



RESEARCH PAPER 98/85
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House of Lords reform: developments since the general election

This Paper updates previous Research Papers on the Lords reform debate, especially RP 97/28, *House of Lords reform: recent proposals*, 17.2.97, by examining some of the major developments and proposals from parties and others since the May 1997 general election.

Members are reminded that briefings on other constitutional and parliamentary issues are indexed in the *CAPRI* booklet, edition 4 of which was published last month (available on the PDVN).

Barry K Winetrobe

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Summary of main points

Reform of the House of Lords has been at the forefront of the political/constitutional agenda for a number of years, especially since Labour in Opposition produced proposals to change the composition of the Upper House by removing the hereditary element. If legislation is forthcoming next session it could well be among the most contentious Bills of the Parliament.

The general background to the complex issue of bicameralism v. unicameralism in general, and the history of Lords reform in particular, was considered in Background Paper 297, *The Other Place: second chambers and the House of Lords*, 7 Sept 1992. Developments in the modern debate up to the immediate pre-election period were set out in Research Paper 97/28, *House of Lords reform: recent proposals*, 17 Feb 1997. This present Paper seeks to bring the debate up to date, in advance of any Government proposals which may be forthcoming in the autumn.¹ If time permits, a Research Paper will be published on the legislative role of the Upper House. Members are reminded that the House of Lords itself, through its Library and its Information Office, produces a great deal of relevant material on the composition and work of the House, and on the history of reform and related matters. Much of this material is available on the Lords pages on the Parliamentary Intranet.

The Labour manifesto for the May 1997 stated:²

A modern House of Lords

The House of Lords must be reformed. As an initial, self-contained reform, not dependent on further reform in the future, the right of hereditary peers to sit and vote in the House of Lords will be ended by statute. This will be the first stage in a process of reform to make the House of Lords more democratic and representative. The legislative powers of the House of Lords will remain unaltered.

The system of appointment of life peers to the House of Lords will be reviewed. Our objective will be to ensure that over time party appointees as life peers more accurately reflect the proportion of votes cast at the previous general election. We are committed to maintaining an independent crossbench presence of life peers. No one political party should seek a majority in the House of Lords.

A committee of both Houses of Parliament will be appointed to undertake a wide-ranging review of possible further change and then to bring forward proposals for reform. We have no plans to replace the monarchy.

At time of writing, it is expected that the Lords will hold a two-day debate on reform during the spillover period this autumn,³ and the Government is expected to produce a consultation paper on its proposals, following the work of the Cabinet Sub-Committee chaired by the Lord Chancellor, Lord Irvine of Lairg. No doubt the debates in both Houses on the Queen's Speech (whether or not legislation on the Lords is foreshadowed) will include discussion of the issue.

¹ It does not consider 'internal' reforms such as changes to the ceremony of introduction.

² *New labour: because Britain deserves better*, April 1997, pp 32-3

³ A further opportunity for debate may arise on a motion by Lord Pearson of Rannoch on the first day after the recess, Monday 5 October, relating to a proposal for the election of representative hereditary peers to the House.

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I The 1997 election and the new Government

A. Background

Reform of the House of Lords as an issue in its own right and as a part of more general constitutional change, was the subject of much debate before, during and immediately after the May 1997 general election. Much of this was considered in Research Paper 97/28, *House of Lords 'reform': recent proposals*, 17 February 1997.

Perhaps the main pre-election development thereafter was the report of the Liberal Democrat/Labour joint consultative committee on constitutional reform, published in March 1997. It stated (pp16-17):

The House of Lords

75. There is an urgent need for radical reform of the Lords. Its current composition is indefensible, in particular the fact that the majority of its members are entitled to take part in the legislative process on a hereditary basis.

76. The two parties are therefore agreed that there must be legislation to remove the rights of hereditary peers to sit and vote in the House of Lords.

77. There is a valuable continuing role for some cross-bench or non-party element in a reformed House of Lords. The two parties believe the cross benchers should remain at their present proportion of around one fifth following the removal of the hereditary peers. An open and legitimate mechanism for appointing cross-bench peers should be developed and the cross benchers should be consulted about the mode of replenishing their members.

78. Some hereditary peers have also made useful contributions to the House. It should be made possible for a limited number of those who play an active part in the work of the Lords to become life peers.

79. Life peers should not be required to step down but there should be a procedure for voluntary retirement.

80. No one political party should seek a majority in the House of Lords.

81. The removal of the hereditary peers will still leave an imbalance in party representation in the Lords in the interim stage. Following their removal, we should move, over the course of the next parliament, to a House of Lords where those peers who take a party whip more accurately reflect the proportion of votes received by each party in the previous general election.

82. The removal of the hereditary peers' right to vote is the first stage in a process of reform. Following their removal a joint committee of both houses should be established to bring forward detailed proposals on structure and functions for the later stages of reform within a time limited period. This body

should produce recommendations for a democratic and representative second chamber.

B. The 1997 election manifestos of the three main parties

❖ *Conservative:*

... We have demonstrated we are not against change where it is practicable and beneficial. But fundamental changes which have not been fully thought through - such as opposition proposals on the House of Lords - would be extremely damaging. We will oppose change for change's sake.

❖ *Labour:*

A modern House of Lords

The House of Lords must be reformed. As an initial, self-contained reform, not dependent on further reform in the future, the right of hereditary peers to sit and vote in the House of Lords will be ended by statute. This will be the first stage in a process of reform to make the House of Lords more democratic and representative. The legislative powers of the House of Lords will remain unaltered.

The system of appointment of life peers to the House of Lords will be reviewed. Our objective will be to ensure that over time, party appointees as life peers more accurately reflect the proportion of votes cast at the previous general election. We are committed to maintaining an independent cross-bench presence of life peers. No one political party should seek a majority in the House of Lords.

A committee of both Houses of Parliament will be appointed to undertake a wide-ranging review of possible further change and then to bring forward proposals for reform. We have no plans to replace the monarchy.

❖ *Liberal Democrat:*

We will create an effective and democratic upper house. We will, over two Parliaments, transform the House of Lords into a predominantly-elected second chamber capable of representing the nations and regions of the UK and of playing a key role in scrutinising European legislation.

C. Debate on the Government's Lords reform policy⁴

The Queen's Speech for the 1997-98 session did not contain any proposals for changes to the composition or functions of the House of Lords. Ministers explained that this was due, in the words of a junior Minister in the Lords, to "the pressure on legislative time, especially for constitutional reform. The pressure is immense but we shall introduce the Bill as soon as time permits."⁵

⁴ See also section IIA of this Paper

⁵ HL Deb vol 580 c.250, 19.5.97 (Baroness Hollis of Heigham)

Exchanges between the then Leader of the House, Lord Richard, and his Opposition counterpart, Viscount Cranborne, during the Queen's Speech debates, illustrate the sort of issues involved in the arguments between Government and Opposition over the Government's proposed changes to the Lords, and to its constitutional reform proposals generally, especially in terms of their legislative process.⁶ During the first day's debate, Viscount Cranborne said:⁷

I hope too that he will ensure - just as he used to advocate to me - that the minimum intervals will be observed and that the Government will not be seduced by their vast majority in another place into ignoring or trampling the rights of Parliament..... I shall also be interested to see whether the noble Lord approves, when in government, of ignoring non-fatal government defeats in this House, should the House choose to inflict them. For our part we shall treat every Bill on its merits. I hear that there is a school of thought in certain new Labour circles which suggests that the prospect of House of Lords reform should be used as a sword of Damocles to railroad legislation through this House - a sort of guarantee of good behaviour, if I may put it that way. I have to confess that I am not at all impressed by that argument or indeed that threat. Within the confines of convention we shall endeavour to act as a constructive but vigorous Opposition. We shall play our part in helping this House to fulfil its obligations as a second Chamber, to scrutinise and improve legislation and, when - and only when - judgment dictates, to ask another place to think again.

Lord Richard responded (c.23):

My reflections on our seating arrangements should not be taken as comfort for those noble Lords who are here through accident of birth. They should not read too much into the absence of any reference in the gracious Speech to the subject of reform of your Lordships' House. A commitment to end the right of hereditary Peers to sit and vote in this House was in my party's manifesto and it remains a firm commitment of Her Majesty's Government. I am sure that the House will allow me to recall - I believe that I caught an echo of this in the speech of the noble Viscount - that it is your Lordships' normal general practice to allow Her Majesty's Government to secure their business. I repeat my own conviction that the House will continue to behave in accordance with its conventions and best traditions. I am sure that it will.

The following day they returned to these themes. Lord Richard said (c.30):

The mandate given to us by the British people is indeed awesome. It is the biggest majority ever for the Labour Party and, I think, the smallest number of Conservative seats in the House of Commons since 1832. I believe that two things follow from that result: the first is a responsibility for the Government;

⁶ On the last point, see Research Papers 97/53 and 97/97

⁷ HL Deb vol 580 c.17, 14.5.97

and, secondly, if I may say so, a responsibility has also been placed on the Opposition.

As a government with such a massive majority in another place, we are, I believe, under a duty to use that power sensibly and wisely in the execution of our mandate. As an Opposition, I think that it behoves the party opposite to recognise the strength of public feeling that was shown for the changes outlined in our manifesto. Of course, one does not want to press the mandate argument too far, and I hope that I do not, but there is no doubt that certain issues, particularly perhaps the constitutional ones, were put fairly and squarely to the people and were resoundingly approved, even to the extent of there now being no Conservative representation in either Scotland or Wales. Whatever else we have, we do have the clear and unmistakable consent of the British people for our proposals for devolution and, dare I say it, for reform of your Lordships' House.

Viscount Cranborne responded (cc 34-5):

I hope that I did not misunderstand the noble Lord. I thought I detected an old threat - what I might call the sword of Damocles argument hanging over your Lordships' House - in some of what he said. I am delighted to see the noble Lord shake his head. In that case I withdraw what was clearly an over-sensitive interpretation on my part.

However, let me reiterate what I intimated yesterday. The Official Opposition in your Lordships' House will not in any way be deflected from what they see to be their duty: to exercise their judgment, to improve, to amend and to scrutinise legislation. They will attempt to be a constructive and vigorous Opposition. They will treat each Bill on its merits with no thought for their own future or indeed the future of your Lordships' House. I hope that your Lordships will feel that that pledge is honoured in the light of experience.

During the Queen's Speech debate on the constitution in the Commons, the Scottish Secretary, Donald Dewar said:⁸

During this Parliament, we shall start the process of reforming the upper House. Neither I nor my colleagues are here to lash out at the Lords. It is not a matter of the politics of envy or of old enmities remembered. We certainly do not intend to belittle the integrity or commitment of individual Members of that Chamber. However, there is a case for sensible change and we must rethink the role of the House of Lords, which is full of anomalies. While it bravely tries to do its job, it is often limited by its structures. The starting point of removing the votes of hereditary peers is sensible, but I stress that it is the first instalment, the first stage of an important constitutional reform.

⁸ HC Deb vol 294 cc280-1, 16.5.97

I think that I am right in saying that in 1995-96, two thirds of the votes won by the Government in the Lords would have been reversed if hereditary peers had not had the vote. That is important in terms of the day-to-day management of the House. I say gently and, I hope, tactfully, that it is difficult to argue that hereditary peers are drawn from a wide and representative stratum of society. We should address that. I discovered in some reading a few days ago that it worried Lord Curzon. If it worried George Nathaniel Curzon, it ought to worry us. I think that we have allies among Conservative Members. It is strange that although Conservatives defend as absolutely essential the presence of hereditary peers, they are remarkably coy about creating hereditary peerages. Those that are carefully selected, although I shall go no further into that. New hereditary peerages are almost as rare as Scottish Conservative Members. I know from personal experience and civilised debate that the right hon. Member for Richmond, Yorks is coy about saying that, if by mishap at some future date - I accept that pendulums swing, especially after the events of two weeks ago - a Conservative Government should come to power after we have abolished the hereditary principle, they will reintroduce it. I welcome that sensible stance, but I suspect that Conservatives defend it simply because, as is their innate wont, it is there and not because they believe in it.

Sir Nicholas Lyell (North-East Bedfordshire): I have a straightforward question for the Secretary of State. How can it possibly be right to destroy or fundamentally alter the existing structure, without first thinking through and putting before the House what is intended to replace it?

Mr. Dewar: No questions are quite straightforward, even those from the right hon. and learned Gentleman. We think that the hereditary principle is indefensible and that it should go, and we shall defend that proposition as it stands. A more broadly based House of Lords could continue with its present role. However, we have gone further and said that there are some interesting ideas on the role of the upper House and on how it can be made more directly representative. There are ideas on the part that elections should play in that process and on whether the Lords should have the role of a constitutional watchdog.

I am not endorsing any of those ideas, but they are interesting and this first stage would give them an impetus. I understand that the right hon. and learned Gentleman does not disagree; those matters will have to be settled in debate in the House and in the public domain.

Throughout the session, there was much discussion of Lords reform in the media and in parliament, most of it speculative (concerning, for example the fate of the bishops or the royal dukes, in a reformed Chamber.) The most concrete development, which itself fuelled further speculation as to the Government's thinking, came at the turn of the year with the establishment of a Cabinet Sub-Committee on the subject:

MINISTERIAL SUB-COMMITTEE ON HOUSE OF LORDS REFORM
[CRP(HL)]

Composition:

Lord Chancellor (Chairman)
Secretary of State for the Home Department
President of the Council and Leader of the House of Commons
Lord Privy Seal
Parliamentary Secretary to the Treasury
Captain of the Gentlemen at Arms
Minister without Portfolio

Terms of Reference: "To consider policy and other issues arising from the Government's plans for reform of the House of Lords and to make recommendations to the Ministerial Committee on Constitutional Reform Policy."

