

# **House of Lords 'Reform': Recent Proposals**

**Research Paper 97/28**

**17 February 1997**



'House of Lords reform' has become a major issue between the Government and Opposition parties, both in the context of the general debate on 'constitutional reform' (on which see Research Paper 96/82, *The Constitution: Principles and Development*, 18 July 1996), and in relation to the Upper House's possible attitude to such controversial 'reform' legislation if there is a change of government after the forthcoming election. The general questions of the role and function of a second Parliamentary chamber, including the precedent question of unicameralism and previous attempts at change, were considered in Background Paper 297, *The Other Place: second chambers and the House of Lords*, 7 September 1992, and are not repeated here. This Research Paper examines the current debate on proposals by the Opposition parties to change the composition and role of the Second Chamber, in particular Labour's immediate proposal to remove the hereditary element from the membership of the House of Lords.

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## Summary

"The House of Lords is the most eminent existing example of representation without election" - *Benjamin Disraeli, 1835*<sup>1</sup>

The House of Lords, especially its composition and powers, has become, yet again, a major issue in British politics, mainly due to the Labour Party's proposals for changes in its composition, and speculation as to the Upper House's possible attitude to 'constitutional reform' legislation that may be brought forward in the next Parliament.

Briefing on a second chamber in general, and reform of the existing House of Lords in particular, was provided in Background Paper 297 *The Other place: second chambers and the House of Lords*, 7 September 1992. This Research Paper seeks to summarise recent proposals for changes to the composition of the Upper House, and reaction to these policies. The issue of the powers of the Lords as such is not considered directly here, although issues such as its legislative powers (and notions such as the 'Salisbury Doctrine') are inevitably woven into the current debate. It is hoped that a further Research Paper on the House's legislative function will be produced in the near future.

This present Paper examines the stance of the major parties to the House of Lords, concentrating inevitably on the main focus of the current debate, Labour's plans for a two-stage reform starting with the removal of the hereditary element. Peers other than party leaders and frontbenchers have also made contributions to the present debate, not only in set piece occasions such as the major Lords debate last July, but also through their own publications. In addition the contribution by the Constitution Unit (a research body which has produced a number of reports on topical constitutional issues recently) to the discussion is considered here, as it has, to some extent, set the agenda and tone of the debate in its current form.

A bibliography of relevant material on the current discussions, and on the issue of Lords reform generally is also provided at the end of this Paper. An appendix reproduces the latest breakdown of the composition of the House of Lords.

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<sup>1</sup> "A Vindication of the English constitution", in F. Hitchman (ed.), *Lord Beaconsfield on the constitution*, p.136

## CONTENTS

	Page
<b>I The current 'reform' debate</b>	<b>5</b>
<b>A. The Labour approach</b>	<b>5</b>
<b>B. The Conservatives' approach</b>	<b>7</b>
1. The Prime Minister's June 1996 CPS speech	7
2. Viscount Cranborne's December 1996 Politieia speech	8
<b>C. The Liberal Democrat approach</b>	<b>12</b>
<b>D. The Constitution Unit Report, April 1996</b>	<b>13</b>
<b>E. The Lords' constitutional debate, 4 July 1996</b>	<b>16</b>
<b>F. Other Peers' approaches</b>	<b>22</b>
1. The January 1997 Fabian paper, <i>Destiny not defeat</i>	22
2. The Earl of Carnarvon's group's 1995 report <i>Second chamber</i>	24
3. Lord Skidelsky's proposal	28
<b>II Recent Bibliography</b>	<b>29</b>
 <b>Appendix:</b>	
<b>House of Lords: current composition</b>	<b>30</b>

## I The current 'reform' debate

"Textbooks often list 'arguments for and against the House of Lords', as though its survival were somehow the outcome of rational debate. In fact, the peers' continued existence is simply the consequence of lack of agreement as to who, if anyone, should take their places." --- *Andrew Adonis, 1994*<sup>1</sup>

### A. The Labour approach

The Labour manifesto for the 1992 general election contained the following section on the House of Lords:

Further constitutional reforms will include those leading to the replacement of the House of Lords with a new elected second chamber which will have the power to delay, for the lifetime of a Parliament, change to designated legislation reducing individual or constitutional rights.

Following the election, policy on the House of Lords was reconsidered, as explained in John Smith's 1993 Charter 88 speech:<sup>2</sup>

I share the widespread desire in the Labour Party to see the House of Lords replaced with an elected Second Chamber. I can see no possible merit in the continuance of a system which allows people to participate in the passing of legislation on the basis of a hereditary principle dating from the Middle Ages.

The future of the House of Lords is one of the issues being considered by the Labour Party's Constitutional Committee chaired by Tony Blair and Richard Rosser. This was set up last autumn and it will report to our annual conference in October this year with what I hope will be a new and radical constitutional agenda for the twenty-first century.

The party's proposals were published later that year:<sup>3</sup>

We do not believe there is any justifiable case for the Second Chamber in its present form. The sight of hereditary Tory peers wheeled out to vote through controversial legislation when entirely immune from electoral account, is a constitutional outrage. Of the 775 hereditary peers only 13 take the Labour whip. We believe the House of Lords in its present form should be abolished. Nevertheless, we still believe that there is a powerful case for a bicameral rather than uni-

cameral legislature. The House of Lords, even in its current form, is a valuable revising chamber, its debates are often of high quality precisely because of the different experience of its members, and a second chamber is a necessary and important check on the power of the first. But it must be made democratically acceptable. We therefore propose replacing the House of Lords with an elected second chamber.

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<sup>1</sup> *Parliament today*, 2nd ed., 1994, pp261-2

<sup>2</sup> *A citizens' democracy*, speech by John Smith, 1.3.93, transcript, p.20

<sup>3</sup> *A new agenda for democracy: Labour's proposals for constitutional reform*, 1993, p.35

## Research Paper 97/28

As a first step, the hereditary peers should not be able to sit and vote in the House of Lords. We should then begin the process of introducing proper democratic elections

We have considered the question of changing the House of Lords' powers. The greater the degree of democracy, then obviously the stronger is the justification of power. However, we do not at present favour any substantial change to

its position as a revising chamber. The prospect of a second chamber challenging or replicating the power of the first, would produce instability and inefficiency and is to be avoided. But this is again something that can be discussed further. Lord Dormand is presently chairing a committee of members of the House of Lords to examine reform of the Lords and he will report to our commission in due course.

Tony Blair, on behalf of the NEC, described this proposal in the 1993 conference debate on constitutional reform:<sup>4</sup>

The idea of hereditary peers in the House of Lords, in varying stages between life and death, deciding issues of vital importance to the ordinary people of our country is an insult to modern democracy. Labour will abolish the House of Lords and replace it with a proper democratically-elected second chamber with a new electoral system to go with it.

As leader, at the following year's press conference, Mr Blair said:<sup>5</sup>

And we will make history by ending the ancient and indefensible privilege of hereditary peers voting on the laws of this land.

Mr Blair, in his *Economist* article on constitutional reform, denounced the "absurdity of the hereditary element" and stated that "it delights and astonishes me that we are about to fight an election in which the Tories will be defending the right of ancestral dukes, marquesses, earls and barons to make the law in a modern democracy. And this is in a society that John Major claims he wants to make 'classless!'"<sup>6</sup>

Labour will remove the right of hereditary peers to sit and vote in the Lords and introduce a more open system for nominating life peers. We will consult widely about an appropriate second-stage reform, but we should be clear that removing the absurdity of the hereditary element will be a huge step forward in itself.

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<sup>4</sup> 1993 Labour Party Conference report, p.182, 30.9.93

<sup>5</sup> 1994 conference report, p.105

<sup>6</sup> "Blair on the constitution", *Economist*, 14.9.96, p.34. See also the recent party document, *Leading Britain into the future*, p.15. A recent press report suggested that the Queen was 'relaxed' about Labour's plans, following consultation between the party and Buckingham Palace: *Sunday Telegraph* 16.2.97

The Shadow Home Secretary, Jack Straw, published a report last December "analysing the privileged background and political importance" of the Conservative hereditary peers.<sup>7</sup> He claimed that of the 402 such peers he identified:

- Almost three-quarters went to one of six top public schools, 228 going to Eton alone;
- Almost half went to Oxbridge colleges;
- Only three are women;
- Three hundred and twenty exercised their right to sit in the Lords in the last session.

