposed legislation, the members of a randomly selected chamber would also be better able to identify omissions, misguided policy goals and other flaws in legislation than an appointed or elected chamber because they can bring a greater variety of perspectives to the task. Their particular sets of knowledge and experience give them insights that might not be available to an appointed or elected chamber, whose members are selected from a similar class of people to members of the House of Commons and are therefore less able to identify the particular errors and omissions that MPs are prone to.

Investigative work

Investigative work can take many forms but the particular form that a randomly selected chamber can enhance is fact-finding, to establish conditions in the country and the opinions of the population. There are two main tools for this purpose: social surveys and focus groups. Surveys have the advantages of a large sample size, so that their results are an accurate representation of the state of the population, and the capacity to cover a wide range of topics. However, it is expensive and inconvenient to probe deeper into the findings through dialogue with respondents. Focus groups cover that aspect of fact-finding, as well as allowing speculative exploration of policy proposals, but their conclusions may not be accurate representations of the wider population, partly because of the small sizes of these groups and partly because of possible bias arising from guidance by facilitators. A random selection of, say, 300 electors would provide an excellent compromise between surveys and focus groups, providing a sample size that is large enough to be reasonably accurate but small enough to allow debate and dialogue, essential functions of the second chamber. Such a chamber would be much more effective in this role than an elected or appointed chamber, whose members can only speculate about what the population might think or the population might want.

Professionalisation of Politicians

The professionalisation of politicians is apparent in two ways: the disproportionately large number of MPs who are related by blood or marriage (for example: brothers; father and son; husband and wife); and the growing number of MPs who have little experience of working life outside parliament or party politics (including, for example, the current Chancellor of the Exchequer and the Foreign Secretary). Such professionalisation has advantages. Politicians with these kinds of background are familiar with the rough-and-tumble of political debate, with policy issues and with the workings of parliament, all of which are very useful for parliamentary work. However, this narrow base of experience means that they are less familiar with the myriad aspects of social and economic life that govern the daily life of UK citizens. A randomly selected second chamber can counteract this by providing a wide range of in-depth knowledge and experience covering all aspects of social and economic life. An elected or appointed chamber can only provide this counterbalance to a limited extent because of the narrow class of people available for such election or appointment, particularly with regard to elected members, whose experience of life is likely to be as narrowly based as that of members of the House of Commons.

9 October 2011

The Rt Revd Dr John Inge, The Bishop of Worcester via a letter to his MP

Though I try to exercise some restraint about writing to you, I feel that I must be in touch about the issue the Reform of the House of Lords. This is not simply because I am scheduled to take a seat in the House of Lords quite soon (I am next on the list0 but because I feel that the reforms proposed in the draft bill are very significant and will have a considerable effect upon our nation. It seems to me, therefore, that debate about them is something in which we should all be involved and I hope, you will forgive me for setting out below a few thought about the proposals for reform in general and the place of the Lords Spiritual in particular.

As you may know, the bishops have welcomed the draft bill as an opportunity to debate reform of the Lords, and in his public statements as Convenor of the Lords Spiritual, the Bishop of Leicester, has made clear that we feel some reforms are necessary and overdue. However, the ultimate test of any reform is whether it helps serve parliament and the nation better. It is generally agreed that the House is too large and some reform is needed (for example, measures to enable formal retirement to tackle the size of the House). However, these could be achieved by more immediate and smaller scale measures that those set out in the draft bill. What the latter proposes is something much more radical which brings with it considerable risks.

The introduction of an elected component into the House, the case for which I would suggest has yet convincingly to be made, risks destabilising a system which generally works well. Whatever may be said, it will be very difficult

thereafter for the Lords to remain simply a scrutinising chamber since an electoral mandate would surely lead to the possibility of it challenging the primacy of the Commons. In addition, there would quite possibly be unhelpful tensions over legitimacy between elected and unelected members within the Upper House. Perhaps most importantly, there would be loss of independence and expertise available to Parliament since elected members would be more likely to toe party lines and existing members, known for their professional expertise or distinguished public service, would be less inclined to want to stand for election. The capacity of the Lords to act as a unique forum where the various voices of civil society (including the voice of organised religion) can be convened and heard would thus be seriously jeopardised.

