Senates and Sensibility

An Analysis of Upper House Reform Attempts in the United Kingdom and Canada, 1906-2014

Heather Hughson
Department of Political Science, McGill University, Montreal
August 2016
A thesis submitted to McGill University in partial fulfillment of the requirements of the degree of Doctor of Philosophy

Abstract

This thesis examines the upper house problem in the United Kingdom and Canada, asking why the types of reform sought by institutional reformers have proven to be so elusive. It is the intention of this work to account for a government's success or failure in achieving their desired objectives, and not simply in passing reform legislation. Distinguishing between reform which is technically successful but does not achieve the outcomes intended by reformers, and change which achieves their objectives, defined as meaningful reform, this work examines each instance of credibly attempted significant upper house reform in either country since the start of the twentieth century. It argues that there are two factors which are necessary for reform to be of the meaningful variety: elites must have a correct understanding of both the written and unwritten rules for reform, and they must have a contextualised understanding of the institution they are reforming, including proper identification of causal links between their planned changes and desired outcomes.

This study includes six cases from the United Kingdom, and two from Canada. In the United Kingdom, this includes the 1911 and 1949 Parliament Acts, the 1958 Life Peerages Act, the 1963 Peerage Act, the 1968-69 Parliament (no. 2) Bill, and the 1999 House of Lords Act. In Canada, this includes the 1980-92 era of megaconstitutional politics, and the 2006-14 attempts at unilateral reform by the federal government. In all but two of the eight cases, one or both of the necessary factors for meaningful reform were absent, even though five of the eight cases resulted in some sort of significant change. Only the 1958 and 1963 reforms were both technically successful and produced the desired results, while in 1911, 1949, and 1999, changes actually produced results which were contrary to reformers' objectives. Most of the time, reformers are good at identifying the written and unwritten rules for reform, but are less capable of identifying what they need to change to produce their desired outcomes.

Abstrait

Cette thèse est une étude du problème des sénats au Royaume-Uni et Canada, et se demande pourquoi la réforme de type significatif est tellement difficile à achever. Il n'est pas l'intente de cette étude pour rendre compte de la réussite ou l'échec d'un gouvernement d'adopter une loi de réforme, mais plutôt dans la réalisation de leurs objectifs souhaités. Avec une distinction entre la réforme qui est techniquement un succès mais n'achève pas les objectifs des réformateurs, et le changement qui

achève ces objectifs, dite la réforme significatif, cette œuvre scrute chaque fois qu'il y avait un essai à réformer le sénat dans chaque pays depuis le début du vingtième siècle. Je propose qu'il y a deux éléments nécessaires pour la réforme de type significatif : les politiciens en charge doivent bien comprendre les règlements de réforme écrites et non-écrites, et doivent aussi avoir une compréhension contextualisée de l'institution, y compris l'identification correcte des liens de causalité entre les changements prévus et les résultats souhaités.

Cette étude comprend six cas du Royaume-Uni, et deux du Canada. Au Royaume-Uni, ça inclut les Parliament Acts de 1911 and 1949, le Life Peerages Act de 1958, le Peerage Act de 1963, le Parliament (no. 2) Bill de 1968-69, et le House of Lords Act de 1999. Au Canada, ça inclut l'ère mégaconstitutionel entre 1980 et 1992, et les tentatives de réformer le sénat unilatéralement entre 2006 et 2014. Au total, deux des huit cas manquent l'une ou l'autre des éléments nécessaires étaient absents, tandis que cinq cas ont donné lieu à une sorte de changement formelle. Seules les réformes de 1958 et 1963 étaient à la fois techniquement une réussite, et ont produits les résultats escomptés, alors qu'en 1911, 1949, et 1999, les changements produits étaient effectivement contraires aux objectifs de réformateurs. La plupart du temps, les réformateurs peuvent identifier les règlements écrites et non-écrites avec succès, mais sont moins capables d'identifier ce qu'ils doivent changer pour produire les résultats souhaités.

Acknowledgments

I would like to extend my thanks to the many people, including family and friends, who contributed to this work in a myriad of ways, both big and small.

First, I would like to thank my supervisor, Professor Richard Schultz, for his continuous support of this work. His enthusiasm guided me towards my final research question, and his feedback helped provide focus to an otherwise broad topic. Similarly, I would like to thank the other members of my thesis committee, Professors Hudson Meadwell and Christa Scholtz, for their detailed review of my chapters and insightful lines of questioning which helped add precision to my analysis.

Many thanks also go out to my colleagues, Professors Melanee Thomas (University of Calgary) and Kate Puddister (University of Guelph), for their feedback and advice in navigating the final steps for completing the PhD process. I am grateful to have such generous colleagues who were willing to pass along valuable advice derived from their own experiences as PhD students.

Thanks also go out to Ms Jo Ridgers, who opened her home and heart to me whenever I had to visit London to conduct research at the House of Lords Library.

Finally, my eternal gratitude goes to my partner, Muhammad Wahdy, who supported me throughout the process by listening to more scattered musings about the House of Lords and Senate than anyone should have to hear. His constant and unwavering encouragement made finishing this thesis possible.

Contents

1 Introduction

Bicameralism is one of the most widely used governmental structures among modern democracies, yet among the most poorly understood. Academics and politicians alike are uncertain about the purpose and functions of a two-chambered legislature in a well-functioning system of government, yet bicameralism not only persists but thrives among the older stable democracies. While lower houses are widely accepted to exist in order to represent "the people", in whatever way that is measured, each upper house is unique to its specific context, and there is no universal norm for the constitutional role or legislative purpose of the upper house. Upper houses are central institutions of governance, and are perfectly positioned to significantly influence the outcome of the legislative process, yet in many states, they rarely receive a degree of attention befitting their fundamental importance. In spite of – or perhaps due to – this high prevalence rate in the absence of extensive theorising, the upper houses within bicameral systems are perennial targets for reformers.

The upper houses of the United Kingdom and Canada are particularly stark examples of this phenomenon. They are the only two upper houses among the advanced democracies which are still fully appointed, which makes them the most easily maligned institutions of governance in either state, yet the domestic political literature does a poor job of integrating the national legislature's bicameral structure into models of governance. These two houses have been the subjects of near-constant reform talk for more than a century, and calls for significant reform appear regularly in electoral campaign rhetoric. In the United Kingdom, reformers have enjoyed a relatively high degree of success, while in Canada, reform has consistently remained elusive. Yet despite this remarkable track record, especially from a Canadian perspective, British reformers are rarely satisfied with the outcomes of reform. This study examines why reformers' underlying objectives seem to be so hard to achieve, even when they appear to have succeeded in bringing about formal change.

The elusive nature of meaningful upper house reform, which is distinguished from reform that technically succeeds in passing legislation yet does not accomplish reformers' intended objectives, is the focal point of this work. All technically successful reforms are not made equal, but can instead result in unintended consequences or actually worsen the situation that they are attempting to resolve. This work seeks to identify how reformers manage to forge a successful link between their stated objectives and institutional outcomes, and what causes reform to go wrong when they fail to do so. It is not the

intent of this work to account for the outright technical success or failure of reform, but rather to examine the nuances of how reformers come to understand their objectives in a conceptual manner, and then translate that into actionable institutional change.

This work begins at the opening of the twentieth century, with the first instance of attempted reform occurring between 1906 and 1911. This starting point has been chosen because it coincides with the gradual emergence of modern democratic standards in both countries, and is a major turning point in both democracy and upper house reform attempts in either country. The last prime minister to govern from the upper house in Canada and the United Kingdom left office in 1896 and 1902, respectively, eventually leading to the emergence of constitutional custom that the government leader should sit in the chamber of responsible government and direct representation. It was also around this time that voting rights began their expansion to modern democratic standards; in the United Kingdom, all men received the franchise in 1918 along with a small group of women, with all women receiving full franchise in 1928, while in Canada, white men and women both received full franchise in 1920.[1] Reforms which occurred prior to the twentieth century, particularly in the United Kingdom, are discussed briefly where appropriate,[2] but are not examined as separate cases because the unwritten rules for change under which they occurred were often quite different from those that emerged alongside the expansion of democracy. Although this means that one case included in this study, the 1911 Parliament Act, predates the actual emergence of modern democratic franchise, it occurred within this context of rapidly changing democratic standards, and gives important context for the two attempts at amending the original arrangement in the late 1940s and late 1960s. The emergence of modern democracy is a major turning point in democratic institutional reform, and an appropriate starting point for study of two upper houses that are frequently criticised for being anti-democratic by would-be reformers (c.f. Bromhead, 1958, pp. 245-249; CAB 1/7, 7 September 1909; Canada West Foundation, 1998; Crick, 1957, p. 465; Harper, 2006; HC Hansard, 2 December 1909; Horsman, 1989; McCormick,

[1] In Canada, some racially-based exclusions to franchise existed, regardless of gender. Canadians of Chinese descent were excluded until 1947, and Aboriginal Canadians who were registered as Indians under the Indian Act were excluded until 1960. In Britain, only women over age 30 who either owned property or held a university degree were enfranchised from 1918 to 1928.

[2] In particular, see Chapter 2, "Prelude: Institutional Origins of Second Chambers" (p10), and Chapter 5.1, "Prior Attempts to Reform through Convention: Wensleydale and Rhondda" (p67).

Manning, & Gibson, 1981; McKechnie, 1909; SAM/A/30, 17 December 1912; Spectator, 19 February 1910; Spender, 1923, p. 350; Times, 29 November 1957, p. 10; 30 December 1968).

This introductory chapter gives an overview of this work's objectives, beginning with framing of the research question and ensuing hypotheses related to upper house reform attempts in the United Kingdom and Canada. Then, there is a discussion of the methodological approach used in this study, and the reasons for these methodological decisions, followed by an overview of the universe of cases which warrant inclusion based upon the research question and methodological choices. Finally, this chapter concludes with a brief synopsis of each ensuing chapter, and the main conclusions of each in relation to the original research question.

1.1 Research Question and Hypothesis

This study departs from previous studies of both the British and Canadian upper houses by distinguishing between reform which is technically successful yet disappoints reformers because it did not achieve their objectives, and meaningful reform, which is successful because it manages to bring about the desired changes in institutional character that were intended with the reforms. Broadly speaking, reform is generally split into two types, "small" and "big". First is "small" change, defined in this study as regular institutional renewal, the effects of which may not be immediately noticeable and the consequences of which are generally limited. Second, there is "big" change, or significant reform, which in the context of this study involves noticeable change to the structure, powers, or membership of the upper house. This study looks solely at instances of attempted "big" change, but introduces an additional distinction between types of significant reform, depending on whether the proposed changes actually produce the effects intended by reformers. When the actual or reasonably anticipated outcomes of change are broadly in line with reformers' stated intentions and objectives, a reform is both significant and meaningful. Conversely, when the primary outcomes are unintentional or even contrary to reformers' stated objectives, a reform is significant without being meaningful. This leads to three broad categories of reform, as described below in Figure 1 below.

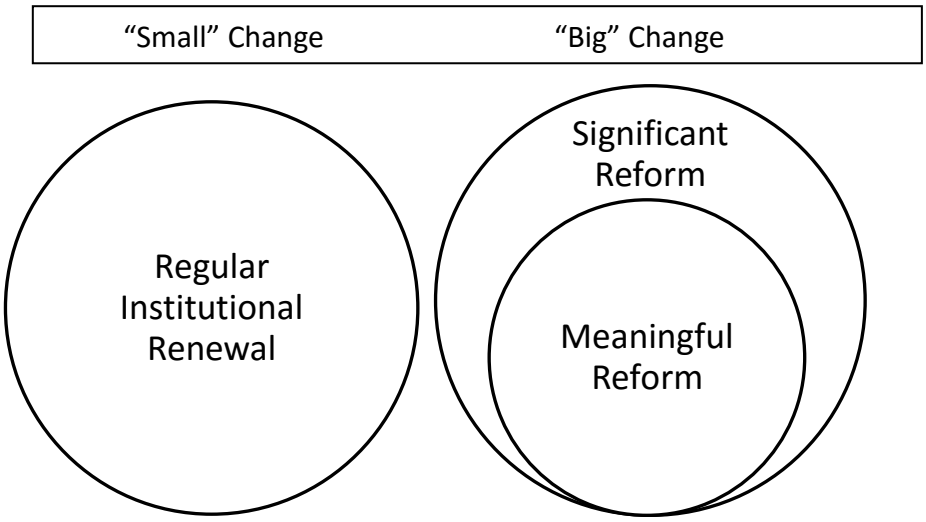

Figure 1 – Three Types of Reform

Where previous studies have sought to account for the success or failure in bringing about any sort of "big" change (c.f. Ballinger, 2006, 2012)[3], this approach has led to somewhat self-evident results, especially from a Canadian perspective, concluding that reform only has a credible chance of passing if it reaches Cabinet's agenda. In Canada's experience with failed upper house reform, reaching Cabinet's agenda is vital, but it is not sufficient to ensure success. In fact, the United Kingdom's track record of technical success once reform reaches Cabinet's agenda appears impressive, yet British reformers have historically been overwhelmingly dissatisfied with the results. This study seeks to explain this discrepancy by making a distinction between these two types of "big" changes, with meaningful reform as the dependent variable being explained in the following text.

To this end, this study looks at each time since 1900 that significant change to the upper house has become a viable possibility, in order to determine the factors affecting reformers' satisfaction and dissatisfaction with the results. Throughout this study, this question leads to the hypothesis that meaningful reform rests upon two independent variables, which are described as the two necessary factors for success. First, elites seeking to engage in upper house reform must have a proper understanding of both the written and unwritten rules for change. Inadequate understanding of the rules for change can lead elites to select ill-advised objectives, or make strategic missteps while waiting

[3] Ballinger (2006, 2012) also includes inter-party conferences in his dataset, and ultimately concludes that reform becomes possible only when it reaches Cabinet's agenda; this conclusion is somewhat self-evident, especially from a Canadian perspective, where the single failure to enact reform in the UK once upper house reform had reached Cabinet's agenda appears to be a high rate of technical success.

for unnecessary preconditions to arise. It can also, as seen in one of the cases examined in this study, mean that a government wastes scarce time in pursuit of objectives which are not viable because they are simply not allowed by the written rules for change. Second, elites need to engage in predictive process tracing, by developing a conceptual understanding of the institution that they are attempting to reform, and establishing that there is in fact a likely causal link between their reform agenda and desired outcomes. It is this factor which often distinguishes between reform which is technically successful yet not meaningful in the intended manner, and reform which is successful both technically and meaningfully. Failure to properly understand the institution, or to make unwarranted assumptions about causal links between institutional structure and outputs, increases the likelihood that reformers will be dissatisfied with the results because the reforms, as enacted, do not adequately address reformers' primary concerns.

1.2 Theoretical Framework and Methodology

This study draws heavily upon the institutionalist traditions within political science, because the research question, as identified above (p3), look at actors' beliefs and attitudes as well as more easily classifiable matters of success or failure. This is a study of two institutions and over a century's worth of dissatisfying results for reform attempts, and they need to be understood as holistically as possible. New institutionalism argues that institutions have their own distinct set of interests, which they can formulate and pursue independently (Evans, Rueschemeyer, & Skocpol, 1985). Both formal and informal rules shape the universe of options and the eventual outcome of political decisions, although often as part of long and sometimes indirect or conditional causal chains (March & Olsen in Rhodes, Binder, & Rockman, 2006). The implication is that institutions are both sources of stability and loci of change. They inherently favour continuity, but can evolve slowly without formal reform through positive feedback loops, while faster change requires deliberate effort under the existing institutional rules and norms.

This thesis implements a historical institutionalist understanding of institutional change and reform, instead of a proceduralist and path dependent perspective, because of the greater purchase that historical institutionalism's methodological combination of synchronic and diachronic analysis yields for studying how the reform process actually unfolds. In this approach, process tracing refers to how elites establish causal links between their formal and conceptual objectives, and come to identify

the likely outcomes of their preferred changes, as opposed to a deterministic model of change. While the practice of process tracing in comparative politics may be of limited value in theory-building, it is still valuable for evaluating the predictive accuracy of elite reform plans. The goal of this methodological decision was to develop a framework which would be expansive enough to use for theory-building, yet particular enough to retain conceptual validity, while avoiding the invocation of path dependent causal chains during the reform processes.

The data collection process followed the qualitative case study methodologies described by George and Bennett (2005), Ragin (2000, 2008), as well as those developed in Brady and Collier's *Rethinking Social Inquiry* (Brady & Collier, 2004). This involved the use of fuzzy-set logic to identify broad categories of phenomena which are observed in varying degrees across the cases, while methodologically, it meant "soaking and poking" (George & Bennett, 2005, p. 89) in the details of each case to ensure proper contextualisation of a detailed chronological narrative, which is necessary for distinguishing between intended and unintended outcomes.

A combination of contemporary government and public records were major sources of data for all eight cases. Declassified Cabinet documents were available for cases prior to 1984, while for the three more recent cases, most Cabinet documents are still classified in both countries. Other publicly available sources, including parliamentary records, recent academic studies, and court documents, were extensive enough to fill in any gaps. Unpublished archival materials were similarly available for all but the most recent Canadian case, the bulk of them held by the House of Lords Library at Westminster, the Bodleian Library at Oxford University, the Library of Parliament in Ottawa, and the Parliamentary Archives in both Westminster and Ottawa. These materials included informational notes prepared for committee meetings, early or alternate drafts of proposed bills, personal journals and diaries, and in one case, an unfinished handwritten book that was being compiled by a close observer of the 1911 Parliament Act. Many of the archival documents also contained personal annotations made by the original owners, including suggestions for possible strategies, reasons for re-wording how a proposal should be presented to Parliament, personal letters referencing private conversations held between the sender and recipient, and highlighting or underlining what the original owners viewed as key passages, all of which could potentially provide valuable insight into the thought process of participants in the reforms. In some instances, the archives contained multiple versions of the same documents which were collected from different individuals, making it possible to verify whether an opinion was held by

one or many participants in the proceedings. However, this is not to overstate the value of these documents – the insight that they provided was limited by the fact that they were unlikely to record the most scandalous or nefarious parts of the proceedings, simply due to the fact that any self-aware participant would be reticent to leave a written record of any real or perceived misdeeds, or voluntarily include them in the piles of discarded documents which were being retained for archival purposes.

Interviews, meanwhile, were deliberately excluded from the study due to the expectation of an unacceptably high degree of unreliability resulting from the highly politicised nature of democratic institutional reform. Political rhetoric is notoriously unreliable for accurately identifying elite motivations, and this is particularly true of senate reform, given the highly partisan manner by which it initially reaches the government agenda. Other studies which have sought to identify underlying reasons and motivations of political actors have similarly eschewed relying on interviews, as "many international leaders take pains to disguise their reasoning and purposes, and therefore much of the best work… consists of reconstructing their assumptions, goals, and images of the world from a variety of sources" (Pelz, 2001, p. 100). Given the objectives of this study, interviews could easily be tainted by re-interpretation of events in retrospect, a desire on the part of interviewee to look better, or adding significance to events after the fact. The self-selection mechanism also means that simply increasing the number of interviewees cannot adequately compensate for the potential drawbacks of asking participants to reflect on their choices. For the same reasons, contemporary statements by elites involved in the reform process need to be treated carefully; it would be an error to assume that the stated reasons and objectives of reform are either true or comprehensive, and so corroboration from additional sources was sought wherever possible.

1.3 Case Selection

In contrast to King, Keohane and Verba's admonition in *Designing Social Inquiry* (1994) to increase the *n* whenever possible, the case selection process in this study intentionally reduces the number of potential cases to a small non-random set. In both the United Kingdom and Canada, plans for upper house reform appear frequently and from many different sources; without parsimonious case selection criteria, the potential number of cases would be overwhelming, and conceptual validity would be stretched so thin as to be meaningless. Arbitrary case selection, on the other hand, would compromise the reliability of results. To ensure consistency in case selection, two criteria were used to determine

whether a case should be included, and all cases since the start of the twentieth century which fits these criteria were included in this study.

First, a reform attempt must have a credible chance of success. Credibility is important because the ensuing plans can be assumed to not just be symbolic statements of ideology. To have a credible chance of success, a plan must come in the form of government-sponsored legislation and constitutional amendments, or deliberate plans for establishing new constitutional convention, which have the support of a significant number of potential veto players have the necessary credible potential, whereas election campaign platforms, green papers, white papers, royal commissions, demands made by the Opposition, private members' bills, inter-party conferences, and proposals from extra-parliamentary groups, do not. This work examines instances of the former, and not the latter.

Second, a reform attempt must seek to change the upper house in a significant manner with a "big" change. This study does not examine the many instances of general upper house renewal in either country, and focuses instead on the attempts at noticeable or significant reforms. To distinguish cases examined in this study from attempts at regular institutional renewal, significant change in this study constitutes a noticeable change to the powers, role, or composition of the upper house. Examples of potential significant reforms and their categories are elaborated in Table 1 below.

Reform Type	Examples
Structure	Constitutional role (lawmaking vs oversight) Legislative relationship with lower house Disagreement resolution methods (joint sessions) Distribution of seats (regional, sectional)
Powers	Constitutional role (law lords as Supreme Court) Veto (outright, suspensive) Ability to introduce/amend legislation Oversight mechanisms Ability to set agenda, censure government
Membership	Selection method (election) Classes of members (hereditary and life peers) Qualifications (property) Tenure (fixed terms)

Table 1 - Three Types of Meaningful Upper House Reform

The first criteria for case selection eliminates innumerable potential cases in both countries, while the second eliminates two additional but notable cases, both from Canada. First, for nearly a century after Confederation, Canadian Senators were appointed "for life", until an Act of Parliament passed by

the Pearson government in 1965 imposed a mandatory retirement age of 75. While this would initially appear to fall under the 'membership' category in Table 1 above, it qualifies as regular institutional renewal instead of meaningful structural reform because of the relatively minor effect that the change had on the operations and fundamental characteristics of the upper chamber. Due to the size limit on the Senate, high rates of absenteeism due to infirmity, inability, or disinterest had always posed a potential problem for the proper functioning of the chamber, making it necessary for Senators to be able to voluntarily vacate their seats early. Prior to 1965, the average age at which Canadian Senators vacated their seats due to death or voluntary retirement was 72; although two Canadian Senators sat past the age of 100, there were also eighteen that retired or died before the age of 50. In the 1960s, with increasing life expectancy and a greater ability to work into old age, it was possible that voluntary retirement would have seen tenure in the upper chamber increase over time, and so the switch to a mandatory retirement age of 75 actually maintained the existing average age of exit, rather than altering it (Library of Parliament, 2014).[4] The limited consequence of the 1965 change was confirmed by the Supreme Court of Canada in its 1979 ruling on the Upper House Reference Case, which referenced the 1965 reform as an example of what was permissible for the federal government to accomplish unilaterally in regards to Senate reform because it did not "affect the fundamental features, or essential characteristics, given to the Senate… in the federal legislative process" (1 SCR 54 (1980), 1979, p. 56).

The second potential case which is eliminated by the requirement for significant change stems from the 1982 patriation of the constitution, when significant reform of the Senate was not up for consideration.[5] While the final document limited the Senate's powers to a suspensive veto over future constitutional amendments, this does not constitute a significant reform in the manner required by this study because of its extremely narrow scope and low likelihood of having a significant effect upon the effective powers of the Senate. The Senate had never previously attempted to block constitutional reform, and it is unlikely to do so under its self-imposed principle of restraint concerning matters of popular governance. Due to the chamber's limited democratic legitimacy, the Senate has historically

[4] For those appointed since 1965, the average age of exit from the Senate has been 71.2. This number excludes Senators currently sitting as of 2015; expanding the sample to assume that all current Senators would sit until their mandatory retirement age would actually increase the average age of exit slightly, from 72.1 for Senators appointed prior to 1965, to 72.3 for Senators appointed since 1965. Data based upon information from the Library of Parliament (2014).

[5] The Senate scarcely warrants a mention in most historical accounts of patriation (c.f. Coyne & Valpy, 1998; Romanow, Whyte, & Leeson, 2007; P. H. Russell, 1993).

adopted for itself a role as constitutional guardian, typically intervening in the legislative process primarily when there is an apparent threat to constitutional principles (c.f. Joyal, 2003; Kunz, 1965; MacKay, 1926). Since the ratification of constitutional amendments by definition occurs explicitly without reference to their constitutionality, the Senate would be effectively limited by constitutional convention to only a delay of future constitutional amendments in order to provide further time for reflection, and would be unlikely to permanently block a constitutional amendment. For this reason, the limitation of the Senate to a suspensive veto over future constitutional amendments in 1982 does not constitute a significant reform to the powers of the chamber, but instead constitutes regular institutional renewal because it codifies existing convention.

Based on these two criteria for case selection, there are six separate instances in the United Kingdom, and another two in Canada, where the government made a serious attempt at meaningful upper house reform. These are summarised in Table 2 below, along with the general goals of the reform proposals that merit their inclusion in this study, as well as the chapter in which each case appears. It should be noted that some cases are grouped together into a single chapter due to thematic similarities between the cases, and not all cases appear in chronological order, with cases from the United Kingdom appearing before those from Canada in subsequent chapters. Further reasons for these decisions are explained in Chapter 1.1, "Research Question and Hypothesis" (p3).

Year	Reform Attempt	Country	Target	Chapter
1911	Parliament Act	United Kingdom	Powers	4
1949	Parliament Act	United Kingdom	Powers	4
1958	Life Peerages Act	United Kingdom	Membership	5
1963	Peerage Act	United Kingdom	Membership	4
1968-69	Parliament (No. 2) Bill	United Kingdom	Powers	5
1980-92	Megaconstitutional Era	Canada	Structure, powers, membership	7
1999	House of Lords Act	United Kingdom	Structure, powers, membership	6
2006-14	Unilateral Attempts	Canada	Membership	8

Table 2 – Summary of cases in chronological order

1.4 Plan of Study

Chapter 2 ("Prelude: Institutional Origins of Second Chambers", p 16) presents an abridged history of the two upper houses discussed in this study up to the end of the nineteenth century, as a prelude

to the analytical chapters. Beginning with the pre-Norman origins of principles that are still found in today's House of Lords, this chapter traces the accidental evolution of British parliamentary bicameralism; the United Kingdom never deliberately chose to formally establish a bicameral system of government, instead happening into the arrangement through a series of informal choices that eventually resulted in long-standing custom, yet bicameralism is one of its most enduring features. This stands in stark contrast to the Canadian Senate, which was the result of extensive and deliberate design; drawing from the American experience of federal bicameralism, as well as the House of Lords, the Canadian Senate was, contrary to popular belief, a carefully and deliberately designed institution meant to buttress, not suppress, democratic representative governance. This historical overview shows how, despite vastly different origins and original purposes, both of the institutions examined in this study arrived at similar structural arrangements and sets of institutional values.

In this context, Chapter 3 ("Literature Review: Bicameralism and Institutional Reform", p 35) then presents a discussion of the existing literature related to bicameralism and democratic institutional reform, beginning with an overview of domestic academic writings studies of the House of Lords and Canadian Senate. It then moves on to discuss the normative justification for bicameralism literature, which is the closest that the field has come to developing an actual theory of bicameralism. This subfield says that, while there is no theory of bicameralism, both elites and academics still appear to choose bicameralism because of expectations related to how bicameral structures affect institutional output. Related to the normative justification argument, and particularly relevant to the Canadian instances of attempted reform examined in this study, is the federalism-bicameralism link. Although this link is dismissed outright by some scholars and overlooked by many others because bicameralism is frequently found in non-federal states, this overview shows how federalism is almost universally associated with bicameralism at the national level, with the only exceptions being microstates and nondemocratic governments. Finally, the chapter concludes with a discussion of the two main theories related to democratic institutional reform, the exogenous shock and reform through crisis model, and the endogenous change through informal adaptation model. The two factors for meaningful reform identified in this work are closely related to these two theories of institutional change, as subsequent chapters show that elites are often operating under implicit theories of what constitutes an adequate opening for reform, and these in turn will inform their expectations for the consequences of change.

Chapter 4 ("Waiting for Crisis: the 1911, 1949, and 1968-69 Parliament Acts and Bill", p52) is the first substantive analytical chapter, and examines three separate yet related instances of attempted reform in the United Kingdom. The Parliament Acts of 1911 and 1949, as well as the failed Parliament (no. 2) Bill of 1968-69, all adopted similar solutions to the upper house problem, which elites from two different parties came to identify as an overly bold and obstructionist House of Lords. Yet in all three instances, elites were also operating under an implicit exogenous shock model of reform, and each time would wait for a suitable crisis that they believed would create an appropriate opening for reform, until it was almost too late. This strategic decision to wait for crisis was a flaw in the first factor of meaningful reform, the understanding of the written and unwritten rules for change, and forced reformers to adopt less ambitious plans than they otherwise would have preferred. Furthermore, because they had not properly traced the likely consequences of their proposed changes, but instead assumed that the reforms' effects would be limited to the textual scope of the proposed bills, they selected less than ideal targets for their reforms. Reformers did not adequately predict that limiting the Lords to a suspensive veto might actually embolden, rather than chasten, the upper house, because it made the potential political costs of applying the veto less serious for the Lords, and so the Parliament Acts are instances of reforms that were technically successful yet not meaningful in the manner intended by reformers, indicating that the Parliament (no. 2) Bill likely would have been similarly ineffective at solving the Lords problem.

Next, in Chapter 5 ("The Subtle Revolution: 1958, 1963 Life Peerages and Peerage Acts", p95), come the only two instances of reform that were meaningfully successful in the terms identified by this study because they both fulfil the two necessary factors for meaningful reform. The 1958 Life Peerages and 1963 Peerage Acts have frequently been overlooked in favour of the other instances of reform in the United Kingdom discussed in Chapters 4 and 6, yet this chapter shows how they were successful in both properly identifying the written and unwritten rules for change, as well as adequately tracing a reliable link between their planned changes and desired outcomes. Reformers had accurately identified a link between the introduction of non-hereditary peers to the Lords, as well as the loosening of rules related to hereditary peers, with the desired result of improved legitimacy and policy expertise in the chamber. The links between causes and consequences were more indirect than in the other cases examined in this study, yet because of the predictive process tracing conducted during the development

phase of reform, the changes ended up being far more meaningful than any other instance of technically successful reform in either country.

