

## **Reform of the House of Lords in British politics 1970-1992.**

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**REFORM OF THE HOUSE OF LORDS**  
**IN BRITISH POLITICS 1970-1992**

**TIMOTHY ENNIS LAMPORT**

**QUEEN MARY**

**PhD Thesis**



## ABSTRACT

Perceived obstruction of the Labour government's legislative programme in the mid-1970s sparked renewed interest in tackling the House of Lords. A Labour Party study group recommended outright abolition and this was adopted as policy, notwithstanding questions about the practicalities. The Prime Minister, James Callaghan, failed to prevent this; and his last minute attempt to block its inclusion in the 1979 manifesto, while successful, led to a major row which had significant repercussions. The alternative policy was then to curtail drastically the Lords' powers, at least as a first step, but the arguments continued into the early 1980s.

Labour's policy was a major influence in leading the Conservatives to set up a committee under Lord Home, which in 1978 came forward with radical proposals, involving a partly or wholly elected chamber. However, these were never formally adopted as Conservative policy and, in office, particularly after the emphatic election victory of 1983, ministers became increasingly complacent and content to maintain the status quo. The Lords meanwhile showed themselves willing to defeat the government on occasion; but while this may have been an irritant, on crucial issues it could usually rely on 'backwoodsmen' to get its way and the Thatcher government seems never seriously to have contemplated legislation.

The experience of opposition in the 1980s led Labour, with the Parliamentary leadership more to the fore in its Policy Review, to change its approach. Now seeing the second chamber as a potential ally in safeguarding future reforms to constitutional and human rights, it supported a fully elected chamber; and the position of the Liberal Democrats was broadly similar.

The question of Lords' reform had a significant influence on the politics of the time, illustrating the potential uses and limitations of prime ministerial power and changing perspectives between government and opposition.

I hereby confirm that I am solely responsible for the contents of this thesis and that any quotations from the work of others, published or otherwise, are properly acknowledged.

I would like to thank all those who gave generously of their time in interviews, who responded by correspondence, or who assisted in arranging access to archive material. I should like to express particular gratitude to Michael Fallon MP for providing access to his papers, as Secretary to Lord Home's Conservative Party Review Committee; to Tony Benn also for providing access to unpublished sections of his diaries; and to Michael Steed for making available his personal files. I am also indebted to Professor Peter Hennessy for his advice and assistance; and to my wife, Jennie for her help in processing the written material and for her encouragement and support throughout.

Tim Lamport





## INTRODUCTION

"We believe the present House of Lords is an outdated institution, completely inappropriate to a modern democratic system of government. It should not, therefore, continue in its present form".  
(*Labour's Programme 1976*, p 104)

".....in our view maintenance of the status quo is not a prudent policy. Indeed, we are doubtful if it is a policy at all."  
(*The House of Lords: The Report of the Conservative Review Committee*, Conservative Central Office, 1978, p 35)

As these statements contained in documents issued by the two main political parties might suggest, there was considerable interest in and speculation about the future of the House of Lords in the late 1970s. Yet, in the event, it was not until 1999 that any changes were implemented, when the Labour government removed the rights of most hereditary peers to sit in the House of Lords.

Before that, the last major instance of government legislation aimed at reforming the second chamber had been the abortive attempt of Harold Wilson's Labour government through the Parliament (No. 2) Bill of 1969. That episode, the events leading up to it and the immediate aftermath were examined in detail by Janet Morgan in her study covering the period.<sup>1</sup> No significant legislation in this area was brought before Parliament in the following two decades (other than what were essentially no more than gestures by backbenchers, which stood no realistic chance of reaching the statute book). Nevertheless, there were important developments in the way the House of Lords handled the business that came before it and in its relations with the governments of the day; and the main political parties came forward with proposals for major reform and even outright abolition of the second chamber. To date, there has been no detailed study of these, of how and why they came about or of their particular impact. This thesis seeks to fill that gap.

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<sup>1</sup> Janet Morgan *The House of Lords and the Labour Government 1964-1970* (Oxford at the Clarendon Press, 1975).

Documentation is available on the actual composition and the workings of the House of Lords over much of the period - for instance, in Donald Shell's definitive book; in a PhD thesis by Nicholas Baldwin; in the detailed study in the 1988-89 Parliamentary Session, edited by Shell and Beamish; and in a wider study of the workings of Parliament by John Griffith and others.<sup>2</sup> There are also various contemporary pamphlets by individuals and organisations; and, more recently, material produced in the run up to the 1999 legislation, such as the report by the Constitution Unit and the book of which the former Leader of the Lords, Ivor Richard, was joint author; also the government's White Paper itself, plus the subsequent report of the Royal Commission under Lord Wakeham.<sup>3</sup> The House of Lords itself has also issued various information and briefing papers.

However, while many of these are extremely useful in providing a contemporary snapshot of the House of Lords, in showing how it dealt with particular issues or legislation, in outlining earlier reforms or proposals, or in discussing particular alternatives for reform, including their respective merits and demerits, none of them covers, to any substantial degree, the policy developments involving the main political parties of the 1970s and the 1980s, the events surrounding them and their consequences. Shell's book does mention these briefly, but, while making some pertinent observations, it, like the others, does not set out to provide an in-depth study and analysis of them (as, for instance, Morgan was able to do for the preceding period).

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- 2 Donald Shell: *The House of Lords* (2nd edition, Harvester Wheatsheaf, 1992); Nicholas Baldwin: *The Contemporary House of Lords* (unpublished PhD thesis, University of Exeter, 1985); Donald Shell and David Beamish: *The House of Lords at Work* (Clarendon Press, 1993).
- 3 J A G Griffith and Michael Ryle with M A J Wheeler Booth: *Parliament - Functions, Practice and Procedure* (Sweet and Maxwell, 1989); Constitution Unit: *Reform of the House of Lords* (1996); Ivor Richard and Damien Welfare: *Unfinished Business. Reforming the House of Lords* (Vintage, 1999); *Modernising Parliament: Reforming the House of Lords*, Cm 4183 (HMSO, January 1999); *Royal Commission on the Reform of the House of Lords: A House for the Future* (Cm 4534, HMSO, January 2000)

Moreover, few of the published diaries, autobiographies or biographies of the period have much, if anything, to say on this. There are a few exceptions from the Conservative side, such as the memoirs by two prominent peers, Lords Carrington and Hailsham.<sup>4</sup> In addition, another former Cabinet minister, Ian Gilmour, has some interesting observations about the relationship between the Thatcher government and the Lords, as, albeit in brief references, do his colleagues Nicholas Ridley and William Whitelaw.<sup>5</sup>

Similarly, despite the considerable interest aroused by policy developments at the time, they are hardly mentioned by Labour politicians, beyond, in some cases, noting the difficulties the Labour government ran into with its legislation in the Lords. This applies even to Tony Benn in his diaries, notwithstanding his close involvement as a member of Labour's National Executive. Benn does, nevertheless, give an interesting account of the arguments surrounding the drafting of Labour's 1979 manifesto, in which policy on the Lords featured prominently, which supplements that contained in the contemporary account, *What Went Wrong*, although both are from similar standpoints.<sup>6</sup> The Prime Minister at the time, James Callaghan, perhaps surprisingly, does not deal with the episode in his memoirs, although he does make a couple of interesting observations about the Lords generally.<sup>7</sup> Overall, however, there is relatively little material to be obtained from these and similar sources.

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4 Lord Carrington: *Reflect on Things Past* (Collins, 1988); Lord Hailsham: *The Door Wherein I Went* (Collins, 1975) and *A Sparrow's Flight* (Collins, 1990).

5 Ian Gilmour: *Dancing with Dogma - Britain under Thatcherism* (Simon and Shuster, 1992); Nicholas Ridley: *My Style of Government: The Thatcher Years* (Hutchinson, 1991); William Whitelaw: *The Whitelaw Memoirs* (Aurum Press, 1989).

6 Tony Benn: *Conflict of Interest: Diaries 1977-80* (Hutchinson, 1990); Ken Coates (ed): *What Went Wrong* (Spokesman, 1979).

7 James Callaghan: *Time and Chance* (Collins 1987). It is however, briefly mentioned by his biographer, Kenneth O Morgan, in *Callaghan: A Life* (OUP, 1997).

Yet, arguably, the developments in this area, particularly in the second half of the 1970s and the early 1980s, were at least as interesting as those that went before. This period saw a number of proposals for reform. By far the most significant were those which emerged from committees established by the main political parties, which, in the case of the Labour Party, involved abolition of the second chamber, leading to a unicameral Parliament; and, in that of the Conservative Party, slightly less drastic, but nevertheless sweeping reforms, involving at least partial election of the second chamber. If either had been implemented, the constitutional ramifications would have been considerable; and the abolition proposals did actually become, for a period, the formal policy of the Labour Party. As Lord Crowther Hunt, a member of the Study Group which came forward with the policy (although not, himself, a supporter of it) was to observe:

"As a constitutional historian, I'm glad the Labour Party has committed itself to total abolition of the Lords...because it raises such a list of fascinating questions".<sup>8</sup>

Such questions did indeed arise, including some concerning the rights of Parliament, the powers of the Crown and constitutional propriety. Any attempt to implement the policy could have precipitated the biggest constitutional wrangle since the Parliament Act of 1911.

As it was, both proposals were ~~were~~ the subject of political debate and some controversy both within and between the parties; and they had a significant impact more widely on the politics of the time, particularly in the Labour Party in the run up to the 1979 election and the ensuing arguments and divisions. After something of a lull in the 1980s, there was a renewal of interest in the Labour Party, although not in the Conservative Party, particularly in the reform of the second chamber in the context of wider constitutional reform. Although, in the event, the structure of the House of Lords remained substantially unchanged until the very end of the century, the developments over the preceding period should contribute an understanding of why this was so and how the main political parties reached their respective positions on this important constitutional issue. This thesis aims to examine those developments in depth.

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8 "Who Needs the Lords?", *The Listener*, 4th December 1980 (Vol 104, p 742).

It will start by looking briefly (in Chapter 1) at the historical background, including the main legislative developments earlier in the 20th century, such as the 1911 Parliament Act which first restricted the powers of the House of Lords, the 1949 Parliament Act which limited them further, the 1958 Life Peerages Act and the 1963 Peerage Act which made changes to the composition and the abortive attempt at comprehensive reform in 1968/69. All these are outlined in Shell's book. The earlier developments were also covered, for instance, by P A Bromhead's study covering the years between 1911 and 1957; while the circumstances surrounding the passage of the 1911 Act were dealt with by Roy Jenkins in *Mr. Balfour's Poodle*.<sup>9</sup> As already noted, the 1968/69 reforms and the events leading up to them have been covered by Janet Morgan. It is not proposed to re-examine these in detail, but, particularly in respect of the 1960s, some new information has subsequently become available, for instance, from the Public Record Office and other archives;<sup>10</sup> also from some diaries and memoirs. Where this contributes to a better understanding of this historical background, it will be referred to.

The thesis will then look in detail (in Chapters 2-6) at the important policy initiatives in the Labour Party in the late 1970s and the 1980s, including the policy of outright abolition which excited much interest at the time, the controversy which surrounded this and the questions which continued to be posed about its practicality and constitutional propriety. It will show that this was an important factor in a major political row concerning the content of the Party's 1979 manifesto, which demonstrated the fraught relationship between the Parliamentary leadership and the National Executive at the time; and it will provide new background information, which throws additional light on this and on the ensuing arguments about the Party's constitutional arrangements, which were one factor leading to a split in the Party and the creation of a breakaway. It will also show

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9 P A Bromhead: *The House of Lords and Contemporary Politics 1911-1957* (Routledge, Keegan and Paul, 1958); Roy Jenkins: *Mr Balfour's Poodle* (Heinemann, 1954, new edition, Papermac, 1999).

10 Public Record Office recently incorporated in The National Archives. Documentation will, however, be cited as from the Public Record Office

how, after further heated discussions, the policy was slightly modified. It will then demonstrate how, after a lull following the heavy election defeat of 1983, Labour's Policy Review of the late 1980s saw the development of a radically different policy, with the Parliamentary leadership taking much more of a leading role, so that, by the time of the 1992 general election, far from contemplating abolition, it was advocating an elected second chamber with significant new powers.

Similarly (in Chapters 7 and 8), it will look at developments in the Conservative Party and, in particular, at how, at least partly in response to those in the Labour Party, it set up an important committee in the late 1970s, which came forward with proposals for radical changes, involving a partially or even a wholly elected chamber. It will also show how and possibly why these were never implemented, or indeed formally adopted as Party policy; and how, despite subsequent occasional flickers of interest, by the time of the 1992 election, the Party had become complacent to the extent that it seemed content to support the status quo.

The thesis will also look at policy developments in the Liberal Party, in the newly formed Social Democratic Party and from the merged Liberal Democrats (Chapter 9). This will necessarily be more concise, not only for reasons of space but because, as minority parties, they were less likely to be in a position to implement their policies. However, there was always the potential for them to exercise influence, particularly in a hung Parliament, so they should not be ignored.

Finally, although strictly speaking outside the parameters of the thesis, it will be necessary to note briefly in a Postscript (Chapter 10) the subsequent developments, in which the main political parties again changed their policies in government and opposition, and which have seen the actual implementation of an important, if limited, reform of the second chamber.

While it is not intended to be a definitive history or record of the work of the House of Lords itself over this period, the thesis will look at some of the most important developments, in particular where the actions of the Lords may have influenced the attitudes of the parties and key political figures. This applies, for instance, to the episodes in the 1970s when the Lords blocked or amended major items of the Labour government's legislation, to its frustration and that of the Party more widely. Similarly, it applies to episodes in the 1980s, when the Lords sometimes proved themselves a nuisance to the Conservative government, but also when, particularly on some crucial issues such as the poll tax, the government was able to rely on its supporters in the Lords, and where this, too, may have influenced the way the second chamber was viewed. Although such instances were often significant for the approaches of both major political parties, they will be dealt with principally in the Chapters referring to the governments of the respective periods.

Although reference will be made, where appropriate, to specialist books, wider studies of the period and to individual memoirs and diaries, the material which these provide is, as has been noted, limited. The thesis will therefore draw, to a considerable extent, on contemporary reports in newspapers and periodicals and on relevant Parliamentary Debates. It will also look extensively at the appropriate documents of the political parties. These will, of course, include published statements and reports.<sup>11</sup> However, most importantly, it will also include the documents of the relevant internal party committees, especially those of the Labour Party's Machinery of Government Study Group, 1976-82, and the Conservative Party's Review Committee, 1977-78. It will also refer to reports and records of Party Conference debates and decisions and, where available, documents relating to higher level committees, in particular, the Labour Party's Home Policy and National Executive Committees, but also to documents, where accessible, from the Conservative and Liberal archives.

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11 e.g. *The Machinery of Government and the House of Lords* (The Labour Party, 1977); *The House of Lords* (Conservative Central Office, 1978); *Meet the Challenge, Make the Change* (The Labour Party, 1989).



This material will be supplemented by interviews with a number of the key participants from all the political parties, who have been able to provide important additional insight and information. In addition, the author was, himself, directly involved in much of what happened in the Labour Party in this area, as a party official, in drafting documents and acting as secretary to various committees and groups, including the Party's Machinery of Government Study Group 1976-82. This offers a unique perspective and experience which can help inform this study, although the intention is to examine all developments objectively and, wherever necessary and possible, to support this evidence from other sources.

All this is intended to help throw new light on the developments on this issue during the period covered and on why, despite a good deal of interest and activity, no major reforms were implemented then. It also aims to show how and why these nevertheless had a significant influence on the politics of the time and to contribute to an understanding of how the House of Lords ended the 20th century in the form that it did.

## 1. HISTORICAL BACKGROUND

The House of Lords, as one of two chambers of Parliament, has its origins in the councils summoned by medieval kings. Those attending such councils included archbishops and bishops, abbots and priors, earls, barons and the king's ministers. From the late 13th century, representatives from shires, cities and boroughs were also summoned and, by the end of the following century, the latter had formed a separate House of Commons. Henceforth, Parliament comprised two distinctive chambers. By the time of the 16th century, the Upper House, comprising Lords Spiritual and Lords Temporal, had become known as the House of Lords.

There were various changes affecting the make up of the Upper House over the centuries - including the creation of new peerages (increasingly, towards the modern era, on the advice of ministers), the creation of new ranks of peerages in the late medieval period, the disappearance of abbots and priors following the dissolution of the monasteries in the 16th century, and the hiatus during the period of the Commonwealth in the 17th century, when the House temporarily ceased to exist. The Acts of Union of 1707 and 1800 provided for peers from Scotland and Ireland respectively to elect a limited number from amongst themselves to sit in the House of Lords at Westminster (arrangements which continued for Irish peers until they ceased to be eligible, as such, in 1922; and for Scottish peers until 1963, when all became eligible). With the creation of new sees in the 19th century, there was from 1847 a limitation on the number of bishops entitled to sit (and disestablishment subsequently removed Irish and Welsh bishops from the House in 1869 and 1920 respectively). The first law lords were created in 1876, initially sitting only during their individual terms of office (like bishops), but as from 1887 for their lifetime. Nevertheless, at the beginning of the twentieth century, membership of the House was almost exclusively hereditary in nature (with the exception of the bishops and law lords) and would remain so for decades to come.<sup>1</sup>

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<sup>1</sup> See Shell: *The House of Lords*, pp 7-10; *The Guide to the House of Lords* (Carlton Publishing, 2003) pp 40-41; House of Lords Information Sheets No 9 (*House of Lords Reform 1850-1970*) and No 11 (*What is the House of Lords?*).

Although Walter Bagehot, writing in the 1860s, had felt able to describe the House of Lords as one of the "dignified" parts of the Constitution, the Upper House actually enjoyed, in most respects, equal powers with the House of Commons. By tradition, the Commons exercised the dominant role in financial matters, which was rarely challenged by the Lords. However, with an unwritten constitution, as commentator Donald Shell has observed, "no authoritative document ever defined its role"; and the House of Lords could attempt to exercise its powers in this field (as it did in 1909, precipitating a constitutional crisis). Moreover, at the beginning of the 20th century, the Prime Minister, himself, the third Marquess of Salisbury, sat in the House of Lords (although he would be the last to do so).<sup>2</sup>

Up to the period covered by this thesis, there were four legislative changes during the 20th century affecting the House of Lords. The Parliament Acts of 1911 and 1949 limited the powers of the House and provided the basis for its operation throughout the period in question. The 1958 Life Peerages Act introduced major changes to the composition of the House of Lords. The 1963 Peerage Act, in addition to its provisions for renouncing peerages, made some other modest changes affecting composition. Other measures were brought in at various times, without the need for separate legislation - for instance, the introduction of travelling expenses in 1946, subsistence allowances in 1957 and provision for Leave of Absence in 1958. There were also other significant official proposals for reform brought forward which did not reach the statute book - in 1918; in 1948, before the implementation of the 1949 Act; and in 1968/69, when legislation was introduced but never passed. All of these are outlined below. The 1999 House of Lords Act, removing the rights of most hereditary peers to sit, came after the period covered by this thesis.<sup>3</sup>

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2 Ibid. See also Walter Bagehot: *The English Constitution* (Fontana, 1963 edition p 18; first published 1867). Note that in 1963 the Earl of Home actually disclaimed his peerage after becoming Prime Minister.

3 Subsequent developments are noted briefly in Chapter 10.

## Parliament Act 1911

This Act was passed by Parliament, under Asquith's Liberal government, following the rejection in 1909 by the House of Lords of the Finance Bill to implement the Budget proposals. As things then stood, the House of Lords could have blocked the legislation; and the Parliament Act 1911 was only passed when backed by a threat to create sufficient peers to ensure its passage. Its main provisions were that:

- (i) Bills certified as Money Bills would receive the Royal Assent one month after being sent to the House of Lords, with or without its consent;
- (ii) Other Public Bills (except a measure to extend the life of a Parliament) passed by the Commons in three successive sessions and rejected by the Lords would nevertheless receive the Royal Assent, provided that there was a minimum period of two years between the Commons' Second Reading in the first session and Third Reading in the third session.

The preamble to the Act stated that it was intended to substitute for the existing hereditary chamber one constructed on a popular basis, and that it was thus a transitional measure. However, these further changes did not, in the event, materialise.<sup>4</sup>

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4 See Shell (op cit) pp 10-11; House of Lords Information Sheet No 9. Previous to this, in 1908, a House of Lords Select Committee, chaired by the 5th Earl of Rosebery, had concluded that "it was undesirable that the possession of a peerage should of itself give the right to sit and vote in the House of Lords". It recommended a chamber comprising around 400 members, mostly hereditary peers elected by themselves for the lifetime of a Parliament, plus some other hereditary peers by virtue of particular qualifications and a limited number of life peers (*Report of the Select Committee on the House of Lords*, HL 234, 1908). No action was taken on this.

### Bryce Commission 1918

A Commission was established by the wartime coalition government to consider the composition and powers of a reformed second chamber. It was chaired by Viscount Bryce and comprised equal numbers of MPs and peers. It recommended that the House of Lords be made up of 246 members indirectly elected by members of the House of Commons on a regional basis, together with 81 existing members elected by a committee of both Houses. (Election should be for 12 years, with one-third retiring every four years.) It also proposed new arrangements for joint consultation between the two Houses to resolve differences.<sup>5</sup>

In 1922, in place of the Bryce proposals, the coalition government proposed a House of 350 members, comprising mainly members elected directly or indirectly from outside, plus some hereditary peers elected from among themselves and some nominated by the Crown. The coalition government fell soon afterwards; and although similar proposals were mooted when the Conservatives were in office in 1924 and 1927, nothing came of any of these.<sup>6</sup>

### Post 1945: The Salisbury Doctrine

Following its landslide victory in 1945, the Labour government enjoyed a large majority in the elected House of Commons, but the Conservative Party was still the dominant party in the unelected (and then almost completely hereditary) House of Lords. It thus had the potential ability to disrupt the government's legislative programme. It was in this context that what was to become known as the 'Salisbury Doctrine', which was to influence the approach of the Conservatives in the post-war years, was enunciated. According to this, the Conservatives would not use their majority in the Lords to block legislation which had been in Labour's

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5 *Report of the Conference on the Reform of the Second Chamber, 1918* (Cd 9038, HMSO 1918). The Commission was not unanimous - eight of the 32 members dissented from the scheme for election.

6 See Bromhead (op cit) pp 261-2.

manifesto. It was put forward by the Conservative Leader in the House of Lords, Viscount Cranborne (who would later become the 5th Marquess of Salisbury), at the beginning of the new Parliamentary session. Referring particularly to the nationalisation of the coal industry, he said:

"With regard to this and similar proposals...whatever our personal views we should formally recognise that these proposals were put before the country at the recent general election, and that the people of this country, with the full knowledge of these proposals, returned the Labour government to power. The government may therefore, I think, fairly claim that they have a mandate to introduce these proposals. I believe it would be wrong, when the country has so recently expressed its view, for this House to oppose proposals which have been definitely put before the electorate."<sup>7</sup>

It is worth noting precisely what was said, since this was still considered relevant decades later.<sup>8</sup> However Salisbury (as he had by then become) did refine this position somewhat in retrospect, when interviewed in 1970:

"The Conservative peers came to the conclusion that where something was in the Labour Party manifesto we would regard it as approved by the country and we'd have second reading and amend it in committee stage. If they produced something that was not in the manifesto, we reserved the right to do what we thought best... we passed on second reading nearly all the nationalisation bills - in the one case of the Iron and Steel Bill we went rather further as we didn't think they'd a justified demand. So we put in an amendment not to put it into force until after the election."<sup>9</sup>

This would seem to suggest that the 'doctrine', as applied in practice, did not necessarily mean withholding opposition to the measures in question; rather that they would not oppose them on second reading, and that there might be exceptions even to that.

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7 *House of Lords Debates*, 16th August 1945 (Vol 131, Col 47).

8 See, for instance, Chapter 2.

9 Quoted by Janet Morgan (op cit) p 4.

Although the 'Salisbury Doctrine' concerning the mandate may thus seem to have contained a degree of ambiguity, it was nevertheless - with the possible exception of steel nationalisation - broadly adhered to during the period of the Attlee government.<sup>10</sup> However, one important measure was blocked by the House of Lords, namely the Parliament Bill to reform its own powers.

### Parliament Act 1949

This Act reduced the period of delay required by the 1911 Act for the passage of Public Bills without the agreement of the Lords to two successive sessions and one year between Commons' Second Reading in the first session and Third Reading in the second session. However, before it reached the statute book, there had been significant discussions between the political parties, in an attempt to reach agreement on more wide-ranging reform.

Labour's election manifesto had given "clear notice that we will not tolerate obstruction of the people's will by the House of Lords";<sup>11</sup> and the Prime Minister, Clement Attlee, thought it "good tactics to make the necessary reform before trouble between the Houses has arisen".<sup>12</sup> It might be argued that subsequent Labour governments would have been wise to take a similar view. On the other hand, some might argue that attempting Lords' reform could itself precipitate such trouble.

The Parliament Bill was introduced in the Commons in November 1947, passing through all its stages there one month later. It then went to the Lords, where the Conservatives moved an amendment declining to give a Second Reading, but the debate was adjourned in February 1948 to allow all-party talks to take place. These were convened later the same month and concluded in April.

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10 According to a later Conservative Leader in the Lords, Lord Carrington, this was "the only conceivable way you could operate" after 1945, given the small number of Labour peers at that time (Interview, April 1999).

11 *Let's Face the Future*, Labour Party Manifesto 1945 (see *Labour Party General Election Manifestos 1900-1997*, ed Iain Dale, Routledge/Politicos 2000, p 53).

12 Public Record Office: PREM 8/1059, House of Lords Reform: Memorandum from Attlee to Lord Addison (Lord Privy Seal), 15th October 1947

A measure of tentative agreement was reached on the question of composition, including that the second chamber should be "complementary to and not a rival to the Lower House"; that any revised constitution should ensure, as far as practicable, that a permanent majority was not assured for any political party; that heredity should not by itself constitute a qualification for admission; that 'Lords of Parliament' could be drawn from hereditary peers, or commoners created life peers, and that women would be eligible for appointment; there should be provision for some descendants for the sovereign and also law lords and lords spiritual. Some remuneration could be payable; and some provision made for the disqualification of a member of the second chamber "who neglects or becomes no longer able or fitted to perform his duties as such". Peers not made 'Lords of Parliament' should be able to vote and stand for the Commons. However, on the question of powers, the participants failed to reach agreement. Although, at one point, the difference appeared to be a matter of only three months, both government and opposition concluded that the differences were fundamental and that there was insufficient basis for further discussions.<sup>13</sup>

Following this breakdown, the Lords declined to give the Bill a Second Reading. The provisions of the 1911 Act (which the Bill itself sought to amend) were then called into play; and the Bill eventually went through to receive the Royal Assent in December 1949.<sup>14</sup>

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13 *Parliament Bill - Agreed Statement on Conclusions of Conference by Party Leaders, Feb-April 1948* (Cmnd 7380, HMSO 1948).

14 *House of Lords Debates*, 16th December 1949 (Vol 165, Col 1668). An account of the timetable of events concerning the passage of the Bill was given by the Home Secretary, Chuter Ede, in the Commons on 31st October 1949 (*House of Commons Debates*, Vol 469, Cols 45-47).



Meanwhile the Labour Party Conference had debated a motion expressing alarm at the government's apparent intention to support plans which would make subsequent abolition virtually impossible, and calling for an elected assembly. For the National Executive Committee (NEC), Herbert Morrison (Lord President of the Council and Leader of the House of Commons) spoke of the dangers of any elected chamber which would have more moral authority than the existing House or that arising from the all-party talks; and seeking (successfully) to ensure that motion was withdrawn, he told the Conference that any agreement by party leaders would have been subject to approval by the NEC and the Parliamentary Labour Party, adding that any proposals which re-emerged would be discussed with the NEC.<sup>15</sup> It might be thought surprising that Labour ministers were prepared ostensibly to give the National Executive what amounted to a veto on an important government policy in this way.<sup>16</sup> Certainly it makes an interesting contrast to James Callaghan's later attitude towards the NEC and Party Conference on the same issue.<sup>17</sup>

It was perhaps fortunate for the leadership that it was not put to the test. Had it proceeded on the basis of the all-party discussions rather than with its own measure, then, according to Tony Benn, "it is far from certain that Mr Attlee would have been able to get a scheme of this kind accepted by the Labour Party."<sup>18</sup> If so, the Attlee government might have found itself in difficulties with its own party and backbenchers, as the Wilson government did twenty years later.

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15 Labour Party Conference Report 1948 (pp 210-12). Morrison's argument would seem to lend strength to the view later put forward, for instance by Ronald Butt, that, when in power, "Labour likes to have a weak chamber with no moral authority and no effective powers" ('The Lords in Modern Dress', *The Times*, 5th November 1970). Lord Carrington has suggested that the House of Lords as then constituted was "absolutely admirable for the Labour Party", in that if it challenged a (Labour) government, people would not discuss the actual issue in question, but whether the unelected House had the right to challenge the elected House (Interview).

16 It may not have been mere conference rhetoric. The White Paper itself, referring to the government's position on powers, states that it was prepared, as part of a general agreement, to "suggest to the Labour Party" an alternative longer delaying period (Cmd 7380, Para 8).

17 See Chapters 3 and 4.

18 Anthony Wedgwood Benn: *The Privy Council as a Second Chamber*; Fabian Tract 305 (1957), p 5.

In opposing the legislation the Conservative leadership clearly took the view that the 'Salisbury doctrine' should not apply in this instance. Indeed, in the Lords, the Marquess of Salisbury (as he had by then become) argued that "the government have no mandate for constitutional reform".<sup>19</sup> Nevertheless, while unwilling to go along with the government in respect of powers, the Conservatives had been prepared to contemplate some quite significant changes to the House of Lords - including a move away from its hereditary basis.

Following the 1949 Parliament Act, the Conservative Party leadership appears to have been persuaded of the desirability of reforming the composition of the House of Lords. It went into the 1950 election stating the aim "to reach a reform and final statement of the constitution and powers of the House of Lords by means of an all-party Conference called at an appropriate date", which would have before it proposals that "the present right to attend and vote based solely on heredity should not by itself constitute a qualification for admission to a reformed House". It should have powers appropriate to its constitution, but not exceeding those conferred by the 1911 Act.<sup>20</sup> Although less specific at the 1951 election, the Conservatives re-iterated the intention to call an all-party conference.<sup>21</sup>

### **The Conservatives in Office 1951-64: The Coming of Life Peerages**

This period saw two significant legislative reforms affecting the House of Lords, both of which were passed during Harold Macmillan's term of office. Both were government Bills, although the second was to some extent forced on the government by circumstances.

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19 *House of Lords Debates*, 21st October 1947 (Vol 152, Cols 28-31).

20 *This is the Road*, Conservative Party Manifesto 1950 (see *Conservative Party General Election Manifestos 1900-1997*, ed Iain Dale, Routledge/Politicos 2000, p 90).

21 *The Manifesto of the Conservative and Unionist Party 1951* (ibid, p 99).

The first measure was the Life Peerages Act 1958, which provided for the creation of life peerages for the first time (other than for law lords).<sup>22</sup> It also allowed for women to be appointed life peers, and thus to sit in the House for the first time. Although hereditary creations continued until 1964, after that time they virtually ceased. Nevertheless, life peers continued to be outnumbered by hereditary peers throughout the period covered by this thesis.

The second measure was the Peerage Act 1963, which introduced provisions allowing hereditary peerages to be disclaimed. It laid down that henceforth all peers by succession would be able to renounce their peerages for their lifetime; and that they would be given twelve months from inheriting in which to decide whether to do so, unless they were sitting MPs, in which case the period would only be one month. Existing peers by succession were given twelve months in which to decide. The legislation also included two other changes: to allow hereditary peeresses in their own right to receive a Writ of Summons, and thus sit and vote in the House of Lords; and to allow all holders of Scottish peerages to participate in the House. (Previously they had elected a limited number from among themselves.)

Churchill's government had entered office committed at least to further steps towards reform; and when the Liberal peer, Viscount Simon, introduced a Life Peers Bill in the House of Lords at the end of 1952, its response was to seek to convene an all-party conference, as envisaged in the manifesto.<sup>23</sup> To some extent this was a ploy. Salisbury, who was now Lord President of the Council, told the Cabinet that: "...he had no expectation that the three parties would find any common ground of agreement. An attempt must nevertheless be made as a result of the pledge given at the time of the election. If the Conference failed, the government would be free to make its own proposals."<sup>24</sup>

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22 Law lords received life peerages under the 1876 Appellate Jurisdiction Act, as amended.

23 Simon (a former Lord Chancellor) formally introduced his Bill on 10th December 1952. The Second Reading debate was adjourned without a vote, to allow for the proposed all-party talks, on 3rd February 1953 (*House of Lords Debates*, Vol 180, Cols 133-176).

24 PRO: CAB 128/43, CC (52) 108, 30th December 1952.

Nevertheless, Salisbury's conversion to the cause of reform of the House of Lords would seem to have been genuine. In criticising Simon's Bill on the grounds that it would not remedy "those main weaknesses of the existing composition of the House of Lords which make it so vulnerable", he pointed out to his colleagues:

"The hereditary right to legislate will continue untrammelled, even for those peers who never attend the House at all. The backwoodsmen will still, if they wish to be that (*sic*)...[This] will be deplored by all those who really do the work of their Lordships' House, and it will make the task of those who wish to buttress the powers and influence of the second chamber quite impossible."<sup>25</sup>

This would seem to be a significant acknowledgement by a senior Conservative that the participation of backwoodsmen was a problem. The government proceeded to establish a cabinet committee, chaired by Salisbury, but nothing came of this in that Parliament.<sup>26</sup> The Labour Party had made it clear it had no wish to join any discussions, but Salisbury told the House: "If we cannot get the co-operation of the Labour Party, we shall have to go on without them, just as they did without us in 1948."<sup>27</sup>

In the 1955 general election, the Conservatives, now led by Sir Anthony Eden, were the only party to refer to the Lords in their manifesto, declaring that it had "long been the Conservative wish to reach a settlement regarding the reform of the House of Lords" and that "Labour's refusal to take part in the conversations must not be assumed to have delayed reform indefinitely." They would "continue to seek the co-operation of others in reaching a solution", but any changes should be concerned solely with composition.<sup>28</sup>

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25 PRO: CAB 129/57, C (52) 454, Life Peers: Memorandum from the Lord President of the Council, 29th December 1952.

26 PRO: CAB 130/86, GEN 432/1-3, House of Lords Reform Committee (1953-1955). Discussions there show that Salisbury was not alone in his concern to deal with backwoodsmen.

27 *House of Lords Debates*, 9th March 1955 (Vol 191, Cols 842-866).

28 *United for Peace and Progress*. Conservative Manifesto 1955 (Dale, *op cit*, p 125).

Whether or not the Conservatives had long wished to reach a settlement, they had been unhappy at the reduction in powers following the failure to reach agreement in 1948. No doubt it was partly for that reason that they had subsequently shown the greater interest in looking for further reforms, particularly involving composition. Bromhead, in his study of the House of Lords, published just a little later, suggested that the Conservatives, having wanted to restore the House of Lords' formal powers to obstruct socialist legislation, had now abandoned this as unrealistic and were pursuing more limited objectives, hoping to improve its effectiveness and prestige, for which they would in return accept a reduction in their numerical supremacy.<sup>29</sup>

Conversely, the Labour Party, in opposition, showed little interest in any further reform. Having successfully enacted legislation restricting the powers of the Lords, there would have been a reluctance to restore credibility to the House; indeed throughout the 1950s the issue was not mentioned in any of the Party's manifestos, neither was it debated at the Party Conference. There seems to have been no great pressure for action from within the Party. A 1954 Fabian pamphlet, although itself putting forward proposals for reform, nevertheless acknowledged a "widely held view" among "working socialists" that it would be "unwise" even to attempt limited reforms;<sup>30</sup> and in another Fabian pamphlet, published in 1957, Anthony Wedgwood Benn described the Party's policy then as one "of leaving it alone to die quietly". He said Labour had come to realise the value of a second chamber - "by maintaining it as it is, with all its absurdities and anomalies, it has left it powerless to do more than minor damage to Commons legislation".<sup>31</sup>

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29 Bromhead (op cit) p vii.

30 *Reform of the Lords*: Fabian Research Series No 169 (1954) by Lord Chorley, Bernard Crick and Donald Chapman. The authors' proposals involved a mixture of appointed members and indirect election by the House of Commons.

31 Benn (op cit) p 1. Nevertheless, he warned that the party "cannot go on saying that nothing can be done and must think out its attitude afresh": otherwise the long term consequences would be that the Conservatives would reform it. There was a "strong case" for a second chamber exercising an advisory role "to help the House of Commons which would otherwise be overburdened". Appointment was preferable to any form of election, and he suggested a chamber with limited delaying powers, comprising Privy Councillors not in the Commons. (This might seem surprisingly conservative, in view of his later advocacy of abolition.)

Such observations notwithstanding, Viscount Alexander (then Labour leader in the Lords) pointed out in a Lords' debate that the Party policy was still officially for abolition, even though the last Conference resolution to that effect had been in 1934. Until Conference decided differently, "there can be no actual recession from that", and he could not commit the Party with regard to reform.<sup>32</sup> Importance was apparently attached even to distant Conference decisions.

Two procedural changes were introduced in the mid-1950s. One was the introduction of an attendance allowance, which meant that peers could claim expenses for attending the House. The other was provision for peers to apply for leave of absence for the duration of a Parliament.<sup>33</sup> This did not fully address the problem of backwoodsmen, as is illustrated by later instances of complaints.<sup>34</sup> According to Donald Shell, the arrangements "seem somewhat pointless".<sup>35</sup>

A much more significant change was the introduction of life peerages by the 1958 Life Peerages Act. Even so, the legislation did not go so far as suggested by the Conservatives in their 1950 manifesto, in that it did not place any restrictions on hereditary peers, who would continue vastly to outnumber life peers. Bromhead, writing shortly afterwards, thought that the legislation came as "something of an anti-climax". On the other hand, Shell, more than thirty years later, concluded that "growing atrophy was averted by the Life Peerages Act".<sup>36</sup>

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32 *House of Lords Debates*, 30th October 1957 (Vol 205, Cols 593-9).

33 Morgan (op cit) pp 12-15. The arrangements for leave of absence, incorporated in Standing Orders in 1958, followed the recommendations of a Select Committee on the Powers of the House (HL 66, HMSO, 24th January 1956).

34 See, for instance, Chapter 8. The Select Committee had rejected an earlier proposal by the 5th Marquess of Exeter that no peer should vote unless he attended a given number of times (Ibid, Cols 24-25).

35 *The House of Lords* (op cit) p 105.

36 Bromhead (op cit) p viii; Shell and Beamish: *The House of Lords at Work*, p 9.

In the Commons, Labour put a reasoned amendment, declining to give a Second Reading to "a Bill which leaves the House of Lords overwhelmingly hereditary in character and with unimpaired powers to frustrate and obstruct the will of the elected representatives of the people". According to the Labour leader, Hugh Gaitskell, it gave the Lords "a slightly more respectable appearance" but left the overwhelming Conservative majority and existing powers untouched.<sup>37</sup> The view that the Bill was essentially cosmetic was apparently shared by the Liberals. Their spokesman, the former leader, Clement Davies, agreed with Gaitskell that the real purpose was to make the House of Lords look "a bit more respectable", while bolstering the hereditary principle.<sup>38</sup> However, the Labour amendment was defeated and the Bill was enacted in April 1958.<sup>39</sup>

The 1963 Peerage Act followed the controversy which arose in 1960 when the then MP for Bristol South East, Anthony Wedgwood Benn, inherited a peerage (the Viscountcy of Stansgate) and was thus disqualified from membership of the House of Commons. Benn stood and won the subsequent by-election, but his election was declared void. A Select Committee of both Houses of Parliament, established to consider the constitutional implications, recommended introducing a right to disclaim an hereditary peerage (and also the admission of hereditary peeresses in their own right).<sup>40</sup>

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37 *House of Commons Debates*, 12<sup>th</sup> February 1958 (Vol 528, Cols 411-430)

38 *Ibid* (Col 430). The Liberals had only six seats in the Commons.

39 Voting on the amendment was 305 to 251 (*Ibid*, 13th February 1958, Col 704).

40 *Report of the Joint Committee on House of Lords Reform* (HL23, HC38 Session 1962-3). (The Benn/Stansgate case and the subsequent development are summarised by Shell (op cit) pp 18-20. See also Tony Benn: *Years of Hope, Diaries 1940-1962* (pp 356-421) and *Out of the Wilderness, Diaries 1963-67* (pp 2-52); Hutchinson, 1987 and 1994.) At one point, Macmillan had apparently expressed an interest in widening the scope of the Select Committee "to do something to settle the composition of the House of Lords and perhaps settle it for years to come, saying that they could then "claim to be the true reformers of the House of Lords' composition", first by "the Life Peers Act" (*sic*) and then by this (quoted by DR Thorpe in *Alec Douglas-Home*, Sinclair Stephenson 1996, p 259).

The legislation proved to be important to the future of the Conservative Party, because the period of grace allowed for existing peers to renounce happened to coincide with Macmillan's resignation as Prime Minister and party leader in October 1963. Two of the leading contenders, the Earl of Home and Viscount Hailsham, were thus able to renounce their peerages and then successfully seek Commons seats. The former, who became Sir Alec Douglas-Home, succeeded as Prime Minister.<sup>41</sup> Ironically, if the government had got its way with this legislation, this would probably not have been possible. Its original intention had been that it should not come into effect until after the following general election; but an opposition amendment to give it immediate effect, which the government had resisted, was carried in the Lords; and the Act came into force on 31st July 1963.<sup>42</sup>

Although Donald Shell has observed that the desire to renounce peerages was a "confirmation of the junior status of the House of Lords,<sup>43</sup> there was no mad rush to leave the Lords. Indeed, initially only four individuals renounced their peerages; and a further eleven did so between 1964 and 1977.<sup>44</sup> These did, however, include Benn, who was then able to return to the House of Commons.<sup>45</sup> The other changes brought about by the 1963 Act also had a limited overall impact - there were only 18 women hereditary peers affected; and 31 holders of Scottish peerages were entitled to sit, compared with 16 previously.<sup>46</sup>

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41 Home only disclaimed his peerage after he had been appointed Prime Minister and then stood for election to the Commons. For a detailed account, see Thorpe (op cit), in particular, Chapter 12. Both Home and Hailsham subsequently returned to the Lords as newly created life peers.

42 For Cabinet discussions, see PRO: CAB 128/137, CC (63) 42 and CC (63) 43, 25th and 27th June 1963. The amendment was carried at Committee Stage in the Lords by 105 votes to 25 (*House of Lords Debates*, 16th July 1963, Vol 252, Cols 117-152).

43 Shell & Beamish (op cit) p 9.

44 Information supplied by House of Lords Information Office. (No further peerages were disclaimed between 1977 and 1992.) Of the 15 peerages disclaimed, five were subsequently reclaimed by successors.

45 His Conservative replacement at Bristol South East resigned, creating a further by-election, which Benn won.

46 Shell: *The House of Lords* (pp 19-20).



## The Labour Government 1964-70: Reform Aborted

Labour's 1964 manifesto stated that it would not permit frustration of its programme by the Conservative majority in the hereditary and non-elected Lords.<sup>47</sup> This was its first manifesto reference since 1945. However, with a narrow majority, it was never likely that the new government would enact major constitutional reforms in advance of a second general election and the issue was put to one side. There was a hint of possible difficulties with the Lords early on, when the fifth Marquess of Salisbury suggested that the doctrine he had expounded in the 1940s might not necessarily apply, as the Labour majority in the Commons then had been "far larger than it is today" and it would be more difficult to decide which items in Labour's programme had been approved by the electorate.<sup>48</sup> However, the Earl of Longford, who was Leader of the House of Lords from 1964 to 1968, observed that the Conservatives there were "willing to wound but afraid to strike".<sup>49</sup>

There would be no major showdown until 1968, although the Conservatives forced "many more divisions" than they had done when last in opposition, inflicting "numerous defeats" on the government, some of which resulted in compromise, others of which were subsequently reversed.<sup>50</sup> Meanwhile, in its manifesto for the 1966 general election, the Labour Party promised legislation to safeguard measures approved by the Commons from delay or defeat in the Lords.<sup>51</sup>

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47 *Let's Go with Labour for the New Britain*, Labour Party Manifesto 1964 (Dale, op cit, p 124).

48 *House of Lords Debates*, 4th Nov 1964 (Vol 261, Col 166). Labour's overall majority in 1945 had been 146, whereas in 1964 it was just four. It would increase to 99, following the 1966 general election.

49 Lord Longford: *A History of the House of Lords* (Collins 1981) p 168. Morgan (op cit, p 5) quotes Lord Carrington, then leader of the Conservative peers, as saying: "If the Labour leadership are reasonable, we let them get away with it. They know how far they can push us. Once we start using our veto, we're damaging the object of a second chamber. If the House of Lords is to work we must show forbearance and common sense".

50 Shell (op cit) p 21.

51 *Time for Decision*, Labour Party Manifesto 1966 (Dale, op cit, p 147).

The Labour government, returned with a large majority, would eventually produce legislation which went considerably further than this. The proposals, which would be outlined first in its 1968 White Paper<sup>52</sup> and then embodied in the abortive Parliament (No. 2) Bill, would actually propose wholesale reform of the composition as well as the powers of the House of Lords. This legislation, the events leading up to it and the circumstances of its failure have been analysed in detail by Janet Morgan and it is not proposed to repeat that exercise here.<sup>53</sup> However, this episode and the experiences of those involved would undoubtedly have influenced subsequent approaches to the issue; and it is therefore worth looking further at the events of this period, noting particularly information which may not have been available earlier.

Although the legislation was not actually brought before Parliament till the third session of that 1966/70 Parliament, the issue, including the possible form and timing of any legislation, was discussed by the Cabinet quite soon after the 1966 general election. A memorandum from Longford and the Lord Chancellor, Lord Gardiner, observed that the situation provided the House of Lords with opportunity for tactical manoeuvring which could embarrass the government and limit its freedom to manage public business; and they suggested that a Bill to curb its powers should be introduced in the following session (1967/68), when there would be time to ensure its passage, using the Parliament Act, if necessary. They added:

"We do not believe that the Labour movement would easily forgive a Labour government with a majority in the nineties which, after two successive Labour governments, left the powers of the House of Lords intact."<sup>54</sup>

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52 *House of Lords Reform* (Cmnd 3799, HMSO 1968).

53 Morgan (op cit).

54 PRO: CAB 129/125, C(66) 87. Reform of the House of Lords: Memorandum by Lord Chancellor and Lord Privy Seal, 24th June 1966.

In the event, that was exactly what did happen. However, at this point, Gardiner and Longford went on to propose legislation on powers, to provide essentially for a three month delaying period, and also that, in effect, delegated legislation should only be subject to affirmative/negative procedures in the Commons.<sup>55</sup> Significantly, they observed that, if the Lords' powers were dealt with, there would be less of a problem in respect of composition; but they also suggested that there was a great deal to be said for a two-writ plan, whereby all peers would be able to attend and speak, but not to vote, unless given a voting writ, which might be confined to first creation and life peers only.<sup>56</sup>

The Labour government would, in due course, attempt to implement reforms to composition, including a 'two-writ' scheme; but at this stage, in 1966, the Cabinet decided only to introduce legislation to curtail the powers of the House of Lords.<sup>57</sup> With hindsight, it may be felt that, if the government had stuck to its original decision, then it might have run into fewer difficulties.

When the Cabinet returned to the matter in September 1967, the position had changed. A Ministerial Committee now recommended amending the delaying powers, so that a Bill rejected by the Lords could be passed immediately in a fresh Parliamentary session, as well as ending the Lords' powers to reject subordinate

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55 Ibid. The House of Lords then, as now, had the power to reject delegated legislation, albeit rarely exercised.

56 Ibid. The 'two-writ' plan had been put forward by Commander Henry Burrows, former Clerk Assistant of the Parliaments, House of Lords. (See 'How the House of Lords might reform itself', *The Times*, 26th May 1966.)

57 PRO: CAB 128/41 CC(66)32, 28th June 1966 (Confidential Annex 128/46). Richard Crossman, at that time Minister of Housing, recorded that Wilson thought attempting to change the composition was "bound to cause trouble in the Party", and that he (Crossman) agreed. Crossman then added that he favoured unicameral government, and that the best way of achieving this was to have a second chamber "so discredited by its composition that it was no threat at all" (*The Diaries of a Cabinet Minister*, Vol 1; Hamish Hamilton & Jonathan Cape 1973. p 553, entry for 28th June 1966).

legislation. Gardiner also reported the Committee's view that there was "no satisfactory way of dealing in isolation with Lords' powers". To attempt to do so with the existing composition, could lead to disturbance of good relations and to greater delay to the legislative programme. If powers only were to be dealt with, it advised that no change be introduced in that Parliament, but that further consideration should be given to wider reform, including composition and function. In this Gardiner was backed up by the Leader of the Commons, Richard Crossman.<sup>58</sup>

The following month, the Cabinet decided to proceed with proposals for a two-tier scheme, the general objectives of which were: the elimination of the hereditary basis of representation; the removal of the inbuilt Conservative majority; the government to secure a reasonable working majority over both opposition parties; delaying powers to be restricted and powers to block statutory instruments abolished. A two-tier system of voting and non-voting peers, was proposed, with all existing peers having speaking rights. Gardiner told the Cabinet that it would be necessary to give life peerages to some hereditary peers in order to allow them voting rights, but emphasised that it was essential to avoid the concession to the hereditary principle which would result from allowing existing peers the right to elect voting members.<sup>59</sup> He emphasised the need to introduce legislation promptly, to avoid possible obstruction in the last session of the Parliament, and warned that, if they failed to take the initiative, one of the opposition parties

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58 (i) PRO: CAB 128/42 CC(67) 54, 7th September 1967. The conclusions of the Ministerial Committee had been set out in a memorandum (PRO: PREM 13/1686; Report of Ministerial Committee C(67)145, 5th September 1967). It concluded (perhaps complacently) that there would be little appreciable gain for the government from a limited measure, since the Lords had shown little inclination to reject controversial Bills.

(ii) Crossman had become Leader of the House in August 1966. His diaries record that by October he had changed his previously held views and had started to see Lords' reform as part of wider Parliamentary reform and wanted to deal with composition. By April 1967, he was claiming to have converted Wilson to his new position (*The Diaries of a Cabinet Minister*, Vol II, Hamish Hamilton & Jonathan Cape 1977: p 298, entry for 3rd April 1967).

59 This is an interesting observation, in view of what would be enacted in 1999 (see Chapter 10).

might do so; but the Ministerial Committee had nonetheless recommended consultation with the opposition, to avoid disruption and the use of the Parliament Act procedure. Notwithstanding doubts expressed at Cabinet by some ministers, the majority supported the proposals and it was agreed to proceed.<sup>60</sup> The ensuing Queen's Speech stated that "legislation would be introduced to reduce the present powers of the House of Lords and to eliminate its present hereditary basis, thereby enabling it to develop within the framework of a modern Parliamentary system", but also that the government was prepared to enter into consultations.<sup>61</sup>

The background document circulated for the first meeting with the opposition parties stated that composition and powers were indissolubly linked; and that this was an "integral part of the government's thinking".<sup>62</sup> That which the government had previously rejected had now apparently become central to its approach. The Inter-Party Conference first met in November 1967; and, by early the following year, a measure of agreement had been reached on a two-tier scheme, with a nucleus of 200 peers with voting rights, conditional on attendance. Although there had been some disagreement on delaying powers, the Conservatives had then proposed a period of six months delay. While doubts were again expressed in Cabinet, including that the proposals would be open to criticism on grounds of patronage involved, there was majority support. A draft White Paper, as agreed in the Inter-Party Conference, was presented to the Parliamentary Committee (Wilson's Inner Cabinet) at the end of May 1968. However, there had been no agreement over the date of implementation, with the Conservatives arguing that this should be after the next general election.<sup>63</sup>

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60 PRO: CAB 128/142, CC(67)59, 12th October 1967. The Cabinet papers show that this Ministerial Committee itself was not unanimous in supporting the two-tier scheme, a minority favouring a single-tier House of first creation peers (PRO:PREM 13/1686, C(67)157: Note on Composition and Powers of the House of Lords - Cabinet Secretary to Prime Minister, 10th October 1967).

61 *House of Lords Debates*, 31st October 1967 (Vol 286, Col 5).

62 PRO: PREM 13/1687, House of Lords Reform Background Paper (undated).

63 Ibid See PRO: CAB 128/43, CC(68)11, 1st February 1968; PREM 13/2294, Parl (Gen) III, Reform Pt 5, 30th May 1968; and Morgan (op cit), particularly Chapter 7.

The approach of the Conservatives in the Lords had been set out in 1967 by the Leader of the Opposition there, Lord Carrington. He argued that restraint was necessary because "an unelected chamber should not, except in the last resort and in quite exceptional circumstances, override the opinion of the House of Commons". Otherwise it would be impossible for any Labour government to govern. However, in the event of "a matter of great constitutional and national importance on which there was known to be a deep division in the country or perhaps on which the peoples' opinion was not known...the House of Lords has a right and perhaps a duty to use its powers, not to make a decision but to accord the people of this country and members of the House of Commons a period for reflection and time for views to be expressed". It could be appropriate for the Lords to ask the Commons to have another look at legislation and a clash would arise only if the Lords insisted on amendments. However he cautioned that the House of Lords would only be able to use its delaying powers once. "Members of the Party opposite in another place will, I am sure, make certain either that this House is abolished or that its remaining powers are removed, if there is direct confrontation of this kind".<sup>64</sup> In the case of "Statutory Orders" (*sic*), there was "more difficulty", since they were not covered by the Parliament Act: "Though I can visualise occasions when your lordships would wish to vote against an order, I should have thought they would be rare indeed".<sup>65</sup> In fact, that very circumstance would precipitate a major row between the political parties the following year.<sup>66</sup> Also, as we shall see, when the Lords did insist on some amendments to legislation in the 1970s, the Labour Party (if not the government) then came out in support of abolition.<sup>67</sup>

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64 *House of Lords Debates*, 16th February 1967 (Vol 250, Cols 419-421).

65 *Ibid.* Presumably by "Statutory Orders", Carrington meant Statutory Instruments or Orders in Council

66 On the Southern Rhodesia (United Nations Sanctions) Order 1968 (see p <sup>35</sup>~~118~~). Back in 1966, Carrington had warned the Shadow Cabinet that this very situation might arise. "It may be that Orders will be necessary to implement the government's policy on Rhodesia. If so this will raise great difficulties" (Conservative Party Archives: LCC (66) 114, 25th November 1966: House of Lords - paper by Lord Carrington).

67 See Chapters 2 and 3.

With regard to actual reform, the Conservative Deputy Leader in the Lords, Lord Harlech, acknowledged: "the Conservative Party has made no attempt to arrive at any agreed policy on this issue at the present time";<sup>68</sup> and when it came to the all-party talks, the Shadow Cabinet was initially reluctant to become involved.<sup>69</sup> Although Crossman records Carrington as telling him that neither Edward Heath, nor Iain Macleod nor Reginald Maudling showed the slightest interest in Lords reform,<sup>70</sup> both Maudling and Macleod were nominated to participate. According to Morgan, the Conservative peers involved in the talks were anxious for a "sensible reform" and "ready to compromise", but their colleagues from the Commons were less determined to reach an agreed solution and more preoccupied by tactical considerations.<sup>71</sup> Carrington told his colleagues in March 1968 that he considered the scheme emerging from the talks to be a "good compromise solution", and that obstructing it could result in "a far less acceptable solution". The Shadow Cabinet eventually agreed to approve the scheme, but added the rider that it opposed implementation before the next general election.<sup>72</sup>

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68 *House of Lords Debates*, 12th April 1967 (Vol 281, Col 1295-1302).

69 Conservative Party Archives (CPA): LCC 67 (189) and 67(191), 23rd and 30th October 1967.

70 *Diaries* Vol 2, p 589, 23rd November 1967. They were Leader, Shadow Chancellor and Deputy Leader respectively. There is little evidence to show that Heath took an interest at any stage. The House of Lords scarcely rates a mention in John Campbell's biography (*Edward Heath: A Biography*; Pimlico 1994) and the events of 1968/69 are not mentioned at all. He created few new peerages as Prime Minister and never accepted one himself on retirement. In 1999, he did, however, indicate his support for an elected Upper House (*House of Commons Debates*, 2nd February 1999, Vol 323, Cols 761-2).

71 Morgan (op cit) p 186.

72 Previously, in December 1967, the Shadow Cabinet had thought "it would not be possible to object to the agreed changes coming into force at once, rather than waiting till the end of the Parliament", but (despite Carrington arguing to the contrary) this position changed. (See CPA: LCC 67(205) 18th December 1967 and 68 (235) 1st May 1968.)

Although, this aspect notwithstanding, a measure of agreement had been reached, this was overtaken by the action of the Conservative peers in defeating the Southern Rhodesia (United Nations) Sanctions Order in June 1968.<sup>73</sup> Following this, the Labour government broke off the all-party talks and announced its intention to proceed with comprehensive and radical legislation of its own.<sup>74</sup>

Initially Wilson thought that Labour MPs would be pressing for "drastic retaliatory action" against the Lords; and ministers considered introducing "a short sharp Bill dealing with powers only".<sup>75</sup> Indeed, according to Crossman, such a Bill had actually been prepared, but nothing came of this;<sup>76</sup> and, less than a month after Wilson's statement, the Cabinet decided, at least provisionally, to prepare a Bill on the basis of the broadly agreed proposals in the draft White Paper.<sup>77</sup> Thus, for a second time, the Cabinet stepped back from a decision to go ahead with a Bill on powers and instead decided, fatefully, to go for the more comprehensive reform.

There was still a degree of vacillation, the Cabinet deciding to review the position in the autumn "in the light of the feeling amongst the government's supporters and in the country generally".<sup>78</sup> However, there seems to have been no great interest in the issue in the Labour Party as a whole; and the Party Conference was,

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73 The Order, implementing United Nations sanctions against the rebel regime in Rhodesia, was defeated by 193 votes to 184 on 18th June 1968 (*House of Lords Debates*, Vol 293, Col 394). This was an affirmative Order, requiring the agreement of both Houses, and had been passed the previous day by the Commons. Carrington would have preferred to avoid this situation, but his advice was rejected by his backbenchers (Morgan, *op cit*, p 192; Carrington: *Reflect on Things Past*, p 20). The Order was subsequently relaid and then was passed by the Lords on 18th July 1968.

74 Prime Ministerial Statement, 20th June 1968 (*House of Commons Debates*, Vol 766, Cols 1314-16).

75 PRO: PREM 13/2295: Note of ministerial meeting, 19th June 1968: Wilson: *The Labour Government: A Personal Record* (Weidenfeld & Nicholson, 1971) p 535.

76 Crossman records Freddie Warren, then Private Secretary to the Government Chief Whip (House of Commons) as saying: "One alternative is a Bill to end the powers of the Lords ...It's all fixed. We've prepared the Bill already" (*The Diaries of a Cabinet Minister* Vol. III. Hamish Hamilton & Jonathan Cape, 1977, entry for June 18th 1968, p 99).

77 PRO: CAB 128/43. CC(68) 36, 18th July 1968.

78 Ibid.



perhaps surprisingly, acquiescent.<sup>79</sup> It is interesting to speculate as to what might have happened had it, for instance, shown strong support for a short Bill reducing the Lords' powers. Might not the government, apparently uncertain in its own mind, then have responded?

The White Paper was eventually published on 1st November 1968 and "followed very closely the line provisionally agreed in the all-party talks".<sup>80</sup> Nevertheless, it was decided it should take the form of a statement of government proposals, rather than an agreed statement, as it was felt this would enable the government to present the "radical" proposals in a way more attractive to its supporters".<sup>81</sup> It proposed in effect a two-tier chamber, comprising a first tier of around 230 nominated voting peers and a second tier of non-voting peers, who could participate in the House but not vote. Voting members would all be peers by creation, but some peers by succession could also be created life peers. There would be a place for bishops and law lords. Although all existing hereditary peers would be able to continue as non-voting peers, their successors would have no such rights. Voting peers would be paid, but would be required to attend at least one-third of sittings and be subject to a retirement age. The composition of the voting House would be such as to give the government a small majority over opposition parties, but not an overall majority, taking account of those with no allegiance. The delaying powers of the House in respect of Public Bills would be reduced to six months (with this period being capable of being carried over from one session to the next); and its powers over delegated legislation would be limited, so that it could require the Commons to reconsider, but could no longer finally reject it.<sup>82</sup>

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79 A resolution calling for immediate abolition was remitted. For the NEC, James Callaghan asked Conference to await the outcome of the government's deliberations and to give it "a completely free hand in whatever proposals it decides to put forward" (Labour Party Conference Report, 1968, pp 172-186).

80 Wilson (op cit) p 608. Carrington confirmed that the government's proposals were based on the position reached in the talks and this was accepted by the Shadow Cabinet (CPA: I.CC (68) 261, 29th October; (68) 263, 4th November 1968).

81 PRO: CAB 128/43. CC(68)42, 17th October 1968.

82 Cmnd 3799 (op cit).

There were already signs of possible trouble ahead when the White Paper was debated in the Commons. According to Morgan, the whips made little attempt to encourage backbench attendance or participation on either side; and of those who did, a succession of them were overwhelmingly critical, attacking, in particular, the notion of a paid and nominated House opening the way to an extension of patronage. "It soon became clear that the reforms would have a rough passage in the Commons." Only the front bench speakers really supported the scheme, although Crossman, speaking for the government, "on his own admission, needed backbenchers", whereas Callaghan, although "known not to be a diehard reformer", made a more convincing case that Labour needed the scheme to overcome Lords' obstruction.<sup>83</sup>

A motion to reject the White Paper was defeated by 270 votes to 159, but a significant minority of Labour MPs voted for rejection or abstained; and amongst Conservatives, twice as many MPs voted against as voted for.<sup>84</sup> By contrast, in the House of Lords, which debated the White Paper at the same time, most speakers supported the proposals and peers overwhelmingly approved the White Paper by 251 votes to 56. All political groupings there voted by a large majority in favour, including the Conservative peers, unlike their colleagues in the Commons.<sup>85</sup>

The government proceeded with publication of a Bill, very much along the lines of the White Paper, in December 1968.<sup>86</sup> Following the Commons debate, ministers had been aware that they were facing potential difficulties and considered "whether the government should persevere with the Bill in the face of

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83 Morgan (op cit) pp 204-5; see also *House of Commons Debates*, 19th, 20th November 1968 (Vol 773, Cols 1125-1434). Callaghan was Home Secretary; Crossman was now Secretary of State for Social Services, but, given his previous involvement, continued to assist with this legislation. Prominent amongst critical Labour backbenchers was the future Party Leader, Michael Foot.

84 Ibid.

85 *House of Lords Debates* 19th-21st November (Vol 297, Cols 642-1096); Morgan (op cit) pp 206-8.

