A More Legitimate and More Powerful Upper House?
The Semi-reformed House of Lords

ESRC End of Award Report

Background

Labour came to power in 1997 on a promise to reform the House of Lords in two stages. The first stage would remove the hereditary peers. The second would create a second chamber that was born not of accident but of explicit design, to replace the curious mixture of life peers, bishops and law Lords which remained following tinkering over the years.

As is well known, the first stage (largely) happened, but the second is still awaited. Given the history of Lords reform in the 20th century, this is no great surprise. Ambitious plans for wholesale reform have always faltered, while occasional piecemeal and long overdue reforms have succeeded. The most recent example prior to the removal of (90% of) the hereditaries in 1999 was the addition of life peers in 1958. Although seen at the time as a small and inadequate change, this endured for 40 years before further significant reform to the chamber's composition, and in retrospect was seen as very important in reviving its status, and perhaps even preserving it from abolition.

This history raised a question about the impact the 1999 reform would have. While most debate about the House of Lords focused on the question of further reform, this project set out to investigate whether the change that had already happened was actually more important than it was given credit for at the time. Unlike the 1958 reform, where an opportunity was missed, this project allowed developments to be recorded in real time.

There were several reasons why the removal of the hereditary peers might prove important. The obvious one was that, although the chamber continued to include no members elected in the conventional sense, the most obviously anachronistic element of its membership had been removed. Even the 92 hereditary peers who remained were elected from amongst those who were most active. This meant that in some sense all members had entered the chamber via their own merits rather than as a result of pure accident of birth. Albeit starting from a low base the reform therefore could potentially, in the words of former Lords leader Margaret Jay, make the chamber seem 'more legitimate'. In addition, the reform significantly changed its party balance. Formerly dominated by the Conservatives, the Lords now included a roughly equal number of Labour and Conservative peers, alongside an equally large number of Crossbench independents, plus Liberal Democrats and bishops. Both of these factors made it likely that the chamber would feel more confident to intervene in the policy process, having previously exercised self restraint while dominated by Conservative hereditary peers. It also raised questions about how attitudes to the chamber would change, amongst both members and nonmembers, and how behaviour might alter in the various party groups. These were some of the questions this project set out pursue.

Objectives

The broad objectives of the project, as stated in the funding proposal, were as follows. In each case a brief assessment given here, but a fuller assessment can be reached drawing on the material in the later sections of this report.

1. *To assess the overall impact of the 1999 reform of the House of Lords, with particular reference to whether it made the chamber stronger.*

This was the most general, and most challenging, of the project's objectives. The question of whether the House of Lords is now 'stronger' is a difficult one to answer, given both the difficulty of measuring legislative influence and the lack of comparable evidence from earlier periods. However, the project has answered this question as well as could be hoped given the material available – i.e. without extensive historical study, which was clearly outside its scope. Answers are indicated in the 'results' section. This analysis forms the basis of a synoptic article which is currently under preparation for *Political Studies*. During the course of the project our results have contributed significantly to a lively debate in political circles about whether the House of Lords has strengthened, as indicated later in the report.

2. To assess the impact of the 1999 reform on the behaviour of party groups in the House, with particular attention on the Liberal Democrats, as the potentially 'pivotal voters' in the reformed chamber.

We have collected significant data about the voting, attitudes and procedures of all groups in the House, drawing from surveys, interviews and material on the public record. This has fed various chapters, conference papers and journal articles, as well as less formal outputs. In particular we have drawn attention to the pivotal role of the Liberal Democrats, including giving a paper in the British Liberalism stream of the PSA's EPOP conference in 2006. Significant further data on the parties remains (as yet) unpublished, and is likely to be drawn upon by a future book project.

3. To explore the backgrounds, attitudes, voting behaviour and overall influence of the independent 'Crossbench' peers, who also potentially hold a pivotal role.

Two conference papers have been given on the behaviour and influence of the Crossbench group, drawing on survey, interview and voting data. One of these is due for publication in *Parliamentary Affairs*. We have also held a seminar in the House of Lords jointly with the Crossbench peers about their role. The project has significantly contributed to knowledge in this under-researched area.

4. To test attitudes of members of both Houses, the media and the public to the 'legitimacy' of the House of Lords, and its right to intervene in policy.