Questioned about the Government's strategy in the Lords on 27 January 1998, Lord Richard reaffirmed the manifesto policy: "We were elected on a manifesto which was quite clear: as a first stage in the reform of this House, we will remove the right of Peers by succession to sit and vote in this House. That remains our policy..... I confirm that the proposal for a joint committee on which the Labour Party was elected remains our proposal. I am delighted to note that the Liberal Democrats are in favour of the early removal of the right of hereditary Peers to sit and vote in this House. I can also confirm that, after the first stage, there will have to be a second stage."⁹ In further questioning a month later, the junior minister, Lord McIntosh of Haringey refused to publish the minutes of the Cabinet Sub-Committee (on the usual grounds of cabinet confidentiality), but promised that "there will be full public consultation in the widest sense when the sub-committee has completed its procedures. As and when that will be is a matter for the sub-committee, and it has not yet been determined ... As to the matter of full discussion in this House, that is for the usual channels, but I am sure that they will look sympathetically on the idea of a full discussion once the recommendations of the sub-committee have been made public."¹⁰

The Lord Chancellor, who chairs the Sub-Committee, was asked about Lords reform during his oral evidence to the Public Administration Committee on 3 March. Lord Irvine of Lairg said that "of course we are looking not merely at the issue of the removal of the rights of hereditaries but we are looking at all issues which are relevant to a reformed and more representative upper house, the House of Lords."¹¹ Questioned on the proposed second stage, he replied: " I think that these are fantastically difficult questions on which it is necessary not to arrive at a concluded view but to have the benefit of a

⁹ HL Deb vol 585 c98, 99, 27.1.98

¹⁰ HL Deb vol 586 cc792, 793, 26.2.98

¹¹ 3rd report of 1997-98, HC 398, Q425, 3.3.98

Cabinet Sub-Committee, the benefit of the resources of government, the benefit of looking at upper houses elsewhere and giving a very very thorough consideration to what a new model might be. You know perfectly well, we all know perfectly well what the possibilities are, wholly elected, wholly nominated, something in between. What to do about existing life peers? What about what I think is pretty broadly agreed by people that any reformed upper house should have a guaranteed place for independents or cross benchers and so on? We are looking at all the alternatives, all the possibilities, and we will decide, once we are clearer in our own minds of the shape that a reformed upper house might have, what the next stage might be" (Q429).

He was then asked by Andrew Tyrie about consultations with other parties:

430. My suggestion is to try and find some consensus about that. If you have started to form a view on that you might consult now.

(Lord Irvine of Lairg) My response to that is government must govern. We have a clear mandate. We have to get on with developing a policy but obviously that does not preclude discussions at a later stage.....

434. Just to clarify, you would not favour trying to generate consultation with all the other political parties in this country?

(Lord Irvine of Lairg) I have not said that. I have said the reverse.

435. You are welcoming approaches.

(Lord Irvine of Lairg) I have said the reverse. I have said that we do not exclude discussions with the other parties at an appropriate time but meanwhile it is the job of this Cabinet Sub-Committee - -

436. To decide what to do.

(Lord Irvine of Lairg) Not to decide what to do. To get ahead with the considered development of policy and to accumulate information from around the world and other upper houses and to be fully informed before coming to views which could perfectly appropriately, once these views are developed, be the subject of consultation.

It quickly emerged that there had been private contacts between the Leader of the Lords and the Government chief Whip and their Opposition counterparts, to see if there could be some consensus between the Government's two-stage approach and the Opposition's demand for a 'big bang' single-stage change.¹² The detailed views of the parties are

¹² The controversy over the Lord Chancellor's remarks to the select committee apparently denying any cross-party talks is beyond the narrow scope of this Paper

considered later in this Paper. The Government's thinking on the timing of its proposals was set out by Lord Richard in his ICR/*Daily Telegraph* speech on 8 June:¹³

We will continue to try to achieve a consensus. But there should be no doubt that we will not be deterred from fulfilling our manifesto commitments, should agreement remain unobtainable. If it is not, we will proceed with an initial Bill to remove the hereditary peers. By that time, we will have produced a consultation document on the issues surrounding the second stage. We will then seek to achieve all-party agreement to wider reform in the medium term.

Answering questions on 9 July on forthcoming business, the Chief Whip, Lord Carter, confirmed that there would be a two-day debate in the Upper House on Lords reform in the spill-over period this autumn:¹⁴

The Government believe that such a debate would be of value and want it to take place at the best time for the House. It was my view and that of my noble friend that a debate in the spill-over would allow noble Lords time to gather their thoughts over the Summer Recess and to return refreshed. It would also avoid this important debate taking place in the next few weeks when the workload is very heavy.

Recent press reports have suggested that the Cabinet Sub-Committee would propose an 'interim solution' on composition of around 600 life peers. This would be made up of the existing life peers and the creation of new life peerages (including those created before the legislation is enacted and those for existing 'active' hereditary peers). A Royal Commission would also be established to investigate the options for the second stage.¹⁵

II Recent party views

A. The Government¹⁶

Ministers have been keeping Lords reform at the forefront of current politics. The recent Labour/Liberal Democrat constitutional declaration included the following:

The reform of the House of Lords is long overdue. The removal of the rights of hereditary peers to sit and vote, will be the biggest change to the House of Lords this century and the first stage in a process to create a modern second chamber.

¹³ The views of the various parties, as expressed at the conference on *Labour and the House of Lords*, organised by the Institute for Constitutional Research and the *Daily Telegraph* at the QEII Conference Centre on 8 June 1998, are considered below.

¹⁴ HL Deb vol 591 c1370, 9.7.98

¹⁵ *Times*, 30.7.98

¹⁶ See also section IC of this Paper

The Prime Minister has reaffirmed the Governments' promise to legislate on the House of Lords during recent PMQs, for example:

The Prime Minister: It is an interesting reshuffle that puts 14 hereditary peers on the Conservative Front Bench. We are committed to the reform of the hereditary element of the House of Lords, for two reasons. First, it cannot possibly be right that people sit as legislators in the Houses of Parliament on the basis that their birth makes them hereditary peers. Secondly, it is an absolute democratic scandal that hereditary Conservative peers outnumber the peers of the elected Government of the day by three to one. In other words, there is an in-built Tory majority in the House of Lords in perpetuity. That may be justified by the Conservative party because it believes in that sort of thing – but it is our job, as a new Labour Government, to remove that and make our Houses of Parliament democratic.¹⁷

And

The Prime Minister: It is not just the injustice of hereditary peers sitting in the other place and making laws; there is an in-built majority of three to one in perpetuity for the Conservative party in the House of Lords, irrespective of who wins the general election. The Salisbury convention exists for that very reason and I hope that the Conservative party will not do anything to break it. I challenge the Opposition to deny that they will. If they do break it, that will be the greatest constitutional outrage of all.¹⁸

The latest detailed statement of the Government's plans was set out in Lord Richard's speech to the conference on Lords reform organised by the Institute for Constitutional Research and the *Daily Telegraph* on 8 June¹⁹. He began by putting the Governments plans for the Lords in the context of its range of **constitutional and Parliamentary changes**.²⁰

The Government's plans for reforming the Lords need to be set in the context of our wider programme to modernise our constitution. We inherited a legacy of a loss of public confidence and trust in our system of government. Unnecessary secrecy, and the over-centralisation of power, had undermined respect and support for the processes of government itself. Our democratic institutions were, I think, seen as out-dated and out of touch, with too much power concentrated at the centre. That is why we set out in our manifesto a major programme of reform to tackle these issues, to restore faith in government and our constitution, and to devolve more power away from Westminster.

¹⁷ HC Deb vol 313 c 366, 3 June 1998

¹⁸ HC Deb vol 313 c 1068, 10 June 1998

¹⁹ Proceedings of a conference: *Labour and the House of Lords*, 8 June 1998

²⁰ *Proceedings*, cc 2-3 (the report of their proceedings was published in mock-Hansard format)

Our proposals therefore included modernising Parliament and the electoral system; devolution; opening up government through a Freedom of Information Act; and incorporating the European Convention on Human Rights into United Kingdom law. Our initial objective has been to put in place an integrated programme of measures to decentralise power and to enhance the rights of individuals within a more open society.....

Now those are just the headlines, but I do believe that the rapid progress we have made in implementing our commitments should dispel any lingering doubts anyone may have about our determination to see through reform of the House of Lords.

Reform of the House of Lords must be seen, too, in the context of reform of Parliament as a whole. This Government is the first to recognise that. We have wasted no time in beginning to tackle reform of the Commons. The Leader of the Commons, Ann Taylor, has been chairing the Modernisation Select Committee, which has already produced recommendations for updating procedures there.

Changing the composition of the House of Lords obviously has potential consequences for its relationship with the House of Commons. We believe firmly that the House of Lords must remain the subordinate chamber. There is no point having a revising chamber if it is simply going to set itself up as a continuous rival to the House of Commons. The Commons will remain the House from which the Government is led and predominantly formed; and in terms of powers, we believe that the Lords should exercise no more than its current powers as a revising chamber.

He then set out the Government's thinking on its **proposals and timescale** (cc3-4)

Given the very demanding programme we set ourselves in our first year in office, I make no apology whatsoever for not yet having reformed the House of Lords. We have a very crowded legislative programme in this session, and we must of course balance our legislative time between important constitutional reforms and other vital pieces of legislation covering issues like education, crime, and health. Given the complexity and the significance of reform, there is a strong case for approaching it more slowly than some other elements. We need to achieve a lasting reform if we are to strengthen the standing and authority of Parliament as a whole.

We have tried to achieve a consensus on the way forward. As you know, discussions have taken place between Lord Cranborne and myself to see whether there was a real possibility of agreement on the composition of the second chamber. Unfortunately, they have not succeeded. Had they done so, it might have been possible to legislate in one stage if there had been all-party agreement—the so called "big bang".

While we are on the subject of Conservative views, I cannot help observing that the phrase the "elective dictatorship" has suddenly come back into fashion. Nothing has been heard of it for nearly 20 years. For Conservative spokesmen, it seems to appear only when their party is in opposition. When they are in power, one assumes that the majority, by definition almost, ceases to be dictatorial.

So what are we proposing? We made our intentions very clear in our manifesto. The right of hereditary peers to sit and vote in the House of Lords will be ended by statute. This is the first stage in a process of reform to make the House of Lords more democratic and representative. The legislative powers of the House will remain unaltered.

Our aim is perfectly clear, and was accepted overwhelmingly by the electorate at the last election. The system of appointment of life peers to the House of Lords will be reviewed. Our objective will be to ensure that, over time, party appointees as life peers more accurately reflect the proportion of votes cast at the previous general election.

We are committed to maintaining an independent Cross-Bench presence of life peers. As the manifesto made clear, we believe that no one political party should seek a majority in the House of Lords. There will be a wide-ranging consultative process to consider the options for the second stage, and put forward recommendations for further change following the removal of the hereditary peers. We have also made it quite clear that our proposals for Lords reform have no implications for the Monarchy.

In spelling this out in a little more detail, I hope to put to flight some of the wilder allegations about the Government's plans.

Lord Richard rejected **unicameralism**: "The Government believes that the House of Lords is an essential part of the legislature. It makes an important contribution to the political and legislative process, and we envisage a reformed House maintaining that role." He continued (c 4):

Extolling the virtues of the second chamber as revising chamber always risks implying that the first chamber, the House of Commons, is not doing its job properly. But the House of Lords brings its own special expertise to the scrutiny of legislation - most obviously on European legislation. The Lords, too, with its less overtly party political character, can give the House of Commons breathing space in the scrutiny and passing of legislation; and through its acknowledged expertise - for example, in the Science and Technology Select Committee - it can make a valuable contribution to the development of policy.

However this did not mean that the Upper House did not need reforming, and he set out three basic reasons (c 4): "The composition is unjustified and anachronistic. It produces gross political imbalance. And there has been agreement in the past that the right of hereditary peers to sit and vote should go."

He denied that the Government's approach was "an act of political spite." Individual hereditary peers did valuable work in the House of Lords, but "that does not justify the fact that [they] are there simply by virtue of birth." The hereditary element was a throwback to the time when "the power of the landed nobility had to be incorporated into the counsels of the monarch ... But that system is long gone. We no longer govern in this country through societal elites .. " The Government's belief in opportunity based on merit and effort applied as much to politics as to the economy or the community: "In a modern Parliament, there really should be no reserved seats booked generations ago for a privileged few" (c5). In any case many hereditary peerages are post-1918 creations. Neither was he impressed with the 'random selection' argument, because of, for example, the hereditary peerage's restricted rules on succession.

Lord Richard also rejected the '**independent element**' argument (c5):

Their supporters argue that the body of hereditary peers constitutes an independent element within Parliament. That is quite simply untrue. The vast majority of hereditary peers who attend the House take the Conservative Party whip. As I have said before, I am quite sure that many Conservative hereditary peers genuinely believe that they are independent. Many of them sit and listen to the debates, believing they are exercising independent judgment upon the arguments put before them. The only trouble is that they almost invariably end up voting independently with their own party.

The argument is bogus anyway, regardless of party. The real independents in the House of Lords are on the Cross-Benches, and, as I have said, the Government is committed to retaining an independent Cross-Bench presence. This is one of the great strengths of the House of Lords. In fact, after reform the independent voice should be stronger than it is now, in a House which is dominated by Conservatives. Hereditary peers are neither elected nor appointed to Parliament - they are just there. To claim that this makes them independent sounds to me suspiciously like an argument for a very successful and long-standing restrictive practice-the original closed shop.

Following on from this was his second argument, that of **party imbalance**. He repeated the Government's principle that no one party should seek a majority in the Lords, and described the effect of what he saw as the in-built Conservative imbalance (c6):

We fully accept that any Government will suffer in the Lords. That is part and parcel of having a revising chamber. But the Government has been defeated 21 times so far this session. Already, we are nearly at the maximum number of 22 defeats suffered in one session by the last Conservative Government, in 1985-86, and way above the average of 13.5 from 1979 to 1996. The Opposition need to weigh very carefully the consequences for the House, and for themselves, if - as in the 1970s - they are tempted to misuse their majority over the Government.

His third reason for reform was that the removal of the hereditary peers had a history back to the preamble to the *Parliament Act 1911* (c 6):

Even then, when the advent of universal adult suffrage still 17 years off, it was as plain as a pikestaff hereditary membership of the Lords had had its day. Since then, it has been agreed three times that an hereditary peerage should not carry the right to a seat in the second chamber: in 1917, 1948, and 1968. The Lords itself, furthermore, voted for the 1968 proposals by a majority of almost 5:1.