He also claimed that "the Government has had to rely on their hereditary peers to pass unpopular legislation such as the poll tax ...", and said that his report showed both "how ridiculous" Lord Cranborne's recent defence of the hereditary peerage had been,<sup>8</sup> and "demolishes John Major's claim that he wants a 'classless society'". He declared that "it is simply unacceptable for modern British democracy to be conducted in this way. That is why we are committed to removing the right of hereditary peers to sit and vote in the Lords," and pointed out that a Conservative party review of the Lords had accepted that the status quo was not an acceptable policy for the Upper House.

## **B. The Conservatives' approach**

"Of course, the justification for continuing the present arrangements is that they work ... I assert that this House works, and works well" -- *Viscount Cranborne, 4 July 1996*<sup>9</sup>

### **1. The Prime Minister's June 1996 CPS speech**<sup>10</sup>

In his speech, John Major attacked the Opposition's proposals (pp10-11):

For example, some have suggested removing hereditary Peers' voting rights, and developing the House of Lords in some other way.

But if you actually look at what the House of Lords does in its Parliamentary role, it is hard to cast it convincingly as the villain.

Has the House of Lords been overstepping the mark with the House of Commons? Of course not.

Has it been showing bias over the years, dispensing favour to one political party in Government and refusing it to another? Not at all.

So what precisely is broken, that needs to be fixed?

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<sup>7</sup> *Tory Lords-a-leaping: the background and power of Tory hereditary peers*, 30 December 1996. The following extracts are from the accompanying Labour Party press notice. His attack on the position of the Duke of Buccleuch, in particular, led to much press comment

<sup>8</sup> See section B2 below

<sup>9</sup> HL Deb vol 573 c.1584

<sup>10</sup> Conservative Party PN 374/96, 26 June 1996. In his speech to the Conservative Welsh Conference on 14 February 1997 Mr Major asked: "How would 700 placemen be more democratic than the present House of Lords? If they aren't appointed, how would they be elected? Would they still have just the same powers as the present House of Lords, or would they be given new ones?"

## Research Paper 97/28

I find no convincing answers to these questions, To people who say that a House of Lords with a strong hereditary element is an anomaly, I say that it works. The fact is that the House of Lords has been far more elective than many overseas equivalents as a revising Chamber. But precisely because the Lords has no rival democratic mandate, the supremacy of the elected Chamber is guaranteed.

And what, anyway, are the alternatives?

A wholly appointed House of Lords? Is that more representative?

Or is it to be another elected Chamber? If so, how? And if we had two elected chambers, how would we avoid a situation where the two Houses are pitted against each other in legislative gridlock, or the executive plays one Chamber off against the other?

I believe passionately in the House of Commons as the vital link between Government and citizen. That is why I don't want to see it weakened by the establishment of a competing elected body.

### 2. Viscount Cranborne's December 1996 Politicia speech<sup>11</sup>

The Leader of the House of Lords ranged in his speech over much of the ground he had covered in the Lords debate on the constitution the previous July.<sup>12</sup> In particular he emphasised the effect that Lords reform would have on the House of Commons (p2):

By definition a reformed House of Lords would enjoy greater authority than the existing chamber. In a system of parliamentary government, enhanced authority confers enhanced power. A reformed second chamber would therefore become a more powerful chamber. It would be conscious of that enhanced power and it would be disposed to exercise that power, perhaps not immediately, but increasingly.

There is only one institution which could yield a measure of enhanced power to a reformed House of Lords: the House of Commons. To the extent that the reformed House of Lords became more powerful, the House of Commons would become less powerful.

He suggested therefore that reform of the Upper House should be undertaken as part of a comprehensive reform of Parliament, and that a Commons select committee should explore the options. He thought this would be preferable to Labour's 'two-stage' approach, attacking the first stage -- the removal of the right of hereditary peers to sit and vote -- because "it would create the greatest quango in the land in Parliament itself", and the second for its vagueness. Because of the likelihood of an absence of consensus over the second stage, "we are therefore quite likely to be stuck with stage one for the foreseeable future with all the increased powers of patronage that would deliver into the hands of the Prime Minister of the day" (p3).

Viscount Cranborne examined the case for and against the hereditary principle. He admitted that "the spirit of the age is not instinctively sympathetic to hereditary constitutional rights"

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<sup>11</sup> Conservative Party PN 762/96, 4.12.96. See also S Heffer, *The end of the peer show?*, Centre for Policy Studies, 1996

<sup>12</sup> see section E below

but thought that there were "pragmatic arguments on the other side." Active hereditary peers were "not obviously less virtuous ... neither are they obviously less able" than MPs. Further in an age of the professional politician, which has led to the increased power of the front benches, and to the public's increasing contempt for politicians, there was a place for the amateur, who, while never wholly disinterested, "is less interested in climbing the greasy pole than the professional. It is helpful to the body politic for Parliament to contain a body of amateur politicians. The only such body we now have is the hereditary peerage and it is a body chosen by lot."

This body of peers, he claimed, did not conform to the public stereotype of the "collection of chinless wonders who live on their broad acres shooting and hunting anything that moves, weak in the arm and weak in the head: people like me in fact." The proportion of traditional landowners among the hereditary peerage, while high, was falling rapidly. He continued (p5):

Increasingly the amateur politicians who make up the hereditary peerage are coming to represent the common man in Parliament. As I say the process is not yet complete, but it is accelerating. They owe no favours to patronage. They are not paid. They do it for its own sake, dare I say it, from a sense of duty and of privilege. They are not a group to be despised in an otherwise specialist House of Lords and in a bicameral legislature dominated by an elected chamber composed of professional politicians.

Turning to the Tory majority in the Lords, Viscount Cranborne emphasised the number of life and hereditary peers who "do not come to the House of Lords at all [or] very little." Some, in either category, only participate when a subject in which they have a particular interest or expertise is being discussed, and could technically be regarded as backwoodsmen, a species of peer often criticised as providing the Tory majority in critical votes. He claimed that (with the help of the Lords Information Office) he could not find "a single instance in the last thirty years when [government chief whips] flooded the House with peers who did not know their way to the bar in order to save the government's skin" (p6). He accused Labour of inconsistency in attacking the Government for seeking to overturn Lords defeats on matters approved by the elected Lower House while "it simultaneously threatens the House of Lords with all kinds of retribution should it dare defy the will of a Labour government validated by an elected House of Commons". (p7)

Further, he produced figures<sup>13</sup> to show that there was "no longer an in-built Tory majority in the House of Lords from the peers who attend regularly and frequently, or regularly but infrequently" (p7). The hereditary peerage made up "only 13%" of the Labour benches compared with 68% of the Conservative side, 41% of Liberal Democrats and 61% of Crossbenchers. The Conservative hereditary proportion was "not such a glaring discrepancy" compared with the figure of 58% of the House as a whole: "I know that the Labour Party tries to brainwash us into believing that, because hereditary peers do not support Labour, they

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<sup>13</sup> He calculated 460 Conservatives and 601 others

## Research Paper 97/28

are Tory, and so are - by definition - illegitimate. I simply do not believe that the figures bear out the thesis that the hereditaries are so disproportionately Tory" (p.8). There were 314 Conservative hereditary peers and 300 other hereditary peers, "not so disproportionate as Labour would have us believe." Citing the Conservative turnout of 236, out of a possible 460, in the last three-line whip, he claimed that "the idea of a monolithic block of Tory peers swamping out the House becomes a figment of Lord Richard's imagination." The attendance and voting intentions of Tory peers, especially the hereditary peers, are, from a whip's point of view, unpredictable, and they are likely to be swayed by the debates.