86 Parliament (No. 2) Bill, 19th December 1968.

determined opposition of a number of their supporters". Some argued that it was unwise to proceed with a Bill "for which there was no enthusiasm on either wing of the Parliamentary Labour Party", and on which the Conservative frontbench was in no position to control its backbenchers, even if it was so minded. The Bill offered "unlimited opportunities for opposition", which would be exploited to the full. Other ministers argued that to turn back "would be a confession of weakness" and might embolden Conservative peers to make "freer use of their powers".<sup>87</sup> The Cabinet decided to proceed, although with a few minor changes, such as continuing with allowances rather than payment for peers.<sup>88</sup>

The Bill passed its Second Reading in the Commons at the beginning of February 1969 comfortably, with a majority of 150 - larger than that for the White Paper - with only 25 Labour backbenchers voting against, but many more Conservatives doing so.<sup>89</sup> However the real trouble was to come during the Committee Stage, which, as this was a constitutional measure, was by convention taken on the floor of the House. The government had optimistically allowed five days for this, but, after two months and eleven sitting days, only the preamble and five clauses (out of a total of 20) had been debated. A cross-party alliance "exploited every procedural device" and "filibustered energetically". Some Labour backbenchers actively opposed the proposals and others were insufficiently enthusiastic to sustain the Bill through its Committee Stage.<sup>90</sup> Attempts to try to secure co-operation from the Opposition, including a possible concession that the reforms to powers and composition could be implemented at different times, came to nothing.<sup>91</sup>

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87 PRO: CAB 128/43,CC(68)49, 5th December 1968. It was suggested complacently that "Labour abolitionists and Conservatives dissidents were unlikely to make common cause, since they opposed different parts of the Bill".

88 Ibid.

89 *House of Commons Debates*, 3rd February 1969 (Vol 777, Cols 43-172); Morgan (op cit) pp 210-11.

90 Morgan (op cit) pp 212-8. The hostility in the Labour Party was not confined to the left. For instance, as Michael Foot has observed, "Robert Sheldon, who led the way, was no great raging left winger" (Interview, 17th March 1999).

91 Callaghan reported this to Cabinet on 20th February 1969 (PRO:CAB 128/44 CC(69)9).

Given the slow progress in Committee, the Cabinet agonised for weeks about what to do. After only a fortnight, it was discussing whether to abandon the Bill; but, for the time being, it decided to continue, since withdrawal "could give dangerous encouragement to the opponents of major Bills in the remainder of the government's programme."<sup>92</sup> However, by mid-April, the Cabinet eventually came to the conclusion that it could not proceed. The possibility of proceeding with a truncated Bill was briefly considered but rejected. There was general agreement that the difficulties resulted from "general malaise" and a problem of authority in the Parliamentary Labour Party. While feeling they needed to make a stand, they were apparently uncertain whether to make it on this or on the Industrial Relations Bill (which, with its provisions to curb unofficial strikes, was also unpopular with sections of the Labour Party and would also eventually be withdrawn). They decided that Lords' reform "was not the right issue on which to base the attempt to restore the government's authority in the Party and that, without doing so, they could not force the Bill through". Nevertheless, even at this stage, the Prime Minister thought they should leave open the possibility that legislation on powers alone might be introduced in this session.<sup>93</sup> Thus legislation on powers, which had been considered at earlier stages, was still not ruled out, although in the end nothing came of it.

As it was, Wilson was forced to announce that the government had decided "not to proceed with the Parliament (No. 2) Bill in order to ensure that necessary Parliamentary time is available for priority legislation". He observed that the Bill had started as a consensus measure, which meant that it was regarded "in a spirit

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92 PRO: CAB 128/44 CC(69)10, 27th February 1969; CC(69)12, 13th March 1969. At the first of these meetings, the Chief Whip, John Silkin, had estimated that a timetable ("guillotine") motion would be lost. (See also Morgan, *op cit*, pp 212-6.)

93 PRO: CAB 128/44 CC(69) 18, 16th April 1969. See also Morgan (*op cit*) pp 216-8.

falling far short of enthusiasm" by a considerable number of Labour MPs, as well as some Conservatives. He suggested that this would not have been the case had the government gone for a "one party" measure; and that "the idea of a consensus measure fell through when it became clear that we had no support whatsoever from rt hon gentlemen opposite in making reasonable progress on this Bill".<sup>94</sup>

Thus, Labour ministers were blaming the Conservative opposition for not delivering the support they expected.<sup>95</sup> The Shadow Cabinet had considered tabling a reasoned amendment on Second Reading, but in the event decided to have a free vote, while making clear the Party's objections on timing - which had become something of a sticking point for them; and then, if these were not dealt with at Committee Stage, to vote against on Third Reading. Thus at Second Reading, both Maudling and Douglas-Home supported the Bill. Nevertheless, on a free vote, Conservative MPs divided almost two-to-one against.<sup>96</sup>

At Committee Stage, despite the Conservatives' nominal support, they had given no undertakings on the handling of the Bill; and there was no agreement between government and opposition on a timetable. Members of the opposition front bench were "not all wholeheartedly eager to see it through"; and significantly, the

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94 *House of Commons Debates*, 17th April 1969 (Vol 781, Cols 1338-44). He specifically referred to the Industrial Relations Bill as one of the items of "priority legislation".

95 Wilson later suggested that they enjoyed seeing the government's legislative programme get into difficulties. He noted that Heath had voted in only one of 59 divisions held after Second Reading (Wilson, *op cit*, p 609). However, since Wilson acknowledged that he himself "made no effort to suggest there was enthusiasm about the Bill one way or the other" at Second Reading (p 608), it seems somewhat invidious to have singled out Heath for subsequent lack of enthusiasm.

96 CPA: LCC (69) 278, 29th January 1969; *House of Commons Debates*, 3rd February 1969 (Vol 777, Cols 43-172); Morgan (*op cit*) pp 210-11.

Conservative Whips were not instructed to discipline their backbenchers at the Committee Stage.<sup>97</sup> Whitelaw later recorded in his memoirs that Carrington accused him as Chief Whip of having considerable responsibility for the Bill's failure, arguing that he should have done more to get the troops into the lobby and prevent filibustering. Whitelaw acknowledged that "certainly I could have tried harder", although he did not think he would have succeeded, adding:

"Not for the first time in my life, I concluded then that masterly inactivity can have considerable advantages. Certainly it proved so in this case."<sup>98</sup>

Carrington himself, with hindsight, doubted whether "our proposals would have lasted a great many years", but he felt "they would have begun a movement". However, he concluded that "we did not go far enough", since in due course "our scheme" would have led to "fresh dissatisfactions and renewed efforts at reform".<sup>99</sup> These references suggest that the then leader of the Opposition in the House of Lords identified closely with the Labour government's proposals (which had, of course, arisen from the earlier all-party talks), although this was not necessarily true of all his colleagues.<sup>100</sup>

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97 Morgan (op cit) p 212. The Conservatives would have opposed any guillotine motion on a three-line whip (CPA: LCC (69) 288, 8th March 1969). Crossman thought that the troubles on the Bill stemmed from the breakdown of "normal channels between the parties" (Hetherington Archive, BLPES: Note by Alistair Hetherington, then editor of *The Guardian*, of meeting with Crossman, 18th March 1969; File 16/25). Although Morgan suggested that Macleod, in particular, was supportive, evidence now suggests otherwise. Macleod's biographer indicates that he was less than enthusiastic in his support and strongly advocated making a stand on postponement of implementation (Robert Shepherd: *Iain Macleod* Hutchinson 1994, pp 512-513); and Shadow Cabinet records show that, for instance, he told his colleagues that "the Party was overwhelmingly against this Bill" (CPA: LCC(69)277, 27th January 1969).

98 Whitelaw (op cit) pp 66-68. He had warned the Shadow Cabinet before Second Reading that "there were known to be a lot of people in the party who were critical of the proposals" (CPA: LCC (69) 277, 27th January 1969). Whitelaw later recalled that Carrington had accused him of being "very wet indeed", because "you haven't the courage to whip our party properly and make sure the proposals that I believe to be right get through" (*House of Lords Debates*, 3rd November 1983, Vol 444, Col 656).

99 Carrington (op cit) pp 208, 213.

100 Carrington had opposed the moves in the Shadow Cabinet to force a delay in implementation. (CPA:LCC(68)235, 1st May 1968; (69)277, 27th January 1969). Crossman, for his part, had described how "Eddie [Shackleton] and I, Peter [Carrington] and George [Jellicoe] have readily become quite a band of brothers" (*Diaries* Vol III, p 87, 28th March 1968). (Shackleton was Leader of the House of Lords; Jellicoe was Deputy Leader of the Opposition; all were involved in the all-party talks.)

Another supporter of reform was Sir Alec Douglas-Home (who had spent a large part of his political life in the House of Lords). In his speech at Second Reading, he addressed those who were dismayed at the prospect of change, arguing that "the composition of Parliament cannot be widely divorced from the social structure of the community", and referred to the constraint that peers were reluctant to oppose measures whatever their judgement, because of their status and for fear of raising a new 'peers vs. people' argument.<sup>101</sup> These factors would probably have influenced Home, when he came to chair a Party committee in the 1970s.<sup>102</sup> That committee would be set up by Margaret Thatcher, who would, as Prime Minister, have the opportunity to implement further reforms, had she been so minded. It is therefore interesting to note that in 1969 she voted (on a free vote) in favour of the Second Reading of the Labour government's Bill.<sup>103</sup>

The inter-party talks had also involved the Liberals. However, although that Party's 1968 Annual Report expressed the hope that "the ill-considered action of the Tory peers in throwing out the Rhodesia Sanctions Order will not have put in jeopardy the large measure of agreement that had previously been reached", when it came to the Commons debate on the White Paper, all eight Liberal MPs who voted did so in favour of the motion to reject the government's proposals. On the other hand, in the parallel debate in the Lords, the Liberal peers divided thirteen to three in favour.<sup>104</sup>

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101 *House of Commons Debates*, 3rd February 1969 (Vol. 777, Cols 149-150). He also told his colleagues (in private) that some Conservative MPs hoped that the Labour government would be forced to drop its Bill and that a subsequent Conservative government would introduce one of its own, but he warned that the consequence would be that Labour would then commit itself to abolition "at the first opportunity" (CPA:LCC (69) 284, 19th February 1969). Notwithstanding his general support, Home had favoured the postponement of implementation of the reforms (CPA: LCC (68) 235, 1st May 1968).

102 See Chapter 7.

103 *House of Commons Debates*, 3rd February 1969 (Vol 777, Cols 168-171).

104 Liberal Party Annual Report 1968 (p 17); *House of Commons Debates*, 19th, 20th November 1968 (Vol 773, Cols 1125-1434); *House of Lords Debates*, 19th-21st November 1968 (Vol 297, Cols 642-1096); also Morgan (op cit) pp 205-7. The Liberals only had twelve MPs in total.

The following month, the Liberal Party Council passed a resolution strongly critical both of the process in which its own leaders had been involved and of the proposals which had been subsequently put forward, in particular that the proposed system of patronage would be "undemocratic, unrepresentative, and a sinister extension of the over large personal power of the Prime Minister".<sup>105</sup> Thus first Liberal MPs and then the official Liberal decision-making body had formally aligned themselves with the critics of the government's proposals. Yet, when it came to the vote on Second Reading on the actual legislation in February 1969, Liberal MPs divided three in favour and three against, with the Party Leader himself voting in favour;<sup>106</sup> and the following year, the Party's Annual Report still felt able to record the "genuine feeling of regret that the reform of the House of Lords was never accepted".<sup>107</sup>

The Liberals' approach over this period may have lacked consistency; but this was, to some extent, true also of the two main parties on this issue, which were characterised by uncertainty and division. The end result was that, for all the time and effort expended, the position of the second chamber remained much the same at the end of Labour's period in office as it was at the start and as it would be for the next three decades - that is mainly hereditary, with the Conservatives far outnumbering their political opponents, and with its powers unchanged.<sup>108</sup> Arguably, if anything, having survived a major attempt at reform, the position of the House of Lords had been strengthened.<sup>109</sup>

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105 Liberal Party Council, 16th December 1968; Liberal Party Archive (BLPES) - Liberal Party Policies 16/145.

106 *House of Commons Debates*, 3rd February 1969 (Vol 777, Cols 43-172); also Morgan (op cit) p 210.

107 Liberal Party Annual Report 1970 (p 10).

108 For statistics, see Appendix 1 (Tables 1-3). Although Wilson had discontinued the creation of hereditary peerages, that was merely a matter of custom and practice. A future Prime Minister could create further hereditary peerages (as Margaret Thatcher was to do).

109 Following this episode, the House of Lords did exert itself - late in 1969 on the House of Commons (Redistribution of Seats Bill), by which the government sought to delay implementation of recommended changes to constituency boundaries. Peers amended it at Committee Stage and then rejected an alternative compromise passed by the Commons, with the result that government found itself obliged to lay the necessary orders before Parliament, but then adopted the somewhat unedifying tactics of using its Commons majority to vote them down (Morgan, op cit. pp 152-168). Thus the Lords showed their continuing potential to cause problems and embarrassment for a Labour government.



### Concluding Note

Both main political parties had, at various times since 1945, shown an interest in reforming the House of Lords. Indeed both of them carried out some measure of reform during their time in office.

The Labour Party twice achieved a large Commons majority, sufficient to secure passage for such legislation, albeit after delay. Yet, in both cases - aware of the potential of constitutional legislation to block its timetable and possibly also to encourage disruption by the Lords in other matters - it became involved in all-party talks in an attempt to proceed by consensus to wide-ranging reforms. In neither case was it ultimately successful. Although initially reluctant to become involved, the Attlee government came close to reaching agreement, but having failed to do so, it found itself forced to use the provisions of an earlier Parliament Act in order to carry through its own measure limiting further the powers of the Lords, in the face of opposition from that same quarter. Having done so, Labour then showed little interest in further reform when in opposition in the 1950s, either when the Conservatives sought to initiate further discussions or when they brought in legislation to introduce life peerages. In the case of the latter, Labour (and for that matter the Liberals) saw the move as essentially cosmetic, to make a still Conservative-dominated chamber appear more acceptable. It did however, support a more limited reform, essentially to redress an anomaly, by allowing peers by succession to renounce their peerages, since the case in question directly affected one of its own prominent members. Yet ironically, by a coincidence of timing, a leading Conservative was a major beneficiary.

Returning to office, Labour recognised the potential for the Lords to create difficulties in its legislative programme and, once it had a substantial majority, sought to address the issue. However, it was slow in dealing with this. Having decided on an all-party approach, things were allowed to drag on, with the White Paper and legislation not presented until the third session of Parliament, by which

time it was getting into difficulties in other areas. Initially intending to introduce legislation dealing only with the powers of the Lords, it allowed itself to be persuaded to go for a more wide-ranging reform, providing much more scope for opposition; and even when, at various stages, it actively considered going back to its original plan as an expedient, it did not pursue this. Clearly such a move would not have had the support of the Conservatives. However, it would almost certainly have been supported by Labour MPs who were not sufficiently persuaded of the case for wider reform and, given that support, would have stood a reasonably good prospect of reaching the statute book, using the Parliament Act if necessary.

Instead Ministers pressed ahead with a measure for which even they, for the most part, had no great enthusiasm. James Callaghan, who was principally responsible for handling the legislation, recalled that, personally, he did not put it at the top of his agenda. Moreover, he told Wilson that, if he wanted to get it through, he would have to put his personal authority behind it, but "Harold was never willing to do that...if Harold had put his authority behind it, he'd have probably got it through without enthusiasm". Although Crossman was keen, "Harold really didn't take a lot of interest in it".<sup>110</sup> Indeed, there is little evidence that Wilson had much to say on the issue itself, as opposed to the tactics.

As it was, the Labour government ended up pleasing nobody, conveying an impression of weakness, and still having to deal with an unreformed House of Lords. This unhappy outcome undoubtedly left a strong impression on those involved, and so would be likely to influence their reactions when the issue arose again in the 1970s.<sup>111</sup>

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110 Callaghan: Interview (May 1998).

111 See, for instance, p 100.

As for the Conservatives, despite their large majority in the House of Lords, for much of this period - in both government and opposition - they showed a willingness at least to consider reform and, at varying times, they showed positive support for reform of one sort or another. Although they opposed the 1949 Parliament Act, they had previously come to a partial agreement with the Labour government on reform. Following this, they sought to resume discussions with other parties; and then they implemented legislation to reform the House, including the most significant reforms to its composition at least until the end of the century. The Conservative leadership was also supportive, up to a point, of the Labour government's proposed reforms in the late 1960s - as might have been expected, since they reflected discussions in which they had themselves been involved. However, the leadership - as opposed to certain individuals - showed no particular enthusiasm. Not surprisingly, as an opposition party, they also welcomed the discomfiture of a government running into trouble with its own legislative programme, and thus were unlikely to strive zealously to pull their opponents' chestnuts out of the fire, particularly on a measure which many of their backbenchers did not support.<sup>112</sup>

This attempt at legislation having failed, interest in Lords' reform would wane for a few years, but, as will be seen, it would soon return to the agenda when Labour returned to office in 1974.

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112 Carrington was an exception. A supporter of reform, he seems to have been keen to see Labour carry it through, and feared that if the Conservatives attempted their own reform, "they might be faced with the "same sort of difficulties as the present government". (CPA: LCC (69) 292, 19th March 1969). There is no evidence to suggest that he pushed strongly for subsequent Conservative governments, of which he was a member, to act - possibly for this reason.

## 2. LABOUR AND THE HOUSE OF LORDS 1970-76

As this Chapter will show, the House of Lords would again become a thorn in the flesh of a Labour government. However, for some years following the failure to reform the House of Lords in the late 1960s, the Labour Party showed comparatively little interest in the issue.<sup>1</sup> Its 1970 general election manifesto said that it would not accept the House of Lords nullifying important decisions of the Commons or, by its power of delay, vetoing measures in the last year of a Parliament and that "proposals to secure reform" would be brought forward;<sup>2</sup> but Labour lost the election and no proposals were forthcoming in opposition.

During the course of Edward Heath's Conservative government of 1970-74, the Lords allowed important and controversial legislation - notably the Industrial Relations Act 1971 and the European Communities Act 1972, both of which had been guillotined in the Commons - to pass virtually unamended.<sup>3</sup> However, although Labour would point to these later,<sup>4</sup> it does not seem to have taken up such cases in opposition as an argument for constitutional reform, or for action with regard to the House of Lords.

The issue was not debated at Conference; and the Party's comprehensive policy statement *Labour's Programme 1973* had little to say on the issue of constitutional reform, other than on regional and local government. It rather blandly noted over 300 years of stability, enabling "reforms to be implemented without upheavals apparent elsewhere", but added that "this had also helped maintain the innate conservatism of many institutions which have a hostility to change", observing that "many reforms have a long and difficult battle before reaching the statute book".<sup>5</sup>

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1 A 1968 Conference resolution to set up a committee looking at machinery of government was not followed up (*Conservative and Labour Party Conference Decisions 1945-81*, ed F W S Craig, Parliamentary Research Services 1982, pp 128-9.)

2 *Now Britain's Strong, Let's Make it Great to Live In*, Labour Party Manifesto 1970 (Dale, op cit, p 171).

3 See Chapter 7.

4 See, for instance, Michael Foot (*House of Commons Debates*, Vol 899, Col 1536, 12th November 1975); and *The Machinery of Government and the House of Lords - An Interim Statement* (The Labour Party, 1977) p 2.

5 *Labour's Programme 1973*, pp 81-82. (See also *Labour's Programme for Britain 1972*, p 61.)

There was no suggestion of specific action; and neither of the 1974 general election manifestos had anything to say on the subject. According to Barbara Castle, this absence was pointed out at an NEC / Cabinet meeting, but although Harold Wilson responded by saying "let's have a sentence about it", this did not materialise.<sup>6</sup> It would seem that, when Labour entered office in 1974, it had no real plans to resolve a problem which had confronted previous governments.<sup>7</sup>

The Labour governments of 1974 to 1979 were, however, to prove even more vulnerable, having little or no majority in the Commons.<sup>8</sup> In the Lords, where Labour was, of course, very much in a minority:

"The Conservatives in Opposition pressed divisions on large numbers of amendments to government bills, defeating the government over 350 times in the division lobby (or in over 80 per cent of all divisions which took place)."<sup>9</sup>

With its fragile Commons majority, the government sometimes found itself unable to reverse Lords' amendments. For instance, in the space of three days in November 1976, it carried two divisions on Lords' amendments to the Aircraft and Shipbuilding Industries Bill by just one vote, while it was narrowly defeated in two key votes on Lords' amendments to the Dock Work Regulation Bill - which reportedly "knocked the heart out of the Bill" - and won a third only with the casting vote of the Speaker.<sup>10</sup> The statistics would, on the face of it, seem to suggest determined action by the Lords to block or delay government measures.

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6 Barbara Castle: *The Castle Diaries 1974-76* (Weidenfeld & Nicholson, 1980) p 182; entry for 16th September 1974.

7 No Labour politicians or officials interviewed could recall any discussion on this.

8 Between March and October 1974, it was a minority government. After the October election, the overall majority was three, but Labour lost this majority just as James Callaghan replaced Harold Wilson as Prime Minister in April 1976. Callaghan "never experienced anything other than minority government from that moment on" (K O Morgan: *Callaghan: A Life*, OUP 1997 p 412). However, the Labour government reached an agreement with the Liberals in 1977 (the Lib-Lab Pact), which helped safeguard its position (See Callaghan: *Time and Chance*, pp 449, 456-7). Most of the government's problems with legislation in the House of Lords pre-dated this.

9 Shell: *The House of Lords*, p 25.

10 Reported in *The Times*, 9th-12th November 1976. The government had by then lost its overall majority; and the Opposition were aided by a small number of Labour abstentions.

The contrast with a mere 26 defeats during the period of Conservative government of 1970-74 is particularly stark.<sup>11</sup> It seems hardly surprising that there should have been concern in the Labour Party and that interest in tackling the House of Lords should have been revived. Certainly, the somewhat complacent view about what the Lords could do, noted by Tony Benn in the 1950s, would no longer have been widely held.<sup>12</sup>

Even during the minority Labour government, between March and October 1974, the Employment Secretary, Michael Foot, had felt it necessary to warn that the Lords would have to be dealt with after Labour secured a majority, to ensure "the built in reactionary majority there" was never allowed to repeat its "monkey tricks".<sup>13</sup> However, that period was largely one of shadow boxing. The bulk of Labour's legislative programme was to follow the second election. As the government sought to carry this through, it suffered numerous defeats in the Lords in the 1974/75 session. The Government Chief Whip in the Lords, Baroness Llewellyn Davies, reportedly complained of the "capacity of the House, full of hereditary or appointed peers, to stop us implementing our policy".<sup>14</sup>

One of the most significant clashes between the Labour government and the Lords was on the Trade Union and Labour Relations Bill, particularly on the issue of journalists and the closed shop. This had first come before Parliament in November 1974. After a prolonged tussle, the Lords insisted on pressing on their amendments, so the Bill fell at the end of the 1974/75 session. The government then re-introduced the legislation and it was finally passed in a slightly amended form, as the Trade Union and Labour Relations (Amendment) Act in March 1976.

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11 Shell: *The House of Lords*, p 24.

12 See p 24 above.

13 Address to Labour Party rally in Peterborough (reported in *The Times*, 27th July 1974).

14 Noted by Tony Benn in *Against the Tide: Diaries 1973-76* (Hutchinson, 1989) p 372 (entry for 5th May 1975). Labour's 1977 Interim Statement (op cit, p 2) complained of more than 100 defeats in the 1974-75 session. (Official figures are unavailable.)



Thus the 1949 Parliament Act procedure was not invoked. A degree of compromise may have suited both sides, since the government (fearing possible by-election defeats) could not be sure of maintaining its majority till the end of the parliamentary session, while its opponents risked losing compromise amendments.<sup>15</sup>

The struggle with the Lords over this legislation had, however, antagonised Labour's front and back benches. In October 1975 Labour backbench MPs tabled two Early Day Motions. The first said that it viewed with alarm the threat to the democratic will of the Commons, noted the success of the western democracies which had established single chamber government and called on the British government "during the lifetime of the present Parliament, to introduce legislation to abolish the House of Lords". The second, mindful of the treatment of recent legislation, called on the government "to abolish the remaining legislative powers of the House of Lords".<sup>16</sup> At this time, the government was still struggling to get its business through before the end of the 1974/75 session; and the Leader of the House, Edward Short warned:

"Certainly at the end of this session, we shall have to sit down and take stock of the changing way in which the other place is behaving".<sup>17</sup>

This was taken by some as an oblique threat of government action to curb the Lords.<sup>18</sup>

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15 See, for instance, reports in *The Times*, 7th and 24th February 1976. Also Shell (op cit) p 25. The Lords had been pressing particularly for a press charter, but the government eventually offered the compromise of a tribunal.

16 See *The Times*, 23rd October 1975; and *House of Commons Debates*, 23rd October 1975 (Vol 898, Col 723). The first was tabled by Bruce Grocott who, as Lord Grocott would, in 2002, become Government Chief Whip in the Lords. Note that New Zealand and Sweden had both abolished their second chambers (in 1950 and 1973 respectively).

17 *House of Commons Debates* (Ibid).

18 For instance, *The Times* (24th October 1975) headlined its report: 'Mr Short hints that the future of the Lords may depend on their actions in coming weeks.'

When announcing the government's intention to re-introduce the Trade Union and Labour Relations (Amendment) Bill in the following session, Michael Foot told the Commons that it was "the first time for many years...when the House of Lords has gone to such lengths to frustrate the will of the Commons" and argued that everyone should join in condemning this "challenge to democratic authority".<sup>19</sup> On the occasion of the Second Reading of the re-introduced Bill, he was a little more specific:

"My main reason for finding the conduct of the House of Lords offensive to proper democratic procedures in this instance, as in many others, is that the House of Lords invokes the final powers only when Labour or Liberal governments are in power. It never does when Conservative governments are in power and that gives a stronger list to the whole constitution" (*sic*).

Foot then referred back to 1711, when he said the Whig majority in the House of Lords had obstructed the Tory majority in the Commons and Queen Anne had responded by appointing twelve peers directly to overturn the Whig majority. He described this as a "very good precedent", adding:

"If that kind of conduct were to be repeated by the House of Lords on frequent occasions...there is a prompt remedy open to us and a remedy that can be invoked".<sup>20</sup>

This particular comment may have owed something to Parliamentary rhetoric. Nonetheless, before the start of the 1975/76 Session, the Labour Party General Secretary, Ron Hayward, had proposed that the government "enact legislation to cut drastically the length of time the House of Lords can hold up legislation and ensure that only life peers are allowed to vote on all the issues before the House of Lords". He envisaged that the Prime Minister would recommend sufficient supporters to maintain a majority; and added, perhaps less than subtly, "life peers would be expected to carry out the duties for which they had been appointed."<sup>21</sup>

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19 *House of Commons Debates*, 12th November 1975 (Vol 899, Col 1536).

20 *Ibid*, 9th December 1975 (Vol 902, Cols 242-243). The issue in 1711 concerned support for the Treaty of Utrecht (see Vernon Bogdanor: *The Monarchy and the Constitution*, Clarendon Press 1995, p 114). But note that it was a Tory government in office at that time.

21 Speech at Lancaster, reported in *The Times*, 13th November 1975.



*The Times*' political editor David Wood, recalling the "ill-fated plan of 1968", observed that Labour ministers would be "less ready than Mr Hayward and left-wing backbenchers to rush into impetuous schemes for abolition or reform of the House of Lords";<sup>22</sup> and indeed they did not act on either of these suggestions, or to give effect to Foot's warning. The lack of action was criticised by some backbenchers. Following the Queen's Speech for the 1975/76 session, six Labour MPs (all members of the left-wing 'Tribune' Group) tabled amendments regretting that the government had not included proposals to abolish the Lords.<sup>23</sup>

The Labour government was to suffer at least as much difficulty with the Lords in this new session as in the last, suffering 126 defeats out of a total of 146 divisions.<sup>24</sup> The subsequent Labour Party statement on the House of Lords accused it of being a "wrecking chamber rather than a revising chamber", noting that:

"most of the major pieces of legislation of the 1975/76 session - the Aircraft and Shipbuilding Industries Bill, the Rent (Agriculture) Bill, the Education Bill, the Dockwork Regulation Bill and the Health Services Bill - were emasculated in the Lords so that they emerged virtually unrecognisable".<sup>25</sup>

Again the government found itself at the end of a Parliamentary session with major disagreements still outstanding with the Lords. The Dockwork Regulation Bill eventually went through;<sup>26</sup> but the Aircraft and Shipbuilding Industries Bill went right up to the wire. The Lords were insisting on the deletion of shiprepairing from the public ownership provisions of the Bill. As Lord Carrington, then leader of the Conservative peers, later acknowledged, this Bill was one on which "we let ourselves go".<sup>27</sup>

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22 Ibid.

23 Reported in the *The Times*, 20th November 1975.

24 *Divisions in the House of Lords since 1970-71* (House of Lords Information Office, 1996).

25 Interim Statement 1977 (op cit) p 1.

26 A motion that the Lords do not insist on their amendments was agreed to and Third Reading given on 15th November 1976 (*House of Lords Debates*, Vol 377, Cols 1030-1056), with Royal Assent a week later.

27 Carrington: *Reflect on Things Past*, p 279. (See also Chapter 7 below.)

Speaking some twenty years later, a future Conservative Leader of the House of Lords, Viscount Cranborne, would claim that the Lords had never blocked the will of the Commons under a Labour government. Referring back to 1976, he argued that "we stood on a principle of hybridity over the Aircraft and Shipbuilding Bill."<sup>28</sup> It was not, in fact, so clear cut.

The question of hybridity was actually raised in the Commons in May 1976, at a fairly late stage in the Bill's proceedings.<sup>29</sup> The Speaker then ruled that the Bill was prima facie hybrid, but the government successfully moved that Standing Orders be dispensed with, to avoid reference to a Select Committee.<sup>30</sup> Subsequently the government had to resort to the guillotine procedure for this Bill (and for four other items of legislation) on two separate occasions.<sup>31</sup> As the end of the Parliamentary session approached, the legislation went to and fro, in what is sometimes referred to as "ping pong" - a vote in the Lords on 16th November was re-affirmed on 23rd November, only for the Commons to vote five hours later to re-instate the key provision. Eventually the Bill fell, to be re-introduced the following session. However, the issue of hybridity was not mentioned by either of the speakers from the Conservative frontbench in the preceding Lords debate; nor was it included in the official statement of Lords' reasons for insisting on their amendment.<sup>32</sup>

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28 *House of Lords Debates*, 4th July 1996 (Vol 573, Cols 1581-9). A hybrid Bill contains elements of both Public and Private Bills, being both public and general in nature, but also affecting particular local or private interests. It may be subject to special procedures, which give interested parties the right to petition Parliament (see, for instance, Shell, *op cit*, p 215).

29 As Francis Pym, speaking from the Conservative frontbench, later acknowledged (*House of Commons Debates*, 1st December 1976, Vol 921, Cols 939-40). The Bill had actually received its Commons' Second Reading back on 2nd December 1975 (Vol 901, Cols 1446-8).

30 See *House of Commons Debates: 25th- 27th May 1976* (Vol 912). The vote was initially tied; but, in a further division, the government won by just one vote. (This was the occasion on which Michael Heseltine famously picked up the Commons mace.)

31 *Ibid*, 20th July 1976 and 8th November 1976 (Vol 915, Cols 1527-1605; Vol. 916, Cols 31-124). The other Bills were the Health Service, Dockwork Regulation, Rent (Agriculture) and Education Bills.

32 See *House of Commons Debates*, Vol 919; *House of Lords Debates*, Vol. 377.

Nevertheless, in the following 1976/77 session, the issue of hybridity came into play again and, although the Bill passed through its Commons stages speedily, further lengthy proceedings were anticipated in the Lords. The government eventually agreed to drop shiprepairing from the legislation, which finally received Royal Assent in March 1977.<sup>33</sup>

One of the most significant aspects of the actions of the Lords on the aircraft and shipbuilding legislation was that they would seem to have been acting in breach of the Salisbury doctrine, whereby the Upper House would not seek to block legislation for which the government of the day had an electoral mandate. The political commentator, Simon Hoggart, noted at the time:

"It was this doctrine which, became a firm unwritten convention over the years, which was broken this week".<sup>34</sup>

Eric Varley, the responsible minister as Secretary of State for Industry, pointed out in the Commons that public ownership of shiprepairing had been "stated in clear and explicit terms" in the 1974 election manifestos and "was not included as an afterthought".<sup>35</sup> Hoggart observed that "it is surprising that there seems to have been such an obvious breach of the conventions this time - a break which the Labour leaders, Lords Peart and Shepherd, have already warned will change for ever the relationship between the two Houses".<sup>36</sup>

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33 With Standing Orders having again been set aside, Third Reading was given on 7th December 1976 and the Speaker then rejected opposition claims that it did not comply with the Parliament Act provisions. However, in the Lords, it was ruled that the Bill was, in effect, hybrid in respect of shiprepairing; and the procedures envisaged could have involved prolonged hearings of petitions, and a lengthy Committee Stage. It could eventually have been passed using the Parliament Act procedures at the end of the session, but rather than risk "terrible" consequences for the industry, the government decided to compromise and drop shiprepairing, thus allowing the Bill to go through. (See *House of Commons Debates*, Vol 922; *House of Lords Debates*, Vol 380.)

34 'How the Lords broke the unwritten rules', *The Guardian*, 26th November 1976. Lord Denham, then Opposition Deputy Chief Whip, later argued that it had not been a breach of the Salisbury doctrine, because of the hybridity ruling and because the Lords had only amended the legislation rather than rejecting it outright (Interview, January 2000, and subsequent conversation with the author). As noted above, the hybridity ruling was not cited as the reason at the time.

35 *House of Commons Debates*, 22nd November 1976 (Vol 919, Col 1890).

36 *The Guardian*, op cit.

Shepherd (who had recently been replaced by Peart as Leader of the House of Lords) had indeed warned, in the last debate on the Bill of 1975/76 session, that the relationships between the two chambers could be shattered. He said he shared with Carrington a desire for reform, but "a reform as a consequence of the act contemplated today would be a reform of the very worst order", which could be brought in "in a spirit of vindictiveness towards the House". He concluded:

"I personally believe in the need for a second chamber, but a second chamber that would not be in conflict with but in support of another place".<sup>37</sup>

In the same debate, the veteran Labour peer Lord Shinwell (who had, in this instance, supported the Conservative-led action) was much more sanguine:

"What can they do? They will go on attacking the House of Lords, threatening to abolish it. I do not think we should worry ourselves unduly about it".<sup>38</sup>

It should be noted that - Cranborne's later observations notwithstanding - in the same 1975/6 session, the Lords also blocked the British Transport Docks Bill, to bring Felixstowe Docks into public ownership. Although supported by the government, it was in the form of a Private Bill, which the Lords had the power to reject, and which they exercised in this instance. Even though it had received majority support in the Commons, the government could not invoke the Parliament Act to override the Lords.<sup>39</sup>

The wider political context was that, by the autumn of 1976, the government had lost its majority in the Commons and was facing major problems, including severe economic pressures. The Chancellor of the Exchequer, Denis Healey, had famously turned back at the last minute from a flight to Hong Kong, and dashed to the Labour Party Conference where, he later recalled, "the mood was ugly"; and

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37 *House of Lords Debates*, 22nd November 1976 (Vol 377, Cols 1668/9).

38 *Ibid* (Col 1677).

39 Shell (op cit), pp 25-26. Private Bills originate outside Parliament and are usually promoted to by bodies seeking authorisation not available to them under general legislation. The Lords and Commons possess equal powers in respect of these. See, for instance, Shell, pp 211-5.

"the rest of the year was dominated by a series of negotiations around our application to the IMF."<sup>40</sup> At such a time, the Opposition was keen to press its advantage in the House of Lords.<sup>41</sup> Although Lord Denham later argued that the Lords had reacted more to being put under pressure by the Labour government than to the government's vulnerability in the Commons, he conceded that "we were being begged constantly to send back more and more amendments by our friends in the Commons - I think because the majority was so small".<sup>42</sup>

Harold Wilson appears in retrospect to have considered that the Lords' actions between 1974 and 1976 were not unreasonable. "Too much" was asked of them, he wrote in his memoirs. He went on to say that in August 1975 ministers entered a "concordat" - which he claimed, at the time of writing in 1979, was "still effective and now virtually an unwritten rule of the constitution" - that the Lords should not be asked to accept in any session any major Bill after Easter, except in emergency.<sup>43</sup> His recollection may have been confused, since although his memoirs linked this to the Aircraft and Shipbuilding Bill, that legislation had made no progress in the Commons in the 1974/75 session and was withdrawn, to be re-introduced the following session. In an earlier book, he had suggested that the key piece of legislation was the Remuneration Charges and Grants Bill, related to the government's counter-inflation policy, which had to be rushed through before the summer recess, when "business in the Lords was already more congested than at any time in living memory". Agreement, he said, was reached "with great good

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40 *The Time of My Life* (Penguin Books 1989) p 429. The crucial Cabinet decisions on the IMF action were actually taken in early December 1976. (See also, for instance, Callaghan, *op cit*, Chapter 14.)

41 See Chapter 7.

42 Interview (January 2000).

43 Wilson: *Final Term* (Weidenfeld & Nicholson and Michael Joseph, 1979) p 144.

will" on the legislative programme, but "as the price of this co-operation, the Opposition exacted a not unreasonable promise that, in the new session, no seriously 'controversial' legislation would be introduced after Easter".<sup>44</sup> This parliamentary business deal (which apparently does not rate a mention elsewhere) hardly seems to merit Wilson's somewhat grandiose description of it.<sup>45</sup>

Whatever Wilson may have thought, other ministers were certainly far from happy with the situation. Barbara Castle had noted in her diary back in October 1975 that:

"Their Lordships are keeping us tied to the House day and night with their amendments to this and that and are beginning to get under our skins".<sup>46</sup>

Tony Benn relates that in Cabinet, in October 1976, Eric Varley accused the Lords of being "enormously irresponsible in blocking legislation". However Lord Elwyn-Jones, the Lord Chancellor, and Lord Peart apparently objected that it would be tactically unwise to attack the Lords then; and, perhaps surprisingly, Benn records that, while he himself disagreed, he said no more.<sup>47</sup> The following month, however, Benn (who was Secretary of State for Energy) stated publicly that he personally supported the "outright, complete abolition of a chamber based either on inheritance or appointment";<sup>48</sup> and at the very end of the session, when presumably it was clear that the Lords were determined to block the legislation,

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44 Wilson: *The Governance of Britain* (Weidenfeld & Nicholson and Michael Joseph, 1976) pp 144-5.

45 Sir John Sainty, a former Clerk of the Parliaments, thought Wilson's description was "absolute rubbish" and said that any such agreement would have been "window dressing" (Interview, January 2001). Indeed Bills have subsequently been introduced in the Lords after the Easter recess. A study of the 1988/89 session, for instance, lists eight Bills leaving the Commons for the Lords after Easter (Shell & Beamish, op cit, pp 70-71). The Lords did accept a Select Committee recommendation for minimum intervals between various stages of legislation, in 1977, but these were not always observed (Ibid pp 64-66). Sainty also suggested that there was nothing unusual about the alleged overload of legislation in the Lords. Indeed Labour, in opposition, would make similar complaints against a future Conservative government (see Chapter 8).

46 *Diaries* (op cit) p 531 (entry for 22nd October 1975).

47 *Diaries* (op cit) p 632 (entry for 29th October 1976).

48 Interview on Independent Radio News, reported in *The Times*, 13th November 1976.

Varley publicly attacked the Tory peers "responsible to no-one and elected by no-one" who had "the arrogance and effrontery to tell this elected House of Commons what policies they will allow us to pursue".<sup>49</sup>

The Prime Minister, James Callaghan, also joined the criticism, telling MPs in early November 1976 that:

"time after time there has been a conspiracy between the Conservative front bench in this House and the in-built Conservative majority in the House of Lords to defeat legislation which has been passed through the House of Commons...I warn the House of Lords of the consequences".<sup>50</sup>

Also, the Home Secretary, Merlyn Rees, a close ally of Callaghan, was reported to have said: "Whatever happens now, the House of Lords in its present form will not endure".<sup>51</sup>

This feeling that something should be done about the House of Lords was undoubtedly shared by many of the Labour backbenchers. It was reported in November 1976 that more than 60 had signed a motion criticising the "wilful and politically motivated" attempts of the Lords to mutilate and wreck legislation.<sup>52</sup> Back in June 1976, the left-wing MP, Dennis Skinner, had sought leave to bring in a Ten Minute Rule Bill to abolish the House of Lords. In colourful language, he argued that "when the lady in red chiffon has difficulty in stopping legislation in this House, she instructs her bover boys in ermine to put the boot in". He also showed how, for some at least on the Labour benches, their objection was not confined simply to hereditary Conservative peers. In a reference to Harold Wilson, he said:

"Our ex-prime minister has made more life peerages than any other prime minister in history - close on 200 - we still have a job to find a 100 who will go through the lobbies and vote Labour".<sup>53</sup>

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49 *House of Commons Debates*, 22nd November 1976 (Vol 919, Cols 1890-93).

50 *Ibid* (Vol 919, Col 211), 9th November 1976.

51 Reported in *The Guardian*, 20th November 1976. In *Time and Chance* (p 387), Callaghan described Rees as "my closest friend".

52 Reported in *The Times*, 13th November 1976.

53 *House of Commons Debates*, 16th June 1976 (Vol 913, Cols 545-552). During Wilson's two terms, 215 life peerages (excluding law lords) were created (House of Lords Library: *Peerage Creations 1958-1998*; figures include some resignation/dissolution honours attributable to previous Prime Ministers, but exclude Wilson's own resignation honours).

Wilson's resignation honours earlier in 1976, which included nine peerages, had been controversial, since some recipients were said to be unsuitable and not all were known supporters of the Labour Party. (One - his raincoat manufacturer, Lord Kagan - was subsequently to go to prison.) This certainly would have done little to enhance the honours system or the House of Lords in the eyes of Labour supporters, as Skinner's speech showed.<sup>54</sup> The episode would no doubt have reinforced objections to a nominated chamber, which had previously been raised by opponents to the 1968 proposals. Although it would not have had official government support, Skinner's motion was supported by 153 votes and was defeated by only 15 votes.<sup>55</sup> Thus nearly half of the Parliamentary Labour Party was at that time prepared to support abolition of the House of Lords.

The situation had changed considerably since the general elections of 1974, when neither manifesto had even mentioned the Lords. After two years in which, in the eyes of Labour members, they had wilfully obstructed the government's legislative programme, there appeared to be a mood for action to be taken to deal with the problem, which had been articulated from the government frontbench, as well as from the backbenches.

As far as the government was concerned, it may be that this amounted to little more than rhetoric. If ministers were, perhaps understandably, unwilling to revisit large scale reforms of the type abandoned in 1969, then presumably the short

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54 In his diaries, Tony Benn described Wilson's list as a 'scandal'. "It is unsavoury, disreputable...that he should push inadequate, buccaneering sharp hysters for his honours was disgusting" (*Diaries* op cit pp 570/1; entries for 23 and 27 May 1976). Wilson's biographer, Phillip Ziegler, says that Benn's reaction was "by no means untypical" and that the Political Honours Scrutiny Committee and reportedly Buckingham Palace had taken exception to the list (*Wilson: The Authorised Life*; Harper Collins, 1995, pp 494-498). Callaghan's biographer concluded that "it undoubtedly did much damage to the Labour Party", as well as to Wilson's own "shop soiled" reputation (K Morgan, op cit, pp 703-4).

55 *House of Commons Debates*, 16th June 1976 (Vol 913, Col 552).



Bill dealing with powers, apparently prepared at the same time, would still have been available, to be dusted down for future use.<sup>56</sup> Nevertheless, there is no evidence to suggest that this or any other measure to deal with the Lords were even discussed by ministers at this time.<sup>57</sup> Of course, the passage of any such measure then would have been fraught with difficulty, given the government's lack of a majority, unless it could secure wider support for it. Callaghan later reflected that, in such circumstances, it would have been "a sheer waste of the Cabinet's time"; and Lord McNally (then his political adviser) recalled that the actions of the Lords "may have annoyed ministers, but certainly there was nothing they could do about it".<sup>58</sup>

However, this would not necessarily inhibit discussion of the development of longer term policy on this issue. It was against this background that an official Labour party committee had begun work on proposals for constitutional reform, including the House of Lords. This will be examined in detail in the following Chapters.

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56 See p 35.

57 Michael Foot, then Leader of the Commons, could not recall any discussions in Cabinet on this, although he thought, in retrospect, they ought to have taken place (Interview, March 1999). Neither could Elizabeth Thomas (his special adviser) or John Stevens (his principal Private Secretary 1977-79) recall discussion of any action (correspondence with the author, May/ July 1999). Sir John Sainty recalled that, at some point, Llewellyn Davies asked him to look unofficially into what steps might be required to create a very large number of peers (Interview). This would have presumably been in response to the Labour Party NEC's proposals (for which see Chapter 3), since there was never any suggestion that the government seriously contemplated such action.

58 Interviews (May 1998, June 1999).

### 3. DEVELOPMENT OF LABOUR'S POLICY 1976-78

#### Establishment of Study Group

The Machinery of Government Study Group had been set up by the Party's National Executive Committee (NEC) in March 1976, in advance of the drafting of Labour's Programme, a comprehensive policy statement due to be put to the Party Conference that autumn.<sup>1</sup> The preceding 1973 Programme had said little on the subject of the constitution;<sup>2</sup> but this gap had been noted by the party officials who presented a paper setting out "issues the Home Policy Committee might like to consider in drawing up Labour's Programme 1976". The House of Lords was one item in a list ranging from the civil service to honours and the role of the monarchy.<sup>3</sup>

The NEC's Home Policy Committee resolved "that a Working Party be set up to consider a general statement for inclusion in Labour's Programme 1976 and that further detailed work be undertaken subsequently". The proposed membership would comprise Eric Heffer, Shirley Williams, John Forrester and Bryan Stanley (two MPs and two trade union representatives on the NEC respectively), plus "a small number of co-opted members".<sup>4</sup> In addition, Tony Benn, as Chairman of the Home Policy Committee, had the right to attend ex-officio. He was subsequently listed as a member and would play an active part in its work. The number of co-optees would not, as it turned out, be confined to "a small number", as the group grew considerably in size. At the first meeting of the Machinery of Government Study Group (as it came to be called) on 1<sup>st</sup> April 1976, the three NEC members present - Stanley was absent - elected Heffer chairman.<sup>5</sup>

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- 1 The Party Conference was the supreme policy making body of the Labour Party, but the NEC was otherwise responsible for policy and for preparing and issuing statements which would, where appropriate, be put to Conference. Domestic policy issues were dealt with by its Home Policy Committee, to which a range of sub-committees, working parties and study groups reported (including the Machinery of Government Study Group).
- 2 See Chapter 2.
- 3 RE 515 (March 1976): The Machinery of Government.
- 4 Home Policy Committee Minutes, 8<sup>th</sup> March 1976
- 5 Machinery of Government Study Group Minutes (1) 1<sup>st</sup> April 1976.

The paper drafted by the officials included many points which were to recur during subsequent discussions. It observed that since the previous Labour government's abortive reforms, "very little attention has been given to this problem". However the problems remained – the frustration of Labour government legislation; the delaying powers' growing importance towards the end of a Parliament; and objections to both hereditary and appointed peers, enjoying no popular mandate. It suggested that the objection to appointed peers was "almost as great as with hereditary peers". It argued that, while the "simplest remedy" might be a pledge to outright abolition and a single chamber, "this would lead to considerable problems", including overwork for the Commons, and added:

"The overwhelming majority of parliamentary democracies are bicameral, and it is suggested that there is a continuing role for a second chamber in the United Kingdom. What is crucial, however, is that this should no longer take the form of an unrepresentative body which is able to frustrate the will of the democratically elected House of Commons."<sup>6</sup>

Thus, the initial paper put to the Home Policy Committee and then to the Study Group did not suggest support for the policy of abolition which was subsequently to be adopted. The wording may seem to have been tentative, but that would have been in the nature of such a paper, which, in advance of discussion, could go no further than consider options and suggest a preferred course of action, which was that:

"The simplest way of dealing with the powers of the House of Lords would be to pass an amendment to the Parliament Act 1911 to provide that all Bills passed by the Commons would be enacted with or without the consent of the House of Lords at the end of each session. This simple provision would shut off any possibility that the House of Lords would frustrate a majority in the House of Commons for even a single session."

It added that there would also need to be provision to remove the Lords' powers to block secondary legislation. The paper concluded that the Lords could still play a useful role, initiating legislation and acting as a revising chamber, but allowing the Commons, if it so wished, to override them, "after due consideration, but without inordinate delay and a lengthy process which can also block other vital legislation."<sup>7</sup>

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6 RE 515 op cit.

7 Ibid.

Thus, the possible introduction of a short Bill dealing with the powers of the House of Lords was again being mooted. As previously noted, this possibly had been considered when Labour was last in office, and a Bill had apparently been prepared by Parliamentary draftsmen. It could presumably have been drawn on again, if necessary; but if anyone involved in Labour's discussions in the 1970s was aware of its existence, no mention was made of it.<sup>8</sup>

A paper of this nature necessarily also discussed possible changes in composition "to ensure that it is a forum which has some weight, although not having the right to hold up legislation", ranging from an elected chamber, to simply ending the rights of hereditary peers to take their seats on inheritance. A House with life peers and others there by virtue of holding specified positions or being nominated by particular "representative organisations" was also mooted;<sup>9</sup> and Benn's earlier proposal for a chamber of Privy Counsellors was noted.<sup>10</sup> After initial discussion in the Study Group, "the general view was that any second chamber should be more representative of the community than the present House of Lords. However, at this stage we should leave the options open as to exactly how it would be composed."<sup>11</sup>

The Group then proceeded to consider a draft for Labour's Programme. This was agreed at a meeting attended by only two NEC members (Williams and Stanley) and the Secretary (the present author);<sup>12</sup> but the passage on the House of Lords, which was to be much quoted in future documents, went through unchanged into the published version. It stated:

"We believe that the present House of Lords is an outdated institution, completely inappropriate to a modern democratic system of government. It should not, therefore, continue in its present form. Any second chamber which replaces it must be much more representative of the community as a whole, and we shall examine ways of bringing this about".<sup>13</sup>

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8 See p 35. Michael Foot has said that he was not aware of the draft short Bill referred to (Interview, March 1999). Nor, at the time, were the present author or the Party's then Research Secretary, Geoff Bish, who later confirmed that the NEC was unaware of it, adding, "I wish I'd known about the Bill" (Interview, March 1999).

9 RE 515 op cit

10 See p 24.

11 Study Group Minutes (1) 1st April 1976.

12 Study Group Minutes (2) 26<sup>th</sup> April 1976.

13 RE 594: Draft Section of Labour's Programme.

The Programme, approved by Conference in October 1976, did, however, note that work on machinery of government issues was at an early stage and that “at this point we are seeking only to present some interim conclusions on a few of the issues involved”.<sup>14</sup> Although there was to be no debate specifically on the Lords, in presenting the Programme to the Conference, Tony Benn drew particular attention to the section on machinery of government, saying the party did not want the impetus of policy bogged down in Parliamentary obstruction – “certainly not in the House of Lords”; and he added, speaking for himself, that abolition of the Lords would add nothing to the Public Sector Borrowing Requirement.<sup>15</sup>

Meanwhile, the full membership of the Study Group had been established. A total of 16 co-options had been agreed by the NEC members of the Group at its second meeting (in the absence of the Chairman) but, following a request from the Home Policy Committee, a further 13 co-options were made, most of whom would have been thought of as broadly on the “left” of the Party.<sup>16</sup> Although political labelling should be treated with caution, one active member, John Garrett, said in retrospect that the Group was clearly not balanced and that it should have had more Lords on it. Another, John Griffith, recalled wondering whether Labour MPs “would regard us as a bunch of left wing eccentrics.”<sup>17</sup> The co-options meant that the membership was extremely large – a total of 36, including Chairman, Secretary and five other NEC members. It should, perhaps, be noted that three of the NEC members were also Cabinet ministers (although Michael Foot played no active role, despite receiving the papers). There were at this stage, only two members of the House of

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14 *Labour's Programme 1976*, p 104.

15 Labour Party Conference Report 1976, p 157. As noted in Chapter 2, the government was facing severe economic pressures at this time.

16 Study Group Minutes (2) 26<sup>th</sup> April 1976, (3) 29<sup>th</sup> June 1979; Home Policy Committee Minutes 7<sup>th</sup> June 1976, 12<sup>th</sup> July 1976 and Study Group papers refer. One of the further co-options included the future Party Leader, Neil Kinnock, then a backbench MP, but he would play little part in the proceedings.

17 Interviews, July and October 1998.

Lords on the Group – Lords Shepherd (who played no active role) and Crowther Hunt (who did). The size and diversity of membership meant that, although there was usually a core of about a dozen or so regular attenders, it could not really be an homogeneous group.<sup>18</sup>

The issue of the second chamber was not initially given priority, but, by October, the Group decided to aim for an interim report for 1977, which would include the House of Lords.<sup>19</sup> The next few meetings concentrated on that issue.

The paper then submitted by the Secretary included much which was to form the basis of the statement issued by the Party the following year. After observing that the simplest course “in theory” would be outright abolition, it suggested that “this could lead to considerable problems” and that “there should be a continuing role for a second chamber in the United Kingdom”, although this should not take the form of an unrepresentative body able to frustrate the Commons. Having discussed various possibilities, “A Proposed Course of Action” was put forward. This involved amending the Parliament Act so that, firstly, amendments to legislation made in the Lords could be removed by a vote of the Commons, with no requirement to send them back again; and secondly, that rejection of legislation by the Lords at any stage could be negated by an overriding vote of the Commons in the same session. The paper also suggested a time limit on Lords’ discussion, removal of powers to block subordinate legislation, but retention of powers over the extension of the life of a Parliament. Like the earlier paper, it examined various options for composition, but now argued that limiting voting to life peers and ending of hereditary peerages, while an improvement on the present, would still mean an appointed House which would “probably not be appropriate as long term solution”.<sup>20</sup>

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18 There would be further changes to the membership over time. For full membership list, see Appendix 2. Note that neither Foor nor Shepherd are recorded as having attended any meetings of the Group.

19 Study Group Minutes (3) 29<sup>th</sup> June 1976; (5) 19<sup>th</sup> October 1976

20 RE842: The House of Lords and a Reformed Second Chamber (November 1976). This paper was broadly in line with the approach suggested in the initial paper (RE 515). In discussion with the author, Geoff Bish later recalled, with regard to unicameralism: “You and I were a bit uneasy about it, weren’t we?...we felt a revising chamber of some kind or something, was necessary” (Interview, March 1999).

Given the battle that was taking place at the same time between the Labour government and the House of Lords,<sup>21</sup> it is perhaps not surprising that the contents of the paper leaked. In the *Financial Times*, Richard Evans reported that a “far reaching plan for reform” had been drawn up “as pressure mounts for action”; and that the proposals on powers would mean that “the ‘ping-pong’ between the two Houses” which had killed the Aircraft and Shipbuilding Bill the previous day could no longer happen;<sup>22</sup> while in *The Times*, Michael Hatfield suggested that the proposals would “strike a chord with Labour voters”.<sup>23</sup>

At this stage, in November 1976, it was by no means clear that the Labour Party would go for abolition. Even Tony Benn, later to be a foremost advocate of the policy, was keeping options open. While calling for abolition of a chamber based on heredity and patronage, he acknowledged in a radio interview that for a second chamber “we could manage quite well with a number of alternatives.”<sup>24</sup>

The Study Group, when it met in November 1976, agreed that “an upper chamber based on either the hereditary principle or on a patronage basis was unacceptable” and that it should not have the existing powers to frustrate the Commons. There were differing views on what sort of chamber, if any, should replace the present one. Some felt a second chamber with limited revising powers, was necessary; but there was little enthusiasm for a chamber of interest groups and “the general view” was that an elected chamber would be able to claim a mandate and be a threat to the House of Commons. Accordingly the minutes go on to record:

“Thus, while some members felt that there should be a second chamber, the majority of those present thought such a body would not be necessary.”<sup>25</sup>

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21 See Chapter 2.

22 ‘Transport House draws up scheme for House of Lords’, *Financial Times*, 23<sup>rd</sup> November 1976.

23 *The Times*, 23<sup>rd</sup> November 1976.

24 Interview with IRN, reported in *The Times*, 13<sup>th</sup> November 1976.

25 Study Group Minutes (6) 23<sup>rd</sup> November 1976.

They add that, if the Commons were overburdened, then it was argued this was a case for the reform of the Commons itself. The Group decided that the paper should be revised in the light of this (by the Secretary, in consultation with Norman Buchan MP and John Griffith, Professor of Public Law at the London School of Economics, both of whom supported the abolition recommendation). It would “make it clear the House of Lords should be abolished”, but nevertheless set out the cases “for and against having any second chamber” and also the merits and demerits of alternative forms.<sup>26</sup>

No members of the House of Lords were present at this meeting. Lord Crowther Hunt afterwards doubted that his presence would have made much difference, but expressed the hope that something on the lines of the Secretary’s paper could be put to the National Executive as one of the alternatives.<sup>27</sup> Lord Peart, the Leader of the House of Lords, had been invited to the meeting, but did not attend. He had also been sent an advance copy of the paper but, perhaps surprisingly, no comments were received.<sup>28</sup>

Reflecting the previous discussion, the revised paper for the December meeting of the Group no longer suggested a continuing role for a second chamber. It acknowledged that outright abolition “would entail certain problems,” but also that “there is a strong case for arguing that the House of Lords has shown itself not to be especially valuable as a revising chamber”, citing in support evidence supplied by Griffith. While acknowledging that the majority of Parliamentary democracies are bicameral, it observed that, for instance, Sweden and New Zealand had abolished their second chambers, and concluded that “it might well be that, given the necessary changes in Commons procedure and governmental processes, abolition of the second chamber would be the most appropriate course for the United Kingdom.”<sup>29</sup>

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26 Ibid.

27 Letter to the Secretary, 30<sup>th</sup> November 1976.

28 Personal recollection.

29 RE 876: Statement on the House of Lords (Revised Draft), December 1976. Griffith’s evidence (included in an appendix) was based on his own study of the Lords in 1968/69 and 1970/71, published in *Parliamentary Scrutiny of Government Bills* (Allen & Unwin 1974); and evidence in Janet Morgan’s study: *The House of Lords and the Labour Government 1964-70*.



Nevertheless, it noted that reforms would take some time to implement, with the danger of the Lords meanwhile frustrating the Commons. It suggested, in the first instance, legislation to restrict the power of the Lords, adding that, if changes were not effected during the existing Parliament, “the NEC should aim to ensure that our next manifesto contains a commitment to introduce legislation to curb, reform or abolish the Upper House in the next session of the new Parliament.”<sup>30</sup> (The failure to mention the issue in the 1974 manifestos had been noted, and this would have been intended as advice to the NEC on the necessity for such a commitment next time.)

However, the Group thought that any suggestion of restricting powers as a first step “would distract from a clear commitment to abolition”. It effectively confirmed the previous conclusion, agreeing that the paper to be put to the Home Policy Committee “should make clear the Study Group’s conclusions in favour of abolishing the House of Lords and having a single chamber legislature.” It would also make clear the need to consider reforms to the Commons.<sup>31</sup> The paper was then further revised accordingly.

Several of the individuals present at this meeting, which agreed the draft statement supporting abolition, were different from those at the previous one. Although most of those who were at the November meeting might have been regarded as on the “left”, this was not the case with those at the December meeting.<sup>32</sup> (The latter included Crowther Hunt, who went along with the statement, despite his personal disagreement with the conclusion.) In any case, it would be much too simple to draw an automatic correlation between the “left” and support for abolition. The Chairman, Eric Heffer, told the press later that “he had originally been in favour of a reformed second chamber, but had been convinced during the group’s studies that a unicameral system was the only answer”.<sup>33</sup>

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30 Ibid.

31 Study Group Minutes (7) 16<sup>th</sup> December 1976.

32 The November and December meetings were attended by ten and eleven members respectively (excluding officials), of whom only five (including the Chairman) were present at both.

33 *The Times*: ‘Labour Executive aims at Lords abolition’, 11<sup>th</sup> February 1977.

Another active member of the Group, Robert Sheldon (then Financial Secretary to the Treasury) was reported as saying that “he had always been a unicameralist, but had been prepared to accept a second chamber on practical grounds. However his work on the Study Group had taken him back to square one.”<sup>34</sup>

Nevertheless, the academic, Bernard Crick, had resigned from the Group after the November meeting. He expressed the fear that the Party was in danger of digging itself “even further into the trough of unpopularity into which we are sinking”, arguing that “it is perfectly plain that people are not convinced of the value of unicameral government and we are fooling ourselves if we think so”. He regretted the demise of the 1968/69 proposals, “the old joint compromise, which would have been workable.”<sup>35</sup>

It was at the December 1976 meeting of the Group that another aspect was raised, which was to prove significant in later debate, as it pointed to a possible stumbling block. Ironically it was at the request of Tony Benn, by no means an opponent of abolition, that a paper by Geoffrey Bing was circulated. Bing was a lawyer, who had previously been a Labour MP and then Attorney-General of Ghana. He raised a number of questions, but the crucial one was as follows:

“it is necessary to consider how to achieve within the present law the abolition of the House of Lords without its agreement. The danger is that the House of Lords will be only too anxious to be reformed in order for it to continue in some shape or another, and the Parliament Act does not appear capable of being used for the purpose of abolishing the Lords altogether.”<sup>36</sup>

This and related points were to be looked at further on several occasions; and, as will be seen, the potential difficulties were never fully resolved. For the moment, however, the Group noted that “this might mean that additional peers would need to be created to ensure the passage of such a measure”; and that it should seek clarification on the points raised.<sup>37</sup>

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34 Reported in *The Times*, 31<sup>st</sup> December 1976.

35 Letter to the Secretary, 25<sup>th</sup> November 1976.

36 RE 879: Points for Discussion in Regard to the House of Lords – Geoffrey Bing (December 1976).

37 Study Group Minutes (7) 16<sup>th</sup> December 1976.

The Party's Home Policy Committee agreed in January 1977 that the Study Group's paper should be published with only minor amendments, and resolved that:

“the NEC be recommended to accept the Study Group recommendations that the House of Lords be abolished and to ask the Study Group to continue its work on the implications of that decision.”<sup>38</sup>

A newspaper report the following day suggested a degree of dissent, implying that Shirley Williams had argued for support for abolition of the existing chamber but not for unicameralism.<sup>39</sup> There is no official record of any disagreement, but Tony Benn's private record suggests that Williams did raise the matter. He noted that, while he had suggested opting for the end of the Lords and “to see where that leads us”, she expressed concern about unicameralism and asked about the possibility of an elected second chamber. Benn himself said this could be looked at later. He recorded that a motion (by Judith Hart) to print the report as circulated, but to say that further work would be done, was agreed without a vote, “Shirley having tried to get the vote, but lost.”<sup>40</sup>

The decision then went through the NEC later that month with no record of dissent from any of those present – who included Williams and James Callaghan – even though Benn had drawn attention to the relevant minute of the Home Policy Committee.<sup>41</sup> This is worth noting, in view of Callaghan's subsequent opposition to the policy. Williams did, however, resign from the Study Group shortly afterwards, but cited poor attendance rather than any policy issues as the reason.<sup>42</sup>

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38 Home Policy Committee Minutes, 10<sup>th</sup> January 1977.

39 ‘Labour take aim at Second Chamber’; Martin Adeney, *The Guardian*, 11 January 1977.

40 Unpublished text of Diaries (entry for 10<sup>th</sup> January 1977). Williams herself could not recall having raised the matter (Letter, March 2000).