Ten years later, members of the Conservative Party, then in opposition, were also prepared under the late Lord Home to propose a radical reform, which included the removal of the automatic right to sit and vote of hereditary peers.

Lord Richard then detailed the **two-stage nature of the Government's proposals** (cc6-8):

In our manifesto, we envisaged a two-stage reform of the Lords. We have always been aware of the enormity of the task of reforming it, especially in the face of opposition from within Parliament itself. It would be a brave but foolish Government which ignored the lessons of past failures to reform the second chamber.

It is well known that the Liberal Democrats broadly share our views on reform of the Lords. As I have said, the Government sought consensus with all the major political parties. Consensus would clearly be desirable on such an important issue. We have, however, clear manifesto commitments, and the staged approach we have set out is a perfectly rational and sensible way of carrying them out.

When I initiated informal soundings with the Conservatives in the Lords, there was a promising start, but sadly, the earlier goodwill seemed to evaporate somewhat. Instead of the possibility of agreement, the Opposition started to lay the emphasis on prior steps such as a so-called "options paper" - I think what they wanted was a "preference paper" - and even a view that the Commons be reformed first. Despite the manifesto commitment, they have still not accepted without conditions that hereditary peers should go. Most worrying of all, they have refused to rule out wrecking amendments to the legislation we propose to introduce.

In recent weeks - indeed, days - the Conservative Front Bench in the Lords has even issued threats about blocking the Government's entire legislative programme if the reform Bill is not to their liking. Like the grand old Duke of York, they are marching their men up to the top of the hill. I can only hope that they will have the good sense to march them down again, as he did.

Quite frankly, the idea of the Opposition wheeling out their army of hereditary peers to try to block the Government's fulfilment of a manifesto commitment, would itself be a constitutional outrage. If the worst comes to the worst, and the Opposition attempts to block a reform Bill over two sessions, we will no doubt have to invoke the Parliament Acts.

I hope that common sense and respect for our unwritten constitution will yet prevail. We will continue to try to achieve a consensus. But there should be no doubt that we will not be deterred from fulfilling our manifesto commitments, should agreement remain unobtainable. If it is not, we will proceed with an initial Bin to remove the hereditary peers. By that time, we will have produced a consultation document on the issues surrounding the second stage. We will then seek to achieve all-party agreement to wider reform in the medium term.

Can I say that we are determined also to ensure that any interim House should be regarded as legitimate, and we will therefore put in place measures to ensure that it retains public confidence. A crucial part of that will be reviewing the system of appointment of life peers. We need a more transparent process, which ensures that the membership of the Lords is drawn from a wide variety of backgrounds, reflecting the talents of the nation as a whole. We need an Upper House that is more representative of the people of this country.

I have read on numerous occasions - over the weekend too - that the Government apparently intends to pack the House of Lords with Labour peers, in order to force through its reforms. The Lords, they say, will become the biggest quango in the country. Let me be quite clear on this point. That will not happen. There are no plans, nor have there ever been any plans, to flood the Lords with party appointees. As I said earlier, we believe that no one party should seek a majority in the Lords. In previous all-party discussions on reform, that has been one of the areas of agreement, and I reiterate it today.

We also recognise the importance and value of having independent peers who choose not to take a party whip. The removal of the hereditary peers will leave a House of around 500 life peers. Of those, 120 or so are currently Cross-Bench peers. We are committed to maintaining an independent, Cross-Bench presence. The Law Lords will, of course, also continue to sit.

We believe, too, that the Church of England should continue to be represented in a reformed House of Lords. It is also important, though, in a more representative second chamber, to consider representation for other Churches and faiths. There is no question of reform leading to disestablishment, whatever *The Daily Telegraph* may say!

Perhaps, while we are on the subject of amusing canards reported by our conference hosts, can I make it plain that the Government has no plans to reform the State Opening, either. The State Opening is a matter for the Queen and the Earl Marshal, not for the Government. Can I also repeat that there are no implications for the Monarchy in our proposals for Lords reform?

Reforming the House of Lords has indeed defeated many. We are under no illusions about the complexity of the task. But it is simply not good enough to argue that long-overdue reforms should be deferred, just because implementing them involves hard, radical choices.

Now there are some who hope that we never get beyond the statement of intent in our manifesto, while others are calling for action straight away. Our critics cannot have it both ways. On the one hand, we are accused of rushing mindlessly into far-reaching constitutional reform; yet on the other, we are urged to set out our plans for the House of Lords immediately.

Within Government, we are deliberately taking our time to think through the detail and the implications of our plans. A Ministerial sub-committee has been examining all the options, and it still has work to do. The direction of our thinking is; however, clear: a step-by-step reform towards a more democratic and representative second chamber. The mediaeval character of this part of our legislature will go. It is another step towards the reform of our political system to which this Government is firmly committed.

Reform of the Lords has been tried many times before. This time, Labour is determined that it will succeed.

The **Government's annual report** published on 30 July listed progress on its election pledges. Number 125 is: "end voting rights for hereditary peers As soon as we can."²¹ The section of the report on 'modern government' contained the following (p 88):

Modernising Parliament - reforming the House of Lords

We will remove the right of peers to sit and vote in the House of Lords merely because of their ancestry. This will be the first stage in a process of reform to make the House of Lords more representative of the country as a whole. We believe that no single political party should have a built in overall majority of members in the House of Lords. We are examining reforms to the system for nominating peers to the House of Lords which retain its expertise and its role in challenging and revising legislation.

The 'what we will do next' segment at the end of that section contained the following: 'Prepare for reform of the House of Lords' (p 89).

The recent ministerial reshuffle, including the replacement of Lord Richard by Baroness Jay of Paddington as Leader of the House of Lords, inevitably led to speculation about the future of the Government's legislative plans for the House of Lords. Lord Richard was quoted in the 31 July issue of the *New Statesman*:

"I have concerns about the reform now," he said. "If all the government is going to do is abolish the right of hereditary peers to sit and vote and then kick the second stage into touch it will be a great missed opportunity."

Lord Richard intended to establish a Royal Commission to agree a second-stage reform. Now, he fears, phase two just won't happen. "Whatever you do to the House of Lords is going to make the second chamber more troublesome for the

²¹ Cm 3969, p 101

Commons. There's no getting away from that and a lot of MPs on both sides are worried."

He adds: "I have no idea what the Prime Minister's views are. I've not talked to him about it. I don't think his mind has been engaged in this in any concentrated way."

It may well be that Blair has chosen to discuss the issue with others - such as Lord Irvine and Jack Straw - but like welfare reform, the scale of the task is greater than any of the ministers involved first realised. Lord Richard briefly lifted the veil on his former cabinet committee to illustrate the problems of merely establishing an interim chamber. "The more we looked at it, the more complicated it became. What do you do with the bishops? How will Lambeth Palace react? What do you do about the law lords? Do you have a cap on the size of the interim house and what's the size of the interim house? How many life peers are you left with? What are you going to do with the Tories? Are they going to get more life peers, in which case how are they going to get them?"

The new Leader in the Lords, Baroness Jay of Paddington, discussed Lords reform in an interview in the *Daily Telegraph* on 8 August. She was quoted as saying: "If you remove the hereditaries you'd already have about 500 life peers and the balance between the Conservatives and Labour would be almost equal. We must focus on that." On the Government's timetable for staged reform, she said: "We have got to have a proper package. To say there is a vacuum beyond the short-term is nonsense, there has been substantial work done by civil servants and politicians. We haven't stopped at scrapping the hereditaries. The degree to which we express the outcome is something we need to think about." She defined her slogan as "More legitimacy, but no more power."²²

She was also quoted as expressing a preference for life peers to be known as 'MLs' - Members of the Lords - and not to have titles as such, so as to distinguish them from hereditary peers. The new Leader of the Lords also suggested the modernisation of some of the ceremonial aspects of the House, including the State Opening. She was quoted as saying: "There are changes that I am sure the Queen herself would not object to, but which make the whole thing much more of the 21st rather than the 16th century."²³ This last point was criticised by her Opposition shadow, Viscount Cranborne, who was interviewed on Radio 4:²⁴

"They must stop this habit of every time they find themselves in need of justification, calling the monarch down into the political bearpit," he said. The proposal was a piece of "flubflummery" with a "radical tinge" which was trying to "cover (Labour's) retreat from going to a full reform of the House of Lords". If a "full" reform was planned, "it's an extremely good idea to remove the ethos of the hereditary peers," Lord Cranborne said. "There's no reason to keep it if you are doing full reform." But in fact Labour appeared to be sticking to a stage one

²² "Discreet charm of Blair's aristocrat", *Daily Telegraph*, 8.8.98

²³ "Strip peers of titles, says Jay", *Daily Telegraph*, 8.8.98

²⁴ "Baroness criticised over Queen remark", *BBC News web-site*, 8.8.98

of reform - abolishing hereditary peerages and replacing them with appointed life peers, "transforming the place into Blair's poodle".

B. The Opposition

William Hague, in his major speech on the constitution last February, described the Government's plans for Lords reform as "potentially the most damaging step of all"²⁵:

The Government is now embarking on what is potentially the most damaging step of all - removing the main independent element in the House of Lords by excluding the hereditary peers. Mr Blair's justification is his dislike of the hereditary principle, although he sees no contradiction in also parading himself as the protector of the monarchy.

Labour's plans could lead to a House almost entirely composed of nominated peers. This would be a huge and dangerous extension of Prime Ministerial power. It would be wholly unacceptable to the Conservative Party. And it should be viewed with utmost suspicion by all who believe in a strong Parliament and an accountable executive.

Unlike the left, Conservatives understand the value of inheritance. Like most people, we believe that one of the things that gives meaning to human life is the opportunity to pass on some of its gains to our children. Property is one obvious form of inheritance, but parents also want to pass on values, family traditions, religion, responsibilities and duties, networks of friends, standing in the local community, reputation. Our country's greatness is built on generations of inheritance of this sort. The inheritance of the throne stands as a symbol of it.

Hereditary peers too are a manifestation of our acceptance of the important idea of inheritance. Take one aspect of this. One of the roles of the House of Lords over the last 300 years has been to provide a place in Parliament for the great owners of land and property. Passing a place in the Lords in the same way as property, by inheritance, was an obvious thing to do. Now the requirement for a House representing the interests of property and land, for so long part of the Conservative defence of the composition of the Lords, has diminished. The balance of power in society has changed. Conservatives are therefore open to suggestions about how membership of the Lords might be changed too, and whether the hereditary principle is the right one to employ when choosing members for the House.

However, when making changes it is important first to note that the present House of Lords provides us with a remarkable service. It improves legislation in a dispassionate way that the party political House of Commons cannot. It represents the very best of informed opinion, yet it is restrained in the way it uses its powers. It only asks the House of Commons to think again in exceptional

circumstances and usually for good reasons. It also ensures, as a directly elected chamber might not, that the Commons is checked without its supremacy being undermined.

Understanding the value of inheritance and the way families pass down values and duties from one generation to the next, Conservatives are not surprised that hereditary peers, no longer required or able to represent the landed and property interest, nevertheless make a valuable contribution to the provision of this remarkable service.

So the onus is on the Government, if it wants to make change, to think more deeply, to consult widely, to come out, if it can, with a better alternative, and then to carry that alternative through Parliament.

Any reform of the House of Lords must meet six tests which Robert Cranborne has set out. The reformed chamber must be better at scrutinising and revising legislation than the present one. That a substantial independent element must remain. That the Prime Minister's powers of patronage must not be increased. That the Members must be drawn from all parts of the United Kingdom. That reform must be considered in the context of its effects on Parliament as a whole. And that the supreme authority of the House of Commons must remain intact.

The whole process, if it is done, must be done in one step, not in a half-baked way that destroys the independence of the present House, while leaving its future hanging indefinitely in the air - to the immense advantage of the Executive and the further diminution of Parliament.

The Leader of the Opposition in the Lords, Viscount Cranborne, set out in some detail the Opposition's approach in his speech to the June ICR/*Daily Telegraph* conference. He derided the Government's plan to remove the hereditary peerage as a modest step, not in accordance with great public demand, but done for reasons of internal party unity and because the Prime Minister "dislikes Parliament ... He hates being held accountable by Parliament .. and he hates the threat to his unfettered power that the existence of an independent second chamber represents"²⁶ He continued (c43):

So I have to ask, what really is Mr Blair playing at? For two reasons, which I have given, I think he badly needs to attack the hereditary peerage. He needs to unite his House of Commons troops against an enemy which looks sort of formidable, but which they feel is morally indefensible. If I may put it this way, we are the Fuzzy-Wuzzies, and he has the Maxim gun. At the same time, he can use the smug outrage which is the hallmark of all puritan regimes to establish complete control over both Houses of Parliament. Like the leaders of all puritan regimes, Mr. Blair is, of course, above all a control freak. I suspect that that is what will bring him down in the end.

²⁵ *Change and tradition: thinking creatively about the constitution*, speech to Centre for Policy Studies, 24.2.98 [party web-site transcript, pp12-13]

²⁶ *Proceedings, op cit*, c41

This was demonstrated by ministers' reactions whenever they are defeated in the Lords, especially when they blame defeats on the hereditary peers. He disputed the Government's analysis of **Lords divisions and defeats**, based on an alleged Conservative majority (c41):

And what about this "massive preponderance" of Tory peers? So far from massive preponderance of votes, the largest Tory vote this Parliament has been 140. There are, I would remind you, Ladies and Gentleman, 157 Labour peers. None of the 20 defeats, excluding one, has been by less than 20 votes. Five have been on Liberal amendments, and - wait for it - two on Labour amendments. One was on a Cross-Bench amendment.

There are 157 Labour peers, as I say. On some recent defeats, Labour have mustered as few as 71, which was on quota hopping; 84 on lone parents; 76 on the Bank of England Bill; 81 on the Murdoch amendment; and 72 on pharmacies. And this, remember, was after the Government had replenished - quite rightly, in my view - the number of Labour peers; and I wish I had managed to persuade the last Prime Minister to give them a disproportionate number of peerages in the last Parliament, which I think they very much needed. If only four in five Labour peers had voted, the Government would have avoided almost half - nine - of its defeats. Labour will create, I am told, a further 20 to 25 peers shortly. If they had had them before, they would have needed just three quarters of their current peers, plus the newcomers, to have won 15 of the Divisions that they have lost.