As far as the latter is concerned, various arguments are used against the presence of the Lords Spiritual in Parliament which do not hold water and I take the liberty of setting out below a few points concerning their role. As well as reading prayers at the start of each sitting day, bishops participate across the full range of issues before the House, tabling questions and speaking in debates. They are emphatically not there to simply defend the interests of the Church of England, though when issues arise that may affect the wider interests of people of faith (e.g. poverty, overseas aid, civil liberties, refugees, child welfare etc), or where the Church has a particular stake (such as educational reform) they are able to act as informed participants in debate. Though they do not have a democratic mandate, this is surely not the only form of legitimate representation that should operate in a democratic society. Bishops by virtue of their day-to-day contact with churches in every community within their diocese, are able to speak with authority about them in a unique fashion. The Diocese of Worcester, for example, has within it 281 churches which are served by 200 clergy and as man lay ministers within whom I am in very frequent contact. As the Bishop of Leicester, Convenor of the Lords Spiritual, when debating with the Labour Humanists in January 2010 put it, Bishops in the Lords "bring to their contribution a network of connections into local communities which no other institution can begin to match, a regional perspective often lacking from the Upper House, and a framework of values which (while claiming no moral superiority over others' values) contributes to the political debate about what constitutes the common god." It might be added that attendance figures at Church of England churches remain at around one million each week. This is an attendance unmatched by any political party, voluntary association, public institution or trade union.

Bishops rarely influence the outcome of parliamentary votes, given that they constitute around 3.5% of Lords membership, are not whipped and do not act as a party (often taking different sides). Bishops take their voting responsibilities seriously and do not use them to act as a 'bloc'. The largest turnout for a single vote by bishops in recent times was for lord Joffe's 2006 Assisted Dying Bill. This saw 14 of the 26 lords Spiritual vote against the Bill (and none for), though as the majority against numbered 48, it can be said that the bishops' votes were not determining factors in the Bill failing to pass. This has not stopped secularist campaigners from claiming that the bishops 'blocked' the Bill.

Although the average collective attendance of bishops is below that for party and crossbench peers, the trend is towards increased attendance by the bishops as a whole in the past five years. There is always at least one—and usually more—bishop in the House on every day that it is sitting. I might add that the average claim for allowances from bishops is lower than that of all members of the House. The majority of bishops who attend the House do not claim the maximum entitlement to allowances.

The continuing place of Anglican bishops in the Lords reflects our enduring constitutional arrangements, with an established Church of England and its Supreme Governor as Monarch and Head of State. The bishops are a reminder that our key constitutional institutions, the monarchy, our systems of justice, education, health care and our charitable sector were all shaped by the Christian tradition and initiated by Christian motives.

Though the presence of bishops in the House of Lords is not the determining factor of the Establishment of the Church of England it is an important part of it. Establishment is unlikely to end with their removal, but it would be seriously diminished. Their removal would also be likely to trigger a wider debate about the future of Establishment and send unhelpful signals about the place of religious voices in the public square.

Dating back to Archbishop Ramsey, the Church of England's public line has always been that there should be increased representation of other denominations and faiths in a reformed House of Lords. However, obstacles to achieving more 'formal' representatives relate to identifying who are the leaders of the different faiths, how many different faiths ought to be accommodated and whether the denomination or faith allows its representatives to sit in legislative bodies. In its past submissions on lord's reform, the Church has offered to help an Appointments Commission grapple with these issues.

It will be very clear from the above that I believe that the important scrutinising role of the House of Lords should not be undermined by wholesale reform and that, further, the role of bishops in the House is an important one which should be retained for the health of Parliament and nation.

Forgive me for writing at length but I do believe that this is a crucial matter about which I wish there were signs of wider debate. I end with some questions: could you, please, give me some indication of your views concerning the following:

1. Are you in favour of a wholly or mainly elected House of Lords?
2. Are you in favour of the retention of the Bishops (as envisaged in the draft bill)?
3. What are your views about the place of wider religious representation in the Upper House?