41 NEC Minutes, 26<sup>th</sup> January 1977.

42 Letter to the Secretary, 4<sup>th</sup> February 1977. Two other members of the Group, Bill Kendall and Norman Ellis, also resigned, giving the same reasons (letters to the Secretary, 2<sup>nd</sup> February 1977). Both were senior figures in the Civil Service Unions. It would be unsurprising if they had preferred not to be associated with a controversial political decision; and one was apparently concerned about leaks from the Group (private information). Shirley Williams subsequently confirmed that, for her, lack of time was the reason, but that she wanted to keep tabs on the work of the Group and her political adviser, John Lyttle, continued to attend. As far as she could recall, there was no connection with the other resignations (Letter, March 2000).

Callaghan and other ministers may, of course, have been pre-occupied with other matters. Interestingly, he makes no specific mention of the House of Lords issue at this time in his memoirs, and neither does his senior policy adviser Bernard Donoughue in his book covering the period.<sup>43</sup> Yet it would be surprising if the Prime Minister and his colleagues were not alerted to its significance. Even before the matter reached the Home Policy Committee, leaks had appeared in the press; and that Committee's endorsement was also reported. Readers of *The Guardian* were told "it is bound to be Party political dynamite, with the Conservatives using it as an argument to frighten voters into viewing Labour as anti-democratic."<sup>44</sup> Moreover ministers (including Callaghan) had themselves been warning of action against the Lords only a few weeks previously, and so would have been unlikely to ignore proposals for such action emerging from the Party's official machinery.<sup>45</sup>

Callaghan clearly felt frustrated by the NEC and later suggested that he may have given up on the NEC by then.<sup>46</sup> Tom McNally, then his chief political adviser, has suggested that the NEC was then seen by Downing Street as an open enemy and that Callaghan "simply bided his time, as far as issues that he didn't want to see", relying on the joint manifesto committee (which would meet prior to an election) as the final arbiter.<sup>47</sup> However, this was surely storing up trouble for the future.

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43 Callaghan: *Time and Chance*; Donoughue: *Prime Minister: The Conduct of Policy under Harold Wilson and James Callaghan* (Jonathan Cape; 1987). Likewise Denis Healey ignored the issue in his memoirs, *The Time of My Life*. Even Benn's published diaries covering this particular period made no reference to this significant policy development (*Against the Tide, Diaries 1973-76; Conflicts of Interest, Diaries 1977-80*, Hutchinson 1989/90). However, as noted above, there was some reference in his unpublished diaries.

44 Martin Adeney, *The Guardian*, 11<sup>th</sup> January 1977.

45 See Chapter 2.

46 Interview, May 1998. In his autobiography Callaghan noted, although not specifically in this context, how he felt that "a small majority of the NEC were actually opposed to the Cabinet and some of the MPs on the NEC appeared to want to set themselves up as an alternative government." (op cit, p 459). Geoff Bish thought it was probably true that ministers had given up on the NEC by then; and recalled that "until we got nearer the election...they treated NEC statements as just another statement from the opposition (*sic*)" (Interview, March 1999).

47 Interview, June 1999.

### Publication of the Study Group's Report

The Study Group's report was published in February 1977 as a 'Labour Party Discussion Paper' and took the unusual form of a special supplement to the Party's newspaper *Labour Weekly*.<sup>48</sup> Despite the label, it did not invite responses to any specific questions, although it did rehearse the arguments for and against various options. However, as we have seen, the NEC had already agreed to accept the principal recommendations contained in the report; and, in the event, the revised statement, which was to be published later in the year and presented to the Party Conference, would not differ from it greatly in substance.<sup>49</sup>

The 'discussion' paper began by pointing to the disruption caused to the Labour government's legislative programme and argued that the Lords' subsequent action had shown that the description of it in *Labour's Programme 1976* to be "more than justified";<sup>50</sup> and "quite clearly that action to deal with unrepresentative second chamber can no longer be delayed." Noting previous attempts at reform, it made particular reference to the Labour government's 1968 White Paper and to criticisms of it, including that it would have "opened the way for excessive use of patronage."<sup>51</sup>

It suggested that "in theory, the simplest course of action would be the outright abolition of the House of Lords, leaving the House of Commons as a single chamber legislature", but that, "if this course of action is advocated, it must be recognised that it would entail certain problems". It noted arguments concerning lack of parliamentary time and also that it would put more power into the hands of the executive, an argument which would be "widely expressed in the press and elsewhere" and to which "the public might be receptive". On the other hand, it reiterated the argument that the House of Lords was not essential as a revising chamber, noting that if the Commons was overburdened, this might be better dealt with by reforms to the Commons itself and greater scrutiny achieved by more open government and pre-legislative consultation.

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48 *House of Lords: A Labour Party Discussion Paper; Labour Weekly*, 11<sup>th</sup> February 1977. The following paras on pp 72-75 all refer to this.

49 See pp 81-82.

50 See p 64.

51 Cmnd 3799 (See Chapter 1). Amongst other criticisms noted were that the delaying powers would still have been too great and that too much of a decisive role would have been given to crossbenchers.

Although suggesting a single chamber Parliament, the report nevertheless went on to consider what form a second chamber could take, arguing that “if we are to have a second chamber, it is crucial that it should no longer take, the form of an unrepresentative body able to frustrate the role of the democratically elected House of Commons. The most immediate way of ensuring this was to deal with the power of the Upper House, reformed or otherwise.” The paper outlined possible changes in powers, along the line of previous drafts.<sup>52</sup> The second chamber could then, “if so required...continue to play a useful role in the Parliamentary process”, able to initiate legislation, and act as a revising and scrutinising chamber.

Even with such changes, the question of composition would still be extremely important. The Commons would “undoubtedly” attach more weight to a representative chamber; and there was the danger of a Conservative majority, “smarting from a reduction in their powers”, which “would be inclined to be even more awkward than now”. Swamping by means of new creations was considered, but to ensure a Labour majority this “would require the creation of several hundred new peers (up to nearly 1,000)”. This “would clearly involve the use of patronage on an unprecedented and unacceptable scale and might also involve difficulties with the Crown”. It would be “adding to the existing unacceptable system rather than replacing it with a more acceptable one”. The paper considered means of curbing the hereditary element, but noted that “it would still be an appointed House, whose members owe their existence to patronage and would in that respect be unacceptable. At best, ending the hereditary voting might serve as an interim measure, but would not provide a satisfactory solution”.

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52 See, for instance, p 65.

The possibility of an elected second chamber was raised, but noting the various existing and proposed elections, it concluded “a further set of elections on top of these would not seem to be appropriate.”<sup>53</sup> The “major problem” was that an elected assembly “could then appear to have a much greater right to challenge the elected House of Commons, and very probably would do so”. The possible dangers, it was said, were illustrated by the recent constitutional crisis in Australia.<sup>54</sup>

Indirect elections were not supported; nor was the suggestion that “members of the proposed new directly elected European Parliament” or of the proposed devolved assemblies should become members of a second chamber. Amongst other objections, both would confuse what the elections were really for. The possibility of a chamber comprising individuals from “representative institutions” was discussed, but “it would appear to be the very kind of corporatist body which many people – especially Labour people – would find unacceptable” and there would be the objection of a “substantial element of patronage”. It also questioned whether the most able and suitable people would want to serve “in what they would see as a ‘talking shop’”.

The conclusion previously reached by the Study Group was then reiterated - that “there is no suggestion for reformed composition which does not have important drawbacks”; and thus, “the most straightforward and practical course would seem to be to abolish the second chamber altogether”. It added that “there is any case a clear need for reforming the practices of the House of Commons”, which should be done “in such a way as to incorporate those functions which have hitherto been thought necessary to a second chamber”; and that the Study Group was looking at this.

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53 At that time, the government was proposing to establish assemblies in Scotland and Wales; and it was also proposed that members of the European Parliament, who then were nominated from among existing Westminster MPs, would in future be directly elected. In the event, the legislation for devolution to Scotland and Wales fell, but direct elections to the European Parliament went ahead in 1979.

54 In 1975, a constitutional crisis had been precipitated in Australia by a clash between the Upper and Lower Houses of Parliament, where the elected Senate, which had much greater powers than the House of Lords in the UK, refused supply to the government. The outcome was that the Labour government of Gough Whitlam was dismissed by the Governor-General. While not directly comparable with the situation at Westminster, memories of this were then fresh.

One caveat was added, however, to the conclusion in favour of abolition. While only in brackets here, suggesting an afterthought, it was to prove of some significance in future discussions. It stated:

“There is some doubt as to whether the Parliament Act can be used to get through legislation abolishing the House of Lords. The Study Group is seeking clarification on this point.”

The published paper also included a separate section by John Griffith, under the heading ‘We should abolish, not reform the Lords’. This reiterated the argument and some of the evidence he had presented to the Study Group to show that “the case for a second chamber has been much overstated and that a single chamber could adequately do the necessary legislative job.”<sup>55</sup>

Around the same time, Griffith had also published a more polemical article in the *New Statesman*, entitled ‘One House of Parliament’, which did not confine its criticism to Conservative peers.

“Facing them across the Upper House are, with very few exceptions, the rag tag and bobtail of the Labour Party, a collection of superannuated widows, defeated and discredited politicians, political hangers-on to the coat tails of our most recent Prime Minister, rich men and poor academics, not one of them able to achieve his or her membership of that House, except through inheritance or the operation of a system of patronage.”<sup>56</sup>

This seemingly harsh attack by a prominent member of Labour’s Study Group was in marked contrast to the official paper, which avoided any direct criticism of existing Labour peers, who had been fighting an uphill battle against superior Conservative numbers in the Lords.

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55 Labour Party Discussion Paper (op cit). Griffith was then a leading advocate of single chamber government, but this view was not reflected in a more recent book of which he was joint author, which argued that, “as the weight of legislation increased, neither government nor the House of Commons have been able to prevent the onus of revision shifting increasingly over to the Lords” (J A G Griffith and Michael Ryle, with M A J Wheeler Booth: *Parliament – Functions, Practice and Procedure*, Sweet and Maxwell 1989, p 455). Asked later whether he had modified his view on the efficacy of the second chamber, Griffith said that it was useful to have a revising chamber, and that this could be either a second chamber or the House of Commons itself, but reform of the House of Commons would have to be “pretty radical” to allow for this (Interview, October 1998).

56 *New Statesman*, 14<sup>th</sup> January 1977 (Vol 93, pp 39-40).



As it was, the Labour peers had been stung into action by the Study Group's report and the NEC's support for it. On receiving a copy prior to publication, the Government Chief Whip in the Lords told the Party's General Secretary that representation on the Study Group and that representation had not been "as we would have wished."<sup>57</sup> Then Lord Champion informed him that the Labour peers had formed a "Working Group to consider House of Lords reform", under his chairmanship, and asked that the NEC consider their deliberations before arriving at any conclusions on what he described as "submissions" of the Home Policy Committee.<sup>58</sup> He was, of course, too late, since the decision to endorse the Study Group's conclusions and publish the report had already been taken.

The NEC's support for abolition should not have come as a complete surprise to Labour peers, two of whom were members of the Study Group.<sup>59</sup> Their leader, Lord Peart, had been sent an early draft of the report which had discussed the various courses of action, including abolition;<sup>60</sup> and the Group's deliberations had been reported in the press. Moreover, it would seem that some discussions had already been held by Labour peers. *The Times* reported on 28<sup>th</sup> January that:

"Labour peers decided yesterday that, *in spite of strong feeling in the Labour Party in favour of abolishing the House of Lords*, they will go ahead with their own discussions on the reform of the House of Lords and preservation of the bicameral system."<sup>61</sup>

As the Party launched its actual statement, Simon Hoggart observed in *The Guardian* that Labour peers had just set up their own group, "partly as a rival to the official one".<sup>62</sup> At the same time, the Conservative Party, too, had been prompted to act, setting up its own Review Committee, chaired by Lord Home, at least partly in response.<sup>63</sup>

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57 Letter from Baroness Llewellyn Davies to Ron Hayward, 27<sup>th</sup> January 1977.

58 Letter from Champion to Hayward, 9<sup>th</sup> February 1977. Champion was a Labour peer (and former MP), who had been Deputy Leader of the House of Lords, 1964-67.

59 Only one, Crowther Hunt (also appointed a member of the Labour peers' group), was active, but both would have received the papers.

60 RE 842 November 1976 (op cit).

61 'Labour Peers to continue talks on reform', 28<sup>th</sup> January 1977 (*emphasis added*).

62 *The Guardian*, 11<sup>th</sup> February 1977.

63 See Chapter 7.

### Questions about Implementation

Labour's Study Group now turned its attention to the means of implementing abolition. The question which concerned it was whether the Parliament Act of 1911 (as amended by the 1949 Act) could actually be used to abolish the House of Lords. The Secretary had written to the Attorney General, Sam Silkin, seeking advice as to "whether the Parliament Act could be invoked to get through legislation abolishing the House of Lords, if the Lords themselves were to refuse to pass such a measure". In his reply, Silkin indicated that he had discussed this with the Solicitor General, Peter Archer, and supplied a note representing their joint view. He also suggested consulting the Lord Chancellor, Lord Elwyn Jones, "on a matter of such urgent constitutional importance". He stressed they were acting in a non-ministerial capacity; and, indeed, both the letter and note of advice were personally handwritten.<sup>64</sup>

The Law Officers' note observed that the 1949 Act had been carried through using the provisions of the 1911 Act, establishing the principle that the Parliament Act could be used to carry through amendments to itself. Also, a literal interpretation of Section 2 of the 1911 Act suggested it covered all Bills not specifically excepted "and hence would cover a Bill to abolish the House of Lords"; and moreover, despite initial appearances, the Long Title of the Act did not rule this out. They took up the argument concerning the preamble to the Act, indicating its transitional nature, and they concluded that, after 65 years, arguments about constitutional propriety had lost much of their force. The return at a general election of a government openly committed to abolition and to using the Parliament Act for that purpose would outweigh arguments based on the preamble to the 1911 Act.<sup>65</sup> Accordingly:

"It follows that in our view, the Parliament Act 1911, as amended, can be used to carry through legislation abolishing the House of Lords, at least if the electorate had given the government of the day a mandate to use the 1911 Act for that purpose".

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64 Study Group papers: correspondence, 14<sup>th</sup> January and 4<sup>th</sup> February 1977.

65 The preamble to the 1911 Parliament Act indicated that its purpose was to make transitional provision, stating that "it is intended to substitute for the House of Lords as it presently exists a second chamber constituted on a popular instead of hereditary basis, but such a substitution cannot immediately be brought into effect."

Although this might, on the face of it, seem a fairly clear conclusion, Silkin and Archer noted two caveats. The first was that the requisite Speaker's certificate might be refused.<sup>66</sup> While this was unlikely, such a refusal "could cause obvious problems." Secondly, Royal Assent might be refused on grounds of constitutional propriety. Again this was "highly unlikely," but the possibility "cannot be completely ruled out."<sup>67</sup>

This paper was never formally circulated, since Silkin, concerned at the sensitivity of the subject, preferred to report verbally.<sup>68</sup> When he did so, he told the Study Group:

"Their view was that the House of Lords could be abolished by making use of the Parliament Act as amended by the 1949 Act. If the Speakers' Certificate and Royal Assent had been received, the courts probably could not challenge it".

Silkin added, however, that he had consulted Lord Elwyn Jones, again in a personal capacity, and "his view was that the preamble was still relevant, and that it would be a constitutional impropriety to use the Parliament Act to abolish the House of Lords altogether."<sup>69</sup> Thus the most senior lawyers in the government disagreed on this important question of whether the Parliament Act could be used to abolish the Lords. Furthermore, Silkin had said only that the courts "probably" could not challenge it. Clearly there was some doubt on this point.

For the same meeting of the Study Group, a paper from Geoffrey Bing had been circulated, which argued that "there are five reasons, each of which might in itself be sufficient to prevent the Parliament Act being used to abolish the House of Lords", and which taken together would seem likely to make it "constitutionally impossible". He further argued that this could probably "lead to a conflict with the judges and with the Crown as to whether future Acts of Parliament were invalid, as not being enacted as required by law, once the House of Lords was abolished."<sup>70</sup>

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66 Under the terms of the Parliament Act, the Speaker must issue a certificate confirming that the relevant provisions have been complied with, before legislation can receive Royal Assent and be enacted under this procedure.

67 Study Group papers (op cit).

68 Ibid: letter 19th March 1977.

69 Study Group Minutes (11) 30<sup>th</sup> March 1977.

70 RE1037: Reasons likely why it is suggested that the Parliament Act cannot be used to abolish the House of Lords – Geoffrey Bing (March 1977). Bing had been invited to the Study Group meeting, but did not attend. Note that Crowther Hunt would bring up the point about the Coronation Oath again in later discussions (See Chapter 5).

The reasons cited were: firstly, the preamble to the Parliament Act 1911, which was not intended to permit abolition; secondly, the 'Long Title' which presumed a House of Lords in some form until both Houses agreed on a Bill for a new Chamber; thirdly, that it must exist in order for an extension of Parliament to be agreed by both Houses, as provided for; fourthly, the Aim, the Scope and Object of the Act, which did nothing to justify complete abolition; fifthly, possible embarrassment for the Crown, since the monarch promises in the Coronation Oath to govern "according to statutes in Parliament agreed on," raising the question of what would constitute such a statute. Bing's conclusion was:

"It would be legally and constitutionally more simple to retain the House of Lords deprived of all real power than attempt to abolish it by the use of the Parliament Act."<sup>71</sup>

This argument could have taken the Study Group back to the case for a Bill dealing with the powers of the House of Lords, at least as a first step, which had been suggested earlier, but not adopted. However, Silkin was not enthusiastic for a House deprived of its powers, telling the Group he "felt there would be greater propriety in straightforward abolition". As far as the other possible alternative means were concerned, he felt that asking the Queen to create a large number of new peers "would hardly seem to be more proper."<sup>72</sup>

The differing views expressed by eminent lawyers clearly suggested a potential problem in implementing the policy. Moreover, if Bing was correct, a Labour government's whole subsequent programme might be called into question.

When it was suggested that safeguards against Parliament prolonging its life were needed, some members of the Group argued that, in the absence of a written constitution, such provisions could ultimately be got round; but the minutes go on to record:

"it was generally felt that it would be desirable for some apparent form of safeguard to be written in on this point. It was also suggested that, as there was still some doubt about the use of the Parliament Act, we should, in our manifesto, cover both points, making it clear it would be done either by the Parliament Act or the creation of peers".<sup>73</sup>

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71 Ibid.

72 Minutes (11) op cit.

73 Ibid.

The use of the word “apparent” points to the continuing uncertainty as to whether any absolute safeguard could be provided.

The argument about the use of the Parliament Act and how or whether the House of Lords could be abolished would be returned to in the Study Group after the 1979 general election.<sup>74</sup> Meanwhile, it would also be taken up by two academics in the learned pages of the *Law Quarterly Review*. Peter Mirfield (Lecturer in Law, University of Leeds) questioned whether the House of Lords could be abolished, even with the Royal Assent, and further whether even then it would have the force of law. He also doubted that the Parliament Act itself could be used to carry it through. He argued what would seem to be a sort of ‘Catch 22’ position, that “the Parliament Act of 1911 provides for legislation without the consent of the House of Lords only on the basis that the second chamber continues to exist”, and that:

“The conclusion must be that if a Bill to abolish the legislative power of the House of Lords were to pass through Parliament under the Parliament Act procedure, the result would be an invalid Act or something perhaps better not described as an Act at all.”

Speculating about the reactions of the courts, he concluded that “the judiciary...would face a minefield of decisions”.<sup>75</sup>

A contrary argument was then put by George Winterton (Senior Lecturer in Law, University of New South Wales), who concluded that, whatever the political force of Mirfield’s argument, “it has no legal significance”; and that “there are, in fact, no legal obstacles to the abolition of the House of Lords”. He suggested that, in any case, there could be means of achieving de facto abolition, but that these should not be necessary.”<sup>76</sup>

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74 See Chapter 5.

75 ‘Can the House of Lords be Lawfully Abolished?’ *Law Quarterly Journal*, January 1979 (Vol 95, pp 36-58).

76 ‘Is the House of Lords Immortal?’, *Law Quarterly Journal*, July 1979 (Vol 95, pp 383-392).

Since both lawyers and academics were divided on the issue, it seems hardly surprising that the Labour Party was, in the event, unable to arrive at a wholly conclusive view.<sup>77</sup>

### 1977 Party Conference

The statement issued by the NEC to be put to the 1977 Conference was based very much on the earlier 'Discussion Paper' – indeed, apart from necessary presentational changes, much of it was identical. Some amendments were designed to make a more positive, less conditional statement in support of abolition; and it omitted the separate section by Griffith, instead incorporating some of his supporting arguments in the main text. Having stated the intention to come forward with a statement on reform of procedures and practices of the House of Commons, it added an initial proposal to take account of the abolition of the Lords:

“in relation to the tidying up and revising functions at present carried out by the House of Lords, it is proposed that a special form of select committee should be set up to consider legislation after it has received its third reading.”<sup>78</sup>

Also the all-important conclusion was amended to take account of the debate on whether and how the abolition of the House of Lords would be carried through. Having stated that

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77 By contrast, the Conservative Party's Review Committee apparently accepted that the House of Lords could be abolished (see Chapter 7). The question has not subsequently been resolved. The Labour Party's further deliberations in the 1980s were inconclusive (see Chapter 5). In current reference texts, A W Bradley and K D Ewing contend that the Parliament Act could be used to abolish the Lords (*Constitutional and Administrative Law*, 13<sup>th</sup> edition, Longman 2003, p 71), whereas O H Phillips, P Jackson and P Leopold question whether the 1911 Act could be used to amend itself and thus whether the 1949 Act is itself valid (*Constitutional and Administrative Law*, 8<sup>th</sup> edition, Sweet & Maxwell 2001, pp 79-81). However, the Royal Commission on the Reform of the House of Lords stated that the Parliament Acts could be amended under their own procedures (Cm 4534, *A House for the Future*, HMSO 2001, p 52).

78 *The Machinery of Government and the House of Lords (1977)*.

“clearly there are immense difficulties with any attempt to provide a reformed second chamber”, it re-iterated that “we certainly cannot allow a second chamber to continue on the basis of heredity and patronage, and that “the most straightforward and practical course would be to abolish the second chamber altogether.” It then added the following:

“We believe that Labour’s next Manifesto should contain a commitment to introduce legislation at any early stage in the new Parliament and should include a passage along the following lines:

“Should we become the Government after the next General Election, we intend to abolish the House of Lords. No doubt, given such an electoral mandate, the Lords would agree to this, but should they not, we would be prepared to use the Parliament Act or advise the Queen to use her prerogative powers to ensure this. Unless something else was done, this would remove the Lords’ complete veto on an extension of the life of the House of Commons beyond five years. To safeguard electors’ rights, therefore, we propose that such extensions should be subject to approval by a Referendum or, in time of war, by a two-thirds majority of the House of Commons.”<sup>79</sup>

This passage was clearly intended to get round the potential difficulties that had been identified. How far it succeeded is open to question. Despite saying “no doubt” the Lords would agree, it immediately cast doubt on this by saying “should they not.....”. This whole question was to be re-opened after the 1979 general election, but for the time being, at least, it would seem to have been laid to rest.

Although labelled an ‘interim statement’ (because other issues relating to machinery of government remained to be dealt with), this was, in fact, the definitive statement of Party policy on the Lords. It was accepted by the NEC’s Home Policy Committee as it emerged from the Study Group, without any dissent being noted.<sup>80</sup> This could have provided a further opportunity for any opponents of the policy on the NEC to intervene, although a reversal of the earlier decision would have been unlikely at this stage.

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79 Ibid.

80 Home Policy Committee Minutes, 19<sup>th</sup> July 1977.

The Labour peers had meanwhile put forward some proposals of their own. Their Working Party, under Lord Champion, had concluded that they agreed with Bagehot that “the difficulty of reforming an old institution like the House of Lords is necessarily great.”<sup>81</sup> The NEC’s Study Group had, of course, come to a similar conclusion and recommended abolition. Unsurprisingly, the Labour peers did not so recommend. Instead they proposed that membership be confined to life peers and hereditary peers of first creation; other hereditary peers would lose the right to sit, although they could be eligible for nomination to life peerages. There would also be a place for law lords and for ten bishops, with consideration given to other religious bodies in future creations. From this body, about 250 “voting peers” would be selected, so as to reflect party balance in the Commons, with the parliamentary parties in the Lords determining composition of their groupings. Other peers would be able to participate in the work of the House, but not vote. Nominees for future creations would be made by a Commons’ Select Committee, chaired by the Prime Minister, who would then select from them. Delaying powers would be reduced to six months (other than for legislation to extend a Parliament) and the Commons would be able to override the Lords on delegated legislation.<sup>82</sup>

These proposals were in many respects similar to those which had been put forward unsuccessfully in 1968/9. In particular, they provided for a two-tier House of voting and non-voting peers; and, on the face of it, prime ministerial patronage would have only been slightly circumscribed. It might be considered surprising that such proposals should have been thought to stand any greater chance of success this time round. As David Wood noted in *The Times*, they could help keep the Lords in being much as it is, for a long time to come, but “for internal party reasons, the proposals cannot be practical politics.”<sup>83</sup>

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81 Report circulated to the NEC Study Group as RE 1232: House of Lords Reform. (Reference is to *Bagehot: The English Constitution*, op cit.)

82 Ibid.

83 ‘A House not to defeat or destroy’, 4<sup>th</sup> July 1977.



No changes to the NEC's proposals resulted. The Machinery of Government Study Group simply noted the paper, regretting it had only been received after the Study Group had reached its conclusions.<sup>84</sup> The Study Group's proposals, accepted by the NEC, would be going forward to the Party Conference later in October. Meanwhile support for its position was expressed by the executive bodies of both arms of the Labour movement in a joint policy statement issued by the Labour Party and the TUC, which included the following:

“The past year has shown the imperative need for early action to reform the House of Lords and we look forward to its abolition”.<sup>85</sup>

The debate on the House of Lords was one of the highlights of the 1977 Labour Party Conference in Brighton. *The Times* reported that the Conference “erupted into a lather of emotion” as it voted for abolition.<sup>86</sup> Alongside the NEC statement was a resolution supporting abolition:

“This Conference declares that the House of Lords is a negation of democracy and calls upon the Government, the Parliamentary Party and the National Executive Committee to take every possible step open to them to secure the total abolition of the House of Lords and the reform of Parliament into an efficient, single chamber, legislating body, without delay.

“Conference calls for this measure to be included in the next manifesto as set out in the National Executive Committee paper. Conference instructs the National Executive Committee to organise a great campaign throughout the movement on this issue.”<sup>87</sup>

It was moved by the Transport and General Workers Union, the largest affiliated trade union, which had strongly supported some of the legislation which had been held up in the House of Lords. Curiously, Tony Benn noted in his diary that, over lunch shortly before, the TGWU General Secretary, Jack Jones, had said to him:

“I hope you're not going to come out in favour of a second chamber. We want total abolition of the House of Lords”.

Benn noted caustically: “Of course, if he'd read the House of Lords statement, he'd know that was our position.”<sup>88</sup>

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84 Study Group Minutes (15) 7<sup>th</sup> July 1977.

85 *The Next Three Years and Into the Eighties*, July 1977 (Para 40).

86 *The Times*, 6<sup>th</sup> October 1977.

87 Labour Party Conference Report 1977, p 270.

88 *Conflicts of Interest – Diaries 1977-80*, p 213: entry for 12<sup>th</sup> September 1977. Surprisingly, given his interest and involvement, this is the only reference to the issue contained in Benn's published diaries for this year.

In the debate, Jones argued fiercely for abolition, pointing out that legislation had been “bruised and delayed by a vindictive and unrepresentative second chamber” and concluding that “the case for abolition is overwhelming.” He asserted further that “this commitment must be included in the next manifesto at the next general election. With one stroke, a firm decision today at this Conference would give greater encouragement to those who believe in a democratic society.”<sup>89</sup>

Government ministers kept a low profile. Perhaps this was because, as political commentator, Ian Aitken, had observed on the NEC statement:

“The document seems certain to be regarded as an embarrassment to Mr Callaghan. Yet even the most sceptical ministers are bound to endorse the political case made against the present House.”<sup>90</sup>

Yet, notwithstanding any potential embarrassment, as already noted, ministers on the NEC had not opposed it there; and at the Conference it was left to Baroness Llewellyn Davies, to argue against abolition of “the poor old deeply unpopular House of Lords”. Even she felt the need to acknowledge:

“Of course the House of Lords is indefensible, based as it is on hereditary peerages, and I do not pretend to defend that. I believe that all titles should be abolished, and I believe that every Labour member of the House of Lords thinks the same thing.”<sup>91</sup>

However, she appealed to the Party to think the matter through, referring to valuable work done by the Lords in amending legislation – without it Bills would go through imperfectly and then be interpreted in courts. “I do not believe the people will respect us if we divert all our too few resources from the real things that matter to a constitutional side issue like this.”<sup>92</sup>

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89 Conference Report, p 270.

90 *The Guardian*, 5<sup>th</sup> September 1977.

91 Conference Report, pp 272-3. Despite this assertion, the Labour peers’ own proposals would not have eliminated titles.

92 *Ibid.*

It was reported that Joan Lester, in the chair, looked about vainly in an attempt to get a balanced debate.<sup>93</sup> However, the veteran former Minister, Lord Shinwell, then in his nineties, also spoke against abolition, arguing again that the Party should concentrate on other issues, but although he won sentimental applause, the outcome of the debate was never in doubt.<sup>94</sup> John Forrester wound up for the NEC, saying “what we cannot mend we must now determine to end”; and the resolution was carried on a card vote by 6,248,000 to 91,000. The NEC statement was then carried on a show of hands.<sup>95</sup>

Given the overwhelming support for abolition, a card vote might have seemed superfluous. However, *The Times*' report suggested it was taken to make the position clear beyond doubt to the government, which implies doubts about the government position in the minds of those asking for it. Significantly, a formal two-thirds vote would ensure it was included in the Party's programme from which, under the terms of the constitution, the election manifesto would be drawn.<sup>96</sup> Jack Jones had, of course, made a point of emphasising the need for its inclusion in the next manifesto in his Conference speech. This, as will be seen, became a matter of major controversy at the time of the general election in 1979.<sup>97</sup> Supporters of the policy had certainly not forgotten it, even though nothing became of the “great campaign” called for on the issue.<sup>98</sup>

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93 Report in *The Times* (op cit).

94 Although Shinwell had supported the Conservatives in blocking the Labour government's Aircraft and Shipbuilding Bill, this was not mentioned. (It seems likely that most delegates were unaware of this.)

95 Conference Report, p 275.

96 Provided for in Labour Party Constitution, Clause V.

97 See Chapter 4.

98 Relevant NEC Reports make no reference to any ongoing campaign; and the author, who would have been involved, has no recollection of any such campaign. Conference resolutions were often the result of a complicated drafting and negotiating process and would sometimes include aspects which were not followed up. However, if the NEC and the policy's supporters had been sufficiently motivated, this one probably would have been.

However, there was at the same time an upsurge of interest elsewhere in the issue of Lords' reform. The work of the Conservative Party's Committee was well under way; and that autumn also saw plans from a former Attorney General and papers from two Conservative pressure groups. The Liberals, too, had begun work on plans for Lords reform.<sup>99</sup>

### **Implications for the Commons**

Labour had never planned simply to look at the House of Lords in isolation. Indeed, the NEC statement had specifically stated the intention to bring forward proposals on reform of the House of Commons.<sup>100</sup> There had already been some preliminary discussions in the Machinery of Government Study Group on specific changes to Commons procedure to take account of the abolition of the House of Lords. In particular, the Group had recognised the need for some form of procedure to take a second look at legislation. One of its members, John Griffith, had suggested a period between the Commons Committee and Report Stages, for which three months might be necessary. He acknowledged that this would mean that most complex measures would have to conclude their Committee Stage by April and that their Report Stage would be longer; but he argued that, since the quantity of positive revision by the Lords was not great, "it could be absorbed by the Commons without great difficulty".<sup>101</sup> However the Group was concerned at the effect of an April deadline on the legislative timetable. Instead, a special form of Select Committee was suggested to consider legislation after Third Reading, although it was envisaged that not all legislation need necessarily go through this, if agreement was reached through the "usual channels".<sup>102</sup>

Subsequently, it was decided to include a less detailed reference in the 1977 Statement.<sup>103</sup> Further work was clearly necessary. No doubt, had the plan been pursued in the form suggested, critics would have asked how a procedure intended to tidy up and revise legislation would work, if some legislation were to be excluded.

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99 See Chapters 7 and 9.

100 *The Machinery of Government and the House of Lords*, p 9.

101 RE 1150: One House of Parliament by John Griffith (May 1977).

102 Study Group Minutes (13) 11<sup>th</sup> May 1977.

103 Study Group Minutes (15) 7<sup>th</sup> July 1977.

Following the 1977 Conference, the Study Group was able to look in greater detail at reform of the House of Commons, establishing a small drafting committee, from which a range of proposals, including a new Revision Committee after Report Stage, emerged. A statement agreed by the Study Group in March 1978 was then subject to minor amendments by the NEC's Home Policy Committee and consultation with the Parliamentary Labour Party, before approval by the NEC and publication in July 1978.<sup>104</sup> It proposed new procedures up to and after Second Reading, with a Committee Stage involving new and more powerful committees (which would be able to take evidence), and then an extra stage.

“After the Report Stage, the Bill would go to a Revision Committee of the House of Commons which would be set up to enable a second look to be taken to see if any obvious flaws or drafting mistakes had been made in the legislation and to see if any changes were necessary. It is at this stage that “second thoughts” on the precise drafting of legislation could be considered. The Revision Committee would report with recommendations to the House, which would approve or reject them. Effectively this would be performing the only useful role which the House of Lords now performs.”<sup>105</sup>

The statement also included, in a “miscellaneous section”, a couple of additional points which seemed to follow on from the 1977 Statement. These were that hereditary peers should revert to the normal rights and privileges of ordinary citizens, with no special status, and that:

“The House of Lords as Court of Appeal should be given accommodation outside Westminster and a Royal Commission should be set up to decide the future of the Law Lords”.<sup>106</sup>

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104 Study Group Minutes (20) 22<sup>nd</sup> March 1978, (21) 19<sup>th</sup> April 1978, (22) 26<sup>th</sup> April 1978, (25) 14<sup>th</sup> June 1978. (NB An earlier version, before final amendment, had been published with 'green paper' status in April 1978).

105 NEC Statement: *Reform of the House of Commons* (1978) para 8. By inference, the proposed Revision Committee would, like other Committees, reflect the political balance in the Commons, although this was not spelt out. Other proposals included provision for carrying over legislation from one Parliamentary session to the next.

106 Ibid (Para 18).

This suggests some uncertainty about how to deal with law lords – an aspect which the Group had not considered in detail and which had barely rated a mention in the 1977 statement. In addition, this wording could be interpreted as envisaging that the House of Lords might continue to exist, at least in a nominal form, for some time to come. This was despite the overwhelming Conference decision on abolition, which had excited so much interest at the time, and which would prove to be significant to the development of the Party's forthcoming election manifesto, as will be seen in the next Chapter.

#### 4. LABOUR'S POLICY AND THE 1979 MANIFESTO

During the course of 1978, attention became increasingly focused on the likely imminence of a general election. Although the Parliament could in theory run until the autumn of 1979, the Labour government had no overall majority; and the Liberals announced in the summer that they would withdraw from the Lib-Lab pact when the new Parliamentary session began in November.<sup>1</sup> An autumn election was widely expected. Some MPs had cleared their filing cabinets in anticipation and the party machine had materials printed ready for the campaign;<sup>2</sup> while in Downing Street, according to his senior policy adviser, the Prime Minister's staff "had mentally adjusted for an electoral battle".<sup>3</sup>

In preparation for the forthcoming election, advance thought was given to the contents of Labour's manifesto. In the summer of 1978 a number of joint working parties were set up, with representation from the National Executive and the Cabinet, "in order to reach preliminary agreement on items for inclusion in the manifesto on the basis of the Party programme."<sup>4</sup> Amongst these was a Working Party on Government Machinery, which met twice in July 1978.<sup>5</sup>

A paper prepared for this Working Party noted that abolition of the House of Lords would require legislation. "This would be a major constitutional measure, debated through all stages on the floor of the House. It would almost certainly extend over two sessions, since the Parliament Acts would have to be used against the Lords' opposition to their own abolition". It suggested the most complicated sections of the Bill would be those dealing with judicial and allied functions

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1 Callaghan: *Time and Chance*, p 513.

2 Ibid; also personal recollection.

3 Donoghue: *Prime Minister - The Conduct of Policy under Harold Wilson and James Callaghan*, p 167.

4 NEC Report 1978, p 44. Abolition of the Lords would now be considered part of the programme.

5 This comprised Frank Allaun, Tony Benn, John Cartwright, Barbara Castle and Eric Heffer (on behalf of the NEC); Michael Foot, John Morris, Lord Peart and Merlyn Rees (on behalf of the Cabinet); plus secretariat (Elizabeth Thomas and Tim Lamport; Geoff Bish also attended). Castle and Cartwright did not attend either meeting. (Of these only Benn, Heffer and - nominally - Foot, plus the author as Secretary, had been involved in the NEC's Study Group).

(which, as previously noted, had not been addressed in detail). It was also suggested that further further legislation would be required, if the proposal to hold a referendum on the extension of the life of a Parliament was adopted, but that consequent reforms of the Commons to deal with the revising functions of the Lords could probably be done without legislation.<sup>6</sup>

At its second meeting, a clear decision was reached on the abolition of the House of Lords:

"Michael Foot proposed and it was agreed with one exception that the Working Group should recommend that this commitment should be included in the Manifesto. Fred Peart wished to have it recorded that he was implacably opposed to the abolition of the House of Lords and believed that it would be a liability electorally."<sup>7</sup>

In view of the controversy that was to ensue, it is worth noting that the proposal to include abolition of the Lords in the manifesto was made by Michael Foot, the Party's Deputy Leader; and that it was agreed at a meeting with five Cabinet Ministers present, of whom only one - the Leader of the House of Lords - dissented.<sup>8</sup> Indeed, at one point in this particular meeting, when Lord Peart had temporarily left the room, Foot (who was in the chair) jocularly suggested: "Let's all agree to abolish the House of Lords before Fred gets back." Peart did, of course, get the chance to make his position clear, but he was in a minority of one.<sup>9</sup>

On the detail, the Working Party thought that reference to a referendum in case of extension of the life of a Parliament should be omitted - "the safeguard required could be guaranteed by specifying a two-thirds or other majority in the Commons". There was some discussion on how the abolition would be carried

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6 Internal Working Party documentation.

7 NEC/Cabinet Working Party on Government Machinery: Minutes (2) 26th July 1978.

8 The five ministers concerned were Foot, Rees, Peart, Morris and Benn (although Benn was there as a representative of the NEC).

9 Personal recollection.



through - with Tony Benn arguing for reference not only to use of the Parliament Acts but also to prerogative powers to create peers; and Michael Foot disagreeing, arguing that the former would be sufficient. Eventually it was decided that compromise wording, along the lines that "we would, if necessary, secure the creation of the required majority in the House of Lords", would be included in brackets in the manifesto draft, with the decision on inclusion to be taken at the appropriate NEC/Cabinet meeting.<sup>10</sup>

Thus, while agreement had been reached on the commitment to abolition itself, differing views remained on what would be necessary to carry this through. These had not been resolved by the Party's Study Group or by the NEC/Cabinet Working Party; and it was to re-surface after the election, with Benn and Foot again taking different positions.<sup>11</sup>

Such disagreements on detail notwithstanding, there would seem to have been good reason to expect that, when the election came, the manifesto would include a commitment to abolish the House of Lords. The day before the NEC / Cabinet Working Party agreed to this, the Prime Minister had reportedly conceded as much at a meeting of the TUC / Labour Party Liaison Committee.<sup>12</sup> Then, on 3rd August 1978, when asked in the Commons by Dennis Skinner whether he would get rid of the House of Lords, he made the following reply:

"As for the abolition of the House of Lords, this has been an aspiration of many of us for many years. I am glad to say that it has been the policy of my party for many years. Because of the constitutional difficulties which I have seen in getting certain Bills through it has not been possible yet to achieve it, but we must always strive to move onwards and upwards."<sup>13</sup>

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10 Working Party Minutes, op cit.

11 See Chapter 5.

12 *The Times*, 25th July 1978.

13 *House of Commons Debates* (Vol 955, Col 932), 3rd August 1978.

Perhaps significantly, Callaghan did not respond directly when challenged by the Leader of the Opposition, Margaret Thatcher, as to whether he supported the aspiration of his party to do without a second chamber altogether. Instead he emphasised that he had "never found any legitimate authority whatever for an undemocratic unelected chamber in this country" and that:

"I know of no-one, save the reactionary Conservative Party who would seek to defend an unelected House of Lords."<sup>14</sup>

Nevertheless, this led Francis Pym, the Opposition spokesman on Commons affairs, to claim that, "in his guise as a moderate, Mr Callaghan is in reality driving onwards and upwards towards the socialist goal of an unicameral state".<sup>15</sup>

The Commons exchanges took place on the last day before the recess and what was widely expected to be an autumn general election. In the event, the Prime Minister decided after all not to call an election;<sup>16</sup> so some six months were to elapse before the actual manifesto came to be drafted.

Meanwhile, the drafts from the NEC/Cabinet Working Parties had been sent to the NEC's Home Policy Committee in September 1978, which then asked party officials to prepare a 'Campaign Document' "as the basis for future manifesto consultations". The Home Policy Committee considered the document 'NEC Proposals for the Manifesto' at two meetings in early December, following which a meeting of key members of the NEC and the Cabinet was held on 20th December. This group then became, in effect, a manifesto working group which held eleven meetings between January and March 1979. According to the Party's Research Secretary, Geoff Bish, "considerable progress" was made at these and through informal contacts, but "substantial differences" remained to be resolved."<sup>17</sup>

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14 Ibid, Cols 932-33

15 Reported in *The Times*, 5th August 1978.

16 He announced this in a broadcast on 7th September 1978 (see Callaghan, op cit. pp 517/18).

17 *What Went Wrong* (ed Ken Coates), Chapter 10, which is extracted from a paper by Geoff Bish presented to the NEC's Home Policy Committee following the election. The account in *The British General Election of 1979* by David Butler and Dennis Kavanagh (Macmillan 1980) tells a broadly similar story. (Butler would almost certainly have spoken to Bish when compiling it.)

Leaks of the draft presented to the Home Policy Committee in December had appeared in the press. *The Daily Telegraph* noted the commitment to abolish the Lords and if necessary secure a majority to bring it about, and also the reference to the proposed safeguard of a two-thirds majority with regard to the life of the Parliament. The newspaper then went on mischievously to infer from the proposed safeguard that Labour actually planned to extend the life of Parliament.<sup>18</sup>

Although the draft reflected the position agreed in the Working Party earlier in the year, party officials had harboured doubts about this point, as shown in a comment accompanying the draft, which said that it "detracts from a clear crisp commitment - and draws attention to a possible drawback which it is not possible to answer clearly in the text."<sup>19</sup> The Home Policy Committee then sought to clarify the position by agreeing a passage stating that "the Bill to abolish the House of Lords will entrench the automatic dissolution at the end of each five year period".<sup>20</sup> *The Daily Telegraph* noted that members of the committee had claimed deliberate misrepresentation by the press. Nevertheless, its report was headed 'Labour Drops Long Life Commons.'<sup>21</sup> This episode would have helped show the potential for a hostile press to raise scares, whether well founded or not.<sup>22</sup>

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18 'Longer Parliament Move by Labour', *The Daily Telegraph*, 11th December 1978.

19 RE 1898: NEC Proposals for the Manifesto: First Rough Draft (December 1978).

20 Home Policy Committee Minutes, 12th December 1978.

21 *The Daily Telegraph*, 13th December 1978

22 This possibility had been anticipated earlier, for instance in the 1977 NEC statement (see p 72). The matter was discussed further in subsequent meetings between members of the NEC and the Cabinet, including the possibility of a reduction in the limit on the duration of a Parliament, but no new policy decisions were taken (Private papers).

Having decided against a general election the previous autumn, Callaghan was forced to hold one at a time not of his choosing when, having failed to secure sufficient support in the devolution referenda in Scotland and Wales, his government was defeated in a vote of confidence in the House of Commons on 28th March 1979.<sup>23</sup> Just two days earlier, Michael Foot had publicly reaffirmed Labour's policy on the House of Lords. In response to a question by the Shadow Leader of the House, Norman St John-Stevan, suggesting a referendum on the House of Lords, he said:

"I am in favour of its abolition and I believe the proper body to carry out the abolition of the House of Lords is the House of Commons".<sup>24</sup>

As noted above, some differences remained on the NEC / Cabinet manifesto working group at the time the government was defeated. The NEC had not yet had a chance to consider these. A special meeting was arranged for 2nd April, but 10 Downing Street had prepared its own draft manifesto, said to be based "to some extent" on drafts agreed in the NEC/Cabinet Working Party. Bish said that he had first sight of this on 30th March:

"It was, in his view, appalling. Not only did it ignore entire chapters of Party policy; it overturned and ignored many of the agreements which had been laboriously hammered out within the NEC/Cabinet Group."<sup>25</sup>

Butler and Kavanagh suggest that the existence of this draft (prepared by Tom McNally and David Lipsey) should have come as no surprise. "It was widely known that there was such a draft", although virtually no member of the Parliamentary Party had seen it.<sup>26</sup>

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23 See Callaghan (op cit) pp 558-563.

24 26th March 1979, *House of Commons Debates* (Vol 965, Col 25).

25 *What Went Wrong*, pp 196-197.

26 *The British General Election of 1979*, p 147.

A revised draft was then prepared by the Research Department for the NEC meeting on 2nd April, but, according to Bish's account, this was never discussed.<sup>27</sup> However, the meeting agreed to establish a drafting committee comprising the Prime Minister (Callaghan), the Party Chairman (Frank Allaun), the General Secretary (Ron Hayward), plus Michael Foot, Tony Benn, Denis Healey, Eric Heffer and Lena Jeger.<sup>28</sup> Bish noted that it was given no remit on policy issues, but was instructed to work on the basis of the Research Department draft ("which it did not do") and to make it shorter ("which it certainly did").<sup>29</sup>

The drafting committee met the same evening and continued till 3.30 the following morning. It was apparently the first time NEC members had seen the No. 10 draft (which was less specific and omitted reference to certain non-agreed policies), but this became the basis for discussion. Callaghan insisted the number of commitments be strictly limited and suggested instead the NEC should approach ministers after the election, when he would ensure progress, saying: "You have to trust us to do things that you want us to do without putting it in the manifesto." It would seem that the trust was not there, but, according to Bish, "NEC members became fully aware only at this meeting about the degree of hostility within the the Cabinet to certain commitments."<sup>30</sup>

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27 *What Went Wrong*, p 197.

28 NEC Minutes 2nd April 1979. It was originally proposed to remit the draft to just the first three, but an amendment moved by Heffer was carried, remitting it to the larger group. (NB These minutes were erroneously dated 2nd May.)

29 *What Went Wrong*, p 197.

30 *Ibid*, pp 198, 199; also Butler & Kavanagh (op cit) pp 147, 148.

One issue on which no agreement was reached was the House of Lords. Tony Benn recorded in his diary a colourful account of this marathon meeting, which quotes Callaghan as saying "I won't have it, I won't have it", by implication in response to a proposal to include abolition of the Lords. Then, he says, Heffer banged the table and challenged Callaghan's right to dictate, to which Callaghan responded by saying that, if they wanted it, they would have to change the leader:

"I am the Leader of the Party and I have to decide what is right. I have responsibilities that I have to take and I won't do it".<sup>31</sup>

Butler and Kavanagh confirm that Callaghan twice threatened to resign if this was included and record that "at one point Mr Heffer reminded Mr Callaghan he was neither God nor the Labour Party."<sup>32</sup> Considerable acrimony certainly seems to have been generated on this particular issue.<sup>33</sup>

A formal decision on outstanding contentious issues was deferred to the full Clause V meeting of the NEC and Cabinet on Friday 6th April,<sup>34</sup> with a press conference planned for that evening and the official campaign launch the following Monday. According to Benn, a Cabinet meeting was held in the interim, at which the question of Lords' abolition was raised; and, when asked how such a question would be settled, "Jim said: 'I will decide it'".<sup>35</sup>

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31 Benn: *Conflicts of Interest - Diaries 1977-80*; entry for 2nd April 1979 (pp 480-482).

32 Butler & Kavanagh (op cit) p 149. Benn's account phrases this slightly differently, quoting Heffer saying to Callaghan: "Who are you to dictate? Who do you think you are? You are just a member of the Party". The gist is the same; but interestingly, Benn recalls Heffer actually using the phrase "You're not God, you're just a member of the Labour Party" to Callaghan a year earlier at a meeting of the TUC/Labour Party Liaison Committee on 24th July 1978, on the issue of public ownership of the building industry (*Diaries*, op cit, p 327). This was clearly not the first argument about the rights of the NEC and the Party leadership in determining policy, but it came at a crucial time.

33 McNally dissented from this view, saying that "there may have been an exchange, but there was certainly not anything approaching a row on it" (Interview, June 1999). However Callaghan, himself, broadly confirmed the other accounts and stated explicitly that he had had "a terrible row" in the NEC and with Eric Heffer in particular (Interview, May 1998). Heffer may have felt particularly incensed, since he had chaired the relevant committee which drew up the policy, and thus felt slighted - in the recollection of the author, this would have been in character.

34 So called after Clause V of the Labour Party constitution, which provides for such a joint meeting to determine the manifesto.

35 Diary (unpublished version); entry for 5th April 1979.

When it came to the Clause V meeting, "there was precious little success for the NEC" on the issue.<sup>36</sup> According to Benn's published account, he attempted another draft and "may have compromised too early", but he had in mind Callaghan's threat to resign the leadership. He noted that those on his side included Michael Foot, Neil Kinnock and John Smith (who, of course, were to be the next three leaders of the Party), "but the reality was that Jim wouldn't have it"; and in the end a compromise put forward by Foot was agreed.<sup>37</sup> Thus the manifesto, as published, stated:

"No-one can defend on any democratic grounds the House of Lords and the power it exercises in our constitution. We propose therefore, in the next parliament, to abolish the delaying powers and the legislative veto of the House of Lords."<sup>38</sup>

This position was, in fact, similar to that suggested to the NEC's Home Policy Committee and Machinery of Government Study Group at the outset of the deliberations on the issue.<sup>39</sup>

This ill-tempered episode was scarcely the happiest way to start a difficult election campaign. Ironically, it occurred despite the considerable advance planning there had been for the manifesto. According to Bish, "the NEC had been set up to agree the very kind of manifesto in the very circumstances it had always hoped to avoid". Arguing for joint determination of policy and strategy, he suggested:

"It is surely quite wrong for the Party to be encouraged to adopt, almost without dissent, major planks of policy (as it did on the House of Lords) and then, at the very last fence, to be faced with a complete veto on its inclusion in the manifesto."<sup>40</sup>

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36 Bish, in *What Went Wrong*, p 200.

37 *Diaries* (op cit), entry for 6th April 1979 (pp 486-7). Foot's recollection was that, although after the initial drafting meeting, he may have asked Callaghan to reconsider, by inference he had not pushed the matter further. He emphasised the importance he attached to Callaghan's leadership - "I was in favour of helping Callaghan" (Interview, March 1999).

38 *The Labour Way is the Better Way*, Labour Party Manifesto 1979 (Dale, op cit, p 231).

39 See Chapter 3. In retrospect, two of the leading advocates of the abolition policy recognised the case for the pragmatic alternative. Tony Benn acknowledged that there might have been a case for a Bill to tackle the powers; and John Griffith agreed that this could have been "a politically much more viable exercise" (Interviews June 2000, October 1998).

40 *What Went Wrong*, pp 200, 203.

He said later that the NEC / Cabinet Working Party on Government Machinery had been "an example of a Group that worked", where ministers and NEC members had agreed drafts. He had pointed out at the controversial No. 10 meeting on 2nd April that the policy on the Lords was something which had been discussed and agreed, rather than simply stuck in a draft; but he recalled that Benn "didn't make a big thing of this."<sup>41</sup>

Writing five years after the event, Michael Foot claimed it was "one chief modern myth" that Callaghan and Wilson invented a leader's veto on the manifesto commitments, and that Callaghan wielded this with a special relish and ferocity, notably on the House of Lords at the meetings in 1979 - "it was never quite like that". He acknowledged that there had been discussions in NEC and PLP committees, but argued the timetable was forced by the Commons defeat and that correct procedures had been followed.<sup>42</sup>

Whether or not correct procedures were followed, the leader could still have exercised what in practice amounted to a veto, even if he formally possessed no such power. In such a situation, decisions on content could not be deferred, as they had been on earlier occasions. The insistence of the leader, particularly if backed by the threat of resignation on the eve of an election, must carry considerable force, as Benn himself has acknowledged. Recalling the episode later, he observed, with understatement, that "to lose a Prime Minister then would have been a bit of a handicap."<sup>43</sup> Butler and Kavanagh incline to the view that there was effectively a veto at the Clause V meeting:

"Mr Callaghan correctly observed that, according to this clause, the manifesto had to be agreed between the NEC and the Parliamentary leadership. He interpreted this to mean that if he did not agree with a proposal it could not be included and that, of course, was the political reality, though no leader had been so blunt in the past".<sup>44</sup>

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41 Interview, March 1999. Bish said he was annoyed about this. When also interviewed, Benn recalled Bish berating him over it; while McNally said he thought Benn had been "going through the motions" at the meeting..

42 *Another Heart and Other Pulses* (Collins, 1984) p 31.

43 Speaking at Queen Mary and Westfield College, University of London, 1st March 1995.

44 Butler & Kavanagh (op cit) p 148.



Moreover Callaghan thought so himself, saying later quite plainly: "well, I've always had a veto, obviously."<sup>45</sup>

It is clear that Callaghan was implacably opposed to including abolition of the Lords in the manifesto. Why should this have been the case? In his memoirs, he noted:

"I had been vaccinated against enthusiasm for legislation on constitutional reform by a salutary experience as Home Secretary in 1968."<sup>44</sup>

He was referring here to his close involvement in Labour's abortive attempt to reform the Lords in 1968/9. With hindsight, he observed that "a large majority is not enough by itself to carry a constitutional Bill, for the opportunities for delay by a handful of determined members are infinite". Thus he concluded:

"Even when firmly convinced that the proposed constitutional changes rank with the wisdom of Solomon, do not leave harbour until all legislative cargoes have arrived safely at their destination, for there is no limit to the uncharted rocks that can wreck this particular freighter during its voyage".

He added, perhaps significantly, that "this was graphically illustrated by his own government's difficulties over devolution legislation".<sup>47</sup>

It may seem surprising that Callaghan did not attempt to block or oppose the policy on abolition of the Lords at an earlier stage. However, at the time of the manifesto meeting, his government's recent defeat, partly as a result of problems with its devolution policy, may have weighed particularly heavily. As Butler and Kavanagh observed:

"His own government had just failed after another fruitless attempt at constitutional reform, which had consumed a vast amount of Parliamentary time. He was not keen, in his own words, to offer 'another gift to the backbench barrack room lawyers'."<sup>48</sup>

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45 Interview, May 1998.

46 Callaghan (op cit) pp 502-4.

47 Ibid.

48 Butler and Kavanagh (op cit) p 148.

Callaghan, himself, recalled that his opposition was tactical, rather than because of opposition to reform as such:

"We'd got plenty of problems on our plate, without taking on this extra thing of abolishing the Lords, which doesn't arouse a flicker of interest in the country, and would merely be used again by the opposition as another weapon - they'd got plenty in their hands already. I wouldn't have minded if we had been, say, on a winning streak...going ahead with it, if we'd got nothing else to do; but we weren't in that position...We were in a position where we were fighting with our backs to the wall anyway, and I regarded this not as an advantage, as a handicap".<sup>49</sup>

This view was supported by Michael Foot, who had personally been in favour of the abolition policy:

"I think it was just a question of thinking it wasn't going to assist us to win the election and I dare say he was right about that."<sup>50</sup>

Nevertheless, this fails wholly to answer the question of why Callaghan does not seem to have attempted to avert the likely clash at an earlier stage. According to Tony Benn, he had told him as far back as May 1978, that he did not want abolition of the Lords in the manifesto.<sup>51</sup> That, of course, was before the meeting of the NEC / Cabinet Working Party, designed to reach agreement in advance of the manifesto, when there would clearly have been the opportunity to intervene.<sup>52</sup> Benn has also suggested another reason for Prime Ministerial opposition to abolition of the Lords. Asked later why Labour had never done so, he said: "The explanation, I think, is quite simple. A Labour Prime Minister would lose his patronage."<sup>53</sup>

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49 Interview, May 1998, and correspondence with the author, May/June 2004.

50 Interview, March 1999.

51 Benn: *Diaries* (op cit) p 305.

52 When asked by the author about this specifically, Callaghan replied that he "wouldn't have tried to interfere with Michael [Foot]", (Interview May 1998); but this seems rather to miss the point.

53 QMW, 1995.

Notwithstanding such arguments, the actual manifesto commitment - "to abolish the delaying powers and legislative veto of the House of Lords" - could, taken literally, still be regarded as radical, leaving the House of Lords in existence but still with relatively little power.<sup>54</sup> Moreover, it could still have meant time-consuming constitutional reforms for "backbench barrack room lawyers" to get their teeth into. However, it was perceived by many as a climb-down from official policy, forced on the Party by the leader; and this was to have repercussions in some of the bitter arguments which followed Labour's defeat in 1979.<sup>55</sup>

It is interesting to note that, despite the controversy, the issue does not seem to have been especially important in the 1979 election campaign itself. It does not feature significantly in Butler and Kavanagh's account of that campaign, which records that only four per cent of Conservative and six per cent of Labour election addresses (in England and Wales) referred to it.<sup>56</sup> Thus the Conservatives apparently did not see the policy as a major weapon to use against Labour, but nor did Labour see it as an especially important plank in its campaign. After a good deal of excitement, the party manifesto had proposed a more pragmatic approach than that so enthusiastically embraced by the Party Conference. Had it been implemented, it might nevertheless have dealt with the perceived problem of obstruction by the House of Lords. However, the way in which it had been arrived at had provoked resentment in some quarters, the ramifications which would continue to be felt after the general election, following Labour's defeat, as will be shown in the following Chapter.

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54 Bish recalled that, subsequent to the initial argument, No. 10 had been "surprisingly willing to accept fairly strong language in the manifesto", which "which was not all that unradical" (Interview, March 1999). Benn also accepted that the manifesto commitment was fairly radical (Interview, June 2000). His unpublished diaries record that, subsequent to the Clause V meeting he disagreed with Frances Morrell, his political adviser, who had argued that the manifesto was "worse than nothing". Moreover, Eric Heffer had even told him that he was "quite pleased with the whole thing" (entry for 6th April 1979).

55 See Chapter 5.

56 Op cit, p 298.

## 5. LABOUR'S POLICY IN THE AFTERMATH OF DEFEAT 1979-83

### Reaction to Defeat

With Labour now back in opposition, the Party's National Executive Committee, some of whose members had felt thwarted in the drafting of the manifesto, took an early opportunity to assert itself over the outgoing Prime Minister's Dissolution Honours. It took the view that to nominate new peerages would be inconsistent with its policy of abolition and passed a resolution which:

“Taking account of the fact that the Labour Party Conference had voted overwhelmingly in favour of abolition of the House of Lords, requests the Leader of the Party not to nominate any members of the Labour Party for peerages in the Dissolution or any future Honours List and similarly requests members of the Labour Party not to accept peerages if they are offered to them.”<sup>1</sup>

By the time the motion came before the full Executive, in June 1979, Callaghan's honours had already been announced.<sup>2</sup> However, the motion had originally been moved by Tony Benn at the preceding Home Policy Committee, held the night before the expected announcement.<sup>3</sup> Two recipients of honours were actually present at that meeting – namely the retiring National Agent, Reg Underhill, who received a peerage, and the former minister, Judith Hart, who was made a Dame. Although the eventual resolution referred specifically to peerages, there was a discussion about relating it to honours more widely. Benn recalls Hart arguing that “we should exempt Jim's resignation honours.”<sup>4</sup> Although, unsurprisingly, Callaghan's honours list went ahead, the resolution could be seen as an embarrassment for the party leader; and it could be used to discourage future creations. Furthermore, by implication it raised the question of how far a party committed to abolition of a body such as the House of Lords should nevertheless seek to play a role in it, so long as it continued to exist.

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1 Labour Party NEC Report 1979, p 72.

2 Callaghan's biographer observes that he was anxious to avoid anything similar to the “sleazy impact” made by Wilson's resignation honours and that Callaghan's honours were overwhelmingly to political associates and Labour Party colleagues (K O Morgan: *Callaghan – A Life*, p 203).

3 Home Policy Committee Minutes, 11<sup>th</sup> June 1979.

4 Benn: *Conflicts of Interest: Diaries 1977-80*, entry for 11<sup>th</sup> June 1979 (p 511); also personal recollection. Both the author and the then Research Secretary, Geoff Bish (Interview, March 1999), recall Hart arguing that being made a Dame was different from accepting a peerage. This surprised some at the meeting, who were unaware of her personal position.

After a two year hiatus, Callaghan's successor as leader, Michael Foot, felt bound to put forward some nominations to strengthen the Labour peers.<sup>5</sup> Tony Benn and Eric Heffer had apparently attempted to dissuade him from doing so, pointing out that this would be out of line with the NEC's decision, but Foot responded that the NEC had not consulted with the leadership on that and told them that the new Lords would be there to do a job.<sup>6</sup> When a list of fifteen new peers, six of them Labour, was duly announced in April 1981, Foot explained that his nominees had all agreed to be "full-time active working peers", adding:

"I recommended their appointment because it would have been unfair to the few who have been carrying the burden so far not to have responded to their requests to supplement their number. This in no way changes my conviction and that of the Labour Party that the House of Lords ought to be abolished. However, I also believe that so long as it exists and is part of the legislative process, the Labour Party cannot leave our opponents to operate the place to suit themselves without even the surveillance which Labour peers can supply."<sup>7</sup>

Back in 1979, the row over the manifesto, in which policy on the Lords featured so prominently, was to have repercussions at that year's Party Conference, where a resolution proposed a constitutional change to give the National Executive the final say in determining the contents of the manifesto, rather than providing for it to be determined by a joint meeting of the NEC and the Cabinet / Shadow Cabinet, as hitherto.<sup>8</sup> This was to be one of several serious and acrimonious internal constitutional wrangles which afflicted the

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5 In the first year of the new Parliament, Baroness Llewellyn Davies, Labour's Chief Whip in the Lords, had expressed concern about the "weight of expectation which is being piled on us," while Lord Peart, the Opposition leader there, suggested that three-line whips were almost a daily occurrence (reported in *The Times*, 5<sup>th</sup> March 1980). In the 1979-80 session, there were 303 divisions in the House of Lords – more than in any of the previous ten years, although it was an extra-long session. (Source – House of Lords Information Office).

6 Benn: *End of an Era – Diaries 1980-90* (Hutchinson 1991), entry for 17<sup>th</sup> February 1981 (pp 89-90).

7 Reported in *The Times*, 14<sup>th</sup> April 1981. Foot later recalled that "every opportunity to put some names forward, I did," but added that he made it clear to nominees that the Party's policy was for abolition and that they would be expected to vote for it, if necessary. "I'm not in favour of the system, but as long as it lasts, the Leader of the Opposition should have the right to nominate" (Interview, March 1999).

