

## Reports and Surveys

# House of Lords Reform: Are We Nearly There Yet?

---

MEG RUSSELL

ON 14 July 2008 the government published *An Elected Second Chamber: Further Reform of the House of Lords*.<sup>1</sup> This White Paper, the fifth on the subject since 1997, appeared finally to bring the government closer to the views of its own backbenchers and the public by proposing a largely or wholly elected second chamber. At first glance, therefore, we might seem to be moving at last towards a conclusion of the long-running Lords reform saga which has dogged ministers for more than a decade. Not least because the new White Paper reflects the results of inter-party talks, with the Conservatives and Liberal Democrats also officially signed up to such a package. Closer examination of the White Paper and the events surrounding its publication, however, suggests that those eagerly awaiting reform of the House of Lords are not going to be satisfied any time soon.

### The story so far

There have been so many twists and turns in the Lords reform story since 1997 that these alone could fill an article.<sup>2</sup> Here a brief summary should suffice to give context to the most recent proposals.

The first White Paper on Lords reform was published in 1998, alongside the short bill which aimed to end the hereditary peers' presence in the chamber. The paper set out the rationale for this 'first stage' reform, and canvassed options for the second stage, which it announced

would be considered by a Royal Commission. The bill completed its passage in 1999 with one amendment, to retain ninety-two (of the 759) hereditary peers until the next stage was completed. The Royal Commission reported in 2000, proposing a second chamber that was largely appointed, but with a minority of elected members. The Commission's concern was that a largely or wholly elected chamber could challenge the supremacy of the House of Commons, being able to claim a similar democratic legitimacy. Instead the Commission proposed that a largely appointed chamber could achieve a legitimacy that was less threatening through appointment of expert members who were balanced in terms of geography, gender and ethnicity.

The Royal Commission's rejection of a more obviously democratic solution was controversial. Yet its emphasis on Commons supremacy and the dangers of an elected house were widely thought to reflect the preferences of Prime Minister Tony Blair. The government's second White Paper, in 2001, proposed broadly to put the Commission's proposals into effect by creating an appointed chamber with 20 per cent elected members. It was clear, however, that these proposals were unacceptable to the Parliamentary Labour Party, and they were fairly quickly dropped. Instead free votes were held in 2003 in both chambers of parliament on options for the composition of a reformed second chamber. The

House of Commons rejected all the options it was presented with, though an 80 per cent elected house proved most popular. The Lords supported an all-appointed house. This deadlock having been reached the third White Paper, later that year, proposed a minimalist reform to remove the remaining hereditaries and put the House of Lords Appointments Commission on a statutory basis. However, this was derided by reformers as a backward step that sought to cement the all-appointed house that the Commons had rejected, and it too was abandoned.

At this point it might have been expected that the government would quietly forget about House of Lords reform, at least until tempers had settled. Yet Jack Straw, when appointed Leader of the House of Commons in 2006, was determined to succeed where his predecessors had failed. His first proposals, in a White Paper published in February 2007, were for a compromise on the central disputed question of election or appointment—that is, for a 50/50 elected/appointed house. This (rather predictably) proved to please nobody when the options were again put to parliamentary votes the following month. The 50/50 option was roundly rejected, but the Commons this time supported two options, for either an 80 per cent or 100 per cent elected house. The Lords again voted to stick with appointment. The latest White Paper follows cross-party talks designed to respond to the expressed wishes of the House of Commons in these votes.

## Remaining points of disagreement

Until now the most obvious obstacle to Lords reform has been the failure to agree if election or appointment is the most appropriate form of composition. This was what sank the Royal Commission's report, and the government's second,

third and fourth White Papers. It was the sole focus of both rounds of parliamentary votes. Finally this issue appears to be resolved. The Liberal Democrats have long been committed to election, and the Conservatives first officially embraced a largely elected house several years ago. The government's change in position on this issue thus seems to be the last bit of the puzzle. Yet even if all parties now support a largely or wholly elected house (which is debateable), there are several new obstacles to be overcome as soon as this initial one is out of the way.

As a result of its relationship to the cross-party talks, the White Paper is able to be quite explicit about points of disagreement between the parties, and the first is over the electoral system. Most proposals to date, including the Royal Commission's report, the earlier White Papers, a report from the Commons Public Administration Committee, and various others from outside bodies, have proposed that elections be based on a proportional representation system. This makes sense as it ensures that the second chamber is distinct from the House of Commons and has its own different logic of composition. It also has the benefit of ensuring that no party would have a majority in the chamber (so that neither government nor the main opposition would be in control), and of bringing a degree of proportionality to Westminster which many have long sought. The current chamber, which resulted from the hereditary peers' removal in 1999, is far more proportional than its predecessor, and now more or less reflects the balance of votes cast at recent general elections (with the complicating factor of a large number of independent Crossbenchers). In the past all three parties have expressed a desire that this kind of 'no overall control' situation in the chamber should be retained. Yet just as a new consensus becomes visible on method of composition, this more established consensus seems to be breaking down.

