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A consensus on the reform of the House of Lords?

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Introduction

... there is the potential to reach a degree of cross-party consensus that will lead to the completion of Lords reform. The free votes in the Commons in March gave us a clear direction of travel on an issue that has dogged the country for decades. We now have a chance finally to finish the job.¹ (Jack Straw MP, Secretary of State for Justice and Lord Chancellor, 19 July 2007)

The above Formal Statement on Lords reform followed a series of free parliamentary votes in March 2007² in which both Houses debated and voted on the future composition of a fully reformed second chamber. The House of Commons voted to retain the second chamber and remove the remaining hereditary peers. In addition, it simultaneously endorsed both a fully elected and an 80 per cent elected House, whilst rejecting all other options.³ In contrast, the House of Lords rejected all options except for a wholly appointed House. These parliamentary votes led eventually to the publication in July 2008 of a further government White Paper⁴ on the House of Lords aimed at completing the reform process. The government's proposals in this paper are based on the votes cast in the

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¹ Hansard HC Debs, 19 Jul 2007, vol. 463, cols 450-1.

² In March 2007, both the House of Commons and the House of Lords were provided with the following options to vote on: fully appointed, 20 per cent elected, 40 per cent elected, 50 per cent elected, 60 per cent elected, 80 per cent elected and fully elected. In addition, the House of Commons also voted on the issue of bicameralism as well as whether to remove the remaining hereditary peers. These options were the same as those voted on by both Houses in February 2003, except that in 2003 the House of Commons did not vote on the issue of the hereditary peers. For an analysis of the 2003 debates and votes see, M Ryan "Parliament and the Joint Committee on House of Lords reform" (2003) 37 The Law Teacher 310 and I Mclean, A Spirling and M Russell, "None of the above: the UK House of Commons votes on reforming the House of Lords, February 2003" (2003) 74 Political Quarterly 298.

³ It should be noted that this paper draws upon, and extrapolates from, the information provided by the following paper of how each MP voted in March 2007 together with any voting patterns identified: R Cracknell, Commons Divisions on House of Lords Reform: March 2007 (London: House of Commons Library 2007).

⁴ The Governance of Britain, An Elected Second Chamber: Further reform of the House of Lords, Cm 7438 (Norwich: The Stationery Office 2008).

House of Commons; although it has been made clear that it was not "a final blueprint for reform", but intended to generate further debate on Lords reform. The expectation was that, following consultation, government Ministers would consider how to take these issues forward before a commitment was made in the manifesto for the next general election so that reform could be implemented thereafter. The purpose of this article is to consider the 2007 parliamentary debates and votes and examine whether there really is any meaningful consensus on how to complete the reform of the House of Lords. It is important to note that although these were free votes, all three of the main political parties (and so their MPs) had a specific 2005 manifesto commitment on the reform of the House of Lords.

At the outset, it is essential that three points are made concerning the limited scope of this article. Firstly, as the article involves an examination of the parliamentary debates and votes on the future composition of a fully reformed upper House, it does not, therefore, focus on the functions that such a chamber *should* perform. Although it is commonly argued that in reforming the House of Lords, composition should necessarily be determined by function, the fact remains that the votes in both Houses of Parliament were confined strictly to the issue of composition. In any event, it is possible to contend that the principal functions of the second chamber, viz deliberative, legislative revision, scrutiny and examination of the government of the day, are already fairly well settled. Secondly, although the government has referred specifically to seeking a broad consensus between the political parties in completing the reform of the Lords, this article does not seek to question the hypothesis that a cross-party political approach is necessarily the correct one to adopt. Thirdly, the arguments concerning elected/appointed members are analysed through the prism and specific perspective of members of both Houses of Parliament as they were expressed during the various parliamentary debates.

Bicameralism

It is clear that there is a general consensus within both Houses in favour of bicameralism. All three major political parties predicated their 2005 manifesto commitments on retaining a second chamber. Moreover, in the two separate votes in 2003 and 2007, the House of Commons has successively, and decisively, dismissed the option of abolition (390 votes to 1726 and 416 to 163,7 respectively). Such was the support for retaining a second chamber in 2007 that Jack Straw was moved to comment that the possibility of unicameralism had been "buried" by this overwhelming vote. In addition, although in the House of Lords there were no motions for unicameralism in either 2003 or 2007, it is obvious that its view on this matter is hardly in doubt. In fact, it is interesting to reflect that during the course of the 2007 debates, the issue of unicameralism merited little discussion in either House.

The above notwithstanding, there are a few points which are worth noting. Firstly, it is significant that a sizeable minority of MPs (172 in 2003 and 163 in 2007) were prepared to countenance a single-chamber Parliament. In particular, these figures were composed largely of Labour MPs (158 in 2003⁹ and 153 in 2007¹⁰) with the latter vote including one

⁵ Governance of Britain, An Elected Second Chamber, n. 4 above, at p. 3. For a very general overview of the 2008 White Paper, see M Ryan, "The house that Jack built" (2008) 158 NLJ 1197.

⁶ Hansard HC Debs, 4 Feb 2003, vol. 399, col. 221.

⁷ Hansard HC Debs, 7 Mar 2007, vol. 457, col. 1601. These figures include, rather confusingly, an MP who voted both Aye and No.

⁸ See n. 1 above, at col. 459.

⁹ The House of Lords: Reform, Cm 7027 (Norwich: The Stationery Office 2007), p. 17.

¹⁰ See Cracknell, Commons Divisions, n. 3 above, at p. 3.

member of the June 2008 Cabinet.¹¹ Although in 2007 all six SNP MPs also voted for abolition, there was virtually no other support elsewhere. Secondly, the pattern of the votes cast overall is of interest as, in both 2003 and 2007, a number of MPs not only voted for abolition, but then also preceded to vote for other options in the context of a bicameral system. In 2003, the Joint Committee on House of Lords Reform pointed out that of the 172 MPs who had voted for unicameralism, 160 thereafter had voted for one or more of the other bicameral options.¹² Similarly, some research reveals that, in 2007, out of the 163 MPs who voted for abolition, only 11 of them (all Labour) voted No, or declined to vote at all, in respect of the other options.¹³ The remaining (abolitionist) MPs, therefore, proceeded to vote, and have an impact on, one or more of the other options for a bicameral legislature (see below).