Questions on legitimacy and attitudes to powers of the House have been central to our opinion surveys with all these groups, and have contributed significantly to debate amongst policy makers (see below). These have been some of our most important and unique findings, and have fed various academic publications. Most specifically a paper on legitimacy was given to the PSA specialist group conference on legislative studies and awaits revision for journal publication. The one element of this work which has not progressed relates to comparison between UK and Australian debates about legitimacy, due to lack of access to Australian data. This remains a possibility for the future.

5. To assess which groups are contributing to government defeats in the House of Lords, and on what policy issues.

Our voting data makes this assessment possible, and the key results were reported in a paper entitled 'Why Does the Government Get Defeated in the House of Lords? The Lords, the Party System and British Politics', given at the PSA conference in 2006 and published in the journal *British Politics*. This highlighted the pivotal role of the Liberal Democrats, the relative cohesiveness of party voting, and the limited influence of the Crossbenchers on voting outcomes.

6. To build a database of information on votes in the House of Lords, and make this information available publicly.

Many of our results draw from this database, which is described in the 'methods' section. Data on voting in the Lords from 1999-2006 has been sent for deposit with the data archive. As reported below, we have also made data on government defeats available on a dedicated website. This was not promised in the original project proposal.

7. To disseminate results widely through different channels to academic audiences, to policy makers and to wider audiences through the media, and to contribute to debates about possible future reform.

The success of this objective is reported in the 'outputs' section below, and the extent to which the project has influenced debates in the 'impacts' section. The project has been both highly productive and influential, including on policy debates.

8. Through all of the above, to enhance understanding of the parliamentary system in contemporary Britain, and bicameralism more widely.

Many of our publications have emphasised the significance of a more assertive House of Lords for the British system of government, reaching a wide audience. They include chapters in textbooks, academic journal papers, policy briefings, media articles, and presentations to teachers and A-level students. Our conclusions are now regularly being drawn on by other academics (for example at length in Anthony King's *The British Constitution* (OUP, 2007)), politicians and journalists. The work has also resulted in various outputs for comparative audiences, including a paper on bicameralism at the ECPR conference (awaiting revision for journal submission), and papers to high-level audiences in Australia and Canada (one to shortly appear in a book with Queensland University Press).

As is inevitable with any large project, we have not met our original objectives in terms of every dot and comma. In places our attention shifted slightly, because the original questions proved not to be as key as we thought, data was difficult to obtain, or other more interesting questions arose. But broadly, the project has met, and in many ways exceeded, the expectations initially set. While some aspects were not pursued, and some work is still in progress, there are other areas where we delivered far more than was promised. The website on government defeats is an example, but others include the various outputs for schoolteachers, the evidence given to key Parliamentary committees, the extent to which work has been quoted by senior politicians, and the ability of the work to feed debates on second chamber reform in Canada (and a lesser extent Australia), as well as the UK.

Methods

The research employed four broad methods: analysis and storage of parliamentary data already on the public record, questionnaire surveys, elite interviews and (more minimally) media content analysis.

Analysis and storage of parliamentary data

The project recorded and stored details of all 'divisions' (colloquially, votes) in the House of Lords since reform in 1999, and all members who served in the House during this time. At time of writing this amounts to 1194 divisions and 939 members, generating over 830,000 records of individual members' votes. Data for 1999-2004 was built on (Excel) files provided by the House authorities, but data from 2004 was collected from Hansard in real time. Additional data was collected on the 412 government defeats during this period, the 261 members who served on the Crossbenches, and the bishops and hereditary peers.

A database was constructed in Microsoft Access for storage and analysis of this data, which is complex for a number of reasons. For example, unlike the House of Commons members join and leave the chamber regularly throughout the year, some take 'leave of absence' whereby they

temporarily opt out of attendance, and floor crossing is common (particularly between the parties and the Crossbenches). Storage of data on voting loyalty and attendance therefore required both specialist database design skills and regular contact with the House authorities. Similarly, a semi-automated system for the transfer of voting records from Hansard into the database was specially designed, while the interpretation of each division required specialist knowledge about the Lords. This presented some challenges. But the database functions well and has been the essential underpinning of most of our research outputs. It also contains the information from our surveys and interviews, allowing cross-referencing between peers' backgrounds, voting behaviour and attitudes.