I do hope that you have not been bombarded with too many letters like this over the course of the summer and have been able to get some break despite the appalling nature of the riots which so shocked us all. There were, at least, none in Worcester and Dudley and it may be some comfort to you to know that, whilst communities elsewhere were being torn apart, communities here were being brought together by the most successful Three Choirs Festival ever which was a magnificent example of hundreds of people, professional and volunteers, working together for the enjoyment and good of all.

22 August 2011

Lord Wright of Richmond, Baroness Butler-Sloss, Baroness Fritchie, Lord Hannay of Chiswick, Lord Janvrin, Lord Kakkar, Lord Low of Dalston, Lord Luce, Lord Ramsbotham, Viscount Tenby and Lord Williamson of Horton

As Chairman of an informal group of Independent Cross-Bench Peers, and in response to your invitation for written evidence, I enclose a submission for your Joint Committee on the House of Lords Reform. This is an updated version of a paper which we sent to the Deputy Prime Minister on 4 June last year, for the information of his Coalition Committee on Lords Reform.

A. Introduction

1. This memorandum is written in response to the Joint Committee's invitation for written evidence on reform of the House of Lords.

2. (a) We are eleven Independent Crossbench Peers who take a particular interest in the issue of Lords Reform. While formally we speak only for ourselves, we have no doubt that the views we express in this submission are shared by the substantial majority of our fellow Independents.

   (b) We use the term "Independents" to mean those Cross Benchers who are wholly unconnected to any political party and who are not, and have not in recent years been, a member of any such party or donor to, or a public supporter of, any such party. Thus it excludes, for example:

   i) members or supporters of any of the minor political parties;

   ii) Bishops;

   iii) serving Law Lords and holders of high judicial office;

   iv) those who sit on the Crossbenches because of the particular office or post which they hold.

B. Scope

3. This submission deals only with the proposals currently being considered for a second Chamber which is either wholly, or partially, elected. Thus it does not enter into the arguments for a wholly appointed Chamber; or one with a substantial proportion of appointed members. It is limited to the issue of the proper representations of Independents in a Chamber thus reformed, and does not touch on the many other issues which will arise in the Joint Committee's deliberations.

C. Assumption

4. (a) We take it as recognised and accepted that

(i) In a wholly elected House there would be no, or virtually no, Independent members because

(f) Few if any Independent Crossbenchers would have th e resources, financial or organisational, to conduct an election campaign; and the Independents as a group certainly could not mount or find a general campaign such as would be necessary to given any prospect of the election of independent members.

(g) Few of the type of people who make effective Independent peers would be willing to enter into a contested election, and they are unlikely to be the sort of people who have a widespread image among the general voting public.

(h) Only very rarely, and in unusual circumstances, has anyone independent of a political party been elected to the House of Commons.

(ii) Currently Independent Crossbenchers make a very considerable contribution to the work of the House, both on the floor of the Chamber and in the various Committees of the House.

(b) If, for any reason, one or other of these points is not accepted as self-evident, we hope that we will be informed, so that we can put forward the evidence and the arguments to support them.

5. a) For the first of the reasons in 4 above, a 100% elected house is wholly incompatible with the presence of any, or virtually any, Independent Crossbench Peers.

b) We therefore concentrate on the example of an 80% elected House, and we do so solely in relation to its direct effect on Independent Peers, without taking into consideration the general consequences of switching to a Second Chamber which is largely elected.

D. An 80% elected Second Chamber

6. a) All discussions of the composition of a reformed House have so far been founded under the premise that there would be "at least 20%" Independents (as defined above).

b) We calculate that there are at present 183 Crossbenchers who come within the definition of Independent; this is 25% of the present House of 787 members.

c) Clearly, if 80% of a reformed House is to consist of elected Peers, this is changed into "at most 20%" Independents.

d) Provided that the whole of the 20% non-elected element was to consist of Independent Crossbenchers, it would mean that for defining the Independent element

i) all members of political parties, including minor parties, would be elected members;

ii) there could be no prime ministerial appointments, or automatic appointments such as ex-Speakers, ex-Senior Public Servants, or retired Law Lords, although, no doubt, if such persons were willing to take active participation, many of them might well be suitable candidates for consideration by the Statutory Appointments Commission.

iii) Bishops (and other religious representatives) would be dealt with outside the system presently under discussion, in other words, the 100% under debate consists wholly of "Lords Temporal".

e) The entire 20% non-elected would be chosen by a Statutory Appointments Commission according to defined criteria.

