The House of Lords have recently debated the Labour Peers’ Working Group report looking at the future of the House of Lords and its place in a wider constitution. The report was published on 28th May 2014 and was generally well received by contributors from all sides during the 4 hour motion to take note. Lord Dubs, one of the authors, has set out the key conclusions of the working group here but in summary they seek to achieve in the interim a smaller House of Lords, limited to 450 members, ahead of a constitutional convention to decide on the future of the House of Lords and, potentially, other constitutional issues. The report also dealt with other matters such as recommending the final abolition of the remaining hereditary peers’ right to sit (in contradiction to the compromise in 1999 ‘binding in honour’ on those who asserted that they should remain until the second and final stage of reform had taken place), ceasing to wear robes during introduction and some procedural reforms. This post, however, shall focus on two significant issues arising from the debate: the prospects for a convention and the division over the means for the reduction in the size of the House.

A constitutional convention

There has been much talk of a constitutional convention in Scotland should the Yes campaign win September’s referendum there (see e.g. Aileen McHarg’s and Katie Boyle’s blog posts) but regardless of the outcome of that referendum the constitutional position of the whole UK, and the House of Lords within it, is open to question following years of piecemeal constitutional reform. With one or two notable exceptions, there was general support among the speakers for the proposal that there should be a convention.

While the report limited the scope of the proposed convention to considering ‘the next steps on further reform of the House of Lords and any consequential impact on the House of Commons and on Parliament as a whole’ (para 3.14), some speakers took a wider approach. Lord Gordon of Strathblane, for example, endorsed the idea but held that the way European legislation was dealt with and the operation of the House of Commons would be higher up the list for consideration by such a body and Lord Norton of Louth, who had previously argued for one before with a different scope, considered that we need one ‘to help us make sense of where we are, and not necessarily to tell us where we should be going—Parliament can decide that once we have a much clearer appreciation of where we are in terms of the structures and relationships that form our constitution’ (at col 952). Only two peers from some 40 peers who spoke, expressed opposition: Lord Stephen questioned whether any convention could come up with any new answers about the Lords and Lord Howarth of Newport thought that the political parties should distance themselves but that the process ‘might valuably be undertaken by academics and think tanks, which could elucidate the issues and offer useful ideas.’ He further stated that a ‘royal commission, or a commission or convention, will get things wrong… [w]hat they recommend will be found not to work’ before going on to note to the shortcomings of the US Constitution and the 1990s Scottish Constitutional Convention (at col 959).

Significantly, both front benches spoke positively of a wider convention. Lord Hunt of King’s Heath, for the Opposition, noted that not ‘all noble Lords are in favour of such a proposal, but we cannot consider Lords reform in isolation from the many other pressing issues that we face in relation to the constitution, not least, as [Lord Maxton] said, in today’s era of new technologies, and also, as the noble Lord, Lord Phillips, said, in view of young people’s disengagement from politics’ (cols. 983-984). For the Government, Lord Wallace of Saltaire went further:

The case for a commission or convention is out there. There was an excellent report by the House of Commons Political and Constitutional Reform Committee last year which suggested that the Government have no view on this issue at present. However, personally and as a Minister, this is a question that we ought to be debating in the last year of this Parliament. I welcome what the noble Lord, Lord Foulkes, and others are doing. It is one that we all need to consider because we need to look at how all of this runs together. (col. 987)

That is not say that a convention will be immediately forthcoming as time is too short to define what is sought before the election, but that the topic of a convention is, to quote Lord Wallace, ‘precisely the sort of thing’ that could usefully be considered in the last year of a fixed-term parliament which could then be taken forward by the next government. A constitutional convention for the UK (or rest of the UK) can thus be seen to be more likely than it has been in the past.