The government itself is curiously quiet on its preferred electoral system (perhaps as a result of known disagreements on its own backbenches), and the White Paper instead presents a range of conflicting options. The Liberal Democrats have consistently supported proportional representation for a reformed House of Lords, as they do for the House of Commons. The Conservatives, however, disagree. As their spokesperson Nick Herbert said in response to the White Paper, they would 'strongly resist any move to introduce an electoral system based on proportional representation'.<sup>3</sup> The options canvassed therefore include first past the post and the alternative vote (AV), as well as two forms of PR: the single transferable vote (STV) or a list system. In this respect the debate seems to have moved backwards rather than forwards. Not only is the disagreement between the Liberal Democrats and the Conservatives a fundamental and intractable one, but many campaigners outside parliament would be completely opposed to reform based on a non-proportional system. If the purpose of the second chamber is to act as a modifying influence on executive power in the Commons, rather than to be the creature of either the government or the main opposition (threatening, in turn, to create either a rubber stamp or gridlock), PR is essential. This means tacit support for government decisions is needed from those outside the governing party. Faced with a choice between a reformed chamber elected by first past the post, or the appointed but proportional chamber we have currently got, the status quo far better provides for the kind of consensual decision making desirable to counterbalance exaggerated government majorities. Many committed reformers on the Labour benches in the Commons, as well as most Liberal Democrats, would therefore see it as preferable.

The argument over the electoral system is the most important illustration of a key

point. While much of the last decade has been spent arguing about a central principle—that of election versus appointment—there are other principles which are equally important. Only now are these coming to the fore. While many people agree on the principle of elections, they can disagree strongly when it comes to the detail.

This divisions over the electoral system could be enough to scupper reform, but there are many other tensions as well. The most obvious is the open question of whether the chamber should be wholly, or only largely, elected. The White Paper discusses two options, of an 80 per cent or 100 per cent elected house. Again the government itself is curiously silent on its preference. Its previous proposals have obviously argued for different levels of appointment, and most previous reports from government and elsewhere have suggested inclusion of a 20 per cent independent appointed element. This would ensure that the Crossbenchers were retained. The White Paper does state that if a 20 per cent appointed element is included, all of these members should be independent rather than being party nominees. Yet it leaves the bigger question open.

Not surprisingly the Crossbenchers themselves (who were represented in the cross-party talks) are firmly against an all elected house. Their convenor therefore protests that 'any use of the term 'consensus' in the White Paper is inappropriate' in this sense (p. 9). Immediately after its publication, a group of Crossbenchers signed a letter to *The Times* rejecting the proposals. Yet this is not only a matter of self-interest. The presence of independent members is one of the things the public appreciates about the House of Lords. This factor was considered important to Lords legitimacy by 83 per cent of respondents in a recent survey commissioned by the Constitution Unit. Until now, however, it has not been seriously threatened, as interest in an all-

elected second chamber has tended to be a minority affair. The reason this option is now receiving such serious consideration is because it proved most popular in the House of Commons votes of 2007. It passed by a majority of 113 votes, rather than the thirty-eight-member majority in favour of an 80 per cent elected house. However, as was widely remarked at the time, this vote almost certainly did not reflect MPs' sincere preferences.<sup>4</sup> The outcome most feared by those opposed to further reform was the 80 per cent elected option as this seemed to be the most feasible. Once this option had been approved, a sizeable number of MPs previously associated with the campaign *against* election went into the division lobby to vote for a 100 per cent elected house. This was a cynical wrecking tactic, designed to make future negotiation more difficult. The White Paper shows that the tactic has already had some success. This part of the story also illustrates another important point: that some will go to extraordinary lengths to get what they want on Lords reform.

The proportion of members elected, and the electoral system, are the most obvious points of contention, but there are many others which are far from trivial. Several more of these relate to electoral matters. Perhaps the most important is that of term lengths. On this point there have been various proposals over the years, ranging from a minimum of five-year terms in the 2001 White Paper, to the fifteen-year terms proposed by the Royal Commission. Here there was general agreement by those at the cross-party talks that elected members (and appointed members, if included) should serve relatively long terms of twelve–fifteen years, and that these should be non-renewable. This is a sensible proposal, ensuring that members are relatively free of pressure both from their party leaderships and from constituents. It would therefore help to preserve another of the best elements of the present culture

in the House of Lords, and help keep it distinct from the House of Commons. It is not uncontroversial, however. While the party leaders may be agreed on this point, there is likely to be dissent in all three parties, as all contain MPs who have publicly proclaimed recall before the electorate to be an essential principle of democracy.