7. a) In order to preserve the continued independence of these appointed persons, it will be very important to ensure that they have nothing to fear, and nothing to hope, from any current, or future, Government or any other outside influence. To this end they should e appointed for a single, fixed, long-term, non-renewable term, for example, 15/12 years.

b) To preserve a full effective quota, members should be able to retire, or to be deemed to have retired.

c) The Statutory Commission should be required to make new appointments (if there were any vacancies) at intervals of, say, 6 months.

15 September 2011

Dr Martin Wright

The function of the upper house

1. Before considering the composition of the upper house, we need to be clear about its function. This paper assumes that the primary function is to be a reviewing chamber: the House of Commons expresses the will of the people, and the upper house goes over its legislation to make sure that it is workable, compatible with human rights, and so on. It may also have other functions such as initiating legislation, pre-legislative scrutiny, asking parliamentary questions and educating the public through well informed debate.

2. A reviewing chamber needs to be, as the Royal Commission under Lord Wakeham said in 2000, distinctively different from the House of Commons, and able to bring a wider range of expertise and experience to bear on the consideration of public policy questions. It should not be a politician-free zone, but also not a creature of the political parties or a home for yet another group of professional politicians.

Problems with geographical constituencies

3. Wakeham proposed that its members should be appointed by a commission, but that is widely considered to lack democratic legitimacy and to be exposed to the risk of political patronage. The current debate therefore assumes that the upper house should be wholly or mainly elected. However, this could have serious disadvantages.

(a) If elected on a similar basis to the House of Commons, it would be likely to duplicate it, and thus not serve its purpose of providing checks and balances.
(b) If elected on a different basis, such as proportional representation, there could be conflict over which House had more democratic legitimacy when they disagreed.
(c) In any case, if based in geographical constituencies, the candidates would be chosen in much the same way as for the House of Commons, by local or national political parties or by a party list system, which puts the selection in the hands of politicians and allows voters little choice. There would be no guarantee, or even likelihood, that these candidates would bring any wider expertise, beyond the skill, shared with MPs, in persuading people to vote for them.

4. This is by implication admitted by those who advocate a hybrid system, with 20 or even 50 per cent appointed, to make up the expertise deficit among elected members. That seems to be the worst of both worlds: the expert members would not be elected, and there would be too few of them to reflect the breadth of knowledge and experience required; the elected ones would not have the breadth of expertise that the House needs.

5. For all these reasons, a system producing an upper house largely on party political lines would be a serious mistake.

A way forward: elected *and* expert

(a) Electoral colleges

6. There is considerable interest, as Wakeham found (paragraphs 11.17-11.25), in finding a way for various specified vocational or other interest groups to be represented in the chamber. One proposal is for the Chartered Institutes and leading voluntary organizations to put forward persons of distinction from their profession or specialist field. Wakeham saw practical obstacles to this. It could be difficult to reach agreement on which sectors of society should be represented. It might not be appropriate to appoint particular office holders, who are often elected on an annual basis, and such posts may be in the gift of a small and unrepresentative group within the organization. If the organizations in question were required to observe specific standards of democracy in the appointment of their

office holders, this could be seen as unacceptable intrusion into the internal affairs of those organizations. Perhaps the most significant objection is that those who do not belong to a recognised professional or vocational group would be disenfranchised.

(b) Constituencies of expertise.

7. It is proposed that these difficulties could be overcome if the interest groups did not select the members of the upper house directly, but would propose candidates from among whom the members would then be elected by the general electorate. The interest groups would thus work in a similar way to constituency committees which choose candidates for Commons seats (and would be no less democratic, since constituency committees are largely self-appointed).