In the final chapter concerning reform in the United Kingdom, Chapter 6 ("Salisbury's Vindication: the 1999 House of Lords Act", p129) looks at the 1999 House of Lords Act, arguing that, from the government's perspective, it does not constitute meaningful change, and is actually a prime example of "big" or significant reform that backfired. Rather than eliminate the hereditary element entirely from the upper chamber, the reforms of 1999 actually further legitimated the continued presence of some hereditary peers, and led to improved legitimacy and public esteem for the entire chamber. Yet from the perspective of the man who almost singlehandedly repurposed the reforms, its significance is second only to the changes effected in 1958 and 1963, because these were his intended objectives. While the government succeeded in terms of the first necessary factor for meaningful reform by identifying the most efficient route for change and then following it, the government had failed to properly identify its conceptual objectives, and determine the changes that would be necessary to secure them, leaving an opening for reforms to be rewritten to the Lords' advantage. This case shows just how important the second factor is for securing meaningful reforms.

Chapter 7 ("Muddling Through: 1980-1992 Megaconstitutional Politics", p160) looks at Canada during the era of megaconstitutional reform, with an emphasis on the 1987-90 Meech Lake Accord, and the 1992 Charlottetown Accord. The 1980s saw the rise of the Triple-E Senate model, which became the default plan for reform of the upper house during the megaconstitutional era, when the federal government was attempting to renew federalism through constitutional reform. This chapter shows how, even though the federal government was properly able to identify the written and unwritten rules for change, particularly for the Charlottetown Accord, its use of Senate reform as a means of sweetening the deal for erstwhile reticent provinces, rather than a reform goal in itself, led it to overlook the second necessary factor for meaningful reform identified in this study. As a result, the Senate plans contained in both Meech and Charlottetown not only failed to examine the upper house in a conceptual manner and identify causal links between planned changes and desired outcomes, but the plans were unlikely to have satisfied reformers, much in the same manner as the Parliament Acts proved unsatisfactory in the United Kingdom. The formal rejection of Meech and Charlottetown is not what fails to make the megaconstitutional era proposals meaningful, but rather it is the oversight of the process tracing step, and proper identification of changes that would yield the desired results, which makes the era a failure.

Finally, Chapter 8 ("Rules Matter: 2006-2014 Unilateral Reform Attempts", p191) looks at the only instance of attempted reform in this study which completely neglected both of the necessary factors for meaningful reform. Between 2006 and 2014, the government tabled eight separate pieces of legislation that attempted to make the Canadian Senate fully elected through act of parliament alone, without involving the provinces, as required by the relevant amending formulae of the constitution, meaning that the first necessary factor for meaningful change was absent. The changes that the government was attempting to enact would have been significant reforms to the upper house, but in order to circumvent the written rules for change, it attempted to cast them as minor changes that required only parliamentary and not provincial consent by playing with semantics. It was a strategy that never had any credible chance of success due to the unconstitutionality of the plans, yet warrants inclusion in this study because it was allowed to go on for so long, and all along, the government was proceeding as if its plans were credible. This instance also warrants inclusion in this study because the government deliberately decided not to pursue an alternative means of achieving institutional reform that would not have required a constitutionally questionable reinterpretation of both written and unwritten rules for change. The second necessary factor for meaningful change was also absent, because the conceptual sophistication of the government's plans was unchanged from the megaconstitutional era; nearly two decades after the start of Meech, the connection between plans and desired outcomes was no more developed, but instead rested upon the same flawed assumptions about how an elected Senate would function, and the effects this change would have upon governance. Had this unconstitutional plan somehow been allowed to pass, in spite of objections from provincial governments, the courts, and some academics, it is unlikely that the outcomes would have matched the conceptual objectives.

This study's independent and dependent variables as they appear in each chapter of this study, as well as whether reform actually passed in each case, are summarised in Table 3 below.

Chapter No.	Group of Cases	Independent Variable 1: Written & Unwritten Rules	Independent Variable 2: Conceptual Process Tracing	Successful Reform?	Dependent Variable: Meaningful Reform?
4	1911, 1949, 1968-69 Parliament Acts and Bill	Partially Present	Not Present	1911, '49: Yes 1968-69: No	No
5	1958 Life Peerages Act, 1963 Peerage Act	Present	Present	Yes	Yes
6	1999 House of Lords Act	Present	Not Present (government) Present (Lord Cranborne)	Yes	No (government) Yes (Lord Cranborne)
7	1980-92 Megaconstitutional Era	Present	Not Present	No	No
8	2006-14 Unilateral Attempts	Not Present	Not Present	No	No

Table 3 – Presence and absence of necessary factors for meaningful reform

2 Prelude: Institutional Origins of Second Chambers

It has often been claimed in the past that the British House of Lords is such a unique institution that, if it had not developed as it did, it would have been impossible to invent. It was certainly impossible to copy, as a number of colonies quickly discovered in the course of the nineteenth century.

-- WK Jackson, 1972 (p 2)

Bicameral institutions, like many democratic innovations, precede theoretical thought associated with them. Proper contextualisation of the debate over upper house reform requires an overview of the historical record which led to contemporary arrangements. This prelude chapter presents a history of the House of Lords and Canadian Senate in order to better contextualise contemporary debates over institutional origins and purposes, and also to highlight just how much both chambers have evolved since their inception, mostly without formal reform. It is after this contextualisation that this work will then move on to examine the political science literature related to bicameralism and democratic institutional reform.

In the United Kingdom, centuries of evolving custom and ad hoc bargains took the place of formal constitutional arrangements, and despite relatively little formal reform to the upper house between the Middle Ages and the late nineteenth century, it transformed itself into a vastly different institution over the course of those centuries. The development of the American Senate, even though that body is not discussed elsewhere in this work, is an important interlude in the history of bicameralism, because it established a precedent for the near-universality of federalism with bicameralism, and was also seen as a cautionary tale by designers of the Canadian Senate nearly a century later. This chapter then concludes with a discussion of the extensive and careful deliberation that went into the design of the Canadian Senate, drawing from early modern democratic thought, and the experiences of both the House of Lords and the American Senate.

2.1 Ad Hoc Institutional Design: The House of Lords prior to 1902[6]

Most contemporary political accounts of the House of Lords begin in the reign of Queen Anne (1702-1707), when the chamber's modern structure and role first become recognizable. Between the Act of Union in 1705 and Reform Bill of 1832, the House of Lords was superior to the Commons in both prestige and power, making that era a convenient starting point for overviews of democratisation in the United Kingdom. Parliamentary historians will begin earlier, during the reign of Edward III (1327–1377), when Parliament first divided into Lords and Commons, with hereditary and clerical peers in the upper chamber. Older histories from before the twentieth century, on the other hand, typically traced the origins of the House of Lords to before the Norman Conquest, illustrating how some of the institution's most enduring values, customs, and rudimentary structures were apparent before the house itself formally existed, and continue until today.

The pre-Norman kings' councils operated under principles familiar to the early modern House of Lords. Attendees did not serve upon the councils at the whim of the king, but rather by virtue of holding a secular or ecclesiastical title, which had been conferred upon them for life or was inherited. Upon the death of the king, the assembly was also tasked with choosing his successor, who then could not dismiss councillors, but had to wait for an empty seat to become available to appoint his own supporters. In a few cases, the council could even depose a particularly bad king, or reinstate one who had previously been forced to abdicate, upon the condition that he seek better counsel. While these councils were not participatory institutions in the modern democratic sense, they are some of the earliest English examples of both a body which held authority independent of the king, and the principle that the king had to secure the consent of the governed in order to rule legitimately.

These two principles – that the nobility, at least, had a legitimate role to play in governance, and that the king's legitimacy was derived in some way from either the explicit or implicit consent of those he ruled – survived the Norman Conquest of 1066, and fuelled ongoing rebellions for more than two centuries. The Norman and Angevin rulers were reluctant to accept limitations upon their powers, while the church and nobility were unwilling to relinquish what they saw as their traditional rights. This led to a protracted power struggle between the monarch and the aristocracy, and eventually resulting in

[6] Much of this section draws from the consensus in narrative which exists between late nineteenth and early twentieth century histories of the Lords by Spalding (1894), Pike (1894), and Firth (1910).

the emergence of Parliament, with the Lords as its most powerful and influential component. When the term 'Parlement' first appeared in royal papers in 1236 during the reign of Henry III, it was solely in reference to consultation between the king and nobility; commoners did not receive permanent representation in parliament until nearly a century later.

As the use of parliaments extended beyond matters of taxation and included new participants, two distinct sets of interests quickly emerged. The land-owning aristocracy and upper clergy, which had claimed the right of consultation since before the Norman invasion, formed one group, which by 1321 had begun referring to themselves as 'Peers'. Representatives of the shire and burgesses, which had not attended any parliament prior to 1265, became permanent in 1327 when Parliament was summoned to approve the forced abdication of Edward II, and formed the other group. The latter first sat as a distinct group in 1332, and the division became permanent in 1341, when Parliament split into the two chambers that it retains today: the Lords and the Commons. From Edward III onwards, Parliament claimed for itself the entitlement to consultation and consent over political matters, though its effective powers fluctuated. Even though the exact terms were still under negotiation, consent of the governed was an enduring and inviolable part of the British constitution, and the House of Lords was where much of this took place.

The role of the Lords during the Civil War is poorly understood and widely mischaracterised, as historians of Parliament have traditionally viewed the Lords as a superfluous distraction from the drama that was occurring in the House of Commons at the time, leaving the Lords' story to the historians of the upper chamber alone (Firth, 1910; Pike, 1894; Spalding, 1894). During the Civil War, most of the Lords would fight for the royalist side, but between the start of the Long Parliament in 1640 and the House's abolition in 1649, the Lords attempted to create a space for itself between Crown and Commons, first as intermediary and then as moderator. The Lords was a third party in the conflict, with its own unique objectives and interests during the conflict. On practical issues, the Lords would typically side with the King, except when it came to matters of Parliamentary authority and independence – the more abstract points of contention which concerned the Lords' historical claim to consent of the governed.

It is interesting to note that despite the abolition of the House of Lords during the Commonwealth years, Lord Protector Oliver Cromwell was convinced that Parliament would need a second chamber to function properly, in an early example of what has come to be known as the normative justification for

bicameralism argument (see Chapter 3.2 "The Normative Justification for Bicameralism", p43). Without a monarch or second chamber, the House of Commons had to function as legislature, executive, and judiciary all at once; there was no balance or check upon the powers of the Commons, and no independent arbiter of constitutional interpretation. Furthermore, there was no mechanism for resolving disputes between the Protector and Commons over the constitutionality of legislation (Firth, 1910, p. 244). Like the mediaeval Crown before it, the commonwealth Commons repeatedly refused to submit to any limitations or checks upon its power. The conflict of interest in a system which attempted to combine constitutional, representative, unicameral government caused a constitutional crisis in 1656, after which Cromwell pushed even harder for the establishment of a new House of Lords, so that the body tasked with upholding the constitution was not the same body with the power to interpret the constitution. The ensuing constitutional negotiations led to an agreement that there should be a second chamber, but the inability to reach an agreement on the powers and composition of a new upper house resulted in no enduring structure prior to the Restoration.[7]

The most enduring consequence of the Civil War and Restoration was the overhaul of the British Constitution following the Glorious Revolution of 1688, which brought William III and Mary II to the throne. William was foreign-born, unpopular, distrusted, and acquired the throne only by virtue of being married to the deposed king's eldest daughter; but, he was protestant, unlike the deposed James II and his newborn son. This gave Parliament the upper hand in renegotiating the basis of governance in England, and its role as an institution of governance distinct from the Crown: it had twice removed a king for attempting to claim absolute political power, and any future monarch was aware it could do so again. Parliamentary supremacy, and along with it the exclusive authority to levy taxes and the curtailing of the monarch's royal prerogative, created an incentive for the monarch to co-operate rather than compete with Parliament. Parliament, on the other hand, agreed to limit its own powers by retaining the monarchy and establishing an independent judiciary, so that no institution could alter legislation or the constitution unilaterally. The Civil War was the only time when the House of Commons challenged the Lords as primary chamber of legislation and governance prior to the nineteenth century.

[7] For a detailed discussion of the many attempts to re-establish a bicameral Parliament during the final years of the Commonwealth, see Firth (1910, pp. 248-268).

Until the Reform Bill of 1832, the House of Lords was the more active and influential of the two houses in Parliament, and it was following the Glorious Revolution, particularly during the reign of Queen Anne, that the Lords adopted its modern form and functions. The ease with which the Lords resumed its pre-Civil War stature had much to do with the strict limitations upon the franchise to vote for the House of Commons, and wildly inconsistent qualifications to vote between districts. The counties allowed all freeholding owners of land worth at least forty shillings to vote,[8] regardless of residency status, a rule which had not changed since 1430. Boroughs, on the other hand, based franchise upon one unique factor, including residency, ownership of certain real estate, corporate membership, freeman status, or even the holding of a Master's or Doctoral degree in Oxford and Cambridge. The distribution of seats was also wildly inconsistent: the village of Dunwick had once been important in the Middle Ages, but by 1831 it had a population of thirty-two, with two representatives in the Commons, while the cities of Leeds, Birmingham, and Manchester had no representation at all. As calls for reform of the Commons increased, the uniformity of qualifications to sit in the Lords, despite being even more restrictive, meant that the institution itself was more stable and held greater apparent legitimacy, allowing it to operate more efficiently.

Between 1810 and 1830, the Lords became the primary source of executive authority, as the country was effectively left without a monarch after King George III fell ill in 1810, and his son, the eventual King George IV, was appointed Prince Regent in his place. The prince did not involve himself much in the business of government, except to occasionally ask Parliament for more money. As a result, Parliament had to come up with new institutional arrangements to cope with the increased demands that had been placed upon it. The most important innovation at this time was the emergence of Cabinet governance, which allowed the executive to delegate responsibility for specific areas in an increasingly complex economy and polity to some of its members. For much of the Regency era, Lord Hawkesbury, Earl of Liverpool and Britain's longest serving Prime Minister, led the government from the upper chamber, and most Cabinet Ministers were drawn from the same body. Only the rechartering of districts to eliminate most of the rotten boroughs, the expansion of the franchise, and the introduction of uniform rules for enfranchisement, beginning with the Reform Act of 1832, allowed for the Commons

[8] Women were not formally barred from voting until 1832. Prior to that, widows and other female property owners would sometimes appoint a male to act as proxy for them in order to cast a ballot.

to replace the Lords as the primary legislative chamber in Parliament. It was not until the twentieth century, however, that the Commons eclipsed the Lords in stature and influence, and about half of Cabinet would continue be drawn from the Lords until 1902, when the Third Marquess of Salisbury[9] stepped down as the last of eighteen Prime Ministers to lead a government from the upper house.

2.2 Federal Revolution: the American Constitution of 1788

The evolutionary link between British and Canadian bicameralism cannot be understood without acknowledging the revolutionary nature of the American Senate, and its fundamental influence on bicameralism in practice. The American Constitution of 1788 was one of the first attempts to operationalize the formal structure and function of a bicameral legislature, and the very first instance in which bicameralism was used as a mechanism for entrenching federal principles in government structure, establishing a pattern of federalism-with-bicameralism which is almost universally observed today.

Modern American bicameralism was, first and foremost, a compromise between the largest and smallest states. Under the country's original constitution, each state government had one vote in a unicameral legislature, and a supermajority consisting of nine out of thirteen states was required to pass any legislation, resulting in legislative gridlock and a crisis of governance. When a constitutional convention was called in 1788 to renegotiate the terms of American federalism, a seemingly insurmountable impasse quickly emerged, with the larger states pushing for representation by population, while the smaller states and those with large slave populations[10] wanted to retain equal representation by constituent territory. In a final attempt to reach a workable compromise, both sides were given what they wanted, in the form of a bicameral legislature in which one house would have its seats apportioned by population, the other equally by state.

[9] The Marquesses of Salisbury are prominent figures in nearly every case of upper house reform in the United Kingdom discussed in this text, and most of them also share the same name of Robert Gascoyne-Cecil. To avoid confusion, their numerical title is specified as necessary.

[10] It is a commonly held misconception that there was a clear division at the time between "slave" and "non-slave" states, and while the vast majority of slaves were in the southern states, the census of 1790 reveals that only Massachusetts was "non-slave".

Asymmetrical bicameralism itself was not a revolutionary or even unexpected arrangement. James Madison had come to the convention with a proposal for a bicameral legislature in which both chambers would be apportioned by population, and at the time, twelve of the thirteen states had bicameral legislatures.[11] These chambers were inheritances left over from the era of British rule, originally modelled after the House of Lords, and so a bicameral legislature with disparate apportionment was not inherently controversial or unusual. What made the new Senate revolutionary, however, lay in how it made American federalism inextricable from its bicameralism. The apportionment of seats by geographical unit institutionalised the legitimacy of concurrent sovereignties at the national and sub-national levels, while the method of selection reinforced the federal principle by leaving the appointment of Senators up to state legislatures.

In the *Federalist Papers*, written to convince reticent state legislatures to ratify the new constitution, Madison presented some of the first attempts to articulate an explicit defence for bicameralism. Notably, however, he did not attempt to develop a theory of bicameralism, but instead presented an early form of the normative justification for bicameralism argument to defend the arrangement, in a foreshadowing of the reasoning still used two centuries later to defend bicameralism in the absence of bicameral theory.[12] According to Madison, a unicameral legislature was likely to create bad legislation out of indecisiveness and impulsiveness, while bicameralism would prevent treachery by requiring the concurrence of two chambers (Madison, 1788). He also tried to reassure the anti-federalists who feared that the smaller states would be left out of national decision-making by emphasising that the system required dual majorities: a majority of the population, and a majority of states. The *Federalist Papers* gave only a half-hearted defence of the equal representation of states in the Senate as a purely political arrangement made to secure the support of smaller states (Madison, 1788). The condition that had secured the vital consent of the smallest states was highly controversial, and could not be justified as anything other than a pragmatic deal by even the constitution's most ardent supporters. Despite an ever-growing population gap, however, the only feature of the US Senate

[11] This number has grown to forty-nine out of fifty today. In 1787, only Pennsylvania was unicameral, while today, only Nebraska is unicameral.

[12] For a discussion of why there is no modern theory of bicameralism, and what exists in its place, see Chapter 3.2, "The Normative Justification for Bicameralism", p43.

which has undergone formal reform was the selection method for electing Senators – a feature which received little notice prior to ratification, but led to conflict beginning with the very first Congress.[13]

The American fusion of federalism and bicameralism caused a paradigm shift in both areas. Prior federal-type arrangements in both Europe and pre-contact North America had been loose alliances established primarily for the purpose of military protection.[14] The new federalism made it feasible to govern large territories and diverse populations through a combination of central and local institutions. More subtly, bicameralism became a powerful tool when building constitutional democracies, as it allowed for greater adaptability to the specific goals and concerns of constitution writers. While few upper houses established after the American Senate borrowed its indirect election selection mechanism, and fewer still adopted its rigid formula for seat apportionment, the example set by the American Constitution made the 'bespoke upper house', tailored to the specific needs of its institutional setting, the bicameral norm, an important precedent when it came time to design the Canadian Senate in the 1860s.

2.3 Deliberate Design: Canadian Confederation, 1867[15]

The preamble to the British North America Act (1867), which states that it was intended to be "a Constitution similar in Principle to that of the United Kingdom", is misleading about the origins of the Constitution, and especially those of the Canadian Senate. The Canadian Senate is one of the oldest continuously operating upper houses among today's advanced democracies; only the House of Lords, the American Senate, and the Swiss Senate[16] have been around longer. Additionally, its first institutional

[13] The passage of the Seventeenth Amendment in 1915 is an interesting case of successful upper house reform which used the rhetoric of democratic deepening. Although it is not included in this thesis due to space constraints, for a discussion of how the Seventeenth Amendment would be an appropriate case for further study and testing of the hypotheses developed in this work, see Chapter 9.2, "Suggestions for Future Research", p213.

[14] Although most scholarship on pre-American federalism concerns the Swiss Confederacy and the smaller city leagues, there was actually long, robust tradition of semi-federal arrangements among the First Nations tribes of pre-contact North America. There is even historical debate as to whether the Iroquois Confederacy influenced the American Constitution and Bill of Rights, a claim which is difficult to evaluate conclusively.

[15] This historical account draws from Joseph Pope's contemporary records, republished in Browne (1969), as well as Janet Ajzenstat's extensive historical analyses (1992, 2009; 2003), Christopher Moore's retelling of the Québec conference (2015), and other historical accounts of the Senate contained in MacKay (1926), Kunz (1965), Coyne (1998), Jennifer Smith (2009), David Smith (2003) and Joyal (2003).

[16] Established in 1848, the Swiss upper house most closely resembles the American Senate in structure. Each canton has two representatives, while each half canton has one, totalling 46 in all. Formerly appointed by cantonal legislatures, senators are now chosen through direct election. In all other respects, however, the Swiss legislature is a democratic anomaly, and shares little in common with other advanced democratic states.

incarnation first appeared in 1791, in what early Senate scholar Robert MacKay described as "the first real upper house in British colonial history" (MacKay, 1926, pp. 12-13). There is a widely held misconception that the Senate was merely a poor colonial imitation of the British upper house, with differences between the two chambers dismissed as artefacts of their historical origins. This tendency to conflate the upper house with its British predecessor in both intent and function is not limited to Canada, but is also seen in domestic legislative studies of other former British colonies, with the phrase "a colonial House of Lords" appearing frequently in descriptions of other Commonwealth upper houses (c.f. Jackson, 1972, p. 21). Contrary to this image, the Canadian Senate was in actuality an intricately designed institution, with each potential outcome of its structure, role, and membership examined before acceptance of the final form; it would be appropriate, given the alternatives which were considered and rejected during the design of the Senate, to describe it not as an imperfect copy of the Lords, but as a pre-emptively reformed institution which purposely drew lessons from the British and American experiences to create a distinctly Canadian upper house.

Indirect American influence on Canadian Confederation was twofold: firstly, it created a sense of urgency for the proceedings, and secondly, it served as a cautionary tale of how not to design stable and effective institutions of governance. In 1864, while the political leaders of British North America were meeting at the Charlottetown and Québec conferences, the United States was nearing the end of a devastating civil war. The victorious Union controlled the largest army ever assembled, causing great anxiety north of the border due to the United States' long history of attempting to annex British North America through both military and political means.[17] Even though it was no longer official government policy, many high-ranking political elites in the United States saw the eventual annexation of British North America as an inevitability, and conditions for its incorporation into the Union often appeared in the electoral platforms of ambitious politicians. The Canadian colonies, meanwhile, were

[17] Some of the more notable attempts at military invasion or political annexation include: the disastrous invasion of Québec during the Revolutionary War; the War of 1812; the policy of Manifest Destiny from 1839 onwards; the 1844 electoral slogan of "54'40 Or Bust" with its promise of annexation; in 1860, American Secretary of State William Seward praised the people settling Rupert's Land for readying a "great American state"; in 1866 after purchase of Alaska, Sen Sumner insisted BC be ceded to the US; also in 1866, Congress passed a bill redrawing the borders of provinces in preparation for annexation; Civil War marching songs which spoke of "liberating" Canada from Britain; the Fenian Raids into Canada West; and frequent incursions into the West, like the American military's attempt to pursue Sitting Bull over the border.

underdeveloped and sparsely populated; while the United States was rapidly running out of unsettled land, the Canadian West had only a very small population of Métis and First Nations, neither of whose presence had any effect upon American expansionist desires.[18] For Confederation to succeed, Canada would have to "become important, not only to England, but in the eyes of foreign states, and especially of the United States" (Macdonald 1864 in Browne & Pope, 1969, p. 96).

The ongoing civil war in the United States was also cited by proponents of Canadian Confederation who saw a direct causal link between the perceived weaknesses of the American Constitution and the conflict. Much of the difficulty, according to proponents of a strong central government, originated from the residual clause of the American constitution, which gave state governments all powers not specifically delegated to the national government (Browne & Pope, 1969, p. 94). This hobbled the powers of the national government, making it unable to resolve conflicts between states. Decentralisation resulted in the absence of any "general feeling of patriotism. In occasions of difficulty each man sticks to his individual State" (Macdonald 1864 in Browne & Pope, 1969, p. 124), leading to the swift collapse of the republic when loyalty to the state and the nation became mutually exclusive upon the outbreak of war.

Another institutional lesson drawn from the American crisis was the desirability of retaining the Westminster parliamentary system. Sir John A Macdonald described the American President as "a despot for four years" (Macdonald in Browne & Pope, 1969, p. 96), highlighting instead how under the British system, "the people having always the power in their own hands and with the responsibility of a Ministry to Parliament, [Canada is] free from such despotism" (Macdonald in Browne & Pope, 1969, p. 97). In the minutes from both the Charlottetown and Québec conferences of 1864, there are frequent references to the inherent superiority of "a plan contrary to that adopted by the United States" (Tupper in Browne & Pope, 1969, p. 123); any proposal that was described as being similar to the American system necessarily implied its inferiority. From a Canadian perspective, the fundamental causes of the American Civil War lay in the country's constitution and flawed institutions of governance, and for the Canadian scheme to succeed, they had to seek a different solution, with a whole new form of bicameralism at its legislative core.

[18] As George Brown remarked at the Québec Conference in 1864, political unification was necessary because, despite a growing population in the West, "the Americans are encroaching" (Brown 1864 in Browne & Pope, 1969, p. 100).

There is little contemporary analysis or even record of the debates and negotiations that resulted in the British North America Act of 1867, but what exists reveals very different origins from what is commonly assumed. Sir Joseph Pope, Sir John A Macdonald's private secretary, assembled a collection of documents related to Confederation which were published in 1895 (republished, with additional documents, in Browne & Pope, 1969), but found that there were records from only one of the six days when composition, role, and powers of the second chamber were discussed at the Québec Conference of 1864 (Lees-Smith, 1923, p. 46fn). Janet Ajzenstat, who has compiled extensive collections of documents related to Confederation, cites five contemporary accounts, of which "no more than three are even quasi-official" (in Joyal 2003, p. ix). There are surviving drafts of the BNA Act, but they exist without annotation or explanation as to their differences. However, there are copies of the debates over Confederation held in the houses of assembly and legislative councils of the colonies, and so there is record of the official reasoning used to justify the decisions that they had made. These debates reveal the extensive effort which went into constructing a second chamber which could act as a buttress rather than a rival to the elective lower house, relying heavily upon early modern liberal political theory. The Canadian Senate was devised under highly unusual circumstances, as a deliberately designed legislature, developed by a group of experienced politicians who were well-versed in contemporary democratic political theory, had the luxury of time to consider their options, and lacked many of the constraints associated with reforming existing institutions.

Bicameralism, the appointive principle, and property qualifications were all deliberate choices, and their alternatives were discarded only after careful consideration. The Fathers of Confederation were strongly influenced by contemporary political thought; they would frequently cite JS Mill, and were also well versed in the *Federalist Papers*, Burke, Hobbes, Locke, Montesquieu, and Rousseau (Ajzenstat et al., 2003, p. 4). Not only were they attempting to construct a constitution which would avoid the pitfalls of the American system, but one which would also safeguard the fundamental principles of egalitarianism and liberalism. The delegates at the Québec Conference were seeking to establish what they believed would be a good and just system of government, and the Senate was an integral part of their solution. For them, the ancient Athenian model of democracy was a form of aristocratic authoritarianism: pure majoritarianism, with the franchise limited to male natural-born citizens, allowed the political majority to pursue its interests unchecked, even at the expense of the numerical

majority.[19] This "unbridled democracy", as they called it, was in their view incompatible with egalitarian thought, which held that no group was entitled to additional rights by virtue of its numerical superiority, making a guaranteed right of dissent vital to any just system of governance.

Majoritarian rule was the natural outcome of representative government, but protecting minority rights was another matter. The American Senate was an obvious failure to the delegates at Québec, as it simply replaced one iteration of majority rule with another. Instead of representing a simple numerical majority, as in the House of Representatives, the American Senate represented an aggregate majority, as its members were selected by majorities in the territorial legislatures.[20] Simply measuring the majority through two different mechanisms did not guarantee that the political minority would be represented in the legislature. The authors of the Canadian constitution wanted a solution other than what amounted to double majoritarianism.

The Fathers of Confederation were not unaware that they could choose to create an elected Senate; in fact, it would have been easier to do so, as at the time of Confederation, Canada West and East (now Ontario and Québec) and Prince Edward Island all had directly elected upper houses. The government of Great Britain had even suggested that the new Senate be elected rather than appointed. Instead of retaining the status quo, however, the elective principle was overwhelmingly rejected by all provinces save Prince Edward Island, even before the Québec Conference had begun. In a letter to British Secretary of State for the Colonies Edward Cardwell, Lieutenant-Governor Arthur Gordon of New Brunswick, who preferred an electoral mechanism, remarked that,

> With regard to the former subject [composition and mode of selection for the upper house], less difference of opinion was found to exist than I should have anticipated… It was generally desired that the members of this body should be nominated for life by the Crown, and with hardly an exception the elective principle as applied to the Legislative Council was decidedly condemned (Lt-Gov Gordon, 1864 in Browne & Pope, 1969, p. 45)

Most of the delegates at the Québec Conference had first-hand experience with elective bicameralism, and many of them were even the same people who had pushed for the change to election

[19] Women, slaves, and foreign-born residents were disenfranchised, meaning that only 10-20% of the total population could vote at any time during Athens' democratic era. Additionally, most legislation came from the Boule, an upper house for which members were chosen by lot, which was in turn led by the 50-member Prytany. The lower chamber, in which all male citizens could vote, was often involved only in voting for or against this pre-written legislation.

[20] Until passage of the Seventeenth Amendment in 1913 which provided for direct election, members of the US Senate were appointed by their respective state legislatures. For further discussion of this experience as a possible case for future study, see Chapter 9.2, "Suggestions for Future Research", p230.

only a few years earlier. The authors of the BNA act also had what few institutional designers have ever had: the luxury of time, and ability to innovate. Unlike the United States in 1788, the existing machinery of government was not at risk of imminent collapse. Domestically, the British North American colonies were politically and economically stable; the greatest risk to the existing governments was exogenous, and came from the perennial possibility of American invasion, a scenario which seemed all the more likely if the colonies were not at least in the process of unification before the ongoing civil war in the United States had been resolved. Additionally, unlike in the United Kingdom, there were no centuries-old institutions with entrenched interests in the status quo who were potential veto players. In fact, the Canadian polity had been in a state of constant transition since the rebellions of 1837 and 1838. All of the colonies were experimenting with power-sharing mechanisms, including a dual premiership between the English-majority Canada West and French-majority Canada East. Without two of the most significant barriers to broad institutional change, the decision to return to an appointments system for the upper house was a deliberate choice, and the rejection of elective bicameralism was based upon past experience and future expectations.