Questionnaire surveys

The second main method was questionnaire surveys, to three different groups: peers, MPs and the public.

- Two surveys of peers were conducted, in 2005 and 2007. An eight page questionnaire was circulated to all peers, asking questions about their work, behaviour of party groups, attitudes to the chamber's powers and legitimacy, and change since 1999. A minority of questions were repeated in both surveys. The response rate was extremely good: 396 in 2005 and 381 in 2007 (well over 50% of peers). Responses were remarkably representative of party groups, new and established peers, and regular and non-regular attendees. Results were initially stored in Access, with data extracted for analysis in SPSS.
- Two questions were also included in a survey of MPs in 2004 (which largely focused on other matters). These were identical to two questions from the 2005 peer survey, about the impact of the 1999 reform on the chamber's legitimacy, and its right to block legislation in different circumstances. The response rate was 30%.
- Two sets of questions were also included in public opinion surveys conducted by Ipsos MORI. All questions related to the Lords' legitimacy and powers. The first were included in MORI's May 2005 telephone omnibus survey to 1,007 respondents and were identical to those asked to MPs (and peers). The second were included in MORI's October 2007 face-to-face omnibus to 2,044 respondents and repeated questions asked that year to peers. As well as demographic variables this survey also included a control question gauging respondents' general knowledge about parliament, allowing more nuanced analysis.

Interviews

The third method was elite interviews, principally with peers. 60 interviews were carried out with a representative sample of peers, and 10 with selected senior officials within the House. Several peers interviewed held, or had held, key positions. Interviews explored in more detail the operation of the party groups, whipping, the appointments process, the organisation of individual peers' work, and how the chamber has changed since 1999. Interviews were conducted on a confidential basis, due to the sensitivity of the issues discussed, providing both background information and anonymous quotations for publication.

Media content analysis

Finally, the research drew on a content analysis of 250 'leader' articles in the national press relating to the House of Lords from 1997 to 2006. The purpose of this analysis was to determine the media's attitudes to the 'legitimacy' of the House of Lords and its use of its powers, how this differs between broadsheet and popular, liberal and conservative press, and over time. This analysis was reported in the conference paper on legitimacy.

Results

Key results of the project can be broken down into the following areas:

The role of the House of Lords in British politics

The House of Lords has long been considered a fairly peripheral institution, and few predicted that the 1999 reform would change that. This was seen as a small and temporary first step to a (still elusive) truly 'reformed' second chamber. But our results demonstrate that the Lords is already playing a significant role in the policy process in Britain. This may in part have already been the case (afterall, few people previously studied the House), but has also been influenced by the unexpected effects of reform. For example, our analysis of the 345 government defeats in the House of Lords from 1999-2006 (awaiting publication in the *British Journal of Politics and International Relations*) found that the government completely overturns only four out of 10 Lords defeats, whilst in four out of 10 the Lords can be judged to have 'won' more than the government when the policy is finally settled. Furthermore, a Lords 'win' is actually more likely on a major than a minor policy issue (41% versus 31% respectively). Some Lords wins have been high profile: for example, the chamber's repeated blocking of restrictions on trial by jury and the attempt to introduce a new offence of incitement to religious hatred. But many others occur under the media's radar, partly because it is in the government's interest to compromise quietly rather than being seen to climb down.

In terms of policy influence, government defeats in the Lords are only the beginning of the story. Most amendments in the House are made without division, and government frequently offers compromises to avoid defeat. This conclusion is supported by our 2007 survey, which found that 33% of peers considered government defeats to be 'very important' to the chamber's policy influence, while 54% said the same about 'government bringing forward its own amendments under pressure from peers'. A detailed analysis of the compromises reached without division in the House was beyond the scope of this study, and is something for which the investigator is seeking future funding. But a case study (presented at the 2007 PSA conference) made of the 859 amendments proposed to the Identity Cards Bill found that most government amendments responded to non-government concerns, and most of these amendments were made in the Lords rather than the Commons. Peers extracted a number of significant concessions on the bill.

These results feed into a more general debate about the role of parliament in contemporary British politics. It has been argued (particularly by Philip Cowley) that the House of Commons is becoming more assertive. These broader debates have started to be influenced by our results. A key area for future research (which our work began to explore) is the interrelationship between the two chambers, and the potential for Lords defeats and backbench Commons rebellions to be co-ordinated and reinforce each other.