8. The details could be arranged in different ways, but if for example the Senate (as it may be called) had 300 seats, these could be grouped in, say, 30 constituencies averaging about 10 seats. Relevant organizations in each field which could demonstrate 'pre-eminence, stability and permanence' would be invited to get together and make proposals for defining the constituencies, to a body similar to the Boundaries Commission; the groupings could be adjusted from time to time. They would represent the main fields of activity which governments have to handle: agriculture, commerce and industry, education, health, women's issues, the arts, sport and so on, but these groupings would also include important subjects on which expertise is needed such as statistics, climatology, geography, architecture, ethics. Politics would be included, as Wakeham recommended, and religion; some seats would also be allocated to regions of the country.

9. In each constituency, the relevant organizations meeting agreed criteria would select one or more candidates. To prevent powerful groups within professions from monopolizing the process, it would also be possible for independent candidates to stand; as a safeguard against frivolous candidates, there would be a requirement for a substantial number of sponsors, which would be more effective than a cash deposit.

10. As an election approached, 30 booklets containing all the candidates' professional CVs and other interests would be compiled and made available in post offices, libraries and on-line. Candidates would be asked to present their qualifications in a prescribed format, to make it easier for voters to compare them; the focus would be on their achievements rather than on promises. Voters could then select the constituencies of most interest to them and compare the candidates. On polling day they would decide in which constituency to vote, vote for their preferred candidate at a polling station, and be marked on the voters' register in the usual way. Postal voting would of course also be an option.

Possible objections

11. (a) The necessity for voters to take active steps to find out about candidates might result in a low turnout; but if this meant that the upper house was elected by people who had given some thought and taken some trouble, it could be no bad thing.

(b). It has been suggested that each topic would be dependent on only one expert; but experts have interests in fields related to their own, in addition to their leisure activities, voluntary work and so on (which they could list in the election booklets). On many topics a house elected on a geographical basis might not have even one.

(c) It could be difficult to agree on a candidate for a particular seat; in that case, more than one candidate could be put forward, for the voters to decide. If they could not even agree on that, the seat would be left vacant.

(d) Wakeham suggested that it is demeaning to think of human beings as merely the sum of their 'interests.' This could be overcome by allowing each person, say, three votes, to reflect their work, leisure and family, and community interests.

e) There could be controversy about the allocation of the constituencies themselves. Requiring organizations to come together to make proposals to the Boundaries Commission would put pressure on them to agree among themselves. In most cases a win/win solution could be negotiated through mediation; there would be a procedure for dealing with any which could not be thus resolved.

Advantages

12. (a) Candidates would be selected by those who knew the best people in their field, and then voted for by universal suffrage.

(b) Politicians would be represented, but the nomination of candidates would not be in their hands, except in the constituency for political affairs, so that the House would not be dominated by party political rivalry.

(c) There would be a constituency for faith groups, where the Church of England would have a say, among others, in the selection of candidates, but not a disproportionate number of seats, and not necessarily a bishop.

(d) Organizations supporting the interests of minorities, people with disabilities and so on could group together to propose constituencies to represent them.
(e) This system would bring into the upper house people with expert knowledge and experience such as is possessed by few politicians; such people would be unlikely to offer themselves to the rough-and-tumble of the hustings, or to get elected if they did.
(f) All subjects relevant to government would be comprehensively covered in the upper house by design, rather than a random number of them by chance.

October 2011

The Viscount Younger of Leckie

For the Attention of the Committee

I wish to submit my views on the future make up of the Lords for your consideration in your discussions on House of Lords Reform.

Elected or Appointed?

My strong preference is for an appointed and not an elected Upper House. A wholly or partly elected House of Lords would destroy the delicate and effective Constitutional balance between both Houses: the Commons as the Executive, where (soon to be) 600 Members are elected by the people, for the people; and the Lords whose prime role is to scrutinize and tighten legislation without the diversion of "vested interests" including being answerable to an electorate in constituencies around the UK.

There is no question that a new Lords or Senate made up of elected Senators would make for a less effective Upper Chamber: Senators would be too distracted by constituency demands, they would become too politicised (akin to MPs) and it would be necessary to pay salaries and allow for staff which would make for a more expensive alternative to the status quo.