8 For details of existing constitution, see note 13.

Labour Party in its first years of opposition (the others being the reselection of MPs and the election of leader and deputy leader). The resolution in question referred to the “failure of successive Labour governments to advance the realisation of the Party’s long term objectives” and continued:

“It regrets that policies approved by the Labour Party Annual Conference and recommended by the NEC for inclusion in the Party’s general election manifestos are often omitted from the manifestos because some members of the Shadow Cabinet object to them, such as the abolition of the House of Lords. Conference therefore instructs the NEC to submit to the 1980 Labour Party Annual Conference, constitutional proposals which would lay down that the NEC alone, after the widest possible consultation with all sections of the movement, would take the final decision as to the contents of the Labour Party General Election Manifesto.”<sup>9</sup>

The mover, Stuart Weir, claimed that, at the Clause V meeting, Callaghan had himself suddenly produced a constitutional amendment, the leader’s “personal veto.” He referred specifically to the House of Lords, “as it was perhaps the most blatant example of the leadership’s disregard for Conference decisions.”<sup>10</sup>

Significantly, this resolution was supported by the NEC itself - indicative of the poor state of relations which now existed between that body and the Parliamentary leadership. Eric Heffer, on behalf of the NEC, gave an account of the preparation of the manifesto. He recalled that agreements reached with Cabinet members had been included in “our draft manifesto”; and although he acknowledged that it was long and needed to be cut “purely from the point of view of readability,” he argued that the essence of agreed decisions should have been included. His description of the late night meeting of NEC and Cabinet members after the election announcement contained an amusing slip of the tongue:

“It was a traumatic meeting for me, comrades, and the veto at that meeting was exercised not just on one particular issue – although it was used on one issue in particular, the question of the abolition of the House of Commons (*Laughter and applause*). All right comrades, the House of Lords.”<sup>11</sup>

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9 Labour Party Conference Report 1979, pp 275-81.

10 Ibid. Weir was later to become editor first of *New Socialist* (published by the Labour Party) and then of *New Statesman and Society*. Amongst other speakers supporting the resolution were two future Cabinet Ministers, Robin Cook and Gavin Strang.

11 Ibid. See Chapter 4 for a more detailed account of this meeting.

The resolution itself was carried on a card vote by 3,936,000 votes to 3,088,000.<sup>12</sup> Accordingly at the 1980 Conference, the NEC proposed an amendment to the Party Constitution, which, in line with the previous year's decision, would have given it the final decision on the contents of any future election manifesto.<sup>13</sup> On this occasion, none of the speakers from the floor specifically mentioned what had happened with the House of Lords. This was perhaps less fresh in the memory now, although it had clearly helped galvanise supporters of the move. However, Tony Benn, speaking for the NEC, did refer to it, alleging that a leaders' veto had crept in, and adding:

“If you have a veto, those who oppose policies do not bother to argue with Conference, because they wait till the Clause V meeting and kill it secretly, privately, without debate. My resentment about the House of Lords – and you must not think I have any particular interest in the place – was not just that it was vetoed but that, when Conference discussed it and decided against it by an overwhelming majority, no voice was raised from the platform to persuade us to drop it. They let the Conference pass it and it was vetoed secretly, quietly, before the Party could discuss what happened. This is wrong and it is out of that that the mistrust in our Party grows.”<sup>14</sup>

Benn himself was highly pleased with the speech. He noted in his diary:

“I must say it was the best speech I have made at Conference, probably the best speech I have ever made at a public meeting.”<sup>15</sup>

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12 Ibid

13 The existing Clause V, Section 2 of the Constitution on the Party Programme read:  
“The National Executive Committee and Parliamentary Committee of the Parliamentary Labour Party shall decide which items from the Party Programme shall be included in the Manifesto which shall be issued by the National Executive Committee prior to every General Election. The Joint Meeting of the two committees shall also define the attitude of the Party to the principal issues raised by the election which are not covered by the manifesto.”

The amendment proposed by the NEC would have changed it to read as follows:

“The National Executive Committee, after consultation with the Leader of the Labour Party and the Parliamentary Committee of the Parliamentary Labour Party, shall decide which items from the Party Programme shall be included in the Manifesto which shall be issued by the National Executive Committee prior to every General Election, and shall also define the attitude of the Party to the principal issues raised by the election which are not covered by the manifesto.” (Conference Report 1980, pp 143-148).

14 Ibid. (Interestingly, the speakers for the amendment included Patricia Hewitt, subsequently a member of Tony Blair's Cabinet, and Dave Nellist, later to be expelled by the leadership because of alleged Trotskyist connections.)

15 *Diaries* (op cit), entry for 1<sup>st</sup> October 1980 (p 32).

The amendment was, however, lost narrowly on a card vote by just 117,000 votes (for the amendment: 3,508,000; against: 3,625,000). It would seem that sufficient opposition had been mustered from the union block vote to defeat it. However, two other resolutions relating to the Party constitution - on the reselection of MPs and the principle of an electoral college for election of leader and deputy leader - were carried, leading to changes which were to prove highly controversial. A third such change had only just been averted.<sup>16</sup> It was at the same Conference that Benn made a controversial reference to the creation of 1,000 peers, which will be examined later.<sup>17</sup>

### **Policy Re-examined**

As for the policy itself, the Party's Machinery of Government Study Group, which was continuing its work, had decided at the end of 1979 to give "early priority" to consideration of "the means by which to bring about the abolition of the House of Lords."<sup>18</sup> (This aspect had, of course, not been resolved to everyone's satisfaction, prior to the election.) A paper by John Griffith and Joe Jacob suggested either legislation "to provide that the House of Lords should, on a specified date, cease to exist" (which could, but need not, also provide for abolition of all existing peerages); or that the House could be retained, but with its powers curbed by legislation to provide that "every Bill approved by the Commons could forthwith be presented for Royal Assent without the concurrence of the House of Lords." The latter course would mean that the non-legislative role had not been dealt with; but it would "not be easy to see how this could be done", unless legislation was passed preventing the issue of writs of summons. The authors concluded that, whatever means were used, "those who oppose are certain to do so with utmost vigour and all devices." Therefore it was best to "take the most dramatic means" and introduce legislation providing for the abolition of both of the House of Lords and all peerages.<sup>19</sup>

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16 See 1980 Conference Report.

17 See p 112.

18 Study Group Minutes (33) 6<sup>th</sup> December 1979.

19 RD 329: Abolition of the House of Lords (April 1980). Jacob (who had joined the Group after its initial work on the Lords) was, like Griffith, an academic in the Law Department of the London School of Economics.



As will be seen, the notion of a House of Lords deprived of most or all of its legislative powers was to feature in future discussions and, indeed, would be included in the 1983 manifesto. However, at this time in 1980, the majority of the Study Group supported Griffith and Jacob's more "dramatic" conclusion. There was, nevertheless, a wide ranging discussion, which included the suggestion that "we should say that we would anyway create sufficient peers to ensure the will of the Commons was carried out until the Lords was abolished"; but, significantly, it is recorded that there was no agreement on this. The contentious question of whether Labour should seek the large scale creation of peers was, for the moment, glossed over. The minutes of the meeting go on to note:

"Generally it was felt there should be a clear commitment in the manifesto so that people would know that in voting for Labour they would be voting for abolition of the Lords, and that we should also make it clear that we would take the necessary means to secure such abolition."<sup>20</sup>

Although the existing Parliament had up to four years to run, the NEC had decided to publish a Draft Manifesto in 1980. This included a passage on the House of Lords which had been recommended by the Study Group, stating:

"The next Labour Government will proceed immediately to abolish the House of Lords. It will secure the passage of the necessary legislation and secure a majority for that purpose. In the legislation to enact this we will make provisions to ensure that the life of a Parliament cannot be extended except by referendum and to safeguard the independence of the judiciary. We shall abolish peerages."<sup>21</sup>

Argument on this issue had been predicted. For instance, *The Times* had prematurely reported that the draft manifesto would include "a proposal to achieve the necessary majority to abolish the House of Lords by packing it with Labour Party supporters", which "would undoubtedly produce a political and constitutional outcry" and would be "bound to meet resistance from the Labour leadership."<sup>22</sup> In the event, the document was carefully worded so as not to specify the means by which the passage of legislation would be

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20 Study Group Minutes (36) 16<sup>th</sup> April 1980.

21 Draft Manifesto 1980. (Inclusion of this passage was specifically agreed at a special meeting of the Home Policy Committee, 28<sup>th</sup> April 1980.) The commitment to proceed "immediately" might be thought to have been somewhat optimistic, given the potential difficulties involved.

22 Michael Hatfield: 'Labour's left in ploy to abolish the Lords'; *The Times*, 11<sup>th</sup> April 1980.

achieved. Thus argument was averted, at least for the moment. However, another contentious proposal, that of a referendum as a safeguard against the extension of the life of a Parliament – which had been included in the 1977 statement, but which the NEC / Cabinet Working Party had subsequently concluded was inappropriate – was revived at this stage. It would not, though, find a place in the next relevant major policy statement, *Labour's Programme 1982*.<sup>23</sup>

Abolition of the Lords was given a brief airing in the House of Commons in May 1980, when Labour MP Jeff Rooker moved, under the Ten Minute Rule, that “leave be given to bring in a Bill to abolish the House of Lords.” Substantive legislation would not be expected, but this provided an opportunity to air the issue and allow a vote. In this instance, the motion was defeated by 240 votes to 142. In his speech, Rooker referred back to Labour’s 1977 Conference decision, acknowledged that “in 1979 we in the Labour Party had a hiccup on the issue” (clearly a reference to the manifesto), but claimed the leadership was now unanimous and looked forward to a forthcoming special Party Conference.<sup>24</sup> This was held on 31<sup>st</sup> May 1980, to discuss an overall statement of Labour’s policies, which included a commitment to “the abolition of the House of Lords” amongst “a whole range of measures...to strengthen democracy against privilege and patronage,” and which was carried overwhelmingly.<sup>25</sup>

There were, meanwhile, indications that Labour’s policy was encouraging further reaction in the upper echelons of the Conservative Party. Newspaper reports suggested that a new second chamber was being considered in response, since “ministers now take the prospect of a future Labour government introducing a powerful single chamber parliament as a serious one;” but Mrs Thatcher, it seems, was not persuaded of the need for action at this time.<sup>26</sup>

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23 See pp 126-7.

24 *House of Commons Debates*, 6<sup>th</sup> May 1980 (Vol 984, Cols 46-56). Rooker would later become a minister in Blair’s government.

25 NEC Statement: *Peace, Jobs and Freedom* (May 1980), approved by 5,164,000 votes to 6,000.

26 See Chapter 8 for more on this. (Quotation from Michael Jones, *The Sunday Times*, 11<sup>th</sup> May 1980.)

The policy of abolition was also perceived as a threat by Labour peers.<sup>27</sup> It was reported that they were “fighting a rearguard action to retain the House, but with its composition reformed.”<sup>28</sup> A committee chaired by Lord Lee of Newton had produced a report which proposed a body of 250 voting peers to be drawn from life peers and peers of first creation. This was similar, in many respects, to that put forward by the Labour peers in 1977, although there was now no mention of salaries, and the delaying powers envisaged would mean that (except in relation to the life of a Parliament) if a measure was sent back to the Commons a second time, “it will become law on a simple resolution of the Commons.”<sup>29</sup> (In this respect, the proposal was not dissimilar from proposals put early on to the Study Group.)<sup>30</sup> The Labour peers acknowledged that an unelected chamber should not seek equality of power with one that was elected, but argued that it could reinforce democracy through the effective performance of functions, including revising and initiating legislation, providing a forum for debates and scrutiny of the executive.<sup>31</sup>

Their report noted two proposals “recently put forward”. The first was Labour’s policy of abolition (which, of course, had been adopted in 1977). This was objected to on the grounds it would make it harder for the overworked Commons to cope, there would be no opportunity for tidying up/second thoughts and “most important, there would be no safeguard against the House of Commons prolonging the life of a Parliament or dismissing judges.”<sup>32</sup> Clearly the NEC’s attempts to arrive at a formula to safeguard the life of a Parliament had not satisfied them.

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27 In view of this, it is perhaps surprising that some peers who were also members of the NEC’s Study Group had not shown a more active involvement in its work. Early in 1980, it was decided to contact inactive members, who included three peers, all fairly recently ennobled. Two of these dropped out, including Lord Cledwyn, a former Chairman of the Parliamentary Labour Party and future leader of the Labour peers (Study Group Papers).

28 *The Times*, 22<sup>nd</sup> May 1980.

29 ‘A Reformed Second Chamber’ (23<sup>rd</sup> April 1980). When it was presented to a meeting of Labour peers, it was noted that the report had taken the 1977 report as its basis (Minutes of meeting of Labour Peers, 24<sup>th</sup> April 1980). Lord Lee, a former minister, was now the Labour peers’ representative on the Parliamentary Committee.

30 See Chapter 3.

31 A Reformed Second Chamber (op cit).

32 Ibid.

Secondly, the report observed that “leading members of the present Conservative government” had suggested replacing the Lords with a chamber elected by proportional representation and with more powers. This was opposed on the grounds that no government would have a majority and it would be a “check on effective government.” Frustration would then produce a demand for “drastic constitutional change”, including possible abolition.<sup>33</sup> Although no specific proposal was identified, the reference suggests that Labour peers thought that a Conservative attempt to pre-empt Labour was under active consideration.

There is no record of the Labour peers’ report having been submitted to the NEC, which had anyway reaffirmed its support for abolition.<sup>34</sup> There seems to have been a reluctance on the part of Labour peers to accept this, or even to acknowledge it as party policy. In a House of Lords debate later in 1980, one of them, Lord Donaldson of Kingsbridge, actually questioned whether abolition was an official Party commitment, although he then added, a touch inconsistently, “we shall fight as hard as we can to alter it.”<sup>35</sup> Moreover, in the same debate, Lord Peart would hark back to the abortive 1968/69 proposals, saying that “what happened then was a tragedy,” and adding:

“One day there will be a reformed House of Lords. I do not believe that there will be an abolition of the House of Lords.”<sup>36</sup>

It is interesting that Labour’s official leader in the Lords felt able to state publicly that he did not believe his own party’s policy would be carried through.<sup>37</sup>

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33 Ibid

34 *The Times* (22<sup>nd</sup> May 1980) suggested that it was not intended to submit it either to the NEC or to the Parliamentary Labour Party. The peers did not, in any case, have any formal role in the policy making process. However, the Chief Whip did later send a copy to the General Secretary, in advance of preparations for the manifesto in 1983 (Internal Party correspondence).

35 *House of Lords Debates*, 8<sup>th</sup> December 1980 (Vol 415, Col 610).

36 Ibid (Cols 625-7).

37 Another front bench spokesman, David Owen, also provided a dissenting voice, in a speech calling for an elected second chamber, with representatives from Scotland, Wales and the English regions, elected by proportional representation, plus possibly members of the European Parliament and some non-voting peers from the existing House (reported in *The Times*, 18<sup>th</sup> September 1980). Owen was then Labour’s Energy spokesman, but would early the following year, break away to form the new Social Democratic Party (for which, see Chapter 9).

Labour peers were not necessarily influential figures in determining Labour's policy, but the Chairman of the Home Policy Committee certainly was. Tony Benn was to cause much greater controversy on the same subject, in the full glare of publicity at the Party's 1980 Conference in Blackpool. Replying for the NEC in a debate on economic and industrial policy, he said three major pieces of legislation would be required within the first month of a Labour government – an Industry Bill; a Bill returning powers from the European Commission to the House of Commons; and, since neither of these would get through the Lords:

“our third immediate Bill is to do what the movement has wanted us to do for 100 years, to get rid of the House of Lords and, if I may say so, we shall to do it by creating 1,000 peers and then abolishing the peerages as well, at the same time that the Bill goes through. It is not possible for a Labour government to continue if it has control of only half a Parliament.”<sup>38</sup>

In saying this, Benn was going beyond his brief, since this had not been agreed even by the Study Group, let alone the NEC on whose behalf he was speaking.<sup>39</sup> As Baroness Jeger, who was Chairman of the Party at the time of the Conference, later told her colleagues in the House of Lords:

“The suggestion about 1,000 peers was made entirely out of the top of the head of a member of another place, with no authority from the National Executive.”<sup>40</sup>

*The Times* reported “appalled reactions in private amongst Party leaders, including some left wingers”, to Benn's Conference speech.<sup>41</sup> Nevertheless, Benn, for whom this was clearly an important issue, would return to the notion he put forward here, as will be seen later in this Chapter. His speech also prompted further interest at the Conservative Party Conference the following week, which responded by passing a resolution to strengthen the composition and status of the House of Lords.<sup>42</sup>

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38 Conference Report 1980 (pp 31-32).

39 Although the possibility of using prerogative powers had been alluded to in the 1977 Conference Statement, crude numbers had not been mentioned. Indeed, in a slightly different context, it had said creations on this scale would be “unacceptable” (see Chapter 3).

40 *House of Lords Debates*, 8<sup>th</sup> December 1980 (Vol 415, Col 610).

41 Fred Emery, *The Times*, 30<sup>th</sup> September 1980.

42 See Chapter 8.

Following this attention, the question of whether abolition could legally be carried through was once again raised. Giving the BBC Dimbleby Lecture, the Master of the Rolls, Lord Denning, said:

“I do not doubt that Parliament would have the power to reform the Lords ...but I doubt whether Parliament could lawfully abolish the second chamber altogether. I would expect any such legislation to be challenged in a Court of Law and for the judges to give a ruling on it.”<sup>43</sup>

He quoted the preamble to the 1911 Parliament Act. Differing views on the significance of this have already been noted;<sup>44</sup> and it would seem the matter might only be resolved if it were ever to be tested in the courts. However, it was raised, along with other related issues by Lord Crowther Hunt, shortly after Denning’s lecture, in a talk given Radio 3, in which he looked forward to “the exciting prospect of a real Pandora’s box of constitutional issues and crises if the Labour Party perseveres with its abolition proposals.” These included whether the Lords could be abolished without its consent and whether the Queen might veto such a measure or insist on a referendum. His view was that Labour could not count on her acquiescence. There would be arguments about whether she would be justified in withholding consent, since it might not constitute ‘a statute Parliament agreed on’, or in insisting first on a constitutional conference. In a reference to Benn’s suggestion that 1,000 peers might be created, Crowther Hunt noted this would require the Queen’s consent; and that in a similar situation, King George V had insisted on a general election first.<sup>45</sup>

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43 Reported in *The Listener*, 27<sup>th</sup> November 1980 (Vol 104, p 722).

44 See Chapter 3. Those disagreeing with Denning’s interpretation included Roy Jenkins who, in *Mr. Balfour’s Poodle*, said “it was an expression of the wishes of the government [which would] have no legal force” (op cit, p 135).

45 ‘Who needs the Lords?’, *The Listener*, 4<sup>th</sup> December 1980 (Vol 104, p 742).

The latter reference concerned events surrounding the passage of the 1911 Parliament Act. It is not proposed to detail these here, but essentially, it proved necessary to hold two elections beforehand in 1910; and at the second, the King had given “contingent guarantees” that if the Liberal government was returned, he would agree to the necessary creation of peers to secure passage of the legislation. In the event, the threat of mass creation proved sufficient. However, the episode did illustrate the potential for differences to rise between Crown and government.<sup>46</sup>

Crowther Hunt concluded that there could be no certainty of abolishing the House of Lords against its will in the first three years of a government. His personal view was that a second chamber should supplement the Commons’ representation of the people by “representation of interests”, scrutinising from the point of view of affected interests and provide a forum for experts.<sup>47</sup> He had, of course, been a member of the Study Group which drew up the original statement supporting abolition, although he had indicated he was not in agreement. He continued to serve on the Group and, indeed, several of the points from this radio talk featured in future discussions.

The issue of the House of Lords was re-opened within the Party’s official machinery, following a brief look at the wider Honours system by the Machinery of Government Study Group early in 1981. A poorly attended meeting in March agreed the basis of a statement, but the Home Policy Committee, chaired by Benn, referred it back, together with alternative proposals from himself, including that no further nominations be made for

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46 For more detailed accounts, see Jenkins (op cit); Vernon Bogdanor: *The Monarchy and the Constitution* (pp 113-119); and Harold Nicholson: *King George V* (Constable & Constable, 1952, Chapters VII-X). The latter shows particularly how fraught relationships between government and sovereign could become in such a situation.

Bogdanor refers to the proposal for 1,000 peers put forward in 1980, but may have misunderstood the reasoning behind it. He states (p 120) that opposition to abolition could be overcome by use of the Parliament Act with a year’s delay, but that some Labour Party members, including Benn, argued that it should not have to wait. In fact, it was the perceived uncertainty as to whether the Parliament Act could actually be used which led some to see this as an alternative.

47 *The Listener*, 4<sup>th</sup> December 1980 (op cit). Crowther Hunt subsequently firmed up his prediction, arguing that a future Labour government would find it “almost impossible” to abolish the House of Lords without its consent, because “Her Majesty the Queen would almost certainly spring to their defence”; and that, in his view, the monarch would be “justified in insisting on either a second general election or a referendum, before acquiescing in creating the peers demanded by a government elected on a minority vote.” (‘How the Queen might finally save the Lords’, *The Guardian*, 11<sup>th</sup> January 1982).

any peerages, baronetcies or knighthoods in the United Kingdom.<sup>48</sup> The Study Group noted that this “carried the implication” that no further peerages should be created and, while agreeing to consider some points further, it decided to resubmit its paper largely as it stood, and this was subsequently endorsed by the Home Policy Committee.<sup>49</sup>

The statement then published in July observed that “once the House of Lords is abolished, presumably no more peerages would be created”, but “the question remains as to what happens to the titles”. Life peerages would cease on the death of the holder, but hereditary peerages could continue in existence for generations.

“It might be argued that their continuance would perpetuate class divisions in our society, in which case it would be necessary to consider whether we should or could legislate to abolish the rights of existing and/or future holders to use their titles. However, it is our view that, given the abolition of the peers’ formal political powers, the continued use of the title would be irrelevant, and that it would be a matter for the individual concerned what he wished to call himself.”<sup>50</sup>

The Study Group was also informed that the April meeting of the Home Policy Committee had suggested that the Group look again at the means of abolishing the House of Lords.<sup>51</sup> In response to this, it was decided to re-circulate the paper by Griffith and Jacob;<sup>52</sup> and also the text of Crowther Hunt’s radio talk, together with some ensuing correspondence between him and Griffith, some of which was rather personalised. For instance, Griffith accused Hunt of being “terrified of democracy”; and, after Hunt had asked about guarantees to protect the basic rights of minorities, Griffith referred to various guarantees, but added pointedly: “I doubt, however, whether greater protection for the minority of ennobled Oxford dons is likely to figure prominently in anyone’s list.”<sup>53</sup>

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- 48 Study Group Minutes (37) 11<sup>th</sup> March 1981; Home Policy Committee Minutes, 6<sup>th</sup> April 1981; RD762: The Honours System (March 1981); RD 829 Amendments proposed by Tony Benn (April 1981). If taken literally, Benn’s proposal here would not have permitted his 1,000 peers notion.
- 49 Study Group Minutes (38) 12<sup>th</sup> May 1981; Home Policy Committee Minutes, 5<sup>th</sup> June 1981. (Benn, who was in hospital around this time, was not present at these later meetings, both of which were chaired by Heffer.) Note that the Honours list announced in April 1981, which included six Labour peers, would have been fresh in people’s minds (see p 104).
- 50 NEC Statement: *The Honours System* (1981). Overall it argued that “if we are to continue with honours, they should only be in recognition of outstanding acts of service and without distinction on the basis of class and rank”, but it made no specific proposals, other than establishing a Select Committee to consider reforms.
- 51 RD 828: Future Work of the Study Group – A Note from the Secretary (April 1981). There was, however, no Home Policy Committee minute to this effect.
- 52 RD329 (op cit).
- 53 RD 905: Who needs the House of Lords? (June 1981). Crowther Hunt was, of course, an “ennobled Oxford don.”



Such remarks might have been expected to presage an acrimonious debate in the Study Group, but at this stage it was reasonably good natured.<sup>54</sup> The minutes of the ensuing meeting in June 1981 record that:

“it was generally acknowledged that a Labour government would have to face significant political, constitutional and legal problems when it came to carry out the abolition of the House of Lords, and that it would not be possible to achieve this within just a few weeks.”<sup>55</sup>

“No conclusion was reached,” but the Secretary was asked to draft a paper “setting out the options and noting the problems each might involve.”<sup>56</sup> The result was the first of several drafts, which were to form the core of extensive discussion in the Group and beyond over several months. It noted that neither the 1977 statement nor the 1980 draft manifesto had spelt out how it was intended to proceed to abolition; and it posed two options, involving the Parliament Act or creation of peers, to secure the passage of legislation, either of which would involve difficulties.<sup>57</sup>

In the case of the former, assuming Lords’ opposition, there would be a minimum of 13 months delay, but a contested measure taken on the floor of the House could take longer; and there was a danger of disruption to other legislation. Referring to previous discussions concerning the life of a Parliament, it suggested the proposed safeguards of a referendum or two-thirds majority would not constitute “a formal safeguard”. It noted previous discussions and the conclusion that the Parliament Act “probably” could be used to abolish the Lords, “but we cannot, of course, be certain what the courts might decide until it happens.” The validity of such legislation might be challenged and that the final court of appeal would be the Law Lords. Legislation would need Royal Assent, which might be refused on grounds that the legislation was unconstitutional, although it noted the suggestion that refusal would be less likely if there was a clear manifesto commitment, particularly if this made clear it would require consent of Queen and Commons only.<sup>58</sup>

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54 Personal recollection.

55 Study Group Minutes (39) 16<sup>th</sup> June 1981.

56 Ibid.

57 RD 992: Abolishing the House of Lords – The Possibilities and the Problems (July 1981).

58 Ibid.

On the creation of peers, the paper noted that the arguments about patronage and possible difficulties with the Crown, but also the suggestion that a clear manifesto commitment, including references to the creation of peers if necessary, would make resistance by the Queen less likely. Nevertheless creations would be on an “unprecedented” scale and, given the Lords’ procedures for introduction new peers – two days a week, two at a time – which they were unlikely to change in the circumstances, it could take more than the lifetime of a Parliament. There was also the possibility that newly ennobled peers might then change their minds on abolition, which could cause “great embarrassment.”<sup>59</sup>

It argued that a referendum would make it less likely that legislation would be blocked, but it would be “contested vigorously”. If the referendum result went against, the Lords, with their existence endorsed, might then be more obstructive. Also, a separate referendum Bill might itself delay things further. The alternative of a second general election was not recommended, since it could not be fought on a single issue and it would not be worth risking the party’s whole programme.<sup>60</sup>

The paper concluded that it was apparent that there were potential problems involved in whatever means was adopted and that it would not be possible to implement the policy overnight, but added that there was general agreement on the need for a clear manifesto commitment.<sup>61</sup>

The main discussion in the Study Group then (July 1981) centred on the use of a referendum, on which “conflicting views were expressed.” The case against was that that many potential obstacles to legislation could still apply and that the result could go the wrong way. In its favour, despite the uncertainty of outcome, “there was a prospect of carrying the policy through, given a clear endorsement;” the alternative would be “several years of constitutional wrangling and an election at a time not of our choosing.”<sup>62</sup>

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59 Ibid. Tony Benn, a principal advocate of mass creation, subsequently acknowledged that there may have been something in the latter argument (Interview, June 2000). Note also that mass creation had been threatened to secure passage of Parliament Act 1911, but there appears to have been no suggestion then that Lords’ procedures might prevent this.

60 Ibid

61 Ibid

62 Study Group Minutes (40) 22<sup>nd</sup> June 1981.

When the matter was discussed again in November 1981, many of the now familiar arguments were rehearsed again, without agreement being reached. However, the minutes state that “it was agreed that with either alternative procedure – the Parliament Act or the creation of peers – Parliamentary business would be disrupted for at least a couple of years, with no certainty of getting an abolition measure through at the end of the day.” They then record:

“It was pointed out that there was considerable danger that the potential difficulties and delays arising from any measures to abolish the Lords could jeopardise the ability of a Labour government to implement the key measures in its programme, and there was general agreement on this. We should therefore conclude that the technical difficulties were so considerable that we could not give a firm commitment to carry out the early abolition of the Lords.”<sup>63</sup>

Significantly, this would mean that there was no longer a presumption that the potential obstacles could be overcome. It may be recalled that, from the outset, party officials had warned that a pledge to outright abolition and a single chamber “would lead to considerable problems.”<sup>64</sup> Had this been accepted at the time, the development of policy might have proceeded on different lines, and some of the ensuing consequences (including at the time of the 1979 election) might have avoided. However, in November 1981, a complete reversal of the policy would almost certainly have been unacceptable, both to the NEC and the Party Conference. Instead, the Group, having noted the difficulties involved in effecting early abolition, considered an alternative proposition:

“However, we could aim to introduce new Labour peers into the House of Lords as quickly as possible. In the longer term this could help in securing the abolition of the Lords, but in the meantime it would have the effect of reducing the Party political imbalance in the House of Lords and this would be something it would be difficult to argue against. The House of Lords meanwhile would be asked to improve the procedures for the introduction of new peers.”<sup>65</sup>

This was a different approach to the issue, which carried with it the implication that it could be expected that the present House would continue for some time. Also, it would represent a clear departure from the 1979 NEC resolution opposing new peerages (although the Leader had since recommended some new creations).<sup>66</sup>

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63 Study Group Minutes (41) 4<sup>th</sup> November 1981.

64 See Chapter 3.

65 Minutes (41) op cit. This took account of the point that the Lords could not be forced to change their procedures.

66 See p 104.

There is nothing to suggest that this November meeting was particularly unrepresentative or one-sided. As it happened, John Griffith (who had been a leading supporter of abolition) was present on this occasion, whereas Lord Crowther Hunt (an opponent) was not; and the Group's Chairman, Eric Heffer, it should be remembered, had himself previously been a forceful advocate of the Party's policy of abolition. The minutes certainly suggest the various arguments were again heard.<sup>67</sup> However Tony Benn was not present; and the following meeting of the Home Policy Committee (which he chaired, but from which Heffer in turn was absent) decided to inform the Study Group that it "would not accept proposals which sought to change Conference policy on the basic issue of abolition."<sup>68</sup>

In response, Study Group members argued that their new proposal was intended to help a Labour government get its legislation through and also, it was hoped, "help facilitate the eventual abolition of the House of Lords." The minutes note that "in conclusion, it was pointed out that all those present wanted to abolish the House of Lords. The question at issue was over how quickly and easily it could be achieved."<sup>69</sup> Benn, in his diary, commented on a "lack of potential will." He also noted that Heffer did not like being told he had changed policy and got "very shirty."<sup>70</sup>

Another option suggested was the creation of peers by means of a Parliamentary resolution, whereby the Commons could present a "Humble Address" to the Queen which would not have to go through the Lords. A possible precedent from Canada was cited. The Study Group accepted that a "Humble Address" from a newly elected House of Commons would "almost certainly" not be resisted by the Sovereign; given a clear manifesto commitment, there should be no question of another election being needed. However, it was also argued that it would "not effectively change very much", beyond

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67 Minutes (41) op cit. (Although Heffer left the chair later in the meeting, the House of Lords was the first substantive item on the agenda; and there is no indication that he dissented from the Group's conclusion.)  
68 Home Policy Committee Minutes, 7<sup>th</sup> December 1981.  
69 Study Group Minutes (42) 9<sup>th</sup> December 1981.  
70 Entry for 9<sup>th</sup> December 1981 (unpublished).

clarifying the position of the House of Commons and that the outstanding problems would remain. It would not necessarily avoid a constitutional crisis and the legislation would still need to be passed.<sup>71</sup>

A paper by Party officials, presented to the Group in February 1982, noted the recent conclusions, the acknowledgement that some of the practical obstacles to abolition could also apply to the new alternative proposition for the creation of peers and that, moreover, achieving an eventual Labour majority in the Lords might not necessarily ensure a majority for abolition. It suggested that the Group consider another course of action, namely legislation to curtail the powers of the House of Lords so that, in effect, it would no longer be able to obstruct the wishes of the House of Commons. The paper pointed out that there was little doubt that the Parliament Act could be used to get such a measure through; and added that “many of those Labour peers who might balk at abolition” would be more likely to support a measure of this nature. It noted that steps could also be taken to reduce the anti-Labour majority in the Lords, as had been suggested, implying that the two courses of action might be taken together, if so desired.<sup>72</sup>

Of course, the notion, at least in the first instance, of restricting further the powers of the Lords was not new. Similar proposals had been put forward by officials when the question was first discussed, and clearly they were thought worth resurrecting. It was put to this meeting that measures could be brought forward “which would severely restrict or remove most of the existing powers of the House of Lords. Although these might fall short of complete abolition, they could represent an important step towards it and make it easier to bring about abolition in the long run.”<sup>73</sup> It was agreed to consider these further and, as will be seen, this was to become the Party’s official policy, at least for the short term.

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71 Study Group Minutes (42) op cit and (43) 2<sup>nd</sup> February 1982. The author’s recollection is that this idea was put forward by Benn, who still wanted to pursue the mass creation of peers option. This is borne out by Benn’s diary entry.

A paper for the second meeting (RD 1075) described how the Canadian House of Commons had passed motions to present Addresses to King George V, asking him to refrain from conferring firstly hereditary titles and then any titles to subjects resident in Canada, in 1918 and 1919 respectively. Although one Canadian Prime Minister had not felt constrained by this, it was thought that no such titles had been conferred since 1935.

72 RD 1162: Restricting the Powers of the House of Lords – An Office Note. The paper proposed amending the Parliament Act in a way similar to that suggested in an earlier paper (RE 842) in November 1976 (see Chapter 3).

73 Minutes (43) op cit.

These deliberations were acquiring a new urgency, as the position on the Lords required clarification in time for the new Party Programme, due to be published in summer 1982. Various alternative means of amending the powers of the Lords had been mooted; and three papers were put to the Study Group's April meeting. The first, by Michael English, proposed a manifesto commitment to abolition, stating that the Lords would be asked to agree to this "as the expressed will of the people", but that, should they resist, "we will immediately use the powers of the Commons alone under the Parliament Act to deprive the House of Lords of all its powers", save the right to veto legislation extending the life of the Commons.<sup>74</sup>

The second was from John Silkin, who had joined the Group and, as Shadow Leader of the Commons, was playing an active part in its deliberations. He argued that, while abolition of the Lords was desirable and a Bill should be introduced, it was "not a matter which should put in jeopardy the rest of Labour's programme". His main point was that "the urgent need is to stop the House of Lords interfering with Labour's legislation". He agreed that it should be deprived of almost all of its powers (with one or two exceptions); and concluded that "if we follow this reasonable course of action, the abolition of the Lords will occur quite naturally and without any fuss."<sup>75</sup> Some of this may have been said tongue-in-check, but the main suggestion was serious.

The third paper, from Tony Benn, did not concern curbing of powers, but argued again that abolition was an essential prerequisite to other measures and advocated a manifesto pledge "to create enough peers to carry the Lords Abolition Bill at the very outset." This, he claimed (without any hint of irony), "would satisfy the Crown that the electorate knew precisely what it was doing when it voted Labour" and so avert the possibility of the Crown seeking a second general election. The same Abolition Bill would "entrench" the five year life of a Parliament, (although it was not made clear precisely how). He set out a procedure, involving a Humble Address, with the Prime Minister advising the Crown to

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74 RD 2194: House of Lords – Draft by Michael English.

75 RD 2195: Labour and the House of Lords – A note from John Silkin. Apart from the life of a Parliament, his proposed exceptions were unclearly worded, but apparently concerned Private Members Bills and non-contentious legislation "suitable for introduction in the House of Lords", plus allowing the Lords to propose amendments "without them having legislative effect".

act on this; and added that, if the Lords delayed the introduction of peers by procedural means, the Commons could pass another Humble Address, “asking the Crown to send a message to the House of Lords commanding them to seat the new peers forthwith.” He acknowledged that “a massive creation – possibly over a thousand” peers could be involved, but the names should be approved by the Commons.<sup>76</sup>

Following the April meeting, a further draft report was prepared, still very much on the lines of that put to the Group in July 1981, but including some additional points covering the Parliament Act procedures, the Law Lords, the creation of peers and a referendum. The most significant addition, however, was a new section entitled ‘Curbing the Lords Powers – An Interim Measure’, which noted “considerable legal, procedural and other difficulties in whichever course was to be adopted” and the danger of disrupting the wider programme of a Labour government; therefore, it said, “we are bound to acknowledge that it may not be possible to give a firm commitment to effect the complete abolition of the House of Lords at an early stage.” However, noting that the Lords would still have considerable powers to disrupt Labour’s legislative programme, the draft report suggested introducing, early in the new Parliament, “legislation to remove most of the powers of the House of Lords at present possesses,” but excluding those relating to the life of a Parliament. It argued that there was “little doubt that the Parliament Act procedure could be used to ensure the passage of this legislation if necessary,” and proposed a clause based on Section 1(1) of the 1911 Act, which restricted the Lords’ powers over Money Bills. Further provisions were suggested relating to delegated legislation, so that the Lords’ conclusions would be reported but the Commons would have sole power to pass resolutions. Given an adequate majority, “we can be reasonably sure the legislation will reach the statute book;” the House of Lords would be seen increasingly as an irrelevance and the logic of eventual abolition as unavoidable. Meanwhile, it would have been prevented from blocking legislation. This would achieve “the major immediate objective of ending the effective political power of the House of Lords,” while also taking a “major step towards our ultimate objective”.<sup>77</sup>

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76 RD 2196: The Abolition of the Lords: A Note by Tony Benn.

77 RD 2332: Abolishing the House of Lords – The Possibilities and the Problems – A Report from the Study Group (Third Draft, April 1982).

The paper was intended to reflect the various discussions and viewpoints expressed over several meetings. Thus, notwithstanding the above conclusions, it also noted two further propositions. The first involved legislation to end all the powers and functions of the Lords, save that relating to the life of a Parliament. It observed that such an emasculated body would soon appear absurd, but also noted the danger that this would be more contentious and that the passage of the necessary legislation and ensuing changes in Commons procedures could prove more difficult. The second suggested, as well as curbing powers, taking steps to secure the creation of new Labour peers to end the anti-Labour majority and to obtain a majority favourable to abolition.<sup>78</sup> The first of these alternatives was soon to be accepted as part of Labour's policy; the second was not.

The meeting which discussed this draft in May 1982 was the last chance to agree a report to the Home Policy Committee before the content of Labour's Programme was determined. As Chairman of the Study Group, Eric Heffer had generally taken a pragmatic approach, supporting the abolition policy, but willing to acknowledge the force of argument about the potential difficulties involved and to take account of these. Tony Benn had, however, taken a committed position, attempting repeatedly to persuade the Group to adopt his proposal for a large scale creation of peers to carry through abolition.<sup>79</sup> Heffer was absent from this particular meeting (as also, incidentally, was Silkin) and the chair was instead by taken by Benn who, from that position, strongly criticised the paper which was before the Committee, although other members defended it as a reflection of the Group's previously expressed views, which they had asked to be prepared.<sup>80</sup>

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78 Ibid.

79 Personal recollection. Benn's observations of an earlier meeting have already been noted (see p 119). Two members of the Study Group, John Garrett and John Griffith, when interviewed later, also recalled that Heffer had taken a more open minded approach on the issue. Benn himself said the reason why he pursued this particular approach so strongly was that he was determined to show that abolition could be achieved and did not accept the argument that it would take ten years to carry through (*sic*). (Interviews, July 1998, October 1998, June 2000.)

80 Personal recollection. The Study Group Minutes (47) 12<sup>th</sup> May 1982, record more blandly: "some questioned the conclusion that it may not be possible to give a firm commitment to effect complete abolition at an early stage, but others confirmed that this view had been taken at earlier meetings."



Various arguments were again put - on the one hand that it was “primarily a question of political will”; on the other that the Party could not ignore difficulties or risk making promises which it might not be possible fulfil and jeopardise other parts of the programme. It was recorded that, if the course of curbing Lords’ powers were followed, “most favoured abolition of all their legislative powers;” and, it was noted, “we could proceed at the same time with the creation of peers.”<sup>81</sup>

As in previous discussions, arriving at a consensus proved impossible. *The Times* later suggested that the Group “failed to reach agreement because of Mr. Benn’s determination to enforce abolition within the lifetime of a Parliament.” It had clearly obtained a copy of the minutes, which, it said, “give a picturesque insight into Labour’s left-right impasse.”<sup>82</sup> These record that Benn had suggested a conclusion which would re-affirm “our determination to abolish the House of Lords in the lifetime of the next Parliament; that the best means would be to “create sufficient peers to ‘swamp’ the Lords with a mandate for this”; and stating the intention also to abolish all legislative powers except those relating to the life of a Parliament. They go on to note that “there was, however, some disagreement in particular over whether we could give a commitment to abolition in the lifetime of the next Parliament,” and that “in view of the fact that the Study Group was unable to reach an agreed conclusion,” the paper be submitted to the Home Policy Committee unamended, but accompanied by the minutes.<sup>83</sup>

It may be worth noting here that the Parliamentary Affairs Group of the Parliamentary Labour Party had taken a view similar to that put forward in the draft report – that legislation should be passed to prevent the Lords frustrating the will of the Commons and steps taken towards ultimate abolition. Backbench groups of the PLP such as this had no formal role in the policy process (and did not necessarily carry great weight), but their position was noted by the Study Group.<sup>84</sup>

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81 Ibid.

82 Anthony Bevins: ‘Labour tries to break deadlock over Lords’, *The Times*, 10<sup>th</sup> June 1982.

83 Minutes (47) op cit.

84 Ibid. The views of the PLP Group are recorded as follows:

“a Labour government should pass legislation to abolish the powers of the House of Lords to frustrate the will of the elected House of Commons (except the power to extend the life of a Parliament) and initiate steps ultimately leading to abolition of the House of Lords, while of course providing a control over a future House of Commons extending its own life unilaterally.” The PLP Group Meeting on 21<sup>st</sup> April 1982 was chaired by Michael English, with just seven MPs present.

The Study Group having failed to reach agreement, it fell to the Home Policy Committee, which Benn chaired, in effect to adjudicate. This Committee (on which, like the NEC itself, the left was predominant) decided to delete some significant points, namely reference to a possible legal challenge to ensuing legislation, a whole section dealing with a referendum and crucially, the statement that it may not be possible to give a firm commitment to abolition at an early stage. It further decided to incorporate, without caveats, the proposal that all powers save one be abolished. The new conclusion, similar to that previously put forward by Benn, was to read:

“We re-affirm our determination to abolish the House of Lords in the lifetime of the next Parliament. We recognise that there will be some obstacles and serious opposition. We believe that to secure the abolition of the Lords it would be necessary to seek a clear mandate in the Manifesto to create sufficient peers for this purpose. We would as a first step bring in a Bill to abolish all the legislative powers of the House of Lords, except those in relation to the life of a Parliament.”

The draft as amended was to be published and the draft of Labour’s Programme 1982 was to reflect this.<sup>85</sup>

Thus the proposition to swamp the Lords – which was favoured by Benn but which the Study Group had not accepted – was agreed by the Party’s senior policy committee. As has been seen, on previous occasions (such as following the 1980 Party Conference) radical proposals had prompted a Conservative reaction. This time, however, *The Times* reported there was no nervous reaction from Conservative ministers, “who believe it will prove a vote loser at the next general election.”<sup>86</sup> They were also, perhaps, more confident about their election prospects at this time – this was less than a week before the end of the Falklands War – than they had been two years previously.

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85 Home Policy Committee Minutes, 10<sup>th</sup> June 1982.

86 George Clark: ‘Benn’s plans seen as vote loser’, *The Times*, 12<sup>th</sup> June 1982.

The Home Policy Committee had not, however, been unanimous. There was in fact, strong disagreement between Benn and Foot who, despite his long standing support for abolition, took the view that the Party had to take proper note of the potential difficulties.<sup>87</sup> He was to have a further opportunity of retrieving the position, at least to some extent, the following week, when the final text for Labour's Programme was to be considered by the full National Executive Committee. The relevant section had been amended, following the Home Policy Committee, and included the following sentence:

“To secure the abolition of the Lords, we will seek a clear mandate to create sufficient peers for this purpose and for them to be introduced as quickly as possible.”

Foot succeeded in securing deletion of this sentence, but by the narrowest possible margin, 9 votes to 8. Almost all those voting to retain the sentence were on the left (and they included Heffer), while those voting to exclude it (who included the future leader, Neil Kinnock, as well as Foot) were from a broader spectrum.<sup>88</sup> Foot's failure to carry the day at the Home Policy Committee and his narrow victory at the NEC perhaps illustrate the weakness of the Leader's position on the NEC at this time.

Meanwhile, the Report on the Abolition of the House of Lords was further amended but, although its publication as an NEC statement was agreed, this seems never to have happened.<sup>89</sup> The Programme was, however, duly published and endorsed at the Party Conference later in the year. It stated in line with the decisions noted above:

“We believe that there can be no place for such an outdated and unrepresentative body in a democratic legislature; and it is therefore our intention to abolish the House of Lords in the lifetime of the next Parliament. We recognise that there will be obstacles and opposition to this. We shall therefore, as a first step, carry through legislation, using the provisions of the Parliament Act if necessary, to abolish all the remaining legislative powers, with the exception of those which relate to the extension of the life of a Parliament.”<sup>90</sup>

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87 Personal recollection.

88 NEC Minutes, 16<sup>th</sup> June 1982. *The Times* (17<sup>th</sup> June 1982) reported that the deletion was on the strong recommendation of Foot. It should be noted, however, that in 1975 Foot had apparently supported the creation of peers to secure the passage of legislation, although possibly not on such a large scale (see p 51).

89 Home Policy Committee Minutes, 12<sup>th</sup> July 1982, and personal recollection.

90 *Labour's Programme 1982*, pp 206-7.

It referred back to the 1977 statement, to show that “we have carefully considered the alternative possibilities and found them all to be seriously defective. Either they would not be truly democratic or they would have the makings of a built in constitutional deadlock.” It expressed confidence that “the limited revising function currently undertaken by the House of Lords could be adequately – and indeed better – carried out by a reformed House of Commons,” adding that :

“We are not proposing the abolition of the House of Lords in isolation. It forms part of our much wider-ranging commitment to democratise and modernise the various institutions of parliament and government.”<sup>91</sup>

There was to be no further detailed discussion on this area of policy before the 1983 general election.<sup>92</sup> The position agreed in 1982 was, for the most part, reflected in the election manifesto, afterwards to be described by a member of the Shadow Cabinet as “the longest suicide note in history.”<sup>93</sup> This was originally issued in the form of a Campaign Document entitled *The New Hope for Britain*, which was agreed at a special NEC on 21<sup>st</sup> March 1983. As well as indicating the Party’s plans for a full parliament, it set out an Emergency Programme of Action, which included legislation to abolish the legislative powers of the Lords. However, the commitment to abolition in the lifetime of the next Parliament was no longer included in the document.<sup>94</sup>

Despite this omission, members of the Shadow Cabinet and the Parliamentary Party were reported to be “dismayed” by the commitment on the legislative powers of the Lords. Under the headline ‘Wipe out Lords policy may scuttle Labour, MPs fear,’ *The Times* said MPs and peers had not been consulted, and that it was being argued that it could torpedo the rest of the legislative programme.”<sup>95</sup> Of course, there had been prolonged discussion on the issue in the Party’s policy-making committees and a clear commitment in the 1982 Programme. Some may have wrongly assumed that such commitments could be omitted,

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91 Ibid.

92 The Machinery of Government Study Group, along with several other committees, was in abeyance during the year 1982/83, following the conclusion of work on *Labour’s Programme 1982..*

93 Gerald Kaufman, as quoted by Denis Healey (*The Time of My Life*, p 500).

94 Commenting on a draft, Anthony Bevens suggested in *The Times* (10<sup>th</sup> March) that this would be seen as a retreat by Benn and the left.

95 *The Times*, 2<sup>nd</sup> April 1983.

as they had been in 1979, but circumstances were now quite different. Butler and Kavanagh observed that, in 1983, the context was a large Conference vote for left-wing policies, charges of betrayal of the last Labour government and a push to make the PLP more responsive to Conference decisions, and loss of office and diminution of the Parliamentary Party's influence.<sup>96</sup> Foot's weak position on the NEC has already been noted (although in the autumn of 1982, the left had slightly lost its grip there and a right winger, John Golding, had become Chairman of the Home Policy Committee).<sup>97</sup>

The Campaign Document was adopted as the general election manifesto, a suggested shortened version having been rejected.<sup>98</sup> According to Butler and Kavanagh, "it was forced through in an hour or so virtually undiscussed.....it was the shortest Clause V meeting ever." Foot had apparently suggested to the Shadow Cabinet the previous day that the Campaign Document be accepted; and although some Shadow Cabinet members wanted further discussion at the Clause V meeting, the authors note that:

"The memory of Mr Callaghan's behaviour in 1979 – or the myths about it – seem to have served as a negative symbol. Mr Foot did not want to inflict on the Party rows like those that had gone on after 1979 or to risk the Party's new found unity by selecting or omitting proposals from the Campaign document."<sup>99</sup>

This suggests that the consequences of the argument in 1979, in which the House of Lords featured so prominently, were still being felt, with the memories still raw. In the event, as part of its 'Emergency Programme of Action', the manifesto stated that Labour would "introduce an early Bill to abolish the legislative powers of the House of Lords."<sup>100</sup> In the substantive part of the manifesto, on 'A Wider Democracy' it referred to *Labour's Programme 1982* and stated a commitment to:

"....Take action to abolish the undemocratic House of Lords as quickly as possible and, as an interim measure, introduce a Bill in the first session of Parliament to remove its legislative powers –with the exception of those relating to the life of a Parliament."<sup>101</sup>

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96 *The British General Election of 1983* (Macmillan 1984) pp 60-61.

97 *Ibid*, p 53.

98 NEC Minutes, 13<sup>th</sup> May 1983.

99 Butler & Kavanagh (op cit) p 62.

100 *The New Hope for Britain: Labour Party Manifesto 1983* (Dale, op cit, p 246).

101 *Ibid*, p 275.

Labour never got the chance to implement this, suffering a heavy election defeat, although there has been no suggestion that its policy on the House of Lords played a significant part in this. It does not feature in Butler and Kavanagh's study of the campaign itself; and their analysis of election addresses shows that only five per cent of Conservative and four per cent of Labour ones even mentioned it.<sup>102</sup>

Essentially, since the general election defeat of 1979, the Labour Party had been looking backwards. There had been lengthy and acrimonious recriminations over what had happened prior to the election. Bound up with these were the internal constitutional wrangles, which dominated Party debates in the early 1980s and which were followed by the defection of a significant number of Labour MPs to the newly-formed Social Democratic Party. The episode involving policy on the House of Lords in the 1979 manifesto, when the Leader was perceived to have exercised a veto over established Party policy, was an important factor in the debate over control of the manifesto, although this was one issue on which the "left" narrowly failed to secure a change.

The actual policy towards the House of Lords also essentially looked back to the earlier debate on abolition. The practicalities of achieving this had again been discussed in detail, but outstanding questions were never satisfactorily resolved. The prospect of a 1910 style constitutional crisis was raised, with the suggested creation of 1,000 peers, prompting further temporary flirtation with reform in the Conservative Party. However, unlike Callaghan in 1977, Foot intervened before a policy he opposed became official Party policy and was successful in stopping it, albeit narrowly. As things turned out, the 1983 manifesto policy was not so dissimilar from that of 1979. While aspiring to abolition, it promised early action only to remove the Lords' legislative powers, leaving actual abolition as a more distant prospect. The policy at this time was, however, still geared mainly toward removing a potential obstacle to the programme of a Labour government. Following further heavy election defeats and a lengthy period in opposition, this would change, as will be seen in the next Chapter.

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102 Butler & Kavanagh (op cit) p 258.

## 6. DEVELOPMENT OF LABOUR'S POLICY IN OPPOSITION 1983-92

### Policy Development in Abeyance

In the years immediately following its heavy defeat in the general election of 1983, the Labour Party showed little interest in the House of Lords. Indeed no further policy statement would be issued referring to it until 1989. Of course, circumstances had changed. The previous concern that the House of Lords might obstruct the programme of a Labour government was unlikely to be foremost in people's minds, since it was clear that the Labour Party was not going to form a government for several years. It had just 209 MPs, the smallest number since the Second World War, having received its lowest share of the vote since 1918. Also there was a new leader, Neil Kinnock, whose principal concern was to ensure the Labour Party was in a position to fight the next general election effectively and who, over this period, concentrated mainly on reforming party organisation, dealing with groups such as the 'Militant Tendency' and on improving presentation.<sup>1</sup> Although some statements on various policy issues did appear, it was only after the 1987 election that the Party would embark on a fundamental review of policy.<sup>2</sup>

Labour's official policy at this time was still for abolition. However, some eight years had elapsed since the confrontation between the previous Labour government and the Lords. Lord Cledwyn, who had become Labour's leader in the Lords, now observed that, in his experience, the House had not exceeded its powers.<sup>3</sup> Opposition could bring a different perspective and, instead of being seen as a potential obstacle to a Labour government, the House of Lords could be seen as providing a means of limiting at least some of the actions

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1 See for instance, Butler and Kavanagh: *The British General Election of 1987* (Macmillan, 1988), pp 47-64.

2 Geoff Bish, then the Party's Head of Research, recalled that, between 1983 and 1987, "we were marking time, policy wise" (Interview, March 1999).

3 *House of Lords Debates*, 19<sup>th</sup> December 1984 (Vol 458, Col 680). He argued for a new enquiry or Royal Commission on Lords reform. In the same debate, the veteran Labour peer, Lord Houghton of Sowerby, observed that Lords' reform had become a "non subject" and that studies had "gone into limbo" (Col 656).

of the Thatcher government. There was greater potential to do so there than in the Commons, with its massive Conservative majority. According to Donald Shell, during the 1980s local authorities – many of which were Labour controlled – came to look to the House of Lords for support in moderating the impact of government legislation; and the Lords had at least some success in the mid-1980s in obliging the government to adjust policies or slow down their implementation.<sup>4</sup> As will be seen, Labour thinking was later to develop so that it saw the second chamber (if not necessarily the existing House of Lords) as a means of preventing future encroachments on individual and constitutional rights.

The role of the House of Lords and the extent to which it had an effect on the policies and legislation of the Conservative government in the 1980s will be looked at more fully later.<sup>5</sup> However, it should be noted here that between 1979 and 1990 the Conservative government suffered 155 defeats in the House of Lords, 148 of which involved legislation. While this number may seem quite large, it should be contrasted with the 350 plus defeats suffered by the Labour government over a shorter period between 1974 and 1979.<sup>6</sup> The bare figures do not necessarily tell the whole story, since some defeats may be relatively trivial, while others can be of great political importance. Although some defeats were significant, such as that in 1984 on a crucial amendment to the Bill paving the way for the abolition of the Greater London Council and the metropolitan county councils, the substantive abolition legislation was passed. In the next Parliament, in 1988, the government secured victory on a crucial amendment to the highly contentious “poll tax” legislation, thanks to heavy whipping and a large turnout of hereditary peers; and it won a key vote on legislation, enabling it to go ahead with the abolition of the Inner London Education Authority. Usually it seemed, the Conservatives could rely on their majority in the Lords, when it really mattered.<sup>7</sup>

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4 Shell: *The House of Lords*, p 173.

5 See Chapter 8.

6 Shell (op cit) pp 25, 157.

7 Writing in 1988, the then Labour Chief Whip, Lord Ponsonby of Shulbrede, asserted that the House had “confounded its critics who have traditionally held that the House of Lords was ineffective as a revising chamber when there was a Conservative government”. However, in the same article, he conceded that “for all the publicity given to government defeats in the Lords, the government has not lost a single important Bill as a result of Lords’ activity” (*The House of Lords: An Effective Restraint on the Executive*, *The Parliamentarian*, Vol 69 No 2, April 1988).



Nevertheless, Margaret Thatcher actually increased the Conservative strength in the Lords with new creations.<sup>8</sup> On at least one occasion she blocked a number of proposed Labour creations. After the election defeat of 1983, the outgoing Party Leader, Michael Foot, put forward some 25 names. Some of them, he recalled, were former MPs, who “hadn’t any income...they were down and out after the election”; and also two or three were nominated by the Deputy Leader, Denis Healey “and I didn’t think I could refuse them”. However, Thatcher refused such a large number and was only prepared to accept six or seven. Foot objected very strongly, but Thatcher refused to concede, with the result that some ex-cabinet ministers were not included.<sup>9</sup> This episode is interesting, not only for the way it illustrates Thatcher’s determination not to make any concession to the opposition, but also in that it shows that providing compensation to former MPs was a motive for the Labour leader, in addition to that of ensuring numbers to carry out work in the Lords.<sup>10</sup>

Despite Labour’s numerical disadvantage, there may have been an expectation – and perhaps a hope amongst some Labour peers – that limited success in the Lords would lead to a change in the way Labour viewed the House and ultimately a change in policy.<sup>11</sup> Following, the votes on the local government “paving” bill in 1984, the *New Statesman* warned that, although “the House of Lords has successfully resisted Mrs. Thatcher’s elected dictatorship”, this did not alter the case for abolition. It added, however, that there was no evidence Labour had done any work on what ending the Lords’ legislative functions would involve, suggesting that “until it does, the commitment to abolish will ring as hollow as last time”.<sup>12</sup>

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8 See Chapter 8.

9 Interview with Michael Foot (March 1999). Lord Denham, then Conservative Chief Whip, recalled that “Margaret was always very reluctant to allow enough members of the Labour Party or indeed the Liberal Party to come here” and that, when it was necessary, she insisted on matching them with Conservatives “because she didn’t want to threaten the balance” (Interview, January 2000).

10 See p 104 for Foot’s publicly stated objectives in 1981.

11 Lord Cledwyn, speaking in 1987, argued that the years since 1979 had demonstrated that the Lords had done a necessary job and this was accepted by the Labour Party. He thought it was one reason why abolition was not included in the 1987 manifesto (*Analysis: The Other Opposition*: BBC Radio 4, 5<sup>th</sup> November 1987). Note also that, by 1989, a supporter of abolition like John Griffith could nevertheless acknowledge the potential usefulness of the Lords as a revising chamber (see p 75).

12 Leading article, 6<sup>th</sup> July 1984 (Vol 108, p 3).

Labour had not looked at the issue in any depth since the Machinery of Government Study Group had failed to reach agreement during the run up to *Labour's Programme* in 1982.<sup>13</sup> Neil Kinnock wanted to distance the Party from memories of the 1979-83 period;<sup>14</sup> and, shortly after his election as leader, it was decided in December 1983 to wind up the existing network of advisory sub-committees, study groups and working parties and replace them with a comparatively small number of new Joint Policy Committees. These were to report to both the National Executive Committee and the Shadow Cabinet and would be made up of equal numbers from both bodies, with only a limited number of co-optees and, so "it was hoped, avoid the problem of over-large fluctuating memberships". They would be set up "only where there was a clear priority for policy development" and "a link to the Party's campaign strategy."<sup>15</sup> None of these new Joint Policy Committees had specific responsibility for policies relating to the House of Lords or for wider parliamentary reform. The second chamber, it would seem, was no longer seen as a priority for policy development or as featuring in the campaign strategy. In the absence of any decision on this by the NEC or the Party Conference, policy remained formally unchanged, but it was now very much on the back-burner.<sup>16</sup>

The Labour frontbench's lack of enthusiasm on the issue was demonstrated when Kinnock, in an interview the same year, said that while he was still in favour of abolition, he did not want this to "pre-occupy the time of a Parliament that's got to get on with the business of helping to rebuild our society". Given other claims on time and energy, it could not be in the "top slot" of the first five years of a Labour government; and the House of Lords was still likely to be there at the time of the following election.<sup>17</sup> Unsurprisingly,

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13 See Chapter 5.

14 Butler & Kavanagh (op cit) p 54.

15 Labour Party NEC Report 1984, p 70. The work of the Machinery of Government Study Group (which had enjoyed a large and fluctuating membership) had, in practice, ended in 1982.

16 Tony Benn and another Labour backbencher, John Marek, made nominal attempts at legislation in 1985, involving respectively abolition of the Lords (as part of a wider Reform Bill) and a chamber elected by proportional representation, but neither stood any realistic chance of success (*House of Commons Debates*, 24<sup>th</sup> May 1985, Vol 79, Col 1253; 5<sup>th</sup> July 1985, Vol 82, Cols 686-9).

17 Interview with David Frost, TV AM, 31<sup>st</sup> March 1985.

therefore, Labour's 1987 manifesto made no reference whatsoever to the House of Lords. In marked contrast to 1979, "little fuss" was made about the manifesto, which was agreed at an amicable Clause V meeting of the NEC and Shadow Cabinet. The general mood, according to one participant was "if Neil didn't want it, then we won't have it."<sup>18</sup>

### Labour's Policy Review

Although Labour's performance in the general election of June 1987 showed improvement on that in 1983, the Party still lost heavily and was again faced with the prospect of a Conservative government with a comfortable majority for a full Parliamentary term.<sup>19</sup> Shortly after the election, it was decided to undertake a wide ranging and fundamental policy review. The aim was said to be to close the perceived gap between the Party and the electorate on policy issues and to help overcome internal disunity.<sup>20</sup> According to Butler and Kavanagh:

"Awareness of how much electoral ground Labour had to make up as well as sullen resignation amongst much of the left and grass roots activists strengthened the hands of the reformers. The widespread recognition that something radical had to be done led to acceptance of a far reaching review of party policy."<sup>21</sup>

The policy review was discussed by the National Executive in July and the decision to establish the review was endorsed at the 1987 Party Conference, without much debate. The Conference was said to have been indifferent, with the left holding fire, not wanting to rock the boat, while the trade unions were supportive.<sup>22</sup>

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18 Butler and Kavanagh (op cit) p 71. This study of the 1987 campaign makes no mention at all of the issue.

19 The Conservatives this time had an overall majority of 102, with Labour winning 229 seats.

20 Gerald R Taylor: *Labour's Renewal: The Policy Review and Beyond* (Macmillan, 1997) p 43.

21 *The British General Election of 1992* (Macmillan, 1992) p 45.

22 Ibid.

Seven Policy Review Groups (PRGs) were established, with joint membership taken from both the NEC and the Shadow Cabinet and with joint convenors. Each was to look at policies within fairly broad themes, and the remit of the Group covering 'Democracy for the Individual and the Community' comprised:

“Civil liberties and equal rights, freedom of information and expression, policies to combat crime, involvement in the democratic process at local, regional and national level, the media and democracy, and the issues of centralisation and decentralisation.”<sup>23</sup>

The joint convenors were the Party's Deputy Leader, Roy Hattersley, and Jo Richardson, who had frontbench responsibility for women's issues, both of whom were members of the Shadow Cabinet and the NEC.<sup>24</sup>

This PRG made no reference to the issue of the second chamber or to Parliamentary reform of any sort in its first stage report. Although it discussed “a framework for more effective and open democratic process” (centred round a Freedom of Information Act), the emphasis at this time was more on individual rights. The notion of an elected second chamber with a special role was only to emerge later. Indeed, the report acknowledged that so far only brief consideration had been given to aspects of its work relating to government and the electoral and decision making process, but the Group would be looking at “how we can improve the quality of our democracy.”<sup>25</sup>

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23 *Social Justice and Economic Efficiency: Democracy for the Individual and the Community* (The Labour Party, 1988).