I therefore have to ask: is being asked to think again on so limited a number of occasions too much for Mr. Blair to bear? After all, the last Conservative Government was defeated some 240 times in the Lords, and it accepted 40% of the Lords amendments. This Government has so far rejected them all, bar about half of one, to which Lady Young referred. I will not bore you by an analysis of those votes, but I do think that it is worth remembering on the subject of defeats in the House of Lords sustained by this Government since 1 May 1997, the sort of things we rather gently have asked the House of Commons to think again on. They fall into three categories: promotion of choice; upholding what, for want of a better term, I would call common sense; and defence of equity.

I should point out that these matters are not entirely Tory-influenced subjective judgments, because they have more often than not been supported and won by virtue of a number of votes from non-Tory benches. After all, contrary to popular opinion, we do not have an overall majority in the House of Lords: we are merely the biggest nominal grouping. I am glad to say that, by switching their attack, the Government has recognised that. They no longer talk about the Tory "majority", which is an unsustainable statistic, but about the "disparity" between the number of Labour and Tory peers on which I myself in some sympathy at least with them.

He considered the **Government's approach to reform**, especially in the context of its two-stage approach (cc 43-4):

Mr. Blair's plans are nothing to do with the reform of the House of Lords. If he had been interested in the reform of Parliament, I suspect that he should have

begun, as others have said today, with the House of Commons; in the light of what reforms took place there, then it would make sense, surely, to look at reforming the House of Lords.

But if he insisted on reforming us first, he would, if he really wanted to be constructive, have taken up my suggestion that I first made long before last year's general election: to engage the other political parties in discussion, and then try to build a public consensus among the public at large for sensible reform. Instead, he tries to make out that any political battle is over whether the hereditary peerage should be abolished. It must be extremely disappointing for him to find that the battle is not going to be about that at all.

It is going to be something completely different. It is going to be about whether Mr. Blair abolishes the hereditary peerage without simultaneously putting something at least as independent in their place. Increasing numbers of his natural supporters - although I do not want to insult Professor Bogdanov. I sometimes wonder whether he might be tempted to become one; and, perhaps more naturally, Hugo Young in *The Guardian* - are beginning to worry that he will succeed in doing just that.

For Mr. Blair knows, just as you and I know, that, unless stage 1, which is shorthand for abolishing the hereditaries' right to sit and vote in the House of Lords, and the further reform of stage 2 happen together, stage 2 will never happen at all. In private, I have heard Ministers accept that, and in public even they acknowledge that it will not happen until after the next election. I hope that Lord Rodgers understands that, because I thought that his trust in this Government was rather touching.

I feel that it is a great pity that so important a question as the reform of Parliament has been sucked into the quest to maintain Labour Party unity, and the control mania of its leader. Parliament as a whole does need reform - that is the consensus that seems to be emerging here this morning - and there is a very good case, in my submission, for reforming the House of Lords. However, in order to reform us, as Lord Selborne so rightly said, you have to have a clear idea of what we are for; which is why it is a good idea to look at the House of Commons first.

Viscount Cranborne set out what he thought considered to be the **purpose of the second House** (c 44):

However, I do think that I know what above all the second chamber should be for. Lady Young has pointed out, quiet rightly, that we are a revising chamber. and that we do our job remarkably well. It is true that most of our time is spent trying to improve the often ill-digested legislation that the Government-dominated House of Commons serves up to us. That is true of a House of Commons dominated by either party. However, that is not our ultimate purpose. I believe that our ultimate purpose is to ask the Government and its myrmidons in the House of Commons to think again. In that instance, it is perhaps no coincidence that the only potential piece of legislation not covered by the Parliament Acts is the Quinquennial Act. If we are to exercise that constitutional

function, by definition we must have the independence and the self-confidence in our own status to give us the authority to do so.

Therefore the case for reform was based on **legitimacy**, which would enable the House to exercise its existing powers more than it does at present (c44):

The weakness of the House of Lords as at present composed is not that it exercises too much power, but of our composition, we do not exercise the considerable powers we in theory have, because we do not feel that we have the authority to do so. That, I believe is the great argument for reform of our composition. That is why Mr. Blair fears a reformed House of Lords: it would make Parliament more powerful, at his expense.

He urged the Government to seek an **all-party consensus** on Parliamentary reform generally, and on Lords reform in particular, including the publication of an 'options paper' (c 44-5): "It won't take long. After all, we have been discussing this matter for over 120 years now. We all know what the basic options are. And I undertake that we in our party will respond in a constructive spirit, as I undertook to do when we first began to talk about this matter. The options can then be put to the public in whatever forum the Government suggests, and we can try to build a consensus for a Bill which can pass without too much difficulty through both Houses of Parliament." (c 45). He questioned the failure of the Labour and Liberal Democrats to have already come up with stage 2 proposals in view of the pre-election Cook/Maclennan joint constitutional committee.

He concluded by dealing with **Lord Richard's approach** as set out in his conference speech (cc 45-6):

I am sorry I missed Lord Richard this morning, but flicking through what he is alleged to have said, I understand that he stated that we needed lasting reform. I do not see that so far he has provided it. He said that he wanted consensus. He clearly has abandoned all attempts to seek it. He said that the discussions failed. He broke them off. He said that he wants a more transparent system of life peers. I have to say that his plans remain somewhat opaque. He says that he wants a wide-ranging consultation. So where is the options paper which would kick off such a wide-ranging consultation? He said that the hereditary peers are anachronistic. Is it more anachronistic than to give the Prime Minister the power to choose the House instead?

He said that the options paper that I asked for was really a preference paper. We specifically said, Lord Strathclyde and I, that it should definitely not be that, because, if the Government stated their preference, we might be asking them to stick their neck out so that we could chop it off. So we were rather sympathetic to the fact that they did not want a preference paper, and accepted why they should not.

According to Lord Richard, we had demanded Commons reform first. But specifically, I have always said that, although I thought it would be preferable, we accepted that that was not their view. He said that he wanted the powers of the

Lords to be unaltered. Does that mean power in theory or power in practice? He said that the proportion of life peers must accurately reflect the votes which were cast at previous general elections. Does that mean that some life peers would go if the voting patterns were reversed? Otherwise, of course, the size of the House of Lords would grow exponentially to an even greater level than we enjoy at the moment.

So, having listened to reports of Lord Richard's speech, as I have, or listened to him in person, as you have, do you understand any better what he wants the Upper House to be? We know well just one thing. He insists that the hereditary peers must go - this not for negotiation. For the rest, all is confusion: a review here, a commission there. It is one giant smokescreen, under which Lord Richard will deliver the Prime Minister the prize of a nominated House. Lord Richard's plan would give Labour's class warriors and party managers everything they want. But it does nothing whatsoever, in my submission, to address what the country actually needs, which is an effective second chamber with the power to ask the Government to think again.

It seems to me that we have here all the ideology of the past, and no idea about what the future should bring. On that analysis alone, with the lack of understanding of what phase 2 might actually bring us, we would be buying a pig in a poke, for all the wordiness of the Government's undertakings, unless we ensure that, with the abolition of the hereditary peerage - which we quite accept will come as the Government gets its way - we should insist that something at least as independent should be put in their place.

The Opposition Constitutional Spokesperson, Liam Fox, has interpreted the reported remarks of Lord Richard, following the recent ministerial reshuffle,²⁷ as putting the 'second stage' of Lords reform at risk.²⁸

“Lord Richard's comments reflect our anxieties that there are elements within the Government who seek to create only a super quango and that the promised second stage of reform will never occur. There is still time for the Prime Minister to halt the one stage reform, which is an act of constitutional vandalism enacted for reasons of class spite and political expediency. He should now consider the good governance of the United Kingdom as more important than throwing sops to his left wing and in the interests of good Government, consider a full 'big bang' reform. The Conservatives reaffirm our previous offer to contribute constructively to such a debate, but only if the Government drop their one-stage reform plans.”

On 13 July, Mr Hague announced the establishment of a commission to review options for Lords reform:²⁹

²⁷ On which, see above, pp 21-22

²⁸ Conservative Party PN, 30.7.98

²⁹ "Hague launches commission on the future of the House of Lords", Conservative party PN, 13.7.98

The reform of Parliament must be above party politics. Changes we make now to the way Parliament works will affect future generations long after we are gone. Rushed and ill thought-out reform, dreamt up in the heat of party political battle, could threaten the foundations on which our freedoms and liberties are based. That is why I am so concerned about the way in which this Government seems determined to proceed with reform of the House of Lords.

The Prime Minister has announced that he intends to introduce a Bill simply to abolish the voting rights of hereditary peers in the next session of Parliament. He assures us that at some future and unspecified time he will look at further reform. In other words, he is proceeding with Stage One reform without giving any indication of when Stage Two reform will take place, let alone what form it will take. It is the worst of all possible worlds, and the Prime Minister has been roundly criticised from across the political spectrum for the way in which he is proceeding.

Now, in the face of mounting pressure, he has agreed to publish a Green Paper. But it is clear that the Green Paper is simply a palliative to accompany the Stage One Reform and that the Government has no intention of producing genuine and lasting reform of the Second Chamber in this Parliament and probably not in the next. The Government plans to remove the principal independent element from our Parliament and transform the House of Lords into a giant quango at the mercy of the Prime Minister of the day. If the Government succeeds, we will witness a significant transfer of power to the executive and take a significant step down the road to elected dictatorship.

The Conservative Party will not stand by and let the Government get away with it. We vigorously oppose the Government's proposals. That is not to say we are opposed to any reform of the House of Lords. Indeed, we accept that in recent years government may have become too powerful and that there is a strong case for real reform of Parliament to reinforce democratic accountability and parliamentary scrutiny.

But reform to our Parliament must be based on sound principles. Reform must be well thought through, so that we know what the long term effects on our democracy will be. Reform should be carried out with as much cross-party consensus as possible so that there is no suggestion of gerrymandering and party advantage. Above all, reform should take place in the open, after a genuine public debate, and with maximum possible support from the people of Britain.

The Government seems determined to avoid all these things. It wants to rush through far-reaching changes that have everything to do with increasing the power of the Prime Minister and nothing to do with principled reform. It wants to avoid public examination and political consensus by drawing up its plans in secret, without consultation or debate. Above all, it wants to avoid real and lasting reform of the House of Lords by delaying indefinitely Stage Two reform.

The time has come for those who care about the future of our democracy, to do what the Government refuses to do and start a real public debate. Today I am setting up a Constitutional Commission to look at the reform of the House of

Lords. Its terms of reference are that it should examine options for reforming and strengthening the Second Chamber of Parliament, bearing in mind six clear principles of reform which I set out earlier this year and which have received a broad measure of agreement. These principles are:

- First, that any reformed chamber must be better at scrutinising and revising legislation than the present one.
- Second, that a substantial independent element must remain.
- Third, that the Prime Minister's powers of patronage must not be increased.
- Fourth, that the Members must be drawn from all parts of the United Kingdom.
- Fifth, that reform must be considered in the context of its effects on Parliament as a whole.
- And sixth that the supreme authority of the House of Commons as the focus of democratic accountability in our country must remain intact.

This Constitutional Commission will not be a creature of the Conservative Party. It will start with no political instructions and no party preconceptions. There will be no nudges or winks as to its findings. It will carry out a wide-ranging public consultation involving a wide range of individuals and interested organisations. I hope it will be in a position to produce an initial report on the broad options for reform, as measured against the status quo, before the Queen's Speech this autumn. It will then hold hearings in public to narrow down the options.

I am delighted that Lord Mackay of Clashfern - the former Lord Chancellor - has accepted my invitation to chair the Constitutional Commission. His reputation for integrity and independence are beyond question. I can also announce today that Lord Hurd of Westwell, the distinguished former Foreign Secretary, has agreed to serve on the Commission. We will announce the other members of the Commission shortly, and they do not need to be Conservatives.

I urge those of you in this room who have written and thought about parliamentary reform to take part and put evidence to the Mackay Commission. I am also today issuing an open invitation to other political parties, including the Labour Party, to present their evidence too. I hope the Mackay Commission will kick-start the public debate on reform of the House of Lords which the Government has so far tried to avoid. The Government has refused to publish an options paper. The Mackay Commission will do so. The Government wants to keep the public out of its deliberations. The Mackay Commission will invite the public in. The Government has closed its mind to all options except the creation of a Second Chamber appointed by the Prime Minister. We have an open mind about all options.

The democratic constitution of our country is not the plaything of any one government or any one Prime Minister. It belongs to the people of Britain. The Mackay Commission will give them the chance to speak out and let their voice be heard.

The independence of the Mackay Commission was questioned in the media following the leaking of a Shadow Cabinet briefing note by Lord Cranborne which suggested that the party's role would not be totally at arm's length.³⁰ Lord Hurd of Westwell (formerly Douglas Hurd) was also quoted in the press as wishing for "a royal commission or some kind of body that would examine [Lords reform]. It is simply not good enough to knock the hereditary peers on the head ... I think there is a very strong case for leaving it alone and many other people are saying the same thing. Unless Tony Blair says what he wants to take the place of hereditaries and there is a proper reform, all we will get is more appointees."³¹

C. Liberal Democrats

The most recent expression of the party's thinking on Lords reform appeared in the report of the Policy Review Commission, *Constitutional affairs*³²

3.3 The Reform of the House of Lords

3.3.1 A Second Chamber is an important part of the Parliamentary process as a check and balance on the House of Commons, even after decentralisation and proportional representation. When the legislation is introduced to remove the rights of hereditary peers, a consultation paper on the subsequent stage of reform should be published. A reformed Second Chamber should take on additional functions, for instance greater scrutiny of delegated legislation and representing the nations and regions of the UK.

3.3.2 Liberal Democrats reaffirm the recommendations of the Cook-Maclennan Report that a joint committee of both Houses of Parliament should then be established to bring forward detailed proposals on the structure and functions of a democratic and representative Second Chamber.