In any event, it is clear that there is a general consensus that unicameralism is not a realistic option and that any constitutional settlement, therefore, will inevitably be based upon a two-chamber Parliament. In fact, the 2008 government White Paper did not even mention the option of unicameralism in passing. In 2003 the late Robin Cook MP, the then Leader of the House and ardent supporter of a reformed second chamber, cautioned that, if the argument over reforming the House of Lords continued to stagnate, more and more of the public could end up losing patience with the issue altogether and support abolition after all. ¹⁴

The remaining hereditary peers

A second issue on which there is broad agreement is the (ultimate) removal of the remaining hereditary peers. The government's 2007 White Paper made it clear that in the Cross-Party Group talks there was agreement "that the special arrangements" made for the retention of these peers in 1999 should be brought to an end. Moreover, none of the three main political parties' manifestos at the last general election stated that the hereditary peers should remain. In fact, each of the last three Labour Party manifestos has expressly called for their expulsion. 16 In 2007, the House of Commons voted overwhelmingly by 391 votes to 111 to endorse the following motion stating: "That this House is of the opinion that the remaining retained places for peers whose membership is based on the hereditary principle should be removed."¹⁷ Indeed, the majority for this (280) was slightly bigger than for the votes cast in favour of retaining bicameralism (253). The breakdown of how the parties voted is significant as they split on this motion. In brief, 60 Liberal Democrat MPs (all those who voted) and a large majority of Labour MPs (305) voted in favour of this motion. In contrast, the majority of Conservative MPs (110), together with one Independent MP, voted against. 18 Theresa May MP, the then Conservative Shadow Leader of the House, argued that although she supported the eventual removal of the hereditary peers, "they must be replaced by elected Members". 19 As a result, she tabled an amendment to the motion to the effect that the hereditaries be removed "once elected

¹¹ Hazel Blears MP (Secretary of State for Communities and Local Government). In addition, a Minister attending Cabinet meetings, Caroline Flint MP (Minister for Housing), also voted for abolition.

¹² Joint Committee on House of Lords Reform, Second Report of Session 2002–03, House of Lords Reform: Second Report, HL Paper 97, HC 668 (Norwich: The Stationery Office 2003), at para. 13.

¹³ These figures exclude any votes that may have been cast for the removal of the hereditary peers.

¹⁴ See n. 6 above, at col. 161.

¹⁵ See House of Lords, n. 9 above, at p. 8.

^{16 2005} Manifesto, "Britain forward not back" (Labour Party 2005), p. 110; 2001 Manifesto, "Ambitions for Britain" (Labour Party 2001), p. 35; 1997 Manifesto, "Because Britain deserves better" (Labour Party 1997), p. 32.

¹⁷ See n. 7 above, at cols 1632-5.

¹⁸ See Cracknell, Commons Divisions, n. 3 above, at p. 4.

¹⁹ Hansard HC Debs, 6 Mar 2007, vol. 457, col. 1414.

members have taken their places in a reformed House of Lords".²⁰ It is worth remembering that in the event of the hereditary peers being expelled, this would necessarily have a disproportionate impact on the strength of the Conservatives in the second chamber as they presently represent the largest group of hereditary peers. This amendment, however, was defeated by 329 votes to 241. The overwhelming majority of votes defeating it were cast by Labour MPs (309) against a combination of Conservative (173) and Liberal Democrat (62) votes.²¹ Interestingly, Liberal Democrat MPs voted firstly for the amendment and then, following its rejection, for the original substantive motion to remove the hereditaries without any preconditions.

Although the House of Lords did not vote on the above motion, in July 2007 the Constitution Unit rather helpfully published the results of a survey into the views of peers on the issue of the remaining hereditaries. They found that out of 373 peers surveyed, 259 peers agreed (153 of them strongly) that there should no longer be automatic rights for hereditary peers to sit in the House, as opposed to 65 who disagreed (20 of them strongly). These figures would appear consistent with the comment of the then Lord Chancellor, Lord Falconer of Thoroton, who said, during the debates in the House of Lords in March 2007, that there was a general recognition (though not universally shared), "that the remaining retained places for hereditary Peers should cease". 23

Following these votes, the government, in the July 2007 Green Paper (The Governance of Britain), stated that "in line with the wishes of the House of Commons" it was committed to removing the anomaly of the remaining hereditary peers as part of a package of reforms.²⁴ This implied that the government was therefore intent on removing the remaining hereditaries in the context of a wholly or largely elected House, and not before then as a separate, free-standing reform. This explained the government's dismissive attitude towards the recent Steel²⁵ and Avebury²⁶ Private Members' Bills. Both proposed to abandon hereditary by-elections forthwith with the intention that the hereditary peers would gradually wither on the vine. The hereditary peer Earl Ferrers, however, preferred to describe the process as a "quiet, gentle strangulation, getting rid of them one by one until they no longer exist".²⁷ The justification for these Bills was that, in the absence of any immediate prospect of full reform being agreed, modest measures - such as the abolition of by-elections – could nevertheless be made in the interim in order to improve the House (i.e. running repairs). It is pertinent to note that the net effect of the abandonment of these by-elections would have been, ultimately, to achieve the 2005 Labour Party manifesto commitment to remove the remaining hereditary peers;²⁸ albeit that, rather than being expelled in one tranche, they would simply not be replaced when they died.

²⁰ See n. 7 above, at cols 1627-32.

²¹ See Cracknell, Commons Divisions, n. 3 above, at p. 4.

²² UCL: The Constitution Unit, "Press notice": 19 July 2007.

²³ Hansard HL Debs, 13 Mar 2007, vol. 690, col. 722.

²⁴ The Governance of Britain, Cm 7170 (Norwich: The Stationery Office 2007), para. 138.

²⁵ House of Lords Bill 2007 (HL Bill 3). Lord Steel of Aikwood introduced a very similar Bill again in December 2008 (HL Bill 4).

²⁶ House of Lords (Amendment) Bill 2008 (HL Bill 22) - introduced by Lord Avebury.

²⁷ Hansard HL Debs, 30 Nov 2007, vol. 696, col. 1428.

^{28 &}quot;Britain forward not back", n. 16 above. Interestingly, the Steel and Avebury Bills would also have achieved the objective of the government's 2003 Consultation Paper which, inter alia, sought to remove the hereditary peers in the absence of a consensus on Lords reform following the inconclusive results of the votes in February 2003: Constitutional Reform: Next steps for the House of Lords, CP 14/03 (London: DCA 2003). Although a Bill to implement this paper was foreshadowed in the 2003 Queen's Speech, it never materialised. On this paper see M Ryan, "Reforming the House of Lords: a 2004 update" (2004) 38 The Law Teacher 255.

Although the intention to remove the hereditary peers was repeated in the 2008 White Paper,²⁹ there is still debate over the timing of their exit. The government proposed that during the transitional phase to a reformed House, all hereditary by-elections would terminate (in effect achieving the aim of both the Steel and Avebury Bills above). According to Jack Straw, this process would take place following the passage of relevant legislation and during the transition to a fully reformed House.³⁰ In relation to the hereditary peers who do not die out, the White Paper put forward three possible options for removing them.³¹ The first and second options would involve removing these surviving hereditary peers once the third group of new members arrived. The difference between these two options is that, in the first, the life peers would remain in the chamber until they died out whereas, in the second, they would be removed in tandem with the hereditaries. The third option would involve removing all life and hereditary peers in three tranches. The first option, in particular, looks far from being uncontentious as Nick Herbert MP, the then Conservative Shadow Secretary of State for Justice, argued that it would be both inequitable and invidious to remove the remaining hereditary peers whilst "the 400 life peers created under Labour" remained in the House.³²