The Legislative Council of the province of Canada made the switch from appointment to direct election in 1856, just after Attorney General John A MacDonald became leader of the Canada West Conservatives. Since then, MacDonald noted, they had been confronted with the unintended consequences of the change:

> This principle has not been a failure in Canada; but there were causes – which we did not take into consideration at the time – why it did not so fully succeed in Canada as we had expected. One great cause was the enormous extent of the constituencies and the immense labour which consequently devolved on those who sought the suffrages of the people for election to the council… the legitimate expense was so enormous that men of standing in the country, eminently fitted for such a position, were prevented from coming forward. At first, I admit, men of the first standing did come forward, but we have seen that in every succeeding election in both Canadas there has been an increasing disinclination, on the part of men of standing and political experience and weight in the country to become candidates; while, on the other hand, all the young men, the active politicians, those who have resolved to embrace the life of a statesman, have sought entrance to the House of Assembly. (6 February 1865, in Ajzenstat et al., 2003, pp. 78-79)

Ironically, as would later happen in the United Kingdom during the interwar years (see Chapter 4.4 “Still Waiting for Crisis: the Parliament (No. 2) Bill, 1968-1969”, p79), the greater prestige of the lower house was acting as a disincentive to the recruitment of suitable candidates for the much more expensive seats in the upper house. Whereas in the United Kingdom, this problem would be caused by adherence to the hereditary principle, in the pre-Confederation province of Canada, it sprang from the

elective mechanism. Election had changed the fundamental characteristics of members in the Legislative Council of the Canadas, without any concurrent change in the surrounding institutions of governance, creating a gap in Parliamentary membership which had yet to be resolved.

Delegates from the province of Canada considered but rejected the idea of an elected upper house because of the potential negative effects on democratic governance. For John A Macdonald, appointment of Senators for life, combined with a size limitation on the chamber, was meant to prevent swamping of the sort that has always been feared in the United Kingdom. It would also maintain the independence of the upper chamber, and the quality of membership in both houses of Parliament. Election of both chambers would otherwise dilute the expertise in both houses, and restrict membership only to those who could afford the cost of campaigning for a seat.

Liberal leader George Brown similarly supported an appointments system, reasoning that election would lead to partisan politics and increased agitation between the two houses, eventually threatening the lower house's control over money bills; appointment of the Senate reinforced the democratic legitimacy of the Commons. Drawing lessons from the ongoing reversal of power between House of Representatives and Senate within the American Congressional system, Brown and other Liberal opponents of an elected national Senate argued that the ideal upper house for a parliamentary democracy like Canada was a democratically illegitimate one. For Brown, an elected Senate would lead to a system of competitive representation between the two houses of Parliament, and undermine the authority of the House of Commons. Responsible government could operate with only one chamber of confidence, and appointment of Senators would deny them the democratic legitimacy which would enable the Senate to challenge the democratically representative lower house. A tenured system, in which Senators were appointed for renewable terms of nine years, was just as objectionable as election, again because of example from the American experience: "for the last three or four years of their term they would be anticipating its expiry, and anxiously looking to the administration of the day for reappointment; and the consequence would be that a third of the members would [always] be under the influence of the executive" (Brown in Ajzenstat et al., 2003, p. 88). Tellingly, the most controversial aspect of the new chamber for Brown's party was not appointment of membership, but the provision for equal regional representation; the English-speaking majority from Canada West objected to a guarantee of equal representation in the Senate for the French-speaking majority of Canada East, which was expected to decline over time as the country expanded, and more English-speakers arrived to

colonise westwards. The decision to support a system of appointment over election was questioned, but was relatively uncontroversial.

The Legislative Council of Prince Edward Island had also been made elective only a few years before Confederation negotiations began, in 1862, "on the condition that a high franchise was required for the Electors" (Lt-Gov Gordon, 1864 in Browne & Pope, 1969, p. 45). In the two years between then and the Québec Conference, however, franchise requirements had been loosened to the extent where they were nearly the same as for the lower house. The colony's delegates were the only ones who entered Confederation negotiations with a strong preference for the elective principle, but even they relented when it became clear how unpopular the proposal for election of the upper chamber was. Instead, their strategy shifted in an attempt to secure greater representation for the island in the Senate. Premier George Coles described the federal government's appointment powers as "a piece of corruption" (31 March 1865, in Ajzenstat et al., 2003, p. 101), and argued that provincial control over Senatorial appointments was "especially necessary as regarded the interests of this island, for it is extremely doubtful, should the union take place, whether we shall ever have a single representative in the general government; and if otherwise, we at least cannot expect more than one" (31 March 1865, in Ajzenstat et al., 2003, p. 100). The colony was already miniscule compared to the other British North American colonies; at the time of the most recent census in 1861, only one out of every 38 residents of British North America lived on Prince Edward Island. The island had less than one third the population of New Brunswick, the second smallest colony, less than one seventeenth the population of Canada West, the most populous colony, and the discrepancy was only expected to grow.[21] Over-representation of the province, rather than mode of selection, was the primary concern of the island's delegates in their negotiations over the upper house at the Québec Conference.[22]

In addition to the principle of appointment, another feature of the Canadian Senate which is perennially controversial to modern democratic sensibilities is the property requirement placed upon potential Senators. Again, the criticism laid against the Senate largely stems from misunderstanding of

[21] Exact numbers from the 1861 census are total 3,112,269; Canada West 1,396,091; Canada East 1,110,664; Nova Scotia 330,857; New Brunswick 193,800; and Prince Edward Island 80,857 (Library and Archives Canada, 2014).

[22] Premier George Coles also raised some concerns about the size limit on the Senate, pointing to the creation of new peers in order to secure passage of the Treaty of Utrecht in 1712, and the threat to swamp the chamber to secure passage of the Reform Act of 1832 (Ajzenstat et al., 2003, p. 100), but these were still secondary to the fears of being rendered numerically insignificant by the much more populous provinces.

the context, and conflation of land ownership with general wealth. Senators were not intended to be fundamentally different from either their peers in the lower house, or voters. The intention was that they were to be "men of the people, and from the people… when he returns home at the end of the session, he mingles with them on equal terms and is influenced by the same feelings and associations, and events, as those which affect the mass around him" (Macdonald in Ajzenstat et al., 2003, p. 82). Despite this, there was an additional qualification upon eligibility for the Senate, requiring that Senators hold land worth at least $4000 in the province they represent, and have a net worth of at least $4000. Initially, a higher amount was proposed, but it was lowered at the insistence of the delegates from Prince Edward Island. The island had ongoing difficulties with absentee landlords, and the abandonment of a plan to create a fund for purchasing the lands at the Québec Conference led to Prince Edward Island's initial refusal to join Confederation in 1867.[23] It is worth noting that the House of Lords had no similar property requirement; while Peers could be ejected from the Upper House if they went bankrupt, they did not have to prove a minimum net worth in order to take their seats.

It is challenging to acquire an accurate equivalent of $4000 in today's dollars because the Bank of Canada only began tracking inflation rates in 1914; popular estimates for a contemporary equivalent amount range from $56,000 to over $200,000. The most appropriate method for acquiring a contemporary dollar equivalent would be to use a combination of historical Canadian and American inflationary rates. Currency Acts in 1852 and 1853 fixed the New Brunswick and Canadian dollar at par with the American dollar, all at a rate of 20.67 dollars to 1 troy ounce of gold (Bank of Canada, 2005, p. 23). This same rate was used in the Uniform Currency Act of 1871, which standardized the Canadian dollar (Bank of Canada, 2005, p. 27), and Canada thereafter remained on the gold standard until 1914. The United States, however, went off the gold standard from January 1862 until 1879 due to the massive inflationary effects of the Civil War, and it was during this time the two currencies diverged in value. On

[23] Land on Prince Edward Island, after its capture from the French in 1763, had been divided into 67 lots, and then dispensed to supporters of King George III by lottery. Most winners and their descendants refused to sell any of the land to their tenants, even if they had the money to offer a fair price, and would instead rent out the land at exorbitant prices. The government of George Coles attempted to resolve the problem in 1853 by buying the land and then reselling it to tenants at a lower rate, but the government quickly ran out of money to complete the project. The problem was not resolved until Prince Edward Island finally joined Confederation in 1873, when the government of Canada offered the island enough money to buy the absentees' holdings.

1 July 1867, the Canadian dollar was worth approximately $1.40 US (Turk, 1962), meaning that the $4000 real property equivalent was equal to about $5600 US at the time of Confederation. Deflationary pressures on gold and a major economic depression in the late nineteenth century meant that, by 1914 when the Canadian and US dollars were taken off parity, this had declined in value to $4011.59 (Bureau of the Census, 1949). It is at this point that a contemporary equivalent can be found simply using the Bank of Canada's inflation numbers, which show that $4011.59 in 1914 would in fact be equivalent to $83,441.07 by the end of 2014 (Bank of Canada, 2016).[24] At a time when most consumer debt was held by individuals and shops rather than banks, a positive net worth meant that Senators were financially independent, and would not be beholden to private debt holders.

Senators had to be wealthy, but the requirements were not so rigorous as to exclude all but the wealthiest few, as had been the case with the Family Compact and Chateau Clique that ruled Upper and Lower Canada in the early 19th century. In fact, some delegates at the Confederation conferences argued that the real property threshold was too low, reasoning that "if a qualification be thought necessary, then $4000 is too insignificant for the Parliament of the Confederation" (Sir Charles Tupper 1866, in Browne & Pope, 1969, p. 213). Only one participant is recorded as objecting to the exclusion of wealthy citizens who did not own property, a protest which was roundly silenced with the retort that, "if a man has $50,000, let him buy land and pay taxes on it" (Fisher 1866, in Browne & Pope, 1969, p. 213). Speaking of the first 304 Senators after Confederation, Sir George Ross remarked that the property qualification had been successful in its objectives:

> Not one can be said, either by heredity or factitious pre-eminence, to be less democratic than the chosen representatives of the people in the House of Commons. Very few, if any, represented either large estates or accumulated capital which would separate them in business or interest from their fellow citizens… [In] no respect, either by education, environment, or personal interests or pretentions are they different from their fellow legislators in the Lower Chamber… So when we invest in the Senate with a certain power, we are merely investing the democracy with a second voice in the councils of the nation. (Ross, 1914)

[24] The only way that the more extreme popularly cited estimates can even be approached using actual inflationary data is by using starting numbers which are simply not realistic or reflective of contemporary economic situations. At the lower end, assuming parity in 1867 in spite of the US being off the gold standard at the time would yield $2865.42 in 1914, and $59,600 in 2014 (Bank of Canada, 2016; Bureau of the Census, 1949). At the higher end, using the Canadian dollar's highest ever historical value against the US dollar, achieved during a brief spike in mid-July 1864 when gold trading was shut down for two weeks and the Gold Room was closed due to the Confederate army's march on Washington (Turk, 1962), yields $10,600 in 1914 and a contemporary equivalent of still only $157,942.10 in 2014 (Bank of Canada, 2016; Bureau of the Census, 1949).

At its core, the property requirement was intended to ensure that that Senators would have a vested interest in the long-term wellbeing of the country. Before 1896, when the government overhauled its immigration policy in order to entice settlers into the "Last Best West", Canada was a net emigrant country; more people left, either returning home or moving on to the United States, than arrived to settle every year. If Senators were to speak for the long-term interests of Canada, they would have to actually remain in the country, and not be indebted to any other individual for their financial security. While many forms of wealth were mobile, real estate was not, and the purchase of land indicated an intent to stay. It also meant that Senators were paying both federal and provincial taxes, as only provincial governments could levy direct taxes upon property. With seats in the upper house allocated by region, property ownership was a means of ensuring that Senators had reason to consider both national and regional interests when evaluating legislation.

The authors of the Canadian constitution held a clear belief of a causal relationship between institutional rules, and actors' motivations and behaviour, making it one of the earliest examples of institutionalism in practice. The Senate was designed to produce results which were not expected to emerge from the House of Commons. While the electoral cycle was expected to make the lower house naturally responsive to majority interests and immediate concerns, it was believed that it would also create an impediment to the protection of minority rights and objective deliberation. By making the Senate an appointed body, the goal was to increase the diversity of views which were heard in Parliament, create a forum which encouraged dissent, and allow for a 'sober second thought' when considering impassioned or controversial issues. It was explicitly designed to work as a complement to the House of Commons, and not as a rival or anti-democratic gatekeeper.

The Canadian Senate's unique origins reveal that representation was a major concern in the design of the institution, making evaluation of its democratic credentials depend upon the conceptualisation of democracy that is being used. The Canadian Senate can be accurately described as anti-democratic by design only if direct election is used as a proxy for democracy; it is apparent that the Fathers of Confederation considered and subsequently rejected the theory of election-as-democracy in the case of the second chamber. Democracy and the upper house cannot be separated from the Senate's context within the Parliamentary system, and it is within that context that a picture of the Senate as representation by non-electoral means emerges.

2.4 Assessing the Historical Record

There is no common set of circumstances which has historically led to the adoption of a bicameral legislature; instead, bicameralism was the common solution to a variety of unique pressures that shaped the possible options for resolution. In the United Kingdom, the House of Lords evolved alongside a centuries-long conflict over the limits of royal power, while the Canadian Senate resulted from a combination of deliberate cross-case learning, and concerns that majority rule and rapid turnover in population could result in poor governance. Utility was far more important than theory in influencing the intended purpose and function of upper houses. The House of Lords and Senate evolved to occupy roles which are inextricable from the broader parliamentary structures within which they operate.

Although the reasoning used to justify particular bicameral structures has varied widely since the pre-Norman era, the recurrent theme is one of balancing powers; whether between monarch and nobility, branches of government, regions, or socioeconomic factions, bicameralism as practiced in the United Kingdom and Canada up to the end of the nineteenth century was inherently a mechanism for entrenched institutional power-sharing. The claimants upon shared power vary in accordance with major political cleavages, and renegotiation of existing institutional arrangements occurs whenever these factors shift significantly. Institutions develop a haphazard pattern of slow negotiation and contestation. Particularly in the United Kingdom, changes were frequently conceptually justified only after the fact, but when those changes are later challenged by reformers, defenders of the status quo will attribute greater historical and symbolic significance to them than they originally had. It is part of a recurring strategy of preventing change which portrays the upper house as the result of deliberate design, rather than ad hoc bargaining and shifting norms. In both countries, the democratic awakening of the twentieth century changed the basis for representative governance, and so these institutions which were created for different purposes and contexts invariably became points of contention for future institutional renegotiation as they fell short of evolving democratic norms. This historical context is useful in informing the contemporary political science literature about bicameralism and upper house reform in the United Kingdom and Canada, which is highlighted in the next chapter, and providing additional context for elite claims and objectives which appear in subsequent chapters.

3 Literature Review: Bicameralism and Institutional Reform

The problem of the Second Chamber is ever with us. No other type of legislative body arouses so much discussion as to its value. The popular chamber has always the same characteristic; the members are elected by the people, the difference consisting in the nature of the franchise, whether more or less restricted. The second chamber, on the other hand, shows great variety of type… The variation of type involves equal variation in proposals for reform.

-- George M Wrong, in Robert MacKay, 1926 (p xiii)

The two necessary factors for meaningful institutional change which are postulated by this work – understanding of the rules for change, and conceptualisation of the institution – are closely linked to ideas about upper houses and their attempted reform, and so it is appropriate to provide an overview of existing literature relevant to these two areas. Although the relevant literature is admittedly sparse,[25] there is some which warrants closer examination. The previous chapter discussed the historical origins and early evolution of the British and Canadian upper houses, and how both institutions came to resemble one another, despite vastly different origins – historical happenstance in one case, and deliberate design in the other. It is within this context that this chapter now discusses the political science literature related to contemporary upper houses and democratic reform.

Beginning this task is an examination of the domestic literature from either country. Case studies of the House of Lords and Canadian Senate are frequently historically rooted, but have long been so few in number, with such long gaps in between major publications, that each subsequent author must start much of their study anew each time. Despite this, there are some key texts which were published around the time of critical points in each upper house's history, and provide valuable contextual insight into how the chamber operated at the time, and the logic of contemporary reform rhetoric.

[25] Much of the existing literature on bicameralism is in the form of either American congressional analyses or large-N cross-national discussions, neither of which are directly relevant for the purposes of this work. Although the Canadian Senate has historical origins which relate directly to the American Senate, the contemporary literature bears little value to either the British or Canadian cases because of vastly different structural arrangements and behavioural styles. The large-N literature, meanwhile, typically distinguishes between upper houses by type in a system developed by Arend Lijphart (Lijphart, 1999, 2012). Under Lijphart's classification system, both the UK and Canadian upper houses are significant outliers because of discrepancies between the chambers' formal and effective powers, as well as the model's inability to incorporate informal exercises of influence.

This chapter then turns to the conceptual literature related to democratic bicameralism. Normally, this would mean an examination of the underlying theory, but bicameralism is alone among the commonplace institutions of democracy in being "a concept in search of a theory" (D. E. Smith, 2003, p. 3). While federalism, unitarism, parliamentarism, presidentialism, and electoral systems have extensive theoretical literature that is commensurate to their widespread use in democratic systems of governance, bicameralism theory lacks similar universality as "a proven system of democratic government applicable to widely different circumstances or places" (Jackson, 1972, p. ix). Instead, there is literature which has been called a normative justification of bicameralism, which examines bicameralism based on outcomes rather than theoretical principle. While these justifications are modern versions of very old arguments, they reveal that bicameralism is frequently adopted, eliminated, or maintained for express purposes. The literature also serves to establish that bicameralism is not simply a more unwieldy and anachronistic legislative design, but that bicameralism alone creates certain structural arrangements which are believed to improve democratic governance and cannot yet be adequately replicated by unicameral legislatures; even if neither elites nor academics fully understand bicameralism as a theoretical concept, there is extensive literature detailing the effects of bicameral arrangements for quality of democratic governance.

In the next section, related to the normative justification literature, is the frequently overlooked and surprisingly controversial link between federalism and bicameralism. While this link is sometimes dismissed by scholars, this chapter shows that there is in fact a very strong correlation between federalism and bicameralism, once undemocratic and micro states are excluded from the dataset. Institutional designers consistently appear to hold an implicit belief that bicameralism is, for whatever reason, necessary in a federation. For the purposes of this study, the federalism-bicameralism link shows why, in the absence of any theory of democracy, Canadian upper house reform plans have historically been strongly informed by evolving ideas about federalism.

Finally, this chapter concludes with an evaluation of the two competing theories for institutional reform in advanced democracies, both of which are directly related to the first necessary factor for meaningful reform. Although elites rarely operate under explicit theories of institutional change, reform necessarily requires that elites have at least an implicit understanding of the relevant rules for change. The leading explanation for institutional change is a model of punctuated equilibrium, with long periods of institutional stasis interrupted occasionally by exogenous shocks which open up critical junctures to

deliberate reform. While institutional change can certainly happen in this manner, there is also a growing historical institutionalist literature on incremental and endogenous reform. These changes typically go unnoticed in synchronic analysis, but have the capacity to radically transform an institution over the long term. This long-term view is more nuanced, and can account for the reaction of actors within the targeted institutions to these reform attempts. Both theories inform elite beliefs to varying degrees in the subsequent chapters, which argue that the way in which elites come to understand their options for going about change has a significant effect upon the meaningfulness of any ensuing change.

3.1 The View from Within: British and Canadian Upper House Scholarship

The logical starting point for any cross-national comparison of governing institutions is in the institutional studies that domestic academics have produced. In the case of the United Kingdom and Canada, almost immediately, the bicameral problem becomes apparent: there is comparatively little scholarship on the House of Lords and Canadian Senate, and even less which situates the upper houses in their bicameral contexts. In legislative studies, the upper house is sometimes omitted entirely. While academics are certainly not unaware of the second chambers and their prominent constitutional roles, they are frequently relegated to the status of what classical British constitutional scholar Walter Bagehot referred to as "dignified" institutions – "historical, complex, august, theatrical parts, which [the country] has inherited from a long past" (Bagehot, 1867, p. 11). This leaves upper house studies at a disadvantage, necessitating that works which do exist must dedicate substantial passages to thick description of the chambers' actual workings, contrasted with the popular misunderstandings about them.

Additionally, due to the relatively small number of publications which do attempt to give a more nuanced view of the upper houses' legislative role and natural institutional drift which occurs in between major publications, there is little pre-existing literature from which academics can begin to construct more complex models of bicameral parliamentary governance. Many of the most important scholarly works act as sequels to their immediate predecessor, picking up where the last left off, and following the same structure: first, an overview of the chamber's history, followed by structural description to explain where it fits into the parliamentary system, then an account of notable activities by the chamber to show its usefulness, finished off with a discussion of possible reforms to the chamber.

These are primarily descriptive rather than analytical works, focussing on how the chamber functions as opposed to its contextual place in the policy and legislative processes.

In the United Kingdom, analytical scholarship on the House of Lords and Westminster bicameralism was rare prior to 1958. While some remarkably detailed historical accounts of the House of Lords, its origins, evolution, and legislative significance appeared in the lead-up to the 1911 Parliament Act, they were of the Old Institutionalist tradition – thick on description and identification of prominent causal chains, but thin on analysis (c.f. Firth, 1910; McKechnie, 1909; Pike, 1894; Spalding, 1894). The first major analytical work would be the report produced by the 1917-1918 Bryce Conference on the Reform of the Second Chamber. A prominent member of the committee was JAR Marriott, former Oxford lecturer and author of a highly regarded historical and comparative analysis of second chambers around the democratic world (Marriott, 1910). A similar approach was used by the committee in preparing its report: it solicited reports on bicameralism from all of the self-governing Dominions including Canada, and consulted extensively with academics who were familiar with the French Senate, all of which were included in the committee's final report as addendums. In addition to this comparative contextualization, however, the committee also sought to depoliticize the question of upper house reform by identifying a set of functions that any well-designed second chamber should perform. These included examination and revision of legislation, the imposition of reasonable delay, and the extensive discussion of important policy questions (Cmd 9038, April 1918). The objective for reformers, therefore, was to design a system which would enhance these functions of the upper house. The Bryce Committee Report remained the most frequently referenced document in both academic and political discourse about House of Lords reform until the 2000 Wakeham Royal Commission Report on the Reform of the House of Lords (CM 4534, 20 January 2000). Other analyses produced in the first half of the twentieth century include reports from the 1921-22 Curzon Committee, the 1925-27 Cave Committee, and the 1933-35 Cabinet Committee, but each one of them would include a copy of the Bryce Report and its list of essential functions for a reformed upper house as a framing device for their suggestions.

Beginning in 1958, with the publication of Peter Bromhead's *The House of Lords and Contemporary Politics, 1911-1957* (1958), academics began to take more of an interest in the House of Lords and its functions, although most were of article rather than book length. Bromhead's analysis of the endogenous changes which had been brought about within the Lords since the passage of the 1911

Parliament Act retains much of its value because it covers the period of time when the House of Lords was deliberately transforming itself from a check on democratic excess to the self-appointed guardian of democratic principles. Janet Morgan's *The House of Lords and the Labour Government, 1964-1970* (1975) provides both a follow-up to Bromhead's account of the Lords since the passage of the 1958 Life Peerages Act, as well as particular insight into the relationship between the upper house and the Labour government following the only instance of upper house reform initiated by a Conservative government. Morgan's, along with Emma Crewe's vivid account of the background to the 1999 House of Lords Act in *Lords of Parliament: Manners, rituals, and politics* (2005), is one of the few works which does not present its research about the contemporary Lords as a prelude to reform discussions, but merely attempts to present "a picture of the House of Lords – its members, their conventions and procedures – caught at a particularly interesting moment" (J. P. Morgan, 1975, p. vii). Another major contribution was Donald Shell's *The House of Lords* (2007), which has since been revised multiple times since first published in 1988. Like Bromhead, each edition of Shell's work has concluded with a chapter outlining possible reforms to the House of Lords, how they could be achieved, and how they would improve democratic governance in the United Kingdom. The most recent in this series of Lords histories with suggestions for reform is Chris Ballinger's *The House of Lords 1911-2011: A Century of Non-Reform* (2012).

There was a veritable explosion in literature about the House of Lords – and particularly about possibilities for additional reform – following the House of Lords Act of 1999 and other associated constitutional reforms of the Labour government. Due to the recent nature of the reforms, these works followed a slightly different format from other House of Lords books, with the section for analysis of changes engendered by the last round of reforms replaced by more conceptual chapters about the new ontology of the British constitution, and speculation about the consequences this would have for long-term democratic governance. The most notable of these include Dawn Oliver's *Constitutional Reform in the United Kingdom* (2003), Vernon Bogdanor's *The New British Constitution* (2009), Louis Blom-Cooper et al's *The Judicial House of Lords 1876-2009* (2009), and Meg Russell's *The Contemporary House of Lords: Westminster Bicameralism Revisited* (2013). Additionally on the more historical side, there is the expansive history of reform attempts to House of Lords from Peter Raina (2011) which fills six hefty volumes, only the first of which deals with pre-1911 history. Raina's work is an extremely detailed chronological account of the plans and key players, with copies of personal letters, draft bills, excerpts

from older histories, and parliamentary debates, and provided insight into the personal thoughts of veto players as they responded to changing circumstances and unexpected complications.

In Canada, the tendencies seen in the literature surrounding the House of Lords are even more pronounced, with long gaps in between solitary major publications, and extended musings about possible reforms. There were only four English-language book length studies of the Senate throughout the twentieth century, the first three of which can be read as a trilogy, with each subsequent text explicitly picking up where the previous one left off. The first of these was Sir George Ross' *The Senate of Canada: Its constitution, powers and duties, historically considered* (1914), which provides a history of the chamber from Confederation to the eve of the First World War, and an assessment of whether the chamber's membership had been successful in providing the type of representation originally envisioned by the authors of the BNA Act. Despite its unabashed support of the existing constitutional arrangement, Ross' book concludes with two chapters entitled "Senate Reform" and "Amending the Constitution". It was published during the period of increased Senate reform-related activity in Parliament just prior to the outbreak of the First World War, following passage of the House of Lords Act in the United Kingdom. The second, Robert MacKay's *The Unreformed Senate of Canada* (1926), was published during a similar era of similar heightened political interest in reform, just prior to the Dominion-provincial conference of 1927, and continues Ross' analysis of Senators and their legislative functions since the First World War. Also like Ross, MacKay's work finishes with a chapter entitled "To Mend or End the Senate", though the theme of a need for extensive overhaul of the chamber runs throughout the book, using the Bryce Committee's list of requirements for an effective upper chamber as its starting point for recommendations.

The sole exception to the pattern of Senate analysis followed by reform proposals comes in FA Kunz's *The Modern Senate of Canada, 1925-1963: A re-appraisal* (1965), which again appeared during an era when Senate reform had increased political salience. Although Kunz mentions the possibility of reform, he does not dwell on it as an inevitability, like Ross, or a necessity, like MacKay. Instead, Kunz's work stands as an attempt to understand the Senate as it was, including analysis of its effectiveness in improving democratic governance through functions which are distinct from those performed by the House of Commons.

The last academic book on the Senate during the twentieth century is even more reform-minded than any of its predecessors, ending with a clear prescription for specific reform, with a final chapter

entitled “Conclusion and a Design for Abolition”. Colin Campbell’s *The Canadian Senate: A Lobby from Within* (1978) broke from the historical tradition of Ross, MacKay, and Kunz, and placed greater emphasis on the need for reform than on an attempt to describe how the Canadian Senate actually functioned. Campbell’s book is also significant as a source of insight into the paradigm shift in the basis for contention over the Senate which was about occur. Although Campbell was sympathetic to the Bundesrat model as “a highly effective vehicle for [provinces] in influencing federal policy” (C. Campbell, 1978, p. 162), he ultimately agrees with the international unicameralist movement which was nearing its end, concluding that abolition of the Senate was the best course of action.

The crux of Campbell’s argument was that the appointment process necessarily made the Senate a vehicle for special interest, and inevitably produced an institution which was “antipathetic to democracy” (C. Campbell, 1978, p. 32). Based in large part upon Paul Pross and Robert Presthus’ work on elites in the Canadian policy process (Presthus, 1973, 1974; Pross, 1975), Campbell reasoned that the Prime Minister would draw most appointments from his existing political and business networks, giving the business community preferential access to the political system, and resulting in a disproportionate weighting of their professional interests in policy matters. This change in the primary objective for reform, from improvement of the federal arrangement, to concerns about democratic legitimacy and representativeness, presaged the shift in focus which would happen in the 1980s, although it would lead to a far different conclusion. Campbell’s book holds a symbolic place as being published at the turning point in Senate reform rhetoric, when occasional academic interest gave way to a flurry of interest in advocating for Senate reform.

As in the United Kingdom, the turn of the century saw a sudden upswing in publications about the Senate. David Smith’s *The Canadian Senate in Bicameral Perspective* returns to the traditional format by picking up where Kunz left off, and opens the book by asking only half-jestingly, “Is it time for another book about the Senate of Canada?” (D. E. Smith, 2003, p. ix). Smith’s book is of immense value not only because it attempts to correct over a century of oversight by treating the Senate as one component of a two-chambered legislature, rather than a hermetic body in isolation from the Commons, but because he situates Canada’s second chamber within the context of bicameral thought, dedicating the first three chapters to bicameralism as “a concept in search of a theory” (D. E. Smith, 2003, p. 3), comparative bicameralism, and an analysis of the history of thought regarding Canadian bicameralism. Smith’s own treatment of the inevitable reform question, consequently, emphasises how

functions currently performed by the Senate would be affected by reform, and the likely consequences of reform which formally targets only the Senate on surrounding institutions of governance, particularly the House of Commons and Cabinet.

There are two other important works on the Canadian Senate which have been published in recent years, both of which are edited volumes that are explicitly structured as responses to Senate reform plans. First is Senator Serge Joyal's edited volume *Protecting Canadian Democracy: The Senate You Never Knew* (2003), which argues that the Senate has replaced the House of Commons in performing the critical roles of acting as a check on the powers of the executive, and seeking a legislative balance between public interests with civil liberties. If the Senate is to be reformed, many of the authors argue, those functions must be deliberately assigned elsewhere, lest they disappear entirely, to the detriment of Canadian democracy. Finally, there is Jennifer Smith's *The Democratic Dilemma: Reforming the Canadian Senate* (2009), compiled in response to the Conservative government's initial attempts at introducing legislation to reform the Senate unilaterally in 2006 (see Chapter 8, "Rules Matter: 2006-2014 Unilateral Reform Attempts", p191). It includes analyses of the proposed bills' constitutionality, and a Bryce Committee-style enumeration of functions that a well-reformed Senate should perform in a Canadian context.