3.3.3 Legislation should be introduced to implement the committee's proposals in the next Parliament. The reformed second chamber should be called "the Senate," and its members "Senators".

Powers and Role of the Senate

3.3.4 The powers of the Senate and its role in a federal Britain should be consistent with the constitutional principles we have set out.

³⁰ See, for example, "Tory memo undermines 'independent' Lords review", *Guardian*, 14.7.98. On the task of the commission see Peter Riddell's column in the *Times* of the same date, "At least the Tories are provoking reform debate."

³¹ "Hurd defends the Lords as a revising chamber", *Times*, 21.7.98. At the time of writing, the other members of the Commission have not been announced

³² As such, it is not a statement of official party policy. See pp 8-10. The recent Blair/Ashdown joint declaration has already been cited; see p 14

(A) *Representative Government and Separation of Powers*

(i) Representative government means that there should be a predominantly directly elected element in the Senate. Elected membership should be drawn from the nations and regions, which should have a direct voice in Parliament to protect their positions against centralisation.

(B) *Open and Accountable Government*

(i) The Senate should have a general watching brief, and powers of advice and consent, over public appointments like the Chairman of the BBC, the Chief Executives of the Next Steps Agencies and the utility regulators.

(ii) The Senate should have a role overseeing the activities of UK quangos and enhanced functions in scrutinising delegated legislation and European laws, directives and regulations.

The Structure of the Senate

3.3.5 The Senate must complement the House of Commons not duplicate it. We therefore believe that the majority of members of the Senate should be elected by STV for six year terms with one third facing re-election every two years, with the constituencies being Scotland, Wales, Northern Ireland and each English region.

3.3.6 If the Senate is to have a constitutional 'watchdog' role, it should not be too heavily dominated by party politics. We endorse the conclusion of the Cook-Maclennan Report that no one political party should have a majority in the Senate. There is a role for a small number of appointed Senators, possessing broad experience and proven integrity. A Committee of both Houses should appoint such individuals to sit as cross benchers.

3.3.7 The present House of Lords, with more than 1200 members, is much too big. The Committee should consider the optimum size for the Senate. Liberal Democrats propose that the Senate should have some 300 members, around 250 of whom would be elected.

A written constitution for the UK has been the party's policy since 1990, and the policy review report seeks to achieve this by 2005. Within the timetable envisaged, the first stage - removal of the rights of hereditary peers - would be enacted in the 1998-99 session, together with the establishment of a Joint Committee on 'stage 2', and the appointment of a electoral/boundary commission to propose boundaries for HL elections (both to report by the early summer of 2000). Legislation to establish the 'Senate' would be enacted in the 2001-02 session, with initial Senate elections in May 2003.

Lord Rodgers of Quarry Bank, the Leader of the Liberal Democrats in the Lords, set out his own, and subject to detail, his Party's view in a speech to the ICR/*Daily Telegraph* conference already cited. He set out **five principal points**:³³

First, the present House of Lords, for the most part, functions tolerably well, although its merits and influence can be exaggerated, and it is constrained in the exercise of the existing powers by its own awareness of its undemocratic nature.

But secondly, in a representative democracy, it is unacceptable that more than half the Members of the second chamber of Parliament should be there not on merit but because of service rendered by their family to the Crown, the country or a political party long ago. This is particularly so because - I make an obvious point because I think it is necessary to repeat it - the overwhelming majority of hereditary peers who declare a party allegiance, nine out of 10, do so for the Conservative Party and have done so virtually throughout this century. This makes it difficult to treat the second chamber seriously as an integral part of a democratic system of Government when the Conservative Party has never commanded even half the votes cast in any general election since 1935, and won less than a third of them a year ago.

To relate the number of places for each party in the House of Lords to elected Members of Parliament would be wrong in principle, and would only replicate the other chamber. Relating it to votes cast in a general election makes better sense. rebalancing from one general election to another in an unelected House.

But consider, if we may, the present figures. The Conservative Party received 30.7% of the votes in the general election, but they had 68.1 % of the party-affiliated peers in the House of Lords. The Labour Party won 43.2% of the vote, and had 22.4% of the party-affiliated peers. The Liberal Democrats won 16.8%, and they had 9.5% of the party-affiliated peers. I know of no rationale for such disparities.

So I come to my fourth point: that the remedy is to move towards a predominantly elected House of Parliamentary Peers - I use that term for convenience - and it should be possible to do so in the next Parliament within perhaps five or 10 years; but public discussion and an attempt to get agreement among the parties should precede such change.

Fifthly, in the interim, the right of hereditary peers to sit and vote should nevertheless be removed, subject to important safeguards. I want to refer to these safeguards because I think the Government's anticipated reform conditional on safeguards of this kind.

³³ *Proceedings, op cit*, cc 22-23

He described the **safeguards** required (c 23):

First, most important and most obvious, the Prime Minister should not be free to make all nominations to the House, but only those of his own political party. I welcome what I understood the Lord Privy Seal to say about that today.

Secondly - again, this follows - the Prime Minister should not be free either to determine the overall composition of the House. That should approximate, after a transition period in stage 1, to the share of the votes cast for the main parties in the previous general election.

We must bear in mind, though, when we consider the advantages or disadvantages of a nominated House, that successive Prime Ministers have controlled the number of new peers, the balance between political parties and the timetable for appointment. This was true through 18 years of Conservative Government, when this power to determine in an arbitrary fashion the composition of the second chamber was exercised in a way that it had been exercised before, and I am sure could be exercised in future.

Then, as my second safeguard, the Cross-Bench peers should be retained-again, I was glad to hear the Lord Privy Seal confirm this-in what I call the interim House-that was not a phrase that he used-at about 20%, or 100 in a House of 500 or thereabouts; although the House would be larger in a transition from its present form.

Then - again, a very important safeguard, as I have said - an independent commission should be responsible for the nomination of Cross-Bench peers and for the overall regulation of the process of appointment within the terms of the legislation passed by Parliament-*ie*, the legislation for securing the agreed political balance. This is a very important provision, because it would put to rest the fears which have been expressed, and which no doubt we shall hear again, about the second chamber being-in the words used this week by Lord Cranborne-a "poodle" of the Prime Minister of the day.

Lord Rodgers emphasised that "Liberal Democrats broadly endorse the Government's position as we understand it to be, and the two-stage approach was of course anticipated in the Liberal Democrat manifesto for the 1997 general election" (c 23) However this endorsement was subject to the condition he had set out, and he explained how the **two-stage reform** should proceed (cc 23-4):

If we reach stage 1, as I believe the Government is right to seek to do. with a Bill to be published shortly after the Queen's Speech this autumn, the direction should be clearly signposted to stage 2 - a predominantly elected chamber. My own and the Liberal Democrats' preferred option would be the appointment of a Joint Committee of both Houses immediately the legislation on stage I has reached the statute book, to begin working towards the achievement of stage 2.

The second of the crucial conditions - I have mentioned it before - is that a wholly nominated second chamber should not be a Prime Ministerial quango.

The Prime Minister should have less power than he has today, not more, over the political composition and balance of the House through nominations to it.

He took it to be common ground that "if the House of Lords did not exist in its present form, no one would seek to create it." The doctrine of the special rights and duties of those with social position and ownership of land would not be popular to modern voters, and he thought that the 'independent element' argument - "freer spirits, bringing a detached and distilled wisdom to the conduct of affairs to offset the febrile and partisan views of nominated life peers" - was not borne out by the evidence of division lists (c 24). Neither was he convinced by the 'special expertise' argument (c 24):

There is also the claim that hereditary peers bring a special knowledge and experience to our debates, which are certainly marked by more substance than the rhetoric characteristic of the House of Commons. But again it is hard to find the evidence. The House benefits greatly from the contribution of those who made their careers outside politics-in the law, in academia, the civil service, business and the armed forces, to take some obvious examples. But most of these come from among the life peers.

We benefit far more from the existing Law Lords and their recent predecessors than we could possibly do from the heirs several times removed of a Lord Chief Justice of long ago. As for the armed forces, much as I respect the great fighting men of Napoleonic times and two world wars, it is the chiefs of staff of recent vintage who give quality to our debates on defence. If I had to choose a House of limited numbers, I would much prefer more veterans of the Falklands and the Gulf, more of today's leaders of the Army, Navy and Air Force than names resonant of great events of distant times.

The valuable work done by particular hereditary peers did not negate his view: "Those peers should not be lost to Parliament, but that is why it is important to have a re-entry provision. But the quality is in the individuals, not the pedigree. The hereditary element is fortuitous not determining" (c 24).

He thought that a single-stage 'big bang' approach in the near future was impractical: "there has been very little public debate, and not much recent discussion, even in Parliament, about the most effective and acceptable way of electing a second chamber, or about its functions and powers" (c 25):

My own and my party's preference would be for a second chamber, or a Senate if you prefer to call it that, of Members elected from the English regions and from Scotland and Wales. As for powers, I do not believe that an elected chamber could be elected to take back from the Commons those powers already conceded; the second chamber could not become a rival to the House of Commons, although there are some new functions of monitoring and consent that it might acquire.

But these are matters to be argued through in the hope of reaching a substantial agreement across the parties and amongst public opinion. We are not yet ready for big bang, and it would be irresponsible to embark on legislation until we are.

He was clear that **stage 1 should proceed** (c 26):

We are unlikely to have an informed debate in the long term or on the larger matter of stage 2, until the issue of hereditary peers has been resolved. More important, the case for stage 1 stands alone. I do not believe in the superior claim of hereditary peers over nominated life peers, because it obscures the question of merit which should be the determining factor for membership of a second chamber.

I have no reason to doubt that this is the way the public, the voters, see it, and today's *Daily Telegraph* poll is certainly relevant. In so far as a manifesto gives a mandate, the Government has a mandate to proceed.

I welcome this conference, because its purpose is described as "to assist the Government in . . . its thinking". I believe that the best way of doing so would be to accept the prospect, if not the merit, of the two-stage reform, and concentrate on defining and refining the safeguards at stage 1; and then begin the process of setting the agenda for the longer term.

III Other recent proposals

A. Constitution Unit: further work

In January 1998, the Constitution Unit (which published a detailed report on Lords reform in April 1996³⁴) produced two follow-up reports:

- *Reforming the Lords: a step-by-step guide*
- *Rebalancing the Lords: the numbers*

The *step-by-step guide* envisaged reform by the present Government in three stages:³⁵

Reform of the House of Lords is likely to involve three stages:

1. Legislation to remove the hereditary peers
2. A consolidation stage, to redress the party imbalance, and open up the appointments process
3. Wider reform, involving a review not just of whether the Lords should be elected, but of what role it should play in the new constitutional settlement.

The first two stages are for the current parliament; there is a strong case for holding over stage three until the next.

³⁴ *Reform of the House of Lords*

³⁵ 'Executive summary'. See Annex A of the report for a timescale for Lords reform in the context of other major constitutional changes

Stage one

A short bill to remove the hereditary peers is likely to be introduced in the 1998-99 Parliamentary session. The only immediate consequence is how many hereditary peers should be offered life peerages, and how they should be selected.

Stage two

But it will be difficult to avoid addressing the wider consequences of a 'House of Patronage', in particular how far to redress the continuing party imbalance, and how to open up appointments. These issues could be referred in stage two to a Joint Committee of both Houses, charged with developing a new set of conventions to govern appointments to an all-nominated House of Lords.

The size of the Lords will inexorably increase if full rebalancing takes place in each parliament, to reflect the votes cast at the previous election. There may need to be only partial rebalancing, or the introduction of term appointments, or even a retirement age.

Stage three

Even if the focus for stage three is limited to re-examining the composition of the Lords, the review cannot avoid a more fundamental analysis, because the whole of the UK's constitutional architecture is changing, and the role of the Lords is likely to change with it. In particular, a stage three enquiry must take account of any change to the electoral system for the House of Commons, devolution, the growing influence of the EU and incorporation of the ECHR: with possible roles for the Lords in representing the nations and regions of the UK, or as a human rights and constitutional watchdog.

An independent, non-parliamentary body offers the best means of exploring the implications of these other changes for the role, functions and composition of the Lords. A Joint Committee of both Houses might then be charged with reviewing its conclusions and developing detailed proposals for the government to implement.

The Unit's 'numbers' report examined various scenarios for achieving the Government's manifesto pledge of proportionality with the previous general election's votes by party. Its conclusions on the size of a reformed House were as follows (pp4-5):

(b) Size of the second chamber

As shown in Table 2,³⁶ the ending of hereditary rights will reduce the Lords to a minimum of 490 party-affiliated and cross bench members (526 with the non-

³⁶ Not reproduced here

party peers and bishops). With a wholly nominated second chamber, this number is likely steadily to increase.

We have developed a computer model to calculate the impact of different election results over the next twenty years. Two scenarios have been used: one for election results with relatively minor fluctuations between the parties, and the other (based on the actual election results between October 1974 and 1987), showing the effect of more significant fluctuations.

The first scenario - with minor fluctuations - involves the creation of fewer new peers than the second scenario. But if natural wastage is not used it would still see the second chamber increase from 490 peers in 1997 to 713 peers in 2002 and 901 peers in 2017. If natural wastage is used to redistribute numbers between the parties, the total size of the second chamber would still need to increase sharply at first, from 490 peers in 1997 to 649 peers in 2002, but thereafter might remain almost steady, with 668 peers in 2017.

Under the second scenario, and without using natural wastage, the size of the second chamber would increase from 490 peers in 1997, to 713 peers in 2002, to 887 peers in 2012 and 1,146 peers in 2017. If natural wastage is used, the size increases by about 100 peers in each parliament; from 490 peers in 1997, to 649 peers in 2002, to 676 peers in 2012 and 791 peers in 2017.

Thus, over the next twenty years, the House of Lords might easily increase from around 500 life peers to around 700-800 peers, if rebalancing took place after each election. The nature of the increase would depend on the swing between the parties at each election.

If it is regarded as unacceptable that the size of the Lords should continue to rise in this way, then there are three options which the government might wish to explore:

- to cap the size of the Lords at, say, 500 or 600 peers, and achieve only such rebalancing as was possible within this limit
- to end peerages for life and make them term appointments for, say, two parliaments or ten years
- to introduce a retirement age of, say, 75.