One thing is clear, it is inevitable that the remaining hereditary peers will be removed in any agreed long-term reform package. There is cross-party consensus on this in the Commons as, even though Conservative MPs (with Liberal Democrat support) wanted their removal specifically tied to a commitment to replace them with elected members, they clearly do not envisage them forming part of a completely reformed House. Recent research revealed that in the House of Lords a significant majority of peers surveyed also supported the principle that there should be no automatic rights for the hereditaries to sit in the chamber. Finally, support for their removal was urged recently in December 2007 by the House of Commons Public Administration Select Committee, albeit that this should take place in the context of, and form part of, an interim House of Lords Reform Bill.³³

The fully elected option

The fully elected option was approved by the House of Commons by 337 votes to 224.³⁴ This majority of 113 was described by Jack Straw as "a very significant majority".³⁵ The importance of this is that the House of Commons has now approved a wholly elected House and the majority for it does appear to be a seemingly convincing one. Most of those that voted in favour were Labour MPs (210 out of the total of 337 Ayes)³⁶ including a majority of the June 2008 Cabinet (12 Ayes to 5 Noes). These Labour members were supplemented by a minority of 57 Conservative MPs and all the Liberal Democrats who voted (59)³⁷ which included virtually the whole of the June 2008 Liberal Democrat Shadow Cabinet. This is in line with the Liberal Democrat's previous votes in 2003 in which they

²⁹ See Governance of Britain, An Elected Second Chamber, n. 4 above, at p. 7.

³⁰ Hansard HC Debs, 14 Jul 2008, vol. 479, col. 23.

³¹ Governance of Britain, An Elected Second Chamber, n. 4 above, at pp. 76-81.

³² See n. 30 above, at col. 25.

³³ House of Commons Public Administration Select Committee, Second Report of Session 2007–08, Propriety and Peerages, HC 153 (Norwich: The Stationery Office 2007), at para. 176.

³⁴ See n. 7 above, at col. 1623.

³⁵ See n. 30 above, at col. 29.

³⁶ See Cracknell, Commons Divisions, n. 3 above, at p. 4.

³⁷ Ibid.

supported a fully elected House by a majority of 34.³⁸ In 2007, Liberal Democrat peers supported this option by a majority of 33 (41 to 8).³⁹

There are, however, a host of issues raised in relation to the House of Commons' vote to approve a wholly elected House. Firstly, although 337 MPs voted for it, they represent only just over half of the overall total of the chamber. Furthermore, in 2003, the House of Commons rejected this option by 17 votes, with a majority of both Labour and Conservative MPs voting against it. ⁴⁰ In the 2007 votes, a majority of 69 Conservative MPs opposed this option (126 to 57)⁴¹ and this represented a more significant rejection of it than in 2003 (79 to 59). ⁴² In fact, both Labour and Conservative MPs were divided on the fully elected option with a sizeable block of just under 100 Labour MPs voting against it (including Jack Straw, under whose aegis the 2008 White Paper had been produced). Although in 2007 a majority of Labour MPs approved the wholly elected House, they were not so supportive in 2003 when a majority voted against it by 40 votes (197 to 157). ⁴³

Secondly, the fact is that the House of Lords has twice voted to dismiss this option by the substantial majorities of 204 in 2007⁴⁴ and 223 in 2003.⁴⁵ In fact, in 2007 the only group of peers in the Lords to support this option were the Liberal Democrats. In contrast, Labour peers rejected it by a majority of 23 votes, the Conservatives 125 and the independent Crossbench peers by 85.⁴⁶ In short, the House of Lords has consistently made it very clear, for whatever reason – self-serving or otherwise – that it opposes a wholly elected House. Indeed, in 2007 only a mere 122 peers⁴⁷ supported a wholly elected House and in 2003 it was even less with 106.⁴⁸ There is clearly no inter-House consensus on the fully elected option.

Thirdly, no previous report or White Paper in the past decade has recommended a wholly elected second chamber. This includes the 2000 Royal Commission, which specifically stated that it could not recommend a wholly directly elected House. ⁴⁹ Similarly, the 2001 government White Paper did not recommend this option and described two wholly directly elected Houses as "a recipe for gridlock". ⁵⁰ Neither the 2002 House of Commons Public Administration Select Committee ⁵¹ nor the 2005 *Breaking the deadlock* report (produced by a cross-party group of parliamentarians) recommended a wholly elected House. ⁵² Even the government's 2007 White Paper proposed a mixed House containing both elected and appointed members. ⁵³

³⁸ See House of Lords, n. 9 above.

³⁹ C Clarke, House of Lords Reform Since 1997: A chronology (London: House of Lords Library 2007), p. 53.

⁴⁰ See House of Lords, n. 9 above.

⁴¹ Above Cracknell, Commons Divisions, n. 3 above, at p. 4.

⁴² See House of Lords, n. 9 above.

⁴³ Ibid.

⁴⁴ Hansard HL Debs, 14 Mar 2007, vol. 690, col. 756.

⁴⁵ Hansard HL Debs, 4 Feb 2003, vol. 644, col. 120.

⁴⁶ Clarke, A chronology, n. 39 above.

⁴⁷ See n. 44 above.

⁴⁸ See n. 45 above.

⁴⁹ Royal Commission on the Reform of the House of Lords, A House for the Future, Cm 4534 (Norwich: The Stationery Office 2000), at p. 113.

⁵⁰ The House of Lords - Completing the reform, Cm 5291 (Norwich: The Stationery Office 2001), p. 18.

⁵¹ House of Commons Public Administration Select Committee, Fifth Report of Session 2001–02, *The Second Chamber: Continuing the reform*, HC 494-I (Norwich: The Stationery Office 2002), at p. 25.

⁵² K Clarke, R Cook, P Tyler, T Wright, G Young, Reforming the House of Lords: Breaking the deadlock (London: The Constitution Unit 2005), p. 19.

⁵³ House of Lords, n. 9 above, at p. 6.

In addition, the fully elected option appears to be at odds with the manifestos of both the Conservative and Liberal Democrats for the 2005 general election. The Conservative Party manifesto referred to seeking "cross-party consensus for a substantially elected House of Lords"54 and, as noted above, the majority of their members voted against the wholly elected option both in the Lords and the Commons (in line with their manifesto). The Liberal Democrat manifesto made reference to replacing the House of Lords "with a predominantly elected second chamber". 55 Yet all of their MPs that voted (together with most of their counterparts in the Lords), not only voted for the 80 per cent elected option (see below), but also supported the wholly elected option as well, seemingly at variance with their 2005 manifesto. Interestingly enough, this support for a wholly elected chamber would, however, appear to be consistent with their 2001 manifesto commitment for a "directly elected Senate". 56 The 2005 Labour Party manifesto was much less specific than either of the two parties above. It stated that a reformed upper House "must be effective, legitimate and more representative", 57 without specifying any more details about its proposed composition. Instead, it promised a free vote on composition - hence the debates and votes in March 2007. Their previous manifesto commitment in 2001,⁵⁸ however, had sought to implement "in the most effective way possible" the recommendations of the 2000 Royal Commission which had recommended a hybrid (and largely appointed) House.⁵⁹