An interesting symptom of the widespread academic disinterest in the upper houses of the United Kingdom and Canada is just how many of the most important texts originated as doctoral theses.[26] Morgan and Ballinger's books were developed from their 1972 and 2006 Oxford University theses, respectively. MacKay's book began as a 1924 thesis at Princeton University, Kunz's was a 1963 thesis at McGill University, and Campbell's was from a 1974 thesis written at Duke University. Each time, the author has pointed out the dearth of material on the upper house relative to the other central institutions of governance, and emphasised the need for understanding the chamber within its proper legislative context prior to engaging in reform, at the risk of causing a ripple effect of unintended consequences. Yet this message does not seem to permeate far beyond the small sphere of academics who dedicate targeted attention to the upper house, as most scholars seem content to treat it as a peripheral, standalone institution, the reform of which would have few if any consequences for the

[26] Peter Bromhead's book also came near the start of his career, though it is unclear whether it was based upon his DPhil or post-doctoral research. David Smith's book is exceptional for being the only one first published near the end of a long and distinguished academic career.

surrounding institutional arrangements. Nevertheless, what works do exist provide valuable insight into the mindset of contemporary elites and would-be reformers during each case study to follow. It is for these reasons that much of the literature cited by subsequent chapters comes from primary documents, including minutes of Cabinet meetings, internal policy papers, and judicial filings.

3.2 The Normative Justification for Bicameralism

One of the most surprising aspects of bicameralism literature, even to political scientists, is just how little we know about why some systems choose to have two legislative chambers instead of one. While we have extensive histories of the specific chambers included in this study (see Chapter 2, "Prelude: Institutional Origins of Second Chambers"), and even a growing literature on how they go about their work, there is no unifying theory for why second chambers exist at all. This is all the more surprising given the consistency with which certain types of states – particularly former British colonies and federal democracies – have chosen to adopt bicameral legislative structures, despite bicameralism having "only an unreal relationship with any theory of government" (Jackson, 1972, p. 20). Democracy, despite the wide variety in particular forms, is unified by a single theoretical principle, that those who are governed have a say in their governance. Federalism, similarly, is a theory of political organization which combines shared and self-rule to produce concurrent sovereignties within a single territorial jurisdiction. These theories do not have to apply to all states to be valid – authoritarian systems are not democratic, and most federal theorists reject the notion that undemocratic states can truly be federal – but the theory has to apply to each member of an exhaustive category, and exclusions can only be on the basis of exogenous factors. When scholars continue to echo the long-standing assertion that "there is nothing that even remotely approaches a fully articulated theory of bicameralism," (Davis, 1983) this is what they mean is absent from the academic literature (see also Jackson, 1972, pp. 20-21; W. H. Riker, 1992, p. 113; D. E. Smith, 2003, pp. 6-7; Uhr, 2006, pp. 491-492).

The closest that the discipline has come to a theory of bicameralism is by developing what Riker (1992, p. 113) classifies as normative justifications for bicameralism – more sophisticated versions of the same arguments which were used to justify the American Senate in 1788 (see Chapter 2.2 "Federal Revolution: the American Constitution of 1788", p21). Significantly, critics of bicameralism can only respond in kind, with arguments about how bicameralism does not in fact guarantee what it purports to do, and no theoretically grounded reason for rejecting a bicameral arrangement (c.f. Jackson, 1972;

Johnson, 1938, pp. 54-75). While these normative arguments may resemble theories, they emphasise likely output over structural principles, and are applicable only to specific subsets of bicameral legislatures.

The normative justification argument draws directly from the earliest literature on bicameralism, which was written as part of the larger ongoing discussion about natural rights and the expansion of democracy. Significantly, early bicameralism literature almost universally emphasised qualities which were not inherent to bicameralism, implying that the same outcomes could theoretically be accomplished by a well-designed unicameral legislature. Barring the existence of a perfect single house, bicameralism was simply a mechanism for securing certain desirable outcomes. This perspective was echoed by the pre-eminent British journalist and constitutional scholar Walter Bagehot, who remarked that:

> With a perfect Lower House it, is certain that an Upper House would be scarcely of any value. If we had an ideal House of Commons perfectly representing the nation, always moderate, never passionate, abounding in men of leisure, never omitting the slow and steady forms necessary for good consideration, it is certain that we should not need a higher chamber. The work would be done so well that we should not want any one to look over or revise it. And whatever is unnecessary in government is pernicious. (Bagehot, 1867, p. 176)

The modern version of this argument somewhat inverts this traditional view, arguing that well-designed bicameralism can produce democratic outcomes that even a well-designed unicameral legislature cannot, and elites seeking to undermine democratic rule seem to agree. Invariably at some point during discussions about upper house reform, the possibility of abolishing the chamber entirely will come up. After all, reason abolitionists, New Zealand, Denmark, Sweden, and Croatia all eliminated their second chambers in 1950, 1953, 1970, and 2001 respectively, with little apparent harm to their democratic systems of governance. However, in Portugal (1910), Hungary (1918 and again 1945), Greece (1935), Estonia (1938), South Korea (1960), Turkey (1980), Peru (1993), Venezuela (1999) and Nepal (2006), the switch to unicameralism accompanied the breakdown of representative government and a move towards authoritarianism or military rule.

The literature that Riker (1992) describes as normative justifications for bicameralism emphasises the capacity for a bicameral system to produce desirable results due to structural processes which are built into bicameralism, and difficult to achieve with a unicameral legislature. First among these is an effective check on pure majoritarianism, without creating a tyranny of the minority. Bicameralism

requires the concurrence of two distinct majorities, which in most cases requires broadening the appeal of legislation and creating a larger coalition of support to appeal to the majority in either chamber. Unicameral systems have attempted to replicate this through use of supermajoritarian voting rules or minority veto, under the rationale that it would encourage the same type of concession-making and coalition-building without the added bulk of a two-chambered legislature. However, supermajoritarianism does not have the same legislative effects of dual majorities. Bicameralism combines an impediment to majoritarian rule, while introducing an incentive for seeking resolution; even if individual members have preferences along multiple dimensions, conflict between the two houses will occur primarily along a single policy dimension (Tsebelis & Money, 1997, p. 78). The greater the distance between either chamber along that policy dimension, the lower the chance for change to the status quo. Despite this, both chambers would prefer to reach a solution to intercameral conflict sooner rather than later, and so they are willing to make concessions which bring their position closer to that of the other chamber, reducing the possibility that the status quo will stand (Tsebelis, 1999, pp. 147-149). On the other hand, supermajoritarianism contains no similar mechanism which reduces the number of policy dimensions. The status quo will stand so long as enough members of the legislature prefer it over change along one or more policy dimensions. The result is a disproportionately strong minority which can prevent change, without an increased incentive for them to make concessions.

The normative justification for bicameralism is at the heart of upper house reform attempts, because elites necessarily have to provide at least a rudimentary justification for their desired reforms. This relates most directly to the second necessary factor for meaningful reform, the identification of accurate causal processes relevant to the intended changes. Elites have to be able to somewhat reliably predict what sort of effects their reforms will have if they want the changes to be meaningful, and affect the chamber in a noticeable and intentional manner. The absence of a theory of bicameralism complicates this, but does not make proper process tracing of the links between institutional design and output impossible.

3.3 The Federalism-Bicameralism Link

A potential subset of the normative argument for bicameralism literature which is nonetheless largely unexplored is the strong correlation between federalism and bicameralism. In many otherwise broad works on federalism theory and governance, bicameralism does not appear at all in the index (c.f.

Burgess & Gagnon, 2010; Feeley & Rubin, 2008; Gagnon, Keil, & Mueller, 2015; Karmis & Norman, 2005; Kincaid, Tarr, International Association of Centers for Federal, & Forum of, 2005; Levi & Casalegno, 2008; Ward & Ward, 2009). When it does appear, it usually warrants only a brief mention (Benz & Broschek, 2013; Filippov, Ordeshook, & Shvetsova, 2003; Gaudreault-DesBiens, 2005). Frequently, the connection is dismissed on the grounds that there are both bicameral legislatures in unitary states, and unicameral legislatures in federal states (P. T. King, 1982; Watts, 1999, p. 15). While it is true that there are many unitary states with bicameral legislatures, particularly among former British colonies, the inverse is true only when including microstates and non-democratic nations, and the correlation between federalism and bicameralism is extremely understudied. In the few federalism studies where bicameralism appears extensively, the attitude is markedly different: "one of the basic principles of federalism is bicameral representation at the national level of government" (Hueglin & Fenna, 2006, p. 59) declares one analysis of comparative federalism, though it stops short of identifying a causal link between the two.

As shown in the preceding historical overview (see Chapter 2.2, "Federal Revolution: the American Constitution of 1788", p21), federalism has been closely associated with bicameralism ever since the American constitution of 1788. It is so common, that there are currently only seven federations with unicameral legislatures. Of the micro-states with populations of under 1 million (Micronesia, St Kitts and Nevis, and Comoros), all three use a combination of selection methods for their legislatures, including direct election, indirect election, and appointment; this combination of representation by population and representation by region is a common characteristic of second chambers in federal states, and so these chambers should be more accurately described as hybrid legislatures, and not purely unicameral institutions. The remaining four states are not functional democracies. They include an absolute monarchy (United Arab Emirates), a state which was downgraded from "flawed democracy" to "competitive authoritarian" at the same time that its bicameral legislature was replaced with a unicameral one (Venezuela) (Kornblith, 2013, p. 48; Levitsky & Way, 2013), a state which first lost its upper house following a coup d'état in 2006 and was then left without any legislature at all following another coup in 2012 (Nepal), and a highly unstable failed nation which nonetheless has constitutional provisions for the establishment of a bicameral legislature in the future (Iraq). It is misleading and counterproductive to reject bicameralism as an inherent feature of democratic federalism because the dataset contains federally-arranged states which would be eliminated from most federalism studies for

being undemocratic and therefore incapable of guaranteeing the legitimacy of concurrent sovereignties which are necessary for constitutional federalism.

For Riker (1964), federalism is a system for the deliberate inclusion or exclusion of particular interests; it bestows the privilege of legitimacy upon certain groups, and denies it to others that seek to organise themselves differently. From this perspective, bicameralism provides an institutional structure which facilitates this process, as evidenced by the diversity that exists across upper houses. The near universality of this federalism-with-bicameralism trend implies that there is an implicit belief, at least among federalists, that bicameralism performs a function which is complementary to federalism. Federalism may not explicitly require bicameralism, but the enthusiasm that designers of federal democracies have shown for bicameralism deserves careful consideration. This is particularly relevant in the Canadian case, where evolving ideas about federalism have historically been closely tied to Senate reform plans (see Chapter 7.1 "The Chamber of Federalism: Confederation to 1980", p162), and also where some critics favour abolition over reform, including several provincial leaders, and the New Democratic Party.

3.4 Models of Institutional Change

The first necessary factor for meaningful institutional change identified in this study is a proper understanding of the written and unwritten rules for change. The manner in which elites attempt to pursue change is informed both by their objectives, and their understanding of how change occurs. Although elites are rarely aware of the scholarly literature on institutional change, subsequent chapters show that they are frequently working from implicit theories of how institutional change occurs, and which theory they choose has strong implications for significance of outcomes.

Most of the existing literature views institutions being reformed from a proceduralist perspective: institutions look and act the way they do because they were designed to perform their current functions. This is not just a significant teleological error, but also gives the impression that the origins and evolution of an institution are largely unimportant. Many academics use a model of punctuated equilibrium, wherein unforeseen exogenous shocks force changes in an otherwise self-replicating system (Goodin & Klingemann, 1996, p. 180; Hall & Taylor, 1996). Outcomes are also decided exogenously in a quasi-random manner, as though institutional reform were being performed upon a 'clean slate', without any institutionally- or time-imposed constraints (Katznelson & Milner, 2002). In

some variants on the rational choice model, once the decision has been made, contingent factors congeal into a path-dependent process of gradual and steady change, but the overall trend is still one in which there are clear distinctions between critical junctures, when exogenous shocks force major reforms, and eras of endogenously-compelled continuity.

The punctuated equilibrium model appears in Longley and Olson's (1991) analysis of the switch from bicameralism to unicameralism in New Zealand, Denmark, and Sweden. They argue that cameral change occurs only after extended popular disenchantment with the broader political system in general, followed by a dramatic shift in parties' electoral fortunes. It is the sudden victory of a group that has tended to see itself as an outsider from government and power which serves as the critical juncture for swift change. What their model fails to do is to account for when abolition fails to occur despite long-standing democratic malaise and a shift in the balance of power to a party which had been out of power for a long time. Nearly every instance of attempted upper house reform in the United Kingdom and Canada occurred under these conditions, yet abolition was not seriously considered. Conversely, Longley and Olson's punctuated equilibrium model of cameral change has difficulty accounting for upper house reform attempts which are initiated by a group which sees itself as the natural party of governance, rather than outsiders, as happened in 1958 and 1963 in the United Kingdom.

Critics have accused the standard model of institutional origins and reform of being functionalist (Pierson, 2000), deterministic (James Mahoney, 2000, p. 507), and just unrealistic for assuming that reform is exceptional, unpredictable, uncontrollable, and unrestricted (Bedock, Mair, & Wilson, 2012; James Mahoney & Thelen, 2010; Pierson, 2004; Pierson & Skocpol, 2002; Streeck & Thelen, 2005). The path dependency literature tends to reject the historical institutionalist belief that institutions have a vested interest in ensuring their continued relevance and jurisdictional authority, and instead portrays them as passive recipients of external influence. An additional problem stems from how "change" is conceptualized: the emphasis on formal institutional reconfiguration due to exogenous shocks inherently assigns greater importance to dramatic and abrupt reform than it does to gradual and incremental change that is imperceptible except over the long term – an assertion which does not seem to be borne out by observation.

By contrast, the predominantly qualitative approach used in this study is informed by the historical institutionalist tradition in political science, which emphasises both formal and informal rules, structures, and procedures of governance. Historical institutionalism holds that the objectives and

behaviours of political actors can be only partially understood without historical contextualisation, because institutions structure behaviour by establishing who has power over what aspects of policy, while actors' locations within the system and structurally defined relationship with other actors will influence what types of changes they perceive to be in their self-interest. In this manner, not only outcomes but the perceived universe of possibilities as imagined by political elites are influenced by prior structures, a tendency noted by Thelen:

> Political actors extract causal designations from the world around them and these cause-and-effect understandings inform their approaches to new problems… This means that even when policy makers set out to redesign institutions, they are constrained in what they can conceive of by these embedded, cultural constraints. (Thelen, 1999, p. 386)

An emerging body of historical institutionalist literature suggests that gradual endogenous change is the norm, and highly visible path-dependent reform is the exception. In contrast to the standard model of exogenous shocks, this field of work suggests that meaningful and broad institutional transformation can occur without deliberate and formal reform, or it can be a secondary by-product of formal change; this slower type of change is only noticeable through diachronic analysis, rather than the synchronic approach used by the standard model. Paul Pierson (2000, 2004; 2002) is one of the main contributors to this perspective, arguing that slow-moving causal processes, like cumulative causes, threshold effects, and causal chains, are the dominant cause of institutional change. These ideas were formalized by Streeck and Thelen (2005) into a coherent model for endogenous and gradual institutional change, which poses a direct challenge to the dominant model by arguing its opposite:

> There often is considerable continuity through and in spite of historical break points, as well as dramatic institutional reconfiguration beneath the surface of apparent stability or adaptive self-reproduction, as a result of an accumulation over longer periods of time of subtle incremental changes. (Streeck & Thelen, 2005, p. 8)

The discrepancy stems from a different understanding of what constitutes change to an institution. Whereas previous research compared formal rules and structures in a time-series cross-sectional perspective, the endogenous change model emphasises the shared norms and behaviour of institutional actors in diachronic context. Formal institutional change is often a slow, unwieldy process, but existing rules can allow for a high degree of flexibility among actors, which in aggregate can potentially amount to institutional reform from within.

When incorporating how actors actually perceive and perform their functions, Streeck and Thelen identify five distinct types of institutional change, all of which can happen without any exogenous shock

or high-profile action: displacement, layering, drift, conversion, and exhaustion. Displacement refers to a change in the underlying logic of institutional action, in which actors adopt new or reject existing roles based upon a changing idea of the basic goals the institutions should serve, often due to a change in the societal balance of power and associated values. Layering involves adapting new institutional arrangements on top of those which are too difficult to change. The concept of drift rejects the path-dependent idea that institutional stability is self-sustaining through positive feedback loops; instead, institutions require deliberate maintenance and occasional recalibration to maintain relevance. Actors may also opt for the conversion of existing institutions to fill new roles in the gaps which naturally appear over time between institutional rules and action. Finally, institutional change can occur through exhaustion, where an institution slowly collapses as a result of self-defeating behaviour frequently involving negative feedback loops, where the processes required to keep an institutional functional are undermining its legitimacy and durability.

Streeck and Thelen's model of endogenous reform does not preclude episodic reform caused by exogenous shocks, but it seems to imply the question of whether there is an inherent difference in potential outcomes. If endogenous change originates within institutional gaps, and gaps are inevitable side-effects of formal institutional design, it is unclear whether exogenous reforms result in anything other than structural change, with more meaningful change occurring only after subsequent endogenous contestation over those gaps. Upper houses are perfectly situated to take advantage of the ambiguities and gaps in institutional design, due in large part to their ambiguous place in democratic governance.

A more holistic understanding of how change occurs and what constitutes change provides a better perspective on the cases which follow, as well as the significance of the two necessary factors for meaningful institutional change. How elites come to understand the written and unwritten rules for change is so important that it comprises the first necessary factor for meaningful change; if elites misunderstand the rules or create unnecessary and additional barriers to change, they may be harming their chances of success. Furthermore, if they do not recognise an institution's capacity for endogenous reform, they may overlook significant changes which have already occurred as a by-product of other reforms, or misidentify the likely outcomes of their chosen reforms, which forms the second necessary factor for meaningful change. In the chapters which follow, implicit theories of institutional reform

appear frequently, informing elite choice of strategy and objectives, and in turn affecting how elites come to predict the likely consequences of their desired changes.

4 Waiting for Crisis: the 1911, 1949, and 1968-69 Parliament Acts and Bill

Whatever romance a title may have once carried with it has now quite gone. It is hardly possible, one would think, for the most Philistine Briton or world-foraging Yankee to perceive any glamour in the present aristocracy.

-- Edward Carpenter, 1908 (p 8-9)

The Parliament Act of 1911 was the first major statutory overhaul of the modern House of Lords, coming amidst decades of reforms which aimed to further democratize the British polity.[27] Ever since the Reform Act of 1832, the balance of power in Parliament had slowly been inverting from Lords to Commons. Responsible government had made the rise of the Commons inevitable, as it gave the Commons alone the power to force a government's resignation, while the gradual expansion of the franchise and elimination of rotten boroughs over the course of nearly a century, beginning with the Reform Act, increasingly making the Commons an actual people's chamber. By the time that Robert Cecil, Third Marquess of Salisbury, left the office of the Prime Minister in July 1902, the Lords was no longer the primary locus of political leadership as it had been prior to the 1830s, but it was still a formidable institution with considerable power. Although Salisbury was ultimately the last man to serve as Prime Minister from the House of Lords, it was not until many years later that the convention that the Prime Minister should sit in the Commons emerged. Similarly, in the Conservative Party, men of political ambition could still play an important role in government from the upper house, though opportunities were becoming increasingly limited for peers from the other parties.

By 1906, democratisation of the British polity had stalled, and the Liberal and Labour parties were growing frustrated with successive Conservative governments' apparent disinterest in the matter. The last expansion of the franchise had been under the 1884 Representation of the People Act, which

[27] The slow inversion of power from the House of Lords to the House of Commons over the course of the nineteenth century is extensively documented by both contemporary and modern sources. The historical account in this section draws from the consensus in narrative that exists – despite sometimes vast differences in the authors' political leanings – between Bagehot (1867, pp. 167-168), Pike (1894, pp. 368-387), Spalding (1894, pp. 133-143), Charley (1895, pp. 65, 98-105), Edgcumbe (1907, pp. 5-55), Stead (1907, p. 53), Fielding (1907, pp. 43-44), Wylie (1908, pp. 166-167), Marriott (1910, pp. 85-86), Muir (1910, pp. 71-72), Osborn (1910, pp. 7-9), Adonis (1993), and Raina (2011, pp. 73-99, Vol I bk 1).

enfranchised 60% of the male population, but women and non-property owning men were still disqualified – about 72% of the total adult population over age 21 (Cook & Cook, 2005, p. 68; see also Muir, 1910, pp. 122-123; P. V. Smith, 1884, p. 26). Meanwhile, the House of Lords – predominantly conservative and almost entirely hereditary[28] – was coming under increased attack for the considerable power that it wielded, on the basis of its non-representative composition. In this context of stalled democratisation, reformers prioritized changes to the powers of the chamber above all else, with a secondary concern for reform to membership, believing that premature reforms to the Lords' constitutional role could inadvertently legitimate what they viewed as inherently anti-democratic arrangements.

This chapter shows how both of the independent variables which are postulated by this work to contribute to meaningful upper house reform – elites' understanding of the written and unwritten rules for reform, as well as a properly contextualised conceptualisation of their priorities – were flawed in the reform attempts of 1911, 1949, and 1968-69, and this contributed directly to the suboptimal outcomes in each instance, despite the appearance of success. Every case presented in this chapter follows a similar cycle, in which elites would delay reform in anticipation of institutional crisis, and were then forced to initiate a hurried solution before time ran out entirely. Only the first Parliament Act was passed under conditions of heightened intercameral conflict, creating for future reformers the presumption that the 1909 rejection of the People's Budget had been a necessary precondition for success. However, reformers were in fact repeatedly missing opportunities to initiate broader change at an earlier point in the legislative cycle.[29]

Although the 1911 and 1949 reforms were technically a success, despite the unnecessarily crisis-dependent strategy, they did not accomplish what reformers had wanted, and, as this chapter will argue, it is unlikely that the 1968-69 reforms would have accomplished this either. This was due largely to reformers' failure to properly conceptualise the causal link between institutional structures and behavioural outcomes. Three different sets of reformers from two political parties all came to identify the Lords' veto powers as the primary hindrance to democratic governance by the Commons, even

[28] Exceptions were the 26 bishops and the law lords. For a discussion of non-hereditary membership in the upper house prior to 1958, see Chapter 5.1, "Prior Attempts to Reform through Convention: Wensleydale and Rhondda", p96.

[29] This error becomes even more apparent in light of the very different experiences of reformers in the attempts of 1958 and 1999. See Chapters 5 "The Subtle Revolution: 1958, 1963 Life Peerages and Peerage Acts" p74, and 6 "Salisbury's Vindication: the 1999 House of Lords Act" p97

though those veto powers became increasingly restricted with each successive reform attempt. The Parliament Acts of 1911 and 1949, and the Parliament (no. 2) Bill of 1968-69 all shared the same underlying belief which equated majoritarian decision-making in the lower house with democratic legitimacy of the bicameral legislature. It is no surprise, then, that these reformers' primary objective was reductive, focussed on removing impediments to majoritarianism created by existing structures, rather than additive, aiming to improve or construct new institutional arrangements for representative governance. This ontological perspective narrowly shaped the reformers' universe of possibilities, so that when more nuanced analyses of the House of Lords problem appeared in the form of the Bryce Conference Committee Report of 1918, they simply did not know how to incorporate this expanded perspective into their approach to the second chamber, and plan for reform which was not contingent upon an exogenous shock to the chamber. Instead, reformers reverted back to the original solution, even though it had already proven to be unsatisfactory.

The durability of the 1911 bargain is all the more intriguing given the context from which it first emerged. It was a compromise reached by process of elimination, the least unpopular of potential options presented to Cabinet. Because no further possibilities were given serious discussion, members of the governing party behaved as though it was unofficial government policy. Then, when the government created for itself a do-or-resign situation, it was the closest option at hand which would appease enough MPs from opposition parties to secure the passage of legislation. However, it would be inaccurate to describe either the initial Parliament Act or its successors as part of path-dependent processes, as others have suggested (c.f. Ballinger, 2006). The Parliament Act, which indelibly altered the balance of power not only between Commons and Lords but within the Commons itself, began as the accidental success of one less-than-optimal choice in the absence of any better ideas.

All three instances discussed in this chapter bear remarkable similarity to each other in terms of both context and objectives, starting with the types of governments that were attempting to initiate the reforms. Each time, the government saw itself as an outsider to the corridors of power, with its right to pursue its legislative agenda being illegitimately stymied by an upper house which was indelibly both small- and big-c conservative. Speaking just after the Lords' rejection of the 1906 Education Bill, Prime Minister Campbell-Bannerman accused the Lords of being inherently undemocratic for allowing "the leaders of a party which had been overwhelmingly defeated by the popular voice… to remain, directly or indirectly, in supreme control of the legislation of the country" (Campbell-Bannerman, 9 May 1907,

in Spender, 1923, p. 348). When the House of Lords delayed or rejected legislation which had been passed by the Commons, it was not the other chamber of Parliament doing so, but the Opposition party, through its agents in the second chamber; in effect, the Asquith, Attlee, and Wilson administrations all viewed the Lords as an illegitimate de facto Conservative shadow anti-government. This perspective implied that the first priority of any reforming government should be to lessen this shadow anti-government's power to overrule non-Conservative governments in the Commons, and then to reconstitute the chamber's membership so that it could no longer function as an institutionalised conservative check on progressive governments. Any further questions about the proper constitutional role of a second chamber in a democratic parliament would have to wait until legislative powers and membership had been resolved.

In each of the instances discussed in this chapter, reformers were operating under the assumption that exogenous shocks in the form of institutional crisis created an optimal opening for change; if the two chambers of Parliament did not clash in a highly visible manner, it would be harder for the Commons to justify their attempts to further restrict the Lords' legislative powers to voters. Under this implicit exogenous shock model, reformers also drew a very direct link between statutory change and likely outcomes, and did not anticipate much in the way of consequences beyond the textual meaning of the legislation. Subsequent instances of attempted reform beginning in 1947 and then again in 1966 opted to return to the 1911 solution both because it would be simple, amounting to a revision of the earlier bargain, and because the secondary objective of attacking the hereditary principle implied that there would eventually be a subsequent round of reform. Reformers chose to pursue additional changes to the suspensive veto not because they were 'locked in' by the initial decision, but because they viewed it as a convenient and easy stopgap measure which would have to do until further, more extensive reforms could be pursued. They were attempting to make the institutional context 'good enough', minimizing potential barriers to future changes which they viewed as more important yet impossible to accomplish without a major clash between the two chambers until the Lords had been adequately weakened. This decision to wait for a democratic conflict between the two chambers to create an opening for reform was a risky and unnecessary gambit which greatly restricted how reformers perceived the opportunities for change and the most likely indirect consequences of statutory reform, making the suspensive veto solution inefficient and ultimately unsatisfying.

4.1 Orchestrating a Crisis: the Parliament Act 1911

In the years leading up to the Parliament Act of 1911, relations between the two houses were driven by strategy first, and politics second. Both the Liberal government and Conservative opposition were anticipating that intercameral conflict could be used as a pretext for radical upper house reform, and planned their legislative strategy in accordance with what they expected the other side to do. The government, which ideally wanted an extensive overhaul and believed the opposition wanted none, did not shy away from conflict, and in some instances indirectly encouraged the more conservative elements of the upper house to behave in an obstructionist manner in order to create a case for reform. The opposition generally believed reform of some sort to be inevitable – although a few reactionary Lords continued to oppose any sort of change until the bitter end – and wanted to limit the potential for what they believed would be some of the more radical changes that they expected the government to pursue. The early years of the Liberal government reveal that both sides believed that bigger intercameral conflict would result in bigger change; they were, in fact, working under what was fundamentally a rudimentary exogenous shock model of institutional reform, an outlook which made meaningful reform harder to achieve.

The Liberal Party unexpectedly came to power at the end of 1905 following Conservative Party leader Arthur Balfour's sudden resignation as Prime Minister, ending nineteen years of Conservative-Unionist rule. Almost immediately, new Prime Minister Henry Campbell-Bannerman requested that parliament be dissolved for an election beginning in January 1906, which ultimately returned the Liberal party with a landslide victory.[30] Despite the party's strong position in the Commons, however, they expected to encounter staunch resistance to their progressive agenda from the Lords, where the Unionists still controlled a sizeable majority (Spender, 1923, pp. 269-270, Vol II). The new Liberal government believed that the Lords would attempt to behave as a counter-government, impeding as much government legislation as possible for purely ideological reasons (Edgcumbe, 1907, pp. iv-v). From this perspective, the Lords was not a safeguard against arbitrary majority rule, but an impediment to basic democratic governance; the Liberal party had won a sizeable majority in the Commons, but

[30] The 1906 election was held from 12 January to 8 February. The Liberals won a large majority of 377 seats, compared to 157 for the Conservatives, 83 for Irish Nationalists, and 53 for Labour. The Liberal Party could typically count on the Irish Nationalists and Labour to side with them, making their control of the Commons secure.

would be prevented from implementing its legislative agenda by what they viewed as an illegitimate form of bicameralism which gave one party persistent veto power, regardless of electoral outcomes. The Lords, meanwhile, expected that the government would attempt to provoke them into confrontation by deliberately tabling more radical legislation than they otherwise would, eagerly expecting "the anticipated mutilation of their measures by the reflection that they will be gradually accumulating a case against the Upper House, and that they will be able to appeal at the next election for a mandate to modify the constitution" (Letter from Mr Balfour to Lord Lansdowne, 13 April 1906, in Newton, 1929, p. 354). They did not share the Liberal government's belief that a majority in the Commons justified majoritarian decision-making. Balfour and Lord Lansdowne, Unionist leader in the Lords, decided to co-ordinate the party's resistance to the government across the two chambers, adopting a strategy in which the party would fight but eventually capitulate in the Commons, and then the Lords would seem to be "the theatre of compromise" by proposing extensive revisions, employing their veto only when they could not get the government to back down and accept the upper chamber's amendments (Letter from Mr Balfour to Lord Lansdowne, 13 April 1906, in Newton, 1929, pp. 354-355). This way, between 1906 and the next general election in 1910, the Lords formally rejected only six out of 250 government bills (Ballinger, 2012, p. 16).

The first major conflict came over the 1906 Education Bill, which sought to increase government control over church-run schools. The Lords' many revisions were deemed unacceptable by the government, and incensed the Liberal Party's base (Edgcumbe, 1907, pp. 49-52). While Campbell-Bannerman briefly considered asking for a dissolution of Parliament so that he could fight another election over the bill, he decided there was not yet enough public concern to fight a de facto referendum campaign over the Lords issue, but he could use the defeat to start building support for an overhaul of the upper chamber (Spender, 1923, pp. 311-313). When Parliament resumed the following year, Campbell-Bannerman formed a special Cabinet committee under Lord Chancellor Loreburn to investigate the government's options and develop a suitable policy.