B. DEMOS' 'Lords by lot' proposal³⁷

One proposal for Lords reform which has received widespread coverage recently has come in a *Demos* pamphlet, *The Athenian Option*, suggesting that a proportion, ultimately a majority, of the Upper House be selected from the public by lot, somewhat in the way that juries are selected:³⁸

³⁷ A Barnett and P Carty, *The Athenian option: radical reform for the House of Lords*, *Demos*, June 1998

³⁸ Summary, p1

- This paper proposes an 'Athenian solution' to the reform of the House of Lords. This could take the form of an experimental programme over several years to apply the most advanced methods of deliberative polling and direct democracy to the work of the second chamber. This approach would bring the reform of the Lords into the rapidly developing debate on radical experimentation with new democratic bodies and procedures at local and regional level - in the interest of revitalising our democracy. The last state in the world to cling to the hereditary principle in its parliament would become the first to introduce modern principles of citizen scrutiny at the highest level.
- The authors propose that the House of Lords should be changed into a second chamber with broadly similar powers to those exercised by the present one: a chamber of scrutiny unable to challenge the legislative will of the Commons. Except that it should have three enhanced powers of scrutiny: it should be able to insist that new legislation is drafted in clear English; that new laws should not lead to outcomes that are at odds with the Government's declared intentions; and that new laws do not endanger basic constitutional values.
- To exercise such a role, the reformed second chamber needs an impartial, non party political character. This can be obtained by selecting a proportion - ideally, ultimately the majority - of its members by lot from among registered voters, on the lines of a jury. This should not be entirely random. Different regions should be represented in proportion to their population, each with an equal number of men and women.
- Those selected could be called PPs (Peers in Parliament). They could serve full time for a fixed period or they could be selected to scrutinise a particular piece of legislation. The paper seeks to establish only the viability of the principle; it offers different options for implementation. It also argues that there would be a need for nominated PPs, similar to present life peers, to serve alongside those selected by lot.
- Around the world, second chambers often reflect national traditions. An Athenian solution to the problem of reforming the Lords would continue the random and non-party political aspect of hereditary entitlement while abolishing the hereditary principle. It would also preserve the existing relationship of the two houses of Parliament, and it would do both in a creative and democratic fashion. *Instead of trying to 'catch up' with other countries, Britain should use the opportunity offered by constitutional reform to move ahead and experiment with new forms of democracy.*

Its conclusion was as follows (pp 20-1):

In its report, *Reform of the House of Lords*, the Constitution Unit surveys international alternatives and notes, 'perhaps more than any other part of the political system, second chambers reflect the history and character of the state'. The main forms of government today, such as parliamentary or presidential, are relatively few. The appendage of a second chamber varies a lot from polity to polity according to local traditions. In Britain, discussion of the Lords has often

focused on the unique bond between it and British history. But when its replacement is advocated, the tendency is to look abroad for one model or another. This then allows the advocates of the *status quo* (or mixed fudge) to reinforce their argument as they denigrate proposals which fail to fit with the British way. So we should look to see what there is of worth in the existing House of Lords. In the modern context the core hereditary tradition has one virtue. It is not that hereditary peers were born to be better than us. Their prime quality, it appears, is that they were not born to be politicians. In this one sense they can be presented as being 'representative' because it makes them like the rest of us.

The proposal to experiment with an 'Athenian' solution is, we believe, a much better way to reproduce this quality. It is in tune with the modernising spirit of the times in our constitutional politics: there is a wave of enthusiasm for experimenting with new forms of participation at local and regional level, and our proposal for the second chamber should be seen as a contribution to this upsurge of ideas. The debate of the revitalisation of our democracy has not taken a dogmatic turn. No one wants a rigid or inflexible outcome imported from outside. The reform of the upper house we have proposed could ensure more dispassionate, independent oversight of legislation. It also strengthens the best aspect of the current relationship between the Lords and Commons.

Finally, we make the proposal in an experimental spirit, not as something that we think should be imposed overnight but as an ideal that can, with some trial and no doubt some error, be made to work. If it did, an Athenian option would provide continuity of a refreshing and genuinely democratic kind. The British constitution has long been an engine of change; now it is time for it to change itself.

C. Andrew Hicks' 'A Peoples' Peerage' proposal³⁹

In May 1998, the Bow Group had published a short paper by its deputy chairman, Andrew Hicks (in his personal capacity) which proposed a fairly similar reform of the Lords' composition (p 1):

In this paper it is proposed that the second chamber, in its final form, should consist partly of peers nominated by a committee, one that is independent of the government, and partly of peers selected from the people by lottery. Such a chamber would have all of the advantages of the current House of Lords, in the sense of being representative of both expert interest and ordinary opinion, with none of the disadvantages. It would be suitably "representative of the people" without being in a position to challenge the democratic mandate or supremacy of the House of Commons.

³⁹ A Hicks, *Reforming the Lords: proposals for a peoples' peerage*, 5.5.98

Since it would eventually include representative views of a normal distribution of the British public, to an extent that the House of Commons will never be able to match, it would nevertheless be able to claim a popular legitimacy in its role as revising chamber, as well as maintaining and enhancing its reputation for expert knowledge and experience through the appointed peers. It is proposed that the franchise for the lottery be open to all consenting British domiciled citizens of working age except those with criminal records, psychiatric histories or undischarged bankrupts. Such a chamber would suffer none of the disadvantages of the present system or those of any of the alternatives currently under consideration.

He analysed critically the various options and then proposed: (pp 3-4):

A Peoples' Peerage

This suggests a third, more radical, model for selection to the second chamber, that of random selection of members of the public from the electoral roll. Despite being radical this method is not without precedent in Britain, since this is exactly how jurors are chosen to judge guilt or innocence in trials. Thus the "Peoples' Peers" could be represented as a kind of "Peoples' Jury" within Parliament.....

The best option would probably be to choose a limited number of "Peoples' peers" each year through some form of lottery, so that the numbers would evolve gradually and the second chamber would not be subject to sudden swings in opinion, attitude or ability in any given year but would tend always to reflect the normal distribution of age, sex, race, education, profession, wealth, attitude and class in British society

Given the life-transforming consequences of "winning" a seat in the reformed House of Lords, it would follow that people should first give consent to be considered, unlike jury service which is a compulsory duty. This could be achieved by adding an extra question to the electoral roll to determine consent. Since the electoral roll is constantly being updated by local authorities anyway, this would not add significantly to the costs of democracy except in initial costs.

An annual "lottery" of some sort, a public event designed to catch the imagination of the people, could choose the Peoples' peers each year, to sit for life with those chosen in previous years. These peers would then receive the title of "Lord" or "Lady" and an allowance based on their attendance at the House, for time, travel and accommodation. This would be a relatively modest sum, calculated from the national average salary.

There would be no obligation on the Peoples' Peers to attend the House, although, no doubt, there would be considerable pressure for them to do so, at least in their initial years, and no limit of friendly advice and criticism from the media for those chosen to represent the ordinary person in the political process. It is easy to imagine that they would take their new roles very seriously.

Several objections to such a system immediately spring to mind, but they all boil down to the argument that such a system might select "unsuitable" people. There are several counter arguments to this, however. In the first place, if selection by lot is not good enough as a method for choosing peers then why is it satisfactory for it to result in a person being condemned to a lifetime in prison? In the second place, why should choice by lottery result in "unsuitable" winners any more than election or selection by committee? One doesn't have to think for very long to come up with lists of MPs and peers who seem barking mad to most people! In the third place, and most powerfully, why should anyone have the right to decide whether someone else is suitable or not? Is it not one of the fundamental principles of democracy that all are equal? If this is not the case then why do we allow these "unsuitable" people even to exercise the vote? And in the fourth place, what more representative model of democracy could there be than random selection from the people'?

All of the arguments against selection by lot can be shown to be patronising and elitist, and inconsistent with the principles of democracy and justice on which the constitution of Britain is supposed to depend. It has to be pointed out, also, that by adding to these peers incrementally, the overall balance should never swing too far from the average distribution of the population in any respect, and that the influence of "extreme" individuals would be moderated. They, after all, have as much right to representation and participation as anyone else.

He also suggested a category of membership called 'merit peers' (p 4):

A case can also be made for a second House that is composed partly of peoples' peers and partly of appointed peers, or "Merit Peers", in approximately equal numbers. The value of the Peoples' Peers is that they confer democratic legitimacy on the Upper House. However, as a revising chamber for legislation, it is wise to include expert opinion also. The parallel can be made with the courts which require not just a jury but also judges, advocates and expert witnesses in order to function properly. In the new House of Lords, all would be equal as peers in the true meaning of the term.

It follows, therefore, for there to be additional peers, selected by a non-partisan committee. This would select candidates for peerage based on achievement and eminence within their field and should be completely free from the influence of the government. These "Merit Peers" should be chosen from a range of professions and should include some automatic appointments derived from those holding certain offices. These should include Bishops (both Anglican and Catholic, as well as senior clergy in other churches and representatives of other religions), Law Lords, senior former politicians and a few others, such as the Governor of the Bank of England, leaders of large Trade Unions, and the chairmen of certain quangos and other public bodies such as Universities, Royal Colleges and Institutions and trade associations.

In order to make the process for selecting the Merit Peers transparent and free from accusations of political control, the committee should be composed of sitting peers; Merit Peers and Peoples' Peers in equal number, with the Speaker of the House of Commons as moderator with casting vote. It is possible that the role

of the Lord Chancellor should be split to give the revised House of Lords an independent Speaker, like that of the House of Commons, who could fulfil this role.

Anyone could submit the nomination of anyone else to that committee, however a second, equally impartial, "Nomination committee" should exist to guarantee that those deserving of nomination, based on clear guidelines, are represented. Some of the Merit peers would be selected immediately upon satisfying certain qualifying conditions, such as those who are there by virtue of current or former office, while others would be at the discretion of the selection committee, up to a fixed maximum limit of not more than twice the number of Peoples' Peers chosen in any given year (which would be constant). Since the Merit peers would, on average, be older than the average age of the Peoples' peers, so would sit for shorter periods, it follows that there should be more of them appointed, in order to preserve the balance between the two types of peers by keeping the numbers more or less equal.

Hicks' conclusion was as follows (p 4):

Here is a proposal that satisfies all of the objectives for a reformed House of Lords. It provides for a mechanism for choosing peers that is suitable for the role of the House as revising chamber. It preserves most of the characteristics and strengths of the House, based on its current composition, with none of the weaknesses of the current system or any of the proposed alternatives. It allows for a gradual phasing in of the new membership over time and thus preserves continuity with the current membership of the House. It introduces an innovative mechanism, among democratic constitutions, for choosing some of the peers that would provide democratic legitimacy for the House without challenging that of the House of Commons. It also preserves the distinctiveness of the House of Lords from the House of Commons. It has the potential to catch the public imagination and offer direct participation in Parliament to "ordinary" people through a selection mechanism for those that are willing, that is without favour of any and totally impartial.

This is admitted to be a radical proposal. However, examination of its merits, in relation to the objectives of reform and the proposed role of the House, continuing as revising chamber, shows that it compares favourably with other proposals currently being discussed whose weaknesses are all too obvious.

D. Andrew Tyrie's CPF pamphlet

Two other Conservative proposals emerged in pamphlets published on 29 June. Andrew Tyrie, in a Conservative Policy Forum publication, argued that, whatever their own views of the need for change, Conservatives have to adjust to the fact that the new Labour Government would press ahead with their plans for two-stage Lords reform.⁴⁰

⁴⁰ A Tyrie, *Reforming the Lords: a Conservative approach*, CPF No. 1, June 1998, p. ii

Do Conservatives need a policy for reform of the House of Lords? Until the 1997 election most Conservatives thought not. The House of Lords works, perhaps not ideally, but certainly well enough to justify its existence. It was Conservative reforms of the late 1950s and early 1960s which made that possible: the introduction of life peers by the Conservatives, among other reforms, modernised the Lords enough to protect it from those who wanted it abolished. Most Conservatives saw (as they still do) reform of the House of Lords as a secondary issue, certainly less important than the crucial challenge of the 1980s and 1990s of reversing Britain's economic decline in the twentieth century, on which much still remains to be done.

However, with their firm decision to remove the hereditary peers in a Bill in the next Parliamentary session, the Labour Government have put House of Lords reform high on the political agenda. The issue for Conservatives is not, now, whether reform is needed. Conservatives cannot prevent change. The issue has become what reform should be undertaken and to what extent Conservatives can influence the outcome in a direction consonant with their principles.

This means that the Opposition should produce its own plans (p iii):

How should Conservatives respond? Many advocate that the Conservatives should oppose Labour's stage one until stage two has been clearly articulated by the Government. Of course it would be straightforward to pick holes in any stage two proposal, if and when it emerged. But this would carry risks for Conservatives who might find themselves manoeuvred into opposing any change at all. In doing so they would be throwing away the negotiating cards which Conservatives hold to influence the outcome of reform.

Labour have a clear mandate for stage one reform, the removal of the hereditary peers, but no more. On such a fundamental constitutional question Conservatives would be right to use the blocking powers provided by their House of Lords majority to obstruct reform if it were framed without any attempt at developing a cross-party consensus. So far Labour have made scant efforts to consult, but all the precedents are on the side of cross-party collaboration. On each occasion this century that a government has proposed comprehensive Lords reform, in 1910, in 1948 and in 1968, the major parties have engaged in serious consultations about the future of the second chamber.

However, if the Conservatives mobilised their majority in the House of Lords to block stage one and stage two, without having come forward with any serious proposals of their own, their credibility with the electorate would not be strong. Labour could and no doubt would argue that Conservative policy amounted to no more than a defence of the hereditary peers. Labour could justify their reluctance to engage in serious cross-party consultation by suggesting that Conservatives are opposed to any change.

The likely result would be that stage one would happen but, as in 1911, not stage two, leaving "a quango chamber. Conservatives could greatly increase their influence in the debate, not by defending the hereditary peers but by fighting to prevent the imposition of

the 'Prime Ministerial Quango'. This approach requires the Conservatives to develop a reform package for stage two of their own." This would make their attacks on the Government's two-stage policy more credible, and understandable to the electorate. "For the choice before the country would have become very clear: the Labour quangocracy versus Tory democracy" (p iv).