Fourthly, quite apart from the somewhat mixed messages that the pattern of voting indicates, there is a suggestion that, in any event, the votes in the House of Commons were marred by tactical voting. Dr Meg Russell has argued that the 2007 votes cannot be taken at their face value as

the vote for a wholly elected house was clearly influenced by tactical voting. Anybody who's followed this debate over recent years would be able to spot some very unlikely names going through the division lobby in favour of an all elected house. This was clearly a spoiling tactic because the 80% elected option, which had already passed, was seen as dangerous.⁶⁰

Similarly, Lord Higgins cast doubt on these votes saying that it was well known that the vote in favour of the wholly elected House "was a result of tactical voting by those who were actually in favour of a wholly appointed House". More recently in July 2008 in the Liaison Committee, Sir Patrick Cormack MP suggested to the Prime Minister that what had given the fully elected option "a good majority" were the tactical votes of Labour MPs (who did not want any elected members at all) voting for the fully elected option in order "to throw a spanner in the works". On the unveiling of the 2008 White Paper, Sir Patrick Cormack repeated that the vote for the fully elected option "was caused by a tactical switch by a number of Members, led by the Hon. Member for Tyne Bridge (Mr Clelland), who is nodding vigorously". The Labour MP, David Clelland, had made it clear during the 2007

^{54 &}quot;Are you thinking what we're thinking? It's time for action" (Conservative Party 2005), p. 21 (emphasis added).

^{55 &}quot;The real alternative" (Liberal Democrats 2005), p. 35 (emphasis added).

^{56 &}quot;2001 Liberal Democrat General Election manifesto: freedom, justice, honesty" (Liberal Democrats 2001), section on reforming politics and the constitution.

^{57 &}quot;Britain forward not back", n. 16 above.

^{58 &}quot;Ambitions for Britain", n. 16 above.

⁵⁹ Royal Commission, A House for the Future, n. 49 above, at p. 8.

⁶⁰ M Russell, Lords Reform: Principles and prospects (London: The Constitution Unit, 13 Nov 2007), at p. 7.

⁶¹ Hansard HL Debs, 20 Jul 2007, vol. 694, col. 497.

⁶² House of Commons Liaison Committee, The Prime Minister, Oral Evidence, HC 192-ii (Norwich: The Stationery Office, July 2008), Ev 31, Q 155.

⁶³ See n. 30 above, at cols 28-9.

debates that he intended to vote for the fully appointed option "which calls for a reformed, but *non-elected* second Chamber" and yet he proceeded to vote for both the wholly appointed and fully elected options.

It is clear that a sizeable number of MPs voted for both the wholly appointed and wholly elected options. These are options which are diametrically opposed to one another. Richard Cracknell has identified that of the 196 MPs (115 Labour, 80 Conservative and an Ulster Unionist) who voted for a wholly appointed House, 72 of them thereafter proceeded to vote for a fully elected House as well.⁶⁵ Some research into these figures indicates that 61 of these 72 MPs were Labour whilst 11 were Conservative. According to Lord Naseby, as a result of a number of MPs supporting both options, the legitimacy of the majority for the fully elected vote was therefore "highly questionable".66 It is also pertinent to note that 42 (all Labour) of these 72 MPs also voted for abolition. In other words they voted for the somewhat unusual combination of abolition, a fully appointed and a fully elected House. What these options did at least have in common was the fact that none of them were hybrid. Furthermore, 111 out of the 163 MPs who voted for abolition also voted for the wholly elected option. Some analysis of these figures reveals some interesting information. For example, if we disregard all the votes (Ayes and Noes) cast by those supporting abolition in respect of the wholly elected option, we find that the overall majority for the wholly elected House shrinks from 113 (337 to 224) to 46 (revised figures of 226 votes to 180).67

It is noteworthy that the 2008 White Paper made no reference at all to any suggestion that tactical voting may have taken place or to any of the patterns of multiple voting. As a result, the paper proceeded on the basis that the votes delivered in March 2007 are to be taken at their face value. Further, in unveiling the 2008 White Paper in July 2008, Jack Straw stated that:

Those of us who take seriously the way we vote have to be bound by the consequences of our votes. We cannot have a situation whereby Members vote in one Lobby and then say that they actually meant to vote in the other Lobby; indeed, that would be the road to complete disaster.⁶⁸

If there was any tactical voting, however, it can be said that it has not exactly paid off as the government's 2008 White Paper confined the only two possible options for Lords reform to a wholly or 80 per cent elected House.

In terms of tactical voting, one way the issue could of course be resolved would be to take the step of having a further and separate vote (Aye or No) to decide definitively whether the House of Commons really is in favour of a wholly elected option. This would deal conclusively with any suggestion that the 2007 votes did not represent genuine preferences. If the House of Commons is truly supportive of the wholly elected option, it would appear to be a relatively straightforward matter to have it endorsed again. The obvious fear, of course, is that after failing in 2003 to secure a majority for any of the options, and then finally managing to muster it in 2007, there is inevitably a concern not to unravel this position. After all, where would Lords reform be if a further set of votes rejected the wholly elected option, thereby casting doubt on the veracity of the March 2007 votes?

⁶⁴ See n. 7 above, at col. 1553 (emphasis added).

⁶⁵ See Cracknell, Commons Divisions, n. 3 above, at pp. 3 and 5.

⁶⁶ See n. 23 above, at col. 690.

⁶⁷ It should be noted that some abolitionists did not vote on the fully elected option.

⁶⁸ See n. 30 above, at col. 29.

The 80 per cent elected option

The other option the House of Commons voted for was the 80 per cent elected/20 per cent appointed chamber. This was approved by 305 votes to 267 - a majority of 38 described by Jack Straw as "quite a substantial majority".⁶⁹ This is the option which the House of Commons came very close to endorsing in 2003, falling short by a mere handful of votes (281 to 284 votes). 70 In 2007, 62 Liberal Democrats MPs (with one MP not voting) supported this option,⁷¹ having previously supported it in 2003 by 47 votes to 3.⁷² It also enjoyed the support of the Liberal Democrat peers in 2007 by a majority of 28 (38 votes to 10).⁷³ The 80 per cent elected House is also the option which is consistent with both the 2005 Conservative and Liberal Democrat manifestos (see above). Indeed, the present leaders of both of the political parties above voted for this option, together with the Lord Chancellor, Jack Straw. It is also the option that the current Prime Minister voted for. The 80 per cent elected House is, of course, a hybrid option (majority elected/minority appointed) and as such, it is consistent with both the reports of the 2002 Public Administration Select Committee which recommended a 60 per cent elected House⁷⁴ and very similar to the 2005 Breaking the deadlock report which proposed a 70 per cent elected chamber.⁷⁵

There are, however, difficulties with the 80 per cent elected option. Firstly, it has not gone unnoticed that the figure of 305 MPs represents less than half of the total membership of the House of Commons. Lord Faulkner of Worcester has noted that although much had been made of the votes in the Commons "they are a long way short of demonstrating that there is a consensus, even in the other place". ⁷⁶ Secondly, a majority of both Labour and Conservative MPs (5 and 18 respectively)⁷⁷ rejected this option, even though it appears consistent with the latter's 2005 manifesto commitment for a substantially elected chamber. Both sets of these MPs also rejected this option in 2003 by majorities of 44 and 2 respectively.⁷⁸ Thirdly, the House of Lords has twice rejected the 80 per cent elected option by majorities of 222 in 2007⁷⁹ and 245 in 2003.⁸⁰ The breakdown of peers in the 2007 votes indicated clear opposition to it with most Conservative, Labour and Crossbench peers rejecting it by majorities of 105, 65 and 73 votes, respectively.⁸¹ It is also worth noting that research undertaken by the Constitution Unit indicated that of those peers surveyed, only 32.2 per cent wanted at least some elected members. Not surprisingly, as a group, only the Liberal Democrats (71 per cent of them) supported this principle. 82 As with the fully elected chamber, there is clearly no inter-House consensus on the 80 per cent elected option.