Viscount Cranborne did admit that there were more Tory peers than Labour peers: "That much is clear." However bald comparisons of the number of Lords defeats inflicted on recent Conservative and Labour Governments were not entirely valid, partly because of the difference in the size of the Commons majorities between the 1974-79 and 1980s periods. Citing Lord Richard's claims about the number of defeats which would have been inflicted on recent Tory governments if only life peers voted, Viscount Cranborne asked if a similar number of defeats of a Labour government would be any more acceptable under a post-'stage one' Lords with, as envisaged by the Labour proposals, no overall government majority. Such a House would have greater authority, and be less restrained, thereby making it more difficult for a defeated government to seek to overturn their decisions in the Commons.<sup>14</sup>

Indeed, it is not clear what Labour wants. Does it want a House of Lords which is more independent than the existing House, or one that is subservient to a Labour Government? If the latter, a reformed and therefore more powerful House of Lords might give them a bit of a shock.

He turned to the convention of Lords restraint in the face of manifesto legislation, known as, in his phrase, the 'Salisbury/Addison doctrine', first enunciated by his grandfather, the Marquess of Salisbury, in the Queen's speech debate in 1945. Far from renouncing the doctrine, he commended it to his audience (pp 10-11):

It is a doctrine that has become accepted in constitutional circles: so much so that it has come to be known as the Salisbury Convention: that is, it has been raised in the language of politics into a constitutional convention. That means that it is definitely part of our constitution. I certainly regard it as such, and so does our party.

In the fifty years since 1945, the House of Lords has never opposed measures proposed by any Government in the manifesto on which it was elected.

In my view it follows that it would be - in my grandfather's phrase - 'constitutionally wrong' - for any party or individual to suggest that, whatever the outcome of the General election, this convention would not hold. It would be implicitly to accuse the House of Lords collectively of being willing to act unconstitutionally.

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<sup>14</sup> p.9. He also pointed out that the only instance of a use of the Parliament Acts since 1947 has been by a Conservative Government, over the War Crimes Bill

I can think of no reason for making such an accusation, except to bolster a case for reform of the House of Lords by scare tactics: that is, to make the absurd suggestion that the Lords would seek to oppose the will of the people expressed in a General Election and thereafter, through the House of Commons.

A differently constituted House of Lords might do that. After all, by definition a reformed House of Lords would take power and authority from the House of Commons and, as I said a moment ago, being tempted to use it, might succumb to temptation.

The Salisbury convention started as a compact between two parties one of which enjoyed a commanding majority in the House of Lords. By extension we now recognise that the convention has become more than that at a time when the House of Lords no longer has a built in majority of any party as a result of the reforms which rejuvenated the House of Lords in 1958 and 1963 by introducing Life Peers and women. It has now become a further limitation on the powers of the House of Lords in its relationship with the House of Commons, whatever government is in power.

Now I'm very happy to see well established practices accepted as constitutional conventions, as I think I have made clear. I am sure therefore that the Labour Party will welcome what I have said today about the Salisbury/Addison accord. After all, they will think it suits them.

He contrasted his support for established convention with apparent Labour willingness to alter settled convention -- which he named the 'Attlee Convention' -- on the taking of committee stages of major constitutional bills on the Floor of the House of Commons, for to do so "would be to show contempt for Parliament, for controlling the Executive, and for the freedoms of the British people" (p12).

The Leader of the House believed that the present Lords had worked well since the last reforms of 1958 and 1963 (p12):

It performs its day to day functions better than well as a revising chamber, as a court of final appeal for matters not delegated to the EU, as a way for experts and the common man to make their voices heard in Parliament. It is expanding the range of its select committee enquiries and is seeking to publicise them further. Its select committee reports are read by experts everywhere already. They should be more widely read by the general public. We are also expanding our revising role by closer scrutiny of the technicalities of legislation. By establishing the Delegated Powers Scrutiny Committee we are not only providing a mechanism for policing the institutionalisation of Henry VIII clauses that the Deregulation Act represents, but a mechanism for policing delegated powers in primary legislation generally.

I am pleased that the Government has responded instantly to the Delegated Powers Scrutiny Committee's reports so far. I regard this as a useful precedent which, if continued by governments of all denominations, will make a considerable contribution both to the quality of legislation and to Parliament's control over the executive just where that control is most difficult and most important: the detail.

However, notwithstanding his "spirited defence of the status quo", he was not against reform in principle, and applied this to Lords scrutiny of any reform legislation (p.13):

If the electorate and the House of Commons want to reform us, the Salisbury Convention would apply. This means that the House of Lords would not vote against the second reading of a bill whose principle had been set out in a new Government's manifesto. We would still have a constitutional obligation to improve the quality of any legislation by amending it in detail insofar as we think this is justified.

## Research Paper 97/28

Any proposals must be thought through with care and they must surely give some confidence that the new arrangements will work at least as well as our present ones.

He concluded by claiming that his remarks were "designed to be a helpful and constructive contribution to the debate." He believed that the Conservatives, unlike Labour, believed that there were higher policy priorities than Lords reform, and warned his opponents (p.14):

In doing so perhaps they would also remember that the House of Lords has one function as a House of Parliament that is more important than the others that I have discussed this morning. That function is to ask the House of Commons, on behalf of the electorate, to think again. That is the vital purpose of a second chamber. It has always been important. It is perhaps even more important in an age of voluminous and often hurriedly prepared legislation.

Any House of Lords therefore cannot be the House of Commons's poodle. What it can be is like a trusted independent adviser to the headstrong head of a family. The adviser cannot prevent him ruining himself but he can warn and once at least ask him to reconsider. And in that context it is not for the House of Lords to provoke a confrontation with the House of Commons in which the people support the Commons. We do better when it is clear the people support the House of Lords in asking the House of Commons to think again."

### C. The Liberal Democrat approach

The party's policy was summarised in its 1996-97 policy briefings: "Liberal Democrats would transform the House of Lords into a directly elected 'Senate', to represent the nations and regions of the UK, with a minority of unelected non-voting members to reflect wider expertise and experience."<sup>15</sup> This was set out in more detail in the party's *Constitutional declaration*:<sup>16</sup>

#### *Transforming the House of Lords*

9. The reformed second chamber will have some 300 members, at least two thirds of whom will be elected for six year terms to represent the Nations and Regions of the United Kingdom; the remainder will consist of members who will be appointed for 12 year non-renewable terms by a joint committee of both Houses of the Westminster Parliament from persons offering a broad range of experience in matters likely to come before the Westminster Parliament.

10. The reform will be made in two stages, but will be introduced by the same Act of Parliament. For an interim 4 year period the Second Chamber will have 500 members indirectly elected to reflect the strength of the parties at the last election, as to 200 members by the existing peers and 300 members by the House of Commons, providing that 20% will be cross benchers.

11. The Second Chamber will in addition to its present functions have special responsibilities in representing the interests of the Nations and Regions of the United Kingdom, in acting as a constitutional watchdog, in overseeing United Kingdom quangos and for scrutinising proposals for European Union law-making.

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<sup>15</sup> *The heart of our democracy*, policy briefing 6, Aug 1996

<sup>16</sup> Aug 1996, p3. See also chap 5 of *Here we stand*, Federal White Paper 6, 1993, and, for a draft legislative version, see *The Great Reform Bill 1997*, 1996, part 4 (this includes for example, a PR system of election)

## D. The Constitution Unit Report, April 1996<sup>17</sup>

The Unit's *Reform of the House of Lords* was a substantial contribution to the debate. As with all their reports, the Unit's analysis takes as its starting-point the reform proposals of the major parties, and considers the means whereby such proposals can be implemented. So, for example, the idea of unicameralism, a necessary initial consideration for any fundamental consideration of a reformed second chamber, is not examined in any detail. The report does recognise, however, that there is no consensus on an 'ideal' second chamber (p.4):

One of the difficulties in identifying the "ideal second chamber" is that there is no agreed role for a second chamber within the British parliamentary system nor any clear idea of the intended relationship between the two Houses of Parliament to use as a starting point. The second chamber is variously defined as a constitutional protector, legislative reviser, and a source of independent counsel and expertise.