It is important to decide what the appropriate method is for entry to the Upper House to ensure that its effective purpose is fulfilled within the Constitution. It is irrelevant and inappropriate to wholly change: to create an elected process just to appease the public in presenting on a platter a fully democratic system, which so demonstrably seems to be the case in the proposals outlined in the draft bill; from this direction there is no evidence of a public clamour.

Appointments Commission

To avoid any criticism of appointment by patronage where an Appointments Commission is a group made up of a small number of people, I believe there should be a panel system. This would involve a limited number of appointment panels set up to represent key sectors nationally in the UK: eg: industrial, financial services, agricultural, charitable, medical, sporting... to name a few. Names of potential members of the House of Lords could be submitted (with CVs and proposed party allegiance) to these panels for initial scrutiny. The Appointments Commission, made up of the Chairmen of each sector panel, would then decide who to appoint from a short-list.

I do not believe this would be either a lengthy or costly process. It would certainly be considerably cheaper than running full elections for the Upper House around the UK in constituencies (as at the General Election)

The result would better ensure a national coverage in the Lords in breadth and depth, by designated sector. It would have the broadest coverage in that any individual could be put forward for consideration to the sector panels which would then assess and select for consideration to the Appointments Commission. It is also highly relevant to appoint on the basis of seeking out the best people in terms of their expertise, sector or "issue" knowledge and not on the basis of geographical representation.

The question then arises as to who appoints the sector panels? I believe the government of the day must decide but there should be a process of cross party consultation and agreement of proposed names to avoid accusations of party bias or lack of balance.

Size of a future House of Lords

The House must be effective as a revising body; it needs to be full of enough peers at any one time who carry the depth and breadth of experience and knowledge necessary to scrutinize legislation whatever sector, ministry or subject is being debated or considered.

The current size at over 820 is untenable beyond the main reason of the strain on House of Lords facilities. Even at times of crucial votes and maximum whipping (excluding for this purpose the crossbenchers and Bishops) the House has barely reached 550. Consequently I believe the total numbers should not exceed 500.

The proposed figure in the White Paper states 300. I believe this is too low on the grounds that from this number it is likely that considerably less might appear at any one time due to illness, travel, or diverted by other business. This would be too low a number to provide the effective breadth and depth of scrutiny required, not least if there was business in the Chamber, Moses Room or elsewhere going on at the same time. A certain quorum of peers is required to ensure the full and effective work of the Select Committees and the All Party Groups.

In conclusion I therefore believe that 400 represents an optimum and appropriate number for the Upper House. I offer no solution as to how you proportion the numbers of peers on each bench, between parties and crossbench; however I am comfortable with the figure of 12 Bishops.

Length of Appointment

I do believe that it makes sense to appoint peers for a limited period. I see 15 years as reasonable (This view for appointment only, not election). This is on the basis that a contribution can be seen to be meaningful over such a period bearing in mind the longevity of certain issues debated or discussed. More importantly, it is highly desirable in the Upper House to have continuity for building a "library" of experience and knowledge; "people assets" are required in the Upper House over the longer term not just for scrutiny purposes but for process and procedural reasons.

On the basis there is a compelling argument for the "peer for life" decision. However it is not in the peers' interest, or in the public interest, for a peer to remain a member if he or she is unable to contribute through long term illness, old age, or permanent disinterest.

A Peer can withdraw from the House but in reality this rarely occurs. I suggest a more formal and pro-active approach, for clarity, as to who is a working member and who is not.

It makes sense to have a 15 year term after which each position becomes vacant. If the peer seeks to continue, the first stage is that all members of the peer's party (or crossbench) then vote (secret ballot) on whether the peer in question should remain—for a further 15 years; if so carry on as before. If unsuccessful then the peer has to retire and the appointments panel is consulted to fill the vacancy.

In this way there is no perceived ageism or automatic age threshold for retirement. For example, if a peer reaches, say 67, after a 15 year stint and is voted by his party (or crossbench) peers as fit to stand for a further 15 years (therefore up to age 82... and it is noted that there are a few vigorous 80 year olds in the Upper House!) then well and good.