⁶⁹ See n. 30 above, at col. 29.

⁷⁰ See n. 6 above, at col. 234.

⁷¹ See Cracknell, Commons Divisions, n. 3 above, at p. 4.

⁷² See House of Lords, n. 9 above.

⁷³ See Clarke, A chronology, n. 39 above.

⁷⁴ See The Second Chamber, n. 51 above, at para. 96.

⁷⁵ See Clarke et al., Breaking the deadlock, n. 52 above, at p. 20.

⁷⁶ See n. 23 above, at col. 705.

⁷⁷ See Cracknell, Commons Divisions, n. 3 above, at p. 4.

⁷⁸ See House of Lords, n. 9 above.

⁷⁹ See n. 44 above, at col. 752.

⁸⁰ See n. 45 above, at col. 127.

⁸¹ See Clarke, A chronology, n. 39 above.

⁸² See UCL, "Press notice", n. 22 above.

In addition, Dr Meg Russell has raised concern about taking the vote for this option at face value as she has argued that

even the 80% elected option looks pretty wobbly. The most obvious difficulty is that the Conservatives supported this position, but at the same time said that they were opposed to proportional elections. They haven't said what their alternative is, but if it's not proportional many in the pro-election camp would oppose it – quite rightly in my view. Once this factor is taken into account, the majority of 38 for an 80% elected house doesn't seem so decisive.⁸³

Indeed, around a quarter of all the votes in favour of this option (80)⁸⁴ were cast by Conservative MPs and the 2008 White Paper indicated that the Conservative Party favours the (non-proportional) first-past-the-post system for elections to any reformed second chamber. This is in contrast to the Liberal Democrats (all of whose MPs that voted supported the 80 per cent elected option), who advocate either of the proportional systems of single transferable vote or open list.⁸⁵ In terms of the pattern of votes, it is significant to point out that unlike the fully elected option above which involved a block of MPs voting for both the fully appointed and wholly elected options, in contrast, only a handful of MPs (5) voted for both the fully appointed and 80 per cent elected options.

Finally, although the principle of hybridity has been recommended by all reports in the past decade, it must be remembered that both the 2001 White Paper⁸⁶ and the 2000 Royal Commission recommended a mixed House which was largely appointed, rather than being mainly elected. In fact, the latter specifically stated that it could not recommend a largely directly elected House.⁸⁷

A fully or largely elected House?

Although in 2007 the House of Commons finally mustered the support to endorse the options of a wholly and largely elected House, the obvious problem is that *two* options were approved. Not only that, but these two options are contradictory (one supports the hybrid principle, whilst the other does not). The choice between these options is not a question of degree, but one of kind and begs the question: which option should prevail?

The 2008 White Paper, rather unhelpfully, made no recommendation as to which option to endorse. In fact, it did not even indicate a preference and its narrative went out of its way to point out that it was not implying support for one option over the other. Resulting Lord Tyler, the then Liberal Democrat Spokesperson for Constitutional Affairs, noted that it was curious that given that the paper was very specific in its detail on many points, the government was "havering" between the two options. He added "No one is asking them to be absolutely determinate about that but at least some preference could be indicated. Surely they could now reveal that." The then Parliamentary Under-Secretary of State, Ministry of Justice, Lord Hunt of Kings Heath, explained that this was deliberate given that the House of Commons had voted for both options. As a result, the 2008 White Paper indicated no preference and the two options will have to be debated and decided in due course.

⁸³ See Russell, Lords Reform, n. 60 above.

⁸⁴ See Cracknell, Commons Divisions, n. 3 above, at p. 4.

⁸⁵ Governance of Britain, An Elected Second Chamber, n. 4 above, at p. 15.

⁸⁶ See Completing the Reform, n. 50 above, at para. 11.

⁸⁷ See Royal Commission, A House for the Future, n. 49 above.

³⁸ Governance of Britain, An Elected Second Chamber, n. 4 above, at p. 76.

⁸⁹ Hansard HL Debs, 14 Jul 2008, vol. 703, col. 994.

⁹⁰ Ibid., at col. 996.

Arguments in favour of a fully elected House

One obvious point in favour of the fully elected option is that it secured the largest majority of votes. In fact, its majority of 113 was 75 more than for the 80 per cent elected option. Indeed, if we aggregate the votes cast by MPs in both 2003 and 2007, we find that with an overall combined majority of 35 in favour of it, the 80 per cent elected option compares unfavourably to the aggregate majority of 96 for the fully elected option.

One advantage of adopting the wholly elected option is that it simplifies the constitutional issues surrounding a reformed second chamber by automatically excluding certain issues from further, possibly intractable, debate. For example, the issue of whether religious representation should be retained in the House (and the wider point of whether other religious representatives should also be included) is decided automatically in the negative. Similarly, under a wholly elected system, retired Supreme Court Justices would not be offered a seat (a proposal which would in any event compromise the separation of powers). In addition, as there would be no appointed members, the fully elected option also does away with the issues surrounding the establishment of an Appointments Commission, viz its constitution, composition, terms, powers, remit, etc. The 2007 White Paper stated that it was generally agreed that any appointed element would be overseen and made by an independent statutory commission⁹¹ and previous reports have also advocated this. A year later, however, the 2008 White Paper conceded that opinion was divided on this issue with the government preferring a statutory Appointments Commission, whilst the Conservative Party favoured a non-statutory version. ⁹² In any event, there would be debate, inevitably, over the composition and remit of any Appointments Commission. 93

One major advantage of the fully elected option is defined in the negative. In other words, its virtue is that it is *not* a hybrid system, as the principle of hybridity is considered highly controversial in some quarters. For some, far from combining the advantages of election (legitimacy and constitutional confidence) with appointment (expertise, independence, no overall control by one party), a mixed House would actually be the worst of both worlds. According to an ex-Lord Chancellor, Lord Irvine of Lairg, a hybrid House was "neither fish nor fowl". Sir Gerald Kaufman MP dismissed this principle rather more peremptorily when he asserted that there were essentially three options for reform: abolition, wholly elected or wholly appointed, with all the rest being "gibberish". 95

The constitutional consequence of a mixed House is that two classes of member would be created, viz the 80 per cent elected members (claiming, arguably, a greater constitutional importance and legitimacy owing to their election) and the remaining 20 per cent appointed members. According to Ben Chapman MP, there was a danger that this would result in a two-tier system with the two types of member challenging each other. Further, Baroness Symons of Vernham Dean posited that the first time a vote turned on the votes cast by the minority appointed members, "a constitutional crisis" would ensue with the majority elected

⁹¹ See *House of Lords*, n. 9 above, at p. 40. It should be noted that the House of Commons Public Administration Select Committee recently recommended putting the present Appointments Commission on a statutory basis (see *Propriety and Peerages*, n. 33 above, at para. 135). In addition, the Constitution Unit's 2007 survey indicated that 89.5 per cent of peers supported the Appointments Commission being placed on a statutory basis (see UCL, "Press notice", n. 22 above).