24 *Ibid.* The other initial members were Eric Clarke, Joan Lestor MP, Jack Rogers, Paul Boateng MP, Ann Taylor MP, Danny Sargent and Lord Irvine of Lairg. Irvine (later to become Lord Chancellor) was then a frontbench spokesman in the Lords on legal and home affairs. The other non-MPs were all trade union members of the NEC. There would be some changes to membership subsequently. The Secretariat was provided by staff from the Shadow Cabinet and Party HQ, with staff from the Party Leader's office also involved.

25 *Ibid.*

At the NEC meeting which agreed to publication of the report in May 1988, Tony Benn moved an amendment that “a Labour government will abolish the House of Lords,” but his influence and the strength of the left had diminished and it was defeated by 18 votes to 4.<sup>26</sup> However, later in the year, Hattersley told a meeting in Dartford that the NEC had agreed in May that the PRG (of which he was joint convenor) should “examine alternative ways of implementing abolition of the Lords.”<sup>27</sup> Newspaper comment noted that this “dispels left wing suggestions that the party had been backtracking on reform of the Lords;”<sup>28</sup> and Hattersley himself took the trouble to deny that the Party had abandoned its commitment to abolition. However, this did not necessarily mean that he (or indeed the Party) still felt committed to doing without a second chamber at all, as the rest of the speech showed. This was an important speech, since Hattersley was to have a pivotal role in the development of policy in this area, and it indicated the direction of his thinking. Nothing had yet been put to the PRG, although he claimed in his speech that he had considered the alternatives shortly after the aforementioned NEC meeting, but had refrained from speaking publicly, lest it become linked with the deputy leadership election. The speech was, nevertheless, made before that election at the Party Conference in October.<sup>29</sup>

Hattersley, in offering thoughts as “no more than a contribution to the debate”, said he had always believed a second chamber of hereditary peers and nominees to be an anachronism. While acknowledging the work of Labour peers and the fact of some defeats for the Conservative government, he stressed that “when the government is determined to win, it can always win”, and attacked the “naked use of the Conservative Party’s inbuilt majority”. Performing a role as “revising chamber of a technical sort” did not in itself justify its existence. He suggested the best solution would be an all-party solution; “if the Tories were prepared to concede hegemony could not last for ever”, there was much to be said for a Royal Commission examining how democracy could be restored to both Houses of Parliament.<sup>30</sup>

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26 NEC Minutes, 25<sup>th</sup> May 1988.

27 Speech to Dartford Constituency Labour Party, 20<sup>th</sup> September 1988. The NEC Minutes do not record such a decision.

28 Patrick Wintour: ‘Hattersley commits Labour to abolition of the Lords’, *The Guardian*, 21<sup>st</sup> September 1988.

29 Both the leadership and deputy leadership were contested in 1988, with Kinnock defeating Tony Benn for the former and Hattersley defeating John Prescott and Eric Heffer for the latter, both by large margins (Labour Party Conference Report 1988, p 11).

30 Dartford speech (op cit).

He went on to pose five questions. Was a second chamber necessary at all? Was there a case for maintaining the hereditary principle? In what other forms might a second chamber be constituted? Should it be elected on some other form of suffrage or from different constituencies? Was there a case for maintenance in its present form, but with powers attenuated and membership augmented? Hattersley told his audience the Party would now address these, but himself made some interesting preliminary observations. He refuted the arguments that the Lords deterred the Commons from excesses, citing the evidence of the past eight years; and he described as “nonsense” the notion that, without the Lords, the Commons might delay an election – it was public opinion rather than “some frail constitutional principle” which obliged politicians to respond to democratic obligations. He was cool towards the idea of a nominated House reflecting the composition of the Commons – “they will be likely to respond to the demands of their patrons and do no more than reinforce both errors and successes of the other chamber”. He noted the “classical argument” that an elected chamber would have greater influence than at present, but saw “no reason why an elected second chamber should not have its powers circumscribed in law”, adding:

“it is difficult to imagine how a representative House can be created by any other means than election.”<sup>31</sup>

At this stage, Hattersley purported only to be floating ideas. Support for an elected second chamber was strongly hinted at, but no more; and there was as yet no suggestion of using the second chamber to provide special powers to safeguard fundamental and constitutional rights, which was to become an important feature of the plans. The comments on a nominated chamber are also worth noting (not least in view of developments since Hattersley left the front bench in 1992). It is also interesting that he should have expressed a preference for an all-party solution, even if he did not expect it to be forthcoming.<sup>32</sup>

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31 Ibid.

32 Hattersley later confirmed that this was his preference, as consensus was the best way of making progress on constitutional reform, without having to sacrifice the Parliamentary timetable (Interview, May 1999).

At the Party Conference itself, Hattersley reiterated the intention of looking at policy on the House of Lords, although the report on which he was speaking made no specific reference to it; and it did not feature in the debate, except for a reference by Eric Heffer, who had just unsuccessfully challenged him for the deputy leadership, and who suggested that it was that campaign which had let Hattersley to say he was in favour of getting rid of the House of Lords:

“I did not hear much of that from Roy beforehand, but I am sure he held that point of view.”<sup>33</sup>

Hattersley told the Conference that, to build a new society, there had to be changes at the top and “that requires the abolition of the House of Lords”, adding in a riposte to Heffer that this was “a view – you know very well Eric – that I have had throughout my political life”. He pointed to the way the Lords had recently “saved the Conservative administration by wheeling in the backwoodsmen”, and added:

“I think we ought to make it clear today that these noble ancients, brought in from great houses and country estates, signed the death warrant of the House of Lords by their behaviour this year.”<sup>34</sup>

Then – perhaps because he was addressing the Party Conference – he took a somewhat different tack from that in his Dartford speech, saying:

“The House of Lords in its present form must go, but we must not assume that it needs to be replaced by another second chamber. There are many in this Party – me amongst them – who think that a single elected chamber is the best of all safeguards for democracy.”

Moreover, he asked the Conference not to support any resolution committing it to a second chamber, promising to return the following year with a firm plan, which “may involve a second chamber or it may not.”<sup>35</sup>

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33 Conference Report 1988, p 121.

34 Ibid, p 124. Hattersley referred particularly to their record on the poll tax and the abolition of the ILEA (see Chapter 8).

35 Ibid. The Conference Report does not record any resolution debated which would have committed the Party to a second chamber. Neither does it show any vote being taken on the specific Policy Review Report.

Even allowing for Conference rhetoric, it seems surprising that the Deputy Leader of the Party should have played down so much the potential role of a second chamber, when less than three months later, he would himself put forward proposals which envisaged an important role for the second chamber in safeguarding democratic reforms – and this at a time when the work of the policy review on this had scarcely begun.

Clearly though, there was now recognition within the Party that, together with other aspects of constitutional reform, this area of policy would need to be looked at.<sup>36</sup> There were also other influences pushing in the same direction. In December 1988, the pressure group Charter 88 launched its Charter, which advocated a range of democratic reforms. Included in its list was a proposal to:

“Reform the Upper House to establish a democratic, non-hereditary second chamber.”<sup>37</sup>

Hattersley himself is said to have been dismissive of Charter 88 - more so than Kinnock<sup>38</sup> - but clearly there was a degree of common ground. Such pressure groups sought and had the potential to influence politicians, particularly those in opposition.<sup>39</sup>

Earlier the same year, Lord Scarman (a prominent, recently retired law lord) had set out proposals for a reformed second chamber. He asserted that the checks and balances, such as they were, of the constitution were of no avail and, echoing Lord Hailsham, argued that “the path to an ‘elective dictatorship’ is open and must be blocked”.<sup>40</sup> One of Scarman’s specific proposals was for a reformed second chamber, partly elected from regional and institutional constituencies by proportional representation and also with a nominated element. A new Parliament Act, he went on to suggest, should schedule legislation of constitutional importance which would require the assent of both Houses for amendment

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36 In a leading article, *The Times* had suggested that this fresh look at Lords’ reform would be “an important test not only of the genuineness of Labour’s revisionism, but of its claim to democratic credentials” (22<sup>nd</sup> September 1988).

37 *New Statesman and Society*, 2<sup>nd</sup> December 1988 (Vol 1, p 11).

38 Butler & Kavanagh (op cit) p 52.

39 For instance, in the 1992 general election campaign, both Labour and Liberal Democrats arranged press conferences on constitutional reform to coincide with Charter 88’s designated ‘Democracy Day’.

40 Hailsham used the phrase in his 1976 Dimpleby Lecture. Hattersley himself would also use it (see pp 141 and 173).



or repeal. For immediate action he proposed incorporation in domestic legislation of the European Convention on Human Rights, a new Parliament Act (to give effect to the proposed new powers of the second chamber) and a joint Parliamentary Committee to review membership of the Lords and propose further reform, although the first two of these need not wait on the third.<sup>41</sup>

The notion of a second chamber with special powers to safeguard legislation of constitutional importance – unlike Scarman’s other proposals – would, in due course, be adopted by the Labour Party. Indeed, when questioned later about when he became attracted to this notion, Hattersley acknowledged that he may have got it from Scarman.<sup>42</sup>

Labour’s Policy Review Group took its first detailed look at policy towards the second chamber on 30<sup>th</sup> November 1988. Hattersley had already made it clear the subject would be back on the agenda; and the way which, that year, the government had secured majorities in the Lords on such contentious matters as the poll tax, the abolition of the ILEA and most recently, eye test and dental charges, may have helped ensure this was the case.<sup>43</sup> In the case of the poll tax, *The Guardian* had observed shortly before the Party Conference:

“Lord Denham won the vote; but at the cost of putting the unreformed state of the Lords back on the party agenda.”<sup>44</sup>

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41 ‘Power House’ *The Guardian*, 6<sup>th</sup> June 1988 (based on his Radcliffe Lecture at Warwick University). Scarman saw the role of the new chamber as restraining the abuse of power by the Commons, without blocking the ultimate right of the Commons to get its way. Greater powers should mean a more representative chamber. His proposal was for a reformed second chamber, based not just on regional constituencies, but also representing other groups in society (professions, churches, business, industry, trade unions, ethnic groups etc). It was not clear exactly how these groups would be identified or would exercise their vote.

42 Interview, May 1999.

43 See Chapter 8.

44 Leading article, 22<sup>nd</sup> September 1988. (NB Denham was then Government Chief Whip.)

The PRG had on its agenda Hattersley's Dartford speech and a paper from Party officials summarising developments in the Party's policy towards the House of Lords since 1976. Noting that there had been no mention of this issue since the 1983 manifesto, the latter observed that there had been "suggestions in some quarters, that the Lords, unsatisfactory as it might be, could prove useful in blocking some of the excesses of the Thatcher government", but argued that, despite the "useful contribution made by individuals," recent events, with Tory backwoodsmen whipped in on key votes, had shown this not to be the case. The PRG would be bound to consider the Party's position on the Lords, but in so doing, it was suggested that:

"it should bear in mind the fact that various alternative reforms of the second chamber have been rejected in the past and also the very real difficulties involved in carrying through actual abolition."<sup>45</sup>

The PRG then set up a small Working Party to examine 'Constitutional Questions', which included on its agenda 'Modernising Parliament'. Before its first meeting, however, the Party's Deputy Leader had developed his thinking further on the role of the second chamber, which might safeguard constitutional reform and possibly also certain legislation on individual rights.

Hattersley floated his ideas in an article in *The Independent* at the end of the 1988, in which he observed that "there are no judicial checks or legislative balances to hold back the sovereignty of Parliament", and that "we need formal protection against elective dictatorship". He dismissed both a Bill of Rights and electoral reform, but argued for devolution; and then went on to suggest that the "powers of the regional assemblies could in effect be entrenched by reform of the House of Lords". He thought there were dangers in an Upper House replicating the Commons or in having an unelected chamber which could frustrate the Commons, but "a second chamber, elected directly by the regions or indirectly from the assemblies, would avoid both dangers". It would be highly unlikely to

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<sup>45</sup> PD 1804 (November 1988) Party Policy on the House of Lords – A Background Note. The paper noted the problems which had emerged from earlier discussions.

endorse legislation removing their powers. He suggested that this second chamber “could come to represent those institutions which conflict with the instincts of central government”. It would defend not only devolved powers, but freedom of information and citizens’ privacy; it would prevent erosion of civil liberties, insist on “close supervision” of security services and on the rights of broadcasters to operate without interference. It would be “a realistic check on the powers of central government and a counterbalance to the authority of the Prime Minister.”<sup>46</sup>

This went further than his Dartford speech; and the notion of a second chamber with a particular role along these lines was to feature in the 1989 Policy Review Statement. However that statement would be much more vague on any direct link between the regional assemblies and the second chamber. It was not explained clearly, at this time or subsequently, why the new second chamber should necessarily share Hattersley’s particular concerns and so safeguard them.

It did indicate a significant change in the way the second chamber was perceived, at least by this senior Labour politician. In the discussions of the 1970s and early 80s, even those opposed to abolition were taking an essentially defensive position, rather than advocating a positive role for the second chamber. Now the Party’s Deputy Leader was doing just that. The long years in opposition and the consequent inability to prevent controversial changes had clearly had some effect. As Hattersley, himself, acknowledged:

“Margaret Thatcher’s contempt for compromise...has changed the constitutional perception. We need formal protection against elective dictatorship.”<sup>47</sup>

Hattersley was opposed to a formal Bill of Rights, as he made clear in the article, and the new second chamber could be seen to some extent, as an alternative proposition.<sup>48</sup> An article and speech by the Deputy Leader did not necessarily determine official Party policy, but clearly they would be influential.

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46 ‘Devolution to defend the nation against elective dictatorship,’ *The Independent*, 30<sup>th</sup> December 1988.

47 Ibid.

48 In a subsequent paper to the Policy Review Group in February, Hattersley would set out objections to the incorporation of the European Convention on Human Rights into British law, and put forward the new second chamber as part of an alternative approach (PD 2060: Constitutional Reform:- Note from Roy Hattersley and Jo Richardson).

Although Hattersley was not directly involved in the aforementioned Working Party, it was chaired by one of the members of his Home Affairs team, Alistair Darling.<sup>49</sup> The second chamber was one of many issues – albeit an important one – to be dealt with in time for the main report, so there could be no lengthy examination. Nevertheless, its first two meetings in January 1989 concentrated on this issue, following which a note was drawn up setting out its conclusions, which were for a new second chamber, “whose composition would be determined democratically, not on a basis of heredity or patronage”. It should have “strong representation from the regions of the UK”. Direct and indirect representation of regional assemblies had been considered, but dual membership could involve practical difficulties, while the latter could mean a lack of direct accountability. Moreover, either would have to await establishment of the assemblies. “On balance, the advantage would seem to lie with the establishment of a directly elected second chamber, elected at the same time as the House of Commons, but by an alternative system of election.”<sup>50</sup>

It recognised that an elected chamber “would have a stronger claim to democratic legitimacy” than the present House and that there could be no guarantee of a government majority there; but an additional nominated element would be “undemocratic” and involve “an unacceptable degree of patronage”. Bills should not be introduced there and delaying powers over most legislation should be restricted, “perhaps allowing for one opportunity at revision”. However, extension of the life of a Parliament should require the consent of both Houses, and “there might be a similar requirement in other constitutional areas” - for instance, “changes to the status of regional assemblies.” Ministers could sit there “if it was so desired”. Titles need not be affected. A number of points would need to be considered further, including the system of election; clarification of specific powers and

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49 Darling had also joined the main Policy Review Group. The other members of the Working Group were Lord Irvine of Lairg, Paul Boateng MP, James Cornford (Director of the Institute for Public Policy Research), David Hill (assistant to Roy Hattersley), Kay Andrews (Party Leader’s office) and Tim Lamport (Labour Party HQ). Note that Darling, Irvine and Boateng were all lawyers.

50 PD 1993A: The Second Chamber – Summary of Conclusions so far (February 1989).

functions, including entrenching powers; the form of links with the regions; timing and mechanism for carrying reforms through and possible interim measures; and consequent changes to Commons procedure.<sup>51</sup> Although not all would be dealt with in the published report, the Working Party was aware that they ought to be addressed.

These proposals would form the basis of the eventual Policy Review statement, but with some significant differences. They were worked into a draft section of the report then put to the full PRG in March. In this, the position on ministers in the second chamber was changed, stating that “ministers will no longer sit there”.<sup>52</sup> This would seem to have been in response to Hattersley who, in a separate paper to the PRG in February, had said there was no reason why there should be a formal government presence in the second chamber.<sup>53</sup> Hattersley was certainly a major influence. For instance in the same paper, while saying that he would himself favour a second chamber with special blocking powers, he acknowledged that his co-convenor, Jo Richardson, even then, remained “highly sceptical about the need for a second chamber”;<sup>54</sup> but Hattersley’s views would prevail.

In the Working Group’s deliberations, the notion of special powers over constitutional matters had been put forward only tentatively, probably taking account of Hattersley’s recent advocacy of this, but making no reference at all to individual rights and personal freedom. The March draft, however, was much more specific as to this special role in respect of constitutional and individual rights. It proposed “extended delaying powers of up to two years” and mentioned specific areas, including regional and local government, freedom of information, data protection and other rights, for instance in connection with race relations and equality. By the time the final draft was sent to the NEC in May, this

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51 Ibid. Although no decision had been taken on the electoral system, it was tentatively suggested that a list system involving party patronage would be unacceptable. (A list system would, however be supported by Party Conference four years later; see Chapter 10.)

52 PD 2120: A Second Chamber – Draft Section of PRG Report (March 1989).

53 PD 2060 (op cit). Reflecting later, Hattersley reasoned that he wanted a second chamber which was as “un-party political as possible” and that, without the prospect of ministerial office, members would be likely to behave more freely. He thought he probably had been responsible for changing this aspect of policy (Interview).

54 Ibid.

would have changed again, reference being made there to “powers to delay repeal of legislation for the whole of the life of a Parliament” and specifying only “legislation establishing the national and regional assemblies” and “covering fundamental rights”. Similarly, although the March draft suggested that “it would make sense” for elections to be held “at the same time and with the same boundaries as those for the regions” and had re-iterated that there could be no guarantees of a government majority in the new chamber, neither of these points would be included in the final version.<sup>55</sup>

The final draft was presented to the NEC in May 1989. At this meeting, a proposal by Tony Benn for “the creation of a sufficient number of peers to secure the abolition of the House of Lords” was defeated by 26 votes to 4.<sup>56</sup> Although now in a small minority on the NEC, Benn was still pursuing this proposition tenaciously. The thorny question of entrenchment (in other words, of how to safeguard particular legislation from repeal) came up, and in particular, in this context, the special powers to be given to the second chamber. The final draft, in its introductory section on protection for rights and democratic reforms, had asserted that it was intended to “make the only constitutional reform which can protect the legislation from repeal in further Parliaments.”<sup>57</sup> However, an amendment moved by Hattersley was passed, so it was amended to read, as it would in the final text:

“We intend to make constitutional reform which can protect that legislation by ensuring any government which seeks its repeal must obtain the consent of both Houses or else fight, and win, a further general election.”<sup>58</sup>

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55 PD 2120 (op cit); PD 2194: Democracy, the Individual and the Community (May 1989).

56 NEC Minutes, 9<sup>th</sup> May 1989. (The Home Policy Committee did not meet during this period, the Policy Review being dealt with at special meetings of the full NEC.)

57 PD2194 (op cit).

58 *Meet the Challenge, Make the Change: A New Agenda for Britain* – Final Report of Labour’s Policy Review for the 1990s (The Labour Party, 1989) p 55; NEC Minutes, 9<sup>th</sup> May 1989 record that the amendment was carried by 20 votes to 4. (An amendment on similar lines had been suggested by the present author.) The chapter as a whole was approved by 22 votes to 4.

The draft section concerning the proposed Scottish Assembly, had made an even more ambitious assertion, that “we are determined to entrench the powers of the Assembly and thus to give a guarantee of permanence to the new settlement”.<sup>59</sup> This was also modified in the published version, which stated instead:

“We are determined to entrench the power of the Assembly and it may be that this is best done through the powers that we will give to our proposed new second chamber, which will replace the House of Lords.”<sup>60</sup>

There seems to have been a degree of confusion about the extent to which entrenchment was possible. Alternatively, there may have been a wish in some quarters, for political reasons, to claim more for the proposals than would actually be the case. It could certainly have been seen as advantageous to be able to claim a degree of permanence for the new settlement. The Policy Review statement would indeed state that “we are determined that the new Scottish settlement will be firmly established in our system”.<sup>61</sup> However it is by no means clear that the PRG had actually accepted it was possible to give any “guarantee of permanence”; and in the event, such a claim was not directly made, even if it was implied.<sup>62</sup>

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59 PD 2194 (op cit).

60 *Meet the Challenge, Make the Change*; p 57.

61 Ibid

62 The author’s contemporaneous notes suggest it had been agreed at the PRG that it was not possible to guarantee permanence, but that apparently Donald Dewar, then Shadow Scottish Secretary, had wanted the contentious wording.

## **Policy Review Report**

The PRG's report was incorporated as a chapter entitled 'A Modern Democracy' in the comprehensive policy statement, *Meet the Challenge, Make the Change*. In view of its importance as a new statement of policy, and the significance of particular wording, it is necessary to quote from it here in some detail. The sub-section on a second chamber reiterated that: "a second chamber of Parliament based on inheritance and patronage is unacceptable in a modern democracy". It noted that for many years the Labour Party had been committed to the abolition of the House of Lords and the time had come "to give precise and practical effect to that intention". It then identified a clear departure from the Party's previously held position:

"We have considered whether democracy would be best served by the creation of a single chamber Parliament or by replacing the House of Lords with a new second chamber. We propose the abolition of the House of Lords and its replacement with an elected second chamber with a specific and precisely defined constitutional role".<sup>63</sup>

The document argued the need to extend democracy by "passing out new powers to the nations and regions of Britain" and "establishing fundamental rights which cannot easily be overthrown by authoritarian government". Parliament must scrutinise legislation "with greater care than is now possible", ways must be found to ensure the proper examination of the increasing European laws and regulations, and the new second chamber would "play a substantial part in achieving all these essential objectives".

On the composition of this chamber, it stated:

"The form of election to the new second chamber will be a matter for further consideration, but, because of its nature, it may be appropriate to adopt a scheme different from that by which Members of Parliament are elected. We intend that members of the new second chamber should particularly reflect the interests and aspirations of the regions and nations of Britain. We do not, however, propose direct links between members of the national and regional assemblies and members of the upper house".

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63 *Meet the Challenge, Make the Change*; pp 55-56. (NB All the extracts on pp ~~6-14~~15 are taken from this.)



The report emphasised that the new chamber would not be “a replica of the House of Commons”. Ministers would not sit there and Bills would not be introduced there. It would retain powers to delay legislation, but for most Bills its power of delay would be restricted “to only one opportunity for revision before final consideration by the House of Commons”. To “improve its efficiency as a revising chamber”, it should develop a standing committee system for the detailed scrutiny of Bills and special select committees for general examination of government policy.

It asserted that “the new second chamber will be an essential element in the protection of fundamental rights”, it would “in effect entrench our fundamental rights legislation”. In the British system there was “only one way of preventing a government with a substantial majority and supine backbenchers from transforming Parliament into an elective dictatorship”, and that was “the creation of at least one House of Parliament which because of its composition and construction, will not automatically accept cabinet directions.” It continued:

“We propose that the second chamber should be the instrument which prevents the swift repeal of legislation on fundamental rights by any authoritarian government which might, in future, be elected. We propose therefore that the new second chamber should have new delaying over measures affecting fundamental rights. It will possess the power to delay repeal of legislation affecting fundamental rights for the whole life of a Parliament – thus providing an opportunity for the electorate to determine whether or not the government which proposes such measures should remain in office. The extra delaying power will apply to items of legislation specifically designated as concerning fundamental rights and all legislation establishing the national and regional assemblies. The second chamber will also possess the absolute right of veto on any proposal to extend the life of Parliament beyond the constitutional maximum of five years”.

It added that “the judicial committee of the present House of Lords will continue to function as the supreme court”, but would comprise senior judges appointed by “an independent committee responsible to the Minister for Legal Administration.”<sup>64</sup>

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64 A new ministry responsible for the administration of justice was proposed.

To set all this in context, the report had stated it was preparing specific legislation to “provide a massive extension of individual rights and to extend democracy”. It added:

“We intend to make constitutional reform which can protect that legislation by ensuring that any government which seeks its repeal must obtain the consent of both Houses or else fight and win, a further general election. Since, within our system there is no way which an Act of Parliament can be ‘entrenched’, legislation remains on statute books for so long, but only so long as Parliament resists its repeal. We intend to create an upper House of Parliament (to replace the present House of Lords) which will – because of its composition and constitutional functions – protect and preserve the rights which we incorporate in law”.

While not explicitly rejecting a Bill of Rights, it made clear that it would not regard this as providing necessary protection, whereas “by creating the new second chamber...we will make it infinitely more difficult for some future authoritarian government to repeal our rights legislation”.

The same chapter of the report also put forward a range of other proposals, including reform of the House of Commons, state funding of political parties, devolution and decentralisation, extending the right to know, changes to the administration of justice and other reforms relating to individual rights.

As far as the second chamber was concerned, this was the most comprehensive statement on the issue for more than a decade. It completely reversed the Party’s position, from one which had argued that a second chamber was unnecessary, to one which, to some extent, made it central to its programme for democratic reform. Although it acknowledged that “our programme for the extension and protection of individual rights is not dependent on our plans for constitutional reform”, they nevertheless came across as pivotal. It is perhaps significant that the new second chamber was placed first in the order in which items on democracy were dealt with in the document.

Despite this, there were still important questions concerning aspects of the policy which remained to be answered, and of which officials dealing with the policy had been aware, even before the report had been finalised.<sup>65</sup> The question of whether it was proposing actual entrenchment was still unclear since, despite in two places asserting a “determination to entrench” or “in effect entrench”, it elsewhere stated that “there is no way in which an Act of Parliament can be entrenched”. If the latter was in fact the case, then it would seem that the new second chamber was seen at least as the next best thing, since it would make it “infinitely more difficult” for a future government to repeal Labour’s reforms. However, it had not been made clear exactly how this would work, or how and precisely what legislation would be designated for this special protection.

Also, it had not been made clear why the second chamber should necessarily be less inclined to accept cabinet directives than the Commons.<sup>66</sup> Nor had it been explained how legislation would be handled there if it had no ministers. Although an explicit link was being proposed with regional government and representation, it had not been established precisely how this would operate. It is clear, however, that a different electoral system from that used for the Commons was being contemplated, even at this stage.<sup>67</sup> The following year Labour would set up a Working Party on Electoral Systems, whose remit would include the second chamber.

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65 The author’s contemporaneous notes indicate that these were raised and clarification suggested.

66 If members of the second chamber were to have no prospect of holding ministerial office, this might have been a factor (see note 53), but it was not explicitly stated. Moreover, in his note to PRG in February 1989, Hattersley had acknowledged that “it may not be possible to avoid its examination of legislation being carried out in the confrontational way which both chambers of Parliament now employ” (Ibid).

67 Despite his known hostility to electoral reform generally, Hattersley had indicated that he would be prepared to consider the Upper House being elected “on a different form of franchise” (Ibid).

### Some Critical Reactions

Some of the problematic aspects of the policy were to provide grounds for criticism by observers from various political standpoints. For instance, soon after its publication, a former senior Labour Party official expressed concern that the Policy Review was “recommending the establishment of a respectable alternative power base to the Commons” and that “an elected second chamber charged with protecting vague ‘fundamental rights’ could well develop a feeling of self-importance and look for things to do. Then the Commons might find it had created a Frankenstein’s monster.”<sup>68</sup> Later the political columnist in *New Statesman and Society* pointed to an inconsistency in having a more democratic second chamber and simultaneously reducing its powers;<sup>69</sup> while his counterpart at *The Spectator* observed sarcastically that it would have enough power apparently to block important legislation, but not enough to block unimportant legislation.<sup>70</sup>

The academic, Donald Shell, subsequently pointed to the fact that no ministers would sit there and that its powers would be limited for the great bulk of legislation, prompting him to ask “what kind of people would compete for election to this new second chamber?” He also asked how a list of measures affecting fundamental rights would be drawn up and who would have the responsibility of deciding when and how draft legislation infringed such rights. He suggested that “it does not appear that the Labour Party has given much consideration to these matters.”<sup>71</sup> Some in the Party were certainly aware that some such questions remained unresolved and would, in due course, seek to clarify the position.<sup>72</sup>

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68 Ann Carlton, *Tribune*, 16<sup>th</sup> June 1989. (She had previously been the Party’s Local Government Officer and then adviser to John Silkin, a Cabinet minister in the 1974-79 government.)

69 R W Johnson, *The New Statesman and Society*, 25<sup>th</sup> May 1990 (Vol 3, p 23).

70 Noel Malcolm, *The Spectator*, 9<sup>th</sup> June 1990 (Vol 264, p 6).

71 *The House of Lords*, p 257

72 See p 159..

Even before the Report had been put to the Party Conference, Tony Benn, who still argued that “the only way you can deal with the Lords...is by threatening to swamp them”, had questioned the likelihood of the proposals ever being implemented. “I would be surprised if it ever got off the ground”, he said;<sup>73</sup> and similar doubts were expressed two years later by the political columnist of *Tribune*, who questioned Labour’s commitment to carry the policy through:

“I would bet a few baubles that, no matter what brave words are uttered, the House of Lords will be as safe in Labour’s grasp as the People’s Party is in the aristocratic embrace.”<sup>74</sup>

This might have proved reassuring to the Labour peers, whose existence would still be threatened and many of whom clearly remained to be convinced of the merits of the new policy. The plans were reported to have “provoked consternation amongst Labour peers” and their Chief Whip, Lord Ponsonby, was quoted as saying they would turn the House into “little more than a sub-committee of the Commons”.<sup>75</sup> In a highly relevant House of Lords debate in April 1990 (on a motion to call attention to appropriate powers and constitution of a second chamber), the speaker from the Labour front bench, Lord Mishcon, did not actually refer to his Party’s policy proposals or respond to criticisms of them made in the debate. Indeed he argued that “we must ensure that the powers and duties of the second chamber are roughly consonant with those that we have”.<sup>76</sup> This was not in line with the Party’s official position.

There appears to be no record of any formal opposition from the Labour peers. However, around the time that the Policy Review proposals were being presented to the NEC in 1989, their leader, Lord Cledwyn, was recorded as stating that the “collective view of Labour peers towards a second chamber was that the hereditary principle should be immediately abolished and a Royal Commission established to consider reform.”<sup>77</sup>

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73 Reported in *The Independent*, 9<sup>th</sup> August 1989.

74 Hugh Macpherson, *Tribune*, 3<sup>rd</sup> May 1991.

75 *The Independent*, 9<sup>th</sup> August 1989.

76 *House of Lords Debates*, 25<sup>th</sup> April 1990 (Vol 518, Col 630).

Later, when Neil Kinnock met the Labour peers, some of them expressed reservations about the Policy Review proposals, but the record does not indicate overwhelming hostility. At this meeting, Kinnock stressed that the Party now favoured a bicameral Parliament, and observed that this represented an “historic shift”. He himself “had changed his own personal view over the years and now firmly believed in the need for two chambers, distinct but complementary.”<sup>78</sup> He told the peers that their views would be taken into account, and is recorded as having agreed that Lords reform was “low on the agenda for action.”<sup>79</sup> Whether Hattersley would have concurred must be doubtful; but he did later acknowledge that the Labour peers were “frantically unhappy” with the proposals. He admitted that they had not been consulted beforehand and that, afterwards, they were “extremely hostile.”<sup>80</sup>

*New Statesman and Society* reported in 1990 that the Labour peers were set to oppose the party’s plans, arguing that, with less power and no hope of government office, it would be difficult to attract candidates for the new second chamber; and that they were seeking a Royal Commission. However, it then went on to note speculation that, possibly in response to the Labour peers, Kinnock had suggested the Lords might not actually be abolished in Labour’s first term.<sup>81</sup> There might have been something in this, as Hattersley later recalled being told by Cledwyn that Kinnock had said he would stop it happening.<sup>82</sup> However, when asked about this, Kinnock said he could not imagine any circumstances in which he would have done so, although he had been aware of the peers’ unhappiness and would probably have said that it was understood and that any change would obviously be complex and time consuming.<sup>83</sup>

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77 Minutes of meeting of Labour peers, 11<sup>th</sup> May 1989.

78 Minutes of meeting of Labour peers, 18<sup>th</sup> July 1989. In a wide ranging discussion on the Policy Review, four peers are recorded as expressing varying degrees of reservation.

79 As might be expected in the case of a Party Leader, Kinnock had not been directly involved in the detailed development of policy in this area (in which, as has been shown, Hattersley took the lead), although staff from his office had been.

80 Interview, May 1999.

81 R W Johnson, *New Statesman and Society*, 25<sup>th</sup> May 1990 and 9<sup>th</sup> June 1990 (Vol 3, Nos 102, p 23 & 104, p 23).

82 Interview with Hattersley.

83 Letter from Kinnock to the author, 5<sup>th</sup> October 1999.

It seems possible that the Party Leader, recognising the strength of feeling of the Labour peers on something directly affecting them, may have emphasised potential difficulties in implementation, in order to try to placate them; and that this may then have been misinterpreted. If it had been the case that the policy was not to be implemented or would be postponed, then the question would have arisen as to how this would square with the party's commitment to give special protection through the second chamber to particular legislation. However, in the event, the policy would be re-affirmed, with no suggestion of any postponement.

The following year the Labour peers made their continuing reservations known, when the author (in his capacity as Secretary to the Party's Working Party on Electoral Systems) met with the 'Labour Peers Working Group on Electoral Systems'. The discussion centred not on any electoral system but on questions concerning composition and functions of the House of Lords, which the peers felt needed to be addressed. Although presumably the Labour peers had their own channels of communications to the leadership, they were apparently seeking aid in their rearguard action from the Working Party, which they hoped would pass on (or even endorse) their reservations.<sup>84</sup> A paper presented by the peers posed a whole list of questions, including those already identified – how the new chamber would reflect regional interests and link with the assemblies, whether the presence of ministers was necessary, and why it should be disinclined to accept cabinet directives. It then added such questions as how differing regional views might be resolved, who would guide its work, the scope and form of committees and scrutiny procedures and whether legislation could be amended, the size of the chamber and term served, whether members would be paid and have a constituency role.<sup>85</sup>

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84 Based on personal recollection and note of meeting on 21<sup>st</sup> May 1991. (This note records Baroness Llewellyn Davies saying that meetings had been held with Hattersley and Kinnock, but they had focused on the need for a constitutional commission rather than on details of the Policy Review proposals.)

85 PD 2894: Final Report of Labour Peers' Working Party on Electoral Systems. It concluded that "We cannot usefully study competing electoral systems until more specific proposals have been made by the PRG about the kind of chamber that is required, the scope of its duties and powers and the size and quality of its membership."  
The remit of the Working Party on Electoral Systems was concerned specifically with how it should be elected and did not extend to the functions and powers of the second chamber. It could only note these points, although PD2894 was circulated and would have been seen by the PRG convenors and relevant front bench spokesmen.

Although the relevant part of the Policy Review Report had clearly left some questions unresolved, there had been a definite change in policy, placing the second chamber at the heart of the party's democratic reforms. Nevertheless, it excited little interest when it was debated at the Party Conference in 1989, at which it was formally approved. However, in his speech from the platform, Hattersley made a bold claim for the new policy.

“The only way to protect our freedom is to provide a constitutional change that makes the destruction of our basic rights impossible. For that reason, we propose to replace the House of Lords with an elected second chamber with a precise and specific constitutional role...It will be charged with the protection of liberties and it will possess the power to delay for the full life of Parliament any legislation which reduces personal freedom.”<sup>86</sup>

The claim, which may have owed something to Conference rhetoric, that it would make the destruction of basic rights “impossible” was, to say the least, questionable. There could be no absolute certainty that this new second chamber would block such legislation; and even if it did, it might be passed after an ensuing general election, depending on the result. This claim went beyond what had been said in the Report and again implied there could be absolute entrenchment.

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86 Conference Report 1989, p 120.



## Further Work on Constitutional Reform

The PRG then went on to concentrate on drawing up a Charter of Rights to be established by a Labour government. This was trailed in a speech by Hattersley in January 1990, in which he linked it with the proposed new second chamber “elected and designed to exercise specific powers”, amongst which would be “the power to delay legislation – which it considers would result in a reduction of individual rights – for the lifetime of a full parliament”.<sup>87</sup> This might seem to suggest that the second chamber would itself determine the legislation over which it would exercise its special powers, but it would actually have to be designated somehow.<sup>88</sup> Although Hattersley referred to individual rights - the subject of the speech - the example he gave would have been significant for both individual and constitutional rights.

“A government which, for example, proposed the repeal of the Freedom of Information Act would only be able to do so after it had faced a general election. Within our system that is the only way to entrench civil rights legislation”.<sup>89</sup>

The actual Charter of Rights, which was published later in the year, made no direct reference to the special powers proposed for the second chamber, but from earlier statements it could be inferred that, where these rights involved legislation, they would be likely candidates for the application of the “entrenching” provisions. The document proposed measures to establish rights relating to freedom of information, privacy, the security services, immigration, citizenship and asylum, equal opportunities, children, the criminal justice system, employment and assembly.<sup>90</sup>

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87 Speech to Fabian Society Conference, Ruskin Hall, Oxford, 6<sup>th</sup> January 1990.

88 Hattersley later said he envisaged that the Act establishing the new second chamber would lay down the criteria for designating legislation. A Commons committee might also play a role in certifying such legislation (Interview, May 1999). This was not spelt out at the time.

89 Oxford speech (op cit). Note the specific reference again to entrenchment.

90 *The Charter of Rights: Guaranteeing Individual Liberty in a Free Society* (The Labour Party, 1990). Some of the measures listed in this document were a re-iteration of more detailed proposals from other policy statements.

Meanwhile, a paper for the PRG had drawn attention to other areas where further work might be needed. As far the second chamber was concerned, these included “the relationship between the second chamber and the regions”, the electoral system for the second chamber and regional assemblies, and “how to entrench legislation on individual and constitutional rights”. It noted that “events in Scotland mean there is some pressure for these questions to be clarified and resolved”.<sup>91</sup> In the event, these matters relating to the second chamber were not fully resolved by the time of the 1992 general election.<sup>92</sup>

Although further steps were taken to clarify the position with regard to entrenchment, these were not altogether successful. Advice on this was sought from John Griffith (now Emeritus Professor of Law, University of London), but he told Alistair Darling (the frontbench spokesman on constitutional affairs) that he thought the Policy Review had conceived a “monster in embryo” and, while acknowledging there were means by which amendment or repeal of legislation might be made politically more difficult, concluded that he knew of “no way short of a completely new written constitution in which Bills can be entrenched”. The dialogue was not pursued further.<sup>93</sup>

It may be that the Labour Party was pursuing a chimera in seeking an answer to the question of entrenchment. More than ten years previously a House of Lords Select Committee, considering the possible entrenchment of a Bill of Rights, had concluded:

“There is no way in which a Bill of Rights could protect itself from encroachment, whether express or implied by later Acts”.<sup>94</sup>

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91 PD 2371: Policy Review: A Note on Future Work (January 1990). The reference to pressure from Scotland would have related to the forthcoming Scottish Labour Party Conference and discussions in the Scottish Constitutional Convention.

92 The Working Party on Electoral Systems, established in 1990, made an interim recommendation for the Scottish Parliament before the 1992 election; but its recommendations for other bodies, including the second chamber, for which it proposed a regional list system, were contained in its main report, published in 1993.

93 Private correspondence (March 1990).

94 *House of Lords: Report of Select Committee on a Bill of Rights*; Session 1977-78 (HL Paper 176, Para 20).

Labour was now talking about a Charter of Rights rather than a Bill – and about several items of legislation rather than one – but this conclusion would still seem to have been valid in that context.<sup>95</sup> Indeed, despite his statements at the time, Hattersley himself later acknowledged that “you can’t entrench anything in our constitution, all you could do is make it more difficult to reverse it”.<sup>96</sup> This was really what the proposals would have amounted to; but there may have been a temptation, for political reasons, to suggest otherwise at that time.<sup>97</sup>

Thus, notwithstanding these reservations, the Labour Party’s last comprehensive overall policy statement before the general election, *Opportunity Britain*, issued in 1991, re-affirmed the policy on a new second chamber, and claimed that it would “effectively entrench” legislation dealing with individual or constitutional rights.

“Our proposals for protecting individual freedom will be underpinned by the reform of government institutions. Our aim is to create a modern constitution. We shall therefore create a new elected second chamber, in place of the anachronism of the House of Lords. It will have the power to delay, for the lifetime of a Parliament, change to designated legislation dealing with individual or constitutional rights.

“In this way we will effectively entrench our Charter of Rights and strengthen the position of the new Scottish Parliament and the assemblies in Wales and in the English Regions. Any government that seeks to follow the Conservative example by eroding peoples’ rights will therefore have to present the issue to the people at a subsequent general election. The new second chamber will also be able to prevent a government delay a general election beyond the five year limit (*sic*).”<sup>98</sup>

This statement made a direct link with the Charter of Rights and the powers of the second chamber, but linked these with legislation on both individual and constitutional rights more explicitly than either the 1989 Report or some of Hattersley’s speeches had done. As, to some extent, a forerunner of the manifesto, it was by its very nature much briefer than the Policy Review Report.<sup>99</sup> The omission of certain details would not necessarily indicate a change in policy. However, it is interesting that it made no reference to the presence or otherwise of ministers in the second chamber; and neither did a subsequent comprehensive briefing document for Parliamentary candidates.<sup>100</sup>

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95 These discussions pre-dated the Human Rights Act 1998.

96 Interview, May 1999.

97 For instance, in relation to devolution, see p 160.

98 *Opportunity Britain – Labour’s Better Way for the 1990s* (Labour Party, 1991) p 50.

99 Butler & Kavanagh (op cit p 93) described it as “effectively a draft manifesto”.

100 Policy Briefing Handbook (Labour Party Policy Directorate).

This latter document (produced following discussions between frontbench spokesmen and party officials) included “questions and answers” on difficult or unresolved aspects of policy.<sup>101</sup> The relevant section on constitutional reform attempted to elucidate some of the outstanding questions already identified. On how the procedures for safeguarding rights would work, it stated:

“The new second chamber will have the opportunity to revise all legislation coming from the House of Commons. However, unlike the present situation, it will not have the power to delay legislation beyond a minimal period, with the exception of certain constitutional measures and legislation relating to fundamental individual rights. This would include legislation under Labour’s charter of rights, and also that relating to the structure of local and regional government, the Scottish Parliament and the Parliament Act itself. Any subsequent measure to amend these would, of course, also be included.

“Such Bills would be designated as constitutional measures; and the second chamber would be entitled to amend or reject them. Without the approval of the second chamber, any such legislation could not be enacted during the lifetime of the existing Parliament; it would have to be reintroduced after a general election”<sup>102</sup>

The document was specific about the inclusion of constitutional measures, including local government and the Parliament Act itself. It also had more to say on how reform of the second chamber would be implemented:

“Through a new Parliament Act. Our intentions will be stated in our election manifesto, so there can be no doubt about the Labour government’s democratic mandate. We would hope that the House of Lords would not seek to block a democratic reform in that light. However, in the event of it so doing, we would be prepared to use the provisions of the existing Parliament Act to get it through.”<sup>103</sup>

The use of the existing Parliament Act in order to ensure enactment was not now questioned, as it had been previously. However, rather than abolition, the new policy involved replacement with additional safeguards for constitutional rights, which was something quite different.<sup>104</sup>

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101 Geoff Bish, who had some involvement in these discussions, together with the author and Alistair Darling, later recalled that “we asked lots of questions, because [they] would never get into details” (Interview). Darling, himself, had at the time expressed “serious doubts about the whole exercise”, which he thought would give “a negative view of our proposals” (Letter to the author, 28<sup>th</sup> June 1990).

102 Policy Briefing Handbook, Section 21.2.

103 Ibid.

104 The PRG’s Working Party noted (7<sup>th</sup> February 1989) that Lord Irvine would look at earlier opinions on whether the Parliament Act could be used as an instrument of reform, but there is no record of any further discussion.

On how the second chamber might reflect the interests and aspirations of the regions, the possibility of a different electoral system on a regional basis was mooted, but this would be “for further consideration”. Asking why it should be less likely to accept cabinet discussions and more inclined to safeguard rights, the response was that, since governments would not be formed on the basis of its composition, it would be at “greater distance from day-to-day government business and from whips using the prospect of patronage to encourage conformity”. Moreover, it claimed, members elected to a chamber with a special constitutional role, “knowing they have been elected for that purpose, are likely to take such a duty seriously”.<sup>105</sup> This sounds more like an expression of hope than a firm statement, but there could be no certainty on such matters.

Although there was no reference to “entrenchment” in this particular section of the document on ‘regional government and constitutional reform’, the section dealing with Scotland asserted that “Labour is committed to the principle of entrenchment to protect the constitutional powers of the Scottish Parliament”.<sup>106</sup> As has been shown, the question of how and whether it was possible to give a commitment to entrenchment had not been satisfactorily resolved; but the context in which it re-appeared suggests that a major consideration in moving the Party in this direction was the perceived need to give the firmest possible commitment to the Scottish Parliament, in order to suggest that its establishment could not easily be reversed.<sup>107</sup> Indeed Hattersley subsequently confirmed that wishing to be seen to appear to entrench devolution was then an important factor.<sup>108</sup>

Those involved were aware that certain questions still remained to be fully answered. However, beyond the clarifications noted above, there would be no attempt to develop the policy further before the general election.

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105 Policy Briefing Handbook, Section 21.2.

106 Ibid, Section 32.1.

107 The draft of the constitutional reform section would have been prepared in London and that of the Scottish section in Scotland. Butler and Kavanagh (op cit, pp 72-73) observed how “Scottish politics... were different because of the constitutional question”.

108 Interview, May 1999.

### Proposals from Other Sources

While new Party policy was being developed through official channels, others in Parliament also put forward proposals of their own, although none progressed very far. For instance, in the Lords in December 1988, the then Labour peer, Lord Stoddart of Swindon put forward a proposal to restrict peers' voting rights there to those who met a minimum 33 per cent attendance requirement. This proposal would seem to have been aimed at tackling the "backwoodsmen" who had affected the outcome of some important divisions, but would have left the House otherwise undisturbed.<sup>109</sup> In the Commons, meanwhile, Graham Allen (subsequently a frontbench spokesman on constitutional matters) presented two Bills in successive sessions to abolish the House of Lords as presently composed and replace it with a directly elected membership.<sup>110</sup> Later, Tony Benn presented a 'Commonwealth of Britain Bill', containing a whole range of proposals for constitutional reform, including ending the constitutional role of the crown and abolition of the House of Lords. The latter would be replaced by a 'House of People', comprising equal numbers of men and women, elected for fixed four-year terms to represent England, Scotland and Wales in proportion to their populations, which would have a limited legislative role and could be overridden by the House of Commons.<sup>111</sup>

An outside organisation with strong, though informal links with the Labour Party was the Institute for Public Policy Research. This "think tank" published proposals for a new constitution in 1991, which included a new second chamber with equal powers with the Commons on constitutional and rights issues, whose members would be elected by Single Transferable Vote for four-year terms, half at a time.<sup>112</sup> There were close connections

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109 *House of Lords Debates*, 8<sup>th</sup> December 1988 (Vol 602, Cols 719-751). A similar proposal had been included in the Labour government's 1968 White Paper.

110 *House of Commons Debates*, 18<sup>th</sup> October 1989 (Vol 158, Col 144); 17<sup>th</sup> December 1990 (Vol 183, Col 20).

111 *Ibid*, 28<sup>th</sup> June 1991 (Vol 191, Col 665). Under Benn's proposals, legislation rejected by the 'House of People' could be enacted after one year, while amendments could be overturned by the Commons. Delegated legislation could be delayed for one month. Benn would introduce an identical Bill in the next Parliament, which again made no progress.

112 IPPR: *Constitution* (1991). This covered a wide range of constitutional reforms including a House of Commons elected by the Additional Member System. The same organisation followed this up with a more detailed paper, *Reforming the Lords* by Jeremy Mitchell and Anne Davies (1993), with some slightly different proposals.

between certain key figures at IPPR and those involved in policy work and presentation for the Labour Party. However, while there were certain similarities, the document only appeared after Labour's policy had been established.<sup>113</sup>

In view of the nature of Labour's new policy, it should be noted here that the Liberal Democrats and their predecessors (the Liberal Party and the Social Democratic Party) had at various times proposed a reformed chamber, partially or wholly elected, with representation linked with the regions, including in 1987 and again in 1990.<sup>114</sup> There was now a degree of common ground between the approach of the two parties. In the general election campaign, there would be some speculation about possible deals, particularly following an apparent suggestion by Kinnock that an invitation would be extended to the Liberal Democrats to become involved in the Working Party on Electoral Systems.<sup>115</sup>

### The 1992 Manifesto

As was to be expected following the policy review, Labour's 1992 manifesto included a major section on constitutional reform. This included devolution, ending the misuse of the Royal Prerogative, improving procedures and facilities of the House of Commons, and reform of the second chamber. On the latter, it stated:

“Further constitutional reforms will include those leading to replacement of the House of Lords with a new second chamber, which will have the power to delay for the lifetime of a Parliament, change to designated legislation reducing individual or constitutional rights.”<sup>116</sup>

However, unlike other aspects of constitutional reform, such as devolution itself and electoral reform, which proved a matter of controversy and contention, the proposals for the second chamber did not feature significantly in the campaign. Perhaps surprisingly, the Prime Minister, John Major, did not really pick up on this quite radical reform at the time, despite otherwise highlighting themes on preservation of the United Kingdom and the electoral system.<sup>117</sup>

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113 IPPR had been established in 1989. James Cornford, its director, was also involved in the working party on constitutional issues noted earlier, while its deputy director, Patricia Hewitt, was involved in the Shadow Communications Agency, preparing for the election campaign.

114 See Chapter 9.

115 Butler & Kavanagh (op cit) p 128.

116 *It's Time to get Britain Working Again: Labour's election manifesto, 1992* (Dale, op cit, p 339).

117 Butler & Kavanagh (op cit) p 130. The issue hardly rates a mention in their study of the campaign.

By the beginning of the 1990s, the Labour Party had come to adopt a significantly different approach to the question of a second chamber from that of a decade earlier. The main driving force in this had been the Parliamentary leadership; and the changed policy had gone through with little dissent. The Party's earlier policy had grown out of frustration in government, which led it to support abolition or, at least a major reduction in the power of the second chamber; and this continued during its first period in opposition, with the principal concern being to prevent the second chamber from blocking the programme of a Labour government. However, after a decade of frustration in opposition, while still seeking the abolition of the House of Lords as such, the Party now saw the second chamber as having a central role in safeguarding some of the key reforms it wished to enact. Certain aspects had not been fully worked out; and the Party's enthusiasm to present its proposals for Scottish devolution, especially, in the strongest possible light, perhaps led some to succumb to the temptation to overstate the nature of the safeguards which this new second chamber would provide. It did, though, provide a clear instance in which Labour's Policy Review resulted in a fundamental change in policy.



## 7. THE HOUSE OF LORDS AND THE CONSERVATIVES 1970-79

This Chapter turns its attention to the Conservatives, who, in the mid-1970s, established a Committee which responded to Labour's support for abolition with some quite radical proposals of its own. However, this did not necessarily mean that they would be implemented; and, as the following Chapter will show, the Conservatives' subsequent period in office would be marked by an increasing disinclination to act at all.

### The Heath Government 1970 - 74

Although the Lords had occasionally flexed their muscles in the 1960s, the outcome of the 1970 general election meant that the potential for further conflict between Lords and Commons "was postponed as a result of the Conservative election victory".<sup>1</sup> The Labour government had recently failed in its efforts to legislate for reform of the Lords, suffering political embarrassment in the process; but differences had also emerged amongst Conservatives, who had made no mention of Lords reform in their election manifesto. It was, therefore, unlikely that Edward Heath's new government would wish to embark on further reform.<sup>2</sup> This was confirmed in a Commons reply by a Home Office minister who, when asked what plans the government had to modernise the Lords, replied bluntly "none".<sup>3</sup>

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1 Shell: *The House of Lords*, p 23.

2 Lord Carrington, a member of Heath's Cabinet and both a former and future Conservative leader in the House of Lords, recalled that, after 1968, the Conservative Party decided that reform was not worth the candle (Interview, April 1999). Heath's apparent lack of interest in the 1960s has already been noted (see p 34).

3 Mark Carlisle (Parliamentary Under Secretary, Home Office), *House of Commons Debates*, 18th November 1970 (Vol 806, Col 442).

According to the Conservative-leaning political commentator, Ronald Butt, most Conservatives either thought it not an important problem to spend time on, or that it would undermine the constitution to do more than tinker. Having criticised Labour for inaction - a somewhat curious stance in view of the previous government's efforts - he argued that the Conservatives should act, preferably with, but if necessary, without all-party agreement.<sup>4</sup>

As it was, the 1970-74 Parliament saw just a few minor changes in procedures affecting the Lords, but no major attempt at reform. A modest and rather half-hearted proposal by Conservative backbencher Sir Brandon Rhys-Williams to limit the voting rights of hereditary peers came to nothing; and indeed the MP himself acknowledged that he was "not seeking to initiate a campaign".<sup>5</sup> Another development was the publication of the Kilbrandon Report on the constitution; but this did not support a direct link between regional government and the second chamber (although a Memorandum of Dissent by two members did) and it would seem not to have affected the government's approach to the second chamber.<sup>6</sup>

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4 'Lords in Modern Dress' (*The Times*, 5th November 1970). He proposed a chamber comprising members elected regionally (either indirectly or directly, possibly by proportional representation) who might be supplemented by a nominated element. It should have delaying powers of six months or a year, but in respect of constitutional legislation, "more far reaching powers of delay, possibly covering the entire length of a Parliament". Both the report of the Committee chaired by Lord Home, as detailed later in this Chapter, and Labour's 'Policy Review' proposals some twenty years later (see Chapter 6) would echo some of these.

5 *House of Commons Debates* 27th April 1971 (Vol 816, Cols 259-6).

6 Report of the Royal Commission on the Constitution (Cmnd 5560) 1973. Principally concerned with regional government, the Commission concluded that it would be "neither practical nor desirable" for a change in the structure of Parliament to give effect to regional policy to take the form of a change in the House of Lords. It would be "irrational" to introduce "a novel geographic factor into the House of Lords" (Para 1073). It specifically rejected the notion of replacing the House of Lords with a chamber similar to the West German Bundsrat (Para 858). However, a Memorandum of Dissent by Lord Crowther Hunt and Professor Alan Peacock included proposals for linking devolution with changes to the House of Lords. This suggested adding 150 members from the proposed Scottish, Welsh and several English Assemblies, reflecting the Party balance in each, but added this would be "by no means essential" to the successful operation of the devolution scheme" (Para 297-307).

However, it has been suggested that the failure of Labour's proposed reforms - as a result of opposition in the Commons rather than Lords - did affect the behaviour of the Lords themselves; and that "throughout the 1970s, the House became noticeably more assertive".<sup>7</sup> An unnamed Labour peer has been quoted as saying:

"The failure of the [1968 reform] proposals had the effect of freeing us from the lethargy that had encumbered and inhibited us for so long. From this point we were determined not to pussy-foot about any longer but instead to get on with the job in hand".<sup>8</sup>

According to Donald Shell, there was now a "markedly different" relationship between the Heath government and the Lords, who were "a great deal less submissive" than they had been to its Conservative predecessors.<sup>9</sup> This government was, indeed, defeated on 26 occasions during its period of nearly four years in office. However this pales into insignificance when compared with the 350 defeats suffered by its Labour successor; and Shell himself acknowledges that, while Labour flexed its muscles, for instance forcing 138 divisions on the controversial Industrial Relations Bill during its passage in 1971, "the government won every one of these divisions and made few concessions".<sup>10</sup>

It would seem that this new "assertiveness" had yet to manifest itself fully - an impression which is strengthened by the handling of another major piece of legislation - the 1972 European Communities Bill. As Janet Morgan noted, "the Bill was brief and incomplete" and reached the Lords "very late in the 1971-72 session." Nevertheless, "in their anxiety to pass the Bill into law, the government

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7 Shell, in *The House of Lords at Work* (p 11).

8 Quoted by Nicholas Baldwin in 'The Contemporary House of Lords' (unpublished PhD thesis, University of Exeter, 1985).

9 *The House of Lords*, pp 23-24. Shell also observes that Labour peers were three times more numerous in the 1970s than in the early 1960s, that the numbers of crossbenchers had grown, and that the Conservatives did not have an overall majority there. (They were, nevertheless, much the largest party.)

10 *Ibid* (p 24). Shell suggests that, when defeats occurred, the government usually but not always gave ground; and notes that, for instance, the Lords successfully insisted on amendments to the 1971 Immigration Bill. There was also some conflict between the two Houses on the 1972 National Health Services Bill, when the Lords voted in favour of free contraception services, but gave way when the Commons asserted financial privilege. A later Conservative Party Research Department paper noted this as the only legislation on which there was "serious disagreement between Lords and Commons" (PG 400/77/10).

had allowed no time for amendments, even on a drafting point". She observed that even many of those supporting entry to the European Community were concerned at omissions covering critical areas such as Parliamentary scrutiny, but that the government was adamant, "as much towards its own supporters as towards the Opposition", since to yield a single Lords' amendment, however reasonable, would mean returning the Bill to the Commons and thus delaying enactment. Accordingly, Conservative peers were asked not to support or propose amendments and, although it may have caused some strain, the exercise was successful as far as the government was concerned.<sup>11</sup> The Bill, which was of major constitutional significance, and which had been passed only narrowly by the Commons, went through the Lords unamended.<sup>12</sup>

An amendment had been moved at Third Reading by Lord Shackleton, from the Opposition front bench, which:

"deplores the insistence of Her Majesty's Government that this Bill should pass unamended through all stages irrespective of the merits of the amendments proposed and deprecates the reliance of Her Majesty's Government upon their built in majority in this House to achieve their purpose".

Unsurprisingly this was defeated.<sup>13</sup> However, the Labour Party would be able to cite this episode later, in order to contrast it with the Lords' treatment of the Labour government's legislation.<sup>14</sup> It certainly gave ammunition to critics of the House of Lords, by suggesting that it was not always effective as a revising chamber and thus weakening the case of those who might seek to defend it on that basis.

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11 *The House of Lords and the Labour Government 1964-70* (Epilogue, pp 233-4). Lord Denham, then Deputy Chief Whip, subsequently recalled "the intense pressure put on Conservative peers to prevent any amendments being made", which he felt had "a devastating effect on the morale of peers" (Shell, op cit, p 95).

12 Edward Heath's biographer observed that "passage through the Lords was a formality" (Campbell, op cit, p 441).

13 *House of Lords Debates*, 20th September 1972 (Vol 335, Col 270). The amendment was defeated by 100 votes. The Bill was then given a Third Reading by a majority of 140 (ibid, Col 1272).

14 *The Machinery of Government and the House of Lords*, p 2.

## The Conservatives in Opposition

While the greater assertiveness of the House of Lords referred to above may not have been fully apparent during the period of the Heath government, it certainly became so under the Labour government which followed. Between March and October 1974, this was, of course, a minority government and, following the second general election of that year, it had a majority only in single figures which was eventually eroded.<sup>15</sup> The Conservative peer, Lord Bethell, shortly after the first general election, suggested that his colleagues were "unlikely to go looking for head-on conflict", warning that "uppity behaviour brings abolition a step nearer", although he added that nobody denied the Lords the right to suggest amendments and that "in the new situation, this weapon could prove extremely powerful".<sup>16</sup> In the event, as has been noted earlier, the Conservatives pressed divisions on large numbers of amendments, defeating the government over 350 times between 1974 and 1979, with the Lords most notably forcing delay and compromise over legislation on trade union and labour relations, dockwork regulation, and aircraft and shipbuilding, such that they were accused of breaching the Salisbury doctrine by their actions.<sup>17</sup>

Some individuals argued that the Lords were, even so, too willing to accept the notion that the Lords should acquiesce in measures that had been in the government's manifesto, and that the Salisbury convention should no longer apply.<sup>18</sup> On the whole, however, the Conservative leadership in the Lords, while clearly prepared to act against key parts of the Labour government's legislation, was nevertheless concerned to justify its actions and argue that it did not breach precedent and conventions.

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15 See Chapter 2.

16 'What if the Lords stand up to be counted?', *The Times*, 12th March 1974.

17 See Chapter 2.

18 See David Wood, political editor of *The Times* ('The Lords should stand and fight'. 21st October 1975), referring particularly to the Trade Union and Labour Relations Bill.

At this point, it should be noted that, although there was a change in the leadership of the Conservative Party, when Margaret Thatcher replaced Edward Heath in February 1975, its approach in the House of Lords does not seem to have been directly affected. The key participants there remained largely unchanged - for instance, Lord Carrington served as leader of the opposition peers throughout from 1974 to 1979.<sup>19</sup> Reflecting later on this period, Carrington said the problem then was a familiar one: "when and whether to defeat the government and yet be regarded as acting responsibly". Although he admitted that on the aircraft and shipbuilding legislation, "we let ourselves go", he argued that:

"We had a good cross section of peers with us, and could not be seen as pursuing a purely factional interest, but as seeking to stop government improperly railroading a Bill through Parliament, without proper process or discussion".<sup>20</sup>

This was not how the Labour government saw things;<sup>21</sup> and Shadow Cabinet minutes tend to support the contention that the Conservatives were engaged in a partisan political fight in the Lords. At the height of the controversy in 1976, they record, in respect of Lords' business:

"We should fight the present contentious legislation as long as possible and should endeavour to deny the government time in which to obtain all their Bills before 17th November."<sup>22</sup>

Michael Fallon, who was then an official in the Opposition Whips' office, recalled that "there was a bit of nervousness in front bench meetings in the Lords" and

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19 Lord Denham took over as Chief Whip from Earl St Aldwyn in 1978 (having previously been his deputy), but this was after the main period of confrontation between the government and the Lords.

20 *Reflect on Things Past*, p 279.

21 The Prime Minister, James Callaghan, claimed that the legislation had been considered for no less than 256 hours (*House of Commons Debates*, 9th November 1976, Vol 919, Col 211).

22 Conservative Party Archives: ICC 76/133 13th October 1976. (The date referred to was the anticipated end of the Parliamentary session.)

that, in particular, Carrington and Hailsham were nervous about the Salisbury doctrine, fearing that such actions might provoke Labour to support abolition; but that some "younger bloods" were prepared to be rough.<sup>23</sup>

Some memories of episodes such as this do, however, seem to be rather unreliable. Viscount Cranborne's subsequent claim that the Lords had "never blocked the will of the House of Commons under a Labour government" has already been noted;<sup>24</sup> and Lord Hailsham even asserted - quite inaccurately - in his memoirs that "there have been more defeats of Conservative governments in the House of Lords than under any Labour administration".<sup>25</sup> However, whether or not the Conservative peers may have regarded their actions over this period as reasonable, there is no doubt that, as shown earlier, they caused considerable resentment in the Labour Party and were an important factor in reviving interest there in policies to reform or abolish the House of Lords.<sup>26</sup>

There were also signs of revived interest in Lords' reform in Conservative circles, as shown, for instance, in the pages of *The Spectator*. Not everyone shared the views of the right-wing political commentator, Patrick Cosgrave, that "we would be better advised to leave things exactly as they are and congratulate ourselves on getting so useful an institution on the cheap".<sup>27</sup> One Conservative MP who did not then favour the status quo was the future Chancellor of the Exchequer, Norman Lamont. Responding to suggestions that Mrs Thatcher should revive

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23 Interview, February 2000. Fallon (later to become a Conservative MP) also recalled Chris Patten, then head of the Conservative Research Department, suggesting to him: "You're not overdoing it there are you?", to which he observed: "I was stoking the fires at this end you know - that was my job".