Reducing the size of the House

There was broad agreement that the House of Lords needed to be smaller and, with one exception, that it should be smaller than the House of Commons. The Act passed in the last session (colloquially termed the Norton-Steel-Byles Act) sought to reduce membership
through expulsion due to criminal offence, voluntary resignation and removing those who failed to attend any sitting during a session (the first of which is in force now and the latter two due to come into force this summer). The report proposed a more drastic threshold of 60% of sittings in a session (which they curiously refer to as an average (at para 8.11)), unless there are exceptional circumstances, and a compulsory retirement for all those who reached the age of 80 in the preceding session (at paras 8.5-8.6).

To have an arbitrary age limit cut-off is inherently discriminatory – in another context it has been described as ‘the statutory age of senility’ – and the justification is slight. Its proponents describe it as the least worst alternative. However, there was support by a number of peers for an evolution of the process that saw the hereditary peers whittled down (attributed to Billy Bragg by the Joint Committee on the Draft House of Lords Reform Bill and as, for example, written about here). Each Parliament, the parties could determine how many hereditary peers each should have (possibly based on the general or other election results, either by each election or through a rolling average) and then elect or select within themselves which peers should remain. Lord Norton of Louth when preferring such a scheme to an arbitrary age limit noted that it ‘would enable the issue of overall size, as well as party balance, to be addressed effectively’ (col. 952). Lord Haskell appeared to prefer a one-off repeat of the Weatherill hereditary peer reduction followed by a formula allowing new peers to be allocated between the parties and the cross-benches (col 980). The proposal fared less well on the front benches. Lord Hunt of Kings Heath drew an unflattering comparison with the hereditary by-elections (where there are sometimes more candidates than remaining peers to act as electors, particularly with regard to the Labour hereditary peers) and considered that the cut-off at the age of 80 was the least worst option (col 983). Lord Wallace of Saltaire pictured ‘a wonderful series of bloodlettings within each of the two groups’ (seemingly forgetting about the Liberal Democrats and others) but, when challenged by the Earl of Sandwich, acknowledged that it was ‘one way of addressing the question of topping up after the election’ (cols 988-989).

In seeking to dismiss the concept of a modified-Weatherill approach to the question of the numbers of sitting life peers (either as a one-off or occurring each Parliament), the frontbench spokesmen appear to have overlooked a number of issues. Lord Hunt was concerned that a system that sought to replicate the general election results would be a strange basis for a distinct House. However, he fails to take account of a sizeable presence of cross-benchers (fixed in one version of the proposal at 20%) which would automatically render the make-up of the House different from the Commons. Furthermore, a system of rolling averages – to avoid temporary blips in electoral support being reflected in the less democratic, less powerful, more reflective House – could be used if a longer term view was sought or, to reflect the differences in different elections, a formula comprising local and European results instead or as well could be adopted. While such a system to reduce the peers – and in the Norton, if not Haskell formulation, keep the number in regular (and reasonably proportional) check – is derived from the Weatherill reduction of peers, to disparage it based on the hereditary peer by-elections is to ignore the differences in size of much of the electorate (there are, for example, over 200 Labour life peers (and nearly 100 Lib Dems) but they have only four seats here) and a compulsory retirement for all those who reached the age of 80 in the preceding session. Lord Hunt could have been more sensitive to the Liberal Democrats and others (but, when challenged by the Earl of Sandwich, acknowledged that it was ‘one way of addressing the question of topping up after the election’ (cols 988-989).

There seems to be near universal agreement that the House of Lords’ size needs to be constrained, not least as the risk now looms large of a ballooning house if new appointments are made to reflect changing strength in the Commons (as predicted by Robert Hazell & Ben Seyd and Meg Russell) even if there is not unanimity about the actual size. It would, on the precedent of the Weatherill amendment, only take a small change to legislation to bring about a system of indirect election as mooted by Lord Norton of Louth which would retain much of the existing strengths (and membership) of the House and which could act to prevent chamber-hopping (see e.g. Meg Russell’s piece from March) and allow more time for a wider-ranging constitutional convention to take place.

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