⁹² Governance of Britain, An Elected Second Chamber, n. 4 above, at p. 52.

⁹³ Part 1 of the Steel Bill (n. 25 above) provides an interesting prototype of a statutory Appointments Commission.

⁹⁴ Hansard HL Debs, 12 Mar 2007, vol. 690, col. 477.

⁹⁵ See n. 7 above, at col. 1533.

⁹⁶ See n. 19 above, at col. 1438.

members refusing to tolerate being overruled by the unelected members.⁹⁷ This point notwithstanding, one of the advantages which has been levelled in favour of the low proportion of 20 per cent appointees, is that the chances of a vote being decisively influenced by these appointed members is minimised. In any case, these problems would not arise in a chamber which was fully elected with just one single class of elected member.

Other objections are that, in the long term, a hybrid chamber is an inherently unstable constitutional settlement. Although other countries have mixed chambers, they are governed by a written codified constitution – interestingly of the other two countries that lack such a document (New Zealand and Israel), both have unicameral systems. The position of a mixed House can be likened to devolution, with devolution being seen as a *rolling process* rather than a static event (for example, see the Government of Wales Act 2006). Alan Williams MP has argued that, instead of being a solution, hybridity was merely a holding position which was stalling the inevitable in which the elected members, being thwarted by their appointed counterparts, would want more elected members, and that this process would continue: "Once we start down this road, we will eventually arrive at a fully elected House of Lords." In other words, the expectation is that an 80 per cent elected House would inexorably lead to a wholly elected one.

The fully elected option would also avoid any debate inherent in any hybrid system over the proportional balance between elected and appointed members. It is well recognised that even if the principle of a largely elected House is accepted, there is certainly no paradigm percentage/proportion of members. In short, although the House of Commons supported the model of 80 per cent, why is this inherently preferable to a 70 per cent or even a 75 per cent elected House? Further, as the appointed members would comprise only one-fifth of the House, they would be in a clear minority which has led some to question whether such a low proportion of appointed members would be left feeling marginalised and "somehow surplus or supernumerary – aside from the main action". 99 In addition, in 2002 the Joint Committee on House of Lords Reform noted that in order for the appointed component to provide independent and expert elements, they would need "a sufficiently wide base" to provide opinions on a variety of subjects. The committee, however, questioned whether this could be realised satisfactorily in the context of an 80 per cent elected House (of reduced size). 100

Arguments in favour of an 80 per cent elected House

Although the 80 per cent elected option received fewer votes than the fully elected option, in 2003, this was the option which came closest to being endorsed by the Commons, falling short by 4 votes only. Indeed, it is fascinating to note that earlier research has revealed that this option would have been carried if 4 MPs (who actually supported the option) had not mistakenly voted against it. 101 The hybrid option is also consistent with both the current Conservative and Liberal Democrat manifestos and it is also broadly similar to the 70 per cent elected recommendation made in the 2005 Cross-Party Group publication *Breaking the deadlock*. In fact, all reports in the past decade have favoured a hybrid House. Nick Herbert has posited that, given that the House of Lords voted for a wholly appointed House, the

⁹⁷ See n. 23 above, at col. 572.

⁹⁸ See n. 19 above, at col. 1427.

⁹⁹ Lord Harries of Pentregarth, see n. 23 above, at col. 598.

¹⁰⁰ Joint Committee on House of Lords Reform, First Report of Session 2002–03, House of Lords Reform: First report, HL Paper 17, HC 171 (Norwich: The Stationery Office 2002), at p. 24.

¹⁰¹ See Mclean et al., "None of the above", n. 2 above, at p. 305.

best hope of consensus would be to retain a minority appointed element.¹⁰² In his reply, Jack Straw agreed that in his personal view "an appointed minority is the best type of consensus".¹⁰³ This is curious given that the House of Lords rejected the 80 per cent elected option by a larger margin than it did for the fully elected House (222 and 204 votes, respectively). It is also of interest to note that a significant majority of those favouring abolition also opposed the 80 per cent elected option and so, if we disregard all the votes (Ayes and Noes) cast by those MPs supporting unicameralism, the overall majority for the 80 per cent elected option would increase from 38 (305 votes to 267) to 110 (revised figures of 264 votes to 154).¹⁰⁴

According to the *Breaking the deadlock* report, "A mixed chamber allows the strengths of both the elected and appointed models to be combined." Further, one of the authors of this report, Dr Tony Wright MP, has argued that

If we design the second Chamber properly, we can get two good things. We can get a mixed House that gives us enough election to give us enough legitimacy, and we can get enough appointment to give us enough independence and expertise. ¹⁰⁶

A hybrid chamber would also be consistent with international legislatures. Dr Meg Russell has pointed out that it is not uncommon for upper chambers to have a mixture of members with the commonest combination being "a predominantly elected chamber with a small number of appointed or ex-officio members". According to the 2007 White Paper, the current House of Lords is already "hybrid" to some extent, as it contains different categories of members, viz bishops and hereditary and life peers. In relation to this notion of being a hybrid House, Lord Cunningham of Felling has commented that the introduction of a majority of elected members "is a fundamental difference from everything that has gone before". In the constant of the c

As noted above, although the fully elected option would dispense with certain issues associated with reforming the second chamber, the problem is that it would raise others. For example, it would make it difficult to guarantee the recently recognised constitutional principle that no one political party should have a majority of seats in the House. Elections are of course unpredictable, with the electorate determining which parties enjoy representation. At least in a mixed House with a fifth of it being appointed the possibility of one party dominating it would be reduced. Another complication associated with the wholly elected option is the loss of expertise, which of course is invariably appointed, rather than being elected through the ballot box. The 20 per cent appointed option would enable appropriate experts to be specifically selected and then appointed (however, note the concern expressed above by the 2002 Joint Committee).

A further problem with a wholly elected House is that it would, in practice, rule out the possibility of having any meaningful independent representation. Although it is of course possible for independent members to be elected, the reality is that elected members tend to be affiliated to a particular political party and its party machine. The evidence for this is clear

¹⁰² See n. 30 above, at col. 25.

¹⁰³ Ibid., at col. 26.

¹⁰⁴ It should be noted that a handful of abolitionists did not vote on the 80 per cent elected option.

¹⁰⁵ See Clarke et al., Breaking the deadlock, n. 52 above.

¹⁰⁶ See n. 7 above, at col. 1547.

¹⁰⁷ M Russell, Second Chambers Overseas: A summary (London: The Constitution Unit 1999), p. 6.