24 See p 53.

25 *A Sparrow's Flight* (Collins, 1990) p 250. Hailsham was attempting to support his contention that "contrary to the false legend sedulously promulgated from the Labour leadership, the House of Lords has no built-in Conservative majority". See Appendix 1. Table 7 for further statistics on government defeats.

26 See Chapters 2 and 3.

27 'The Peers in Practice', *The Spectator*, 22nd November 1975 (Vol 235, p 654). Cosgrave was an adviser to Margaret Thatcher 1975-79.

hereditary peerages, he argued "that would be a step into the 19th century....which would achieve nothing, except for a considerable amount of ridicule"; and he continued:

"Far from reviving ancient practices like hereditary peerages, the next Tory government should limit or abolish the hereditary element in the Lords with a view to radically reforming that institution (*sic*) and creating the effective second chamber we need so badly....What is needed is an Upper House which can be an effective guardian of the citizens' liberties. The Upper House should also be able to slow down the speed with which the Commons churns manifestos into laws."

The best way to do this, he asserted, would be through a second chamber "with real powers of veto, which was either wholly or partially elected". This should be by a different system and at a different time than for the House of Commons; and he proposed proportional representation for electing the Upper House, plus a fixed term for the House of Commons.<sup>28</sup>

It is interesting to note Lamont's views, since, although not necessarily influential at the time, he went on to serve in Conservative governments which would revive hereditary peerages (albeit on a limited scale) and support the status quo for the House of Lords.<sup>29</sup> Paradoxically, several of his proposals would subsequently become Labour Party policy at one time or another - including ending the hereditary element, an elected second chamber using proportional representation (PR) and fixed-term Parliaments.<sup>30</sup>

Another Conservative commentator arguing for reform was one who had himself renounced his peerage, John Grigg. He found the House of Lords to be a second rate chamber, and clearly did not share the view noted earlier that life peerages had averted "growing atrophy", since he suggested that the Life Peerages Act had

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28 'Reforming the Lords', *The Spectator*, 27th March 1976 (Vol 236. p17).

29 See Chapter 8.

30 See, for instance, Chapters 6 and 10.



"done more than anything to give the House of Lords the character of a geriatric institution". He wanted to see what he regarded as a proper second chamber - partly elected by PR and partly appointed.<sup>31</sup> At the height of the controversy over the aircraft and shipbuilding legislation, Grigg argued that the Lords should allow the passage of controversial legislation and refrain from using its "power to override the popularly elected chamber, even though to do so might be popular."<sup>32</sup>

Clearly some Conservatives, at least, were unhappy with the prospect of an unelected chamber blocking the wishes of the elected House, even if they agreed with it on the matter in question. This led them to consider the attraction of a more democratic second chamber, which would have a more legitimate basis on which to challenge the actions of the Commons. Significantly, these appeared to include Lord Carrington. Speaking at the Conservative Party Conference in October 1976, he described how "unpaid amateurs, rather old, we sit until one or two in the morning, trying to do our job....yet we are hamstrung by our composition and lack of real power". Emphasising that he was speaking for himself, he added:

"Has not the time come when there should be a reformed House of Lords given real power to curb the excesses of the executive abusing its position and with no safeguard for checking it? A hereditary and nominated chamber will not be given that power, for its unrepresentative composition enables the government to misrepresent its actions. The Labour government want a weak chamber; the present chamber suits them well".

He went on to suggest that members of the European Parliament should serve in a reformed second chamber, along with members elected under whatever form of devolution arose.<sup>33</sup>

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31 *The Spectator*, 26th June 1976 (Vol 236, p 4). Formerly Lord Altrincham, Grigg had disclaimed his peerage in 1963. (Earlier quotation from Shell - see p 25).

32 *Ibid*, 13th November 1976 (Vol. 237, p 4).

33 Reported in *The Times*, 8th October 1976. The suggested link with devolution is interesting, since the Conservatives opposed the Labour government's proposals; indeed, Carrington was speaking on a motion to reject them. However, the Liberal Party had shown an interest in linking membership of the second chamber with that of devolved assemblies and the European Parliament (see Chapter 9).

Carrington seems to have been the first top-level Conservative to raise seriously the question of Lords reform since the debacle of 1968/69. It was known at the time that the Labour Party would be looking at it, since its Conference had just endorsed the 1976 Programme saying the House of Lords should not continue in its present form.<sup>34</sup> However, even though he was addressing the Party Conference, Carrington claimed to be speaking for himself, and has subsequently denied that he was flying any sort of authorised kite.<sup>35</sup>

Shortly afterwards, however, another senior Conservative peer, Lord Hailsham, raised the issue in the widely reported Richard Dimbleby Lecture, in which he complained about an "elective dictatorship". He argued that the powers of Parliament were unlimited:

"in this we are almost alone....we have an elective dictatorship, absolute in theory, if hitherto thought tolerable in practice".

He complained that "government controls Parliament, not Parliament the government". Moreover, "power has centralised itself more and more in the Commons....the sovereignty of Parliament has virtually become the sovereignty of the House of Commons". The Lords played a useful role, but "it is not an effective balancing factor and cannot in practice control the advancing power of the executive".<sup>36</sup>

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34 See p 63.

35 Interview, April 1999. He also denied acting in co-operation with Hailsham, who would also raise the issue.

36 Published in *The Listener*, 21st October 1976 (Vol 94, pp 496-500).

Hailsham observed that the second chamber had been said to be either objectionable or unnecessary - objectionable if it endorsed the decision of the first and unnecessary if it did not; but he disagreed with this. A single chamber, by whatever means it was elected, could not be "wholly representative for all purposes". He continued:

"What is obvious to me is that, useful and distinguished as the present House of Lords is, nothing can be done to modify its present composition in that direction. In the long run it will be a question of abolition or replacement. Until then it is better to leave it alone. But when the time comes I shall be for replacement".<sup>37</sup>

Hailsham's long term solution was for a written constitution, which would include a second chamber representing the regions and elected by a form of PR; but he envisaged this in "a number of years rather than months".<sup>38</sup> A second chamber along these lines would subsequently become Labour Party policy, if not Conservative policy. By that time, however, Hailsham would have changed his mind, although Carrington would continue to favour reform.<sup>39</sup>

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37 Ibid.

38 Ibid. His long term proposals also embraced a Commons elected by single member constituencies, a Bill of Rights and limitation of powers. He envisaged a constitutional convention before legislation and a referendum afterwards.

39 See Chapters 6, 8 and 10.

### Conservative Review Committee

Clearly, in the mid-1970s, reform of the House of Lords was on the agenda, at least as far as some senior Conservatives were concerned; and in early 1977 an official committee was established by the Party. Yet, surprisingly, neither Hailsham nor Carrington were members. The Chairman of the Conservative Review Committee was the former Prime Minister, Lord Home of the Hirsel, who, having renounced his hereditary peerage was now back in the House of Lords as a life peer. The committee included five peers - apart from Home, there were two hereditary peers (Lord Mancroft, who was the committee's Vice-Chairman, and Lord O'Hagan) and two life peers (Lord Blake, the historian, and Baroness Young, a future Leader of the Lords) - and four MPs (Kenneth Baker, Jim Lester, Neil Marten and Sir Derek Walker-Smith) among its ten members.<sup>40</sup>

Although the Committee was appointed by the Party Leader, the membership does not seem to have been especially Thatcherite. According to Michael Fallon, who was Secretary to the Committee, it was chosen "very carefully" to reflect strands of opinion both in the Lords and the Commons. He recalled that the hereditary peers were anxious to secure representation, because they suspected a "plot" by Carrington, who himself wanted to ensure representation of "the modernisers". Also, those for and against proportional representation wanted to ensure their voices were heard.<sup>41</sup> Clearly a balancing act was involved. It was certainly considerably smaller than Labour's Study Group then looking at the issue, although it did have a much narrower remit.<sup>42</sup>

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40 The other member was Nevil Johnson (Nuffield College, Oxford). The Secretaries were James Douglas and Michael Fallon. (Membership listed in the Committee's report - *The House of Lords: The Report of the Conservative Review Committee*, Conservative Central Office 1978.)

41 Interview with Fallon (February 2000). This suggests that, although not himself a member of the Committee, Carrington may have had some influence over the composition.

42 The Committee's report stated that it was appointed by Mrs Thatcher in January 1977 to consider the future of the House of Lords (op cit. p 2). Home observed at its first meeting that it had no formal terms of reference (Committee Minutes, 22nd February 1977).

The timing, in the same month as the report of Labour's Study Group was approved, may have been significant. As *The Times* reported:

"Conservative thinking is that the Opposition must be prepared with an answer if the Labour Party commits itself at this year's Conference to the abolition of the Upper Chamber on the basis of the National Executive Committee's report".<sup>43</sup>

This would later be acknowledged by Home in his introduction to the Report itself:

"The issue was to some extent forced by the apparent intention of the Labour Party to commit itself to government through a single House of Parliament....in such a situation, we do not believe that the Conservative Party can do nothing".<sup>44</sup>

As might have been expected, the first meeting of the Committee in February 1977 ranged over various options, including election, nomination and group representation. Home appeared to be cautious about radical reform, saying that he felt the argument against two elected chambers to be a powerful one and pointing to difficulties in abolishing hereditary peers in one go.<sup>45</sup> On the other hand, the future Home Secretary, Kenneth Baker, showed much greater enthusiasm for radical reform. He argued that a House based on the hereditary principle was fragile, pointed to the arguments against appointment involving patronage (which had been used against the 1968/69 proposals) and questioned who would decide on groups which might be represented. He did, however, think a part-elected / part-appointed chamber might be possible.<sup>46</sup>

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43 *The Times*, 2nd February 1977.

44 Committee Report, p 4. Baroness Young confirmed that it was established at least in part in response to Labour's report (Interview, July 1997).

45 Committee Minutes, 22nd February 1977. Back in 1969, Home had argued the case for reform in supporting the Labour government's Bill (see p 42).

46 *Ibid.* Interestingly, Baker observed that "it was a mistake to think that unicameralism was linked to the Labour Party"; and that "some of his colleagues were quite attracted to the idea of a unicameral legislature". He wanted to see the case put for bicameralism. There would, however, seem to be little evidence of support for unicameralism in the Conservative Party at that time; and Fallon did not know who such supporters might have been (Interview). Baker also appears to have been under a misapprehension that the Labour government would seek to reduce the Lords' powers, but leave composition unchanged. Fallon, too, had thought it was planning a Bill to that effect. However, although this was discussed in Labour's Study Group, there is no evidence that the government had any firm plans (see Chapters 2 and 3).

The Committee's second meeting indicated broad agreement on the role of the second chamber, which should be: to revise Public Bills; to act as a debating chamber to complement the Commons; to initiate Bills for which there was no time in the Commons; to scrutinise subordinate legislation; and to act as a constitutional safeguard against abuse of power by the Commons - "this was, of course, the most important of the powers of the Upper House". (Mancroft put it more colourfully that the Lords' primary role was "to stop the House of Commons going mad".) It was said that people were beginning to hanker after some form of constitutional protection, particularly with governments elected by a minority of the electorate pursuing radical proposals that had little support. Possible forms such protection or entrenchment might take were discussed, including a special Commons procedure for constitutional Bills, requirements for a special Commons majority or powers to require a referendum in certain cases, or a constitutional court.<sup>47</sup>

No doubt, at this time, members of the Committee had a Labour government in mind when looking to possible constitutional safeguards. It is interesting to note that, in the following decade, the Labour Party would consider reforming the second chamber to provide a similar form of constitutional safeguard - at least partly in response to a Conservative government pursuing radical and controversial policies.<sup>48</sup> The perspective when in opposition can, of course, be different from that when in office.

A position paper from Home in April said it was agreed that the Committee should consider composition before powers; and that the proposed pattern of the reformed House had begun to gell on the following lines: 100 hereditaries elected from their own number; 100 appointed (by the Prime Minister or party leaders, assisted by a committee of Privy Counsellors); 200 elected from the regions (probably by PR); plus Privy Counsellors from the existing House retained *ex officio*.<sup>49</sup>

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47 Committee Minutes, 3rd March 1977.

48 See Chapter 6.

49 PG 400/77/6, April 1977.

However, Home was not present when the Committee considered his paper. In that discussion "it transpired that the idea of hereditary peers electing from amongst themselves a number of representatives did not commend itself to the Committee", which thought it would be difficult to justify any system in which heredity was a sufficient qualification. It was assumed, however, that the appointed element would include a number of hereditary peers, as well as appointed members, bishops (and possibly other church leaders), law lords and "non political men and women of distinction" in other walks of life. There was no agreement on exactly how the appointments should be made, although there was "relatively little support for appointment by a Committee of the Privy Council", but a limit on numbers was thought desirable. There was also general agreement that the elected element should be seen to account for at least 50 per cent of the total (although Baker suggested two-thirds); and further, that PR would be likely to prevent one-party domination and that a proportion should be elected at a time.<sup>50</sup>

Thus, comparatively early in its deliberations, in April 1977, the Committee was supporting the notion of a reformed chamber with a substantial elected element. The following month, after further discussion on the pros and cons of various options, it was affirmed that most of the Committee seemed to favour the part-elected / part-nominated option, although it was acknowledged that this might lead to a wholly elected chamber.<sup>51</sup>

Having already reached a measure of agreement on the role of the second chamber, the Committee went on to consider in some detail concerned the ways by which possible disagreements between Lords and Commons might be resolved. A paper by one of its members, Nevil Johnson, suggested provision should be made for the establishment of a Mediation Committee at the request of either

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50 Committee Minutes, 21st April 1977. It is interesting that this Committee came down against the proposition that hereditary peers elect 100 members from amongst themselves, since an arrangement along these lines would form part of the Labour government's compromise interim arrangement in 1999 (see Chapter 10).

51 Committee Minutes, 17th May 1977. (Neither Home nor Baker were present at this meeting.) The elected chamber option was referred to in the paper before the Committee from James Douglas as the "Carrington Scheme" (PG400/77/13). Carrington had shortly before given evidence to the Committee (see p 180).

House, if the Commons could not accept Lords amendments. This could comprise seven members nominated by each House and would make proposals for resolution, voting as a single body. If the mediated proposals were then accepted by the Commons but not the Lords, the Commons should be able to pass them into law over the Lords' objections. If they were accepted by the Lords but not the Commons (or if no proposals were agreed by the Mediation Committee), the matter could be resolved by the use of the Parliament Act procedure. There might be a requirement for a "re-inforced majority" (possibly 60 per cent of the membership) in the Commons.<sup>52</sup>

This was first discussed in March and again in July. Amongst the points raised was whether a distinction should be made between constitutional and other Bills, although no firm decision seems to have been reached. Baker initially argued that the whole question could not be divorced from that of composition - if there was a strong Labour majority in the Commons and a Conservative majority in the Lords, the proposed Mediation Committee might get nowhere. Subsequently, he proposed a 'Committee of Reconciliation', to meet after amendments had been rejected. If agreement could not be reached, then existing arrangements should apply for most Bills, but he envisaged a special threshold for constitutional measures, certified as such by the Speaker and defined by statute.<sup>53</sup> In the event, the Committee's Report would suggest a Mediation Committee broadly along the lines proposed by Johnson.<sup>54</sup>

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52 PG 400/77/4 : Memorandum on methods of resolving disagreement between the two Houses of Parliament.

53 Committee Minutes, 31st March 1977, 19th July 1977; PG 400/7720: A Committee of Reconciliation (July 1977). Baker suggested the threshold could be either a two-thirds majority or 60 per cent of total Commons membership; and that constitutional measures could comprise those relating to the powers and existence of the monarchy, the powers and existence of the House of Lords, those affecting the sovereignty of Parliament or changing the voting system. However, Johnson thought this definition unsatisfactory.

54 See p 191.



During the course of its deliberations, the Committee invited a number of prominent individuals to address it. Foremost amongst the supporters of an elected chamber was Lord Carrington, who told the Committee in May that "he believed that only a wholly elected second chamber could be credible as an effective check on government supported by a popularly elected Commons." Otherwise the Commons would always have greater legitimacy. The second chamber should be elected by a different system, namely PR. Generally, he thought existing powers under the 1911 Act would be sufficient, but it should also have the power to order a referendum before certain measures affecting "constitutional or fundamental human rights." As an elected chamber, it would not suffer from the same inhibitions as the present House in challenging the Commons.<sup>55</sup>

In response to questioning, Carrington thought "there was little to be achieved by relatively minor tinkering with the powers or composition". When the possibility of a partially elected chamber was raised, he emphasised that, if the principle of election was diluted, it would not be able to challenge the Commons. As for the possible loss of contribution by distinguished non-partisan figures, he was dismissive, suggesting they could have as much effect by writing a letter to *The Times* as by a speech in the Lords.<sup>56</sup>

When Hailsham appeared before the Committee in June, he argued that, if the Conservatives failed to reform the Lords when they had the power to do so, the opportunity of introducing an effective safeguard against "elective dictatorship" could be lost for ever. Although he accepted that this could come from the extreme right or the left, it was virtually certain that the next Labour government would be determined either to abolish the Lords or, more probably, emasculate its powers. "In his view, there was only one way in which the upper chamber could have sufficient power to curb the House of Commons and thus avoid an elective

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55 Committee Minutes, 3rd May 1977. Carrington suggested here similar areas for special protection as would the Labour Party a decade later (see Chapter 6).

56 Ibid.

dictatorship; and this was for members of the upper chamber themselves to be elected". A nominated or hereditary chamber would never be strong enough; and the former would also mean that the potential power of government to swamp the membership would remain. The chamber should, however, be elected by a different system and by different constituencies than the Commons. He did not support the idea of a referendum on the issue, but, when asked if he thought the Conservative Party could be persuaded on such a radical scheme, he said that "if the Party did not adopt it, it would need its head examined".<sup>57</sup>

When it was put to Hailsham that Labour might still be able to abolish the Lords, he suggested that a Parliament Bill embodying his proposals should provide that any change in the composition or powers of the new chamber should require the the consent of both Houses.<sup>58</sup> This was significant, since a proposed safeguard along these lines would feature in the Committee's final report.

Invited to the same meeting, another Conservative Party grandee, Lord Butler of Saffron Walden (who had held many senior posts in earlier governments), took a different view, arguing that radical reforms would be more likely to invite total abolition than would modest ones. He felt that the problem of extreme governments elected on a minority vote would be better dealt with through changes in the electoral system; and he argued for a smaller House, with representative election from existing peers (both hereditary and life), plus additional nominated peers.<sup>59</sup>

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57 Committee Minutes, 14th June 1977. Several years later, Hailsham's views would be quite different (see Chapter 8). At this time, he appears to have shared with Baker the view that a Labour government would probably seek to reduce the Lords' powers.

58 Ibid.

59 Ibid. Interestingly, Home said he was attracted by this concept - even though the Committee had previously opposed representative election of hereditary peers (see p 179).

Various other papers and evidence were also submitted to the Home Committee, but were not necessarily discussed. These included some advocating the status quo - unsurprisingly, from such as the Conservative MP John Stokes, well known as a traditionalist, who argued that "it is vital to retain the hereditary element";<sup>60</sup> but also from the academic Philip Norton, who argued that "composition based on the hereditary principle and life peerages is probably the best composition possible for the British second chamber". Norton further argued that the question of composition was fundamental, while powers and functions were essentially secondary. However, he took issue with John Griffith who, as previously noted, had argued elsewhere that the House of Lords was not especially effective as a revising chamber, asserting that Griffith's own study demonstrated that the Lords were more effective in scrutiny than the Commons, and that backbench amendments in the Commons had a higher success rate than in the Lords. Thus, according to Norton, Griffith was hoist by his own petard.<sup>61</sup>

One memorandum which was discussed was that from Lord Denham, who was broadly supportive of the status quo. He argued that if the House of Lords were to have stronger powers to act as a check on the Commons, it was less likely that reform would be accepted, "not only by the Labour Party but by members of the House of Commons of all parties".<sup>62</sup> When he appeared before the Committee in July, he argued that the existing House was able to exercise a revising role "in a relatively non-party political way because, and not in spite of, the anomalies of its present composition." It exercised forbearance because of its composition; if the anomaly was removed, this would not continue. Any conceivable reform would make party strengths more equal and alter its character and method of operation.

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60 Submission PG 400/77/3D

61 Submission PG400/77/7: 'The Case for the House of Lords' and supplementary note PG 400/77/9. Norton was referring to Griffith's *Parliamentary Scrutiny of Government Bills*. (See Chapter 3 for Griffith's role on Labour's Study Group and subsequent views.) Then a lecturer at the University of Hull, Norton later became Professor of Government and, from 1998, a Conservative peer.

62 PG 400/77/3A, March 1977.

He felt there was a choice between preserving it as a revising chamber, which meant leaving it much as it was; or making it a more effective safeguard, which meant complete reform as a wholly elected body, with powers not short of the Commons (although, even then, this might not be sufficient safeguard against elective dictatorship). Any attempt at compromise would almost certainly lose the advantages of the former, without securing the advantages of the latter. Constructive revisions, he suggested, were unlikely to be achieved in a more party political atmosphere.<sup>63</sup>

Denham, by inference, preferred an unelected and to some extent consensual chamber, performing a modest revising role; but, as has been seen, this was not necessarily the view of other leading Conservatives or of all members of the Committee, some of whom wanted to see the House taking on a more significant role as a constitutional check on government. Indeed, at the very meeting which Denham addressed, Home subsequently told his colleagues that the status quo was "probably not a viable option".<sup>64</sup>

At the last meeting of the Committee before the summer recess, when discussing the possible format of its report, Home suggested that it should review and comment on the various options, without plumping formally for any one of them. Significantly, he observed that, although he thought Mrs Thatcher disliked the notion of a wholly elected House, this was an option that could not be ignored.<sup>65</sup> Nevertheless, and notwithstanding his observations at the previous meeting, Home also floated the notion of maintaining the status quo, with a self-denying ordinance on the number of hereditary peers who could sit and vote, to make it more acceptable. Baker thought this would not work and, indeed, it would seem to have been a non-starter. It does suggest, however, that Home himself may have been in two minds - perhaps recognising that the Committee was likely to favour fairly radical changes but uncertain in his own support for them.<sup>66</sup>

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63 Committee Minutes, 5th July 1977.

64 Ibid.

65 Committee Minutes, 19th July 1977.

66 Note also, his remarks at the first meeting of the Committee and his apparent sympathy with Butler's notion of representative elections from existing peers (see pp 177 and 182).

Home was not present when the Committee next met in November 1977, so it was chaired by Mancroft, who drew attention particularly to the Labour Party Conference's endorsement of abolition the previous month. "He thus felt that the report should make an even stronger case against single chamber government". He also "voiced Lord Home's growing apprehension that the option of a wholly elected chamber was not, in fact, feasible, as it would prove unpopular with the Commons, and asked the Committee to bear this in mind."<sup>67</sup>

The emphasis was now mainly on the mixed option. There was some discussion on how the nominated element should be chosen - with Baker favouring lists put forward by party leaders before an election and places then allocated according to votes; others expressing concern about loss of independence and the presence of "party hacks"; and Walker-Smith suggesting nomination on the advice of Privy Counsellors. According to Mancroft, the Committee veered in the direction of the latter.<sup>68</sup> It was suggested that, if they did go for a mixed option, it should be for two-thirds elected and one-third nominated; and Baker followed this up with a note suggesting an assembly of 402 members, of whom two-thirds would be elected by PR for fixed terms of five years, and one-third would be appointed - the latter to include bishops and law lords.<sup>69</sup> Proposals broadly along these lines would be identified as the Committee's preferred option.<sup>70</sup>

The Committee met on successive days in December to discuss the final draft, with mostly different people present on each occasion - Home himself was only present at the second of these.<sup>71</sup> A significant element in the final report was the proposal for transitional arrangements in moving towards a new chamber - including in the nominated element virtually all life peers, together with some hereditary peers for their lifetime and possibly also bishops and law lords. This aspect was specifically discussed at these meetings. A proposal by Nevil Johnson

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67 Committee Minutes, 10th November 1977.

68 Ibid. In April there had been little support for a similar notion (see p 179).

69 Ibid; also note from Baker, 15th November 1977.

70 See pp 192-3 (The proposed terms to be served would be different.)

71 Only Mancroft and Fallon were at both meetings.

to reduce the number of hereditaries from 50 to 30 and for bishops and law lords to be additional to the 402 members was agreed at the first meeting, also with a stipulation that - "subject to further research" (*sic*) - there should be an upper age limit of 75 for life peers and that they should be willing to serve a full term. However, the following day, Home asked the Committee to reconsider, as the reduction to 30 hereditaries could make it difficult to sell to the Party; and it was duly agreed that "the Committee revert to the number of 50 for reasons of party political management" (*sic*).<sup>72</sup>

Shortly before these final meetings, Home had met with the backbench Conservative peers. According to Fallon, Home wanted all along to be able to sell any recommendations to them, or at least "to be able to sort of square them".<sup>73</sup> Perhaps unsurprisingly, Home reported afterwards that the majority would probably like the minimum of change.<sup>74</sup> But the emphasis of the report would be on rather more than that.

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72 Committee Minutes, 5th and 6th December 1977. The high proportion of nominated members involved in the proposed transitional arrangements was specifically pointed out by Baker, who said it could be 20 years before this group decreased sufficiently to allow for new nominations; and by Blake, who said that it would mean initially a House of nearly 600, then gradually decreasing.

In the event, the final report would leave open whether bishops and law lords should be included in the nominated element; and it would not include any firm proposal on an upper age limit.

73 Interview.

74 PG 400/77/33: Report of meeting, 1st December 1977. He added that they had expressed the hope that an element of election by hereditary peers would not be ruled out. It was not, but it did not form a major plank of the recommendations.

## The Committee's Report

The Committee's report was completed in January 1978 and published in March. Most significantly, it concluded that:

"in our view maintenance of the status quo is not a prudent policy. Indeed we are doubtful if it is a policy at all".<sup>75</sup>

In what was clearly a response to developments in the Labour Party, the Report's discussion of the background observed that:

"There is every sign that the Labour Party will commit itself in its next election manifesto to abolition. And even if it does not, in fact, go this far, it may still resort to abolition if opposed by the Lords, or at the minimum, bring about the complete emasculation of the powers of the House of Lords".<sup>76</sup>

The Committee then linked this explicitly with its own work, declaring that "obviously the political developments just outlined require the Conservative Party to think carefully about the role of the House of Lords and its future". Going on to consider "the case for reform", it argued that:

"The thrust of British political development in this century, supported on occasions by *all* parties, has undoubtedly been towards what we call 'mandated majority government'".<sup>77</sup>

This concept was clearly similar to Hailsham's 'elective dictatorship', but it was acknowledged that this had occurred under Conservative as well as Labour governments. Affirming that "this trend ought to be halted", the Report turned to the powers and role of the second chamber. It argued that the Lords had generally been reluctant to use their powers, partly, it was suggested, for fear of abolition. It stated explicitly:

"And under the law as it now stands this is quite possible. The second chamber could be abolished or its powers further drastically reduced by the Commons alone. The Parliament Act can be altered in this way; thus the Act of 1949 amended the Act of 1911 without the consent of the Lords".<sup>78</sup>

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75 Committee Report p 35.

76 Ibid, p 7. In the event, Labour's 1979 manifesto would contain a commitment to ending the Lords' delaying powers and legislative veto (see Chapter 4).

77 Ibid (NB emphasis original).

78 Committee Report pp 11-12.

This suggests that the Conservative Review Committee did not accept or take on board the argument that it might be impossible to use the Parliament Act to effect abolition of the House of Lords - a view which the Labour Party went to some lengths to address.<sup>79</sup>

The Report noted that the existing Parliament Act's provisions excluded legislation to extend the life of a Parliament, but suggested this could still be got round by passing an amending Act to remove the exclusion. This led on to the conclusion that, if a new Parliament Act included provisions allowing the Commons to override a Lords veto, it should be clear these would not apply to the Parliament Act itself.<sup>80</sup> Home sought to emphasise, in his preface, that this was a clear recommendation:

"We feel that at the very least we must act to secure that in future there will continue to be two chambers of Parliament. One way to do that is to have a new Parliament Act which would make it impossible for the second chamber to be abolished without the consent of both Houses. This we propose."<sup>81</sup>

The Report also referred briefly to the need to nullify the threat of extra creations by limiting the total membership or limiting the number of creations in any one year.<sup>82</sup> The threat of "swamping" was thus only briefly addressed, almost in passing. Although the Labour Party Group had discussed potential practical difficulties involved in this course of action, their Conservative counterparts were clearly not confident that existing procedures would be sufficient to prevent this possibility.

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79 See Chapters 3 and 5. According to Michael Fallon, it did take legal advice. He also said it was assumed that if legislation was passed, the sovereign would give assent (Interview).

80 Committee Report pp 12-13.

81 Ibid, p 4.

82 Ibid, p 13.



When it came to consider the options, the Report rejected the status quo - "we do not believe that leaving things just as they are should be considered a viable option for the next Conservative government". It argued that "without doubt, few would seriously defend the hereditary principle as a basis for a seat in the legislature", but also that "appointment for life inevitably smacks of political patronage". It went on to conclude:

"Thus on balance we feel that to leave the House of Lords unchanged would be to leave it with a composition which, should a political attack on it be mounted, would be virtually impossible to defend".<sup>83</sup>

Pointing to the potential for a future Labour government to take action, the Report noted that "both periods of Labour majority government since the war have seen a serious attempt at further limiting the powers of the Lords";<sup>84</sup> but, interestingly, it failed to mention that the 1968 proposals had at least the nominal support of the Conservative front bench.<sup>85</sup> These, it seems, were no longer acceptable. The Committee was "strongly opposed" to any solution involving two tiers of voting and non-voting peers. While such a House might be effective as a revising chamber, "it could never be strong enough to act as a constitutional safeguard". Furthermore, the option to limit voting rights to life peers and peers of first creation would "be open to most of the objections raised to the 1968 proposals".<sup>86</sup>

Other variations on the status quo had been considered, but limiting hereditary peers to a representative number elected by themselves "would be unlikely to make sufficient difference to the party balance in the second chamber to avoid the conclusion that it has a built-in Conservative majority"; while including members

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83 Ibid, pp 16-17. The next Conservative government would leave things unchanged and would actually create a small number of hereditary peers (see Chapter 8).

84 Ibid.

85 See Chapter 1. (An appendix did, however, acknowledge that they owed a good deal to discussions in the inter-party conference.)

86 Ibid, pp 17-18.

of the European Parliament "would introduce into the Lords people elected for a totally different purpose...and who could moreover have heavy commitments outside this country" and this was not thought practical.<sup>87</sup>

The pros and cons of a wholly elected chamber were considered - including, on the one hand, that it would have a strong moral authority to act as an effective constitutional check; and, on the other, the possibility of deadlock between two elected chambers, as well as the exclusion of bishops, law lords and other eminent individuals. If there were to be an elected chamber, a preference was expressed for its members to be elected for fixed terms and retiring at intervals. The assumption was that it would be by "some form of proportional representation", so as not to replicate the Commons, although no specific method was recommended. (It was suggested that, if there were to be a regional list for the "European Assembly", then this could be adopted for the second chamber; otherwise the Single Transferable Vote might be preferable.)<sup>88</sup>

It was in the context of an elected chamber that the possibility of increasing the powers of the second chamber - to restore the two-year delaying power it had enjoyed up to 1911 - was discussed. An alternative to require a referendum before consenting to specific measures was also mooted. This might apply to measures thought to be "fundamentally opposed to the will of the majority of the electorate", or those judged to be of "fundamental constitutional importance" or adversely affecting "basic human rights". It concluded that there would be potential difficulties, including the problems of defining the aforementioned areas and of potential conflict with the Commons. The notion of a referendum in this context was not pursued.<sup>89</sup> Although it had been discussed "quite extensively" in the Committee, Fallon thought it had not been a serious runner.<sup>90</sup>

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87 Ibid. One meeting of the Committee is recorded as agreeing that this notion "lost its attraction as the elections actually approached" (Minutes, 5th December 1977).

88 Ibid, pp 19-20. The first direct elections in the UK for the European Parliament were held in 1979 on a first-past-the-post basis (except in Northern Ireland).

89 Ibid, pp 20-21.

90 Interview, February 2000. Baroness Young recalled that people were "very nervous about referendums" (Interview, July 1997). The Party subsequently established a separate committee to look more generally at the question of referendums (see p 200).

In looking at a mixed chamber, part-nominated and part-elected, the Report discussed the possibility of indirect election, possibly by local government, but was not enthusiastic. It also considered the possibility of the "elected" element comprising individuals chosen by their parties in proportion to the respective strengths of the votes cast for each in a general election. It noted, though, that they would represent no particular area and would still owe their position to patronage. Corporate representation of various interests (such as religious bodies, trade unions and employers' organisations) was also discussed, but not recommended.<sup>91</sup>

It is interesting to note that on some options, at least, the Conservative Committee came to similar conclusions to Labour's Study Group. For instance, both were unenthusiastic about corporate representation and both were against representation of MEPs in the second chamber; and for similar reasons. Also the possibility of the second chamber having a special role in respect of legislation affecting constitutional rights would feature in Labour's proposals some ten years later.<sup>92</sup>

The Conservative Committee's preferred option was for a House with an upper limit of 402, of which 268 (two-thirds) would be directly elected for nine year terms (one-third every three years). It suggested election by PR to differentiate from the Commons. The 134 nominated members, who would also serve renewable nine-year terms, would be selected by the Prime Minister after consultation with a committee of Privy Counsellors. Titles would be separated from membership of the new House, whose members could be designated "Lords of Parliament". However, it then went on to suggest a transitional arrangement,

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91 Ibid, pp 25-27.

92 See Chapters 3 and 6.

whereby the nominated group would comprise virtually all life peers and also 50 hereditary peers for their lifetime. Subsequent vacancies would be filled by nomination. Bishops and law lords might also be included. It acknowledged that this would mean a higher proportion of "nominated" members in the transitional period.<sup>93</sup>

A number of 'miscellaneous recommendations' were also put forward. One of these was for a Mediation Committee to resolve differences between the two chambers, because "the chances of disagreement leading to formal confrontation might well be increased in the wake of any substantial reform" and "it would be prudent to take steps to reduce this risk". The Report envisaged a committee along the lines proposed by Nevil Johnson (i.e. one which might be set up at the request of either House, comprising seven members nominated by each). However, it did not specify what would happen if the Committee could not itself agree or if either House declined to accept its recommendations. Moreover the Report acknowledged that the procedure "could not entirely avoid irreconcilable disagreements", although it might reduce their incidence.<sup>94</sup> Other proposals included an upper limit on numbers (either for total membership or for the number of creations in any one year), a possible age limit on membership, changes to enable peers to vote in parliamentary elections and minor procedural reforms.<sup>95</sup>

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93 Committee Report, pp 27-28.

94 Ibid, p 32. This suggests uncertainty about how useful this procedure might be. (See p 180 for earlier discussions.)

95 Ibid, pp 32-33. No figures were specified in respect of any limit on numbers. A retirement age of 75 was suggested, if composition were to be left unaltered.

In conclusion, the Report pointed to the 1968/69 experience to show that "modifications of what is essentially the present framework are open to many objections". There remained essentially two options - "a wholly elected second chamber or one which is based on some combination of election and nomination".<sup>96</sup> Whilst suggesting that "careful attention" be given to both, a tentative preference was expressed for the latter. Home acknowledged in his preface that "the arguments are finely drawn" and "much debate will be needed within the party before a final choice can be made". Not all Committee members were necessarily committed to every recommendation and arguments, but they believed that "when a decision is taken, a Conservative government would receive widespread support for two objectives", namely:

- i) "maintenance of an effective revising chamber, capable of supporting the work of the House of Commons and of ensuring that controversial legislation is not hastily thrust before the public";
- ii) "to ensure the position of a second chamber within Parliament is put on a firm foundation by protecting it against abolition without its own consent".<sup>97</sup>

The Committee concluded that, whether wholly or partly elected, there was "a strong case for reversion to the delaying power of two years"; and that there should be provision that change to the powers of the second chamber could only be made with its consent.<sup>98</sup>

Differing views on the Committee were clearly hinted at. Home's preface suggested that some members may have wished to look at the issue in the context of wider constitutional reform, but this was not within the terms of reference.<sup>99</sup>

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96 Ibid, pp 35-36.

97 Ibid, p 4.

98 Ibid, p 36.

99 Ibid, p 4. An earlier draft suggested some thought reform should probably start with the Commons and that the review should include Parliament as a whole (Draft, January 1978). Although it started by concentrating on the Lords, Labour's Study Group did have a wider remit.

Moreover, there were varying degrees of enthusiasm and support for a wholly elected or a mixed chamber. Home himself seems to have favoured some reform, but not a wholly elected chamber. The result was, therefore, according to one of its members, a compromise.<sup>100</sup> The proposals were, in fact quite radical, but seem to have been tentatively expressed, possibly to cover the differences of view on the committee. The suggested transitional arrangements would seem to have diluted these further and to lay it open to criticism.

Before publication, the report went to the Leader's Steering Committee in February 1978. The discussion there suggested an inclination on the part of the leadership to hedge its bets and distance itself to some extent. It agreed that the Conservative Party was united in its desire to see a second chamber which could be "a significant means of preventing the slide towards a situation similar to that which existed in Eastern Europe" (*sic*). However, the 'introduction' to the report (in the form of a letter from Home to Thatcher) should be amended, "so that it did not totally rule out continuance of the status quo", since that was preferable to single chamber government, and should indicate that, "on balance, the majority of the Committee preferred the solution set out in the report, but were well aware that wider discussions would bring forward a number of factors meriting further consideration".<sup>101</sup> The report should be published, but printed in a form of its own and not as a Conservative Political Centre document.<sup>102</sup>

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100 Interview with Baroness Young.

101 CPA: LSC/78/52nd meeting. Curiously, Home told this meeting that the Review Committee had been opposed to a wholly elected second chamber. The minutes of the Review Committee do not include any such firm conclusion; and indeed, it was presented in the Report as an option which could be supported.

102 Ibid. The Conservative Political Centre acted as a Party discussion forum and publishing house.

There were thus some significant differences between the introduction to the document which went to the Steering Committee<sup>103</sup> and the Preface of the published Report. A statement that "we reject the option of maintaining the status quo" was removed, as was a reference to the need for "essential and urgent action" (although it still said that "we do not believe the Party can do nothing" and the status quo was ruled out elsewhere in the report). References to finely drawn arguments and the need for debate on the main options were also added. Although the options were still put forward in the Report, this opening presentation was certainly more anodyne, again suggesting a degree of hesitancy.

### Responses to the Report

It may be significant that the Conservative Research Department's contemporary notes, *Politics Today*, gave the Report very little coverage. They ignored it on publication and there were just five lines in the issue preceding the 1978 Party Conference.<sup>104</sup> The following issue, reporting Conference speeches, carried just three lines, quoting Francis Pym (then frontbench spokesman on House of Commons affairs) as saying: "we want to reinforce and strengthen the second chamber....Lord Home and his colleagues have shown us the way".<sup>105</sup> This implied some support for further action, but Pym may not necessarily have been reflecting the views of all of his front bench colleagues. Fallon recalled that "the whole thing had a whiff, not of non-adoption, but of second term", but "Margaret didn't want Alec to be snubbed in any way", so the Report was welcome cautiously; while according to Carrington, everyone said how interesting, but "nobody intended to do anything". Denham claimed that the Committee "produced some fairly silly recommendations" and that that was the generally held view of the Party.<sup>106</sup>

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103 PG 400/77/33: Final Revise.

104 *Politics Today* (No 17, September 18th 1978).

105 *Ibid* (No 18, October 30th 1978).

106 Interviews, April 1999 - February 2000.

Among the public critics was Ferdinand Mount who, writing in *The Spectator*, acknowledged that the Conservatives needed a "defensible alternative" to Labour's policy, but concluded that "this is not that alternative". He registered particular doubts about the obligation to consult a committee of Privy Counsellors on appointments; and about the transitional period, in which life and hereditary peers would still be in a majority. He argued the new chamber would be unlikely to have enough democratic authority "to act as a bulwark against socialism"; and concluded that the Home Committee seemed "motivated less by a serious belief in the supremacy of popular election than by a wish to look respectably modern, while still managing to sooth sensitivities of life peers and console hereditary peers..." Arguably, none of this mattered too much, since, according to Mount, reforming the Lords "must come about 47th on most people's lists of What Needs to be Done".<sup>107</sup> Nevertheless, Mount's views both on this report and priorities may be worth noting since he later became an adviser to Margaret Thatcher.<sup>108</sup>

Reporting the document's launch, *The Times* noted Thatcher's opposition to proportional representation for the Commons, but quoted Home as suggesting she would not object to having different systems for different chambers, adding that he (Home) thought there was a strong case for PR as the method of election to the Lords, rather than reproducing the House of Commons. Not surprisingly, the President of 'Conservative Action for Electoral Reform', the former Home Secretary, Lord Carr of Hadley, welcomed this, hoping it would be incorporated in the next manifesto. However, according to the same report, Home himself had said that, because of the big questions raised by his Committee's report, he expected only a general pledge to reform the House of Lords.<sup>109</sup>

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107 *The Spectator*, 28th March 1978 (Vol 240, p 5). Note his assumption that the second chamber would be anti-socialist.

108 Mount was Head of the Prime Minister's Policy Unit, 1982-83.

109 George Clark, *The Times*, 21st March 1978. In the event, the manifesto would not include even such a general pledge.



Meanwhile, in *The Guardian*, Simon Hoggart - perhaps cynically, but certainly not inaccurately - noted that there was an official Labour plan, a plan from Labour peers and now a Conservative plan; but "the scheme most likely to win over the next few years is the one to do nothing at all". He observed that the previous Labour government had found it impossible to get its proposals through, and there was "no reason to imagine that any new plan would work any more easily". The Home proposals were not yet policy, but Hoggart suggested "the main reason for haste for a future Tory government is that a Labour government might make the effort to abolish the Lords".<sup>110</sup>

The concern with what Labour might do was echoed by a member of the Committee itself, Lord O'Hagan, who referred the following day to the prospect that "Labour may emasculate us, if it does not abolish us". He said he had been "delighted, if surprised when we all agreed that the status quo was no longer a real option, but added that "when we turned from diagnosis to prescription, our thoughts began to diverge". Although he supported an elected chamber, he thought it would take a long time to persuade the Conservative Party to aim for such a target.<sup>111</sup>

The period following the Labour's espousal of outright abolition was actually marked by a flurry of interest in Lords' reform in Conservative circles. In September 1977, the former Attorney-General, Sir Peter Rawlinson, had put forward proposals for Parliamentary reform which, for the Lords, would involve each Party nominating voting peers in proportion to its Commons representation for the lifetime of a Parliament, with powers limited to approval or rejection on second reading.<sup>112</sup> Shortly afterwards, the Bow Group (a Conservative research

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110 *The Guardian*, 21st March 1978.

111 'Lords Reform: The Next Steps', *The Times*, 22nd March 1978.

112 *The Times*, 13th September 1977.

and discussion group) published a memorandum by Jacques Arnold (then a banker, later to be a Conservative MP), which argued that reform was inevitable and should be carried out by the Conservatives to avoid total abolition by Labour.<sup>113</sup> Around the same time, 'Conservative Action for Electoral Reform' issued a paper proposing a second chamber with significant powers, which should be determined by an "acceptably democratic process", but different from the lower chamber. Election by a regionally-based system of proportional representation would be the most attractive option, but only in the context of wider reforms, including the Commons.<sup>114</sup>

The following April, the Constitutional Reform Committee of the Society of Conservative Lawyers proposed abolition of the existing House and its replacement by a senate of 300 members, with one-third elected every two years by PR. A varying percentage of this new senate (diminishing during the lifetime of a Parliament) would be required to agree before legislation could be referred back to the Commons.<sup>115</sup> In the same month, the political commentator Wilfred Sendall argued in *The Spectator* for a reformed second chamber. Like some in the Labour Party, he concluded that its revising and debating functions "could be satisfactorily discharged after some procedural changes by the Commons itself", but said it should be able to stop the Commons carrying through "a revolution" on a simple majority vote. The present House of Lords, he claimed, lacked authority; and he proposed a House representing various interests in the community - "it should not be difficult to devise means by which each could choose representatives, either by election or nomination", he asserted, optimistically -

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113 *Reform of the House of Lords - Practical Proposals for a Strong Second Chamber* (1977). Arnold's proposals were for rather a hotchpotch of a chamber, including members elected by PR, nominated by the Commons, MEPs and representatives of various groups (including existing peers and "university graduates".)

114 Elizabeth Lyons and Anthony Wigram: *The House of Lords* (1977). The same organisation had submitted a different paper to the Home Committee (PG400/77/3F), which argued that although electoral reform of the House of Commons would be vastly preferable, a proportionally elected Upper House might be more acceptable "to those who have the power to reform our constitution".

115 *House of Lords Reform*, 1978.

and there could also be a directly elected element on a regional basis. This new House should have limited delaying powers generally, but on matters affecting the constitution, it should have "an absolute veto".<sup>116</sup>

Following publication of the Home Committee's report, a separate Party committee recommended legislation providing for a referendum before any fundamental change in the constitution, stating that the "primary protection sought by such a Bill would be the existence of the second chamber".<sup>117</sup> The Shadow Cabinet decided early in January 1979 to insert a passage in the manifesto indicating that a referendum would be an extremely useful device.<sup>118</sup> Just days before the election, Norman St John-Stevas, now Shadow Leader of the Commons, publicly suggested a referendum on the House of Lords.<sup>119</sup> However, the actual manifesto would go no further than indicating a general willingness to discuss referendums and a Bill of Rights with all parties.<sup>120</sup>

Notwithstanding the recommendations of the Home Committee, the manifesto made no specific commitment to Lords' reform. Instead it stated:

"The public has rightly grown anxious about many constitutional matters in the last few years - partly because our opponents have proposed major constitutional changes for party political advantage. Now Labour want not merely to abolish the House of Lords, but to put nothing in its place. This would be a most dangerous step. A strong second chamber is necessary not only to revise legislation but also to guarantee our constitution".<sup>121</sup>

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116 'House of Committees', *The Spectator*, 8th April 1978 (Vol 240, p 15).

117 *Report of Conservative Party Committee on the Referendum* : LCC(78)141. The Committee met between April and July 1978.

118 CPA:LCC 79/230, 29th January 1979

119 *House of Commons Debates*, 26th March 1979 (Col. 965, Vol 25). This may have been intended mainly as a challenge to the Labour government.

120 *The Conservative Manifesto 1979* (Dale, op cit, p 276).

121 *Ibid.* An earlier draft had warned that the Labour Party wanted to swamp the second chamber "to eliminate barriers to the advance of socialism and state control of many aspects of our lives" and that, without a second chamber, a socialist majority in the Commons could vote itself into permanent power, without ever holding an election again. The Shadow Cabinet decided to delete these references (LCC 78/219, 4th September 1978) and the final text was more moderate in its wording.

Thus, in place of any specific proposals, the Party's 1979 manifesto presented what was, in essence, a generalised reaction to Labour's policies. To some extent, this reflected the nature of the debate that had taken place in the Party on the issue in the preceding period, although Ian Gilmour, then Defence Spokesman, later recalled that Thatcher and the right-wing of the Shadow Cabinet had obstructed reform proposals, wishing to protect the House of Lords from the "contagion of democracy".<sup>122</sup> Thus, an authoritative committee had come forward with detailed proposals for reform which were, in the event, not reflected in the manifesto. It would seem that the Shadow Cabinet did not feel the need for a specific position on the issue at the time, although it had not yet ruled out the possibility of future reform.<sup>123</sup>

The assertion made strongly in the Home report - that the status quo was not an option - was very different from the attitude John Major's government would later take; and it was different from that of his predecessor who, for all her vaunted radicalism would, as we shall see, leave the Lords untouched and even create new hereditary peers. In the 1970s, the Conservatives were undoubtedly motivated by concern that Labour might actually abolish the Lords; but influential figures were forced to acknowledge that the existing chamber was unacceptable. They apparently saw the second chamber as a sort of bulwark against "elective dictatorship" and, sometimes quite explicitly, as a way of blocking what they regarded as extreme or socialist policies - although, in fairness, the Home Committee itself did not put it in such partisan terms. Some also appeared to assume that a more democratic chamber would be inclined to block measures they disliked - an assumption some in the Labour Party would also make a decade later, when they took up the notion of the second chamber as a means to safeguard particular rights. Concern amongst Conservatives about "elective dictatorship" would, of course, diminish when they were in power, as will be seen in the following Chapter.

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122 *Dancing with Dogma*, p 318. (The actual phrase was attributed to Roger Scruton.)

123 Baroness Young confirmed this was the position (Interview).

## 8. THE CONSERVATIVES IN GOVERNMENT 1979-92

In opposition, the Conservatives had been attracted to the notion of the second chamber acting as a constitutional longstop, to serve as a brake on radical reforms being carried through by a government with a majority in the Commons but which did not necessarily have majority support in the country. In office, however, this perspective would change, as the government of Margaret Thatcher sought to carry through radical measures which proved highly controversial and met with fierce opposition. Sir Ian Gilmour, a member of her first Cabinet, later turned critic, observed how:

"the views of the public were of little consequence during the legislative process. Disliking public inquiry, despising opposition and believing in Thatcherite infallibility, the government customarily kept all the preliminaries to legislation in its own hand, only listening in private to groups and individuals who would give it the advice it wanted. As a result, the government, especially in its third term, produced a mass of legislation...strongly opposed by a majority in the country".<sup>1</sup>

In the face of this, the House of Lords would come to be seen as a potential obstacle to measures the government was keen to push through, despite the Conservative strength there. Indeed, it has been suggested that, particularly after 1983, the Lords were "more effective than the Lower House in obliging the government to change its mind on particular questions".<sup>2</sup> Of course, unlike its Labour predecessor, the Conservative government enjoyed comfortable majorities in the Commons and, with the benefit of whipping, could normally be confident of avoiding defeat, even on measures opposed by some of its own supporters.<sup>3</sup>

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1 *Dancing with Dogma*, p 180. (Gilmour was Lord Privy Seal 1979-81; he entered the House of Lords in 1992.) For further illustration of public opposition to Thatcherite policies see, for instance, Hugo Young: *One of Us* (Macmillan, 1989) p 529.

2 Shell: *The House of Lords*, p 26.

3 In two out of the three Parliaments of this period, the Conservatives had a Commons majority of over 100. The majority of 43 in 1979 increased to 146 in 1984, but was down to 101 in 1987. The share of the total vote, however, was between 42 and 44 per cent (Butler & Butler: *Twentieth Century British Political Facts 1900 - 2000*, pp 238-9).

However, the position was different in the Lords. While it could use "whipping" and other methods of persuasion at crucial times, it could not always be certain of carrying the day there, given the uncertainty of turnout, particularly if independent/crossbench peers and some Conservative "rebels" joined forces with Opposition peers. This was quite possible, since, as Donald Shell observed:

"the sheer continuity of the Upper House meant the Party there was less 'Thatcherite' and remained more tempered by the old paternalistic Tory tradition".<sup>4</sup>

Peter Hennessy noted at the time that the Lords were amending Conservative legislation in a progressive or centrist direction; and that Conservative peers were said to be rather pleased with themselves.<sup>5</sup> In Gilmour's view, the House of Lords was "much less Mrs Thatcher's poodle than the House of Commons".<sup>6</sup> Baroness Young, who was Leader of the House from 1981 to 1983, recalled that Thatcher "thought she could run the House of Lords as she ran the House of Commons", but "she found she couldn't."<sup>7</sup>

It has been claimed that the Lords became "the main focus for opposition to the Thatcher government in the 1980s".<sup>8</sup> Local authorities, for instance, came to look to the House of Lords for support in moderating the impact of government legislation. According to Shell, it became evident then that "as far as actually getting detailed changes made to Bills was concerned, the House of Lords could be at least as useful as the House of Commons" and that interest groups responded accordingly.<sup>9</sup> Sir John Sainty (Clerk of the Parliaments 1983-90)

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4 Shell (op cit) p 27.

5 'Medieval Relic or Mighty Oak?', *The Listener*, 5th November 1987 (Vol 118, pp 11-12).

6 Gilmour (op cit) p 186.

7 Interview, July 1997. Lord Denham, who was her Chief Whip throughout, remembered that Thatcher often said to him: "Look, I don't have defeats in the Commons. why do you have defeats there?" (Interview, January 2000).

8 Ivor Richard and Damien Welfare: *Unfinished Business - Reforming the House of Lords*, p 44. (Richard was Leader of the House of Lords, 1997-98.)

9 Shell (op cit) pp 150, 173. He records a 1986 survey of 211 organised groups, which found that 177 had used the Lords "to make representations or influence policy", most of which had found it "useful or very useful".

observed that both interest groups and the official opposition "used the House of Lords to forward points that they hadn't been able to carry in the House of Commons.<sup>10</sup>

Between 1979 and 1992, the Conservative governments were defeated in the Lords 179 times (in 7.9% of divisions).<sup>11</sup> Analysis by Shell has shown that 148 out of a total of 155 defeats under Thatcher (1979-90) involved legislation; and that in 63 cases the changes made were accepted by the government; in 55 cases they were rejected (but in a few instances they were accepted after a second defeat); and in the remaining 30 a definite compromise was reached. However, amendments varied considerably in importance - "some were minor to the point of triviality, while a few were very significant indeed".<sup>12</sup> According to Gilmour, while quite often defeated on minor matters, the government could use its Commons majority to reverse such defeats and, "because of the large Conservative majority amongst backwoods peers, the government was never in serious danger on major issues".<sup>13</sup>

### Legislative Highlights

Although it is not intended to examine in detail the handling of all legislation by the House of Lords over this period, it is worth noting some of the most significant and controversial instances, as these would have influenced the way in which it was perceived.

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- 10 Interview, January 2001. Sainty and Denham agreed that the Lords became increasingly subject to lobbying in the 1980s.
- 11 House of Lords Information Office (1997): Divisions in the House of Lords since 1970-71.
- 12 Shell (op cit) pp 157-8. (The House of Lords Information Office lists 156 defeats under Thatcher.) Shell has further observed that by the late 1980s, around 2,000 amendments were being made to government Bills each session, but this was "more to do with the ill-thought-out nature of much legislation when first introduced than with any particular skill or diligence by peers" ('The House of Lords: Time for a Change', *Parliamentary Affairs*, October 1994, Vol 47, p 733).
- 13 Gilmour (op cit) p 186.

The most notable episode in the 1979 Parliament involved the Education (No. 2) Bill in March 1980, when the government was heavily defeated by 216 votes to 112 on a clause giving local authorities powers to charge for school transport. The main mover against this was the Duke of Norfolk, a Conservative peer, and other opponents included Lord Butler of Saffron Walden (who had been responsible for the landmark 1944 Education Act).<sup>14</sup> Shell notes that "any attempt to reverse such a defeat in the Commons would probably have led to further humiliations for the government, so instead ministers gave way".<sup>15</sup> Ministers had also suffered defeats on other legislation the previous month, but this was the first really significant reverse forced on them by the Lords.<sup>16</sup> The Minister responsible for handling the Bill was Baroness Young, who would later become Leader of the House. This undoubtedly would have impressed itself on her memory - as she later recalled: "I got the biggest defeat for the government it ever had".<sup>17</sup>

Such early defeats may have galvanised the government into organising heavier whipping later when key aspects of legislation were at stake. Nevertheless, it would not be immune from defeats, both in this and the next Parliament, which in some cases, it would be unable to reverse.<sup>18</sup>

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14 *House of Lords Debates*, 13th March 1980 (Vol 406, Cols 1206-1395).

15 Shell (op cit, p 161) points out that, in the Commons, 13 Conservative MPs had voted against the government and 16 abstained.

16 The other defeats were on the Bees Bill and the Criminal Justice (Scotland) Bill, which he suggests were minor affairs (Ibid, p 158/9).

17 Interview, July 1997. She mentioned it in a debate in the 1980s, when arguing that "the House as a revising chamber is effective" (*House of Lords Debates*, 4th July 1996, Vol 573, Cols 1599-1603). According to Denham, he had known the government was going to lose the vote, however strong the whip, and he had warned his colleagues of this (Interview and subsequent conversation with the author).

18 Shell (op cit) pp 162-168. There may have been improved organisation of whipping over the period. (Sainty, when interviewed, thought this was probably the case.) However, another factor might be that, after 1983, the government had a bigger majority in the Commons, increasing its confidence and lessening the likelihood of problems with any legislation returned by the Lords.



The most significant legislation in the 1983 Parliament was probably that affecting local government, which carried with it constitutional implications. The government was determined to abolish the Greater London Council and the metropolitan county councils in other urban conglomerations, but got itself in a position whereby the substantive legislation could not be introduced until the 1984/85 session and so would be unlikely to be passed before council elections due in 1985 would have been held. (The proposed abolition would undoubtedly have been an issue and the results might have proved embarrassing to the government.) Thus in 1983/84 it introduced what was popularly known as a "paving" Bill - formally the Local Government (Interim Provisions) Bill - which would have cancelled the scheduled elections and set up bodies nominated by the lower-tier local authorities to run the councils in the final year until abolition was effected. In London this would probably have meant substituting control by a body with a Conservative majority for that by one with a Labour majority, without recourse to further election.<sup>19</sup>

On the face of it, this would seem to have been the sort of issue on which a second chamber which saw itself as a guardian of constitutional rights (or indeed as a check on "elective dictatorship") might wish to assert itself. While the actual abolition proposals had been included (at the last minute) in the 1983 Conservative manifesto, they had not hitherto been subject to wide discussion or consultation; yet, by abolishing a tier of government, they would fundamentally change the way people were governed.<sup>20</sup> The "paving" Bill was particularly contentious. There had been much criticism in the Commons and although, given

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19 Ibid, pp 168-9.

20 "Some of the most far-reaching and unresearched proposals for local government for many years, thrown into the manifesto at the last minute" (*Beyond our Ken: A Guide to the Battle for London*; Andrew Forrester, Stuart Lansley and Robin Pauley; Fourth Estate, 1985; p 66) "Not the result of informed discussion but of prime ministerial insistence" (Gilmour, op cit, p 181).

the government's large majority, there was never any danger of defeat, 19 Conservative MPs had voted against Second Reading.<sup>21</sup> Arguably, this was a situation in which it would be appropriate for the Lords to accord the people and Commons "a period for reflection".<sup>22</sup>

When the Bill came to the House of Lords in June 1984, there was much activity. The then Leader of the GLC, Ken Livingstone, has described how "the calm, leisurely pace of life in the Lords began to change with our lobbying", cars were provided and rooms supplied with food and drink to keep potential supporters on hand.<sup>23</sup> Despite this, the government whips were successful in ensuring that it passed Second Reading. One Conservative hereditary peer, Viscount Mountgarrett, told the House during the debate that "extensive pressure has been brought to bear on a number of the government's rather far distant and somewhat irregular supporters."<sup>24</sup>

However, later in the month, at Committee Stage, the government was defeated on a crucial amendment by 191 to 143.<sup>25</sup> This amendment - which, although moved in the Lords by Lord Elwyn Jones from the Labour benches, became known as the "Pym amendment" after the former Conservative minister Francis Pym, who had moved a similar amendment unsuccessfully in the Commons - laid down that the elections should not be cancelled until the actual legislation abolishing the authorities became law (by which time the election would probably have been held).<sup>26</sup> Livingstone called this "the biggest defeat a Tory government suffered in the Lords since the First World War".<sup>27</sup> Whilst this was not strictly true

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21 *House of Commons Debates*, 11th April 1984 (Vol 59, Col 1479) .

22 As suggested by Lord Carrington when in opposition in the 1960s (see p 33).

23 *If Voting Changed Anything They'd Abolish It* (Collins 1987, pp 278-9).

24 *House of Lords Debates*, 11th June 1984 (Vol 452, Col 957). The crucial vote was on an amendment condemning the Bill as a "dangerous precedent", which was defeated by 237 to 217, after what *The Times*' report described as an "intense whipping operation" , with only seven Conservatives actually voting against. The hereditary peers were reported to have divided 178 to 53 in favour of the government - "it was clear yesterday that the government had hereditary peers to thank for its majority" (Phillip Webster: 'Hereditary peers earned victory for amendment on Abolition Bill,' 13th June 1984).

25 *House of Lords Debates*, 28th June 1984 (Vol. 452, Col 1069).

26 Shell (op cit, p 169) describes it as a "wrecking amendment". (The substantive Bill finally received Royal Assent in July 1985, two months after the elections would have been due.)

27 Livingstone (op cit) p 283

- the margin on the Education Bill in 1980 was larger - the government had, in the words of a senior minister, been "humiliated" and, moreover, decided it could not risk a Lords / Commons clash by reversing it in the Commons.<sup>28</sup> It decided instead to offer a compromise by allowing the existing councils to continue in office - without further election - for the final year. This compromise was, in due course, accepted by the Lords.<sup>29</sup> A banner was erected on County Hall, opposite Parliament, which declared: "Peers - Thank you for saving London's democracy".<sup>30</sup> *The Times* described the episode as "a triumph for the principles of constitutionalism and specifically for the principle of a bicameral Parliament".<sup>31</sup>

When the actual abolition legislation came to the Lords, after again receiving a comfortable Commons majority, one of the crucial tests came on an amendment moved by the independent peer Lord Hayter and supported by Conservative peers Baroness Faithfull and Lord Plummer (a former Conservative leader of the GLC). This would have replaced the GLC with a new London-wide authority and was defeated by just four votes.<sup>32</sup> Following this, according to Livingstone, the Lords initially passed some amendments, but this spurred Denham, the Chief Whip, "to wring out the last few votes of the inbuilt Tory majority"; and "they began to win all the really crucial votes, while continuing to lose those they could afford to do without". Of 100 amendments passed, there were only two which the government could not live with, and these were subsequently reversed in the Commons, following which the Lords did not insist on them.<sup>33</sup> The legislation thus duly came into effect.

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28 Kenneth Baker, *The Turbulent Years* (Faber & Faber, 1993) pp 96, 98.

29 Shell (op cit) p 169.

30 Baker (op cit) p 98.

31 Leading article, 30th June 1984 (as noted by Shell, op cit, p 169).

32 Committee Stage, Local Government Bill (*House of Lords Debates*, 30 April 1985, Vol 463, Col 167). The voting was 213 - 209.

33 Livingstone (op cit) pp 302-6. The two amendments concerned London-wide waste disposal and highway authorities.

This episode showed how Labour-controlled authorities saw the House of Lords as having the potential to amend legislation in a way favourable to them and lobbied there accordingly. It demonstrated too that, although the House of Lords was prepared to defeat the Conservative government on an important aspect of its legislation, which appeared particularly anti-democratic in nature, this defiance had its limits; and that, when sufficiently determined, the Conservatives could, in Livingstone's words, "get their act together".<sup>34</sup> There may have been a hiccup on the way, but ultimately, controversial legislation - abolishing a tier of government - for which there was doubtful public support found its way on to the statute book; and the House of Lords was unable or unwilling to prevent it.