The Lords and the parties

One of the central objectives of the project was to investigate the role of the political parties in the chamber, and how this may have been changed by reform. A key reason that the Lords has been assertive and influential since 1999 is the change in party balance which reform brought about. It is no longer a Conservative-dominated chamber, but instead the balance of power is held by the Liberal Democrats, Crossbenchers and others. Indeed in 2005 Labour became narrowly the largest party. The central question, therefore, is which group or groups are influential in practice. This question was investigated in 'Why Does the Government Get Defeated in the House of Lords?', presented at the 2006 PSA conference and subsequently published in *British Politics*. This analysis, based on all divisions in the House from 1999-2005, demonstrated that the Crossbenchers are rarely decisive on legislative outcomes due to their low voting numbers and lack of cohesion, and that the Liberal Democrats, despite their far smaller size, have disproportionate influence. Of 283 defeats in the Lords, the government was supported by the Liberal Democrats on only 12 occasions. The key explanatory factor in the growing number of defeats since 1997 is this party's changing attitude, from largely voting with the government to largely voting against it. Given that the Conservatives never support the government (though they do occasionally abstain) and Crossbench impact is limited, the Liberal

Democrats are generally the pivotal voters in the Lords. In achieving this the party benefits from far higher turnout than other non-government groups, highly cohesive voting, and organisational advantages that come from its smaller size. Our surveys also show Liberal Democrat members to be both more ideologically and socially cohesive than other groups.

These results challenge traditional assumptions about both the House of Lords and the British party system. Our data shows that 'cross-voting' in the Lords is rare, despite its renowned 'less partisan' culture. The outcome of divisions is largely predictable by party positions (though abstention/absenteeism is important). As the Lords is becoming an important site of interparty negotiation, we find that all parties are taking the appointments process and management of members more seriously. But what also would have gone unnoticed, were it not for this work, is the growing influence of the third party in British politics through the Lords. This helps explain the chamber's successful intervention in many civil liberties matters in recent years. Various authors (most notably Patrick Dunleavy) have suggested that devolution and other constitutional changes have put the traditional two-party system under significant strain. We have demonstrated that the House of Lords also contributes to this. But in addition policy-making in Britain is actually already far more plural than people might think.

The paradox of independent parliamentarians

Another objective was to investigate the role of the non party-aligned Crossbenchers. As already noted, this group is far less influential in legislative outcomes than its numbers would suggest. But there are other questions. For example, it has often been assumed that the Crossbenchers have Conservative leanings (based on their voting when the group was largely hereditary). Our analysis showed that this view is outdated, and indeed that the ideological and voting profile of the Crossbenchers is changing further following reform. New members appointed by the House of Lords Appointments Commission (created in 2000) are often drawn from voluntary sector backgrounds, and split their votes relatively evenly between government and opposition. The change to the appointments process has raised difficult questions about how to define 'independence' , and how to support non-party members in a party dominated parliament. These issues are of interest given that most proposals for future Lords reform envisage a continuing role for appointed independent members. They were explored, drawing evidence from voting analysis, questionnaires and interviews, in two conference papers delivered in 2006 and 2007. One of these has been accepted for publication in *Parliamentary Affairs*, and will also be published as a Constitution Unit briefing.

The Lords and notions of legitimacy

A fourth central strand of the research was investigating notions of the House of Lords' legitimacy. When reform happened, ministers claimed that the chamber's legitimacy would be enhanced. Legitimacy is a contested concept, and we have not sought to construct objective measures of it, but instead explored extensively attitudes to and perceptions of it. Our surveys of peers, and survey of MPs, show it is widely believed in political circles that the House of Lords is more legitimate post-1999. In both 2005 and 2007 a consistent 77-78% of peers agreed the 1999 reform had made the chamber more legitimate. In 2005, 57% of MPs, including 75% of Labour MPs, said the same. The public were more ambivalent on this question (at 43% in 2005), but demonstrated significant support for Lords intervention on policy. Around two-thirds of respondents (largely irrespective of party allegiance) believed it was justified for the Lords to block an unpopular or controversial policy, even if it was in the governing party's manifesto. Unsurprisingly, this view was strongly shared by peers. But more surprisingly, a majority of Labour MPs accepted the Lords blocking policies that were unpopular, or on which there had been a government backbench rebellion, so long as these were not in the manifesto. This showed differences in attitude to the 'Salisbury Convention' (whereby the Lords does not block manifesto bills), which have since come to the fore in debate. But they generally showed widespread support for Lords intervention. Finally, our media content analysis found that the newspapers

have grown more positive in their coverage of the Lords since 1999 – particularly the liberal broadsheets thanks to its stance on civil liberties issues.