It is in the aftermath of the Education Bill's rejection that two recurring trends in Lords reform first become apparent: designing purposely flawed solutions to create a case for a second round of reform at a later date, and the prioritization of party interests and ideology over other considerations. In setting the scope for the committee's work, the Prime Minister had one unexpected requirement: that hereditary membership in the House of Lords remain untouched. This was surprising, and unpopular

even with many moderates in his party. At the time, calls for "reform" often implied change to the actual form or membership of the chamber as well as institutional roles and powers, and so he was effectively requiring that the committee not consider Lords reform as most of Cabinet understood it. Campbell-Bannerman's reasoning was that changing composition prior to powers would prevent any further reforms:

> To set up a nominated Second Chamber composed of grave and reverend but necessarily conservative-minded individuals would, if such a Chamber succeeded to the powers of the present House, both increase the evil and abolish the remedy which the present system provided in the last resort through the creation of Peers. On the other hand, to set up an elective Second Chamber would be to destroy the unique character of the House of Commons, and to introduce a new dissension into the heart of the Constitution. (Spender, 1923, p. 350)

Although both he and his party objected in principle to the hereditary nature of the Lords, they were more offended by the chamber's capacity to impede a majority in the Commons. Leaving composition untouched, he assumed, would both avoid the inadvertent empowerment of the chamber, and create an incentive for a future Liberal government to return to the matter of Lords reform, and prevent the Lords from becoming a body that could challenge the executive with any effectiveness.

The committee's report became known as the Ripon Plan after the elderly government leader at the time in the House of Lords, but Lord Ripon was scarcely involved. Much of the committee's work was instead based upon earlier discussions held between the Earl of Crewe and Herbert Asquith (Weston, 1968, p. 512).[31] Crewe and Asquith had already rejected as "undesirable or practically unattainable" four potential solutions: unicameralism, an elected Senate, 'Home Rule all round'[32], and the referendum (Crewe, 8 March 1907, in Raina, 2011, pp. 392-393, Vol I bk 1). The referendum idea in particular received extensive censure on ideological grounds; the power to trigger direct popular consultation on legislation would make the Lords, and not the Commons, into the symbolic guardian of voters' interests, while a referendum which went against the government's way would undermine the very principle of parliamentary governance as a form of rule by 'the people in Parliament' and not just their representatives. This left the committee with three variants on the suspensive veto, which was

[31] The Earl of Crewe was lord president of the council, and served as Ripon's assistant in the leadership of the Lords before succeeding Ripon after his death in 1908. Herbert Asquith was Lord Chancellor of the exchequer, and had already been chosen by Campbell-Bannerman as his successor in the premiership.

[32] The Home Rule all round proposal involved devolution of most parliamentary jurisdiction to the local counties, effectively removing the House of Lords from most areas of domestic policy, but would have involved extensive change to the fundamental characteristics of the state and its constitution

the most popular solution within the Liberal Party (Weston, 1968, p. 513): suspensive veto alone, suspensive veto with a reconstituted House of Lords, and suspensive veto with a joint session of the two houses. The first option was rejected for being "a kind of informal referendum, alien to our English theory of a representative House… in sight of the real referendum and a maimed House of Commons" (Crewe, 8 March 1907, CAB 37/101, in Raina, 2011, p. 394, Vol I bk 1). The second was rejected for creating "a paradox unintelligible to the ordinary voter" in which the upper chamber would be conferred with improved legitimacy, yet denied the ability to exercise its improved capacity (Crewe, 8 March 1907, CAB 37/101, in Raina, 2011, p. 395, Vol I bk 1). The only remaining option, in the committee's view, was the suspensive veto with joint sessions between the two houses. Following a first veto by the Lords, legislation would be suspended for either one year or even a single session;[33] if it were vetoed a second time by the Lords, the two houses would go into a joint sitting with 100 peers,[34] their numbers proportional to their party standings in the upper chamber (Loreburn, 23 March 1907, CAB 37/87/38, in Raina, 2011, pp. 398-400, Vol I bk 1).

The Ripon Plan's proposal for a suspensive veto with joint sittings was utterly unacceptable to the Prime Minister on both ideological and strategic grounds. Even though the Lords would be at a numerical disadvantage in conference, it "would put the power of the Lords on an equality with that of the Commons – an anti-democratic innovation which [Campbell-Bannerman] thought a Liberal Government should be the last to introduce; and… it would be fatal to Liberal Governments unless they had a majority of at least 100" (Spender, 1923, p. 350). Additionally, it might cause governments to avoid passing legislation if they were unsure of outvoting the Lords in a joint sitting. Campbell-Bannerman took the unusual step of circulating a strongly worded memorandum[35] to Cabinet which established that only the suspensive veto was acceptable to him, a move which Herbert Asquith later described as "strong and rather unusual" (Spender & Asquith, 1932, p. 191, Vol I), before tabling a resolution in the Commons which effectively overruled the conclusions of his own Cabinet committee (Spender, 1923, p. 358). He did not proceed with any legislation, however, because he knew the legislation would be vetoed by the Lords, and the rejection of a constitutional bill would likely trigger an

[33] At the time, this would have been about 6 months.

[34] This was out of approximately 587 Lords as of 1906 (PO/300/11, 14 November 1921)

[35] Although initially accredited to Campbell-Bannerman himself, Corinne Comstock Weston established that the memorandum had in fact been written by Sir Courtenay Ilbert, clerk of the House of Commons (Weston, 1968, p. 516)

election, but the public did not yet care enough about Lords reform for the government to be assured of victory (HL/PO/LB/1/23/1, undated).

While the Cabinet committee was still debating variants of the suspensive veto plan, Lord Newton drafted and tabled his own plan for Lords reform, the first such plan of the twentieth century. In it, he proposed reducing the size of the chamber by eliminating the hereditary right to a writ of summons, and replacing it with a two-writ scheme, in which the hereditary Lords would elect 200 from amongst themselves to serve for the duration of a single Parliament, to sit alongside hereditary peers who were former office holders, and the creation of up to ten life peers per year (1907, pp. 111-118). Newton had opposed the Lords' rejection of the Education Bill, and felt that the chamber had historically been misused by the Conservative party:

> Overgrown, unrepresentative, and unwieldy, when the Unionists were in office it was expected merely to act as a kind of registry office, and to pass without amendment, and occasionally without discussion, any measure sent up to it at the last moment. When, however, a Liberal Government was in power, it was expected to come to the rescue of a discomfited Opposition. (Newton, 1929, p. 360)

Newton, and some other Conservative Lords, felt that either the house could reform itself into a more useful chamber, or wait to be reformed by a Liberal government that did not have as strong an interest in seeing the Lords reformed well. To make the chamber's desire for reform more credible (Raina, 2011, pp. 414-427, Vol I bk 1), Newton withdrew his bill in favour of the establishment of a select committee on Lords reform under former Liberal Prime Minister Lord Rosebery, who sat as a cross-bench peer.[36] Yet the government refused to participate, believing that there was a fundamental and irreconcilable difference between the two parties concerning the purpose of reform. Herbert Asquith's position was that, "whereas Conservatives interpreted 'reform' as the setting up of a second Chamber which would be an even stronger bulwark against radical or subversive legislation, Liberals interpreted it as the removal of an obstacle which had brought Liberal and Progressive legislation to a standstill" (Spender & Asquith, 1932, p. 191). The Rosebery Committee met for a year before presenting a report which agreed with most of Lord Newton's original proposals, but it was never even debated in the upper chamber (Raina, 2011, p. 457, Vol I bk 1). Although the two-writ scheme would disappear from subsequent negotiations over the 1911 Parliament Act, similar ideas for curtailing the number of

[36] Other members of the committee included Lords Lansdowne, Curzon, St Aldwyn, Midelton, Courtney, and Selby, as well as the Archbishop of Canterbury (PO 300/1, 1 July 1908)

hereditary peers would appear regularly throughout the rest of the twentieth century, including in the reforms of 1958, 1968-69, and 1999. Cabinet clearly wanted change, but only on their own terms; input from the chamber they wanted to reform was gratuitous.

Talk of reform was allowed to subside as Campbell-Bannerman left office and was replaced by Herbert Asquith, and the government waited for adequate popular support for Lords reform, which it finally did in 1909 with the Lords' defeat of the so-called People's Budget. Despite its name, the Finance Bill was in fact an omnibus bill, presented to Parliament as a means of deliberately stimulating high-profile conflict with the House of Lords (Crewe, CAB 37/101 in Raina, 2011, pp. 460-461, Vol I bk 1). It included clauses that had previously appeared in the rejected Land Reforms and Licensing Bills, as well as provisions for redistributive taxation that were unpopular with the Unionists and for which the government could claim no clear mandate from the last election, and was so broad that it would not have fit the requirements to be classified a money bill under the terms of the Parliament Act (Ridley, 1992, pp. 248-249). The People's Budget was a means for the government to win whether the bill succeeded or failed. If it was passed by the Lords, they would be capitulating on the previously rejected bills, and acceding to extensive social welfare reforms. However, if the bill failed in the Lords, the government had a sympathetic case for claiming that the upper house was impeding the democratic process. When the Lords did reject the bill, it tried to depoliticize the move by overwhelmingly approving a motion which declared the chamber was "not justified in giving its assent to the Bill until it has been submitted to the judgment of the country" (HL Hansard, 30 November 1909, cols 1233-34). Nevertheless, after Parliament was dissolved a few days later, an editorial cartoon in *Punch* magazine responded to the news with an illustration of Prime Minister Asquith reading news of the budget's defeat to his Cabinet which responds with jubilation, with one Minister going so far as to exclaim, "My boy, they are delivered into our hands!" (Reed in Asquith, 1920, p. 224, Vol III).

The first general election of 1910 returned a hung Parliament with a Liberal minority of 275, only two more than the Unionists, making the government reliant upon the support of 40 Labour and 82 Irish Nationalist MPs. The leaders of the Irish Nationalists were quick to establish themselves as potential veto players in Lords reform, informing Cabinet that they would not approve the budget until the government had presented them with an acceptable plan for limiting the Lords' veto (Raina, 2011, p. 466, Vol I bk 1; Spender & Asquith, 1932, p. 272, Vol I). Conventional accounts of the Parliament Act identify this ultimatum as the critical juncture in the abandonment of wider reform (c.f. Ballinger, 2006,

p. 82; Spender & Asquith, 1932, p. 276, Vol I), but this narrative discredits the significance of what happened in the following months, and the underlying motivations of Cabinet.

The government would have to pass a budget, but it still had no official policy on what to do with the House of Lords. While the rank-and-file of the party had come to assume that the Campbell-Bannerman Plan was government policy, Cabinet actually had no strong guidance from the Prime Minister on how to proceed, and so it initially seemed as though the minister who cared most to get involved with upper house reform would get to dictate policy. This was Foreign Secretary Edward Grey, who was vocal in his opposition to the suspensive veto and support for composition reform, and had most of the senior Cabinet ministers on his side. The mood within Cabinet in early 1910 showed a desire to pursue broad, comprehensive reform not just of powers but of composition as well, and the House of Lords had repeatedly signalled its willingness to accept changes to the hereditary principle of membership. Grey's position was moderate in that it sought to alter and not just remove features from the upper house, but it was radical on the same grounds, because it forced the reformers to consider parliamentary bicameralism from a normative perspective – what it should do, rather than what it should not do. This radicalism made broad reform harder to pursue, but it was not impossible.

However, Lord Rosebery was once more attempting to initiate reform from within the upper house, and in March 1910 he tabled three resolutions calling for reform of the Lords into a strong and efficient second chamber and elimination of the hereditary right to a writ of summons (HL Hansard, 14 March 1910, cols 140-169). Once again, the Liberal Lords refused to participate, citing interest only in changes to the powers and not composition of the chamber, but the resolutions otherwise received widespread support (Raina, 2011, pp. 497-527, Vol I bk 1). After several days' debate, the only opposition was limited to a small contingent of only seventeen Lords who voted against the end of hereditary membership (Newton, 1929, p. 390).[37] In a letter to Lord Lansdowne, Lord Rosebery described his primary motivation as the desire to keep the second chamber efficient and relevant, arguing that if they failed to act, the chamber would be "at the mercy of its enemies… and if this chance is missed, it may not recur" (Rosebery, 18 March 1910 in Newton, 1929, p. 390). The fourth Marquess of Salisbury also wrote several memoranda around this time to his fellow Lords advocating that they take the initiative on reform, considering any possible changes that would improve the workings of the

[37] This group of hardline supporters of the hereditary principle was led by Lord Halsbury.

upper house, including a gradual transition in composition from hereditary to lifetime peerages (S(4) 239/7-9, 1 March 1910), or indirect election (S(4) 239/7-9, undated (1911?)). Most of the upper house was not only willing to discuss the possibility of reform, but eager to do so in order to secure the chamber's continued existence; it was Cabinet's desire to pursue types of changes that even progressive and reform-minded lords would find objectionable, without seeking consensus or even considering concessions, that prevented any multilateral negotiations from occurring.

Wishing to reclaim sole authority over the issue of Lords reform and to secure Irish support for the budget (Fair, 1980, pp. 77-78), the government tabled its own set of resolutions at the end of March 1910 which became the basis of the Parliament Bill tabled in April. The clauses were nearly identical to the suggestions made by Campbell-Bannerman three years earlier, with one major modification: there was no longer any provision for a joint sitting of both houses in case of disagreement (Spender & Asquith, 1932, p. 277 , Vol I). The reason for this change is unclear, as no Cabinet documents, Ministers' memoirs, or biographies discuss why the government chose to drop the joint sittings, but it was likely a matter of expediency and simplicity; without joint sittings, there would be no need to negotiate the size of the delegations from each chamber. Between Rosebery's resolutions and the threat of Irish dissension, the government needed to present a plan quickly, and leave little room for debate over the minutiae. The appropriate size of the Lords contingent at joint sittings had always been a sticking point in previous negotiations, and would become so again when the issue was broached a final time that summer (Fair, 1980, p. 101), and so eliminating the provision for joint sittings avoided one more clause over which the reform plans could collapse.

Under the government's resolutions, the Lords would be unable to veto money bills, have only a limited veto over other legislation of at least two years or three sessions of Parliament, and the life of a Parliament would be reduced from seven years to five. This amendment to the Septennial Act of 1716 is rarely discussed within the context of the other provisions of the Parliament Act, but it illuminates the Liberal and Labour parties' foremost recurring fear about the potential consequences of upper house reform. Reformers wanted a weakened upper house, but only if they could do so without relocating any of the same powers to another institution which might challenge Cabinet authority. The combination of the suspensive veto with the seven year gap between elections could potentially strengthen the case for referenda, because otherwise a government would be able to use consecutive veto overrides within a single Parliament, giving the appearance of weakened representative

government (D. E. Smith, 2003, p. 35). The referendum principle remained unacceptable to the Liberal government since it would, in turn, undermine Cabinet government by removing contentious matters of national policy from Parliament to the public stage. If it was illegitimate for the House of Lords to overrule the House of Commons with an absolute veto, the logic went, it was equally illegitimate for them to undermine Commons authority with the power to force referenda on contentious issues (c.f. Edgcumbe, 1907, p. 129). Edward Grey was so vehemently opposed to the suspensive veto plan, and insistent upon the need for reform to composition, that the government nearly collapsed under the pressure.

Asquith was readying to ask for a dissolution of Parliament in order to fight a summer election over the Parliament Bill when King Edward VII (1901-1910) died suddenly at the beginning of May 1910, seriously disrupting the government's plans. Since the previous monarch had been informed of the government's plan but had not yet agreed to flood the House of Lords with new peerage creations if necessary, the government thought it unwise to ask it of the new King George V (1910-1936) so soon after his accession (Bogdanor, 1995, pp. 113-122). Additionally, the government did not want to publicise any such agreement that it did secure from the new king, for fear of dragging the monarchy into "the sphere of party and electoral controversy" (CAB 41/38/1, 15 November 1910). Edward VII's death also meant postponing the intended summer election until after the King had settled into his new role. Edward Grey took the opportunity to press once more for change to composition, suggesting that the government reconsider the Ripon Plan (Ballinger, 2012, p. 24). He had a strong case; the Parliament Bill had only received a first reading prior to Parliament rising for a recess, and so there had not yet been any time spent debating a bill which did not include reform to membership of the upper house. Now that the government had to wait, they had the time to find a solution that Cabinet and the Lords actually liked.

Sensing that public opinion was unfavourable towards a unilateral move by the government, Cabinet called an interparty constitutional conference to discuss Lords reform, with no strict boundaries to its negotiations (Spender & Asquith, 1932, p. 285, Vol I).[38] The eight-person conference met 22 times between June and November of 1910, agreeing quickly to a limitation upon the Lords' ability to amend

[38] The conference consistent of Herbert Asquith (PM-MP-Lib), Lloyd George (MP-Lib), Augustine Birrell (MP-Lib), Lord Crewe (Lib), Arthur Balfour (MP-Cons), Austen Chamberlain (MP-Cons), Lord Lansdowne (Cons), and Lord Cawdor (Cons).

or veto money bills, but could not agree on whether the suspensive veto should apply to constitutional matters (CAB 37/103/24, 22 June 1910). The Conservative delegation wanted future constitutional reform to be exempt from the suspensive veto as a legislative safeguard against radical and unilateral constitutional reform, preferring referenda or general elections as mechanisms for settling constitutional questions. Asquith initially appeared willing to offer an acceptable compromise to the Conservatives by adopting the Rosebery Committee's suggestion for joint sittings on constitutional reform, but as before, they could not agree on the size of the delegation from the House of Lords (Newton, 1929, p. 402).

Fair (1980, p. 102) suggests that the conference's failure to produce a new plan for reform was because the government was only using it to "delay a settlement of the House of Lords question for six months after the death of King Edward [VII]". However, while the delay was a strategic one, the conference's failure also lay in a similarly strategic lack of structure to its proceedings. The Prime Minister was largely apathetic about the outcome, except for the requirement that it weaken the House of Lords, and there were no committee members who felt particularly attached to any one solution. Despite their consistent support for more radical reform, neither Edward Grey nor Lord Rosebery participated in the conference. The former was too busy with the increased demands placed upon him as Minister of Foreign Affairs in the years leading up to the outbreak of war in 1914, while the latter was convinced by Lord Lansdowne to let the multiparty and cross-Parliamentary committee attempt to negotiate a settlement that would be amenable to both government and Opposition in both chambers (Newton, 1929, p. 395). Without an invested participant to provide direction, the conference "wrestled with every form of constitutional change which confronted the nation" (Fair, 1980, p. 102). The plethora of choice, combined with the conference's lack of enthusiasm for any option, meant that the conference ended in November having made no new breakthroughs. Asquith blamed the Unionists (Spender & Asquith, 1932, pp. 286-287, Vol I), Lansdowne blamed the Liberals (Newton, 1929, pp. 401-402), and Cabinet simply reverted back to the Parliament Bill as the default plan when negotiations broke down in November.

Campaign rhetoric during the second election of 1910, in December of that year, was dominated by the question of Lords reform. Some peers, for the first time, even broke with long-standing custom and appeared alongside their party's candidates for the House of Commons (Blewett, 1972, p. 156). Voters, however, did not seem to share elites' enthusiasm for the matter (Newton, 1929, p. 431), and

the election results were nearly identical to those from the previous election in January. The Conservatives and Liberals lost one and three seats respectively, while the Irish Nationalists and Labour each gained two. This meant that the Conservatives and Liberals were tied, at 272 MPs each. The Asquith administration returned to power, and re-introduced the Parliament Bill at the end of February 1911. It passed the House of Commons by the middle of May before being sent to the Lords, where it was amended heavily to include provisions for referenda on constitutional bills.

The Conservative leadership knew that the government would have the King swamp the upper house if the Lords rejected the bill, but they disagreed on the best tactic. Asquith had publicly given every indication that he would ask the King to create new peers in order to secure the passage of the bill, but nobody knew how many.[39] Arthur Balfour wanted the peers to reject the bill by a slim margin, believing that the government would create only enough new peerages as was needed to pass the bill, or they might even be able to secure some compromise from the government on the matter of constitutional bills (Raina, 2011, p. 36, Vol I bk 2). Lord Lansdowne, on the other hand, believed that the government would use any defeat to swamp the upper house with enough new peerages to threaten the Conservative majority, and wanted the Lords to capitulate to avoid any new creations (Raina, 2011, p. 36, Vol I bk 2). Hard-liners, however, rejected Lansdowne's position and objected to the Parliament Bill on the belief that it would turn Parliament into a de facto unicameral legislature (Halsbury et al, 21 July 1911 in Raina, 2011, p. 33, Vol I bk 2). Some began to openly challenge Lansdowne's leadership, leading Balfour to change his position in favour of supporting the Conservative Party Leader in the House of Lords (Newton, 1929, pp. 417-429). Between a plea from Lord Rosebery in *The Times* to Conservative opponents that they should abstain rather than vote against the bill, and Lord Newton's appeal to Conservative peers to support the bill in order to counteract the hard-liners, the bill finally passed in early August by a vote of 131 to 114. Among them were fourteen peers who voted for the bill but signed the rarely used Protest Book, which was used to register that peers who had voted for a bill did so in spite of objecting to its contents (R. O. Crewe & Crewe-Milnes, 1931, p. 644).

[39] Even Asquith's biographer was unsure, but believed that the government was readying to make hundreds of new appointments if the Lords rejected the Parliament Bill, and reprinted a list of approximately 260 names that Asquith had considered to recommend for peerages if necessary (Spender & Asquith, 1932, pp. 329-331).

Thirty-five Conservative "Judas Peers" voted in favour of the bill, though whether it was due to Newton's intervention, as conventionally asserted (Ballinger, 2012, p. 29), or because they feared worse would happen to the upper house if they rejected it (Weston & Kelvin, 1984), is indeterminate. In his biography of Lord Lansdowne, Newton himself asserts that the question is irrelevant, since the Crown had consented to create as many new peers as was necessary to pass the bill, and the Unionists were unlikely to have won had they triggered a third election over Lords reform:

> One of the peculiarities of the situation was that in spite of the convulsions at Westminster, the country showed only a faint interest in the constitutional question, and that interest was quickly eclipsed by a big railway strike and the Agadir crisis, when Europe was again brought to the brink of war through the aggressive policy of Germany. (Newton, 1929, p. 431)

As monumental as the Parliament Act was for the fundamentals of British governance, and as much conflict as it had caused within Parliament, Lords Reform did not elicit widespread interest or strong reactions outside of Westminster, and the government was operating under the belief that it needed heightened public interest to engage in dramatic reform. This belief in the need for broad popular support for reform, enhanced by conflict between the two chambers, meant that the first necessary factor for meaningful reform was only partially present in 1911; reformers understood the formal rules, but had imposed upon themselves additional and unnecessary restrictions due to misidentification of the unwritten rules for change. This meant that the government was effectively restricting its own ability to pursue an optimal solution by restricting the number of potential scenarios under which it believed it could act. The second factor for meaningful reform, meanwhile, was absent due to misidentification of the Lords' veto powers as a cause rather than a symptom of the intercameral discord that reformers were attempting to fix.

4.2 Of Committees and Conferences: The Interwar Years

The preamble to the Parliament Act of 1911 describes it as an "expedient [measure] for regulating the relations between the two Houses of Parliament," until such time as the government could "substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis" ("Parliament Act," 1911).[40] The bill replaced the Lords' absolute veto with

[40] This preamble was included at the behest of Edward Grey, secretary of state for foreign affairs, who was keenly interested in Lords reform but too busy with his portfolio to participate in drawing up a more comprehensive scheme for reform (Fair, 1980, p. 65).

a suspensive one of up to two years, and reduced the length of a Parliament from seven years to five. There is every indication that the government intended to fulfil this promise to eventually do away with the existing upper house entirely, but after the bill was passed, any further progress promptly stalled, as the potential for an opening due to institutional crisis abated. Would-be reformers did not challenge the assumption that institutional reform would first require intercameral conflict, and so all the discussions which went on during the interwar years always held the assumption that planning was done in preparation for an eventual crisis, and not as a pre-emptive measure to avert future conflict. However, it was during this time that one particular plan for upper house reform attempted to change the underlying logic for future reform attempts by studying the likely causal link between institutional structure and output, a task which had been overlooked in development of the Parliament Act.

Prime Minister Asquith's government had hoped that the Parliament Act would enable a second round of reform, culminating in the expulsion of hereditary peers from the upper house. A few confidential papers circulated within Cabinet containing suggestions for an elected upper house (SAM/A/30, 17 December 1912, 24 November 1913), but with the threat of the Lords' veto gone, the motivation for a second stage quickly evaporated. The Unionists, for their part, were adamant that the legislation had to be amended to add a referendum-triggering veto over constitutional matters as quickly as possible (Selbourne, July 1912 in Raina, 2011, p. 95, Vol I bk 2). One bill regarding the elimination of hereditary peerages passed its Commons committee stage in mid-July 1914, but with the outbreak of the First World War barely a month later, all discussions on either side were shelved entirely. The matter does not appear in Cabinet documents from the coalition war government until 1917, and no mention is made of it during that time in the biographies of prominent Lords or Cabinet Ministers.

Despite the sudden drop-off in the immediate aftermath of the Parliament Act, the interwar years in Britain proved to be the most prolific era in contributing to a modern normative justification for democratic parliamentary bicameralism, and many of the scholarly and governmental works produced during that time are still referenced today as foundational texts in Westminster bicameralism studies. Where previously, the focus on what the United Kingdom's second chamber was doing wrong, the emphasis was increasingly placed upon understanding parliamentary bicameralism from a conceptual perspective. The change meant that new plans in the interwar years were increasingly additive, rather than focussed on dismantling existing powers and structures.

The most important of these interwar documents came from the 1918 report by the Conference on the Reform of the Second Chamber, more commonly known as the Bryce Conference after its chairman. The committee was established in 1917 following the success of the Speaker's Conference on Electoral Reform, which led to the largest single expansion of franchise in British history by enfranchising all adult men and some women over the age of 30.[41] The hope was that the conference would replicate for the upper house what the Speaker's Conference had done for the lower house (Raina, 2011, p. 120, Vol I bk 2). Amongst the thirty-two members who sat on the committee were Viscount Bryce, a distinguished constitutional historian; former upper house reformers the Marquess of Crewe, the Marquess of Lansdowne, and Earl Loreburn; and former Oxford lecturer and comparative second chamber scholar JAR Marriott.[42] The Bryce Report quickly became a foundational text in British bicameralism studies; it has been appended to every major government report on Lords reform since 1918, and frequently appears in full in academic texts on the House of Lords (Bailey, 1954; Bromhead, 1958; J. P. Morgan, 1975; Raina, 2011; Roberts, 1926) and even the Canadian Senate (MacKay, 1926).

In all, the committee was tasked with reporting on three matters relating to a reformed second chamber: legislative powers, resolving conflicts between the two houses, and what changes were necessary to facilitate the functioning of the second chamber (Cmd 9038, April 1918, p. 2). The committee took a decidedly apolitical approach, approaching upper house reform as a conceptual, abstract problem, and so the bulk of their report was taken up by a discussion of the first objective. The report reads as a theoretical discussion of what a second chamber's ideal functions should be, a normative perspective which had notably been absent from discussions which preceded the Parliament Act. The Bryce Conference's report (Cmd 9038, April 1918) emphasizes the need for reform to address the upper house as part of a bicameral legislature, rather than an institution in isolation.

The ideal upper house depicted in the report was one which was unequal to the Commons in power, but equal in importance to the legislative process. There were four main points of agreement

[41] Women had to be property owners, a member of or married to a member of the Local Government Register, or university graduates voting in one of the University Constituencies, which were at the same time expanded from just Oxford, Cambridge, London, and the four ancient Scottish universities, to include nearly every major university in the British Isles.

[42] Notably absent from the committee was Edward Grey, whose duties as foreign secretary kept him preoccupied with the ongoing war, and Lord Rosebery, who had effectively retired from political life after reluctantly voting in favour of the Parliament Act, "a Bill which was abhorrent to him" (R. O. Crewe & Crewe-Milnes, 1931, p. 644), which proved to be his last appearance in the House of Lords.

about the proper functions of an upper house, all of which relied to their own advantage upon the chamber's weakened political authority vis-à-vis the directly elected House of Commons (Cmd 9038, April 1918, p. 4). First, it should be a chamber of revision and research. The business of government could no longer be treated as a part-time hobby of wealthy men, but was a full-time endeavour. Even though MPs first began to receive a salary for their work in 1911 under a new full-time employment model for the business of government, there was often simply not enough legislative time to give adequate consideration in the Commons to the minutiae of each bill (PO/300/8, 22 October 1917). This increased the risk of unintended consequences resulting from rushed legislation; the House of Lords could act as compensatory institution. Secondly, the upper house should specialise in the introduction of uncontroversial bills. Mundane legislation was a necessary party of governance, and the Bryce Committee felt that it was wasteful for the House of Commons to spend scarce legislative time on these bills (PO/300/6, 2 October 1917). Instead, if housekeeping bills could be thoroughly discussed and debated before reaching the House of Commons, it would free up valuable time for more politically controversial matters which could only properly be decided by elected representatives.

The other two functions valued the more confrontational elements of the relationship between the two houses, which the committee knew would be less popular under a philosophy of government which equated unhampered majoritarian rule with democracy (Cmd 9038, April 1918, p. 3). The third critical role for a reformed second chamber was the capacity to delay legislation long enough to gauge where public opinion rested on controversial legislation. Delay powers were important, but equally so was the supremacy of the House of Commons on legislative matters. A lack of any power for delay left the system open to violation of minority rights, but excessively long delays or an outright veto left the house of direct representation vulnerable to being overruled by the non-representative second chamber (PO/300/7, 5 October 1917). Finally, the second chamber must be able to hold free and open debate on controversial political issues. The mechanisms of responsible government were vital to Parliamentary democracy, but also had the potential to be used by governments to restrict debate and avoid scrutiny in the Commons. Governments dealing with rebellions in the backbenches, or a reticent Opposition in a minority Parliament, could invoke confidence procedures to force a choice between passing an unpopular bill and causing the administration to collapse (Cmd 9038, April 1918, p. 5). The political costs of defeating a confidence motion in the Commons were high, but they were absent when the rejecting chamber did not have the ability to defeat a government.