Donald Shell has observed that in the 1987 Parliament, the Thatcher government showed "a new determination to overcome resistance in the Upper House" or to insist on reversal of Lords amendments in the Commons.<sup>35</sup> Viscount Whitelaw, who had been Leader of the House since 1983, retired on health grounds at the beginning of 1988, to be replaced by Lord Belstead. In his subsequent memoirs, Whitelaw observed that the number of defeats the government suffered in the Lords while he was Leader "had something to do with the controversial nature of the legislation". He also acknowledged (without being specific) that he had tried to make use of these defeats to obtain concessions.<sup>36</sup> Thus the Leader of the Lords may not always have been unhappy to be defeated. Lord Carrington recalled that Whitelaw found it helpful to be able to tell Thatcher that he couldn't get things through the Lords - "it did actually play quite an important role". More generally, he acknowledged that there were some in the

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34 Ibid. p 303.

35 Shell (op cit) p 27.

36 *The Whitelaw Memoirs*, pp 243-4. Sheila Gunn (later to become a Conservative Party official) wrote in *The Times* that Whitelaw had been able to convince fellow ministers and peers simultaneously that he was fighting on their side. She added: "True, Margaret Thatcher had contempt for the Upper House and used to stamp her foot whenever it challenged yet another of her prized policies. But when convinced the Lords had a strong case, Lord Whitelaw usually managed to wheedle a concession out of her" ('Peers lose their Self Confidence', 23rd April 1991).

government who saw the Lords as potential allies against possible excesses - they felt the House of Lords was a "more liberal assembly than the cohorts on the Conservative benches in the Commons"; and although they couldn't do that much, if distinguished people came out, "it would have some effect."<sup>37</sup>

The most controversial measure of the new Parliament was undoubtedly the introduction of the poll tax (officially called the "community charge") in the Local Government Finance Bill of 1987/88. With its large majority in the Commons, the government was able to push through the measure successfully there, although its majority fell to 25 on an amendment which would have had the effect of creating bands for the tax according to ability to pay.<sup>38</sup> When a similar amendment was moved in the Lords by Lord Chelwood (the former Conservative MP, Sir Tufton Beamish), the government pulled out all the stops in order to turn out its vote; and, in the end, it carried the day by a majority of 317 to 184.<sup>39</sup>

The government was certainly well prepared for the vote, but it may, perhaps, have overdone things. As Richard Holme noted in the *New Statesman*, Lord Denham, had persuaded 400 Conservatives to take the oath, 40 more than usual, but "he drafted in far more non-working peers than he needed and achieved such an embarrassingly large majority that his ruse became transparent."<sup>40</sup> The vote saw one of the highest turnouts ever in the House of Lords, bolstered by Conservative hereditary peers who had rarely attended before.<sup>41</sup> It attracted sharp comment.

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37 Interview, April 1999. Denham, when interviewed, also confirmed that Whitelaw welcomed the occasional defeat to strengthen his hand - "very much so".

38 Shell (op cit) p 172.

39 Ibid; *House of Lords Debates*, 23rd May 1988 (Vol 497, Col 685).

40 "The Lords: The Not Contents Have It", *New Statesman*, 3rd June 1988 (Vol 115, p 10). Holme was then Chairman of the Constitutional Reform Centre. He became a Liberal Democrat peer in 1990. (The Oath of Allegiance must be taken - or solemn affirmation made - by all peers on introduction, in every new Parliament and on the accession of a new monarch, before they can sit or vote in the House.)

41 According to Shell (op cit. p 172), 550 peers turned out in all. *The Independent* (24th May 1988) reported that this was the second highest turnout ever.

Amongst the most vociferous was *The Sun* - at that time usually a strong supporter of the Conservative government - which told its readers:

"When it matters to the Tory Party, the House of Lords is as feudal, as reactionary and as undemocratic as it ever was".

It referred to an assembly dominated by the rich, hereditary aristocracy and "those who got their peerage on political hire purchase from a Tory Prime Minister". Noting "peers coming out of the backwoods and woodwork", it observed:

"Some of them hadn't spoken in the House - or been seen there - since the Coronation. But they heeded the call and provided the biggest turnout of the unelected representatives of privilege that Parliament has witnessed this century. Some came because they will do well out of the poll tax... but most came because they heeded the call for loyalty to the Tory cause, a loyalty bred in their bones and encased in ermine. As least the House of Lords can now be seen again for what it is; Mrs. Thatcher's poodle. Some of their Lordships may live long enough to regret it".<sup>42</sup>

Supporters of the status quo had previously sought to deflect or reject criticism that the Conservatives could rely on backwoodsmen to get them out of a crisis. Now the government had been seen clearly to be doing just that. Gilmour cited this as an example to show how they could always ship in some who never normally attended or who knew little about the issue "at some public expense in transport fees and attendance allowance", adding that in this particular case, "since the passage of the amendment would have cost most of them hundreds of pounds, their visit to London was undoubtedly... 'vaut le voyage'".<sup>43</sup> According to Shell "the whole episode...discredited the House".<sup>44</sup>

When interviewed, the former Leader of the House, Baroness Young agreed that "forcing it through the House was a disaster". She thought "it would have been much better if the House of Lords had just operated and thrown it out", adding: "I'm never very happy about bringing in large numbers of backwoodsmen".

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42 'House of Poodles', *The Sun*, 25th May 1988.

43 Gilmour (op cit) p 186.

44 Shell (op cit) p 172.

However, Lord Denham was quite unrepentant about his role. He described Chelwood's amendment as a "wrecking amendment" and argued that, had it been passed, it would have breached the Salisbury convention. He argued that it was this that "brought in such an enormous number of people" on this occasion. He further suggested that, if the amendment had been passed, this might have prompted the government to support reform of the House of Lords.<sup>45</sup> It should be noted, however, that neither speaker from the government front bench made any specific reference to the Salisbury doctrine.<sup>46</sup> Of course, in the event, the government did not come close to defeat and no reform materialised (although it may have helped to put the issue back on Labour's agenda).<sup>47</sup>

That same month in 1988 had also seen the government win another key vote in similar fashion, in another very high turnout, enabling it to go ahead with the abolition of the Inner London Education Authority.<sup>48</sup> As was pointed out in the debate, that controversial step had been tacked onto a broader measure at a late stage and had not been in the governing party's manifesto.<sup>49</sup> This was the sort of situation in which a revising chamber might have been expected to assert itself, but it did not.<sup>50</sup>

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45 Interviews, July 1997 and January 2000.

46 The government speakers were Whitelaw and the Earl of Caithness. Conservative supporters of the Chelwood amendment denied that it was a wrecking amendment. For instance, the former Home Secretary, Lord Carr of Hadley, said: "We are not trying to wreck the fundamentals of their scheme, much as we might wish they had chosen a different one. It is too late for that now. What we say is that they really must go back, think again and produce further ameliorations..." (*House of Lords Debates*, 23rd May 1988, Vol 497, Cols 648-684). It might have been felt that the manifesto commitment had been less than clear. It spoke of replacing the local rates with "a fairer Community Charge" (*The Next Moves Forward*, Conservative Party Manifesto 1987; Dale, op cit, p 344).

47 See Chapter 6.

48 This was on an amendment to the Education Reform Bill, to set up a panel of assessors to investigate education in London before the ILEA could be abolished, which was defeated by 236 votes to 183 (*House of Lords Debates*, 17th May 1988, Vol 497, Cols 234-7).

49 Ibid, Col 186.

50 Shell (op cit, p 172) notes that "although the government was defeated six times on this Bill, the resulting changes were relatively minor". *The Times* (30th July 1988) was able later to report that it emerged virtually unscathed in the end.

Later in the same session, in July, the Lords defeated the government on the Health and Medicines Bill over proposals to introduce charges for eye tests and dental checks.<sup>51</sup> The Commons subsequently overturned these Lords' amendments when the Bill returned in November, but only very narrowly.<sup>52</sup> When it came back to the Lords, the Government Chief Whip managed to achieve what was reported to be the third highest attendance of the 20th century; and secured majorities of 50 and 41 respectively on the critical amendments on eye tests and dental charges.<sup>53</sup> These were much higher than the majorities reached in the heavily whipped Commons. Thus, once again, the government got its way in the end. It would seem that, at least for crucial votes, it was now able successfully to whip its supporters into line in the Lords, and ensure the attendance of sufficient "backwoodsmen".

Such key votes would seem to contradict the conclusion of Nicholas Baldwin's study that, while the attendance of the backwoodsmen is a theoretical possibility, it is not one that materialises in practice.<sup>54</sup> Lord Denham has also argued that "backwoodsmen are a fiction"; but, as noted earlier, Baroness Young herself used that very term when discussing the Lords' action on the poll tax.<sup>55</sup> Ian Gilmour, too, has referred to the role of "backwoods peers" in helping the government on major issues; and Viscount Mountgarrett's observations in the debate in the GLC legislation also suggested pressure on backwoodsmen, although he did not use that actual term.<sup>56</sup> The 5th Marquess of Salisbury did, when he complained about the

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51 *House of Lords Debates*, 19th July 1988 (Vol 499, Col 237, 1247). Amendment to delete proposed dental charges carried 118-97; that to delete proposals for eye test charges carried 126-94.

52 The vote to overturn the Lords amendment in respect of dental charges was carried by 16 votes; that in respect of eye tests was carried by just eight votes (*House of Commons Debates*, 1st November 1988, Vol 139, Cols 918, 958).

53 John Carvel: 'Tories crush Lords revolt on eye tests', *The Guardian*, 9th November 1988. He gives the turnout as 467. However, the official record shows the highest figures as 464 (including tellers). The amendment on eye tests was defeated 257-207; that on dental charges defeated 237-196 (*House of Lords Debates*, 8th November 1988; Vol 501, Cols 579, 586).

54 PhD thesis, University of Exeter (1985), Chapter 5. Baldwin's thesis was, of course, submitted before the 1988 votes, but not before others, such as those on local government legislation.

55 Interviews (for Young, see p 209).

56 See pp 202 and 205.



role of "backwoodsmen" some thirty years previously; and notwithstanding Denham's protestations, they still seem to have been a factor in the House of Lords in the 1980s.<sup>57</sup> The Conservative dominance in the second chamber could normally be made to count where it really mattered. As Donald Shell concluded, "to the Thatcher government of the 1980s, the House was frequently an irritant, but never a serious obstacle".<sup>58</sup>

There was, however, to be one measure later in the Parliament on which the government would not be able to carry the Lords. This was the War Crimes Bill 1990, enabling the prosecution of former Nazi war criminals in Britain. A debate in the Lords on the issue prior to the legislation had indicated "clear and overwhelming hostility to such legislation".<sup>59</sup> However the Commons was in favour, and the Bill passed all its stages there, only to be rejected overwhelmingly when it came to Second Reading in the Lords.<sup>60</sup> This was highly significant, since it was "the first time since 1949 that peers had rejected outright a measure approved by MPs and the Cabinet".<sup>61</sup>

The government decided to reintroduce the Bill in the following session, using the Parliament Act procedures, if necessary, to get it through. The Commons again passed it comfortably in March 1991, but the Lords once more rejected it on Second Reading, this time by 131 votes to 109.<sup>62</sup> The government duly invoked the Parliament Act procedures and the Bill went forward for Royal Assent without the approval of the House of Lords. This was the first time the procedure had been used since the Act was passed in 1949.<sup>63</sup>

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57 For Salisbury quote, see p 23. For general statistics on attendance, see Appendix 1.

58 *Parliamentary Affairs*, October 1994 (Vol 47, p 733).

59 Shell: *The House of Lords*, p 132. This debate took place in a motion to take note of the War Crimes Inquiry Report, on which there was no vote (*House of Lords Debates*, 4th December 1989, Vol 513, Cols 604-677).

60 *Ibid*, 4th June 1990 (Vol 519, Cols 1080-1208). An amendment to decline a Second Reading was carried by 207 votes to 74.

61 George Jones, *The Daily Telegraph*, 8th June 1990.

62 *House of Lords Debates*, 30th April 1991 (Vol 528, Col 742). The vote was on an amendment to delay Second Reading for six months.

63 Shell (*op cit*) pp 132-33.

Thus the government got its way in the end, despite being unable to obtain the support of the House of Lords. It was, however, an unusual measure in that it was not one to which party political partisanship applied - it had not been in the government's manifesto and the vote had not been whipped.<sup>64</sup> Ian Gilmour has described the actions of the government in pushing the Bill through as "a clear abuse of the Parliament Act", although it is not clear how, unless there was an assumption that the powers contained in the Act should never be used.<sup>65</sup> There is, nevertheless, a certain irony in the fact that the only occasion on which the powers of the 1949 Act have been used should have been by a Conservative government.

In *The Times*, Sheila Gunn noted how the Lords' influence had now "crumpled to the point where every key decision that conflicts with the elected chamber is openly jeered at by members and reversed in the Commons".<sup>66</sup> Although Shell has suggested that the readiness with which the Conservative government and the Commons "brushed aside the views of the House of Lords" was indicative of a changed attitude towards it, he has also argued that Margaret Thatcher - despite, when in opposition, having commissioned a committee to advise about the future of the House - was, as Prime Minister, "manifestly agnostic"; that her government showed "little interest in reform" and that, "as the decade went by, the need to reform the House lest it fall victim to Labour's abolitionist ambitions diminished. The Conservatives simply ceased to have any policy at all".<sup>67</sup> This lack of interest would seem to be borne out by the fact that very few of Thatcher's ministers seem to have had anything to say on the issue in their subsequent memoirs.<sup>68</sup> Neither, indeed, did she herself.<sup>69</sup>

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64 Ibid, p 252.

65 Gilmour said it had not been mentioned at the 1987 election, that the Lords' expertise was "far greater" than the Commons and that it had been annihilated in Lords. "even more in argument than in votes" (op cit, p 186).

66 *The Times*, 23rd April 1991.

67 Shell (op cit) pp 167-168, 252.

68 The main exceptions to this were Carrington, Hailsham, Gilmour and Whitelaw (op cit). Nicholas Ridley also mentioned it briefly (see p 214).

69 In neither *The Downing Street Years* (Harper Collins, 1993), nor *The Path to Power* (Harper Collins, 1995). Nor did Hugo Young mention it in his biography, *One of Us* (Macmillan, 1989).

### Strengthening Conservative Ranks

Nevertheless, Thatcher would have been well aware of the potential for difficulties in the Lords. According to Shell, while she took "good care as Prime Minister to keep the opposition benches in the Lords starved of new recruits", she continued to appoint significant numbers to the already well-stocked Conservative benches - "far from evening up the Party balance in the House, she seemed determined to ensure an increased majority"; and indeed she was responsible for creating more than twice as many Conservative as Labour peers.<sup>70</sup> As Gunn noted in *The Times*, "she freely added to her Party's numbers".<sup>71</sup> As a result, by the time John Major replaced Thatcher at the end of 1990, Conservatives outnumbered Labour peers by three-to-one; and they actually had a majority overall (even taking crossbenchers into account).<sup>72</sup>

Nicholas Ridley, who was a close ally, acknowledged that Thatcher "created honours quite liberally" and that, with just one exception, she bestowed a peerage on every one of her Cabinet ministers who left the Commons, anticipating their support. Thus:

"When many of these ennobled ex-colleagues were reported to have voted against the government she used to be surprised. 'I sent them there to support me, they ought to know better,' she would say. So she created many other peers who would be more reliable. Even some of them were to transgress".<sup>73</sup>

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70 Shell: *The House of Lords*, p 275; *Parliamentary Affairs*, October 1994 (Vol 47, p 723). The former (p 36) records 203 creations, of which 101 were Conservative and 45 Labour. (These differ from the official statistics listed in Appendix 1, which include resignation/dissolution honours for which her predecessor would have been responsible.) See p 132 on how Thatcher apparently blocked some proposed Labour creations.

71 'A Handful of Rebels', *The Times*, 6th June 1990.

72 See Appendix 1; also *The Times*, 21st December 1990.

73 *My Style of Government: The Thatcher Years* (Hutchinson 1991) p 33. The single exception referred to was former Defence Secretary, John Nott, who received a knighthood. (Ridley was Secretary of State for Transport 1983-86, for Environment 1988-89 and for Trade and Industry 1989-90.)

Margaret Thatcher also revived the creation of hereditary peerages, albeit on a very limited scale. None had been awarded since 1964, but she awarded hereditary viscountcies to the former Speaker of the House of Commons, George Thomas (Viscount Tonypandy), and to her Cabinet colleague, William Whitelaw (Viscount Whitelaw), in 1983; and also an hereditary earldom to the former Prime Minister, Harold Macmillan (Earl of Stockton), in 1984. The two former had no eligible heirs, but Macmillan did.<sup>74</sup> Separately, one royal dukedom was also created during this period.<sup>75</sup> There were no further hereditary creations; nevertheless, it showed that the hereditary peerage could still be added to, if the Prime Minister so wished.

### Reform Discussed

This limited revival of tradition followed the landslide victory in the 1983 election. However, when the Conservatives first regained office in 1979, there was still a significant degree of interest in reform of the House of Lords. Although the party's manifesto had been non-committal, the report of Lord Home's Committee was then little more than a year old; and there continued to be concern over potential action that Labour might take in future. *The Daily Telegraph* reported in October 1979 that:

"proposals by the Labour left for the abolition of the House of Lords had increased the feeling among Conservatives that some reform of the second chamber should be made".

Although the government had "no immediate plans", the report continued, "consideration of the future of the House of Lords is expected during the lifetime of this Parliament...Many Conservatives believe that it would be better to reform - and hopefully strengthen - the Lords before the return of a Labour government".

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74 Shell (op cit) p 33. The Tonypandy and Whitelaw peerages therefore terminated with the holders' deaths.

75 The Queen's second son, Prince Andrew, was created Duke of York in 1986.

It singled out two senior government figures, Lords Carrington and Hailsham, as supporters of reform.<sup>76</sup> Not long afterwards, Hailsham was reported as telling a Conservative backbench committee that "there ought to be constitutional changes", but adding, perhaps significantly, that "he did not expect it without backbench pressure on Cabinet ministers".<sup>77</sup> This would seem to suggest that he thought that the Cabinet might be willing to consider the issue, but not necessarily to give it priority without some pressure being brought to bear.

However, there were further reports that ministers were addressing the matter. In May 1980, *The Sunday Times* reported that:

"a new second House of Parliament is being considered by senior cabinet members in response to the growing Labour Party threat to abolish the Lords. The new chamber would be elected on a new constituency pattern".

In an apparent reference to Jeff Rooker's Ten Minute Rule Bill, the report noted that, although it had been easily defeated, there had been "impressive unity on the Labour side to end the present upper chamber". The thinking amongst Conservatives in "the reform camp" was said to be that an elected chamber would present Labour with "a strong democratic challenge" and the initiative rested with Hailsham, who was expected to take soundings amongst other parties. Some ministers were said to want action before the next election, but others apparently thought Labour should be left to do itself electoral harm, as they saw it.<sup>78</sup>

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76 'Tory feeling grows for reform', *The Daily Telegraph*, 24th October 1979. Carrington and Hailsham were now Foreign Secretary and Lord Chancellor respectively. Possibly one or other may have inspired this story. However, when interviewed, Carrington could not recall any discussions at this time, although as Foreign Secretary, he may have been pre-occupied with other issues. Neither could Baroness Young recall either of them actually raising it in government, although she thought Hailsham might have done. (However, she did not join the Cabinet until 1981.)

77 'Elected Chamber Call by Lord Chancellor', *The Times*, 24th January 1980. (Official papers were not available, but no mention was made of a backbench committee in this context by any Conservatives interviewed.)

78 Michael Jones: 'Ministers plan new elected Lords' Chamber', *The Sunday Times*, 11th May 1980. The report implied that the proposed new chamber would be elected by proportional representation; reformers thought it would reflect public opinion "in a way that the first-past-the-post system would not". It would not have financial powers, but would be able to reject other legislation. A referendum was mooted as a way of overcoming Commons' resistance. (For Rooker's Bill, see p 109.)

It would seem that this report did not reflect the views of the whole Cabinet, since the following day it was "authentically described" as "premature". According to *The Times*, although Conservative reformers, "with Lord Hailsham in the van", believed it would be "better to be safe with an elected second chamber than sorry with an abolished or emasculated House of Lords", the Prime Minister was "unpersuaded of the need to pre-empt the possible Labour action".<sup>79</sup>

Clearly some rival briefing was taking place; and any kite flying was presumably not authorised by Downing Street. Hailsham's name, in particular, seems to have been identified with supporters of reform; and it may be that he was seeking to encourage the pressure on his Cabinet colleagues that he apparently then thought was needed. It seems curious that the possibility of talks with other parties should have been mooted since, as *The Times* pointed out, "the prospect of all party talks is dim";<sup>80</sup> and this would not only have been because of the Prime Minister's views - it was surely unlikely that Labour would have joined any such talks at that time, given the recent arguments about the watering down of the commitment to outright abolition.<sup>81</sup> *The Sunday Times* report had, after all, noted the strength of support on the Labour benches for a Ten Minute Rule Bill proposing abolition. It is interesting to note that, while the chances of such a Bill reaching the statute book may be negligible, this procedure can serve as a demonstration of feeling on an important political issue, as in this instance.

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79 *The Times*, 12th May 1980.

80 *Ibid.*

81 See Chapters 4 and 5.

The commentator, Ronald Butt, once again lent his support to the cause of reform, arguing that "failure of the present government" on the issue could lead to "fundamental challenge to the whole shape of our society". Notwithstanding previous clarifications, he sought to resurrect the suggestion that Labour's proposed safeguard with regard to the life of a Parliament actually meant that it might be extended. He wanted to see a house of "elders", which would be able to ensure "substantial delay on any Bill certified as a constitutional measure".<sup>82</sup>

The Prime Minister's lack of enthusiasm for Lords' reform was demonstrated when she responded to a Conservative backbencher, who asked about the possibility of a Green Paper on "how to improve our vitally important system of dual chamber government". She said:

"There are many conflicting views on whether the House of Lords should be reformed and, if so, precisely how that could be achieved. Some hon members who have been in this House a long time remember a number of efforts to reform the House of Lords, but they were not successful. There is no possibility of the government producing a Green paper in the autumn. I think that my hon friend will agree that, for the time being, we have more urgent matters on our plate".<sup>83</sup>

In referring to unsuccessful efforts at reform, she must have had in mind those of the Labour government in 1968/69. It would seem that this unhappy experience had helped encourage caution amongst Conservative as well as Labour politicians.

However, the debate in the Labour Party continued to give impetus to Conservative advocates of reform, as events during the 1980 Party Conference season showed. Tony Benn's speech at the Labour Conference - proposing that a

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82 'Persuing a perilous path without the Lords'; 'The Making of a New Upper House': *The Times*, 24th and 31st July 1980. It would comprise some elected peers, together with former cabinet ministers, judges and other individuals "of great personal distinction" or holding particular responsibilities. Ten years previously, he had proposed a mainly elected chamber (See p 165).

83 Reply to David Madel (*House of Commons Debates*, 5th June 1980, Vol 985, Col 1673).

Labour government introduce an "immediate Bill" to abolish the Lords and create 1,000 peers to carry it through<sup>84</sup> - seems to have galvanised the Conservatives, no doubt much to the satisfaction of those who had been pushing for reform. According to Fred Emery in *The Times*, it "worked wonders". He noted that, despite lobbying from Lord Hailsham, the issue had been a "low priority with Mrs Thatcher and her colleagues", spoken of, if at all, as a matter for a second term, but that events at the Labour Conference had "compelled the government to respond", and at the Conservative Conference the following week, speakers were "almost falling over themselves to urge action".<sup>85</sup> That Conference passed a resolution urging that the House of Lords be strengthened. It stated:

"In the light of the Socialist commitment to abolish the House of Lords and the likelihood that a future left wing government intent on perpetuating itself would establish a single chamber Parliament as a step towards the creation of a Marxist state, this Conference urges that the composition and powers of the Upper House should be strengthened and firmly established as a safeguard against arbitrary government".<sup>86</sup>

Two future ministers spoke on opposite sides in the debate, Ann Widdecombe was against change, while Douglas Hogg (Lord Hailsham's son) argued that survival of the second chamber would be ensured only if its membership was elected, adding that "if this Conference persuaded our colleagues in government of the need for an elected second chamber, we will have made a real contribution to the survival of democracy in Britain."<sup>87</sup> A former minister, Lord Boyd Carpenter, proposed entrenched legislation to limit the number of peerage creations, perhaps to a dozen in any one year.<sup>88</sup>

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84 See p 112.

85 'Tory pledge to guard against end of Lords; Benn speech looms over Conference', *The Times*, 8th October 1980.

86 *Conservative and Labour Party Conference Decisions 1945-1981*, p 27.

87 *The Times*, 8th October 1980. Widdecombe became Minister of State at the Home Office and Hogg Minister of Agriculture in John Major's government (which would take no action on Lords' reform).

88 Ibid. This was a clear repose to Benn's proposition. Boyd Carpenter was joint author (with Viscount Eccles, Lord Drumalbyn and the Earl of Lauderdale) of a pamphlet '*The Need to retain a Second Chamber*', published by the Executive of the Association of Independent Unionist Peers' around the same time (October 1980). It contained no very clear proposals but claimed, apparently on the basis that many members did not attend regularly and on the evidence of one Conservative defeat (on school transport), that their "built in majority" had disappeared, and that there was thus no justification for abolition on these grounds.



The minister who replied to the debate, Norman St John-Stevas, argued that it was important to devise a means "so that the second chamber cannot be swept away by an unrepresentative House of Commons, but can stand secure as long as it commands the approval and the esteem of the nation". However, while supporting the Conference motion, he could not say when the government would proceed - "the nostrum of instant abolition is not to be answered by the nostrum of instant reform", he said. It was necessary to think "long and carefully", to consult with peers and to consider whether to retain the status quo (which would actually have been inconsistent with the motion), to have a fully elected chamber or a mixed chamber. He favoured retaining an hereditary component. St John-Stevas was also reported as admitting (in an interview on BBC *Newsnight*) that the Cabinet "had never considered the matter" and that it could not be considered by Parliament in the forthcoming 1980-81 Parliamentary session.<sup>89</sup>

This suggests that, notwithstanding the previous reports, those in favour of reform had made little headway.<sup>90</sup> Nevertheless, the events at the Party Conferences must have helped their cause.<sup>91</sup> According to Michael Fallon, there was then still "a feeling that the Lords was vulnerable and we needed to sort of protect it"; and that the only way to protect it was to modernise it - "if we didn't do something, a future Labour government could just sweep it all away"<sup>92</sup>

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89 Ibid.

90 As Ronald Butt had previously noted, "this is Mrs Thatcher's government, not Lord Hailsham's, and the Prime Minister has shown herself little interested in and, in some cases, positively hostile to constitutional reform" ( 'A Question of Rights', *The Times*, 17th July 1980).

91 It should be noted that the Conservative Conference did not actually determine Party policy. Both Carrington and Denham, when interviewed, acknowledged that its influence over the government would have been limited. Nevertheless, it could prove a useful barometer of opinion amongst Party activists.

92 Interview, February 2000.

In an apparent attempt to make this difficult, the former Conservative minister, Lord Alport, introduced a Constitutional Referendum Bill in the Lords. This provided for a referendum to be held on legislation involving constitutional reform, with a requirement that 40 per cent of those entitled to vote should support it, otherwise it would be subject to a five year delay. Lacking active government support, it made no progress beyond Second Reading. However, the reply from the Leader of the House, Lord Soames, was interesting for what it revealed about the government's position. He noted that matters of definition were "a grey area"; but while the the government would "look carefully" at the arguments for legislation to protect the constitutional powers of the House, he was "not in a position to give an undertaking that we shall necessarily come forward with our own proposals". He also argued that enacting legislation to protect the principle of a second chamber was different from seeking to protect an "unreformed second chamber" and that a measure of protection should be looked at in the context of wider reform. Having said that legislation would be more appropriate to a government Bill, he was surprisingly frank about current thinking within the government, adding:

"Certainly some of my colleagues think there should be radical reform of this House. There are others who think there should be some reform and yet others who think that at the moment it is probably better as it is....what I am saying is that the government have not yet made up their mind."<sup>93</sup>

Despite his initial lack of success, Alport made a further attempt to introduce broadly similar legislation in the following 1981/82 session. By this time, Soames had been replaced as Leader of the Lords by Baroness Young, who asserted that the House was an "essential safeguard of individual liberty" and, moreover, that it was the only constitutional guarantee that a general election must be held at intervals of not more than five years". It could be argued that this did not amount

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93 *House of Lords Debates*, (25th November 1980, Vol 415, Cols 590-635). The 40 per cent hurdle was similar to that required for implementation of the previous Labour government's devolution legislation. Soames asked Alport to withdraw the Bill, but he declined. After Second Reading, it was committed to Committee of the whole House, but progressed no further. Its provisions would have applied to a Bill certified by either the Speaker or the Lord Chancellor, which in their opinion would abolish the House of Lords or substantially reduce its powers.

to a complete guarantee, since the House of Lords could, in theory, support a proposal to extend the life of a Parliament. Be that as it may, Young made it clear that the government did not propose to pursue "any forms of protection or entrenchment by legislation, whether by referendum or otherwise, during the present Parliament"; and that the Bill had "virtually no chance of reaching the statute book". On the wider question of reform, she suggested that progress could be made only through all-party talks and a measure of agreement with other parties, of which there was currently little sign.<sup>94</sup>

In the debate on Alport's second Bill (which was withdrawn at Committee Stage), he and several other speakers continued to refer to a perceived threat from the Labour Party.<sup>95</sup> However, the 1981 Conservative Party Conference, held shortly before, had shown rather less enthusiasm for action than it had done the previous year. Once again a motion was on the agenda. This one stated:

"Conference believes that reform of the House of Lords is an urgent matter and steps should be taken in the lifetime of this Parliament to ensure that Britain's second chamber retains the experience and integrity of the present system, while gaining constitutional authority that would accrue if it were wholly or partly elected."

The mover of the motion (Stephen Mann) warned that the Conservatives had to face the threat of an election with the Labour Party committed to abolition, but Baroness Young said that reform could not be achieved in the lifetime of the current Parliament. All-party talks seemed unlikely, although the government would continue to search for a change that would be acceptable to all parties. Although it would have been consistent with the still recent report by Lord Home's committee, the motion was defeated.<sup>96</sup>

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94 Second Reading Debate, Constitutional Referendum Bill: *House of Lords Debates*, 4th December 1981 (Vol 426, Cols 19-26, 34-58).

95 Ibid.

96 *Conservative and Labour Party Conference Decisions*, p 27; *The Times*, 17th October 1981.

In the following months, Young repeated in the House of Lords what she had told the Party Conference; and, similarly, the Leader of the Commons, now Francis Pym, when asked about the prospect of a Green Paper, replied that the government had no such proposals at present.<sup>97</sup> Nevertheless, the possibility of future movement had not been ruled out.

Lord Hailsham, whose earlier support for reform has already been noted, spoke at a Conference of European (Parliamentary) Speakers in June 1982 of the the need, ideally, for "a predominantly or completely elective assembly, elected from constituencies, geographically different from those in the Lower House". While subordinate to the lower house, such a second chamber should have real power to make itself felt.

"It must be in a position to impress its views, particularly in the field of legislation designed to be permanent, in such a way that the Lower House cannot rush through legislation which flouts the genuine rights of minorities, the permanent sense of the inarticulate majority as to what is appropriate or right, the fundamental rights and freedoms of the individual and of groups, or the changing opinions of a minority of the electors".<sup>98</sup>

It is not clear how far Hailsham was willing to pursue these arguments inside his own government, however. According to Gilmour, he was given no remit as Lord Chancellor to carry through constitutional changes of any kind and, while disappointed and making some dissenting noises, he chose not to oppose the Prime Minister, defending this on the grounds that economic reform took priority.<sup>99</sup>

However, although not generally known at the time, the government was actually giving consideration to a possible measure of reform to the House of Lords. This emerged in a BBC radio programme some five years later, which reported that

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97 *House of Lords Debates*, 24th March 1982, (Vol 428, Cols 960-3); *House of Commons Debates*, 5th April 1982 (Vol 21, Col 221).

98 Published in *The Parliamentarian* (issued by the Secretariat of the Commonwealth Parliamentary Association), October 1982 (Vol 63, No 4).

99 Gilmour (op cit) pp 35, 178.

Baroness Young had persuaded the Prime Minister to set up a Cabinet Committee (chaired by Whitelaw) to consider proposals for reform.<sup>100</sup> This was subsequently confirmed by Young, who had been a member of the Home committee, which she said, had suggested reforms which were possible and which sparked her off. Another factor was the inability of the then Foreign Secretary, Lord Carrington, to speak to the Commons following the Argentinian invasion of the Falkland Islands in 1982, which she thought had handicapped the government. She had thought major reforms would not be possible, "as 1968 showed us", and moreover "Mrs Thatcher wasn't keen" - indeed she didn't want any reforms of the House at all. Young had suggested "relatively small reforms" - for instance, that ministers be allowed to address either House, for joint meetings of both Houses and for joint committees. She also suggested some distinction be drawn between "honorific" and "working peers" - in other words, doing something about backwoodsmen who rarely attended - although it was not clear whether any detailed plans were formulated.<sup>101</sup>

In fact the Cabinet Committee only met once. Nothing came of it, as, in Young's words, "there was no pressure there". Although Thatcher "disliked" the House of Lords and became annoyed with it when it defeated the Commons, this did not help Young's modest efforts at reform. Thatcher became displeased with both her and the House - "she felt they were all Conservatives sitting there, the least they could do was support her" -but there was "absolutely no pressure from her for reforms". If anything, "all these things militated against getting reform done."<sup>102</sup>

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100 *Analysis - The Other Opposition*, BBC Radio 4, 5th November 1987.

101 Interview, July 1997. She is on record as having told the Home Committee (Minutes, 12th Meeting, 6th December 1977) that, as its work continued, she had become more sceptical about wholesale reform, which suggests a predisposition toward "small reforms".

102 Ibid. In separate interviews, Carrington recalled that Thatcher "got very angry" over defeats in the Lords and that Denham, as Chief Whip, was on the receiving end of her displeasure - "he was "black and blue...she used to beat him over the head". Carrington also thought, however, that Thatcher had no intention of doing anything about it. Carrington's colourful description is clearly not literal, but Denham himself acknowledged that Thatcher berated him over defeats.

Baroness Young's successor as Leader of the Lords, Viscount Whitelaw, later observed that he felt the time had not then been ripe for change. He added that, while he would not have objected to her proposals, he was not sure the Commons would have agreed, especially to ministers in the Lords addressing the Commons.<sup>103</sup> Of course, another way of avoiding the position whereby a senior Cabinet Minister was unable to address the Commons, would have been not to appoint members of the House of Lords to senior departmental positions. However, although Lord Carrington resigned as Foreign Secretary in 1982, to be replaced by Francis Pym in the House of Commons, Mrs Thatcher would later appoint Lord Young of Graffham to the Cabinet post of Secretary of State for Employment.<sup>104</sup>

Later in 1982, Baroness Young told the Conservative Party Conference that "*lack of agreement within the Conservative Party and other parties.....would be fatal at any attempt at reform*", although she added that, if major reforms were to be rejected in future, "we shall continue to search for smaller internal improvements".<sup>105</sup> Presumably she had in mind the sort of reforms she put forward in the Cabinet Committee earlier that year. This statement, like that of her predecessor Lord Soames in 1980, suggests that it was lack of agreement in the Conservative Party, as much as the lack of any wider agreement, which inhibited any significant movement on the issue of Lords' reform.

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103 Interviewed by Peter Hennessy for *Analysis: The Other Opposition*. In another interview for the same programme, Lord Hailsham said that he had not been consulted on Young's proposals.

104 Lord Young (no relation of Baroness Young) was Secretary of State for Employment 1985-87, then served as Secretary of State for Trade and Industry 1987-89.

105 Reported in *Conservative Campaign Guide 1983*, p 324 (*Emphasis added*). *The Times* (8th October 1982) reported that the Conference rejected overwhelmingly a motion calling for the election of some members of the Lords; and Young as saying that priorities over the next year or two must be elsewhere.

The Conservatives' 1983 election manifesto was non-committal on the issue. It stated:

"Labour want to abolish the House of Lords. We will ensure that it has a secure and effective future. A strong second chamber is a vital safeguard for democracy and contributes to good government".<sup>106</sup>

The Party's Campaign Guide sought to put a more positive gloss on things, acknowledging that the "existing state of opinion in the Party and the country does not permit further substantial reform at present", but asserting that "it is a well established Conservative tradition stretching from the days of the great Lord Salisbury to seek constructive reform".<sup>107</sup>

### Settling for the Status Quo

By the end of the next Parliament in 1987, however, the Campaign Guide had changed its emphasis, arguing in respect of the House of Lords that "further major reforms would not necessarily increase its effectiveness".<sup>108</sup> With a Conservative majority of 144 in the 1983 Parliament, the prospect of Labour abolishing the House of Lords - which had previously exercised the Conservatives - had receded; and such interest as there had been in Lords reform seems to have waned.<sup>109</sup>

Whitelaw, the new Leader of the House, was no great enthusiast for reform. In November 1983, although only recently elevated to the peerage, he was publicly expressing scepticism about the likely success of thorough-going reform, arguing that the Commons would not want a second chamber with too much power.<sup>110</sup>

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106 *The Conservative Manifesto, 1983* (Dale, op cit, p 303).

107 *Conservative Campaign Guide 1983*, p 324.

108 *Conservative Campaign Guide 1987*, p 410.

109 One exception was a paper by Nicholas Paget Brown (*Unfinished Business: Proposals for Reform of the House of Lords*; Bow Publications, 1983) in which he argued that, while it would be unfortunate if the proposals of "a few unrepresentative socialists" led to abolition, it would be equally damaging if the response from the Conservatives was simply to do nothing". He argued for phased introduction of elected members to the House, with limitations on the voting rights of hereditary peers and those unwilling to attend regularly.

110 *House of Lords Debates*, 3rd November 1983 (Vol 444, Cols 655-660).

He later told Peter Hennessy that he did not want the House given more powers, nor did he want to see composition changed dramatically;<sup>111</sup> and he acknowledged in his memoirs, "with hindsight....I am convinced that the House of Lords is far more valuable as it stands."<sup>112</sup> In Parliamentary replies in this and the next Parliament, Whitelaw and his colleagues were mostly content to state simply that the government had no present plans for reform. They no longer even hinted at willingness to seek wider agreement.<sup>113</sup>

Another minister, Nicholas Ridley, later recalled that when the Lords "became quite troublesome before the 1987 general election, Margaret Thatcher "considered reforming the powers of the House of Lords but that discretion became the better part of valour over this".<sup>114</sup> However, Baroness Young (who was no longer in the Cabinet, but had been moved to become Minister of State, Foreign and Commonwealth Office) said that if there was any discussion in the Cabinet at the time, she never heard of it.<sup>115</sup> Neither could Lord Denham, who was still Chief Whip, recall any such discussion.<sup>116</sup> Certainly there was no specific mention of the issue in the Party's 1987 manifesto. Although, after the election, *The Times* reported that the government was considering making greater use of secondary legislation as a means of "preventing peers watering down its radical programme of reforms this session",<sup>117</sup> there is no evidence of any further interest

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111 Interview for *Analysis*, 1987.

112 Whitelaw (op cit) pp 66-68.

113 See, for instance, Written Answers by Whitelaw, 26th January 1984 (*House of Lords Debates*, Vol 447, Col 444); Margaret Thatcher, 20th November 1986 (*House of Commons Debates*, Vol 105, Col 266); and Kenneth Baker, 3rd December 1989 (*Ibid*, Vol 182, Col 10), who, asked if he would bring forward proposals, replied simply "No".

114 Ridley (op cit) p 33. He added that, in his view, it would have been worth the effort. Gilmour also notes this in his memoirs (op cit, p 186), but he was not in the government then, and gives Ridley as his source.

115 Interview. She thought she would have heard of any such discussion.

116 Interview. He thought Mrs. Thatcher may have said to him that it was "about time we reformed your House", but he did not think she really seriously thought of doing so.

117 Sheila Gunn: 'Lords may force move to curb powers', *The Times*, 5th November 1987. Unlike Bills, secondary (or delegated) legislation cannot be amended. Although it has the power to do so, the House of Lords has hardly ever voted down secondary legislation.



inside the government in pursuing actual Lords reform. According to Ivor Crewe, "Mrs Thatcher's preferred way of dealing with obstinate institutions was not to reform them, but to abolish or bypass them, unless they were so weak that she could ignore them".<sup>118</sup> It would seem that the House of Lords must have come into the latter category.

By the time of Thatcher's third term, following the 1987 election, earlier protagonists of reform such as Lord Carrington, Lord Hailsham and Baroness Young had all left the government. As an individual, Carrington continued to favour reform. He stated in his memoirs, published in 1988, that from the time he entered the House of Lords in 1945, he had been unhappy with his party's dominance there, and argued that "it is extremely flawed". He concluded that "a House which, in effect, appealed to the people by blocking the House of Commons had to have some sort of demonstrable authority", and added: "I am now convinced that what is required is an elected House".<sup>119</sup>

Young continued to favour the sort of reforms she had earlier put forward inside the government. She felt there was a need to convince her colleagues that it was important for the sake of the constitution, but that stage had not been reached. Interestingly, when asked what it would take to get Lords reform taken seriously again, she replied that it would entail a real threat to abolish the House, backed by real thinking about how it would be achieved.<sup>120</sup>

Hailsham, however, subsequently lost interest in reform and was even prepared to defend the existing chamber. Writing in 1990 - after eleven years of Conservative government - he quoted the 19th century Prime Minister, Lord Melbourne, asking "Why not let it alone?" While accepting that "no one could have invented the present body and no one outside a lunatic asylum could possibly defend its present composition on purely intellectual grounds",

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118 In *How Tory Governments Fall* (ed Anthony Seldon, Fontana Press 1996, p 397).

119 *Reflect on of Things Past*, pp 81, 204, 214. Carrington still took this view when interviewed in 1999.

120 Interview with Peter Hennessy for *Analysis*, 1987.

Hailsham now argued that "the strength of the present House of Lords lies in its very anomalies". Moreover, not only did it offer "a model of civilised, thoughtful and well informed discussion on public affairs", it also provided "a real limitation of the party system which, left to the Commons, might well convert Parliament....into a single party, single chamber elective dictatorship on the former East European model".<sup>121</sup>

Thus he revived his famous Dimbleby Lecture phrase some 14 years on. Notwithstanding the contentious legislation put through by the Conservative government in the intervening period, he still saw the threat as coming from Labour. He noted that the danger of our constitution degenerating into an elective dictatorship had led to "a demand that the House should be used as a means of curbing more vigorously the authoritarianism inherent in a sovereign Parliament, *especially under Labour governments* more controlled by than controlling the executive."<sup>122</sup> The use of the House of Lords as a blocking mechanism had often been argued, but not always in such overtly party political terms.<sup>123</sup> Hailsham no longer supported proposals he himself had previously advocated, but consistency would not, seem to have been his hallmark. Only a year before his Dimbleby Lecture, he had written that he had "never been a supporter of the more grandiose schemes for Lords' reform" and that, moreover, he had "no fundamental objections to an hereditary house of legislature, provided it served a useful purpose."<sup>124</sup>

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121 *A Sparrow's Flight*, pp 248-250, 270. Perhaps forgetting similarities between then current Labour Party proposals to his own earlier ideas, Hailsham even then suggested Roy Hattersley should have asked Melbourne's question on the subject, "before he introduced it into current politics".

122 *Ibid* (*Emphasis added*).

123 On reflection, both Carrington and Denham acknowledged that there had been elective dictatorship under governments of *both* parties (Interviews). Moreover, Hailsham himself conceded, when giving evidence to the Home Committee in 1977, that elective dictatorship could come from the right or the left (see p 180).

124 *The Door Wherein I Went*, p 188/9. The "grandiose schemes", which he specifically mentioned, he attributed to the late Lord Salisbury ("who was an enthusiast") and those supported "more recently under Mr Wilson's first government by Lord Carrington and Lord Jellicoe".

The "why not let it alone" position seemed increasingly to be the position of the Conservative Party, although there were individual exceptions. For instance, the maverick MP, Richard Shepherd, was reported as supporting an elected chamber and describing the existing House as:

"the sunset home at the other end of the building....it is a pretty poor body. Life support machines are wheeled in and people talk deferentially about one another's magnificent contributions".<sup>125</sup>

The Conservative peer and MEP, Lord O'Hagan, who had been a member of Lord Home's committee, wrote in 1990:

"Now that Labour has abandoned the closed shop, is it not time for the Conservative Party to think about reforming the House of Lords?"<sup>126</sup>

Another Conservative peer, Lord Beloff, suggested that ministers in the Commons should be able to speak in the Lords on relevant legislation. This would have been in line with one of the "small reforms" suggested previously by Baroness Young, but it met with an absolutely non-committal response from the then Leader of the House, Lord Belstead. Referring to Labour's plans for an elected chamber, he said:

"From these benches, I can certainly say that we do not contemplate a comprehensive reform of that kind; but that is not to say that I think everything should remain the same".<sup>127</sup>

Outside Parliament, Ferdinand Mount, asked in *The Times*, in the light of the War Crimes Bill, "can we really be happy with a second chamber which is overruled with such impertinent contempt by the first chamber?" He argued that

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125 *The Independent*, 9th August 1989.

126 Letter to *The Times*, 11th January 1990.

127 *House of Lords Debates*, 24th April 1990 (Vol. 518, Cols. 609-11). Previously, Beloff (a former Professor of Government at Oxford University) had also suggested, as an alternative, having a member of the Lords in every government department ('A Lord for Every Ministry', *The Times*, 6th January 1988).

there was a need to bolster its constitutional authority, and now commended proposals based on those of the Home Committee (which he, himself, had criticised at the time).<sup>128</sup> Mount developed the case in a book discussing wider constitutional reform. He observed that, as things stood, except in uncontroversial matters, Lords' amendments would be reversed and "the government will steamroller the Bill back into its original shape....The Lords now know that the Commons will automatically overturn it". While acknowledging that the public did not feel strongly on the issue, he suggested that:

"Lord Carrington and his fellow reformers of the late 1960s were entirely right in arguing that, if the House of Lords was to have substantial authority restored to it, its composition must be changed."<sup>129</sup>

It is interesting that he should have made the link with Carrington, rather than with the Labour government, which had actually attempted to bring in legislation then.<sup>130</sup>

Mount went on to suggest a mixed chamber, which might include some hereditary peers, some life peers, some regional/county representatives and representatives of the modern "estates of the realm". He concluded, somewhat complacently, that "if it is agreed that reform of the constitution of the House of Lords would be a profitable exercise, it should not be too difficult to work out a solution which satisfies most criteria". Mount also wanted to see other reforms, emphasising that the Lords could only become "a serious revising chamber", after the Commons had done likewise.<sup>131</sup>

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128 'Sorting out John Bull', *The Times*, 14th April 1992 (published immediately after the Conservatives' election victory on 9th April ).

129 *The British Constitution Now* (Hutchinson, 1992) pp 162, 188. Mount said that public opinion remained "slumbrous and amiable"; but that in decisive confrontations - 1832, 1911, 1949 - the public had shown "no great desire to come to the rescue of the Lords" (Ibid, p 187). It is worth noting that a Public Attitudes Survey (for BBC Radio 4) found only 30 per cent wanted the second chamber left unreformed, and that while just 8 per cent wanted no second chamber, 46 per cent wanted hereditary peers removed (Reported in *The Times*, 10th January 1991).

130 See Chapter 1.

131 Ibid, pp 188/89.

Advocates of constitutional reform were, however, becoming isolated figures in a Conservative Party which increasingly seemed to favour the status quo. Shortly after the 1992 election, Viscount Whitelaw, interviewed for *The Times*, cautioned against change (although he was prepared to concede there could be merit in having a ballot of hereditary peers, presumably to elect some from among their own number). The former Chief Whip, Lord Denham, in the same article, was quoted as warning that, "short of substituting a wholly elected chamber for the House of Lords, any tinkering might be dangerous". The author, Sheila Gunn, suggested that most MPs also "want to keep the Lords exactly as it is", since, despite what they say, "they would love to end their time at Westminster there". She pointed out that, as the Conservatives had shied away from reform, "the hereditary principle dominating the Upper Chamber became one of the few areas of public life that Thatcherism did not touch".<sup>132</sup> Indeed, some Conservative supporters were now even prepared to defend the hereditary principle outright. Charles Moore, writing in *The Spectator* in 1988, claimed somewhat contentiously that "the Lords appear, collectively, the only disinterested body in modern public life", adding that "the hereditary principle, far from being anachronistic, is natural to human beings in a way that democracy is not".<sup>133</sup>

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132 'Life Times' section, 11th May 1992. Gunn suggested the Conservatives feared that "pecking away at the structure" would "expose cracks in the entire political system".

133 28th May 1988 (Vol 260, p 6). Moore was editor of *The Spectator* (and later of *The Daily Telegraph*). Here he was writing following a discussion about the disputed Moynihan peerage, in which the contenders were the then Conservative MP, Colin Moynihan, and the baby son of a Filipino massage parlour owner and a drug dealer. The succession was eventually settled in favour of the former. This would hardly seem to have been a good advertisement for the advantages of the hereditary principle.

As a subsequent study noted, the Conservative Party had "no pressing reason to revise the constitution of the House of Lords, given its numerical superiority".<sup>134</sup> It went into the 1992 general election with no proposals for any reform of the House of Lords (and this would remain the case for the whole of the next Parliament). Indeed, as Donald Shell observed, by the 1990s: "The Conservatives had apparently ceased to have any policy on the subject of Lords' reform, or indeed on virtually any constitutional question whatsoever."<sup>135</sup>

When the Conservatives came to office in 1979, the issue of Lords' reform had been a live one in the Party. Although there had been no firm commitment in the manifesto, the report of Lord Home's committee was barely a year old, and there was some support for reform amongst some senior members of the Cabinet, although these did not include the Prime Minister.<sup>136</sup> There was still considerable concern at the threat of abolition by Labour, as evidenced at the 1980 Conference; but this diminished, and Labour eventually moved towards an elected chamber, along lines not dissimilar to those favoured earlier by some leading Conservatives. There continued to be voices speaking up for reform, but they became increasingly isolated. Even Baroness Young's modest suggestions made no headway in the absence of Prime Ministerial support. Meanwhile, the House of Lords had shown that, although it was prepared to place itself on occasions against a Conservative government, when it came to the crunch, the government could usually get its way. Moreover, provided the issue was not crucial, the occasional defeat suited some Conservatives; and furthermore, it could help strengthen the argument of those who would seek to defend the status quo.<sup>137</sup> Thus by the 1990s, the leadership had ceased to contemplate any significant reform.

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134 *Enquiry into Implementation of Constitutional Reform: Reform of the House of Lords* (The Constitution Unit, 1996) p 34.

135 *The House of Lords at Work* (Clarendon Press, 1993) p 348.

136 Lord Carrington thought she had not the slightest intention of doing anything about the House of Lords - her position was "highly negative" (Interview).

137 As Young observed, "Lord Denham always makes the point that it's a bad thing if the Conservatives win every time" (Interview).

## 9. THIRD PARTIES AND THE SECOND CHAMBER

Whilst the major parties are most likely to be in a position to implement policies, a third party may on occasion have the potential to exercise some influence. Although, for much of the post-war period, the Liberal Party's representation in the Commons was very small, it had been a little stronger in 1966 and would be again in the 1974 Parliaments.<sup>1</sup> During the course of the latter, in which the government had either a very small or no majority, the Liberals formed a pact with the Labour government, and in the 1980s, following the formation of the SDP and the Alliance with the Liberals, a third party breakthrough was anticipated in some quarters, but not realised. This Chapter looks briefly at how these parties and then the Liberal Democrats approached the issue of the second chamber.

As noted earlier, the Liberals had been somewhat inconsistent in their response to the Labour government's proposed legislation in 1968/69.<sup>2</sup> They put forward no proposals of their own and their 1970 election manifesto was silent on the subject. However, although the question of Lords reform took a back seat in the new Parliament, the Liberals did show some interest in the reform of parliamentary institutions. A Working Party on the Machinery of Government, established in 1971, reported to the Liberal Assembly in September 1973, which itself passed a lengthy resolution, 'Power to the People', outlining a commitment to "a revolution in the style and structure of British government". This covered a range of areas, but its proposals on the House of Lords, which were described as a "longer term aim", comprised:

- (i) abolition of the automatic right of hereditary peers to sit in the second chamber;
- (ii) a majority of members of a reformed second chamber to be elected by new regional assemblies;
- (iii) a proportion of members to be selected on the basis of particular experience or expertise;

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1 Only six Liberal MPs were elected in the 1951, 1955 and 1959 elections. In 1964 this rose to nine and in 1966 to 12, but in 1970 the numbers were down again to six. However, in the two 1974 elections respectively 14 and then 13 were elected.

2 See Chapter 1.

- (iv) British members of the European Parliament to be included, *ex officio*;
- (v) a limited term of office to be fixed, with continuity maintained by staggered elections at regular intervals.<sup>3</sup>

The revised final report of the Working Party, published the following year, suggested that, although it was likely that its actual powers would be reduced further, the second chamber was the best place for the discussion of broad issues; and that it should be a means of linking the various systems of government in a federal system. It should also take over the functions of bodies such as Royal Commissions, and continue to exercise a judicial role. Membership was envisaged along the lines of the 1973 Assembly resolution, including representatives from the Scottish and Welsh Parliaments and from regional assemblies, plus members of the European Parliament. It suggested that, in addition, independent members (who might include, for instance, people from voluntary bodies or those who might not want to stand for election) could be appointed, possibly by a committee of both Houses, for renewable periods.<sup>4</sup>

The possibility of linking reform of the second chamber with devolved government had recently been rejected by the Royal Commission on the Constitution, but a Memorandum of Dissent by two of its members had supported such a proposition.<sup>5</sup> The Liberal Party Council had welcomed this Memorandum of Dissent (although it should be noted that the Liberal peer, Lord Foot, who was a member of the Commission, did not dissent from the majority recommendation).<sup>6</sup>

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3 Liberal Assembly 1973: Resolutions adopted at Southport, 18-22 September.

4 *Power to the People: Report of Liberal Working Party on Machinery of Government* (Liberal Party Publications, 1974). It was chaired by Desmond Banks (former Party President). The other members were Peter Billiness, Alan Butt Philip and William Walker (Liberal Parliamentary candidates); Hannah Rose and Michael Steed (academics). The Secretary was Adam Pleasance (Research Assistant to Banks).

5 See p 165.

6 Liberal Party Council Resolution, Manchester 1973 (recorded in *Power to the People*, p 28). According to Lord Holme of Cheltenham, Foot was not regarded as mainstream (Interview, June 1998); but nevertheless Foot would be appointed to the next Liberal Party Committee looking at Lords reform; as also would Alan Peacock, who signed the Memorandum of Dissent.



Despite the existence of detailed policy proposals on the subject, neither of the 1974 Liberal manifestos included any reference to the House of Lords. However, the elections saw an improvement in Liberal fortunes and, for a brief period after the first, there was speculation that the Liberals might join a coalition with the Conservatives. There were contacts between the Prime Minister, Edward Heath and the Liberal Party Leader, Jeremy Thorpe, but nothing came of them.<sup>7</sup> Minority parties, would, however, be able to exercise greater influence in the new Parliament, with the Labour government having at best a precarious majority and, for much of the time, none overall. Indeed, the Liberals entered a pact with the Labour government during 1977-78, but the second chamber did not feature in this, although devolution legislation did.<sup>8</sup>

The period from 1974 up to the conclusion of the Lib-Lab pact, saw the government run into difficulties with its legislative programme in the House of Lords, notably in the case of the Aircraft and Shipbuilding Bill. In the final - and crucial - debate in the Lords at the end of the 1975-76 session, the Liberal leader there, Lord Byers, had supported the Conservatives in their move to delete ship-repairing from the provisions of the Bill, even though this was arguably in breach of the Salisbury convention, saying that, if the government chose to use the Parliament Act, then that would be their responsibility.<sup>9</sup> In the event, the legislation went through in an amended form; but as has been noted, the experience was a factor in leading the Labour Party to support abolition, which in turn helped prompt the Conservatives to set up a committee on the subject.<sup>10</sup>

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7 See Campbell: *Edward Heath, A Biography*, p 617-8.

8 Callaghan: *Time and Chance*, pp 456-7. Although the Liberals had supported a link between the two, no such proposal was included in the government's legislation.

9 *House of Lords Debates*, 22nd November 1976 (Vol 377, Col 1672).

10 See Chapters 2, 3 and 7.

The Liberals did likewise. Shortly before the 1977 Labour Party Conference was due to debate the abolition proposal, they announced that, "in view of the present interest in the future of the House of Lords", a Liberal Working Group had been studying the matter since July that year.<sup>11</sup> This Group, comprising Liberal peers and academics, was chaired by Lord Henley, and began its work in July 1977.<sup>12</sup> Unfortunately Henley died later the same year, following which there was a hiatus in its work until it was revived, under the chairmanship of Lord Airedale, in May 1978. Its terms of reference were to produce a consultative document "in the context of Liberal policy for a constitutional settlement with a federal system of government" and reforms which could be effected prior to such a settlement. What was termed an "Interim Report" was issued under the title *Two Chambers or One?* in September 1978.<sup>13</sup>

In answer to its own question, the report accepted the value of the two chamber system and rejected abolition. However, it concluded that the existing House of Lords performed a "very limited role in protecting the basic constitutional rules against a partisan majority in the House of Commons"; and that its actual revision of legislation offered "only limited justification for its existence". While acknowledging that that some need for revision could be taken care of by a reformed Commons, better preparation of legislation and more open government,

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11 Press Release, 20th September 1977 (Liberal Party Archive 16/145). Although the Party had last debated the issue fully in 1973, a resolution from a pre-plenary group of delegates at the 1976 Liberal Conference made a passing reference to "the eventual replacement of the House of Lords by a Senate composed of elected representatives of the federal states and the British members of the European Parliament", as part of wider reform in a federal system (Michael Steed papers).

12 The other members were Viscount Thurso, Lord Wade, Lord Foot, Peter Bromhead, Brian Keith-Lucas and Alan Peacock, the latter three all being academics, as was the Group's Secretary, Michael Steed. According to Steed, Peacock was not an active member, although he received papers and agreed to be associated with the report (Interview, September 1999).

13 Interim Report of Liberal Working Group (Liberal Publications Dept. 1978).

the report nevertheless argued that, "it is worth including a revising function both a present and a revised House". Similarly, private legislation "could be dealt with by other means, but it is sensible to include it among the functions of a second chamber". Nor did its role in scrutinising European Community legislation justify it, "but if a second chamber exists, it can usefully be employed in scrutinising the policy and administration of the UK government, of the EEC and quangos", given effective committee systems and enough members able and willing to sit on them. Powers should flow from functions; although one chamber should be the "clear source of political authority". The present delaying powers were about right.<sup>14</sup>

Noting that Labour would "make some play with the undemocratic nature of the present House", the report then made the questionable assertion that this was "scarcely less democratic" than the voting system for the House of Commons. Surprisingly, however, it rejected a chamber wholly or partly elected by proportional representation (PR). Since the Liberals supported this for elections to the Commons, it was argued that it could either lead to conflict between the two Houses or to duplication, if polls were conducted on the same basis. However, it suggested that a reformed composition should include:

- (i) a major element elected on a regional basis (although it was not specified how - both direct and indirect elections were discussed);
- (ii) members of the European Parliament ex-officio (although there was dissent on the Working Group about this);
- (iii) others, "especially to man committees" (although it was not clear how they would be chosen - probably by interest groups, possibly by the Prime Minister, but there was no conclusion on this).<sup>15</sup>

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14 Ibid (Paras 5, 11-15, 25).

15 Ibid (Paras 9, 16, 24-26).

In the short term, the report suggested ending the rights of hereditary succession, adding members of the European Parliament (although it questioned their right to vote, if they were elected under the first-past-the post system), and possibly indirect election of members from the Scottish and Welsh assemblies. In the longer term, it should form part of a more major constitutional reform.<sup>16</sup>

This report was not dissimilar from Labour's 1977 report, in asserting the limited value of many of the Lords' existing functions and that, to some extent, these could be dealt with in ways other than through a second chamber. Of course, it did not draw the same conclusion. However, despite arguing that powers should flow from function, it had no clear view of the role a second chamber should perform. Furthermore, the proposals on composition were very tentative, taking things little further than the 1973/74 report, *Power to the People*. Concern with electoral reform for the Commons seems to have led the Group into some rather curious positions - the argument that the unelected and largely hereditary House of Lords was scarcely more democratic than the Commons;<sup>17</sup> the conclusion against a second chamber elected wholly or partly by PR (presumably because it might detract from the campaign for PR for the Commons); and the suggestion that election by first-past-the-post might debar members of the European Parliament.

Despite the "interim" designation, no further report was issued. Indeed, little more was heard of it, which, given its rather confused conclusions, may not be wholly surprising. The timing and the title suggest that it was, in any case, to some extent a reaction to Labour's recently published proposals for abolition.<sup>18</sup>

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16 Ibid (Para 28). It did not go into what this further reform should comprise.

17 Lord Holme, when interviewed, suggested that this was a "rhetorical point", intended as "a plug for PR". However, if not meant to be taken literally, this was arguably an inappropriate place to make it.

18 Holme agreed that this was probably the case, but argued that the Liberals saw this as an opportunity rather than a problem.

The question of the second chamber had, however, become a live issue again; and the 1979 general election was the first since the Second World War in which all three main parties set out their position on the Lords in their respective manifestos. In the case of the Liberals, this was the first time they had done so since 1950. Now they stated their intention to replace the House of Lords with a democratic chamber, including representatives of the nations and regions of Britain and of members of the European Parliament.<sup>19</sup>

Although Liberal representation in the new Parliament was slightly down,<sup>20</sup> the years following were to prove highly significant for third party politics, witnessing the birth of the Social Democratic Party in 1981, and the Alliance between the SDP and the Liberal Party, and their merger to form the Liberal Democrats in 1988. Early on, there was speculation about a fundamental re-alignment of British politics, as the Alliance briefly headed the opinion polls. The Conservatives were said to have discussed seriously the possibility of an Alliance government. However, in the 1983 general election, despite securing 25 per cent of the votes, they secured no more than 23 seats. During the next Parliament, they again enjoyed a short-lived lead in the polls, and there was talk in the Alliance camp of the prospect of holding the balance of power and either influencing the legislation of a minority government or forming a coalition. This situation did not materialise and, following the 1987 election (when together they won just 22 seats), the two parties merged.<sup>21</sup> Nevertheless, for a while, given that the prospect of the Alliance in government or influencing government was taken seriously, then their policies for constitutional reform also assumed a greater significance than they might otherwise have done.

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19 *The Real Fight is for Britain: Liberal Party Election Manifesto 1979* (Dale, op cit, p 190). Although not included in previous manifestos, the policy itself was not new.

20 11 Liberal MPs were elected in 1979.

21 The Alliance, which began soon after the formation of the SDP in 1981, appears never to have had a formal title. The newly merged Party in 1988 was formally known as the Social and Liberal Democrats, but it would in practice be known as the Liberal Democrats. A rump of the SDP continued, but was finally wound up in 1990. (See Ivor Crewe and Anthony King: *SDP - The Birth, Life and Death of the Social Democratic Party*, Oxford University Press 1995, pp 135, 140). See also Butler & Butler. *Twentieth Century British Political Facts*, p 169; and Butler & Kavanagh: *British General Election series* (1983, 1987 and 1992).