These perceptions, by peers, MPs, public and media, have all helped feed a greater confidence by the chamber which helps account (alongside the change in party balance) for its successful intervention in policy. In our 2007 survey 86% of peers stated their confidence to demand policy change had increased since 1999. This is, in a sense, counterintuitive: after all, the chamber remains unelected. It contradicts the assumption by some political scientists (notably, with respect to second chambers, Arend Lijphart) that legitimacy flows directly from election. In fact, in the case of the Lords, the chamber's new more proportional party balance has added to its sense of legitimacy, particularly given the contrast with the non-proportional House of Commons. This leads us not only to re-evaluate the Lords, but to re-evaluate our general understanding of the dynamics of bicameralism. These issues have been explored in two conference papers: 'Legitimacy and Bicameral Strength: a Case Study of the House of Lords' and 'Reform of the British House of Lords: A Test of Lijphart and Tsebelis', both of which await revision for submission to journals.

Activities

Most activities which the project engaged in are best described under 'Outputs', below. These included contributions to numerous conferences and seminars organised by others. The project itself organised three seminars in the House of Lords to feed back the results of the research: one for each year. Two concentrated on summarising the survey results, while the third was held jointly with the Crossbench peers and focused on the work of that group. In each case the audience was a mixture of peers, MPs, parliamentary staff, civil servants and interested academics. All the events were well attended, with the most recent, hosted by the Lord Speaker in December 2007, attracting around 60 participants. In each case a short briefing paper was circulated to those present, and made available afterwards to others, including the media.

Outputs

The project was highly productive, generating a large number of outputs targeted at different academic and practitioner audiences, as well as more widely through the media. A summary is as follows:

- 10 academic conference papers have been delivered, with two forthcoming. These include three at the PSA, two at PSA specialist groups, one at ECPR, and two at international conferences on bicameralism in Italy and Canada.

- One journal article has been published (in *British Politics*), two others are forthcoming (in *BJPIR* and *Parliamentary Affairs*), and one is in preparation (for *Political Studies*). Three of these began as conference papers, and a further two conference papers (on legitimacy, indicated above) await revision for submissions to comparative political journals. This work will be completed over the next six months.

- Four book chapters have been published. Two were in the *Palgrave Review of British Politics* 2005 and 2006, one in an Italian book on bicameralism and another in a British book on parliament. Two further chapters are forthcoming, one in a British and another in an Australian book collection, as is a contribution to the *Oxford Companion to Law*.

- Five Constitution Unit briefings on the Lords have been published. Two were in the formal report series, and the others (linked to the three seminars mentioned above) were published online. In addition, regular updates on the project and on developments in the House of Lords have appeared in the Constitution Unit's newsletter, *The Monitor*, published three times

a year with a circulation of over 3000 academics and practitioners in Britain and overseas.
The work also informed a Constitution Unit briefing on constitutional reform presented to
Gordon Brown on his accession as Prime Minister, which was subsequently published.

• As well as academic conferences, and the project's own events, there have been numerous
other invited presentations to seminars, conferences and meetings. The most prestigious
amongst these were a lecture to the House of Lords at the invitation of its Leader, and a
public lecture at the Australian Senate. Other events included invited talks to the meetings of
the Crossbench and Conservative peers, two talks at the British Academy, a seminar at the
Department for Constitutional Affairs (now Ministry of Justice), and departmental seminars
at the universities of Nottingham and Sussex. The results reached additional audiences
through two presentations to conferences of A-level politics teachers, and one conference of
around 900 A-level students.