¹⁰⁸ See House of Lords, n. 9 above, at p. 32.

¹⁰⁹ See n. 94 above, at col. 494.

to see in the House of Commons where very few independent MPs are ever elected. Moreover, it could be argued that putative independent members may not wish to participate in the process and machinations of an election. A fourth problem of a fully elected chamber is the question of it being representative and reflective of society at large (the same charge could, of course, also arguably be levelled at a largely elected House, albeit with less force). Indeed, in terms of sex and race, MPs in the wholly elected House of Commons are hardly truly representative of society. As pointed out by the 2007 White Paper, a concern is that, without "strict rules" about who could stand as a candidate being in place, it would be very difficult to ensure that a wholly elected upper chamber was sufficiently representative of the racial, gender and religious mix of the nation. In In short, whereas elections may confer constitutional legitimacy, they do not guarantee social representativeness. At least the 20 per cent appointed element could go some way to offsetting the problems of a lack of diversity typically associated with elected members.

Finally, one constitutional problem frequently attached to a wholly elected House is its potential threat to the primacy of the Commons (this primacy being a principle which the 2008 White Paper asserted as "acknowledged as beyond debate"). As elections confer constitutional legitimacy and authority, a wholly elected House would therefore necessarily be more constitutionally legitimate, aggressive and assertive than the present chamber. This issue, however, is clearly less acute with the 80 per cent elected option where not all members would be elected. According to the *Breaking the deadlock* report, a hybrid option "helps ensure that whilst the chamber gains legitimacy, it can never challenge the primacy of the fully elected House of Commons". It should be remembered that the report recommended a 70 per cent elected House.

Consensus

In February 2007, in a written answer to a question concerning consensus in relation to Lords reform, the then Lord Chancellor, Lord Falconer, stated that "Consensus does not mean unanimity on all the issues but, as has been evident through the cross-party discussion, the government are seeking general agreement on key areas". 114 Jack Straw stated subsequently that, as reform of the Lords was a central aspect of the British Constitution, it was right that there was "as much all-party agreement as possible", however, he accepted "that there may well not be total agreement". 115 As history has demonstrated, universal agreement on the composition of a reformed second chamber is simply impossible. Indeed, Kenneth Clarke MP, speaking in the context of the 2007 votes, hoped that "we do not all defeat each other in our anxiety to ensure the perfect reform". 116

Lord Howe of Aberavon has insisted it was crucial that consensus on Lords reform must not only be between political parties, but also be between the two chambers. He added that this consensus should involve giving as much weight to the views of the Lords as to those of the Commons. In fact, Lord Howe went further and suggested that the scales should be weighted in favour of the House of Lords, partly on the basis that the House of Commons did not understand how the second chamber operated and so "its judgment".

¹¹⁰ For example, in August 2008 there were only 126 female MPs in the House of Commons.

¹¹¹ See House of Lords, n. 9 above, at p. 30.

¹¹² Governance of Britain, An Elected Second Chamber, n. 4 above, at p. 4.

¹¹³ See Clarke et al., Breaking the deadlock, n. 52 above.

¹¹⁴ Hansard HL Debs, 22 Feb 2007, vol. 689, col. WA271.

¹¹⁵ See n. 1 above, at col. 450.

¹¹⁶ See n. 19 above, at col. 1430.

cannot be given much weight".¹¹⁷ Unfortunately, the votes in 2007 reveal a constitutional chasm between the two chambers as the House of Lords voted only in favour of a wholly appointed House (by the commanding majority of 240 votes) and rejected decisively all other options. Further, this vote was made in the full knowledge of the earlier vote in the House of Commons, in the previous week. In July 2007, Jack Straw repeated that the government's intention was to proceed in line with the wishes of the lower (and primary) House.¹¹⁸ In other words, in respect of composition, consensus meant consensus only within the House of Commons and this is reflected in only two possible reform options being set out by the subsequent 2008 White Paper. Indeed, it is significant to note that the Convenor of the Crossbench Peers and a member of the Cross-Party Group took the view that, as the basis of the group's talks (which helped shape the report) had essentially ignored the views of the House of Lords, it was inappropriate for the term consensus to be used in the White Paper.¹¹⁹

The stark differences of view between the two Houses on Lords reform leads inevitably to the probability of inter-chamber conflict if legislation is ever placed before Parliament to implement either a fully or largely elected chamber. Would the government be forced to have to resort to using the Parliament Acts to force such a measure through the legislature? Would this be constitutional? According Salisbury-Addison/government Bill Convention, in constitutional theory, resistance in the Lords should be lessened if such a Bill was preceded by a clear manifesto commitment. That said, however, we would certainly be in virgin constitutional territory with proposals for an elected second chamber (whether largely or wholly) and, therefore, the reaction of the Lords may be difficult to assess. Nevertheless, it has not gone unnoticed that it would be somewhat ironic for peers to accept the principle of primacy in general, but then thwart the view of the Commons on Lords reform itself. Lord McNally, the Leader of the Liberal Democrats in the Lords, has warned peers

I urge noble Lords to listen carefully. There is a noise coming down that Corridor. It is a noise which this House has heard before. It heard it in 1832; it heard it in 1911. It is the thunder of reform, and this House ignores it at its peril. 120

It is, of course, a peculiarity of our constitutional system that major constitutional changes do not require a convoluted procedure involving specially weighted parliamentary majorities, the consent of the upper chamber or even endorsement via a referendum.

In terms of inter-party consensus, on what issues is there general agreement? The 2008 White Paper stated that "there is already widespread consensus" concerning the constitutional role of the upper House (i.e. to act as an investigatory and scrutinising chamber, as well as holding the executive to account). Similarly, the principles of the primacy of the Commons and the right of the government to ensure its business proceeds through Parliament are also beyond doubt. The paper added that, since the recommendations of the Royal Commission in 2000, there was also a widespread consensus that any elected members "should normally serve a single, non-renewable term of 12–15 years" elected in thirds and serving three electoral cycles. The White Paper conceded, however, that there was division on a number of aspects associated with elections. In fact,

¹¹⁷ See n. 94 above, at cols 487-8.

¹¹⁸ See n. 1 above, at col. 449.

¹¹⁹ Governance of Britain, An Elected Second Chamber, n. 4 above, at p. 9.

¹²⁰ See n. 94 above, at col. 463.

¹²¹ Governance of Britain, An Elected Second Chamber, n. 4 above, at p. 4.