He believed that "probably only a second chamber with an elected element can perform the role of revising chamber and constitutional long-stop effectively. Conservatives today should be less shy of saying so." While any reform, which would have to address questions of composition and powers and relations with the Commons, could have drawbacks, "a largely elected House would have fewer than a wholly nominated quango. Few people, outside the unicameralist camp, would relish the prospect of a Labour quango in perpetuity. This is the reality which every Conservative must address on House of Lords reform" (p v).

His conclusion was as follows (pp 45-7):

In answering the question posed in the first line of the introduction to this paper, 'do Conservatives need a policy for reform of the House of Lords?', many Conservatives look beyond the Lords to the constitution itself before answering 'no'. For Conservatives the constitution works. The lack of popular interest in Lords' reform and wider constitutional issues suggests that many people agree. Almost uniquely, the British constitution has succeeded in adapting to enormous change without recourse to social unrest or violence. With the possible exception of Scotland, the way Britain has been governed commands that priceless ingredient - crucial to any political system - consent.

However, Labour have forced the country on a constitutional journey. If they themselves - as they freely confess - have not identified the end point it is the duty of others to make the intellectual effort. In doing so, Conservatives must balance their traditional suspicions of abstract constructs with the need to ensure that change accords with Conservative principles. Conservatives should not embark on this task with heady illusions of building a better world. Conservatives are not utilitarians - they always have in mind the dangers inherent in the implementation of theories.

However, this scepticism should not be an excuse for timidity. Since Disraeli, Conservatives have - been afraid of radicalism in pursuit of their principles. In constitutional issues above all others, Conservatives now need to respond to electoral defeat not by withdrawal from the fray, thus allowing Labour to monopolise reform of the constitution, nor by excessive defensiveness of existing arrangements, but by vigorous engagement in the constitutional debate.

It is in this context that Chapter 1 set out some principles to help identify desirable end points of reform: constitutional stability, limited government and power legitimised by democracy. In the same spirit Chapter 3 attempted to translate these ideas into proposals for the end point of the current bout of House of Lords' reform. It is insufficiently appreciated that many Conservatives have

trodden the same path. Conservatives have a proud and consistent reforming record: they have contributed more than any other party to constructive thinking on the House of Lords this century.

The theme of this paper has been that if Conservatives are to ward off the dangers of Labour's quango, and the risk that the Conservative Party's position is misconstrued as a tactic to avoid any reform whatsoever, they must participate in the constitutional debate themselves. To do so on House of Lords' reform issues the Conservatives now need - and without delay - to develop clear proposals of their own. In my view the case for an elected element in the second chamber is strong - the Conservatives should embrace it. At the same time they should also call for an end to Labour's artificial distinction between stage one and stage two. With clear proposals based on democratic principles on the table Conservatives will be able credibly to demand that all-party consultation, for which there are strong constitutional precedents, should start immediately. This should take place before any legislation is put before Parliament.

If the constitutional agenda was not of Conservatives' choosing it is still their responsibility to improve the outcome. Conservatives have won the battle of ideas on so many issues - placing freedom, personal choice and responsibility at the head of the political agenda was a remarkable achievement of the past two decades. It is time to put Conservative ideas and principles at the forefront of the battle for the British constitution.

E. Tory Reform Group's proposals

The Tory Reform Group proposals were published in June in *Enhancing our democracy: reforming the House of Lords*. It described Lords reform as "the most intractable constitutional question of twentieth century Britain" and declared that, in the light of present constitutional changes by the Government, "the Conservative Party must now rethink its positions on many of these issues after the election defeat of last year" (p 2). The hereditary element had to be addressed: "The House of Lords should be able to lessen the chances of democracy giving way to demagoguery; unfortunately the supporters of the hereditary peerage do not recognise the simple truth that it is the fact that the House of Lords is not elected that limits its ability to act in the public interest" (p 5).

The TRG report suggested some principles for reform (p 8):

- that the second chamber should have a clearly defined role;
- that it should be differently composed from the Commons and that it should not be entirely appointed;
- that it should seek to fill some of the gaps in our constitutional arrangements for example, a feeling of alienation by regions from the centre;
- that it should have the power commensurate with its role;
- that it should be complementary to the House of Commons and not a rival to it.

The report was clear that "it is a necessary precursor to reform that it is decided what the Lords should do", and it identified a number of 'core functions':

- to consider and where necessary revise, legislation brought from the Commons and those Bills that start in the Lords;
- to play a part in informing and educating the body politic and the people through general debates and expert committees;
- to hold the Executive to account in the chamber and in select committee (taking into account that this is mainly the role of the House of Commons);
- to scrutinise European legislation;
- to be the guardian of our human rights and of constitutional matters more generally;
- to be the final court of appeal in the UK when sitting, in its judicial capacity.

It identified another role in the context of devolution: "Relationships between the various parts of the United Kingdom will become ever more important after legislative devolution to Scotland; the House of Lords could become one important bridge between Westminster and Edinburgh and Cardiff" (p 8).

The report set out what it saw as the Conservative approach (p 9):

Conservatives are rarely enthusiasts for constitutional change. It is usually others who propose and Conservatives who follow in this area. But the Conservative Party, is not and should not be the party of no change. To resist reform of the House of Lords either because it is proposed by Labour or out of some antediluvian belief that to accept the passing of the hereditary peerage is to betray private property, would not be merely truculent; it would also be irresponsible. For that reason we endorse the decision of the Party managers to conduct conversations informally with the Government on reform of the House of Lords.

Those who think that if the hereditary peerage goes, the monarchy, will be next have no grasp of the clear distinction between the role of legislators who make laws and the role of a sovereign who acts on advice. The hereditary peerage is, as continental experience demonstrates, entirely detachable from the monarchy without adverse consequences for the latter institution.

Sometimes in opposition political parties indulge in the luxury of opposition for its own sake. The Liberal Democrats have elevated this approach into a political artform, changing sides according to the perceived mood of the country. The Conservative party should be big enough to recognise its past failings and to put the national interest before party advantage. If it does the latter, particularly on this issue, it will be acting in marked contrast to the breathtakingly arrogant present Government

It argued therefore for comprehensive reform: "A so-called 'big-bang' reform of the Lords is really the only way forward. We have spent too much of this century pussy-footing around on this issue; it is time for MPs to have the courage to get on with the job of Parliamentary reform" (p 9). It proposed the following composition (p 10):

- 350 members in total
- 160 or so members elected regionally for a nine-year term
- 91 members to be appointed as life peers
- 12 Law Lords (as at present)
- 20 bishops and archbishops from Church of England (down by 6)
- 12 other- religious leaders (additional)
- 5 members elected by the British Overseas Territories
- 50 non-voting hereditary peers, representative of all parts of the UK.

The electoral system could be PR or First Past The Post. The nine-year term would "protect Lords of Parliament from being subject to the negative influence of the party whips while retaining a democratic mandate." All peers would, by an agreement between the two Houses, be prevented from taking up constituency cases. There would be fewer political life peers than at present: "the notion of the House of Lords as a place for former cabinet ministers to retire to where they can have a cheap lunch and a free Hansard will have to go" (p 11). They would be appointed by the Sovereign on advice from an independent commission rather than from the Prime Minister. The proposal to retain a number of (non-voting) hereditary peers would minimise the practical short-term problems for the House and their rural rather than urban connection would be advantageous.

A reformed House would need increased powers (p 11):

A delaying power of one year is insufficient to deal with the failings of the executive-dominated House of Commons. If the Upper Chamber is to be effective, it must not only retain its present power to reject statutory instruments outright but it must if necessary be prepared to use it. In addition to this power, the House of Lords' delaying power should be extended to two years and it should be able to reject constitutional bills altogether. In the same way the Speaker of the House of Commons rules that a public bill is a 'money bill', thus preventing the Lords from amending or rejecting it, so she would decide whether a bill was one concerning constitutional matters or not.

A joint select committee would be required to settle disputes between the two Houses. The report's conclusion was as follows (p 12):

A House constituted on this basis need not be in regular conflict with House of Commons. By limiting the elected element, ensuring a diverse membership and restricting the role of the Lords, an effective second chamber with a significant role can be created.

The present House of Lords is widely praised for its effectiveness. Up to a point this acclaim is justified; but there are failings. The House has failed to stop major mistakes being made by a government determined to ram its policies through. It has failed to create credible procedures to deal with the potential conflicts of

interest amongst its members. Above all, its composition has removed its legitimacy in the modern age such that it now probably tries too hard to appease the Commons.

There is now a window of opportunity in which reform of the House of Lords is possible. The need for an effective, credible second chamber able to make the government of the day stop and think has rarely been more necessary in our history. The Conservative Party ought to seize the moment.

F. William Wyndham's proposals

A book was recently published dedicated entirely to Lords reform, *Peers in Parliament Reformed* by William Wyndham. The theme of and proposals in the book were neatly summarised:⁴¹

A Summary of Recommended Reforms

The Aim: a popular Second Chamber.

The bulls-eye: a House of Lords in a Parliament that represents the British People to their Government on equal terms.....

Principal conclusion: logical extension of the Lords' current activities could allow them without structural change to carry out all proposed functions, except a) interlocking with the European and devolved Parliaments/Assemblies, and b) the continuing - but with authority their function as 'constitutional guardian'.

A Popular Second Chamber's Functions:

are those of a Second Chamber

i. taking the second part in a Parliament of two Houses which splits integrated scrutiny of government (from policy-making and prelegislative preparation through legislation to executive and administrative action) into complementary functions between them - that is, in a unified Parliament of diverse functions which reflects our diverse country;

ii. concentrating (with independent mindedness and expertise) on:

a) policy formulation in all fields, b) non-controversial legislation and revising Commons legislation, and c) scrutiny of government methods of executive and administrative action -

but leaving to the House of Commons:

prelegislative consideration of Bills as a first step to its dealing with all controversial and mainstream government legislation, b) scrutiny of current government policy (especially financial policy), and c) case by case issues through Commons Departmental Select Committees;

⁴¹ 1998, pp 230-2, extracts

- iii interlocking with the European Parliament and the new devolved Parliaments/Assemblies to ensure integrated popular representation in government;
- iv. enjoying the authority derived from clear functions and (mainly) public election, to act as 'guardian of the constitution';
- v. securing the above by the development from current Lords' committees (particularly their European Communities Committee and their Science and Technology Committee) of a new comprehensive committee system - initially 12 plus sub-committees (together with its new secretariat with civil service backing, to be shared with the Commons); while
- vi. retaining (and developing) its current functions.

The Second Chamber's Powers

An incremental approach to Lords' reform encourages the minimum of changes to the Second Chamber's powers. For example the Lords' right to veto prolongations of Parliaments would remain. The proposal here is for the one-year delaying power to remain, except for constitutional Bills, when the 1911 Parliament Act's 2-year delay would be reactivated. This extended delaying power could be reinforced, at the option of the Second Chamber, by a power to demand a referendum to be monitored by an independent authority. But the above balance is predicated on a change (the only one suggested exclusively for the Commons) to four-year maximum instead of five-year Parliaments. For manifestos and mandates get progressively stale after two years of a Parliament. The Lords' power to reject subsidiary legislation would remain.

Composition of Second Chamber

An amalgam is proposed of Lord Bryce (1918), Labour (1968) and Lord Home (1978); for the aim is at constructive consensus. A two-tier Chamber is proposed of Voting and Non-voting Peers (VPs and NVPS). VPs would be two-thirds elected by proportional representation (STV, regionally grouped - including Scotland, Wales and Northern Ireland by Euro-constituencies); and one third appointed. Both election and appointment would target functions of the Second Chamber as above. VPs would number about 420.

All elections and appointments (after transitional provisions) would be initially for six years. Initially one third would be elected for ten years, one third for eight, one third for six (priority for longer initial terms being given to youth). Thereafter elections of one third of electeds every two years. By-elections and top-up appointments as required by vacancies. Appointees would normally have the option of a second full six-year term; but ex officios would be replaced by their successors in office. (But age limits for all.)

VPs and appointees would have professional salaries (extra unless ex officios - who would be allowed at least generous attendance expenses). For NVPS, attendance allowance only.

NVPs would have speaking rights etc but no vote. NVPs would be allowed subject to age limits one initial six year term; but to continue thereafter

they would have to go through a selection process aimed at public election. Ex-VPs subject to age could continue as NVPS..

Preselection for NVPs first six-year term - only - (but subject to age limit) would depend exclusively on undertaking to attend at least one quarter (or perhaps one third) of all sittings. With those limitations, all current peers would be entitled to sit. Hereditary rights would continue as NVPS. VPs would have an option to nominate a child (male or female), if over 25, as NVP on retirement or death. NVPs would thereby provide a regular stock for VP selection.

Selection with a view to election would be in two rounds. First parties would draw up lists out of available NVPS, including additional appointments to allow for a sufficient pool of all main parties. Then a joint standing committee of both Houses would select 60m those with a rigorous view to the Chamber's functions. This JSC would also advise on appointee VPs.

Start date for elections and appointments - as soon as may be.

G. Tony Benn's *Parliamentary Reform Bill*

On 14 July Tony Benn presented his *Parliamentary Reform Bill*, Bill 226 of 1997-98,⁴² to replace the Upper House with an elected Council of State. Its long title and preamble are self-explanatory:

A Bill to provide for the election of a Council of State to replace the House of Lords; and for connected purposes.

Whereas it is desirable that laws passed by Parliament under which the people of Britain are governed should all be considered, debated and decided by persons who have been elected by, are answerable to, and removable by those who are required to obey such laws;

And whereas the continuation of the House of Lords composed of persons who have either inherited their titles or have been appointed by executive decision without any electoral legitimacy, and who are protected from any democratic accountability for their actions is both outdated and fundamentally unacceptable;

And whereas the prerogatives of the Crown to appoint bishops, judges, European commissioners, cabinets and to create peerages have conferred upon the Prime Minister of the day who exercises all these powers a wholly excessive and undemocratic degree of patronage which historically has been, and could still be, abused for personal and political advantage without regard to the public interest;

And whereas there is now a wider demand from the people to gain greater control of their destiny through the ballot box to choose and remove all members of Parliament in both Houses;

⁴² Its sponsors were mainly Labour, though they also included Cynog Dafis and Richard Shepherd.