It accepts that "many, although not all, of the reasons given for maintaining a second chamber are derived from the de facto pursuits of the House of Lords rather than from any more fundamental analysis of the necessary functions of parliamentary government." These are often the consequences of criticisms of the role and function of the Commons, which "are just as much reasons for the reform of the first chamber as justifications for a second chamber." Without some consensus as to the role of a second chamber, "there can be little agreement on whether the current House of Lords is working as well it might, and therefore whether and how to fix it." While most debate over the Lords tends to begin and end with its composition, the only satisfactory reform can arise out of a definition of the second chamber's intended functions, powers and relationship with the House of Commons: "Only then is it possible to determine the composition required to carry out those functions; exercise those powers; and fulfil that role" (p.4). International experience suggests the following conditions for an effective second chamber (pp4-5):

- a second chamber that positively complements, rather than compensates for, the first chamber is more likely to be accepted and effective.
- the need for, and role of, a second chamber is most readily discernible in federal states like the USA, Australia, Canada and Germany; but even in these states the political authority of the second chamber will depend on its specific composition and powers.
- the composition of the chamber (whether through nomination or election) must be clearly and deliberately representative of something if the body is to have political authority.

The **impetus for reform** of the existing House of Lords arises out of two main elements, which many regard as fundamentally undemocratic: the hereditary nature of much of the membership, and the predominance of Conservative supporters. Inevitably, from the Opposition's point of view, such theoretical considerations will be matched by the practical political ones of being able to get its business through a House composed in this way. Such self-interest, by all parties, will colour their views on reform.

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<sup>17</sup> The extracts are taken from the report's 'executive summary'

## Research Paper 97/28

The report sets out the following criteria on the **process of reform** (p5):

Would-be reformers need to understand both the evolution, and current working, of the House of Lords, in order to:

- appreciate that the legislation relating to the House of Lords is only a small part of the framework within which it operates - convention, practice and procedure are of equal importance. Any attempt to reform the House of Lords by legislative means should bear this important fact in mind.
- recognise the complexity of the relationship between functions, powers and composition. So tackling composition without creating knock-on effects may be difficult.

Whether reform involves one, two or more stages may be irrelevant. What is more important is that a clear set of goals is established and each stage of reform is directed towards achieving them.

This would probably involve some form of political consultation and negotiation, eg by a Speaker's Conference or royal commission. The report warned that consultation is not always a problem-solver, and a royal commission, in particular, may not be an appropriate method "for resolving the tension between political and constitutional goals that is implicit in finding a long-term solution for the House of Lords." It suggested the following (p6):

The most productive way forward for a Government seeking to build consensus around long term reform of the House of Lords, would be first to convene a Party Leaders' Conference on the principles of reform. The terms of reference might be as follows:

*To determine -*

- *the functions appropriate to the second chamber.*
- *the powers appropriate to the second chamber.*
- *the role of the second chamber in relation to the House of Commons and other tiers of government - local, regional, and international.*
- *the basis on which to select members of the second chamber.*
- *the balance of party power, if not predetermined by the basis of selection.*

The agreed principles would then be remitted to the Government for further development of the scheme, to be published for wider consultation before introduction as legislation.

For a Government that wishes to consult on its own proposals, or on one specific aspect of reform, it is recommended that the same practice be employed, adopting more specific terms of reference.

The report assumed that, save for the judicial role, the existing **functions** of the Lords would remain, being supplemented rather than being completely revised:

The House of Lords, and any replacement, will remain a second chamber responsible for checking, delaying and resisting - but not preventing - the actions of the Government of the day. It is also likely to have an enhanced role of constitutional surveillance. In the context of wider devolution, the principal additional function of a new second chamber is likely to be to provide a voice for the regions and nations of the UK at the centre of the political system.

As to the **powers** of the reformed chamber, the report said:

Removing the hereditary peers will remove one of the inhibitions on the House of Lords' use of its present powers. There may be a resurgence in the authority of the House of Lords and a willingness to use long-dormant powers of delay or veto on primary and secondary legislation, which may prompt further reform sooner rather than later.

The credibility of a predominantly elected second chamber (and its ability to attract high quality candidates) will also depend on the extent of its powers, which should therefore include the power to delay non-financial legislation for at least as long as the one year currently permitted.

Finally the report turned to the question of **composition**. It suggested that a number of changes could be made immediately by the present Government -- attendance requirements, more transparent appointment system, equalising the balance of the parties -- as part of a Conservative philosophy of incremental constitutional reform. The Labour proposal to remove the hereditary peerage from the House would lead to pressure for further reform of this 'interim nominated chamber' "to ensure that it is sustainable in its own right." The extent to which a Labour Government would make further changes would depend on the degree of Parliamentary pressure for change and a desire to turn the House into a "working chamber, in which peerages are jobs rather than honours" (p7). The report recommended:

- the appointments system could be reformed to provide for peers to be chosen by party lists, but with public nominations invited for cross-benchers; recommendations to the Queen would ultimately be the responsibility of the Prime Minister, but he or she could be required to seek the advice of an advisory body of Privy Councillors. Criteria for decisions on appointments could be published.
- party strengths could be determined in the short term on the basis of the party of government having a majority of one over the nearest opposition party (this would require the creation of 63 new Labour peers on taking office). In the longer term, party strengths could be determined on the basis of nominations proportionate to votes cast in every general election, but this would need to be accompanied by some mechanism to limit the number of peers created.

An elected chamber, such as proposed by the Liberal Democrats, had attractions, such as democratic legitimacy, but this brought the crucial issue of it becoming a rival to the Commons itself, important for practical reasons of reform implementation. An elected system would have to take account of the following:

- the form of representation - direct or indirect.
- the units of representation.
- the total number of members.
- the possible retention of a nominated element.
- who might seek election.
- the likely party structure.
- the tenure of office and timing of elections.
- the electoral system.

### E. The Lords' constitutional debate, 4 July 1996

Viscount Cranborne, the Leader of the House, opened the debate by suggesting that though peers may disagree over the proper composition and powers of the Upper House, they would all agree that Parliament is and will continue to be the fount of authority and political cockpit of the nation."<sup>18</sup> Its "authority ... flows from the electorate. Without that consent Parliament's authority would evaporate." Indeed he went further and suggested that the beauty of the current tripartite Parliament -- Monarch, Lords and Commons -- was the clarity it provided by only one element being elected: (c.1582):

There can therefore be no doubt about where the victory should be in any dispute between the two Houses. It is a clarity that extends to the way the government themselves are chosen. Our present first-past-the-post electoral system nearly always ensures that the electorate chooses the government, not parliamentary factions hammering out deals in bars or in what has become the cliché of the smoke-filled room. It has ensured that rule by faction has become a folk memory and that governments stay or change as soon as the results of the election become clear.

That clarity is an asset of immense value. It gives our constitution a certainty in the way it works which is a source of political stability. As I shall try to make clear during the course of my remarks, stability is something we should prize above all else.

He believed that recent and proposed changes to legislative procedure were of particular value to the Lords, as around 30% of its work was the revision of legislation, and such reforms could also allow more time for general debates.

Continuing his theme of stability, he asserted that "what I am certain will not make such a contribution is a reform of your Lordship's House that undermines the authority of another place. And that, of course, as we all know from experience is the difficulty. By definition every reform of our House short of abolition would give more authority to the second chamber" (c.1583), and he was not in favour of abolition.

His strong view on reform was that "of course, the justification for the present arrangements is that they work.... and work well" (c.1584):

Our role as a check on another place, as a rising chamber, as the highest court in the land, and as a forum for informed debate is a formidable one, and if any more evidence is needed one has only to turn to the annual report of your Lordships' House to find a comprehensive account of our activities, carried out, I may say, for the modest price to the taxpayer of £24 million per annum.

He developed his argument in directions which have already been set out above, from his

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<sup>18</sup> HL Deb vol 573 c.1582, 4.7.96

*Politica* speech,<sup>19</sup> and attacked the Labour proposals as a "headlong rush to reform .... Here, as so often, sanctimoniousness cloaks party political necessity", by which he meant that Lords reform was simply a sop to Labour's left-wing (c.1587). Its immediate, temporary reform would become permanent, leaving the Lords as "the biggest quango in the land", which would "deliver powers of patronage into the hands of party leaders unprecedented since the days of Newcastle and Rockingham" (c.1588).

Replying for the Opposition, Lord Richard set out Labour's policy: "It is our intention, if elected, to remove the right of Peers by succession to sit and vote in this House. That is the proposition. It is clear; it is simple, it is unambiguous; and it will be put to the country". He paid tribute to the role of the hereditary peerage in British history, "but at the end of the 20th century the accident of birth on its own cannot justify a legislative seat" (c.1590).