Even before the committee reported its findings, however, the government was unlikely to act upon any of their suggestions. Unlike in the case of the Speaker's Conference on electoral reform, in which the prospect that many soldiers returning from the war would be unable to vote made expansion of the franchise a matter of national importance, the ongoing war distracted from rather than heightened the urgency of reform (Raina, 2011, pp. 227-228). Furthermore, the model for a reformed upper house contained in the final section of the report was complicated – too complicated for a government preoccupied by war and unencumbered by any impending crisis in the Lords. Commentary in *The Times* which appeared the day that the report was published noted this, remarking that "the Conference have proposed a very elaborate and complex scheme on a subject which at the moment has only a secondary claim upon public attention… it is in no sense an urgent war measure, such as is, for instance, the question of Ireland [Home Rule]" (24 April 1918, p. 7). Without a crisis in the Lords, the government had no strong incentive to act; but, as experience had already shown and would again be repeated every time the House of Lords became a salient policy issue, this crisis response approach to Lords reform often resulted in haphazard, poorly thought out change.

The most important outcome of the Bryce Conference was to trigger a fundamental shift in the objectives underlying public discourse concerning what should be done about the Lords. The clearest instance of this is in the changing dialogue concerning the use of life peerages to refresh the upper house. Prior to the Parliament Act, life peerages were advocated as an alternative to an ever-growing chamber of heredity and a means of securing legislative input from men who were capable of contributing politically but were unable to sustain the dignified lifestyle for himself and his heirs expected of a peer (c.f. Marriott, 1910, pp. 278-279; McKechnie, 1909, pp. 125-126). The case for life peerages had been virtually unchanged since constitutional scholar Walter Bagehot, writing about the 1856 Wensleydale peerage case (see Chapter 5.1 "Prior Attempts to Reform through Convention: Wensleydale and Rhondda" p99), had represented life peers as the only way to provide the Lords with:

> The very element which, as a criticising chamber, it needs so much. It would have given it critics. The most accomplished men in each department might then, without irrelevant considerations of family and of fortune, have been added to the Chamber of Review. The very element which was wanted to the House of Lords was, as it were, by a constitutional providence, offered to the House of Lords, and they refused it… [U]nless [that error] is repaired, the intellectual capacity can never be what it would have been, will never be what it ought to be, will never be sufficient for its work. (Bagehot, 1867, pp. 191-192)

It is only after the Bryce report – and often arising in deliberate response to the Bryce report – that the case for life peerages or the restriction of hereditary membership in the Lords changed. It was no longer adequate to say that the aristocratic principle had lost its lustre, or engage in personal invectives against members of the upper house (c.f. Carpenter, 1908; McKechnie, 1909; Spectator, 19 February 1910; Stead, 1907; Times, 24 April 1918); reforms now had to be justified in terms of what they would contribute to the workings of a multicameral democratic Parliament. Under this shifted perspective, life peerages became a means of supplying the upper chamber with skilled and expert membership, without becoming a mirror of the lower chamber in terms of partisanship and contestation of a government (Bailey, 1954; Bromhead, 1958, pp. 245-249).

The Parliament Act had brought about a dramatic and rapid expansion in the power of Cabinet which was observed almost immediately, and highlighted in the Bryce Report. MPs had quickly found themselves under pressure from party whips to reject even legitimate amendments from the Lords, since any substantial change to the bill would reset the time for the suspensive veto to take effect (J. H. Morgan, 1914, p. 34). By concentrating power into the hands of the Prime Minister and Cabinet, it also relocated many important decision-making processes of parliamentary government to the executive (Lees-Smith, 1923, p. 36). The Bryce report linked these developments in the House of Commons to the Parliament Act's effects upon the House of Lords, making it clear that the upper house could not be altered without affecting surrounding institutions, particularly the lower house of Parliament (Cmd 9038, April 1918, pp. 14-19). This bicameral perspective on the House of Lords attempted to completely change how would-be reformers had to approach the Lords question, and although certain proposed changes which were popular before the passage of the Parliament Act remained the prevailing solutions, the underlying justification changed dramatically. The new objective for Lords reform that aimed to improve the functions of the second house was to create a chamber which would compensate for the legislative gaps left by an increasingly overburdened House of Commons, and correct some of the imbalances which had arisen due to the increased workload of governance. Ironically, a big part of the reason why the Bryce Report has retained much of its contemporary relevance is because future attempts to revise the Parliament Act were overly slow in incorporating this broader contextualised perspective when deciding upon their choice of objectives. In the meantime, there was a complete lack of government action on either the committee's report, or any of the reports which followed it in the interwar years.

After the Bryce Conference, House of Lords reform appeared on Cabinet's agenda three more times before the outbreak of the Second World War in 1939, though none of the instances warrant significant mention since they never posed a strong chance of effecting any change. Cabinet committees were formed to discuss the possibility of reform in 1921, 1925, and again in 1933, each following a similar pattern of starting from the Bryce report, considering a myriad of potential solutions ranging from unicameralism to alteration of the suspensive veto, presenting a scheme to Parliament, and then having their report shelved by a disinterested government that does not appear to have been serious about pursuing Lords reform.[43] The committees were typically established in response to rumblings from within the broader party membership about Lords reform (PO/300/11, 26 October 1921), and while some members were keen on reform, the consensus was ultimately that there was little to justify the political costs of reopening the Lords issue (PA/LH/4/2, 1 April 1935).

4.3 Anticipating Conflict that Never Came: the Parliament Act, 1949

Even though the Parliament Act of 1949 was passed under the leadership of a different governing party, it was a clear sequel to the Liberal government's 1911 Parliament Act. The underlying logic was the same, with lessons from the Bryce Committee report unheeded: the Lords' ability to block a majority in the Commons was simply "out of place in a modern democracy, and should be abolished" (Attlee, 1935, pp. 113-114). The strategy was also the same: wait for – or even encourage – intercameral conflict in order to create a case for further restricting the Lords' powers. The only clear difference between 1906-1911 and 1945-1949 lay in the rhetoric levelled against the Lords. The first Parliament Act was passed by a government seeking to dismantle what they effectively viewed as an illegitimate Conservative shadow anti-government in the Lords; House of Lords vetoes were Conservative party vetoes (CAB 1/7, 7 September 1909; HC Hansard, 2 December 1909; McKechnie, 1909; SAM/A/30, 17 December 1912; Spectator, 19 February 1910). By the 1940s, criticisms of the conservative element in

[43] Members of the 1921-22 committee were Marquess Curzon (Cons), Viscount Birkenhead (Cons), Austen Chamberlain (MP-Cons), Winston Churchill (MP-Lib), and HAL Fischer (MP-Lib) (PO/300/12, 14 June 1922). The 1925-27 committee consisted of Viscount Cave (Cons), Fourth Marquess of Salisbury (Cons), Sir Samuel Hoare (MP-Cons), and Viscount Cecil of Chelwood (Cons). Other unofficial attendees included Winston Churchill (Now MP-Cons), Sir Joynson-Hicks (Cons), Viscount Peel (Cons), and the Earl of Birkenhead (Cons) (CP 27(26), 1927). The final committee from 1933-35 was comprised of Prime Minister Ramsay MacDonald (MP-Nat Lab), James Henry Thomas (MP-Nat Lab), Viscount Sankey (Nat Lab), Stanley Baldwin (MP-Cons), Neville Chamberlain (MP-Cons), David Ormsbey-Gore (MP-Cons), Viscount Hailsham (Cons), Marquess Londonderry (Cons), John Simon (MP-Lib), and Walter Runciman (MP-Lib) (CAB 27/562, December 1933).

the Lords were more likely to be of the small-c than large-C variety, and this tendency was generally attributed to the hereditary element, rather than party membership (Jennings, 1941, p. 52; Laski, 1938, p. 111; see also personal correspondence and parliamentary debates from 1946-47 in Raina, 2011, pp. 24-68).

Although the dynamics were similar, with a progressive government facing primarily Conservative opponents in the Lords, the root cause had shifted slightly. Labour did not want to replace a Conservative majority in the Lords with its own party supporters, because the socialist Labour party was ideologically opposed to the hereditary principle; instead, Labour ideally wanted to eliminate hereditary membership in government entirely. However, because the Labour government was operating under the same implicit crisis model that the Liberal government had previously used, and the Lords did not take "some action which was directly contrary to the policy of the Party [thus] providing [them] with an unanswerable case for action" (CAB 129/13, 15 October 1946), it did not perceive any opportunities to engage in the more extensive change to composition. When no suitable window of opportunity appeared, the government's action was intended primarily to secure the passage of its iron and steel nationalisation bill, which it had been forced to delay until the final two years of Parliament, when the Lords had an absolute veto (CAB 128/10, 7 August 1947; "Editorial," 17 October 1947). The Parliament Act of 1949 was not so much an instance of successful Lords reform, but an instance in which the government had sought and failed to find for itself an opening for real reform, and what change occurred was a half-reform, incidental to another part of the government's agenda.

The Labour Party's resounding victory under the leadership of Clement Attlee in the 1945 general election brought it to power with its first ever majority government. Labour controlled 393 out of 640 seats in the House of Commons, but they expected to encounter staunch resistance from the Conservative-dominated Lords over their extensive nationalisation plans, especially if they were unable to introduce all of the necessary bills within the first three years of the Parliament (Bromhead, 1958, p. 140). Despite this fear, it took nearly a year for Cabinet to discuss the possibility of amending the Parliament Act (CM 60(40)2, 20 June 1946). This was in large part because Labour had never been forced to develop any clear policy on Lords reform. While party activists had voted in favour of abolition at a party conference in 1918, the party leadership had been reticent to adopt it as official policy during the short-lived Labour governments of 1924 and 1929-31 (Dorey & Kelso, 2011, p. 56). Within the party, many MPs preferred indirect election, similar to what had appeared in the Bryce Committee report, but

in Parliament, they had been more concerned with issues of social class and democratic reform of the Commons.

The Fourth Marquess of Salisbury[44] had previously approached the wartime coalition government with a proposal for Lords reform in 1943, which would have dramatically altered the hereditary principle and allowed for the creation of a limited number of life peerages (S (4) 187/1-12, April 1943). Although Lord Addison, leader of the Labour party in the Lords, had presented the bill to Cabinet, the government had decided not to take any action at the time, though after the 1945 election, he reminded Cabinet of this earlier proposal, suggesting that any scheme for reform follow Salisbury's plan (CP (46)382, 15 October 1946). While they could have potentially secured the necessary support for the proposal, the government quickly dismissed the idea because they had a fundamental difference in objectives from Lord Salisbury; where Salisbury wanted to make the Lords a better revising chamber, Cabinet wanted a further weakening of the Lords' formal powers (CP (46)382, 15 October 1946). As in 1909, the government wanted to wait for the House of Lords to do something controversial to justify retributive reform of the upper house. While some government bills were encountering resistance in the Lords, it was mostly limited to criticism and amendment rather than rejection, leading the Lord Chancellor to report around the same time that Salisbury's 1943 bill was once more being passed around Cabinet, that they should not give any indication that they were considering reform until "the House has made harsh or unreasonable use of its power," (CP (46)376, 11 October 1946). The Labour government was uninterested in seeking a broad consensus on reform, preferring instead to wait until the conditions were right for the type of reform they wanted.

In 1947, however, unexpected delays in Labour's legislative agenda prompted Attlee to reverse his earlier position, and he decided to act pre-emptively on Lords reform (Ballinger, 2012, pp. 56-59; CM (47)80, 14 October 1947; Crick, 1968, p. 118). Due to time constraints, the government had been unable to pass all of its nationalisation plans by the end of the 1946-47 session, leaving gas, iron, and steel

[44] The Fourth Marquess of Salisbury inherited his title in 1903, following the death of his father, the Third Marquess of Salisbury and final Prime Minister from the House of Lords. He had previously tabled a bill to place a cap on the size of the chamber, and changing composition to half hereditary, half indirectly elected by the Commons, in 1933 (1934). He died in 1947 and his son, as Fifth Marquess of Salisbury, went on to play a vital role in the 1958 Life Peerages Act, while the future Seventh Marquess of Salisbury, as Viscount Cranborne, was similarly influential upon the 1999 House of Lords Act. The Marquesses of Salisbury also appear frequently in historical documents by their junior titles of Viscount Cranborne or Baron Cecil, as many of the sons were elevated to the House of Lords by writ of acceleration prior to their fathers' deaths.

nationalisation incomplete. Gas nationalisation could be completed relatively quickly, with a bill that closely mirrored the earlier Electricity Act of 1947, but iron and steel were more controversial with the public, in Parliament, and even within the Labour Party caucus (CM (47)80, 14 October 1947). If the government did not initiate Lords reform before the end of 1947-48 Parliamentary session, they risked running out of time to force the bill through under the 1911 Parliament Act's suspensive veto override provisions, and might also be unable to pass any further bills related to their extensive nationalisation plans in the two years before the next general election, anticipated for 1950.

Under pressure from the Parliamentary Labour Party to proceed with the rest of nationalisation and faced with a rapidly shrinking timetable, with no perceived window of opportunity for broader reform to the hereditary composition of the Lords, the government hastily tabled a new Parliament Bill (CP (47) 299, 28 October 1947). It was even shorter than its single-page predecessor from 1911. Instead of requiring that legislation be passed in three consecutive sessions of Parliament spanning at least two years, the revised bill would require only two sessions of Parliament and one year to pass between the initial second reading of the bill in the Commons and receiving Royal Assent (LLN 2005/07, November 2005). The possibility of seeking more extensive reform scarcely appears in Cabinet documents from the time; when the Liberal leader in the Lords asked for a party conference on Lords reform, he was told that the 1947 Parliament Bill would have to be passed before the government would consider any additional reform, and they were uninterested in soliciting cross-party agreement on any proposals in the future (CM 87(47)3, 13 November 1947).

It was only once the Parliament Bill had been tabled and rejected by the Lords, and the veto override mechanism triggered, that the government finally acceded to requests for an interparty discussion on House of Lords reform. Cabinet discussions reveal that the government believed it could not risk the appearance of "adopting an unreasonable attitude, and would be likely to forfeit public sympathy" if it retained an entirely unilateral approach (CM 9(48)1, 2 February 1948). On the other hand, entering into discussions with the other party leaders would give the appearance of being willing to compromise – but more importantly for a party that commanded a significant majority in the Commons and did not have to rely on Opposition support to pass the Parliament Bill, it would keep the other parties occupied and unable to mount any serious complaints for much of the two years before the veto override could take effect (CM 9(48)1, 2 February 1948).

The terms of the Party Leaders' Conference of 1948, as set by the government, were very restrictive.[45] The government openly declared that it would not consider any amendment which would impede their ability to pass legislation within the final two years of a Parliament, and the Parliamentary Labour Party would have to agree to any decisions made by the conference before the government would take any action (CM (48) 9, 4 February 1948). Additionally, at meetings prior to the conference and in personal letters between ministers, Cabinet established further limitations that were to be kept confidential. They would not agree to a Lords' veto longer than twelve months; there could be some negotiation on the start date for the twelve month window – first or second reading in House of Commons or Lords – but only if the opposition parties would guarantee the passage of the resulting bill before the end of the current Parliament (LH/4/1, 9 January 1948). One letter described the government's possible concession "not so much a question of mechanics as one of pure political strategy", but even so, it was to be "the Government's very last offer, failing the acceptance of which, let them shoot and be damned" (LH/4/1, 10 January 1948, pp. 1-2).

The government had a clear upper hand going into the conference. They did not have to negotiate except for appearance's sake, and so they did not want to come out of the conference with anything other than an agreement which would be better for Labour than what was currently waiting for the veto override to take effect. As well as being useful for public relations purposes, the conference also gave the government a slim chance of being able to amend what had become the most controversial part of the Parliament Bill – a backdating clause, allowing the reduced timetable in the revised Act to be applied retroactively to any bills introduced after the 1947 Parliament Bill (Ballinger, 2012, pp. 62-63). The government had included this clause in case it was unable to secure passage of the final components of its nationalisation program in the 1947-48 session.

Even so, the other parties agreed to the terms, and negotiations began in February of 1948, but they broke down after only seven meetings. A disagreement had quickly appeared over what otherwise seemed to be the minutiae of the suspensive veto, with the Opposition unable to agree on a starting point for the twelve month suspensive veto timeline. The report from the conference notes that the

[45] The conference consisted of party leaders and other prominent party members: Prime Minister Clement Attlee (MP-Lab), Herbert Morrison (MP-Lab), William Whiteley (MP-Lab), Viscount Addison (Lab), Viscount Jowitt (Lab), Clement Davies (MP-Lab), Viscount Samuel (Lab), Sir David Fyfe (MP-Cons), Oliver Stanley (MP-Cons), the Fifth Marquess of Salisbury (Cons), and Viscount Swinton (Cons) (Cmd 7380, May 1948).

start of the suspensive veto was such a fundamental point of disagreement that "there did not exist between them that basis for further discussions which would warrant carrying negotiations beyond their present stage" (Cmd 7380, May 1948, p. 6). Shortly after the talks ended, a Cabinet memorandum had expanded upon the problem as "a fundamental difference of view regarding the purposes for which the period of delay should be… used" (CM 28(48)5, 15 April 1948), an account which was corroborated by Opposition participants, but interpreted differently. While the Labour Party exited the conference claiming substantial agreement over composition, the other parties, represented by the Fifth Marquess of Salisbury, held that the powers and composition of the upper house were too interconnected to deal with either issue in isolation (CAB 130/37, 3 March 1948).

A few last-minute amendments were proposed to the Parliament Bill in late 1948 and early 1949. Such amendments were allowable under the 1911 Parliament Act, so long as both chambers agreed to the changes, but ultimately, none of them were accepted by the government. Many of the proposed amendments involved granting female hereditary peers the right to sit in the House of Lords alongside male hereditary peers, an idea which was intolerable to many within the otherwise woman-friendly Labour Party, because it risked giving implicit validation to the hereditary principle.[46] Additionally, the time needed to pass the amendments in the Commons would have delayed the enactment of the bill beyond the current session, and the government was becoming impatient for the bill to take effect. Fortunately for the government, the Lords decided to reject the Parliament Bill for a third time in November 1949 by refusing it a second reading; had they simply chosen not held a vote on it, the government would have had to wait until the end of the Parliamentary session, but instead they were able to send the bill for Royal Assent by the end of the year.

Without any major intercameral conflict to create a pretext for more extensive change, the passage of the 1949 Parliament Act was an exercise in running out the clock. The government, secure in its ability to pass legislation in the Commons, simply had to bide its time while the two year veto window ran out. In the meantime, it avoided delay and controversy by providing the opposition with some distraction in the form of an unnecessary party leaders' conference which was timed to provide the government with a win either way. If discussions collapsed, the government could say that it had

[46] For more on Labour's consistent yet complicated opposition to women in the House of Lords, see Chapter 5.3, "The Two Bill Solution and the Life Peerages Act, 1958", p84.

tried to seek a concession but the opposition parties were unwilling to compromise, but if the government could secure a better deal than what it already had waiting out the suspensive veto, it could appear to be a consensus builder on the matter of Lords reform. The primary objective had been to weaken the Lords' ability to block legislation during the last two years of a Parliament, and so a revision of the 1911 Parliament Act, which had removed the Lords' ability to veto legislation during the first three years of a Parliament, seemed like a natural and self-evident solution to a government that wanted the matter resolved quickly, and with minimal effort. Yet as in 1911, the reform ultimately proved to be unsatisfactory to reformers, and for many of the same reasons. Reformers' primary objective had been to remove impediments to majoritarian decision-making, yet the 1949 amendment to the Parliament Act did not alter the Lords' ability to block legislation during the final year of a Parliament, and in fact made it easier for the Lords to freely exercise its authority. The reduced length of the suspensive veto actually further reduced the associated political costs for its use, because the seriousness of the action became even lower when the delay was only one year instead of two.

And so the implicit shock model went unchallenged, without any credible alternative for reformers. Two decades later, another Labour government would once again attempt to re-open the Parliament Act, but this time it ended in failure – the only such instance of credibly attempted yet failed reform in the modern United Kingdom. While the intervening years had seen the most meaningful reform to ever happen to the House of Lords, with the Life Peerages and Peerage Acts of 1958 and 1963 respectively (see Chapter 5 "The Subtle Revolution: 1958, 1963 Life Peerages and Peerage Acts" p95), the Parliament (no. 2) Bill, the government's strategy, and its failure are best discussed in the context of the prior Parliament Acts.

4.4 Still Waiting for Crisis: the Parliament (No. 2) Bill, 1968-1969

Despite the passage of two reform bills in the time between the 1949 Parliament Act and the Parliament (no. 2) Bill, the government's overall strategy and how it conceptualised the "House of Lords problem" remained unchanged. The key problem with the Lords, from the Labour government's perspective, was its capacity to overrule the democratically elected majority in the Commons, and therefore the solution was to alter that ability. More complicated calculations of how existing structures could be altered to create desired effects, a key component of the Life Peerages and Peerage Acts, were not present. To engage in reform, the government once again believed that it would first need a trigger

in the form of intercameral conflict, which it could use to justify the changes to a voting public that otherwise cared little for House of Lords reform. Why the government retained this belief in the necessity of a shock to create an opportunity for reform after the Conservative government had managed to pass reform without major intercameral conflict has not previously been explored. The following account shows how the slow-moving effects of the 1958 and 1963 changes, combined with a fundamentally ideological conceptualisation of the Lords problem, gave the government little reason to reconsider the Labour party's long-standing acceptance of either the implicit shock model of reform or the simplistic calculation of solving the Lords problem by limiting the chamber's powers even further which had held sway in both the Liberal and Labour parties since the beginning of the century.

Labour lost power in the 1951 election, and didn't return to office until 1964, under the leadership of Harold Wilson, with the slimmest of majorities. Between the 1964 and 1966 general elections, the Labour government was deliberately disinterested in Lords reform, and the matter rarely appeared in Cabinet documents. Instead, Wilson freely exercised his power to dispense peerages, more than doubling the number of life peers in the upper house in under two years (Beamish, 2014a). This angered some of the party's base, which was dissatisfied with the government's lack of concern for the upper house (HC Hansard, 4 May 1965, cols 1117-1120), prompting the party to promise in its 1966 election manifesto that "legislation will be introduced to safeguard measures approved by the House of Commons from frustration by delay or defeat in the House of Lords", but providing no additional detail (Labour Party, 1966). Where the previous election's manifesto made a political complaint about the Conservative-dominated upper house, accompanied by an ambiguous appeal to government efficiency (Labour Party, 1964), the 1966 manifesto was a procedural objection to the institution's structural legitimacy.

When Labour returned from the 1966 election with a strengthened majority, the government was committed to doing something to the House of Lords – but the actual substance of that change had yet to be decided. Cabinet had no clear idea of what the government wanted to accomplish with Lords reform, and within the Parliamentary Labour Party, there was a strong divide between abolitionists who favoured a unicameral legislature, and radical reformers who wanted to retain a bicameral exoskeleton but none of the existing membership (CAB 128/46/17, 28 June 1966; Crossman, 1975, pp. 573-574, Vol II; HL/PO/1/477/42, 23 June 1966). All Cabinet knew for certain was that if they failed once more to reform the upper house, there would be political consequences from the party's rank-and-file

membership (WHE/2/4, 6 April 1967); the only option which was not acceptable was to maintain the status quo. But any change would still have to wait until after passage of the Steel and Land Commissions Bill, at which time they could finally turn to what the Chief Whip referred to as "this contentious and time-wasting problem" of Lords reform (PA/HL/PO/1/477, 18 May 1966).

Timing was key if the government was to reform the Lords. Since 1911, the House of Lords had developed a number of strategies which maximised the effectiveness of their suspensive veto, which could be used to prevent further reform. Rather than actually veto legislation at a third reading, they could allow it to remain on the floor until receiving a de facto veto at the end of a Parliamentary session, delaying the start of the one year time window. If the government subsequently wanted to make any amendments to the bill, the Lords had to approve them as well, or else the veto clock would start over again. Then in the final year before a general election, the Lords effectively had an absolute veto, since any active legislation would simply die on the order paper upon the dissolution of Parliament (HL/PO/CP/1/2/2, 28 March 1967, Annex A). To reform the Lords without having to fight an election over the matter, the government would have to make sure any legislation was approved by the Commons more than a year before the dissolution of Parliament.

Another looming problem for the government was that the House of Lords was doing its job, and doing it well. During the previous Parliament, by Cabinet's own admission, the Lords had "created no difficulties with regard to Government legislation" (PA/HL/PO/1/477, 18 May 1966; see also PA/HL/PO/1/477, 19 May 1966). Even though the formal structure and powers of the institution were unchanged since 1949, the modest change to membership in 1958 and an even smaller one in 1963 had enabled the beginnings of a thorough overhaul from within. Improved attendance rates, a more professional membership, and self-imposed behavioural principles meant that, despite remarkably similar outward aesthetics, the Labour government was facing a completely different House of Lords than the one it had left behind in 1951. In the early stages of planning, would-be reformers within the government did not recognise that these changes had occurred, and much of their strategy anticipated an obstructionist and openly confrontational House of Lords that no longer existed.

Despite the lack of conflict during Wilson's first administration, many members of Cabinet believed that a major clash between government and Lords was inevitable, especially if reform publicly came onto the legislative agenda (CAB 128/46/17, 28 June 1966; Crossman, 1975, p. 94, Vol II; HL/PO/1/477/42, 23 June 1966). Rather than wait for a crisis, by which time it would be too late to act

without making Lords reform an election issue, the government wanted to engage in pre-emptive reform. In the absence of any unreasonable action by the Lords, however, it would be difficult to justify spending Parliamentary time on reform of an institution that had rising levels of public confidence. Simply broaching the topic publicly risked stirring up opposition that might derail any reform before it could get started, and so the Chief Whip advised the government:

> Public discussion of the reform of the House, particularly if Ministers were involved, would be bound to increase the political temperature (and might jeopardise the tight legislative schedule)… whenever discussions take place these should be restricted to Ministers on a confidential basis. Thus to all outward appearances we would remain content with the present position. (PA/HL/PO/1/477, 18 May 1966)

The government's solution was to proceed with the utmost secrecy; Cabinet discussions were held in a confidential annexe to regular Cabinet meetings, and ministers were told not to give any public indication that they were considering House of Lords reform (CC 32(66)2, 28 June 1966). The principal strategy being discussed in the meetings relied, once again, on a two stage process, which presumed that an initial change to powers would facilitate broader changes to membership (HL/PO/CP/1/2/2, 4 August 1967). The suspensive veto, which had been reduced to a minimum of one year in 1949, was still too restrictive for many within the government, as was the requirement that legislation be substantially unchanged during that time. Rather than seek a new solution to eliminate these structural problems resulting from the 1911 and 1949 reforms, Cabinet decided that the fastest and simplest course of action would be to tweak the Parliament Acts once more, by reducing the suspensive veto to three months from a bill's first reading in the Lords and excluding any amendments made in the House of Commons from House of Lords approval (HL/PO/CP/1/2/2, 28 March 1967, p. 20). So long as the Lords continued to avoid direct conflict with the Commons, the government felt that it would not have sufficient political capital to pursue anything more far-reaching (CAB 128/46/17, 28 June 1966; HL/PO/1/477/42, 23 June 1966). Other ministers proffered their own plans; one from Lord Longford, leader of the House of Lords, based on a plan by Henry Burrows, and initially proposed by Lord Exeter in 1953 as a means of reforming the composition of the upper house through standing order rather than statute (HL Hansard, 17 March 1953, cols 5-23) suggested a single stage, comprised of the shortened suspensive veto and a 'two-writ' scheme for membership which would grant some Lords speaking rights, and others both speaking and voting rights in the upper chamber (PA/HL/PO/1/477, 19 May 1966). The two-writ scheme quickly gained favour with Lord President Richard Crossman, who was in

charge of evaluating the draft reform schemes presented to Cabinet, but he also noted that Cabinet should be open to other, potentially better ideas (Crossman, 1975, p. 94, Vol II; HL/PO/1/477/42, 23 June 1966).

A ministerial committee, established in June 1966, met in secret with the mandate to prepare the legislation for reducing the Lords' veto to three months (WHE/2/4, 1967). Rather than produce an updated Parliament Act, however, committee member George Coldstream[47] ultimately convinced the government to reverse its former strategy. First, this meant seeking agreement from the Opposition, if only for symbolic purposes or to avoid the potential for twelve months of conflict with the Lords over every piece of legislation. Second, the reform should deal with both powers and composition at the same time, concluding that there was "no satisfactory way of dealing in isolation with the Lords' powers over legislation and that if the Lords' powers only can be dealt with, we must advise that there should be no change in this Parliament" (HL/PO/CP/1/2/2, 4 August 1967, p. 2). His conclusion tapped into Labour's perennial fear that reform to one aspect of the upper house without alteration to membership would have the unintended consequence of legitimating the hereditary principle, and could embolden the House of Lords to challenge the government with greater regularity. Negotiating reform with the other parties was also a way to stack the deck in the government's favour: they could offer a two-writ scheme which would allow only some hereditary Lords to remain in the chamber as a "less than ideal concession" to the Opposition, and if the Opposition refused, the government had justification for pursuing a more aggressive scheme (HL/PO/CP/1/2/5, 8 September 1967). Cabinet accepted his advice, and in the Queen's Speech at the end of October 1967, the government promised reform of the Lords' powers, and elimination of the hereditary basis to the upper house.

The Inter-Party Conference met from November 1966 to June 1967 and from the outset, progress was slow, though the conference managed to reach a few agreements by the end of the year. Among these was the retention of a large number of cross-bench unaligned peers, whose contributions to the legislative process were held in particularly high esteem by all parties, while their apolitical backgrounds made them nonthreatening to members of the lower house who feared competition from the "Other Place" (CAB 130, 12 December 1967; CAB 130/359, 29 March 1968). Another decision was that the

[47] Permanent Secretary to the Lord Chancellor since 1954, he had previously helped to draft the Life Peerages and Peerage Acts

Prime Minister should nominate life peers, as the conference could devise no viable alternative; oddly enough, this provision was least popular within the Labour Party, many of whom did not trust Harold Wilson's judgment in using his patronage powers judiciously (CAB 130/340, 29 December 1967; CAB 130/357, 11 January 1968). Finally, they agreed that the Lords should no longer have a veto over subordinate or secondary legislation, only an ability to delay (CAB 130, 12 December 1967; CAB 130/340, 29 December 1967). One major agreement was reached in the new year, when the government unexpectedly compromised on the term of the suspensive veto, lengthening it to six months from the initial point of disagreement (CAB 130, 9 January 1968, 28 November 1967; J. P. Morgan, 1975, pp. 181-182). This was a significant concession on the part of both Labour and the Conservatives, but one which satisfied neither party – the Conservatives were unable to secure a delay long enough to gauge public opinion on a bill, and Labour had to double the length of delay which had appeared in its initial proposal to the conference. However, many fundamental questions remained unresolved, including the ideal size of the chamber, powers of delay over public bills, the classes and qualifications for membership, and whether to adopt the government's preferred two-tier scheme of writs or continue to use a one-writ system (J. P. Morgan, 1975, pp. 182-187).