The White Paper anticipates this objection, but the proposal it makes to overcome it is more controversial still. The suggestion is that there could be 'recall ballots', whereby the electorate in an area could petition to have their second chamber member removed if judged corrupt, incompetent or neglectful of their duties. This process is thus far alien to the British system (though it is used in the United States), and holds out the prospect of nasty negative campaigns against individuals, which could easily be fuelled by opposing parties. It seems an ugly and dangerous compromise. The White Paper also ties itself in knots trying to work out how vacancies could be filled if members die or retire before their term is up, and none of the options looks appealing. Finally, the question of when elections would be held remains unresolved, with Labour and the Conservatives favouring holding these alongside general elections, while the Liberal Democrats would prefer to hold them alongside elections to the devolved assemblies. This last point, at least, is probably not fundamental to anyone.

The same cannot be said, however, of the awkward question of the bishops. At present twenty-six Church of England bishops continue to sit in the House of Lords, and the Royal Commission and others have proposed a compromise whereby their number is in future reduced to sixteen. If an appointed element is retained, the government proposes that it would 'be logical to reduce proportionally the number of seats available for Bishops' (p. 55). As the overall size of the new chamber is suggested to be some-

where between 250 and 450, this would cut their seats to somewhere between nine and seventeen. Yet there would, of course, be no place for bishops in an all-elected house. And in any case the Liberal Democrats, and many on the Labour backbenches, object to the bishops' presence on principle. This could prove to be a nasty sticking point if the government ever gets as far as a bill.

So far all of these objections relate to matters of composition. Yet there is, finally, the whole thorny matter of powers. On this the government has not taken a consistent position. Initially it suggested that the powers of the House of Lords (which allow it to delay most bills for about a year) were broadly correct, and the Royal Commission and others agreed. However, as election has come increasingly onto the agenda, the government has become nervous of leaving the second chamber with such substantial powers. Labour's 2005 manifesto proposed cutting the Lords' powers, including allowing it only sixty days to consider government bills. This suggestion was strongly opposed by the Liberal Democrats, in particular. In 2006 a joint parliamentary committee was established to consider the conventions governing the powers of the House of Lords. At this point Jack Straw dropped the sixty-day proposal, and the new White Paper reverts to a position that 'there is no persuasive case for reducing the powers of a reformed second chamber' (p. 40). Pragmatically, this is quite correct. Given the disagreements about composition, the difficulty of reform would simply be multiplied if an attempt was made to reform the chamber's powers as well. Any attempt to reduce its powers, unless it had just behaved in some way which was clearly outrageous, would be publicly controversial. Yet the truth is that many on the government side are very uncomfortable with the thought of the Lords' current powers being transferred to a more democratically legitimate and

confident chamber. Removal of the hereditaries has already boosted the chamber's assertiveness, which makes the government's life more difficult, and addition of elected members would almost certainly boost it further still. Should it come to a bill, there might well be internal dissent from ministers, requiring limitations on power to be added. If not, similar concerns would be expressed by government backbenchers during its passage. If, on the other hand, the bill sought to reduce the chamber's powers, this would face fierce opposition from the other parties, and from the Lords itself.

## Next steps

The government has been quite explicit that there will be no further progress on Lords reform in this parliament, but that this must wait until after a general election. One of the purposes of a White Paper to which all three parties have agreed in principle is that all three might then include similar words in their election manifestoes, providing a greater momentum for reform. As things stand it is likely that Labour, Conservative and Liberal Democrats will now all commit themselves at the next election to creating an 80 per cent or 100 per cent elected second chamber. Yet as the preceding discussion shows, we should not conclude from this that such reform will be smoothly introduced thereafter.

One of the potential advantages of commitment to a particular Lords reform outcome in a governing party's manifesto is that this may limit obstruction from the House of Lords itself. The so-called 'Salisbury-Addison convention' (or simply 'Salisbury convention') requires that the Lords should not completely block a bill to implement a government manifesto commitment. The chamber is much more assertive than it used to be, but although the convention is contested and its boundaries far from

clear, it still has some force. There is no such guarantee against trouble in the House of Commons, however, and this could in fact prove to be bigger problem for a Lords reform bill. There are clearly numerous issues on which MPs would be divided, both across and within political parties. The spectre that haunts any government on Lords reform is that of 1968, when the Wilson government introduced a bill that had support in the Lords, but fell apart in the House of Commons. Too radical for some and too cautious for others, the bill generated so much backbench dissent that it was ultimately abandoned. No government will want to repeat that exercise, though it remains a trap that could unintentionally be stumbled into. Both the Lords and the Commons would be conscious, of course, of public opinion, and opinion polls do show majority support for a largely or wholly elected second chamber. Yet just as turning this principle into practice presents difficulties for the politicians, so it could prove to be for the public. The principle of election is one thing, but the reality of creating more seats for elected (and salaried) politicians might prove less widely popular. This is particularly so if opponents managed to make the case that this would lead to a decline in the chamber's expertise and independence, both of which the public support.