He analysed the existing composition, concluding that "this House is not only not democratic it is also overwhelmingly Conservative". Thus the votes of the hereditary Peers have an important influence in the work of the House, and have assisted the passage of the present Government's legislation. This was an important matter "if we are to take this House seriously. It is meant to be a legislative Chamber, not a club .... The idea that into the 21st century Britain should continue to be partly governed by legislators whose sole legitimacy is birth is frankly absurd" (c.1592).

Lord Richard described the Government's policy on the Lords as 'no change', not even 'gradual and evolving change', although he cited examples from this century where senior Conservatives had proposed or supported various reform schemes. He also criticised the report from Lord Carnarvon's group<sup>20</sup>, which he described as accepting the indefensibility of the hereditary principle and its demise, provided that a better alternative were proposed, as containing "perhaps just a tinge of aristocratic superiority in the assumption that he and his group know better than the people?" (c.1594). He set out the two-stage nature of Labour's proposals (c.1594):

I agree with the Prime Minister that these are great constitutional issues. That is why the final resolution will take time, as it should. It is precisely for this reason that the Labour Party is proposing reform in two stages: the first is the removal of the right of hereditary Peers to sit and vote in this House; the second is a major exercise in public consultation. We want to ensure that so far as possible the whole country should be involved in the consideration and determination of the precise nature and form that our second Chamber should finally take. That is our long-term aim. That is what we shall put to the country and advocate at the next election.

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<sup>19</sup> See section B2, above

<sup>20</sup> *Second chamber: some remarks on reforming the House of Lords*, August 1995, summarised in section F2 of this Paper

## Research Paper 97/28

He concluded by claiming that everyone who had looked at the issue since 1911 had agreed that "the right to sit in Parliament by virtue of hereditary advantage has to go. It is time that that was grasped. The time has come to begin the process of bringing this Chamber up to date and that is exactly what we propose to do" (c.1594).

For the Liberal Democrats, Lord Rodgers of Quarry Bank described Viscount Cranborne's speech as "entertaining though thoroughly reactionary", and turned to the constitutional principles which should govern any constitutional reform: "the distribution of seats in any elected chamber should roughly reflect the division of political opinion in the country .... The long dominance of a single party in Westminster or in local government is not a formula for good government or public faith in our institutions ...[and] there is today an excessive attachment to party, which is inappropriate to the need to find lasting solutions to our economic, social and political problems" (cc1594-5). The present composition of the Lords could not be justified: "we would not seek to create it in this way if it did not exist" (c.1596).

However there were two difficulties for reformers: "in the short term there is no easy formula by which to create an elected chamber" as there is no federal system which could allow a second chamber to be elected on a different basis from the Commons, and such a system could not be created simply to provide it. As he did not like a part elected, part appointed second chamber<sup>21</sup>, "if there is to be a short-term reform of this place, it must remain a quango of a kind, little as we may like that description" (c.1597). Secondly, even with reform, the Lords will not be able to take back powers from the Commons because that House would not surrender them.

He proposed that a government intent on short-term reform should set out in its Queen's Speech the principles behind its legislative proposals for reform and then allow the House of Lords, say within three months, "to come up with cross-party proposals for implementation through legislation" (c.1597). Lord Rodgers thought that a select committee would not provide a sufficient measure of necessary consent. The principles he would adopt would provide for a new class of 'parliamentary Peers' making up a House of 450-500; all hereditary peers would be eligible to become such a Peer; there should be cross-bench parliamentary Peers in proportion to the present group of active crossbenchers, say 20-25% of the new House; and in each Parliament the political composition of the House should "broadly reflect the proportion of votes cast for each party", providing a degree of political legitimacy without providing an unacceptable challenge to the Commons' primacy. As it was unacceptable that the choice of parliamentary Peers should be ultimately in the hands of the Prime Minister, there should be an independent commission on representation which would decide on political balance, receive and accept after appropriate scrutiny nominations from party leaders, and make nominations for cross-benchers "on the basis of openly declared principles which would broadly embody current practice", including nomination from the public, as with honours. Finally there would be room for the Lords Spiritual and Law Lords.

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<sup>21</sup> He described this as "a kind of bisexual second chamber" (c.1597)

The Bishop of Chichester considered the position of the Spiritual Peers, saying that if reform led to a reduction in the overall size of the House then they would accept their share of the reduction, and that the bishops would welcome the appointment of leaders of other churches and faiths (cc 1598-9). Baroness Young (Conservative) criticised Labour's proposals as being just as undemocratic as the appointment of life peers; logic dictated either an elected House or abolition (c.1601). The former Commons Speaker, Lord Weatherill (Cross-Bencher), advised caution about measures of Parliamentary reform, because of the unintended consequences that they tend to bring, and believed that membership of the Lords "should be an honour and not a job" (c.1608). Lord Denham, formerly the Conservative Government Chief Whip in the Lords, thought that Labour's motivation for its proposals -- fear of the attitude of an unreformed House to an incoming Labour Government's programme -- was unjustified: "One of the principal obligations for an Opposition in this House is to enable the Government to get their programme through" (c.1609). Lord Renton (Conservative) accepted that, though he thought that the preponderance of Conservative peers made little difference, "this House should not only work but should appear to be composed in the right way, without great advantage to any party" (c.1618).

Lord Campbell of Alloway (Conservative) viewed the present constitution as "unique" and one which "works well enough" (c.1624), and defended the existing House on the basis of the Conservative belief in "consensual, evolutionary process of practical change as distinct from any imposed legislative reform" (c.1625). Lord Elton (Conservative) described abolition of the hereditary element as akin to the removal of one of the four wheels of a vehicle,<sup>22</sup> and supported the idea that the whole question be considered by a Commons select committee. Lord Annan (Cross-Bencher) suggested that all members of the Lords, who should be nominated, should in future be called 'Lords of Parliament', not raised to the peerage, but entitled to use 'LP' after their name. The existing system "makes us hostages to snobbery. Members of the House who are not of noble birth should be content to remain 'Mr'" (c.1632). There should be a retirement age of no more than 75. Lord Hesketh (Conservative) said he would not oppose "anything which was an honourable Bill" on Lords reform, but was concerned at the possibility of the House being "confronted by a three-clause Bill which would remove the hereditary Peerage and do, not only little else, but nothing else", which he regarded as a "wholly dishonourable proposal" (cc1634, 1635).

Lord Carter (Labour) noted that while the percentage of life peers who attended at least half of all sittings ranged from 27% (Cross-Benchers) to 70% (Labour), on the hereditary benches the range was 21% (Cross-Benchers) to 57% (Labour). Of those 'active' peers, over 50% (184 of 348) were Conservative. This suggested to him that, unlike the proposals of the Constitution Unit and of Lord Skidelsky<sup>23</sup>, a House of 350 members (excluding law lords and bishops) could function quite well (cc1636-7). Lord Boardman (Conservative) urged wider reform of Parliament. Lord McConnell (Cross-Bencher) suggested that, "to get rid of some of the dead wood", peers who did not attend a specified number of sittings should not be entitled to attend, vote or speak in the following session (c.1641). While Lord Strabolgi (Labour) supported his party's policy of removing the hereditary peers, he feared that the system of nomination, especially of Cross-Benchers, would lead "to a good deal of nepotism

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<sup>22</sup> The others being life peers, law lords and lords spiritual

<sup>23</sup> See section F3 below

## Research Paper 97/28

and unfairness. I think it is absolutely unworkable" (c.1643). Lord Marlesford (Conservative) would support reform "to modify and build upon the assets that we already have." He recognised that an unelected legislature was undemocratic but it need not be 'anti-democratic', and supported a system of representative hereditary peers within a House of 600-650.

Lord Mottistone (Conservative) claimed that "the uncertainties of succession also make hereditary Peers a form of random selection ... That makes them much more representative of the country at large than is an appointed quango" (c.1650). Lord Winston (Labour) admitted that the appointed peers were hardly representative of society, especially in terms of gender, race or religion, but warned that reforms "must not just be for political expediency" (c.1654). Lord Hindlip (Conservative) claimed that, with the hereditary element "this House provides an enviable way for unbiased and independent thought to go into the drafting and scrutiny of legislation" (c.1655). Lord Monson (Cross-Bencher) was concerned about the independence of an elected peer for a marginal constituency, as well as the cost of an elected House. Baroness Flather (Conservative) believed that everyone knew that the House was effective and not in competition with the Commons. She supported the idea of representative hereditary peers.