The government abruptly cut off the inter-party conference in June 1968 when the House of Lords vetoed the Southern Rhodesia (UN Sanctions) Order, which had to be ratified every year. The Lords ultimately passed the bill a month later, saying that the earlier veto was only meant to delay and the only means of delaying secondary legislation was through rejection. Yet the talks did not resume, as the move had been planned by the government even before the vote as a strategic action meant to foment intercameral conflict; in anticipating a defeat on either the Southern Rhodesia Order or Transport Bill, the Lord Chancellor had decided that the government would immediately end the talks, hopeful that the rejection would be enough to galvanise popular support for more radical upper house reform, as the Lords' rejection of the People's Budget had done in 1908 (Crossman, 1975, pp. 95-96, Vol III; WHE/2/7, 23 September 1968, p. 3). The Prime Minister, incensed by the defeat of the Order, wanted to proceed with radical, unilateral action, but Labour's leader in the House of Commons Richard Crossman and Lord Chancellor Gardiner, still working from a conflict-based model of institutional reform, convinced him that the move would only cause greater difficulties for the government (WHE/2/6, 5 July 1968). Furthermore, immediate reaction reported in Cabinet minutes showed that, once again there was not yet enough popular awareness to fight an election on the issue (WHE/2/7, 8

July 1968, pp. 1-2). Rejection of the sanctions bill had been controversial, but not nearly enough to cause the type of institutional crisis that key decision makers within the government believed to be a necessary catalyst for broader reform (J. P. Morgan, 1975, pp. 147-151).

The newspapers, as Richard Crossman later noted in his diaries, had expected the government to retaliate with a plan for broader reform, but Cabinet ultimately decided that the rejection simply had not triggered a large enough institutional crisis to justify a broader attack on the House of Lords, either to the voting public or within the governing party (Crossman, 1975, pp. 96-104, Vol III). Cabinet, limited by the assumptions of a crisis-based model for institutional reform, was unwilling to undertake a more comprehensive scheme, which it viewed as riskier than a more limited plan. Results of the conference were hastily summarised into a White Paper, presenting it as a statement of government policy in the hopes that it would restore sagging morale within the party (Cmd 3799, 1968), which was then tabled as the Parliament (no. 2) Bill.[48] The new Parliament Bill was substantially longer than its predecessors in 1911 and 1949, but was still fundamentally a continuation of what the earlier Parliament Acts had started. First, it adopted the two-writ scheme, with all peers of first creation receiving a writ enabling them to vote in the upper house, while hereditary peers would have to request a non-voting writ unless they also received a life peerage. These voting peers, for the first time, would be remunerated for their work, have to attend at least one third of sittings to be eligible for pay, and be subject to a mandatory retirement age. Second, it further reduced the Lords' veto to the agreed-upon six months. Further clauses simply clarified the rights and responsibilities of both voting and non-voting peers, including the Bishops and Law Lords.[49]

The traditional account of the bill's demise hinges upon two factors. First, radicals from either major party, particularly Michael Foot of Labour and Enoch Powell of the Conservative Party, filibustered the bill, leading to unnecessary delay. Second, these unexpected time constraints led the government to choose to 'sacrifice' the bill in order to secure the passage of other important legislation. This interpretation was understandably promoted by a government which was trying to avoid any further embarrassment, and the explanation was readily accepted by the press and academics for many years

[48] The awkward numerical designation in the middle of the bill's title stems from the fact that it was the second bill of the same title tabled in the 1968-69 Parliamentary session. Had it passed, the number would have been dropped and it would have been another Parliament Act.

[49] For a summary of all changes, see Morgan (1975, pp. 200-202); for complete text of the Bill, see Raina (2011, pp. 843-861, Vol III).

due to a lack of evidence otherwise (c.f. J. P. Morgan, 1975, pp. 216-217). Contemporary Cabinet documents which first became publicly available in the late 1990s, however, reveal a very different story – one in which the bill was unlikely to ever have succeeded due to some major tactical missteps on the part of the government and Cabinet.

A crucial strategic mistake was in expecting the vast disparities between Labour and Conservative opponents of the proposed reforms to neutralise the threat posed by one another. Labour backbenchers found the bill too modest, while Conservative backbenchers thought it went too far, and aside from their mutual dislike of the bill, there was virtually no common ground between the two factions. Cabinet recognized that "the Bill offered almost unlimited opportunities for opposition, and it had been made clear that they would be exploited to the full", but decided to proceed nonetheless, believing that party whips would be able to keep the unruly backbenches in check (CC 49(68)3, 5 December 1968). In the end, however, there was no need for any formal or informal alliance among opponents to defeat the bill; they only had to wait for the government's patience to run out.

Since 1907, standing orders in the House of Commons specified that all public bills were automatically "moved upstairs" to standing committee, except in the case of "the great measures of the session, which almost necessarily are controversial" and were kept in a Committee of the Whole (Winetrobe, 20 May 1997). As a result, debate over the Parliament (no. 2) Bill consumed the most valuable Parliamentary time, and made it difficult for the government to allocate the necessary time for other legislation. The bill handily passed its second reading by a majority of 150 votes, but it derailed almost immediately when it began the committee stage on 12 February 1969.

While it was true that Foot, Powell, and other radical opponents of the bill dominated verbal debates (HC Hansard, 12-26 February 1969), they were able to do so only because the government was so disorganised. The filibustering often stretched into late-night sittings, and the government was unable to convince enough of their MPs who supported the bill to attend in order to carry the closure motions that were necessary to cut off debate (CC (69)37, February 1969). Party whips were having little success keeping the backbenches in order, in large part due to demoralising poll numbers. The government had expected the Opposition to be a grudging ally, but the Conservatives had little incentive to support the government. The Opposition could easily portray itself as being miffed that the government had cut off the inter-party conference in what Opposition leader Edward Heath later denounced as "a fit of pique and petulance" (HC Hansard, 17 April 1969, col 1339), and then issued the

White Paper unilaterally. While the Conservative leadership did not oppose the bill, they were not about to risk their own political capital by going out of their way to support it. The bill was not particularly popular either within or outside of Westminster, and the Opposition saw no potential for political gain by supporting lacklustre legislation from an unpopular government. An article which appeared in *The Times* perfectly captured the atmosphere at Westminster after only three days of debate, describing it as a "fight to the death for [a] bill nobody wants" (Wood, 24 February 1969). There was always, however, clear gain to be had in allowing the government to flounder, making it appear weak and incompetent.

Realising that passage of the bill would take more time than they had anticipated, Cabinet was once again forced to reconsider its strategy. At a series of emergency meetings in late February and early March, they vacillated between three different options: the government could impose a guillotine time limit on debate, they could send it upstairs to standing committee, or drop the bill (HL/PO/CP/1/2/3, 7 March 1969). The last option was discarded quickly over the fear that withdrawing the bill would embolden opponents of the controversial Industrial Relations Bill, a key part of the government's legislative agenda (CC 10(69)2, 27 February 1969). The other two options were constitutionally murky: there was no precedent for constitutional bills being either subject to the guillotine, or moved upstairs to free up time in the Committee of the Whole.[50]

Cabinet provisionally accepted the timetable option (PA/HL/PO/1/477/67, 4 March 1969), but reversed its decision only two days later upon realising that it would have to be introduced by the Prime Minister as a confidence motion, or else the government would lose by 30 to 35 votes (HL/PO/CP/1/2/3, 7 March 1969). Cabinet had enough trouble getting its MPs who supported the bill to attend the long evening sessions to invoke closure, and similar apathy would doom a guillotine motion that was not attached to the fate of the government. They reconsidered sending the bill upstairs, away from its most vociferous opponents, but ultimately decided that this would not necessarily save time, and so they ultimately chose to stay with the same strategy they had been using from the start, hoping that the bill would survive the Committee of the Whole (CC 12(69)1, 12 March 1969).

[50] As in the case of constitutional reform which takes effect in the middle of a Parliament, there is now precedent for this. It was used for the Welsh and Scottish devolution bills of the late 1970s, and more notably, by Labour when pushing through its constitutional reform agenda in 1998.

Following weeks of indecisiveness over basic strategy, faced with dwindling legislative time, and with backbenchers and Conservative opponents adamant in their refusal to compromise, the government was eventually left only with the choice of how to jettison the bill without losing face. At an emergency meeting in mid-April, Cabinet members matter-of-factly accepted that the bill was doomed, and discussed strategy for how best to dispose of what had become a liability for the government, in both the Commons and within its own party. Cabinet members were unanimous on why the bill had failed, attributing it to "the general malaise in the PLP [Parliamentary Labour Party] rather than the provisions of the Bill itself and… there was an urgent need to restore the Government's authority in the Party" (CC 18(69), 16 April 1969). Without a consistent strategy for getting the bill through Parliament, the government had made it easy for opponents to run out the clock on their patience. The longer the bill was stalled, the less the backbenches cared about it, and the higher the political costs to the government. Some Cabinet ministers had been looking for an excuse to jettison the bill as soon as possible ever since a meeting between three of them during the Easter recess,[51] at which time they also "realised that the Conservatives could usefully be blamed for breaking of the co-operative agreement" (J. P. Morgan, 1975, p. 217). Finally, the government had a clear strategy for dealing with the bill.

The Prime Minister's speech to the House of Commons on 17 April, in which he announced that his government was dropping the bill, heeded the Home Secretary's advice that the move "be presented not as a defeat, but as a positive change of policy" (WHE/2/7, 15 April 1969, p. 1). Blame for the bill's failure, according to Wilson, lay squarely with the Opposition for rejecting what had been "a consensus Measure" borne of the Inter-Party Conference, and he was withdrawing the bill as a gesture of goodwill to ensure that the Industrial Relations and Merchant Shipping Bills received adequate scrutiny (HC Hansard, 17 April 1969, cols 1338-9). However, it was his own lack of credibility within the Labour Party which made the legislation impossible to pass, and abandoning the Parliament (no. 2) Bill ultimately did nothing to secure the passage of the other bills he mentioned but, as some Cabinet members had feared, instead bolstered their opponents. The government had already retreated once on the Industrial Relations Bill, and would have to water down the bill even further before its ultimate defeat

[51] This meeting took place between Cabinet ministers Roy Jenkins, Richard Crossman, and Barbara Castle. All three disliked the bill but had previously supported it under the principle that the government should stick to its policies. (J. P. Morgan, 1975, pp. 216-217)

in 1970. Dropping the Parliament (no. 2) Bill ended what had become an ongoing waste of time, avoiding further humiliating defeats on Lords reform for the Prime Minister but little else. From the start, the bill had shown little promise because it was written in anticipation of a crisis that never came, leading to unnecessary delay before the government turned once more to the suspensive veto as a solution for its dislike of the upper house. No further discussions about possible House of Lords reform appear in Cabinet minutes between the meeting on 16 April, and Wilson's surprising defeat in the 1970 general election; the House of Lords had remained unreformed without making a single move.

4.5 Discussion

The saga of the Parliament Acts stretches sixty years, from the defeat of the People's Budget in 1909 to the Wilson government's decision to drop what had become a toxic bill in 1969. When viewed together, certain patterns emerge in terms of both how the government understood the written and unwritten rules of reform, and conceptualised the task at hand – the Parliament Acts were lacking in both of the fundamental factors for meaningful upper house reform as identified in this study. Parliament Act reformers were operating under an implicit theory of institutional reform through exogenous shocks, in which intercameral conflict would create the necessary opening for reform. The rejection of the People's Budget in 1909 created, from the Campbell-Bannerman government's perspective, just such an opening, which is why the Lords' veto of the omnibus budget bill was not entirely unwelcome. Even when the government wanted to act pre-emptively, as in 1947 and 1966, it was always in anticipation of an eventual confrontation that they believed would inevitably occur. Yet this strategy also meant that any openings were dependent upon popular attitudes towards the Lords and its reform; repeatedly, governments delayed action rather than forging ahead because they saw that voters simply did not prioritise Lords reform very highly. When the Lords problem was an ideological one, reformers expected the solution to be one as well. Believing that Lords reform would be easiest to achieve following a flare-up of that conflict, a major part of government strategy was to look for what they thought was an appropriate opening, in a strategy decision that was likely jeopardising the government's chance of success, because the government deliberately avoided initiating reform during what it believed were suboptimal conditions without active intercameral crisis or conflict.

By initially delaying reform until an appropriate shock could occur, and then proceeding anyway once the window of opportunity was about to close due to the suspensive veto timeline, the Attlee and Wilson governments were attempting to proceed without a clear strategy for victory, relying instead upon the assumption that conflict between the chambers would happen, and that it would facilitate the passage of a reform bill. When that conflict did not occur, the government had to rely upon its own strength in Parliament and within the party's parliamentary caucus, and the hope that the Opposition would be distracted by other priorities. Where the Parliament Act 1911 was able to secure non-governmental support through concessions and coalition building across party lines, trading support on Lords reform for Home Rule in Ireland, and the Parliament Act 1949 had a unified governing party behind it as well as an Opposition distracted by inter-party negotiations, the Parliament (no. 2) Bill shows just how easily disparate opponents of a bill can win simply by waiting out the clock when the government does not have a clear strategy for victory. Contemporary documents consistently reveal uncertainty on the part of the government concerning how to proceed, and a complex pattern of multiple reversals once a decision had been made (c.f. Raina, 2011, pp. 175-827, Vol III); the government believed that the bill would simply wind its way through the legislative process, at least in the Commons, and eventually pass if for no other reason than it was not highly controversial. Opponents caused delays and the bill itself was weak, but these factors would not have been insurmountable had the Prime Minister ultimately been able to command the confidence of his party caucus, and get them to support the bill. Yet between unruly backbenchers and a filibustering Opposition with no incentive to support the bill, the government's lack of direction on the bill made it into a liability. The low public salience of Lords reform made delay costly for the government, as the longer the debate went on, the less time there was to debate other legislative initiatives that actually did capture widespread public interest.

All three cases exhibit a similar prioritisation of the three dimensions of upper house reform identified in this study – powers, composition, and constitutional role – owing to how they conceptualised the fundamentals of bicameralism, and the causal link between institutional structure and output. In all three instances, the Lords' powers were the primary target of reform, with a secondary interest in alterations to composition. Reformers viewed limitations upon the Lords' veto as a basic matter of democratisation, and the objective was to weaken existing arrangements, removing bad elements from the political process, not building new structures or improving the chamber's contributions to governance, which would have involved reflection upon the Lords' proper place in the

constitution. If the problem was that the Lords had the ability to veto legislation, the solution was to prevent them from using that veto. Beyond this, however, parliament as a bicameral structure was an underdeveloped concept among Parliament Act reformers. Despite the Labour Party's insistence that the Lords' veto was illegitimate because of the Lords' unrepresentative composition, the party never clearly stated whether the veto would be acceptable if the upper house became more politically representative. Labour never developed a conceptual basis for Lords reform beyond opposition to the hereditary principle. The party remained a jumble of staunch unicameralists, radical reformists, and ambivalent bicameralists, leading to a very muddled and indecisive long-term strategy, which constitutional scholar Donald Shell goes so far as to describe as being "schizophrenic" (Shell, 2007, p. 150). Labour effectively had no consistent understanding of the role that bicameralism should play, limiting it to reform that sought to dismantle existing institutional functions, rather than build or adapt new ones.

It is for this reason that the Bryce Commission's extensive explorations of the normative justifications for bicameralism and democratic deepening through upper house reform had no direct impact upon what the Attlee and Wilson governments were trying to accomplish. The Asquith government's initial decision to deal with Lords' powers by limiting the chamber's veto was chosen almost by accident, but it showed remarkable stickiness once the first Parliament Act was passed. Even though the Bryce Commission had developed an extensive plan for complete overhaul of the upper house which was well received by all major parties, and the suspensive veto itself was a contributing factor to the party's continued dissatisfaction with the Lords, Labour kept returning to the suspensive veto as its preferred solution for preventing the Lords from blocking majoritarian rule in Parliament. Given this track record, it is unlikely that the Parliament (no. 2) Bill would have accomplished what it set out to do with the Lords: scheduling difficulties would have remained, and the Lords would still effectively have had an absolute veto for the final six months of a Parliament. By contrast, the reforms of 1958, 1963, and 1999 conceptualized the problem of the Lords differently, prioritizing alterations to the chamber's membership first, constitutional role a close second, and formal powers in distant last place.

A final similarity between the three instances lies in the effects that they ultimately had on democratic governance in the United Kingdom, all of which lend greater credence to the endogenous change model of institutional reform, in spite of reformers' assumptions that crisis and conflict were

necessary for change. The Parliament Acts fundamentally altered the constitutional balance of power in the United Kingdom in a manner that went far beyond the changes prescribed by the text of the bills, as surrounding institutions had to accommodate the formal rule changes through informal rearrangement of their procedures. Their most significant impact was a strengthening of Cabinet vis-à-vis the rest of Parliament for three main reasons. First, it required a strong Cabinet capable of pushing important legislation that might be vetoed through Parliament as quickly as possible in the first two to three years of a government, cutting down on time for dissent and compromise within caucus. Second, it immediately weakened individual MPs by placing them under pressure to reject even legitimate amendments once a bill had been passed by the Commons (Bromhead, 1958, p. 141; J. H. Morgan, 1914, p. 34), as the suspensive veto could only be applied if the legislation remained unchanged from the first to third legislative sessions. Third, the suspensive veto undermined the Lords' legitimacy as a legislative body, leading the chamber to renounce its legislative writing prerogatives in favour of a revisory role, which in conjunction with the first two changes, helped to make Cabinet increasingly responsible for the drafting of legislation. None of these changes were explicitly prescribed by the Parliament Acts, but arose naturally as institutions accommodated the change in formal rules.

In a similar vein, even though the Parliament (no. 2) Bill failed, Wilson ultimately had an effect on the evolution of the House of Lords, just not in the manner he had wanted or that the exogenous shock model of institutional reform would have anticipated. Before the Parliament (no. 2) Bill had even been tabled, he was being credited with having "reformed the Lords with 107 Life Peers" (30 December 1968). By the end of his first administration, he had appointed a total of 122 new life peers to the upper house, followed by another 80 in his second term from 1974 to 1976 – more than the total number of life peers that Lord Salisbury had initially proposed in the long version of his reform bill in the 1950s. With no limit on the size of the upper house, Wilson normalised the use of Prime Ministerial nominations to alter the balance of power between parties in the upper house, and effectively halted the creation of new hereditary peerages, except for male members of the royal family upon their marriage.[52] Wilson's

[52] Four of Wilson's six hereditary peerage creations were retired or defeated Conservative politicians who were nominated as exit honours by the outgoing government, and the other two were Conservative businessmen. Since then, only three hereditary peerages have been created for people other than members of the royal family – former Conservative Home Secretary William Whitelaw, former Labour Speaker of the House George Thomas, and former Conservative Prime Minister Harold Macmillan, all during the Thatcher administration. All titles save Macmillan's are now extinct. The three

two predecessors, on the other hand, had shown no indication of any intent to stop dispensing hereditary peerages (see Figure 2 below).

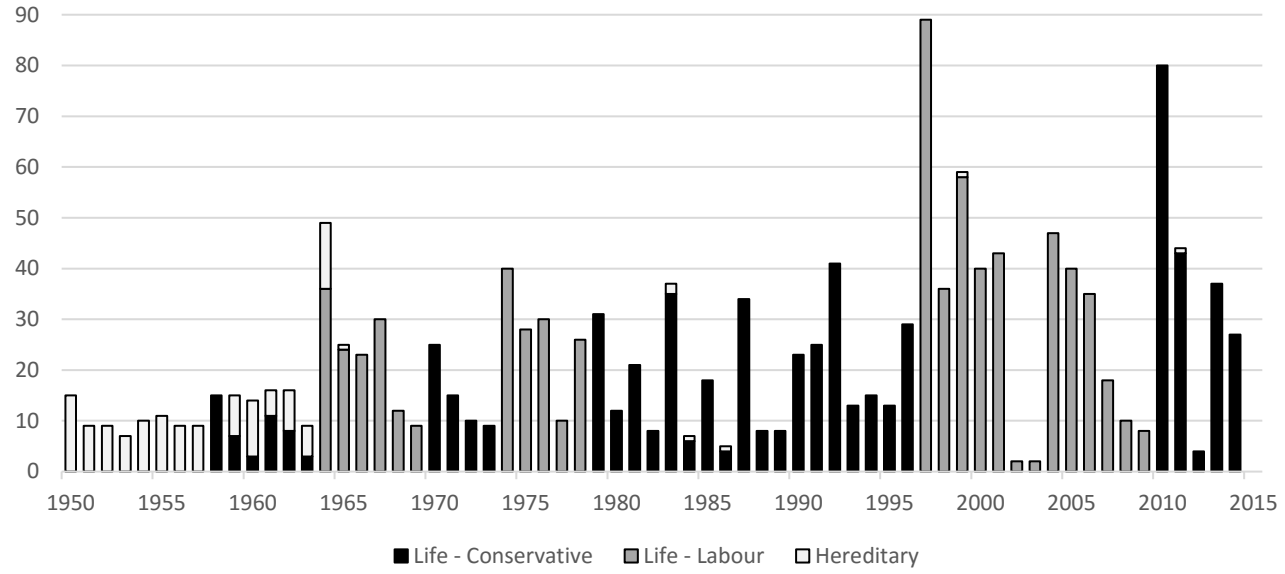

Figure 2 - Peerage creations since 1950, excluding Law Lords and Bishops[53]

Without amending the formal rules for composition of the upper house, Wilson effectively established a new custom that subsequent Prime Ministers have adhered to simply because the visuals of creating a life peerage in recognition of an individual's contribution to public life was better than the visual of creating new hereditary peers whose descendants would have a right to sit in the chamber without having to display any competence or expertise in governance. Wilson's roundabout reform of the upper house had been made possible by the formal reforms of 1958 and 1963 which, despite appearing to be modest in their scope and immediate effects, were actually quite revolutionary, and far more successful in achieving the reformers' desired objectives than any of the Parliament Acts had been. The next chapter discusses these two instances of reform, from their more ambitious original versions to final reduced forms, to show how relatively small statutory changes can have broad ramifications if

royal creations since then were the Duke of York (1986), the Earl of Wessex (1999), and the Duke of Cambridge (2011); all three had also been offered life peerages, but they were declined as it would mean they would automatically hold seats in the House of Lords and would be under heightened expectation to attend.

[53] The government making the appointment correlates strongly but not perfectly with the party that appointees ultimately sit with in the upper house. Defeated governments may make recommendations to the new incoming government, leading to a spike in appointments with transfers in power. Cross-bench and opposition appointments are also common. Nevertheless, categorisation by government of appointment help to illustrate some differences in how appointments are used. Data from (Beamish, 2014b). Aggregate numbers for Cameron to end of 2014.

they dispense with the assumptions underlying the Parliament Acts, in favour of an emphasis on altering the informal basis for institutional behaviour rather than formal structures.

5 The Subtle Revolution: 1958, 1963 Life Peerages and Peerage Acts

It is becoming increasingly clear, with every year that passes, that, without reform, the House will, within a measurable time, for financial and other reasons, die on its feet.

-- Fifth Marquess of Salisbury in FO 1109/350, March 1956

In histories of Lords reform in the twentieth century, the Life Peerages and Peerage Acts 1958 and 1963 are typically given far less attention than the Parliament Acts of 1911 and 1949, or the House of Lords Act of 1999. Even key veto players have historically downplayed the significance of the changes: Lords reform does not appear at all in Prime Minister Anthony Eden's memoirs (Eden, 1960), there is only a single mention of Lords reform in Prime Minister Harold Macmillan's official biography (Horne, 1989, p. 37), and even Tony Benn's political diaries, which he otherwise kept diligently from 1950 until his death in 2014 "as part of an obsession… with time" (Winstone in Benn, 2013, p. xv), go silent from 1961 to 1963, nearly all of the time that he was fighting against his removal from the Commons (Clarke in Benn, 2013, p. 86).[54] This broad silence implies that the Life Peerages and Peerage Acts were of limited influence and significance compared to the other successful reforms, a perspective which is both inaccurate and misleading.

From an initial overview, this misperception can appear to be justified. The reforms did not formally alter the powers or constitutional role of the upper house, and were only additive in terms of membership, creating a new class of life peers and allowing for the admission of women to the chamber without removing any of the hereditary, religious, or legal Lords. There was no sudden and dramatic shift in the character or operations of the chamber – life peers would not formally outnumber their hereditary counterparts until after the House of Lords Act in 1999, and the official rules were not

[54] Benn's diaries are some of the most comprehensive first-hand accounts of British politics in the latter half of the twentieth century, making their silence from 1961 to 1963 an unfortunate gap that would have provided valuable insight into Benn's personal strategy in his fight to remain a "persistent commoner" (Benn, 1960 in "Tony Benn dies: his most memorable quotes," 14 March 2014). He had kept diaries on and off from 1940 to 1950, before deciding in early 1951 that he would "try out a political diary. What I want to do is highlight the most significant events of which I am a witness and set down contemporary opinions and accounts which my memory would probably distort to suit current purposes were I to try to recall them later on. This is surely the politician's greatest weakness, if published memoirs are anything to go by" (Benn, 2013, p. 26). His first set of published diaries from after the Peerage Act was entitled *Out of the Wilderness*, referencing both Labour's return to power under Harold Wilson, and his own return the House of Commons (Benn, 1987). The chapter covering 1960 to 1962 in his collection of diaries, letters, and papers from 1940 to 1962 is entitled "Into the Wilderness" (Benn, 2012).

amended to preclude any of the behaviours which had become so objectionable as to necessitate reform in the 1950s.

Yet the Life Peerages Act, and to a lesser extent the Peerage Act, initiated a revolutionary shift in both the character and operations of the chamber, albeit in a much slower and informal manner, and this was largely due to the process and priorities chosen by reformers. These two Acts stand as the sole instances of truly meaningful upper house reform in this study, at least from the perspective of reformers, because they were pursued in a dual strategic manner by navigating the written and unwritten rules for change to the advantage of reformers, who had chosen their objectives carefully by tracing the likely causal chain that would create the desired results and limit the potential for unintended consequences. Unlike the earlier changes examined in this study, the reforms of 1958 dispensed with the assumptions of the exogenous shock model for institutional reform, and deliberately sought to create structural conditions which would enable long-term, endogenous renewal from within the institution itself. The follow-up reform in 1963 did rely upon institutional crisis to create an opening for reform, but in a manner which was fundamentally different from the crises anticipated by the Parliament Acts. In stark contrast to how the Liberal government had used the rejection of the 1909 People's Budget in an attempt to create support for broad reforms, Tony Benn's challenge against the upper house targeted only a single rule in a manner which had widespread popular support, and the government was able to use this opening to tie up loose ends left from the first round of reform. It is this emphasis on creating conditions favourable to informal institutional adaptations that made the Life Peerages and Peerage Acts revolutionary, and quite possibly the most effective instances of upper house reform in this study.

The 1958 reforms introduced the new class of life peers to sit alongside the existing hereditary Lords, who formed the vast majority of the chamber's membership, the law lords, who since 1876 had acted as final court of appeals, and the lords spiritual, drawn from the upper ranks of the Anglican clergy. Although the powers of the Lords remained unchanged with life Peers, this shift in the composition of its membership was an attempt to increase the legitimacy of the body by infusing it with members who had earned their seats through a lifetime of public service, rather than by virtue of their heredity. It also allowed women to sit in the upper house for the first time ever. In 1963, a second stage of reform – the only successful instance of Lords reform actually reaching an intended stage two – provided for even more modest changes to membership, allowing for hereditary peers to disclaim their titles so that

they would be eligible to stand for election to the House of Commons, and allowing for female hereditary peers to join female life peers in the upper chamber. Yet these two small shifts in the rules concerning who could sit in the upper house were what initiated the actual changes that reformers had been seeking, all without the need for an exogenous shock to the institution.

The two Acts were extremely brief, and as in the case of the earlier Parliament Acts, they were written in anticipation of crisis, yet that is where the similarities end. Where the Parliament Acts were deliberate attempts to formally limit the powers of the upper house in order to constrict its ability to challenge the House of Commons in what the Liberal and Labour governments behind the Acts expected to be an ideologically driven confrontation between the two chambers of Parliament, the Life Peerages and Peerage Acts were meant to avert crisis due to institutional decay; rather than weaken the chamber, the reforms of 1958 and 1963 were meant to strengthen it against future attacks by improving its democratic legitimacy. For over a century, the upper house had slowly been faced with a series of mounting challenges stemming from a dearth of respected and qualified policy experts who could make meaningful contributions to the workings of the upper house.

This chapter begins with a brief overview of these earlier attempts to solve the problem through changing custom and convention, which were rebuffed first by the Lords themselves in the 1850s in their ruling on the Lord Wensleydale case, and then by an anti-women's rights Lord Chancellor in the 1920s when he intervened in the Lady Rhondda case. Wensleydale had first established that reform to the chamber's composition would require an act of Parliament rather than evolving convention, while Rhondda showed how an obstructive veto player could prevent even implied compositional reform. It was in this context that statutory reform became necessary to alter the composition of the upper house in the 1950s.

The rest of this chapter argues that the Life Peerages and Peerage Acts were the only instances of attempted upper house reform examined in this study that exhibit both of the necessary conditions for meaningful reform. Members of the upper house were vital in first setting the reform agenda, and then pursuing change as a means of preventing institutional crisis, rather than anticipating or responding to it, and used the written and unwritten rules for change to their advantage. The changes pursued by reformers are also important to the ultimate success of the process, because the desired effects were not limited to structural appearance, but were meant to foster a new institutional culture of behaviour. By the 1950s, the upper house was once more nearing a crisis point that went far beyond the lack of

qualified judges which had led to the Wensleydale case, and the absence of women from the chamber at the same time that a woman was head of state was becoming a matter of national embarrassment. Governance was now a full-time vocation, and policy experts were increasingly required for the proper examination and revision of legislation in both chambers. Reformers feared that if the situation persisted for much longer, the Lords would lose all political legitimacy, and would be susceptible to poorly designed reforms, or even abolition. Although Cabinet was willing to pursue reform, the driving force for change was the upper house itself – Lords who wanted to see the institution modernized and become capable of self-reform through displacement and conversion of existing institutional logic and policy functions. As such, the objectives of reformers are much harder to discern than in either the Parliament or House of Lords Acts, as the text of the acts was merely intended to remove formal impediments which had hampered the chamber's ability to change itself from within. It is for this reason that the importance of the Life Peerages and Peerage Acts have been overlooked by most studies of Lords reform.