In 1980, the Liberals published a policy paper which argued that the constitution was in a mess and that it was "important and urgently necessary to consider how to get it right", as the issue was likely to be high on the political agenda. It described the Conservative approach to Lords reform as "essentially only a response to the Labour Party's initiative", but predicted that they would look to entrenchment of the second chamber and its election by PR. For itself, though, it proposed nothing specific on the second chamber.<sup>22</sup> Although the predictions about the Conservatives would prove wrong, many of them were concerned at that time to respond to Labour's "initiative", as indeed Liberals had been.<sup>23</sup>

Possible means of reforming the second chamber had, meanwhile, been considered by the Liberal Party's Reform of Government Panel. A discussion paper considered the pros and cons of various means of determining composition, including direct election by PR on a regional basis, indirect election and partial appointment. It also looked sympathetically at the notion that peers might be chosen by "selection juries picked at random from the electoral roll." These juries, it was suggested, could be regionally based, about 100-200 in size, and observe guidelines concerning matters such as political balance and the background of candidates.<sup>24</sup> However, this notion seems to have made no further headway.<sup>25</sup>

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- 22 *A New Constitutional Settlement* (Liberal Publications Dept, 1980). Generally, it advocated a settlement involving a written constitution and also a Speakers' Conference or Royal Commission on constitutional reform.
- 23 See Chapter 8 and this Chapter above.
- 24 *The Second Chamber: A Discussion Paper*, July 1980. (Michael Steed papers - Steed was the Panel's convenor.)
- 25 Steed's papers suggest that there was a discussion at an Assembly fringe meeting, but nothing more.

The SDP's initial approach to the second chamber was broadly similar to that of the Liberals. Early in its life, one of its founders and future leader, Dr David Owen, wrote:

"Reform of the second chamber, doing away with hereditary peerages and bringing in representation from the nations and the regions, are innovations that are long overdue".<sup>26</sup>

An early SDP Green Paper envisaged a second chamber forming part of a wider devolution plan, as a "chamber of the regions", comprising regional members and government-appointed life members. This chamber would have delaying powers of up to two years.<sup>27</sup>

The Liberals and SDP soon began to undertake work together on constitutional reform. A joint Commission was set up in November 1981 to examine policies which the two parties could present together at the next election. It was chaired by Sir Henry Fisher and, although particularly concerned with the issue of electoral reform, it did put forward some specific proposals for the reform of the second chamber.<sup>28</sup>

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26 In *The Rebirth of Britain*, ed Wayland Kennet (Weidenfeld & Nicholson, 1982) p 249.

27 *Decentralising Government*, 1982.

28 *Towards a New Constitutional Settlement - Report of Joint Liberal/SDP Alliance Commission on Constitutional Reform*, 1983. Fisher was President of Wolfson College and a former High Court judge. The other members were Alan Beith MP, Ralf Dahrendorf, Tom Ellis, Lord Evans of Cloughton, Richard Holme, Mari James, Roy Jenkins MP, Anthony Lester QC, Robert Maclennan MP, David Marquand, Ray Miche, David Owen MP, Lady Stedman, Michael Steed, David Steel MP. Secretary Vernon Bogdanor. (Stedman was replaced by Usha Prashar during the course of 1982.) This was one of two joint commissions established - the other was on the economy.

Labour's commitment to abolition was still seen as an important factor. The Commission's report specifically mentioned this, arguing that the threat of an omnipotent executive, controlled by a single party, legitimised by a single chamber legislature was "getting steadily nearer". It rejected abolition in favour of reform, stating:

"We want a second chamber which enlarges its present useful functions by bringing a sharper regional dimension into the national legislature".

It sought a new composition, with "a mixture of elected regional representation and meritorious appointment", rather than "the outdated hereditary principle".<sup>29</sup>

The Commission's conclusion in favour of a partly elected, partly nominated second chamber, was similar to that reached by the Conservatives' committee under Lord Home a few years previously, and it specifically acknowledged this. It suggested that, in a chamber of some 500 members, half should be elected by PR on a regional basis, for a fixed term of more than five years, with a half or a third coming up for an election at any one time. The other half should be selected by a standing commission (mainly comprising senior privy counsellors). They would be likely to include some existing peers and leading church figures, but they would not include the law lords (whose role would be taken by the Judicial Committee of the Privy Council). Nominated members should serve for a lengthy period - say 10 years - and be eligible for re-nomination.<sup>30</sup>

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29 Ibid (Para 16). It also sought a more representative House of Commons, with reformed procedures and a reformed electoral system.

30 Ibid (Paras 49-66).



The report envisaged that the functions of the new second chamber should be those of scrutiny, revision and delay; but, in addition, members representing regional interests should have "special responsibilities" in respect of regional affairs - where there was no regional government, they should supervise the regional activities of central government and other regional bodies, including appointments to the latter. Unlike previous Liberal statements, it concluded that members of the European Parliament should not actually be members of the second chamber, although there should be provision for them to participate in committees on European legislation.<sup>31</sup>

Although intended to come up with recommendations for the Alliance parties for the general election, the Commission's main report was actually published afterwards, in August 1983. One of its members, Michael Steed, was subsequently highly critical, saying the policy commissions had been "hampered by ambiguity as to whom they were responsible and...hung uneasily between being independent investigating commissions and representatives of their parties seeking agreement". After a year, that on Constitutional Reform had produced agreement only on the issue of the electoral system. Other aspects, including the second chamber, had just been agreed and the report was in draft when the election was called; but "whether for lack of imagination or simply logistic failure, the report did not get published during the election campaign as it should have been". Steed observed that the parties had not been working well together; and later suggested that the establishment of the Alliance had "set us back several years" in respect of looking at constitutional reform, including the House of Lords.<sup>32</sup>

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31 Ibid.

32 Steed: 'The Alliance: A Critical History', *New Outlook*, Vol 22, No 3, Liberal Assembly Issue 1983 (pp 33-4 ); also interview (September 1999) and correspondence with the author (May 2004).

Nevertheless, the Alliance manifesto did include a commitment to reform the powers and the composition of the House of Lords, which it said should include "a significant elected element representing the nations and regions of Britain".<sup>33</sup> This was also listed as one of the "Key Alliance Policies" in the Candidates Handbook, which outlined a policy along the lines contained in the Commission's report.<sup>34</sup> A draft of the report was probably drawn on by those drafting the joint manifesto.<sup>35</sup> However, by common consent, that appears to have been an unhappy experience, with work beginning late and then undertaken in a hurry.<sup>36</sup>

Collaboration between the SDP and the Liberals nevertheless continued during the 1983-87 Parliament. In July 1986, a new wide ranging joint discussion document was published under the title *Partnership for Progress*. It again linked reform of the second chamber with devolution and proposed new elected regional assemblies, along with wider parliamentary reform.<sup>37</sup> The debate on this at the Liberal Assembly at Eastbourne in 1986 was overshadowed by a row following the defeat of the leadership over defence policy, seen at the time as heralding a potential split between the Liberals and the SDP, although that was avoided.<sup>38</sup> It was relaunched as a joint policy statement in January 1987, under the title *The Time Has Come*.<sup>39</sup> This became the slogan used by the Alliance in the 1987 general election. Its manifesto stated, in respect of the House of Lords, that there was no justification for membership based on heredity or patronage. It proposed to phase out voting rights for hereditary peers; and linked Lords' reform with devolution, to include in a new chamber members elected from the regions and nations of Britain.<sup>40</sup>

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33 *Working Together for Britain*, Liberal/SDP Alliance Manifesto 1983 (Dale, op cit, p 227).

34 Alliance Candidates Handbook 1983 - Section 5: Constitutional Reform (pp 52, 59)

35 According to Steed, it was likely a draft would have been available (Interview).

36 Ibid. See also *New Outlook*, Vol 22, No. 2, Post Election Issue 1983 - 'Programmed for Government' by Leighton Andrews (pp 12, 13); and Crewe and King (op cit) pp 78, 79.

37 *Partnership for Progress*: SDP/Liberal Alliance Discussion Paper, July 1986. Lord Holme confirmed that the policy was drawn from the 1983 Commission Report (Interview).

38 Des Wilson: *The Battle for Power* (Sphere Books, 1987) Chapter 2 (pp 13-69). Interestingly, a long resolution on 'People's Government' passed at the same 1986 Assembly made no reference to the Lords (Liberal Party Archive 8/4).

39 Ibid, p 130.

40 *Britain United: The Time Has Come*, SDP/Liberal Manifesto 1987 (Dale, op cit p 241).

When the SDP and the Liberal Party merged in 1988, there were still some outstanding policy differences.<sup>41</sup> Nevertheless, they had worked closely on constitutional reform; and the new Party continued to take an interest in this issue. A general policy document, published in 1989, stated that the new constitutional settlement advocated by Liberal Democrats included "reform of Parliament to democratise the House of Lords and give the House of Commons effective powers to scrutinise and control the executive".<sup>42</sup>

The Party's approach to constitutional reform was fleshed out in a Green Paper published the following year, *We the People: Towards a Written Constitution*, which included proposals for a fully elected second chamber as part of a wider programme of constitutional reform. An elected senate would comprise about 100 members, directly elected by Single Transferable Vote from the nations and regions of Britain (for a six year period, with one-third voting every two years). Existing peers would be able to participate in the chamber, but not vote. The new House would have the power to delay legislation other than money bills for up to two years; and amendments to the constitution would require two-thirds support there.<sup>43</sup>

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41 However, differences were apparently resolved within a couple of years (*The Liberal Democrats*, ed. Don MacIvor; Prentice Hall / Harvester Wheatsheaf, 1996, p 86).

42 *Our Different Vision - Values and Themes for Social and Liberal Democrats* (Hebden Royal Publications 1989) p 11.

43 Reported in *The Times*, 6th July 1990.

However a resolution was passed at the Liberal Democrats' 1990 Conference, which amended the proposals on the second chamber in one very important aspect. It stated that it endorsed the Green Paper's key proposals, including:

"Replacement of the House of Lords by an elected Senate, with powers to delay legislation other than money bills, except that the membership of the Senate be widened with long term aim of retaining the wealth of expertise currently available to the House of Lords".<sup>44</sup>

This meant that the second chamber would not necessarily be a wholly elected chamber, but could include a nominated element. The leadership was defeated, following an appeal by the veteran peeress, Baroness Seear. The amendment to "retain the wealth of experience currently available" was carried by 334 votes to 290. This was said to be a "rebuff" for Robert Maclennan MP, who had chaired the relevant working party and who had spoken from the platform in support of a fully elected chamber.<sup>45</sup> However, another leading Liberal Democrat has suggested that the leadership was not particularly unhappy with this development.<sup>46</sup>

Thus the Liberal Democrats' policy set out in the following election manifesto was for a senate "primarily" elected by the citizens and nations of Britain; and with the power to delay legislation" (except money bills) for up to two years.<sup>47</sup> Essentially, the policy of the Liberal Democrats in 1992 was similar to the policy pursued for the previous two decades by the old Liberal Party and then the Alliance - involving a partly but not wholly elected chamber, with close links to the regions.

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44 A copy of this was sent to the author by the Liberal Democrat Information Officer, who described it in her letter (3rd August 1998) as "the only policy statement the Lib Dems have on this subject up to 1992.". The resolution also endorsed, amongst other proposals, use of the Single Transferable Vote for all elections.

45 Reported in *The Independent*, 18th September 1990. Seear was then deputy leader of the Liberal Democrat peers (having previously been leader of the Liberal peers 1984-88). Maclennan was a former Labour MP and junior minister, who had subsequently been a front bench spokesman for the SDP and the Liberal Democrats. He was briefly leader of the SDP 1987-88 and joint leader of the Liberal and Social Democrats 1988. He later became President of the Liberal Democrats in 1994-98 and a life peer in 2001.

46 Lord Holme of Cheltenham (Interview).

47 *Changing Britain For Good*, Liberal Democrat Manifesto 1992 (Dale, op cit, p 316).

This proposed link between the second chamber and regional government/representation was thus a consistent aspect of these parties' policies for much of the period in question. A not dissimilar approach was adopted by the Labour Party in the late 1980s and early 1990s. The policies of Labour and the Liberal Democrats were not identical - there were differences in position on delaying powers, although both envisaged a role for the second chamber in safeguarding constitutional rights; and the Labour Party was, in 1992, committed to a wholly rather than a partially elected chamber, although the former had been the preference of the Liberal Democrat leadership too. Nevertheless, there was, by then, a considerable degree of common ground between the non-Conservative parties; and had a Labour government been elected then, it could probably have counted on Liberal Democrat support to implement its policy on the second chamber, had the need arisen.<sup>48</sup>

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48 Lords Holme and McNally, when interviewed, indicated that the Liberal Democrats would have been likely to support a Labour government in such circumstances.

## 10. POSTSCRIPT - DEVELOPMENTS SINCE 1992

Recent years have seen major developments relating to reform of the House of Lords. Although these do not, strictly speaking, fall within the parameters of this thesis, they should be noted, if only briefly.

Since the Conservative Party went into the 1992 general election with no proposals at all for reform of the House of Lords, it is hardly surprising that none were forthcoming in the following Parliament. If anything, the Conservatives, who were returned with a much reduced overall majority of just 21, seemed more content than ever to maintain the status quo. A government minister, Lord Fraser of Carmyllie, having noted the Lords' functions of deliberation and revision, told the House in 1994:

"The government consider that the powers and composition of your lordships' House are broadly apt for the effective discharge of these functions. Accordingly we have no plans for far reaching reform."<sup>1</sup>

The Prime Minister, John Major, was determined to "defend our tradition, our heritage and guard against any needless change which threatens the institutions that make us one nation" and claimed that "the House of Lords has been far more effective than many overseas equivalent revising chambers." He even claimed that the House of Lords had shown no party political bias over the years.<sup>2</sup> In fact, the number of defeats suffered by Major's government, although on average slightly higher than under Thatcher, still paled into insignificance compared with those suffered by Labour in the 1970s.<sup>3</sup>

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1 *House of Lords Debates*, 13th April 1994 (Vol 553, Col 1569). Fraser was then Minister of State, Scottish Office.

2 Speech to Centre for Policy Studies, reported in *The Times* and *The Guardian*, 27th June 1996. Major apparently changed his mind after leaving office, describing hereditary peers as an anachronism and acknowledging the need for reform (see Disraeli Lecture, reported in *The Guardian*, 30th October 1998 and *John Major: The Autobiography*, Harper Collins, 1999, p 734). He did not take a peerage when he retired from the Commons in 2001.

3 See Chapters 3, 8 and 9. Major's government was defeated 23 times in 12.3 per cent of divisions between 1990 and 1992; and 62 times in 10.6 per cent of divisions between 1992 and 1997 (Divisions in the House of Lords since 1970-1971: House of Lords Information Office, 1997).

Major added new life peers to the House at a faster rate than his predecessor. During his term of office, between 1990 and 1997, 160 were created (excluding law lords), of whom 75 were Conservative, 40 Labour and 17 Liberal Democrat. This represented an average annual rate of 25, compared with 18 under Margaret Thatcher.<sup>4</sup> Thus the overwhelming majority of politically affiliated peers were still Conservative.<sup>5</sup> On occasion, large turnouts of hereditary peers could still be mustered on three line whips to help the government win important votes, notably to defeat proposals for a referendum on the EU Maastricht Treaty in 1993 and plans to privatise military housing in July 1996.<sup>6</sup>

The Labour Party, in a statement to the 1993 Party Conference, observed that "the sight of hereditary Tory peers wheeled out to vote through controversial legislation when entirely immune from electoral account is a constitutional outrage," and re-affirmed its intention of "replacing the House of Lords with an elected chamber." However, it added an important new caveat:

"As a first step, the hereditary peers should go. We should then begin the process of introducing proper democratic elections."<sup>7</sup>

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- 4 House of Lords Library Notes: *Peerage Creations 1958-1998*. These figures include the final resignation list drawn up by Thatcher in 1990, but exclude resignation honours drawn up by Major in 1997.
- 5 As of January 1996, the party strengths were: Conservative 480, Labour 111, Liberal Democrat 55, plus 400 cross bench/non-affiliated. (House of Lords Information Office: Information Sheet No 2, March 1996. Figures exclude peers without writ or on Leave of Absence.)
- 6 Amendment to European Communities (Amendment) Bill defeated by 445 votes to 176 (*House of Lords Debates*, 14th July 1993, Vol 547, Col 329); amendment to Housing Bill defeated by 256 votes to 176 (*House of Lords Debates*, 11th July 1996, Vol 574, Col 475). The leader of the Labour peers, Lord Richard, was reported as saying: "You see some of them and wonder who the hell they are. There were some the clerks didn't even recognise" (*The Observer*, 28th July 1996). One of the clerks confirmed this in private conversation with the author.
- 7 *A New Agenda for Democracy: Labour's Programme for Constitutional Reform* - Statement to Labour Party Conference 1993. Significantly, Tony Blair (as Shadow Home Secretary) was joint convener of the Policy Commission responsible for this statement.

No method of election was specified but, in the same year, Labour's Working Party on Electoral Systems recommended a regional list system of proportional representation for the second chamber.<sup>8</sup> A consultation exercise within the Party showed a majority of respondents in favour; and a resolution supporting this was passed at the Party Conference.<sup>9</sup>

The 1993 statement envisaged no significant change in powers, so it appeared that the notion of special powers to safeguard constitutional and individual rights had now been abandoned. It also became increasingly clear that the commitment to an elected chamber was moving on to the back burner. Speaking early in 1996, Blair (now Party Leader) stated - inaccurately - that "we have always favoured an elected second chamber", but went on to argue:

"Surely we should first make the House of Lords a genuine body of the distinguished and meritorious - with a better, more open and independent means of establishing membership - and then debate how we incorporate democratic accountability".<sup>10</sup>

A policy statement later that year re-iterated the intention to remove the hereditary peers "as a first step towards a more democratic representative chamber", but suggested that some places be "reserved by appointment for those who have an outstanding contribution to make".<sup>11</sup> The Shadow Lord Chancellor, Lord Irvine of Lairg, confirming that Labour had prepared a draft Bill to remove the hereditary peers, said that, for the longer term, "the fundamental question is whether the House of Lords can remain an appointed chamber, but it's too early to address that".<sup>12</sup> Meanwhile, Peter Mandelson and Roger Liddle, two

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8 *Report of the Working Party on Electoral Systems* (Labour Party, 1993). This Working Party included several individuals who would subsequently become members of Blair's government.

9 Supporting NEC Statement and Record of Resolutions Passed, Annual Conference 1993.

10 John Smith Memorial Lecture, Queen Elizabeth II Conference Centre, February 7th 1996.

11 *The Road to the Manifesto*: abridged version, published in *The Guardian*, 5th July 1996.

12 Interviewed in *New Statesman*, 6th December 1996 (Vol 125, pp 18-20).



individuals known to have Blair's ear, warned that a reformed Lords would have more legitimacy and power to block what the government of the day wanted to do. They said that whether Labour should go further than removing the hereditary peers and, if so, how far, was "a difficult judgement."<sup>13</sup> Such hesitancy was bound to re-inforce scepticism about the prospects for a second stage of reform.<sup>14</sup> The Liberal Democrats, having earlier published proposals for a mainly elected senate with increased powers, modified them in 1996 with a proposal to phase them in over two Parliaments. In the longer term, they envisaged a senate of 300, three-quarters elected by Single Transferable Vote and a quarter elected by a Joint Committee of both Houses. However, as an interim measure, they proposed a chamber of 500 indirectly elected members, 200 by existing peers and 300 by the Commons to reflect party strengths at the previous general election.<sup>15</sup>

Thus the Liberal Democrats now, like Labour, appeared to envisage a two-stage process, albeit with somewhat different and more clearly defined proposals. The two parties were attempting to collaborate on constitutional reform issues; and a Labour / Liberal Democrat Agreement on Constitutional Reform was announced in March 1997, which listed amongst the areas of agreement that the right of hereditary peers to sit and speak in the House of Lords should be ended.<sup>16</sup>

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13 *The Blair Revolution: Can Labour Deliver?* (Faber & Faber 1996), p 205. Mandelson was known to be a confidant and subsequently served in Blair's Cabinet. Liddle, a former member of the SDP, became a Downing Street policy adviser.

14 See, for instance, *The Constitution Unit: Reform of the House of Lords* (April 1996) p 75.

15 *Federal White Paper: Here We Stand*, 1993; *Great Reform Bill*, September 1996.

16 Reported in *The Independent*, 6th March 1997.

Labour's 1997 election manifesto stated that:

"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."

Its objective was to ensure that over time party appointees "more accurately reflect the proportion of votes cast at the previous election", although it was also committed to maintaining an independent cross-bench presence and no party should seek a majority in the Lords. A Committee of both Houses would look at proposals for further reform.<sup>17</sup> Significantly, the removal of hereditary peers was now described as a "self-contained reform", rather than part of an ongoing process; and there was no mention specifically of an elected chamber.

The Liberal Democrats went rather further, stating their intention "over two parliaments" to "transform the House of Lords into a predominantly elected second chamber capable of representing the nation and regions of the UK and of playing a key role in scrutinising European legislation".<sup>18</sup> The Conservatives, by contrast, had no proposals for reform, emphasising the need to preserve stability and opposing "change for change's sake".<sup>19</sup>

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- 17 *New Labour: Because Britain Deserves Better*, Labour Party Manifesto 1997 (See Dale: Labour Manifestos, op cit, p 374).
- 18 *Make the Difference*, Liberal Democrat Manifesto 1997 (See Dale: Liberal Manifestos, op cit, p 345).
- 19 *You Can Only Be Sure with the Conservatives*, Conservative Party Manifesto 1997 (See Dale: Conservative Manifestos, op cit, p 458).

Following Labour's election victory in May 1997, with a huge Commons' majority of 179, the new Prime Minister set about strengthening the Party's representation in the Lords. August 1997 saw the first of several batches of new peers, which meant that, by 1st May 2003, Tony Blair had presided over the creation of a record number of 254 life peerages in six years, 111 of them Labour, most of which were in the first three years.<sup>20</sup> Whilst this may have served to help redress the political imbalance in the House, it did mean that Blair was responsible for the creation of more than 60 new peerages a year, representing the exercise of patronage in this area on an unprecedented scale.<sup>21</sup>

The new government's first leader in the Lords, Lord Richard, was replaced after just a year, and soon after was expressing fears that the second stage of reform might be "kicked into touch".<sup>22</sup> Nevertheless, Blair still ostensibly favoured an elected chamber as longer term objective, assuring sceptics that:

"there are two stages to reform; one is getting rid of the position of hereditary peers; and secondly, there is the longer term reform for a more democratically elected chamber. I think it is important we do both things".<sup>23</sup>

The government, meanwhile, suffered defeats in the as yet unreformed House, in a total of 39 divisions in the 1997/98 Session, and in a further 31 in the 1998/99 Session.<sup>24</sup> These included politically significant measures - notably on the European Parliamentary Elections Bill, which was lost at the end of the 1997-98

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20 Information supplied by House of Lords Information Office. (The breakdown was Lab 111, Con 48, Lib Dem 38, Cross Bench 53, Other 4. Six law lords created during this period are not included, but peers in Major's resignation honours are.) See also *House of Commons Debates*, 20th July 2000 (Vol 354, Col 261W).

21 See Appendix 1, Table 4 for comparative figures for other Prime Ministers.

22 Reported in *The Times*, 30th July 1998. The new Leader of the House was Baroness Jay of Paddington.

23 Interview on *Today*, BBC Radio 4 (reported in *The Times*, 31st July 1998).

24 House of Lords: 1998-99 Sessional Statistics.

Session and re-introduced in December 1998, only to be defeated again on Second Reading, following which the government invoked the Parliament Act procedure to secure passage.<sup>25</sup> They also included the controversial issue of the age of consent for homosexuals.<sup>26</sup>

Legislation to remove the rights of hereditary peers to sit and vote in the House was heralded in the Queen's Speech at the start of the 1998/99 Parliamentary Session.<sup>27</sup> However, before publication, behind-the-scenes negotiations took place, details of which emerged, perhaps prematurely, when the Conservative Party Leader, William Hague, dismissed the Party's Leader in the Lords, Viscount Cranborne, for his part in a reported deal to allow a limited number of hereditary peers to remain after the first stage of reform, in order to smooth the passage of the legislation. This apparently had not been authorised by the Shadow Cabinet.<sup>28</sup>

The Conservatives had, meanwhile, set up their own constitutional commission, chaired by the former Lord Chancellor, Lord Mackay of Clashfern, to examine reform of the Lords. Its main report, published in April 1999, proposed two options, both involving a senate of between 400 and 550 paid members, with similar revising powers to the existing chamber. Under the first option, it would be predominantly directly elected, with just a small number of appointed members. The second option was for a mixed senate, less than half of which would be directly or indirectly elected, with the rest appointed. The Party was not, however, officially committed to either of these proposals.<sup>29</sup>

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25 See *The Guardian*, 19th, 20th November, 16th December 1998.

26 *House of Lords Debates*, 22nd July 1998 (Vol 592, Col 973). The Lords voted by a large majority on an amendment to the Crime and Disorder Bill to keep the age of consent at eighteen. The government subsequently dropped this measure from the Bill and re-introduced it as a separate measure in a later session (see p 257).

27 *House of Lords Debates*, 24th November 1998 (Vol 595, Col 4).

28 Reported in *The Guardian*, 3rd and 4th December, 1998.

29 Reported in *The Guardian* and *Financial Times*, 16th April 1999.

The House of Lords Bill, introduced in the Commons in January 1999, was a short measure to remove the rights of hereditary peers to sit and vote in the House of Lords (including those of first creation, although these would be offered life peerages); and to remove the disqualification of hereditary peers from voting or being elected to the House of Commons. The use of titles would not be affected; and the position of life peers, law lords and bishops would remain unchanged. A White Paper, issued in conjunction with the Bill, made it clear that in the 'transitional' House, the government would, through new creations, seek broad parity of representation between Labour and Conservative members, while retaining a significant cross-bench element. A new Appointments Commission would nominate cross-bench peers, operating an "open and transparent system", and would itself invite nominations.<sup>30</sup>

In the course of the Bill's passage, an amendment to allow 92 hereditary peers to remain (in line with the previously mooted compromise), moved by the former Speaker of the House of Commons, Lord Weatherill, was passed overwhelmingly at Committee stage in the Lords.<sup>31</sup> These would comprise 75 elected by hereditary peers in their respective political groupings, in proportion to their existing strengths (which meant 42 Conservatives, 28 cross-bench and just three Liberal Democrats and two Labour); together with 15 hereditary peers who were also office holders in the Lords, plus the Earl Marshal and the Lord Great Chamberlain.<sup>32</sup> Although it became generally known as "the Weatherill Amendment", according to an authoritative source it was really a government amendment, which had been drafted in the Lord Chancellor's Department and agreed with Viscount Cranborne.<sup>33</sup>

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30 *Modernising Parliament: Reforming the House of Lords* (Cm 4183, The Stationery Office, January 1999).

31 *House of Lords Debates*, 11th May 1999 (Vol 600, Col 1137). A similar amendment had been defeated in the Commons (*House of Commons Debates*, 16th February 1999; Vol 325, Col 782).

32 This detail was not specified in the amendment itself, but would be provided for in Standing Orders.

33 Private Information.

Although the Conservatives had earlier opposed Second Reading in the Commons, they abstained at Third Reading in the Lords; and the Bill eventually received Royal Assent on the last day of the Session, 11th November 1999, with its provisions coming into force immediately.<sup>34</sup> The hereditary peers who would remain had already been elected by their respective political groups and, in the case of office holders, by the whole House. Additionally, ten hereditary peers, including those of first-creation, were awarded life peerages.<sup>35</sup> As one commentator observed, the compromise "keeps the hereditary principle afloat - only just - but the aristocracy had always played a long game".<sup>36</sup>

If the government was hoping for an easier ride in the newly reformed House, it was to be disappointed. In the following Parliamentary Session (1999/2000), it was defeated on 36 occasions. These included significant items of legislation, such as the Criminal Justice (Mode of Trial) Bill, which would have restricted rights to trial by jury, and the Sexual Offences (Amendment) Bill, relating to the age of consent for homosexuals, which had been introduced in a second successive session and eventually went through using the Parliament Act procedures. The government was also defeated on the Greater London Authority (Election Expenses) Order, the first occasion since 1968 on which the House of Lords had voted down an affirmative order. It would continue subsequently to suffer defeats, losing as many as 88 divisions in the 2002/3 Session.<sup>37</sup>

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34 *House of Lords Debates*, 26th October 1999 and 11th November 1999 (Vol 606, Cols 292 and 1649).

35 House of Lords Information Office; also *The Guardian*, 3rd November 1999 and *The Times*, 6th November 1999.

36 Michael White: 'Survival instinct kept warrior class in power for centuries', *The Guardian*, 27th October 1999.

37 House of Lords Public Bill Sessional Statistics 2002-03; *Guide to the House of Lords 2002* (pp 266, 276).

Meanwhile, the government had set up a Royal Commission, chaired by the former Conservative Leader of the Commons, Lord Wakeham, to look at longer term options for reform, whose terms of reference included a requirement to have regard to "the need to maintain the position of the House of Commons as the pre-eminent chamber of Parliament". Its report, published in January 2000, recommended a second chamber of approximately 550 members, mainly nominated, but partly elected. It put forward three options for the latter - 65, 87 or 195 elected by proportional representation, either drawn from regional lists with the numbers based on votes at the previous general election, or in elections held by a regional list system at the same time as those for the European Parliament. Non-elected members would be chosen by an Appointments Commission, which would take account of party nominations, but also have a duty to ensure political balance and representation broadly reflecting society. New members should serve for fifteen years, but existing life peers could sit for life, if they wished. The remaining hereditary peers would be excluded. Members should receive a "modest payment" related to attendance. No change was proposed to their main legislative powers, except that it should no longer be possible to use the Parliament Act procedures to amend the Parliament Acts themselves; and that, for secondary legislation, a vote by the second chamber could be overridden by an affirmative vote of the Commons.<sup>38</sup>

The report attracted critical comment. For instance, the columnist, Simon Jenkins, suggested that Wakeham had got the message that he was to "come up with a vaguely plausible fudge so that Downing Street could reclaim the brief and play for time"; and that "he had duly offered lifetime protection to his fellow peers".<sup>39</sup> Lord Carrington was even more scathing, calling it a "mish mash".<sup>40</sup> Nevertheless, in the subsequent Parliamentary debate, the government indicated that it accepted the principles underlying its main proposals. The Leader of the Commons, Margaret Beckett, confirmed that "we agree that the second chamber should be

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38 *A House for the Future: Report of the Royal Commission on Reform of the House of Lords* (Cm 4534, The Stationery Office, January 2000).

39 'Wakeham the weak'. *The Times*, 21st January 2000.

40 Interview in *The Guardian*, 24th April 2000.

largely nominated". However, the Conservatives indicated a preference for a larger elected element in a reformed House; and the Liberal Democrats, who had previously been broadly supportive, were also now critical, describing the Commission's recommendations as "weak and unhelpful". Significantly there were also critical interventions from several Labour backbenchers. Winding up the debate for the government, Paddy Tipping made the curious observation that "being democratic does not necessarily mean having elections."<sup>41</sup>

A year after its establishment, a first list of fifteen non-affiliated peers appointed on the recommendation of the new House of Lords Appointments Commission was announced in April 2001. It was widely criticised, since it seemed "the body to set up to choose 'peoples' peers' appointed establishment figures instead".<sup>42</sup>

This came shortly before the start of the campaign for the 2001 general election. In its manifesto, the Labour Party re-iterated its commitment to "completing House of Lords reform, including removal of the remaining hereditary peers to make it more representative and democratic, while maintaining the House of Commons' traditional primacy", stating its support for conclusions of the Wakeham Commission, which it would seek to implement "in the most effective way possible".<sup>43</sup> The Conservatives' manifesto wanted a joint committee of both Houses "to seek consensus on lasting reform", but added that "we would like to see a stronger House of Lords in future, including a substantial elected element".<sup>44</sup> For their part, the Liberal Democrats' manifesto proposed a smaller directly elected senate, with representatives from the nations and regions of the UK, which would be given new powers to improve legislation".<sup>45</sup> Thus Labour's position now appeared to be the least radical of the three main parties.

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41 *House of Lords Debates*, 7th March 2000 (Vol 610, Cols 910-27); *House of Commons Debates*, 19th June 2000 (Vol 352, Cols 48-125). Tipping was then Parliamentary Secretary in the Lord President's Office.

42 Report in *The Times*, 27th April 2001. It noted they included "seven knights, three professors, three charity bosses and a captain of industry", all apparently self-nominated.

43 *Ambitions for Britain*, Labour Party Manifesto 2001, p 35 .

44 *Time for Common Sense*, Conservative Party Manifesto 2001, p 46 .

45 *Freedom, Justice, Honesty*, Liberal Democrat Manifesto 2001, p 14



With the 2001 election result almost a repeat of that in 1997, the Labour government could look forward to another very large majority (167) in the House of Commons; but since the removal of most hereditary peers, it was no longer faced with a House of Lords which was predominantly Conservative.<sup>46</sup> The two main parties were now much closer to parity there, although this did not necessarily ensure that the government would get its way.<sup>47</sup>

The government issued a further White Paper in November 2001, which envisaged a second chamber of 600, with a predominantly nominated but partly elected membership. One-fifth would be elected by a regional list system of proportional representation and another fifth would be independent members, nominated by the Appointments Commission (placed on statutory basis with a duty to ensure balanced representation); but the majority would be nominated political members, with proportions based on the distribution of votes between parties at the previous general election. It was anticipated that no one party would have an overall majority, although the Commission might be required to ensure a lead for the governing party over the official opposition. The rights of the remaining hereditary peers to sit would be abolished, but existing life peers would retain their rights for life. New members would not necessarily be peers with titles. The only change proposed to legislative powers was that the second chamber should be able to delay secondary legislation by up to three months.<sup>48</sup>

The response in all political parties was less than enthusiastic. Even Lord Wakeham, himself, was critical.<sup>49</sup> Most significant, however, was the criticism from within the Labour Party. The White Paper apparently met with an extremely hostile reception at a meeting of the Parliamentary Labour Party in January 2002,

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46 At the end of the previous session the political breakdown was: Conservative 225, Labour 195, Liberal Democrat 61, Cross Bench 162, Other 32 (House of Lords: 2000-2001 Sessional Statistics). A further 25 peers (13 of them Labour) were appointed in June 2001.

47 See p 257.

48 *The House of Lords: Completing the Reform* (Cm 5291, The Stationery Office, November 2001).

49 *House of Lords Debates*, 9th January 2002 (Vol 630, Col 589).

when reportedly "MP after MP stood up to denounce the plan"; and an Early Day Motion by Fiona Mactaggart MP, calling for a second chamber which was wholly or substantially elected, attracted more than 300 signatures.<sup>50</sup> The Institute for Public Policy Research (normally sympathetic to Labour) greeted "with dismay" the proposals for a majority nominated by political parties, which would "undermine democracy and exacerbate public cynicism".<sup>51</sup> As one commentator observed, "rarely, if ever, can a White Paper have received such a drubbing - not just from the public but from its own MPs and peers as well".<sup>52</sup> A report by the House of Commons Public Administration Select Committee concluded that the proposal for a mainly appointed chamber was "likely to be extremely unpopular with MPs of all parties". It was argued that both the White Paper and the Royal Commission had been "fundamentally misconceived" and recommended a smaller chamber of 350 members, of whom the majority (60 per cent) should be elected. Of the remainder, half should be nominated by political parties and half independent.<sup>53</sup>

Meanwhile the new Conservative Party leader, Iain Duncan Smith, had set out plans for a largely elected second chamber. This would take the form of a senate of 300 members, 80 per cent of whom would be elected for single terms of fifteen years (one-third of the seats every five years) under a first-past-the-post system, using the counties as constituencies, with no allowance for population size. There were suggestions that this system could result in a Conservative and rural bias; but nevertheless, as the commentator, Peter Riddell, observed, it had allowed Duncan Smith "to claim the democratic high ground".<sup>54</sup> Certainly it represented a major shift from the Party's earlier "do nothing" approach, although apparently it did not go down well with all Conservatives.<sup>55</sup>

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50 *The Guardian*, 24th January 2002; *The Times*, 15th February 2002.

51 Reported in *The Times*, 8th November 2001.

52 Polly Toynbee, *The Guardian*, 1st February 2002.

53 *The Second Chamber: Continuing the Reform, Fifth Report of the Session 2001-2* (The Stationery Office, 14th February 2002, HC 494-1).

54 *The Guardian*, 14th and 24th January 2002; *The Times*, 24th January 2002.

55 See, for instance, *The Guardian*, 24th January 2002.

Later in the year, a Joint Parliamentary Committee of both Houses was established, chaired by the former Labour Cabinet Minister, Jack Cunningham, to look at options for further reform, again with terms of reference requiring it to have particular regard to "the impact which any proposed changes would have on the existing pre-eminence of the House of Commons". Its report, issued in December 2002, set out a range of options for composition from fully appointed to fully elected, with various combinations in between; but it did not come down in favour of any particular option (although it hinted at attraction to the middle of the range). Election should be by a different system and on a different date from general elections. No system was specified, although there was a very tentative suggestion favouring "some form of indirect election".<sup>56</sup>

The Commons held two debates on the Joint Committee's Report. It was clear after the first of these that MPs were divided and that, moreover, differences extended to the Cabinet itself. The then Leader of the Commons, Robin Cook, cast doubt on the validity of the largely or wholly<sup>57</sup> elected options, while in contrast Lord Irvine, in the parallel debate in the Lords, spoke in favour of a wholly appointed House.<sup>57</sup> Less than a week before both Houses were due to vote on the various options, Tony Blair gave a fairly clear view of his preference, when he said he thought a "hybrid" between an elected and an appointed chamber would be wrong and would not work.

"The key question on election is whether we want a revising chamber or a rival chamber. My view is that we want a revising chamber...we should be cognisant of the need to make sure that we do not have a gridlock".<sup>58</sup>

By implication, this endorsed Irvine's call for a wholly appointed House, and certainly this was how it was reported.<sup>59</sup>

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56 *Joint Committee on House of Lords Reform; First Report* (HLPaper 17/HC 171. The Stationery Office, 2002).

57 *House of Commons Debates*, 21st January 2003 (Vol 398, Cols 187-272); *House of Lords Debates*, 22nd January 2003 (Vol 643, Cols 831-838). Cook resigned from the government a few weeks later over the Iraq war, and Irvine also left it later in the year.

58 *House of Commons Debates*, 29th January 2003 (Vol 398, Cols 877-8).

59 See, for instance *The Guardian*, 30th January 2003. It would be consistent with earlier reports that Blair had privately told both Cranborne and Wakeham that he wanted an all appointed/nominated House (*The Guardian*, 4th February 2000; *The Independent*, 12th April 2000).

When votes were held on 4th February 2003, the House of Commons rejected every option that was put, although there was surprisingly strong support for outright abolition and the option for 80 per cent elected was only narrowly rejected. The House of Lords, itself mostly appointed, voted overwhelmingly in favour of the option of an all-appointed House and rejected all other options.<sup>60</sup> A Labour whip was reported afterwards as saying that "a huge operation had been mounted on the Prime Minister's behalf to scupper an elected House...the machine came through for Tony."<sup>61</sup> It seemed now that the second stage of reform was unlikely to be realised for some time to come; and that what Cook had called an "opportunity to bring down the curtain on what has been the longest period of political indecision in political history" had been missed.<sup>62</sup>

This would mean a continuation of a supposedly interim arrangement, with all the anomalies involved. The peculiarities were illustrated by the elections to replace hereditary peers who had died. In that held in March 2003 to replace Viscount Oxfiird, an office holder, all peers were eligible to vote and there were 81 candidates; while in that to replace the Labour peer, Lord Milner, in October 2003, only the three remaining Labour hereditary peers were eligible to vote, although there were eleven candidates.<sup>63</sup>

In June 2003, the government announced plans for the abolition of the post of Lord Chancellor and the removal of the law lords from the House of Lords

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60 *House of Commons Debates*, 4th February 2003 (Vol 399, Cols 152-242); *House of Lords Debates* (Vol 644, Col 116). In the Commons, the amendment for abolition was defeated 289-272 and that for 80 per cent elected by 284-281. In the Lords, the all-appointed option was supported by 335-110. As Cook had observed in the Commons debate, "most of those who were appointed to the second chamber believe that appointment is the perfect way in which to maintain it"; although these did not include the then Leader of the Lords, Lord Williams of Mostyn, who made clear his support for the wholly or mainly elected options.

61 *The Times*, 5th February 2003. Nevertheless, 179 Labour MPs reportedly voted against Blair's preferred option of an appointed House, including 21 ministers; and 172 Labour MPs supported outright abolition, including five members of the government.

62 *House of Commons Debates*, 4th February 2003 (Vol 399, Col 152). Peter Riddell (*The Times*, 5th February 2003) suggested it meant "the disappearance of any chance of radical reform for at least a decade".

63 Information from House of Lords Information Office; also *The Times*, 28th March and 28th October 2003.

(something which had not been envisaged in the 2001 White Paper);<sup>64</sup> and in September it issued a consultation paper on further reform, which envisaged a chamber whose members would be appointed, mainly by political parties, the number of each having regard to the previous general election result, but with about 20 per cent independent. An Appointments Commission would determine the number and timing of appointments by each party and also select independents in accordance with certain guidelines. The government should have more seats than the main opposition party, but not an overall majority. There were no plans to change its role and powers.<sup>65</sup>

This blueprint for an appointed chamber was followed in November by the Queen's Speech, which contained a commitment to legislate for reform, including the removal of the hereditary peers and an independent Appointments Commission for non-party members. It generated a hostile response from the Conservatives, who were angry at what they regarded as a breach of undertakings that the 92 hereditary peers would be retained until there was comprehensive reform; and in the Lords' debate on the Queen's Speech, a critical amendment, calling on the government to withdraw the proposals, was carried (although this would not necessarily have any direct effect).<sup>66</sup>

However, by March 2004, the government had already run into difficulties in the Lords with the Constitutional Reform Bill (HL), embodying its proposals covering the law lords and the office of Lord Chancellor. The government decided not to proceed with the proposed legislation on wider Lords' reform during the current Parliament, but that a commitment to Lords' reform, including powers, would be included in Labour's next manifesto.<sup>67</sup> The long running saga could clearly still have some way to run.

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64 Reported in *The Times*, 13th June 2003. Lord Falconer of Thoroton, for the time being, combined the role of Lord Chancellor with the new post of Secretary of State for Constitutional Affairs.

65 *Constitutional Reform: Next Steps for the House of Lords* (CP 14/03).

66 House of Lords Debates, 26th November 2003 (Vol 655, Col 3).

67 See reports in *The Independent*, 19th March 2004, and *The Times*, 20th March 2004.

## CONCLUSION

Writing in 2004, the United Kingdom still has a second legislative chamber whose membership is based on heredity and patronage. The mixture of the two may be somewhat different from that pertaining before the changes enacted by the Blair government; but still in no way can it be described as democratic, accountable or responsible to the electorate. In this respect, it differs from most other modern democracies. It is suggested that the events and circumstances outlined in this thesis, which preceded the election of the present administration, help throw light on why this continues to be the case. It has shown in some detail how and why the main political parties developed policies in this area; and how and why, all this work notwithstanding, they were never implemented. It has also shown how, nevertheless, there were important political ramifications, particularly for the Labour Party; and also how wider questions of constitutional propriety and import, including the relationships between government, Parliament and the Crown, were perceived and dealt with.

In 1970, at the start of the period in question, a serious attempt at reform by a previous Labour government had recently failed, following which, for a time, there was little interest or enthusiasm for reform in either of the main parties. This failure might have emboldened the House of Lords to make greater use of its powers, but the Conservatives, with their strong numerical superiority, were never seriously threatened there between 1970 and 1974, with controversial legislation going through almost unscathed.

It was only with the return of a Labour government in 1974, enjoying for a while just a very small majority in the Commons and then none at all, that the House of Lords, where Labour was very much in a minority, really asserted itself. With such a weak position in the Commons, the government was particularly vulnerable.

It suffered an enormous number of defeats in the Lords and was forced to compromise on important aspects of its legislative programme. The Conservatives were accused of acting in breach of the Salisbury doctrine - under which they would not use their majority to block legislation which had been in Labour's manifesto. Undoubtedly, they sought to use their majority in the Lords to exploit the weakness of the Labour government, although this did lead to nervousness on the part of some senior figures, who feared it might provoke Labour into action to threaten their majority there or even to abolition of the House of Lords altogether.

Their fears were not wholly without foundation. Certainly the Labour government was extremely unhappy about the situation and dire threats were made by senior ministers. There was apparent support for action amongst Labour backbenchers. However, perhaps surprisingly, little thought appears to have been given in preceding years as to what Labour might do in such an eventuality; and there is no evidence to show that there was any serious discussion of specific measures by ministers in government. Admittedly, they were not in a strong position to force through any controversial legislation, but they might have been supported by the Liberals, with whom Labour, for a period, had a parliamentary pact. Furthermore, if comprehensive reform was not contemplated, there was always the possibility of a short Bill to tackle the powers of the Lords. Such a Bill had apparently been drafted as a possible fall-back measure in 1968 and could presumably have been dusted down a decade later; but those involved then seem to have been unaware of its existence.

Although the Labour government may not have discussed any specific action, this was not true of the Party's National Executive, which had set up a special group to look at policy on this and related issues. After some deliberation, it came forward with an extremely radical solution. Having examined various alternatives, it

concluded that the most straightforward and practical course would be to abolish the House of Lords altogether and dispense with a second chamber. This received overwhelming support at the 1977 Party Conference, but some important practicalities involved in the implementation of the policy had not been fully thought through. These included whether the Parliament Act procedures could be used, whether large scale creation of peers was acceptable or feasible and whether the Crown might become involved in political controversy. Attention had been drawn to these, but the questions had not been resolved - indeed the most senior legal figures gave conflicting advice. These questions would be returned to in the future, but the policy went forward notwithstanding. An alternative policy, involving curbing most of the legislative powers of the Lords, which would have avoided some of these practical objections, had been suggested by Party officials, but was not accepted at the time. However, it was essentially this policy which came to be included in Labour's 1979 manifesto, but only after a major political row at the worst possible moment.

The Prime Minister, James Callaghan, was determined that the commitment to abolition be kept out of Labour's manifesto, but when the policy was originally going through the Party's policy making machinery, there had been no serious attempt to stop it. Indeed ministerial rhetoric might have encouraged expectations of radical measures; and some senior ministers certainly supported abolition. Once the policy had been adopted overwhelmingly by the Conference, it was always going to be difficult to go back on it. At a later stage, when the contents of the manifesto itself were being discussed, there was continued support for the policy from some senior ministers; and only at the very last minute did Downing Street intervene, provoking resentment and a major political row just before a general election, even though mechanisms had been set up to avoid that very situation.



The episode showed how the Prime Minister could be both strong and weak - strong in insisting on a veto over a policy he did not like and thought could be damaging to his party; but weak in not having sorted out the problem sooner. Moreover, it would have further ramifications for the Labour Party after its election defeat, when there were highly acrimonious debates and internal constitutional wrangles, followed by the defection of several prominent MPs to a new political party. The question of control of the manifesto featured prominently in all this, including what had happened to the policy on the House of Lords. Events as detailed in this thesis may help explain the background to this and the resentments which built up, which proved so damaging to the Party at that time.

Developments in the Labour Party, and in particular the adoption of a policy of abolition, also helped bring about a renewed interest by the Conservative opposition in Lords' reform. Certainly there was a strong motivation to come forward with proposals which would forestall more radical moves by Labour and to establish a second chamber with a greater degree of legitimacy to block what they regarded as "extreme" Labour measures. It was in this context that Lord Hailsham famously spoke of an "elective dictatorship".

The Conservatives were forced to acknowledge that the House of Lords as then constituted was widely regarded as unacceptable; and indeed a Party committee chaired by the former Prime Minister, Lord Home, stated explicitly that the status quo was no longer an option and put forward some surprisingly radical proposals for a partly or wholly elected second chamber. However, right from the moment of publication in 1978, there was a degree of distancing by the Party leadership and a sense amongst some of those closely involved that they were unlikely to be formally adopted as Party policy, which in the event they were not; and the ensuing manifesto made no specific commitment on the subject.

Margaret Thatcher was, to say the least, unenthusiastic about Lords reform; and although there were occasional flurries of interest in the Conservative Party, particularly in the early 1980s, when the perceived threat of abolition by Labour was still felt, this waned following the 1983 landslide victory, which meant that there was little prospect of Labour carrying through any such policy in the foreseeable future. Even modest suggestions for minor reforms seemed to find little favour.

During this period, the House of Lords showed itself willing to stand up to the Conservative government on occasion, inflicting on it a number of well publicised defeats. Moreover, those opposed to the government's policies sought to use the House of Lords much more than previously, although this was probably to a substantial degree a reflection of the weak position of the opposition in the Commons. Nevertheless, when it came to the crunch, the government usually succeeded in getting its way on crucial issues, aided if necessary by its "backwoodsmen". It was an irritant rather than an obstacle to the Conservative government; and indeed, in some respects, the occasional defeat on a non-crucial issue could potentially be useful to those who sought to defend the House as it was. Thus, while Thatcher may have occasionally expressed frustration with the House of Lords, there seems never to have been any serious intention of taking action. That certainly was also the case under her successor, John Major. The status quo had come to suit the Conservatives.

The events outlined illustrate how political parties have tended to see things from different perspectives in government and in opposition. The Conservative concern about "elective dictatorship" largely evaporated in the 1980s and with it most of the support in the Party for Lords reform - even though the Thatcher government was then in a much stronger position in both Houses than the Wilson or Callaghan governments had been in the 1970s (although some Conservative politicians were, in retrospect, prepared to acknowledge the existence of "elective dictatorship" under Thatcher too). However, since 1997, the Conservatives have

shown a renewed interest in an elected second chamber. Having failed to act when previously in office to legitimise the second chamber, they have seen their numerical superiority greatly reduced by the removal of most of the hereditary peers, and found a new status quo which suits them less well.

It was not just the Conservatives whose viewpoint changed when in government and in opposition. This was also true of Labour. Initially, after its 1979 defeat, it looked back to the policy of abolition. The practicalities of achieving this were examined again, but the outstanding questions were never satisfactorily resolved. Notwithstanding his own personal support for abolition, the Party Leader, Michael Foot, helped narrowly to defeat those who advocated mass creation of peers in an attempt to implement the policy and, in the event, the 1983 manifesto - on this aspect of policy, at least - was not dissimilar from that of 1979. However, the Party's policy still largely reflected frustration from its time in government and was geared mainly towards removing a potential obstacle to a future Labour administration. Two further election defeats would change this perspective.

By the late 1980s, after a decade or so of frustration in opposition, the Labour Party came to see the second chamber as a potential means of blocking Conservative excesses, an approach similar in many respects to that taken by the Conservatives in opposition to the Labour government in the 1970s. It had been unable to prevent a Conservative government with a large majority driving through major changes, including some with important constitutional implications. Such limited successes as there had been had come mostly in the House of Lords.

Unlike in the 1970s and early 1980s, the Parliamentary leadership now took much more of a leading role in policy development, the influence of the NEC and the Party Conference having diminished; and it saw the second chamber as having potentially an important role in safeguarding some of the key reforms it was working to bring about. Thus, while still advocating abolition of the House of Lords as such, it now supported the idea of a democratically based second chamber, with enhanced powers to block fundamental changes to constitutional and individual rights. As we have seen, similar ideas had been discussed by the Conservatives a decade previously, when they were in opposition.

This was an example of how Labour's much vaunted policy review of the late 1980s brought about a major change in approach. The policy was, in part, bound up with the Party's commitment to devolution, particularly in Scotland, and the need to be seen to safeguard any settlement there; but certain aspects, including whether there could in reality be a formal entrenchment, were never fully worked out. The Labour leadership also seems to have assumed rather too readily that a new second chamber would share its views in those areas over which it would have special powers (an assumption some Tories may also have made in the 1970s). This could certainly not be guaranteed; and, had the policy been implemented, a future Labour government might have been faced with a second chamber equipped with stronger powers and greater legitimacy, attempting to block some of its measures. This may be one reason why Tony Blair later came to have strong reservations about an elected chamber, and the policy was in due course abandoned. Again, it may also illustrate the different perspectives of government and opposition.

This thesis has concentrated mainly on the development of policy in the two main parties. The developments in the Liberal Party and later the SDP and the Liberal Democrats have also been noted, but fairly briefly since, although they took an interest in this area, they were, for the most part, unlikely to be in a position to implement their policies. For a short period in the 1980s the opinion polls may have suggested otherwise, but this did not last. Although they might have had the potential to exercise influence in a hung Parliament, the issue did not feature in the Lib-Lab pact of the 1970s. Later there would be a good deal of common ground between Labour and Liberal Democrats on the issue, when they both supported an elected second chamber. Had Labour been narrowly elected, say in 1992, it could probably have counted on Liberal Democrat support to carry through any reform of the second chamber. When Labour was eventually elected in 1997, it did initially seek collaboration with the Liberal Democrats on issues of constitutional reform, but in the end, the Blair government, enjoying a huge Commons majority, acted on its own initiative to reform the House of Lords.

The Labour government has now, to some extent at least, succeeded in what was an objective over much of the post-war period, in creating a second chamber which is no longer dominated by its political opponents and which may be - in the same way as it was to its Conservative predecessors - an irritant but not a serious obstacle to its programme. By contrast, the Conservatives, having shown an interest in heading off what they regarded as unacceptable reforms by Labour when in opposition, failed to act when they were in office. Thus we now have a situation in the early years of the 21st century in which, having carried through a modest but undemocratic reform which ended Conservative dominance of the second chamber, a Labour government appears reluctant to pursue any reform which might result in a body with greater legitimacy to obstruct its programme.

It is probably true to say that the present situation is widely regarded as unsatisfactory, having resulted in a sort of half-way House that is neither accountable nor democratic and which still lacks legitimacy. This might suggest that there was some merit in the argument that abolition could be the most straightforward course of action. Certainly there is a strong case for arguing that there might have been a more satisfactory outcome if one or other of the previous schemes, which this thesis has examined in detail, had been implemented. These have ranged from outright abolition to a fully elected chamber, both of which were advocated at various times by the Labour Party. They have also included the elected or part-elected, part-nominated chamber proposed by the Conservatives' committee under Lord Home in the 1970s; and the variants on these proposed at various times by the Liberals and the Liberal Democrats. Each of them had various advantages and also disadvantages, which have been discussed here; but each of them would have had some coherence and would, arguably, have been preferable to the present position. As it was, a good deal of time and effort was expended and political controversy engendered, but the House of Lords survived; and despite recent changes, the challenge of establishing a more representative, accountable and viable second chamber remains to be addressed by politicians in the 21st century.

**APPENDIX 1**

**HOUSE OF LORDS: STATISTICAL INFORMATION**

**Table 1**                      **Composition of the House of Lords**

<i>Type of Peer</i>	<i>1970/71</i>	<i>1980/81</i>	<i>1991/92</i>
Hereditary by Succession	764	769	758
Hereditary - First Creation	86	35	19
Life Peers (1958 Act)	184	330	373
Life Peers (Law Lords, 1876 Act)	18	19	20
Lords Spiritual	26	26	26
<b>TOTAL</b>	<b>1078</b>	<b>1179</b>	<b>1185</b>
<i>Of the above:</i>			
Without Writ	101	87	80
On Leave of Absence	171	160	133

*Sources:* J A G Griffith and M Ryle, with M A J Wheeler Booth:  
*Parliament - Functions, Practice and Procedure* (Sweet & Maxwell, 1989);  
 House of Lords Information Office

*Note:* Peers on Leave of Absence or without writ were ineligible to attend.

**Table 2**                      **Party Strengths in the House of Lords 1988-89**

	<i>Hereditary</i>	<i>Life</i>	<i>Law Lords</i>	<i>Total</i>
Conservative	328	105	-	433
Labour	12	101	-	113
Lib/Lib Dem	29	27	-	56
SDP	9	14	-	23
Cross Bench	134	86	20	240

*Source:* D Shell & D Beamish: *The House of Lords at Work: A Study based on the 1988-89 Session* (Clarendon Press, 1993).

*Note:* (i) 'Hereditary' includes those of first creation.  
 (ii) Bishops and other peers without any registered affiliation not included.

**Table 3** Changes in Party Strengths in the House of Lords

	1975	1991
Conservative	292	458
Labour	149	115
Lib / Lib Dem	30	68
Cross Bench	281	259

*Sources:* D Butler and G Butler: *Twentieth Century British Political Facts 1900-2000* (Macmillan, 2000); †  
*Dods Parliamentary Companion* (1992 edition).

*Note:* (i) Peers without any registered affiliation not included;  
(ii) Figures quoted for 1968 (Cmnd 3999, p 5) show Conservative 351, Labour 116, Liberal 41, Other 554 (including those without registered affiliation).

**Table 4** Peerage Creations by Prime Ministers

**(i) By Category of Peerage**

	<i>Hereditary</i>	<i>Life (1958 Act)</i>	<i>Law Lords</i>	<i>Total</i>	<i>Annual Average</i>
Heath 1970-74	-	45	3	48	12
Wilson 1974-76	-	80	3	83	38
Callaghan 1976-79	-	58	2	60	19
Thatcher 1979-90	4	201	11	216	18
Major 1990-97	-	160	11	171	25

**(ii) By party affiliation**

	<i>Con</i>	<i>Lab</i>	<i>Lib/Lib Dem/ SDP</i>	<i>Crossbench/ Other</i>	<i>Total</i>
Heath 1970-74	8	9	2	26	45
Wilson 1974-76	22	39	6	13	80
Callaghan 1976-79	5	29	1	23	58
Thatcher 1979-90	98	56	10	41	205
Major 1990-97	75	40	17	28	160

*Source:* *Peerage Creations 1958-1998* (House of Lords Library Notes).

*Note:* (i) The above figures are listed under the Prime Minister at the time of announcement. Resignation/dissolution honours which were the responsibility of an outgoing Prime Minister are included under his/her successor, if announced later. Available information suggests that under Heath there were 8 thus attributable to Wilson, under Thatcher 11 attributable to Callaghan, and under Major 7 attributable to Thatcher.  
(ii) Of Major's total of 160, 35 preceded the 1992 general election (and there were a further 21 dissolution honours).  
(iii) List by party affiliation does not include Law Lords.



**Table 5**      **House of Lords Attendance 1989-90**

	<i>% Attending over one-third of sittings</i>	<i>% Not attending at all</i>
Conservative	20.1	11.6
Labour	25.7	7.1
Lib/SDP	27.8	9.7
Crossbench/Other	5.7	56.1
Bishops	0.0	7.7
Law Lords	10.5	31.6
All Created Peers	21.0	9.9
All Peers by Succession	10.6	41.7
Total	14.3	30.4

*Source:* D. Shell: *House of Lords* (2nd Edition, Harvester Wheatsheaf 1992).

*Note:* The above figures include those without writ or on leave of absence.  
*[If these are excluded, the figure for Crossbench / Other attending one-third of sittings is 10.2%; and for those not attending at all is 21.2%. The total figures are then respectively 17.7% and 14.0%.]*

**Table 6**      **House of Lords Business**

<i>Session</i>	<i>Sittings</i>	<i>Ave length of Sitting</i>	<i>Average Attendance</i>	<i>Public Bills</i>	<i>Amendments Made</i>	<i>Divisions</i>
1971-72	141	5hr 46min	249	89	974	171
1990-91	137	6hr 28min	324	63	635	104

*Sources:* Butler & Butler (op cit); House of Lords Information Office.

**Table 7**      **Government Defeats in the House of Lords**

**(i) By Periods of Government**

	<i>Defeats</i>	<i>Divisions</i>	<i>%</i>
1970 - 74 (Con)	26	459	5.7
1974 - 79 (Lab)	*	*	*
1979 - 83 (Con)	45	723	6.2
1983 - 87 (Con)	62	700	8.9
1987 - 92 (Con)	72	841	8.6

*Source: Divisions in the House of Lords since 1970-71* (House of Lords Information Office, 1996).

*Note:* Figures for Labour government 1974-79 are incomplete. However they are available for 1975 - 79 and show 240 defeats in 308 divisions (77%). According to Shell (*The House of Lords*, op cit, p 25), over the whole period the Labour government was defeated more than 350 times in over 80% of divisions. Another reference source, *Parliament in the 1980s* (ed Philip Norton; Basil Blackwell, 1985; p 14), lists 362 defeats in those two Parliaments.

**(ii) Individual Sessions**

	<i>Defeats</i>	<i>Divisions</i>	<i>%</i>
1971 - 72	5	171	3
1975 - 76	126	146	86
1980 - 81	18	184	10
1984 - 85	17	142	12
1988 - 89	12	189	6

*Source:* As for 7(i) above.

*Note:* These statistics cover the first normal length session of each Parliament.

**Table 8**      **Life Peerage Creations**

*Total Number of Peerages created under 1958  
Life Peerages Act since its inception:*

as at June 1970	188
as at June 1992	621

*Source:* House of Lords Information Office.

## APPENDIX 2

### LABOUR PARTY MACHINERY OF GOVERNMENT STUDY GROUP

#### Membership: 1976

##### *National Executive Committee:*

Eric Heffer MP (*Chairman*), Tony Benn MP, Michael Foot MP, John Forrester, Bryan Stanley, Shirley Williams MP

##### *Co-opted Members:*

Tony Banks\*, Norman Buchan MP\*, Ken Coates\*, Bernard Crick, Lord Crowther Hunt, Norman Ellis, John Garrett MP, Bryan Gould MP, John Griffith\*, Adrian Ham\*, Cledwyn Hughes MP, Sydney Irving MP, Bill Kendall\*, Neil Kinnock MP\*, David Lea, Alex Lyon MP\*, John Lyttle, John Mackintosh MP, Michael Meacher MP\*, Frances Morrell, Robert Neild, Arthur Palmer MP, Derek Robinson, Brian Sedgemore MP\*, Robert Sheldon MP, Lord Shepherd, Dennis Skinner MP\*, John Torode\*, Bill Wedderburn\*

*Secretary:* Tim Lamport

*Note (i)* The co-opted membership was first agreed in April 1976. Those additional members whom it was agreed to co-opt in June 1976 are indicated by \*.

*(ii)* Some co-opted members were initially described as "correspondent members", but this distinction made little difference in practice.

*(iii)* As of February 1977, the membership had been amended as follows:

*Deletions:* Michael Foot MP (*NEC*); Bernard Crick, Norman Ellis, Lord Shepherd (*co-opted members*)

*Additions:* Judith Hart MP (*NEC*); Lord Balogh, Michael English MP (*co-opted members*)

#### Membership: 1981

##### *National Executive Committee:*

Eric Heffer MP (*Chairman*), Tony Benn MP, Judith Hart MP, Dennis Skinner MP

##### *Co-opted Members:*

Lord Balogh, Tony Banks, Norman Buchan MP, Bill Callaghan, Ann Carlton, Campbell Christie, Lord Crowther Hunt, Colin Crouch, Michael English MP, John Garrett MP, Bryan Gould, John Griffith, Adrian Ham, Roy Hattersley MP, Stanley Henig MP, Patricia Hewitt, Lord Irving, Joe Jacob, Alex Lyon MP, Michael Meacher MP, Frances Morrell, Charles Morris MP, Brian Sedgemore, Robert Sheldon MP, John Silkin MP, John Torode, Alan Williams MP

*Secretary:* Tim Lamport

*Note:* In addition to the above, Rober Neild and Lord Wedderburn were designated 'Consultative members'.

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