All of this, of course, is to assume that a future government was motivated to pursue reform in the first place. Leaving aside the obstacles, there are some doubts about how sincerely committed both Labour and the Conservatives really are. David Cameron is said to have calmed his peers by telling them that Lords reform is a 'third term issue' should the Conservatives return to power. The public commitment to election is of course an easy one when in opposition, but may not be followed through if the opportunity presents itself. After all, Labour stated a commitment to a 'more democratic and

representative' second chamber back in its 1997 manifesto. The pressure from the opposition parties, and from backbenchers in the Commons, has undoubtedly helped bring about the government's most recent change of position, and its own enthusiasm for reform is not necessarily great. Electoral competition encourages the two main parties to try and outbid each other in terms of democratic credentials, but neither may be strongly inclined to proceed to the next step.

The really keen reformers are the Liberal Democrats, who are normally powerless to introduce reform. The party could, however, find itself in a strong bargaining position after the next election if this results in a hung parliament. In these circumstances it might well seek to make Lords reform a condition for supporting one of the other parties, either as a coalition or minority government. Yet here too it gets problematic. As already indicated, the Conservatives and Liberal Democrats are now fundamentally opposed on the detail, as the only electoral system acceptable to one would be wholeheartedly rejected by the other. In committing themselves so strongly to a non-proportional electoral system, the Conservatives have essentially killed any chance of a deal with the third party on this issue—which may or may not have been part of their thinking. The best chance of Lords reform therefore rests with a future parliament where Labour needs Liberal Democrat support. Yet even here, given the obstacles above, this is no certainty.

The shame perhaps with all this talk of reform is that we remain largely unaware of the benefits of the second chamber we have already got. The 1999 reform which removed most hereditary peers does look, in retrospect, to be much more important than most people realised at the time. It has created a chamber that is relatively proportional, with no single party in control, and is more confident to challenge the government on contro-

versial policies. It has had many victories, on issues such as detention of terrorist suspects and limitations on trial by jury. In future it would challenge a Conservative government just as it challenges Labour. The other problem created by the endless disagreements about ambitious, large-scale reform is that small-scale reforms which could be implemented quickly, and further enhance the present house, tend to be overlooked. For example, the House of Commons Public Administration Committee suggested in 2007 (after the 'cash for honours' controversy) that more extensive powers should be given to the House of Lords Appointments Commission, at least until further reform is reached.<sup>5</sup> In this way we could end the increasingly anomalous practice whereby the prime minister decides how many peers are created and when, and how these are balanced between the parties (a situation that, at least in theory, would allow a prime minister to do away with proportionality and 'pack' the Lords with party supporters). The Commission could also be given a greater role in choosing between nominees put forward by the parties—for example, to ensure gender and ethnic balance. A bigger (but still small) step would be to move from life appointments to a fixed term of office for second chamber members, which would halt the currently spiralling size of the chamber. Yet another, long overdue, would be to break the link between the peerage and membership of the upper house—making clear that membership is now a job, no longer just an honour.

If the prospects for larger scale Lords reform remain bleak it shouldn't surprise us. Second chambers are fundamentally controversial institutions, given that they exist to question the decisions of elected governments and first chambers. Reform debates are common in other bicameral countries—even those with elected second chambers. Yet they rarely get very far—not least because few governments are inclined to introduce changes that will strengthen parliamentary resistance to their legislation.<sup>6</sup> The current state of the debate is also wholly consistent with Britain's past. As Peter Riddell noted in *The Times* on the day after this latest White Paper was published: '[T]he solution to the long-term future of the House of Lords is always after the next election, and has been for a century.'

## Notes

- 1 Cm 7438, Ministry of Justice.
- 2 Indeed, such an article was recently published, for those who want a more complete history. See P. Dorey, 'Stumbling through "stage two": New Labour and House of Lords reform', *British Politics*, vol. 3, 2008, pp. 22–44
- 3 House of Commons Hansard, 14 July 2008, col. 24.
- 4 For a discussion, see Dorey, 'Stumbling through "stage two"'.
- 5 *Propriety and Peerages*, Second Report of Session 2007–08, HC153, House of Commons.
- 6 See M. Russell and M. Sandford, 'Why are second chambers so difficult to reform?', *Journal of Legislative Studies*, vol. 8, no. 3, 2003, pp. 79–89.