Hereditary by-elections

I entered the House as a result of a successful hereditary by-election. Although I am grateful for this, and the enabling process, I recognise that reform is required in that the by-election process is an anachronism; if retained it would maintain, undesirably, the two-tier process of entry.

I believe that the Upper House was effective pre-1999 in that it was largely made up of Members in their place as a result of an inheritance, but nevertheless representing a considerable breadth and depth of experience and knowledge. We must now move on and the best way to replicate is to utilise and expand on the appointments principle and process.

I believe that, were the House to be elected, it would be a narrower and shallower house made up more of those seeking political careers and of those with more political backgrounds. In addition the danger is that candidates could be largely confined to only those comfortable in seeking election and running a campaign. The question has to be asked: how many of the candidates who <u>should</u> be on the short list would in reality present themselves if election rather than appointment was the chosen entry method?

Conclusion

I feel certain that a move to an elected House, with the ensuing upheaval and change of personnel, is not reform; it is the dismissal and consequent abolition of the Upper House; as such it is a dangerous experiment with our unique Constitution.

I believe that the provisions in the Steel Bill broadly reflect my views and this Bill represents the best measured and sensible way forward for reform at this time.

26th October 2011

Nadhim Zahawi MP

I would like to register on record, my concerns regarding the draft House of Lords Reform Bill.

It is clear that when the direction of travel across Government is, as is laid out in the foreword to the draft bill "to move power from the centre to the people", that it is important that we consider accountability and modernisation in the second Chamber.

Modernisation and reform is after all not something that can be ignored, be it in the sitting hours of the Commons or the working practices of the Second Chamber, however I feel that we must question what form modernisation should take.

The underlying argument of the House of Lords Reform Bill is that more elections equals modernisation. However that simply is not the case, modernisation can in fact take many forms, all of which could improve accountability and function, without having to lose the detailed and expert knowledge that currently exists in the second Chamber.

It is the unique nature of the way members are appointed to the House of Lords that makes it possible to find a world renowned expert on any topic there. An individual or group of individuals who, without the need for briefings or preparation from staff, can speak eloquently and with great knowledge on any legislation that comes before them. It is this unique mix of knowledge and skill, which is found no where else in government, that has enabled the Lords to, again in the words of the draft bill's foreword, "Serve the country with distinction"

I have significant concerns that the proposals for a primarily elected Lords, as put forward in the draft Bill, will lose this great and ever evolving bank of knowledge, and replace it with merely a sub-standard imitation of the House of Commons.

I would therefore urge you to consider not just the content of this Bill, but whether it's underlying argument that modernisation must equal elections is correct.

11th October 2011

Zoroastrian Trust Funds of Europe

The Zoroastrian Trust Funds of Europe is the oldest religious voluntary organisation in the United Kingdom of South Asian Origin. This Association is the principal Zoroastrian organisation representing the Zoroastrian community in the United Kingdom. Please convey to the Joint Committee on the draft House of Lords Reform Bill:

1. The Zoroastrian community is extremely concerned that if Parliament were eventually to decide for a 100% elected House then there would not be a 'voice of the faith community', because in a 100% elected second chamber there would not be room for the Lords Spiritual, or even for that matter leaders or representatives of other world faith communities that make up the unique multi faith and inter faith landscape in this country.

2. The Zoroastrian community full heartedly supports parliamentary democracy in this country and globally. But it is very mindful that minority faith communities like us could be marginalised in a 100% elected House of Lords. Thus we urge the Joint Committee to include faith leaders / representatives in the House of Lords who may not be elected by the people, but are representative leaders in their respective faith communities. By not having faith

representation in the post reformed House of Lords would risk depriving our nation of a unique forum within which the voices and concerns of all stands of civil society are able to be convened and heard.

12 October 2011

List of unprinted evidence

The following material have been reported to the House, but to save printing costs is only available on-line and in the Parliamentary Archives:

Liam Finn (part of his note)

National Secular Society: appendix 2

Unlock Democracy: appendix 2

The following material has been reported to the House but has not been printed. Copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

Names of those contributing to the Unlock Democracy e-consultation