Hereditary peers contributed to the debate. Lord Rochester (Liberal Democrat) was of the view that reform should not wait for some "wider parliamentary settlement" because "I see no chance of such an accommodation being reached with a sufficient measure of agreement in the near future." However he thought that "speedy reform of the composition of the House is a realistic proposition" (c.1619), and supported Labour's proposals. The Earl of Longford (Labour), a former Leader of the Lords in the 1960s, described the present composition system as "a ludicrous arrangement", yet the House held the best debates in the world, and the hereditary peers were "a very valuable element" (c.1628). He continued to support the 'two-writ' plan of the 1960s, which would allow the hereditary peers to sit but not vote. Lord St John of Bletso (Cross-Bencher) admitted that he could not rationally justify his privileged position, but "the raw reality is that, despite its many flaws, the system has worked for many generations. It has unique qualities, with many talents" (c.1647). He supported evolutionary, minimalist reform. Lord Astor of Hever (Conservative) was willing to give up his membership "but only if I were certain that the daunting task of unravelling parts of it would not destabilise an interim chamber before the next stage of reform" (c.1664), and was concerned that a second stage may never happen. The Earl of Kintore (Cross-Bencher) believed that frontbenchers and the convenor of the Cross-Benchers should have some financial assistance, and if all peers were to be paid there should be a compulsory retirement age of 75. Lord Belhaven and Stenton (Conservative) saw "no passionate demand for our exclusion" (c.1667), and criticised plans for part-exclusion of, or self-selection among the hereditary peers as "introducing patronage by other means" (c.1669). Viscount Mountgarrett (Conservative) suggested that, as with the Irish peers after 1922, the existing hereditary peers could remain for their own lifetime only.

Winding up for the Liberal Democrats, Lord Wallace of Saltaire said that there were three possible reform paths -- an appointed House or 'Senate', a directly elected chamber, and an indirectly elected chamber. He regarded the least satisfactory outcome to be a partly elected, partly appointed House "in which there would be two halves who would fail to agree with each other" (c.1678).

Lord McIntosh of Haringey explained Labour's two-stage reform process (cc1682-3):

It is right in principle that we should be consulting through the form of a Royal Commission or a party leaders' conference or whatever; I do not believe that the detail matters that much. We should be consulting thoroughly on what form of second Chamber is acceptable in this country. I agree with those who say that it is not easy. We are not naturally a federal state. We are not like the United States of America or Germany, where Leader or states form a natural constituency. I do not find it very attractive to have a different electoral system which might result in a different balance of parties and yet give no indication of which is to be given precedence.

There is no lack of difficulty in achieving that. I am convinced that the people of this country do want a second Chamber which has a significant elected element-probably a majority elected element-but it is also likely that they will want to preserve some of the virtues of the Honours List and of the distinguished people who serve in this House. Whether they are life Peers or hereditary Peers, we will want to keep a significant number of them as Members of a second Chamber as a supplement to the elected element.

Although it is true that 85 years ago this was stated as an objective but has never been done, it is worth emphasising that the interim stage of a House which consists only of the life Peers rather than having hereditary Peers is inherently unstable. A number of noble Lords who are not sympathetic to our ideas have pointed out that, if the balance between the parties were to be corrected at each election, the numbers in the House would explode. That is absolutely true and it is a strong argument against continuing with the interim provisions. So there must be, there is and there will be a firm continent to future change and to, as we say, a more democratic and representative Chamber.

We end up with a three-stage approach. The first is to deal with the hereditary peerage, the second is extensive and fundamental consultation and the third is with the mandate of the people, and only with the mandate of the people, to proceed to

the final composition of this House. Anybody who believes that it might be better to leave the House of Lords as it is rather than have an interim Chamber really ought to think again. Yes, of course, there are some good hereditary Peers in this House. I look around me and see that there are many good hereditary Peers in this House. I look up in order not to look at anybody in particular. But we can create life Peers from the hereditary Peers. I have just worked out that my noble friend Lord Longford does not have to be created because he is already a life Peer too. Therefore, his hereditary peerage can go and he will stay in the House Yes, of course it is true that there are a number of distinguished independent Peers, mainly on the Cross Benches. But most of them are life Peers, very few of whom would be removed by this reform. However, there could be a mechanism for replacing the more distinguished of them from the Cross Benches. But, above all, I really must resist the idea that there is something inherently offensive about the interim change of an unelected House.

The choice is between a House which is composed on the basis of merit and that which is composed on the basis of birth. Merit is a more difficult concept to assess and it is much more difficult to find ways of achieving effective choice on the basis of merit; but can there be any doubt that it is better than the basis of birth?

It is not for me to prejudge the result of the extensive consultation period. To that extent, I cannot possibly answer some of the questions posed by the noble Lord, Lord Astor. However, surely a more democratic and representative Chamber which recognised the outstanding contribution of many hereditary Peers and which contained elected Members as well as others, including Cross Benchers, is an objective worth aiming for.

Lord Strathclyde wound up for the Government, by claiming that the common thread running through the Opposition parties' constitutional reform proposals was "the undermining of the power of Parliament" and in particular, the elected Commons (c.1685). He attacked the Opposition's claim that the legislative powers of the Lords would be unaffected: "You cannot tinker with the composition of an organism as subtle as Parliament without affecting, however unintentionally, the way in which it operates" (c.1686). He challenged each of the grounds of attack on the present House, in particular the idea that the hereditary element was 'unfair': "But the essence of heredity is that it is not fair. It embodies the basic human wish to ensure the well-being of future generations. In parliament the hereditary element enriches our constitution with some of the unpredictable and random nature of real life, in complement to other aspects of our institutions" (cc1687-8).

He attacked Labour's plans, especially the prospect that its interim stage would become permanent, leaving a House of professional politicians, which would be unlikely to continue its self-denying ordinances on the use of its powers: "Such a chamber would be hungry for more power" (c.1689). He denied that the present system was its lack of democratic legitimacy, stating that power is concentrated in the elected House: "Democracy in the United Kingdom is alive and well without the need to tinker with the House of Lords to no clear advantage" (c.1690).

### **F. Other Peers' approaches**

The views of peers other than front-benchers have already been examined in section E of this Paper, on the July 1996 Lords debate. What follows is a brief summary of three particular publications on Lords reform by peers which provide interesting perspectives on the current debate.

#### **1. The January 1997 Fabian paper, *Destiny not defeat***

A Fabian discussion paper written by two peers - one a Labour life peer, one a cross-bench hereditary peer - published in January 1997 criticised Labour's policy on Lords reform.<sup>24</sup> They warned of the risks of a two-stage reform process, citing the 1991 precedent, and described the first stage of creating an appointed House (by removing the hereditary peers from membership) as "the least legitimate of the reform options" (p2):

It would simply provide the Commons with a fangless watchdog and a useful rest home for unseated MPs and Party worthies. Furthermore, it is very difficult to envisage acceptance by the Commons of the next step towards a legitimate second chamber - a democratic mandate.

What we are offered is the prospect of a permanent halfway house of lifetime appointees, which can hardly be claimed as an advance either for democracy or effectiveness. But the Labour Party cannot be allowed to shelter behind a smokescreen of vague intentions. It must come clean and, at the very least, publish its preferred option for the phase of reform after removal of hereditary peers. The politics of this situation may be difficult but this does not mean the Party can escape its obligation.

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<sup>24</sup> Lord Desai and Lord Kilmarnock, *Destiny not defeat: reforming the Lords*, Fabian discussion document 29

They claimed that the most important lesson to learn from the Labour government's abortive reform attempt in 1969 "is that it is not possible to separate the issue of composition of the second chamber from that of its power" and they believed that "the real defect of the second chamber is its lack of power. Because it is unelected, the House lacks legitimacy and is aware of this .... The HoL is a fig leaf for what is effectively a unicameral system", which suits the Lower House (p.3):

The elected chamber senses that a change in composition will invariably lead to change in the exercise, if not the distribution, of power. The virtual monopoly of power enjoyed by the Commons would be challenged. A half hearted change in composition will give us the worst of both worlds. It lacks legitimacy and will alarm those who want to retain the effective unicameralism of Parliament.