¹²² Ibid., at p. 15.

one major criticism which can be levelled at the 2003 and 2007 parliamentary votes is that they did not particularise what "election" meant (i.e. did this connote direct or indirect elections?) – this is important as, for some, indirect elections are little more than a de facto system of appointment. The 2008 White Paper argued that there was a strong consensus within the Cross-Party Group and the government proposed that elections to a reformed House should involve direct elections.¹²³

Not surprisingly, the most divisive electoral issue is the electoral system to be employed (indeed, there was no consensus within the Cross-Party Group on this). This is certainly not an inconsequential secondary constitutional matter as it will determine, necessarily, the composition and party balance of any reformed chamber. The 2008 White Paper put forward four different systems for discussion ranging from the first-past-the-post (favoured by the Conservatives) to the alternative vote, single transferable vote and list systems. The Liberal Democrats support the last two systems (albeit only the latter in form of the open list variant). 124 For its part, in its 2007 White Paper, the government proposed "a partially open regional list system". 125 It is also arguable that the electoral system for a reformed second chamber cannot be determined in isolation without reference to the electoral arrangements in the House of Commons, and whether the latter will be subject to reform in the near or long-term future. In short, from a constitutional perspective it would be particularly difficult to justify the use of two identical electoral systems. Similarly, there is no consensus between the main political parties as to which existing election the proposed electoral cycles should be tied (the government and Conservatives favour a general election, whilst the Liberal Democrats prefer the elections to the devolved institutions). 126 Nor is there agreement over the size of constituencies, with the Conservatives advocating smaller, more recognisable ones than the government prefers. 127 Even in the context of a hybrid House, as noted earlier, the two main political parties disagree over whether any Appointments Commission should be statutory or not. Finally, the size of the chamber itself, which is necessarily linked to the electoral system, is also up for discussion. 128

One interesting aspect which should be mentioned is that the government in both the 2007 and 2008 White Papers made various references to the views (consensual or not) of the Cross-Party Group of parliamentarians. This group, however, was essentially comprised of a *coterie* of frontbench members and therefore lacked backbench involvement. The significance of this is that it is debatable as to whether the viewpoints/consensus forged by this Cross-Party Group (arguably with a frontbench perspective) will necessarily be translated onto the floor of both chambers when considered by all members in due course.

In terms of powers, in March 2007 Jack Straw indicated that there was general agreement "that the current powers of this place in relation to the powers of the Lords or any second Chamber should remain the same". 129 Over a year later, the government, in its follow-up report *Governance of Britain: One year on*, stated that cross-party talks had reached consensus that there should be no reduction in the present powers of the House of Lords. 130 The view that the reformed chamber should not have additional powers, however, is clearly not universal as it could be argued that a more democratic House should

¹²³ Governance of Britain, An Elected Second Chamber, n. 4 above, at p. 24.

¹²⁴ Ibid., at ch. 4.

¹²⁵ See House of Lords, n. 9 above, at p. 39.

¹²⁶ Governance of Britain, An Elected Second Chamber, n. 4 above, at pp. 19-20.

¹²⁷ Ibid., at p. 20.

¹²⁸ Ibid., at pp. 21-22.

¹²⁹ See n. 19 above, at col. 1399.

¹³⁰ Governance of Britain: One year on (London: Ministry of Justice 2008), at p. 16.

arguably (and logically) enjoy a corresponding increase in its powers. Furthermore, even though in January 2007 the constitutional conventions which regulate the relationship between the two Houses (as identified by the 2006 Joint Committee on Conventions), ¹³¹ were approved by resolutions in both chambers, ¹³² these relate specifically to the present (unelected) House of Lords. As a result, there will, inevitably, be some debate over whether these conventions could adapt, or even survive, in the context of a fully reformed, elected second chamber.

Conclusion

In March 2007, the two Houses of Parliament voted on the future composition of a reformed second chamber. What is clear is that the principle of bicameralism is generally agreed and no political party proposes to retain the hereditary peers in the context of a fully reformed House. That said, although the House of Commons approved two options, a majority of Conservative MPs together with a sizeable block of Labour MPs voted against the fully elected option. Moreover, no report in the past decade has even recommended a wholly elected House and the vote in any event has been blighted by a claim that it has been undermined by tactical voting. In relation to the 80 per cent elected option, this was voted against by a majority of both Labour and Conservative MPs. Furthermore, the votes cast in favour of both these options approximated to around only half of the total membership of the House of Commons. In contrast, the House of Lords has very clearly indicated its view by endorsing a wholly appointed House and rejecting, by overwhelming majorities, both of the options endorsed by the Commons. As evidenced by their recent manifestos, although all three major political parties are now committed to reforming the Lords, there is no uniform agreement exactly on how this should be achieved.

Finally, it is important to point out that at, the time of this article going to print, the Prime Minister, in June 2009, issued an extraordinarily wide-ranging Formal Statement on Constitutional Renewal. He indicated that it was the intention of the government to "set out proposals for debate and reform" on various areas of the constitution, viz the rights of the citizen, devolution, the electoral system and public engagement in the political system. In relation to the House of Lords he made the following statement:

we will move forward with reform of the House of Lords. The Government's White Paper, published last July, for which there is backing from other parties, committed us to an 80 or 100 per cent elected House of Lords, so we must now take the next steps as we complete this reform. The Government will come forward with published proposals for the final stage of House of Lords reform before the summer Adjournment, including the next steps we can take to resolve the position of the remaining hereditary peers and other outstanding issues. ¹³³

To put this statement into context, it should be remembered that the government's intention in July 2007 was that, following the earlier votes in March, a further White Paper would be published – informed by cross-party talks – so that a reform package could be produced and placed before the electorate at the next general election. The hope was that the other main political parties would include this commitment in their respective manifestos (although how this could be guaranteed is not clear). ¹³⁴ One year later, Jack

¹³¹ Joint Committee on Conventions, First Report of Session 2005–06, Vol. 1, *Conventions of the UK Parliament*, HL Paper 265-I, HC 1212-I, (Norwich: The Stationery Office 2006).

¹³² House of Lords: Hansard HL Debs, 16 Jan 2007, vol. 688, cols 573ff; House of Commons: Hansard HC Debs, 17 Jan 2007, vol. 455, cols 808ff.

¹³³ Hansard HC Debs, 10 Jun 2009, vol. 493, cols 797-8.

¹³⁴ See n. 1 above, at col. 450.

Straw, in unveiling the promised 2008 White Paper, pointed out that, although the document represented "a significant step on the road to reform", it was not, however, the definitive blueprint. He also made it plain that it had "never been the intention to legislate in this Parliament". More recently in March 2009, Michael Wills MP, the Minister of State, stated that the government was in the process of considering the responses it received to the White Paper and that

More detailed plans for comprehensive reform will be developed and put to the electorate as a manifesto commitment at the next general election. Comprehensive legislation would then be possible in the next Parliament. 136

In July 2009 the government published the Constitutional Reform and Governance Bill which, inter alia, proposed to allow members to resign from the House of Lords, remove those convicted of a serious criminal offence and end by-elections for hereditary peers. In September 2009, Jack Straw stated at the Labour Party Conference that legislative proposals for a new (elected) second chamber would be published shortly. Notwithstanding these recent developments, nevertheless it seems fair to argue that the final completion of the reform of the House of Lords is still some way off. After all, this is a constitutional issue which has bedevilled parliamentarians for almost a century and, in any event, any proposal for an elected or largely elected chamber is bound to encounter at least some resistance in the House of Lords itself. In conclusion, it seems inevitable that when we mark the centennial anniversary of the 1911 Parliament Act (which was only ever supposed to be temporary legislation), the second chamber will still be in the partly reformed state that it is in today.