And whereas it is desirable that a second chamber of Parliament be elected as a Council of State to perform the functions now exercised by the House of Lords, subject to the over-riding authority of the House of Commons, under the Parliament Acts:-

IV Recent Discussion in the Lords

The latest extensive discussion on Lords reform arose in the Upper House on Thursday 25 June.⁴³

Lord Denham asked Her Majesty's Government: Whether they had been prepared to discuss without preconditions fully comprehensive single stage Lords reform before talks with Her Majesty's Opposition were broken off.

The Lord Privy Seal (Lord Richard): My Lords, yes, on the basis of our manifesto.

Lord Denham: My Lords, does the noble Lord agree that he would be far more likely to be able to reach the best agreement among all parties in both Houses over a single package than by first removing the hereditary element and only then starting to argue about what to put in its place?

Lord Richard: My Lords, the Labour Party manifesto was perfectly clear on the issue. I hope that the noble Lord will agree with me at least on that. We said that we would reform your Lordships' House in two stages. The first stage would be a discrete stage standing on its own, which would be the abolition of the right of hereditary Peers to sit and vote. As to whether a different posture on the part of Her Majesty's Government would make an agreement more or less possible, that must be a matter of judgment.

Lord Chalfont: My Lords, if, as it seems, the Lord Privy Seal is underlining the Government's total commitment to a two-stage process, can he say when they will announce their intention as regards the second stage? Will it be before the first stage legislation is introduced, at the same time or somewhere in the distant future?

Lord Richard: My Lords, if matters proceed in the way set out in the Labour Party manifesto there will be the first stage, which is the abolition of the right of hereditary Peers in this House to sit and vote. There will then be a period, as I have described in the past, of full-scale public consultation. The manifesto mentions that taking place by means of a Joint Committee of both Houses of Parliament. Another possibility might be a Royal Commission. In the course of that process Her Majesty's Government will have to make their views clear.

⁴³ HL Deb vol 591 cc 344-8, 25.6.98 (extracts)

The Earl of Halsbury: My Lords, is the manifesto a sacred cow? No item in the manifesto is loaded with respect to who voted for it.

Lord Richard: My Lords, of course the manifesto is not a sacred cow. If it had been a sacred cow I would not have been talking to the noble Viscount, Lord Cranborne, to see whether it was possible to reach agreement on a single stage. Just as it is not a sacred cow, it is impossible, with great respect, for noble Lords in this House to ignore the fact that that was the policy which we put before the electorate upon which we were overwhelmingly elected.

Viscount Davidson: My Lords, if it is not a sacred cow, is it a Papal bull?

Lord Richard: My Lords, with respect, it is neither. It is a strong piece of evidence as to the views of the British electorate on the reform of your Lordships' House.

Lord Avebury: My Lords, did the Leader of the House discover what was the opinion of the Opposition on the two proposals that he mentioned, the Royal Commission and the Joint Committee of both Houses?.....

Lord Richard: My Lords, the noble Lord must ask the Opposition.

Viscount Cranborne: My Lords, perhaps I can help the noble Lord the Leader of the House in forming the judgment to which he referred in answer to my noble friend Lord Denham. I suggest that the answer might be yes. Can he give a guarantee that after the Government have introduced the stage 1 Bill, which he has promised, they will proceed with all due expedition to stage 2, bearing in mind that the last time a rapid stage 2 was promised was in 1911 and we are still waiting?

Lord Richard: My Lords, if we have been waiting since 1911 that underlines my view that this is unfinished business since 1911. We committed ourselves in the manifesto - I do not want to use it as a sacred text - to the first stage being precisely that; namely, the first stage.

Lord Rodgers of Quarry Bank: My Lords, understandably, such exchanges are becoming very repetitive at Question Time because there is concern in all parts of the House about where the future lies. Can the noble Lord the Leader of the House indicate when the debate that he has promised will take place? If we knew that it would be before the Summer Recess a good deal of your Lordships' time could be saved.

Lord Richard: My Lords, the date of the debate is a matter for discussion between the usual channels. I can tell the noble Lord that those discussions are taking place. What I cannot do today is give him a definite date upon which the debate will take place. But he is right; we have promised a debate and it will take place.

Viscount Mountgarret: My Lords, does the noble Lord agree that there is little or no demand by the general public to do away with the hereditary peerage in

toto? If that is so, why the headlong rush? Does he agree that it might be better to look at the possibility of making this House totally independent in mind and view by abolishing the whipping system so that we can all speak our own minds, give an independent view and vote for or against the argument on merit rather than by whipping?

Lord Richard: My Lords, I note the joy with which the noble Lord enjoys the freedom that he now possesses, having given up the Whip on the Conservative Benches and moved to the Cross-Benches.

The noble Lord speaks of a headlong rush. It has been 87 years! That can hardly be a rush, even at the snail's pace which constitutional reform usually takes in the United Kingdom. I cannot help but remind the House that on at least three occasions during those 87 years this House accepted that the right of hereditary Peers to sit and vote should no longer persist. That was in 1917, in 1948 and in 1968, when, if my memory serves me correctly, the majority in this House in favour of a package which deprived hereditary Peers of the right to sit and vote was five to one. In those circumstances, for us to be accused of indecent haste in respect of what this House has accepted three times in those 87 years seems to me to be pushing it a bit!.....

Lord Jenkins of Putney: My Lords, is my noble friend aware--I am sure he is--that parliamentary government is, whether we like it or not, an evolutionary rather than a revolutionary process? Is it not also the case, as the Fabians pointed out some time ago, that evolution is inevitably gradual?

Lord Richard: My Lords, I am in favour of a long period of gestation. However, I believe that that period has been very long and it is time that the birth took place.....

Lord Denham: My Lords, I was rather thrown by the noble Lord's original Answer. My question was: "To ask Her Majesty's Government whether they had been prepared to discuss without preconditions fully comprehensive single stage Lords reform".

The answer that I received was yes. Since then, the noble Lord the Leader of the House has been suggesting that he is going to go ahead with his plan to take away the hereditary principle first before going on with the second stage. That is neither comprehensive nor a single stage. I ask him to consider whether it would not be better to discuss first whether there is any way to achieve universal agreement before possibly punishing this House for what he no doubt considers to be its intransigence. Is he or is he not prepared to discuss single stage reform?

Lord Richard: My Lords, with great respect, I am not saying that this House is intransigent. Of course I am not.

Noble Lords: Answer the question!

Lord Richard: My Lords, I shall answer the question but I shall answer it in my own way and not perhaps in the way that the Opposition would like me to. I

cannot forbear from making the point that the party opposite was in government for no fewer than 18 years and that in those 18 years we heard nothing whatever from it about reform of your Lordships' House.

My party has been committed to that reform for a very long time. We included the matter very clearly in the manifesto and we were elected on it. Therefore, we are committed to that course of action. The noble Lord asked me about the reform being undertaken in a single stage rather than in two stages. I entered into discussions - somewhat desultory discussions, if I may say so - with the noble Viscount and members of the Opposition to see whether there would be sufficient support for an agreed reform which could take place in a single stage. Unfortunately, there was no such agreement.

Earl Russell: My Lords, is the noble Lord the Lord Privy Seal aware that this House contains many hereditary Peers who will make no effort to defend their continued membership of this House but nevertheless feel a legitimate curiosity about the nature and quality of their successors? Does he agree that he might have a quieter life if he were to do a little more to satisfy that curiosity?

Lord Richard: My Lords, anybody who takes on the leadership of your Lordships' House when there is a Labour Government cannot, by definition, expect a quiet life. There are ways in which my life could be made quieter, less frenetic and less wearing. The suggestion that the noble Earl has made is obviously one of those that I shall consider for my future better health.

On 9 July the Opposition Chief Whip, Lord Strathclyde asked the Government for a debate before the summer recess on reform of the House.⁴⁴

I wrote to the noble Lord the Government Chief Whip exactly three weeks ago. I received a reply to that letter on Monday of this week. The request was a very simple one; that this House should be allowed to debate its future before it rose for the summer.

There was a reason for that: first, to inform the Government of the views of this House; secondly, since the Government have recently made an announcement that they are now willing to provide an options paper in the shape of a Green Paper at some point in the autumn, it would help to guide the Government on the drafting of that document; and, thirdly, and perhaps most importantly, to avoid the many misconceptions of government Ministers that we have seen so visibly over the past few weeks.

I have now received a reply from the Government Chief Whip who stated that it was not possible to provide for such a debate before the end of July and before we rose for the summer. I have two questions for the noble Lord. First, is he now able to reconsider that position; and, secondly, can he confirm that the Green

⁴⁴ HL Deb vol 591 c 1368, 9 July 1998. His request was wrapped up with a question as to the date of the summer recess, a matter which other peers addressed during these exchanges

Paper will be published by the time we return for the spill-over? It has struck me on many occasions recently that there is an absurdity in the fact that the only place in which the reform of your Lordships' House cannot be discussed is in this Chamber.

The Government Chief Whip, Lord Carter, replied (cc 1370, 1371):

He did indeed write to me requesting a debate on the reform of the House of Lords by mid-July. After consulting my noble friend the Leader of the House, I replied that the Government agreed that there should be a debate on reform. We would wish to see a two-day debate on reform in the spill-over. The Government believe that such a debate would be of value and want it to take place at the best time for the House. It was my view and that of my noble friend that a debate in the spill-over would allow noble Lords time to gather their thoughts over the Summer Recess and to return refreshed. It would also avoid this important debate taking place in the next few weeks when the workload is very heavy.....

That is all I wish to say at present. We expressed our view clearly to the noble Lord. I hope to tell the House the date of the Summer Recess as soon as I can. There is a very heavy workload. As noble Lords know, we have been given extra business. We feel that the two-day debate on reform, with which we agree, should be held in the spill-over.

The following exchanges took place on 13 July:⁴⁵

Parliament: Constitutional Safeguards

Lord Waddington asked Her Majesty's Government: What steps they propose to take to strengthen the safeguards against a government seeking to extend the duration of a Parliament beyond five years.

The Parliamentary Under-Secretary of State, Home Office (Lord Williams of Mostyn): My Lords, we believe that the present safeguards are sufficient.

Lord Waddington: My Lords, I thank the noble Lord for his somewhat complacent reply. Is it not obvious that if the hereditary Peers' right to sit and vote were abolished and nothing else done to change the composition of this place, the constitutional safeguard in the 1911 Act giving the Lords an absolute veto on Bills to extend the life of Parliament would be gravely weakened in that the Government could easily secure the creation of enough Peers to get such a Bill through? Would it therefore not be rash and irresponsible for the Government to press ahead with their plans to create a wholly nominated Chamber when history shows that decades could elapse before a comprehensive reform took place - decades during which a vital safeguard against arbitrary power would have been rendered virtually useless?

⁴⁵ HL Deb vol 592 cc5-8, 13.7.98, extracts

Lord Williams of Mostyn: My Lords, I do not believe that my reply was complacent. Parliament has had its life extended on only two occasions this century; once in 1916, for obvious reasons, and once in 1940 for the same obvious reasons. I agree with the noble Lord that a speedy reconstitution on rational bases of your Lordships' House is long overdue.....

Lord Peyton of Yeovil: My Lords, since the Minister declared that the Government were satisfied with existing safeguards, would he be very careful not to remove them in such a way that your Lordships' House might become a mirror image of the House of Commons and thereby wholly amenable to the Party Whips - a dreadful prospect?

Lord Williams of Mostyn: My Lords, I can see no immediate or long-term prospect of the noble Lord, Lord Peyton of Yeovil, being a mirror image of anyone at all, nor indeed being subject to any whipping of any kind in any circumstance. The present safeguard is the Septennial Act of 1715. As I said in Answer to the Question from the noble Lord, Lord Waddington, that Act has worked extremely well over more than 250 years because it has been put on one side only twice; once in the First World War and once in the Second World War. That is not a bad record.....

Lord Strathclyde: Is the noble Lord also aware that there is a serious point behind my noble friend Lord Waddington's Question to which the Minister has not faced up? It is that if the hereditary peerage is to be removed - in other words, if the Government go ahead with their stage one without producing stage two - it will create a real danger that the life of Parliament could be extended against the interests of the people of this country.

Lord Williams of Mostyn: My Lords, I have heard some pretty thin arguments in my time, but I have to say that that pretty well takes the biscuit. The hereditary Peers are not necessarily the sole or indeed significant bastion of our rights in this country. The Act has worked well in the past; it does not need alteration at the moment. Ingenious though the noble Lord is, I cannot see that the Septennial Act has much to do with the reform which is long overdue. As the Lord Privy Seal said the other day, it is unfinished business since 1911. It has nothing really to do with it at all - has it?

Lord Annan: My Lords, has the Opposition Chief Whip forgotten that there is one safeguard in this House against abuse of this kind - the Cross-Benchers?

Lord Williams of Mostyn: And long may they remain, my Lords.....

Lord Waddington: My Lords, is not the noble Lord overlooking the fact that the difference between the present situation and the situation which has appertained over the past few centuries is that if the hereditary Peers' right to vote and to sit is abolished and nothing else is done it will only need the Prime Minister to recommend the creation of quite a few Peers for the government of the day to dominate this House absolutely?

Lord Williams of Mostyn: My Lords, that is of course the position, and over the past 18 years incumbent prime ministers have used their power of party patronage to increase their representation in this House. It has been the fact that, numerically, Conservative Peers have always formed the largest segment. That does not seem just, it does not seem rational and it ought not necessarily to be tolerated for all time.

Lord Stoddart of Swindon: My Lords, would not my noble friend agree that the answer to the Opposition was actually given to this House last Tuesday in the debate and the decision on Scottish education fees when the existing Government were defeated, and would have been whether or not hereditary Peers had voted?

Lord Williams of Mostyn: My Lords, that is factually correct. Whether that is the answer to the noble Lord's question, I am not quite sure.

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