This is the paradox of reform of the HoL. Any reform which makes it more legitimate and hence more effective will be resisted by the House of Commons. A reform which further weakens the HoL is difficult to contemplate.

The authors considered the various options for change -- abolition, retention, reform, replacement<sup>25</sup> -- regarding abolition as simply unicameralism, which would "create a genuine elective dictatorship", and arguing that retention would not be a defence of the hereditary principle as such. Reform generally meant total or partial replacement of the hereditary element. They believed that the party imbalance in the House came about because of "the entanglement of the honours system with the political system. Any serious reform must prise them apart" (p5). Thus "life peers are just as much the products of patronage as hereditary peers were at the time of their creation" (p.6). Neither of the two proposed solutions -- Labour's plan to remove the hereditary peers and others', such as Lord Skidelsky's proposal to have a 'representative peers' system for the hereditary peers<sup>26</sup> was acceptable. "Hereditary peers have survived as an estate of the realm, albeit with diminished powers, largely through lethargy, snobbery and a lack of consensus for reform .... Apart from the principle, such ingenious schemes to manipulate party balance in an unelected chamber would be almost unworkable in practice ... Attempts to solve what is essentially a Conservative Party credibility problem will not provide us with a credible second chamber" (p.6).

Replacement meant a new second chamber, mainly elected, but with an appointed element. This raised the question of the basis of election, eg indirect election by local authorities, or direct election, such as 3 members from each Euro-constituency. Their preferred option, which would provide legitimacy, was a change to a House of around 400, mainly elected chamber, with around 100 appointed cross-benchers. They also believed that the question of the second chamber's powers had to be addressed: "it is not possible to reform the HoL without tackling the balance of power between the two chambers ..... a revitalised and more legitimate house could reasonably expect to exercise its existing powers with more confidence and authority" (p9).

Concluding, the authors said that the real Parliamentary battle to implement any reform would not be in the Lords, because of the Salisbury Doctrine, but in the Commons, which should

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<sup>25</sup> See generally Background Paper 297, 7.9.92, esp section D, for a similar analysis of reform approaches

<sup>26</sup> See Section F3, below

have “no fundamental difficulty” with Labour’s first-stage proposal. But the second stage would be more contentious, therefore “in passing the first stage the elements of the final reform must be made clear” (p.12). They warned (p.12):

Merely to remove the hereditary element will not solve the problem of legitimacy of the second chamber. Especially in a two-step strategy, the path to be traversed has to be mapped out before the first step is taken. An effective and legitimate second chamber is vital to the evolving constitution. The Labour Party's proposals can have no credibility until it publishes a white paper on the final shape and function it envisages for the "upper house".

### **2. The Earl of Carnarvon’s group’s 1995 report *Second chamber***

In 1995 a group of four Peers and a former Lords clerk published a report “on the composition of the House of Lords, and in particular the role of the hereditary peers” (para 1) in the light of Labour’s proposals.<sup>27</sup> Their guiding principle was “the stated conviction that hereditary members of the present House of Lords -- who are well aware of its shortcomings -- would vote themselves into history with barely a backward glance in favour of a reformed House which was more effective, and whose composition commanded wider acceptance, than the present one” (para 4). Their report was intended to be merely preliminary remarks, not to make reform proposals of their own, or criticise the proposals of others.

The authors stated that the present House “represents several hundred years of development ... through growth rather than rationalisation. It is an organism rather than a machine” (para 12). They recognised that different Members have distinct views of the House’s functions, and that to those outside it may appear “as a political irrelevancy, as a bastion of unacceptable privilege, as the emblem of continuity in our ancient constitution” (para 14).

Having described the composition and rules of membership of the House (noting, for example, that all Peers sit “in their personal right. They have no representative function whatsoever”: para 34), and its history (noting, for instance, that while there have been examples of new categories of membership -- such as life peers -- there were few major examples of categories being deprived of their seats<sup>28</sup>) the report noted that, with a few exceptions, “the hereditary peerage has .. to all intents and purposes been a closed class for thirty years” (para 42). The Commons had developed as the representative House, and “the adaptation of the Lords to the growth of democracy has been through its powers, not its composition” (para 44):

45. We would sum up, at this stage: the composition of the Lords may be determined by arcane principles which, with the passage of time, have come to seem archaic and arbitrary, but beneath the dust of ages can be discerned two very different principles of composing our two Houses of Parliament: one clearly representative, the other where specific individuals are summoned to play a part in the work of Parliament and government.

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<sup>27</sup> *Second chamber: some remarks on reforming the House of Lords*, 1995, by the Earl of Carnarvon (a hereditary Cross-Bencher), Lord Bancroft (a Cross-Bench life peer), the Earl of Selborne (a hereditary Conservative peer), Viscount Tenby (a hereditary Cross-Bencher) and Douglas Slater

<sup>28</sup> such as the exclusion of the Welsh bishops following disestablishment of the Welsh Church, and of the elections for Irish representative peers after 1922

Such a system of composition “does not give rise to a House which represents the political complexion of the nation” (para 46), but it does have its own political complexion, and “clearly -- indeed notoriously -- the system of hereditary peerages has a direct bearing on party strengths in the House” (para 47). While the Conservative Party has enjoyed a “preponderant position” for well over a century, the number of Labour peers (mainly life peers) had declined since 1979 from 180 to about 110. The Liberal Democrats and Cross Benches have more balanced memberships. Further, division analysis demonstrates the relative importance of the hereditary peers in the achievement of Conservative government victories. However, in a House not based on a representative principle, the idea of a ‘distortion’ of party strengths cannot arise, “since that would imply a standard against which the present position could be judged. There is no such standard, and never has been.” The balance of party strength -- including the inevitable, even historically justifiable, patronage bias in favour of the government of the day -- is “a function simply of who was individually summoned to sit there” (para 50). The ‘working peers’ were the only exception, but this process, however balanced, could not make the House ‘representative’<sup>29</sup>. The Cross Benchers, the second largest grouping, make analyses of party balance and divisions even more difficult, especially as they take no whip and can therefore be more selective about their participation, and do not act collectively as a group in themselves.

Other factors which complicate analysis of the House’s political make-up and activity include its ‘amateur’ status, the proportion of elderly members, and the level of specialisation/expertise which may have been the rationale behind particular appointments. The composition of the House arose in the era before party politics, and a distinction must be made between a body consisting of people organising themselves into groups (the Lords) and one constituted so as to be representative of party groupings (the Commons). This allows the Lords to contain both those who can make a valuable contribution to political life who choose not to participate in electoral politics, and those who actually make a negligible contribution. However, the authors regarded the ‘backwoodsman’, one major reason for public criticism of the House, as “largely mythological” (para 63). Even within the ‘working House’, ie the active peers, there is no very clear distinction between the life peers and hereditary peers<sup>30</sup>: “the work of the House could not be sustained without the life peers. On the other hand, it is hard to conceive that it could be sustained at its present level without the peers by succession” (para 66). They concluded that “there is an imbalance in party strengths, but this is a function of the historical nature of the House, and moreover a function of its qualities and its defects” (para 67), and that this has had an effect on the House’s role and powers.

In other words, notwithstanding the House’s formal powers, it exercises them restrictively, limiting itself to revision and technical improvement of legislation, and asking the Commons to ‘think again’ on policy matters. It has only a limited role as the so-called ‘guardian of the constitution: “The House of Commons has at least as strong an historical claim to be guardian of constitutional rights” (para 85). The Lords’ attitude to the exercise of its powers is largely determined by “its consciousness that it is not democratic. It is also painfully aware of the incongruity of its hereditary element in the final years of the twentieth century. This

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<sup>29</sup> especially from the viewpoint of the Opposition parties, as appointment remained in the gift of their opponents

<sup>30</sup> other than in relation to the Labour benches

has led the House to develop a habit of collective political deference ... The arrogance of aristocracy has, since 1911, been tempered by an awareness of illegitimacy” (para 90). The House is clearly subordinate to the Commons and the government, although in principle, it is a House of Parliament. The position of the House in relation to wider society has also to be considered because “public attitudes will ultimately determine the future of the Lords” (para 109).