• As Lords reform has remained on the political agenda throughout the life of the project,
there have been other opportunities to feed the results into policy debates. In particular, the
principal investigator gave invited oral evidence to two parliamentary committees: the Joint
Committee on Conventions (on conventions governing the relationship between Lords and
Commons) and the House of Commons Public Administration Committee (on reform of the
appointments process). Invited evidence was also given to a committee of the Canadian
Senate considering proposals for Senate reform.

• There were also various opportunities to contribute to media debates. Important results were
press released during the project, and various commissioned articles written. These include
articles for the *Parliamentary Brief, House Magazine*, and several for the *Guardian*. The principal
investigator also made numerous broadcast appearances, including on Channel 4 News, BBC
Parliament, Radio Five Live, BBC News 24, and Radio 4's Today Programme, World
Tonight, A Week at Westminster and (several times) Westminster Hour. She was also
interviewed for 'The House' on Canada's CBC.

• Finally, the project has established its own website (http://www.ucl.ac.uk/constitution-
unit/research/parliament/house-of-lords.html), on which many of the above outputs have
been made available. As well as these, the website includes regular updates on defeats in the
House of Lords. There is a report for each defeat, detailing its substance, summary voting
figures by party, and lists of voters, drawn from the project database. The website invites
visitors to sign up for quarterly research updates, and/or updates every time a new defeat
occurs. This service is used by parliamentarians, academics and journalists.

Impacts

As demonstrated by the outputs above, the project has had a significant impact on both academic
and policy debates. In the academic world, its outputs are gaining citations and its arguments
feeding through into other publications. In the policy world, particularly given the continued
focus on Lords reform, the impact has been more immediate.

The media impact of the project exceeds that indicated above, as its findings have been
frequently cited by journalists, beyond interventions by the researchers themselves. There have
been numerous references in *The Times, Independent, Guardian, Economist* and elsewhere.

The policy impact also exceeds that indicated, though results being presented to groups in the
House of Lords, Whitehall and further afield would itself perhaps be enough. Further indications
can be found, for example, in the fact that the final key recommendation in the Public
Administration Committee's 2007 report on 'cash for honours' was drawn directly from the
researcher's evidence. The research results on the Salisbury Convention were also influential in

8

the 2006 report of the Joint Committee on Conventions. The project's results have been frequently cited by politicians in debates. They are regularly used in public speeches by the Lords Speaker, Baroness Hayman, and the project researchers were mentioned by name in the winding-up speech by Jack Straw in the Commons debate on Lords reform in March 2007. There have been numerous other references to the project's work in debates in both Houses, including by group leaders Lord Strathclyde (Conservative), Lord McNally (Liberal Democrat), and Baroness D'Souza (Crossbench). The principal investigator has also been invited to private meetings with several ministers, Number 10 officials, and opposition frontbenchers.

A final indication of the project's reach is the number of peers who have asked to be kept informed about the research. There are currently 398 such members (out of a possible total of just over 700). Almost 300 have provided an e-mail address, and receive regular email updates, as do around 50 others outside the House of Lords.

Future Research Priorities

Some future research priorities have already been indicated above. One is to study in greater detail the policy impact of the House of Lords which comes through negotiation rather than defeat. Another is to study the links between Lords interventions and Commons rebellions. Both of these were tested on the case study of the ID cards bill, and further funding will be sought to widen this research to other bills. There is also useful work that can be done on the dynamics of party cohesion in the House of Lords, and on the influence of Lords committees.

Some of this work, as well as the forthcoming journal articles mentioned above, will be pursued by the researcher under an ESRC Fellowship which has recently been awarded. This Fellowship will also enable future research directions to be explored. There is unpublished data collected from this project to feed future publications, which will be complemented by new data collected. A book project is likely, alongside several further journal articles.

It is desirable to maintain the data collection that this project has begun, in order to be able to track changes over a longer time period. The Fellowship will allow voting data to be collected for a further three years. It would also be beneficial to make this data more widely available. At the moment the project website provides some results, but does not make the data fully searchable as it is in the project database. Funding for development in this area would be useful, particularly given that the parliamentary authorities remain reluctant to make available data which is seen as 'politically sensitive'. But this would present some significant technical challenges.

The great unanswered question is whether Lords reform will indeed proceed, as the government continues to promise. If it does, and particularly if elected members are introduced, the need to track the impact of the House and the behaviour of its members will only increase. In this case, the data from this project will have provided an important baseline.