The report then turned to the proposal to remove the hereditary element, as an initial stage in reform of the Lords. It admitted that there was some logic in such an approach, as history has shown that limited change has been more successful to achieve than comprehensive schemes, and a short bill should be relatively less difficult to pilot through Parliament (even if it required resort to the Parliament Acts). A House reformed in this way has to be examined, as it would last for at least the remainder of the next Parliament, and conceivably much longer. It would have greater party and gender balance, and the present powers, and their exercise in relation to the Commons and the Government, would probably continue.

On the other hand “there seems to be something inherently objectionable in a House of Parliament made up solely of appointees” (para 122), although this could be exaggerated, as, for example, it is unlikely that such patronage would be used for crude party advantage. Nevertheless patronage can have some influence on the subsequent action of its recipients, and the loss of the hereditary peers, especially of its younger element, could deprive the House of the arbitrary benefit of its wide expertise and interests. The cross benches may, over time, also lose such diversity. “The House would be much more a House of professional politicians, and there would be a narrower base of experience at Westminster” (para 127). The very irrationality of the hereditary principle means that “by historical accident the present House introduces a random element into political life” (para 129).

The authors believed that “in the longer term, a House without the hereditary peers would probably change considerably”.<sup>31</sup> They may feel more able to oppose the will of the Commons, for example. “A more even party balance in the Lords might therefore be bought at the price of changes in the relationships of our parliamentary government between the Houses” (para 132), such as the ending of the ‘Salisbury Doctrine’, greater party discipline and pressure for pay and better facilities. This would increase the move to a House of professional politicians: “that would be the ultimate quango, indeed” (para 134). Party conflict could become sharper, especially as the number of former MPs rises.

The report pointed out that an interim statutory change, such as the removal of the hereditary element, would limit the options for future comprehensive change to be considered, say, by a Speaker’s Conference or royal commission. It recalled that, in the mid-1980s, the Lords wrecked the Government’s legislation to create unelected interim bodies pending the abolition of the GLC and metropolitan county councils (paras 139-140).

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<sup>31</sup> The report assumed that the hereditary peers, if they lost their membership of the Lords, would be granted the franchise for future parliamentary elections

Turning to the proposed comprehensive reform stage, the authors agreed that progress through a formal, authoritative and representative consultation process was the right way to proceed. They identified three basic reform models, reflecting different principles of composition: 'minimalist', 'indirect election' and 'direct election' (or a mixture of these options). Any scheme would keep the Second Chamber subordinate; would have no permanent party majority; should contain independent members, and that there should be a degree of continuity between the present and reformed Houses (para 156). Any scheme would contrast (intentionally, in the eyes of some reformists) with the existing simple elective system for the Commons, which has provided stable government. But, they asked, should a reformed second chamber, in the absence of constitutional safeguards such as a written constitution, act as a stronger check on the Commons' and Government's power? Would Lords reform trigger wider constitutional reform?

They considered objections to an elected Lords, such as the loss of those who wish to contribute to public life without having to seek public election, and, more seriously, the conflict of legitimacy between the two elected Houses. On the other hand, while an appointed House would ensure that it was subordinate to the Commons, it would involve a great deal of patronage, or sectional elections, and perhaps lead to "a certain dullness, a certain safety in appointments" (para 165). A reformed, more professional House would probably require more public spending. The report concluded:

168. The present House of Lords brings something distinctive to our politics, if only fortuitously, because of the idiosyncrasy of its composition. The challenge therefore is to find a rational basis for a Second Chamber which would allow the continuance of the best features of the present House. Few would say that the present House has no good features and therefore that any change would be for the better. Some - perhaps many - would advise no change.

169. Our review of the issues suggests that reform of the House of Lords would require strong political will, and would entail real constitutional change, perhaps - even probably - beyond the narrow role of the Second Chamber. It is for others to decide - ultimately, for the electorate - whether to embark on such reform.

170. The worst upshot would be if reform of the House of Lords were to lead to years of constitutional tinkering and uncertainty, or if we were to exchange the present House for one which was more rational but less effective. There is a danger in piecemeal change which would alter the balance and nature of the present House without first determining that whatever replaced the existing composition would be as - or more - effective in fulfilling the varied roles of the Second Chamber.

171. Our institutions have been distinguished both by their stability and by their capacity to change. Both qualities have their roots in wide public acceptance. Wide public debate is the path to that acceptance. What sort of Second Chamber - in what sort of constitution - do we believe will serve our nation best as we enter the next century? That is the question.

### 3. Lord Skidelsky's proposal

In a Times article on 3 July 1996, the Conservative life peer Lord Skidelsky, urged his party to defend the Lords "on Burke's grounds of tradition, convenience and expediency, and force the Opposition to justify its proposals."<sup>32</sup> He asserted that calls for reform have arisen, not so much because of the hereditary element, but because of the Lords' perceived dominance by the Conservatives. "If the problem is the existence of a 'surplus' of Conservative peers, the solution is to eliminate the surplus, not to abolish the right of hereditary peers to sit in the Lords."

He suggested that this could be done by reducing the number of Conservative hereditary peers and increasing the number of Labour and Liberal Democrat life peers. The former could be achieved by the Conservative hereditary peers electing a proportion of their number, say 100 out of around 466, as 'representative peers' (as took place with the Irish peers until 1922 and the Scottish peers until 1963) If there were an extra 64 Opposition life peers, there would be approximate balance between the Conservatives and the other two parties. Such a solution would also, he claimed, "weaken the charge that the hereditary peers sat *solely* by accident of birth. It would achieve these aims with least disruption -- in fact by building on sound precedents. It would give the Conservatives an active, not just passive, response to the Opposition's plans. Above all, it would be a sensible, and long overdue, contribution by peers to the determination of their fate."

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<sup>32</sup> "Reform, not revolution, in the Lords", *Times*, 3.7.96

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## Appendix

### House of Lords: current composition<sup>33</sup>

There are 1,203 potential members of the House altogether, This total comprises 26 archbishops and bishops (of the Church of England); 756 hereditary peers who have succeeded to their titles (including 16 women) and 421 created peers (10 created hereditary peers, 421 life peers, - 69 of whom are women). There are also 11 people who had inherited peerages and have disclaimed them for life so they cannot sit in the Lords. However, their heirs may do so if they wish once they inherit the titles (2 other people who have disclaimed peerages now sit in the House by virtue of other titles).

Of this total, 145 peers are not eligible to attend the House at present (64 of them have leave of absence from the House and 81 have not obtained Writs of Summons enabling them to attend). So there are, therefore, 1,058 peers currently eligible to sit in the House of Lords.

The peer who has been a member of the House for the longest time is known as the Father of the House; at present this is Lord Oranmore and Browne, a hereditary peer who first attended the House in 1927 (he is, however, no longer active in the House). The longest serving peer who still attends the House is the Earl of Listowel who has been a member of the house for nearly 65 years and still attended 30% of the sitting days, last session.

The House spans a wide range of age groups: The youngest peer is the Earl of Craven who was 7 in June - but he will not eligible for a seat until he reaches 21. The youngest attending member of the House is the Earl of Hardwicke at 26, the oldest is Lord Denning who is 98. The average age of those peers eligible to sit is 65 years 1 month. Created peers are on average 10 years older than hereditary peers (their average age being 71 years whilst hereditary peers average 61 years 8 months).

There are three main political parties represented in the House of Lords; the numbers of peers eligible to sit and declaring party allegiance is shown below with the proportions of the total eligible House each group represents shown to the right of those figures:

Party	Created Peers		Hereditary Peers by succession		Bishops & Archbishops		Total	
Conservative	147	14%	313	29%			460	43%
Labour	98	9%	14	1%			112	10%
Liberal Democrat	33	3%	23	2%			56	5%
Cross Bench <sup>1</sup>	124	12%	192	18%			316	30%
Other	14	1%	74	7%	26	3%	114	11%
	416	39%	616	58%	26	3%	1,058	99%

Note: <sup>1</sup> These are peers who have declared that they are independent

<sup>33</sup> House of Lords Information Sheet No. 14, as at 4 February 1997, extract

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