The Life Peerages and Peerage Acts were the culmination of nearly a century of debate over appropriate changes to the membership of the upper house, and repeated attempts to engage in reform through changes to the Standing Orders of the Lords and constitutional reinterpretation of existing convention. While the lack of constitutional precedent and need for statutory reform to membership created an opportunity for more extensive reforms, which reformers within the government were eager to pursue, time constraints and the low prioritisation of Lords reform compared to other issues of governance once more meant that the final reforms were pared down to the bare minimum of what the reformers thought was necessary. Yet unlike in 1911 and 1949, the bare minimum was not a textual restriction upon the Lords' powers, but a re-opening of the chamber's opportunities to evolve from within. The vastly different approach to reform stemmed primarily from a different conceptualisation of reform by the elites involved in planning. Rather than institutional crisis being necessary to create opportunities for reform, institutional crisis was something to be averted through reform. Not only were exogenous shocks unnecessary for reform, but they were undesirable, as they could force a less than ideal solution. However, this round of changes also conceptualised outcomes of reform differently. The primary objective of reform was distinct from the statutory text; the reforming legislation was not an end in itself, but meant to facilitate change by removing conventional impediments to endogenous reform. This would initiate a causal chain that would eventually lead to the desired result, which was

the extensive re-imagining of the chamber's democratic role and functions among its membership, making it even harder to challenge the chamber in the future through simple restriction of the Lords' formal powers. The changes of 1958 and 1963 were the most successful reforms to the modern House of Lords, in large part because they dispensed with the assumptions of the exogenous shock model of reform in favour of a more nuanced understanding of institutional renewal, but also because reformers understood reform as an ongoing process of renegotiation within the institution itself, in which existing actors would adapt to a new statutory context by adopting new values and behaviours in response. The statutory changes were not an end in themselves, but a deliberate trigger meant to foster a deliberate renegotiation of the institutional culture from within the upper house that would make it more democratically-minded.

5.1 Prior Attempts to Reform through Convention: Wensleydale and Rhondda

The roots of the membership changes of 1958 and 1963 lie in the Lords' judicial role as well as the persistent exclusion of women from the upper chamber, and so those two issues warrant further examination here. The House of Lords' judicial functions were a natural development of custom and convention, and planted the seed for the first statutory reform of the early modern upper house in the late nineteenth century. Ever since Henry II (1154-1189) had established a national system of common law, judges summoned to Parliament for consultative purposes always sat with the Lords rather than the Commons (Pike, 1894, p. 247). Between the reigns of Edward IV (1461-1470 and 1471-1483) and Henry VII (1485-1509), the Court of the Lord High Steward went from occasional arrangement to permanent judicial court of the House of Lords, making the Lords an indelible part of both the legal system and the constitution. At the same time, however, it laid a foundation for future difficulties, as the demands placed upon the legislature and the judiciary became increasingly complex following the industrial revolution and expansion of democratic rights in the nineteenth century. By the mid-1800s, it was apparent that the House of Lords was experiencing increasing difficulty in fulfilling its legal responsibilities. It was the highest court in the United Kingdom, yet few peers had the extensive legal expertise that would be necessary for adjudicating the increasingly complex cases brought before them. Frequently, there were not even enough Lords with judicial training to meet the quorum of three for the court to conduct hearings, and it had to be met with lay peers, who by emerging custom would not

vote on the cases, even though their presence was required for them to be heard (Waddams, 1992, pp. 44-45); the situation was not only embarrassing, but it risked triggering a constitutional crisis.

Before any viable solution could be achieved, an idiosyncrasy of membership in the House of Lords had to be resolved – and the manner in which it was ultimately resolved continued to shape the membership of the chamber, keeping both women and life peers out of the upper house until 1958. The Crown could issue any number and type of royal honours, but the House of Lords alone had the authority to decide which of those honours served as the necessary qualifications to receive a writ of summons to participate in the chamber's legislative activities. Life peerages were not unheard of, but historically, they had always been granted either to individuals already holding hereditary peerages in recognition of some public service, or the mistresses and illegitimate daughters of the monarch (May, 1863, p. 248).[55] Since men holding hereditary peerages already had a right to a writ of summons to Parliament, and women did not obtain the right to sit in Parliament until 1918, there was no precedent wherein someone holding only a life peerage had received a writ of summons to the Lords.

The general consensus among early- to mid-nineteenth century politicians was that the House of Lords needed more judges, but not necessarily the judges' descendants (Waddams, 1992, p. 46); otherwise, the house would be afflicted with the same shortage of judges in each subsequent generation, as well as an ever-growing membership, which would severely dilute the value of a peerage (Nicolas, 1834). The chamber needed some form of non-hereditary peerage which could supply the chamber with qualified judges, without burdening their descendants with the trappings of a peerage. The challenge lay in finding a qualified lawyer or judge who could maintain the lifestyle expected of a peer of the realm, but also one who had no children, so that the lack of precedent for life peerages did not leave open the possibility that descendants might attempt to claim a writ of summons to the Lords in the future. In the 1850s, the Prime Minister, at the Queen's urging, approached many well-respected judges and lawyers who fit these criteria with the offer of a life peerage, but each one refused because he could not afford to give up his judicial salary in order to enter the Lords, which did not provide any remuneration; the legal profession was not the domain of the independently wealthy, but the House of Lords was.

[55] In total between 1377 and 1855, the Crown had granted a total of twenty-nine life peerages, but only one had been to a man with no hereditary peerage or royal heritage, and his letters patent explicitly forbade him from taking a seat in the Lords until he was granted additional hereditary titles (Pike, 1894, p. 99)

Finally, an adequate candidate was found, and granted a title of Baron Wensleydale for the term of his natural life. Although he was initially issued a writ of summons, other Lords challenged his right to sit in the upper house, and the question was referred to the House of Lords' Committee for Privileges, which had the sole authority to determine the grounds for admission to the Lords. The Committee eventually ruled that, while the Crown had the prerogative to create life peerages, it did not have the right to place someone in the House of Lords who did not meet criteria set out by the chamber. Admission to the house was a matter of privilege, which was the sole purview of the Lords themselves, and not the Crown or government. In terms of constitutional convention, the decision confirmed the Crown's independence from Parliament, while reaffirming the constitutional limitations upon the Crown's authority in Parliament (Carpenter, 1908, p. 28; Charley, 1895, p. 493; Macpherson, 1893, p. 31). However, it also placed exclusive responsibility for Lords reform with Parliament, so that fundamental structural characteristics of the House of Lords would be subject to change only through an act of Parliament, and not simply at the behest of the executive or even the chamber itself.

A sustainable solution to the shortage of qualified peers to serve as judges finally came in 1876 with the passage of the first Appellate Jurisdiction Act, amended 1887, which created up to four Lords of Appeal in the Ordinary who could sit in the Lords, but whose titles would not be passed on to their descendants. For the first time, the law lords would also receive a salary for performing their judicial responsibilities, making it possible for men of modest means to sit in the high court.[56] The Acts had the desired effect of providing much-needed legitimacy to the final court of appeal in the United Kingdom, but they also confirmed that any further change to the type of membership in the Lords would have to come through legislation, and not evolving convention (Bagehot, 1867, pp. 192-193; Marriott, 1910, pp. 20-21).

Unlike with life peerages, supporters of allowing women to enter the upper house saw no victories – even minor ones – prior to 1958. There had always been a small but significant number of female peers in their own right, primarily among the Scottish peerage and older hereditary titles, but the House of Lords was not forced to respond to the issue directly until they were confronted with a legal suit in 1920, when Margaret Mackworth, Second Viscountess Rhondda, sued for the right to take her seat in

[56] Until 2009, the Law Lords were the only Peers who received a salary for their work in the Lords. Members of Parliament similarly did not receive any salary until 1911, making it possible for Peers who also held other government offices to receive salary for those jobs.

the House of Lords. Her claim rested upon the fact that the letters patent which made her father Viscount Rhondda a few days before his death in 1918 had a special remainder, included as a condition of her father's acceptance of the title, that specifically named her and her heirs male as successors to the title (HL Hansard, 30 March 1922, cols 1012-36). Additionally, the Viscountcy had been granted in recognition not only of her father's work during the First World War, but of Margaret's as well.[57]

Viscountess Rhondda's petition argued that, under the Sex Disqualification (Removal) Act of 1919, she could not be barred from taking her seat in the Lords.[58] Since she was a peer in her own right, holding a recent title that was created in part because of her wartime service to the state, was explicitly named in the letters patent of creation, and was basing her suit upon recent constitutional changes, Rhondda was an ideal test case for the admission of women to the Lords. As with Wensleydale, her petition was referred to the Committee for Privileges, which initially ruled in Rhondda's favour, but later reversed its decision at the behest of Lord Chancellor Lord Birkenhead, who had previously been a staunch opponent of any bill that extended the political and civil rights of women (Bromhead, 1958, p. 254; Iwi, 1954, pp. 102-103). Birkenhead's reasoning was that women were not explicitly barred from taking a seat in the Lords, but a lack of precedent meant they could not enter the chamber due to constitutional convention, which, in his view, would require an Act of Parliament to reverse (HL Hansard, 30 March 1922, cols 1012-36); since neither the Sex Disqualification (Removal) Act nor the Parliament (Qualification of Women) Act had specified that women were eligible to receive writs of summons to the Lords, the convention remained untouched. With this ruling, the fates of both female and life peers became intertwined, as precedent was the main impediment to both.

---

[57] During the War, however, she joined her father, Welsh Member of Parliament and businessman D.A. Thomas, on a trip to the United States to secure the supply of munitions for the war effort; on their return journey in 1915, they were among the few survivors of the Lusitania when it was hit by a German torpedo. While her father and his secretary were able to escape the sinking ship in Lifeboat number 11, Margaret and two friends were swept off the ship by rising waters. Unable to swim, she was saved by a lifebelt that she had grabbed from her room immediately after the ship was hit, and was later found by the rescue ship Bluebell, unconscious from hypothermia. The ship's sinking was reported in the Cardiff Evening Express under the unintentionally amusing headline "Great National Disaster. D.A. [Thomas] Saved". For the rest of the war, she served as Director of the Women's Department of the Ministry of National Service, while her father served as Minister of Food, and devised the wartime food rationing system.

[58] The relevant portion of the Act stated that "A person shall not be disqualified by sex or marriage from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation, or for admission to any incorporated society" ("Sex Disqualification (Removal) Act," 1919). In practice, this meant that women could attend and read for degrees at public universities, become solicitors and judges, enter the civil service, and could not be formally barred from taking part in public life.

Rhondda was not the only woman who had inherited a peerage but was unable to take a seat in the House of Lords. By 1957, ten of thirty-six active Baronies by Writ were held by women, while another four were held by men with only female heirs presumptive. Seven women also held letters patent by grant, including three who were the original recipients, and one which could descend to a female heir. A further seven Scottish peerages were held by women, and all Scottish peerages had the potential to be inherited by women. In all, twenty four female peers had the right in theory to sit in the Lords, but were prevented from doing so by a lack of precedent (HL/PO/DC/CP/30/8, December 1957). Especially following the accession of Elizabeth II to the throne as head of state in 1952, the exclusion of women from the upper house had become an embarrassing, archaic aberration (Bromhead, 1958, pp. 254-255; CC 26(53)4, 26 April 1953; Iwi, 1954, pp. 102-108). The insistence that constitutional convention brought about by lack of precedent could only be overturned by act of Parliament meant that the issues of female peers and life peerages were inseparable, and by the 1950s, the absence of both from the chamber was beginning to threaten its long-term survival. It is in this context that we now turn to how a Conservative government came to implement the broadest and most dramatic changes to the House of Lords in the twentieth century.

5.2 Existential Crisis, and Choosing Priorities: The Lords in the 1950s

There has been a widely held misconception, especially at the time of the reforms but still lingering although to a lesser extent today, that the Conservative Party was generally happy with the Lords as it existed at the time, and was keen to preserve the anti-democratic and unrepresentative aspects of the upper house as much as possible, limiting change only to that which was absolutely necessary to prevent something worse from happening to the chamber under the next Labour government (Ballinger, 2012, p. 99; Bromhead, 1958, pp. 245-249; Crick, 1957, p. 465; Dorey & Kelso, 2011, pp. 87-88; Kelso, 2009, pp. 146-147; Shell, 2007, p. 32; Times, 29 November 1957, p. 10; 30 December 1968).[59] In fact, Cabinet and committee documents from the time show that the party wanted to make extensive changes to the structure and membership of the Upper House, and Lord

[59] Nearly alone amongst Labour Party members at the time, Tony Benn recognised just how keen the Conservative Lords were for more extensive reforms than the government ultimately accomplished, calling the Fifth Marquess of Salisbury "the great architect of Lords reform" (Benn, 1961-1962, p. Vol V p99). Other Labour Party members have since taken the opposite stance from their predecessors, calling the Life Peerages Act "the most significant change in the House of Lords since 1911" (Wheeler-Booth, 2003, p. 641).

Salisbury, who was developing the government's reform plan, had even greater ambitions than his party leader. However, anticipated resistance from the Labour Party and even backbench Conservative Lords meant that early on in the process, a distinction had to be made between the essential components for any reform scheme if the House was to be saved at all, and any other changes that were desirable but not necessary for the survival of the second chamber. This strategic decision to avert crisis through pre-emptive reform, combined with reformers' nuanced understanding of the often convoluted connection between institutional structure and behaviour, led reformers to opt for a far more subtle plan which would be far more effective at achieving the desired results than prior reforms.

The inability to force institutional change through convention had limited the upper house's ability to adapt to the changing expectations which were placed upon it in an increasingly complex democratic polity. The post-War growth of the state and the increased role for governments in social, economic, and cultural matters created the need for Parliamentarians from both houses to spend more time attending to their legislative responsibilities. Governance had become a full-time vocation, with a great need for policy experts, yet the House of Lords could not turn to the bureaucracy or hire advisors like the Commons, because members received no financial compensation for their work unless they were also a member of Cabinet, and did not even receive a stipend for office or travel expenses. The chamber needed its own policy experts, but the lure of a hereditary title now seemed more of a financial liability than a prestigious incentive to an increasing number of qualified candidates (Brogan, 1954; Hinchingbroke & King-Hall, 1954, p. 134). In contrast to the 1850s, when it had been feared that judges lacked the wealth necessary for fulfilling their responsibilities as members of a hereditary nobility, in the 1950s, it was feared that hereditary peers lacked adequate incentive or experience to fulfil their responsibilities as contributing members of a legislative upper house.

This general lack of qualified experts was causing the interrelated problems of low attendance rates and backwoodsmen,[60] both outcomes predicted by constitutional scholar Walter Bagehot in a scathing response to the Lords' decision in the Wensleydale case a century earlier, predicting that:

> Some time or other the slack attendance of the House of Lords will destroy the House of Lords. There are occasions in which appearances are realities, and this is one of them. The House of Lords on most days looks so unlike what it ought to be, that most people will not believe it is what it ought to be. The attendance of considerate peers will, for obvious reasons, be larger when it can no longer be

[60] So called because they seemingly appeared out of the "backwoods" whenever a contentious issue which personally affected them appeared before the chamber, but were otherwise uninvolved in its daily operations.

> overpowered by the *non*-attendance, by the commissioned votes of inconsiderate peers. (Bagehot, 1867, pp. 192-193).

Bagehot went on to link higher attendance rates with the need for life peers, saying that these two changes "would have made the House of Lords a real House [and] a good House" (Bagehot, 1867, p. 193). Yet the problem persisted, and by the mid-1950s, daily attendance averaged only 97 out of more than 800 eligible Lords, reaching a historic low of only 22 attendees one day in April 1956 (HL/PO/JO/5/2/150, 1956). At the same time, improved long-distance travel infrastructure made it possible for otherwise uninvolved members to show up long enough to cast their vote on controversial bills, and then promptly leave. Backwoodsmen, as they were called, were offensive to reformers for two main reasons: first, they represented the worst of the worst in the hereditary principle, attending Parliament only to thwart the government of the day and preserve the status quo; second, their lack of participation in Parliamentary debates appeared to devalue and potentially even negate the contributions made by actual policy experts and professional politicians in the legislative process (Bromhead, 1958, pp. 46-49). Yet even if the backwoodsmen and low attendance rates problems could be solved, there remained the issue of how to fill the chamber with valuable contributors.

The long-term decoupling of great family wealth from economic and political power in Britain had been going on for more than a century. Historically, hereditary peers had been men of affluence, either in the form of property or industry tied to generational aristocratic wealth; the House's importance had stemmed from the economic influence of its members, and not the other way around (Bagehot, 1867, p. 24). But in post-War Britain, nurtured in part by Labour's post-War policies of nationalisation and social welfare, recent socioeconomic shifts caused by "taxation, the decline of the 'landed interest', the coming of a managerial society and most important of all, the increase of a levelling spirit" (Brogan, 1954, p. 22), meant that heredity had become an unreliable measure of a man's economic or political importance. Professionals, even in highly respected white collar jobs, rarely achieved the level of wealth necessary to secure not only their own livelihood, but those of their descendants, who would likely also have to go into a profession to secure their financial wellbeing. Hereditary peers had to have the wealth necessary to sustain themselves while engaging in their unpaid labour for the House of Lords; while some men offered peerages might be certain of their own financial wellbeing, they could not be so certain that the same would be true of their heirs.

Even if new peers could ensure their descendants' financial wellbeing, it would be a death sentence for the political ambitions of their children; anyone who held a hereditary title was barred from seeking a seat in the House of Commons, and ever since the Palmerston era in the 1850s and 1860s, a place in the Lords was a liability for the politically ambitious. Although there had been nineteen men who served as Prime Ministers from the House of Lords a total of twenty-seven separate times, the last of them, the Third Marquess of Salisbury, left in 1902. In 1923, when Lord Curzon was passed over for the post of Prime Minister following the resignation of Andrew Bonar Law, it was because the Conservative caucus felt that a member of the House of Lords could not perform the necessary duties of a Prime Minister, a belief which had solidified into constitutional custom by 1940, when Winston Churchill was selected to replace Neville Chamberlain, even though a majority in the Commons would have preferred Lord Halifax (Brogan, 1954, pp. 24-25; Bromhead, 1958, p. 100). Similarly, members of Cabinet were increasingly drawn from the House of Commons. Since confidence in the government was determined by the Commons alone, it was logical for the Westminster system, with its fused executive and legislative branches of government, to draw most of its executive from the lower house.[61] It had become routine for men who were offered a peerage to first discuss the matter with their eldest sons so that they would not risk putting a future political career in jeopardy. Nevertheless, even this was not a reliable mechanism for preventing the inheritance of a peerage by someone who did not want it.

When the Conservative Party formed a majority following the 1951 general election, Cabinet recognized that it had the choice between doing nothing and risk a complete overhaul of the Lords when Labour eventually returned to power, or engaging in some reform and risk alienating their traditional support in the Lords. Although they had promised change in their 1951 election manifesto, initial progress was delayed, first by the death of Labour leader in the Lords, Viscount Addison, and then the death of King George VI and accession to the throne of his daughter, Queen Elizabeth II (Raina, 2011, pp. 307-309, Vol II). The ultimate decision to undertake reform was prompted not only by the strategic belief that life peers would serve a beneficial purpose in the upper house, but also by a pragmatic desire to avert more radical change under a future Labour government, and so the ensuing process was

[61] Cabinet members who sit in the Lords rather than the Commons, aside from the Lord Chancellor, are not as rare as in the case of Canadian Senators. They are more common under Conservative governments, but are not unheard of under the Labour party.

characterised by the dichotomy between the desired ideal upper house, and the changes that would be necessary to keep the institution from death by atrophy.

Initial government discussions focussed on what the chamber could do through standing order, with reform advocates pointing out that there had, in fact, been changes to ancient powers of the Lords without statutory reform, first when peers relinquished the right to vote by proxy in 1868 through standing order, and then when lay peers gave up their right to vote in judicial appeals following the Appellate Jurisdiction Acts (Lord Exeter in PA/ST/168, 1952).[62] However, Lords Simonds and Salisbury quickly pointed out that any scheme of reform through standing order would likely encounter the same type of resistance which had blocked reform through convention in both the Wensleydale and Rhondda cases, in which opponents would use the lack of precedent to challenge the Lords' right to reform itself from within (Raina, 2011, pp. 311-315, Vol II). The idea of reform through convention or standing order was quickly dismissed for high risk of failure; unlike the Wilson government a decade later, Conservative reformers readily saw how easily disparate and unallied opponents – this time in the form of anti-modernist Conservative peers and anti-heredity Labour MPs – could derail and prevent reform through procedural gambits, and they sought to forestall these challenges to reform by proceeding with all formality.

A bill allowing for the creation of up to twenty-eight life peers at a rate of up to four per year had appeared in the Lords with some regularity ever since the Wensleydale case.[63] The final time was at the beginning of 1953, when former Lord Chancellor Viscount Simon tabled the bill once more the same day that Prime Minister Winston Churchill sent a letter to the other party leaders inviting them to an all-party conference on House of Lords reform. The government had already made the decision to host the conference when they became aware of Lord Simon's intentions at the end of 1952, but did not ask him to withhold on his bill. This decision has been characterised as an act of petty jealousy on the part

[62] Following the first Act in 1878, constitutional convention settled in favour of exclusivity of the law lords in judicial matters. A lay peer attempted to vote on a case as late as 1883, but his opinion was thrown out by the other judges on the bench, and since then, no peer without adequate legal training has attempted to render legal judgment on cases brought before the Lords (Waddams, 1992, pp. 44-45).

[63] Nearly identical versions of the bill appeared in 1869, 1888, 1907, 1929, 1935, and 1953.

of the Fifth Marquess of Salisbury,[64] who with an attitude of "suspicious vigilance… regarded the shaping of the House as wholly his own province of action" (Raina, 2011, p. 319, Vol II), but this is a gross mischaracterisation of Salisbury's actions. Salisbury was, first and foremost, interested in creating conditions for the emergence of a better House of Lords. Although he was personally invested in the project and his enthusiasm sometimes resulted in delay because he wanted to be more ambitious in his goals than was immediately viable, he was intensely aware of the need to sell Lords reform not just to holdouts in his own party who wanted to keep the status quo, but radicals in Labour who wanted to let the institution decay further in order to make a case for getting rid of it entirely. The sort of petty rivalry that Raina (2011, Vol II) describes clashes directly with private conversations between Simon and Salisbury held at the end of 1952, in which the two men agreed that Simon would withdraw his bill, publicly stating that he did not want it to adversely prejudice the results of any inter-party negotiations on the matter (CC 150/52/5, 30 December 1952). This tabling and then withdrawal of the bill would create a clear indication that the government was attempting to proceed in good faith with Lords reform. It also allowed for the government to indicate what its own priorities in the negotiations would be, as their public statement on the decision not to support the bill mentioned that it did nothing to combat the problem of backwoodsmen, and would increase the size of an already overly-large House (PA/LH/4/24, 8 May 1953). Lord Simon's bill gave the government the opportunity to make a public display of its commitment to Lords reform, and establish that certain objectives would be the bare minimum of they would accept.

Although the offer was made in sincerity, it seems unlikely that Cabinet expected any cross-party conference to actually take place, since informal discussions with the other party leaders – particularly

[64] As Robert Gascoyne-Cecil, Viscount Cranborne, the Fifth Marquess of Salisbury had sat in the Commons from 1929 until his accession to the Lords in 1941 through writ of acceleration. A writ of acceleration allowed for members of a family that held multiple titles that entitled them to sit in the Lords to enter the upper chamber under the junior title while the current holder of the highest title was still alive. The Seventh Baron of Salisbury was given the additional title of First Marquess of Salisbury in 1789, and so Viscount Cranborne was summoned to the Lords in 1941 through the junior title of Baron, even though his father did not die until 1947. The practice has fallen into disuse, likely lost entirely through desuetude since the 1999 House of Lords Act, and the last instance in which an heir was summoned to the Lords in this manner was in 1992, when the current Seventh Marquess was elevated from Commons to Lords under his father's junior title. He was responsible for the eponymous Salisbury Doctrine, which established clear guidelines for the democratic application of the Lords' seemingly anti-democratic legislative powers. Key principles included the idea that the Lords should not prevent the passage of any legislation which had been promised in the government's most recent electoral manifesto, and they should only exercise their suspensive veto powers when legislation was potentially damaging to the rights of citizens or the quality of democracy. More about the roles played by the Fourth and Seventh Marquesses in the passage of the 1911 Parliament Act and the 1999 House of Lords Act are found in those respective chapters.

Labour – had revealed such deep divides that it seemed as though any agreement would be impossible to achieve (Bromhead, 1958, p. 247). They did not expect Labour to accept – and in fact the Prime Minister hoped they would refuse the offer, lest the "search for such an agreement… have the effect of weakening a structure which would otherwise have continued to bear useful weight," and hasten the demise of the upper house (CC 63(53)5, 5 November 1953). Rather, it appears to have been a tactical manoeuvre on the government's part, designed to make subsequent attempts at reform easier to accomplish. First, talk of a conference would buy time for Salisbury to come up with a plan that would be acceptable to both the Commons and the Lords. Second, it would create a public impression of goodwill and willingness to compromise with the other parties. Finally, Labour's anticipated refusal would make more publicly apparent what inside observers had already noticed, that "if they cannot find some way of reforming the Lords safely and utterly, and without increasing thereby their public prestige, [Labour] seem[ed] quite happy that the composition of that House should remain, indeed, indefensible" (Crick, 1957). Although, as Lord Llewellin remarked in a note to Cabinet, the government could expect that, "on account of the Labour Party having declined to enter an all-party conference there could be no legislation… that would, whatever its provisions, succeed in being non-controversial" (CAB 124/1123, 1953), it would be harder for Labour to criticize a plan that they had explicitly refused to help develop. When Labour finally announced that they would not be attending any negotiations, Salisbury remarked on the decision in a Cabinet memo as a government victory, noting that "the rank and file of the party [Labour] no doubt prefer the Lords in its present impotent yet vulnerable state. We need not break our hearts over their refusal" (CC (53)114, 23 March 1953). With the potential for Labour to derail the early stages of reform out of the way, Cabinet now had to turn its attention to seeking consensus within the Conservative Party caucus, and established an eight-member committee under Salisbury's leadership tasked with investigating options and potential outcomes for reform (CC 26(53)4, 26 April 1953).[65]

The only restriction upon the scope of the committee's work was that reversal of the Parliament Acts and restoration of legislative equality with the Commons – an idea popular with the most conservative elements of the party – would not even be considered. Salisbury and Churchill, in private discussions before the committee was established, had agreed that such a move would likely provoke

[65] Members of the committee, as recorded at the first meeting, were HFC Crookshank, Sir David Maxwell Fyfe, Iain Macleod, Lord Salisbury, Duncan Sandys, Lord Simonds, Lord Swinton, and Lord Woolton (CC 26(53)4, 26 April 1953)

further, more radical reform by Labour the next time the party was in power, and undo any temporary improvements they could make (CC 26(53)4, 14 April 1953). Otherwise, the committee could consider any potential changes that they thought would improve the chamber's democratic functions.

While the committee considered a myriad of potential changes, there were two matters related to composition which they regarded as non-negotiable, essential if any reform was to take place at all: the admission of women and non-hereditary members to the chamber. The continued exclusion of women had become particularly shameful for Westminster after the Law Lords, acting as final court of appeals for the dominion of Canada, had ruled in *Edwards v. Attorney General of Canada* (1929) that Canadian women were eligible to sit in the Canadian Senate. Yet the Lord Chancellor's intervention in Lady Rhondda's 1922 petition had made it impossible for the chamber to admit women through a similar process of constitutional reinterpretation, and it would require statutory reform to accomplish. As for the matter of non-hereditary membership, the Appellate Jurisdiction Acts had shown that life peerages were a workable alternative to heredity; they did not bind future generations, and tied a peer's place in the Lords to his qualifications, rather than those of a potentially distant ancestor.

Other than women and non-hereditary peers, the committee identified other potentially useful changes, foremost amongst these a size limitation upon the chamber. Schemes for reducing the overall size of the Lords had been popular since the early 1800s, and appear to have even been the most popular idea for reform throughout the 19th century (see unpublished manuscript in HL/PO/LB/1/23/1, undated). Although the suspensive veto had lessened the potential for governments to view swamping the upper chamber as a necessity, it did not eliminate the possibility entirely, especially when Prime Ministers wanted their influence to continue to be felt beyond the end of their tenure. Due to the hereditary principle, flooding would also result in a permanent change to the composition of the Lords, creating further incentive for future governments to counteract its effects by flooding the chamber with their own appointments. Cabinet documents from 1927 show that the primary concern of any reform scheme at the time had been the prevention of swamping (HL/PO/300/15, 24 April 1927). As it was, the chamber could not physically accommodate everyone who had the right to sit in the Lords, leading Lord Salisbury's private secretary to remark, "it would indeed be a disaster if they all obeyed the [writ of] Summons. There is neither room to contain them nor work to occupy them… so we have this absurdity – a House whose efficient operation depends upon the persistent refusal of over 50% of its members to attend its sittings" (PA/HL/LH/4/16, 17 June 1954). In the 20th century, the Lords continued

to grow at an ever-increasing pace, for a total of 692 new peerages between 1906 and 1955. Declining infant mortality rates and improvements in medical science meant that title holders were more likely to live long enough and have enough children to keep their titles from going extinct.[66] Peerage creation rates that would have amounted to swamping a century earlier had become the norm, a trend which could be expected to continue if no change was made. If the committee could not find a way to reduce the size of the chamber, it wanted to impose a size limit, to stop it from growing indefinitely.

Recommendation for the remuneration of peers also appears in each of the committee's four reports, but with the caveat that it could only feasibly be accomplished if a size limit were placed on the chamber and something was done to combat the low attendance rates. Under the existing system, regular participation in House of Lords business was essentially volunteer work for the independently wealthy, operating on the principle that participants were amateurs in the etymological sense – men who enjoyed contributing to the legislative process without being compelled to participate through financial compensation (Hinchingbroke & King-Hall, 1954, pp. 131-132). Yet the trend towards decoupling of generational wealth from political stature meant that some peers, particularly from Labour, were prevented from attending the Lords by the lack of payment. Those who would otherwise want to attend were dissuaded from doing so by the need to earn a living outside of Parliament. However this raised further logical problems, as the hereditary nature of composition, combined with remuneration, would imply a hereditary right to employment, while a proposal to provide peers with an allowance based on attendance was viewed as "at best only a palliative", and vulnerable to exploitation (CAB 21/3721, 4 November 1955). Between 1948 and 1956, barely half of all eligible peers attended even a single sitting, and in all but two of those years, more than half of those who did attend were there for less than a total of ten times; the low was in the 1954-55 session, when only 163 out of approximately 875 eligible peers attended ten or more sittings (LH/4/1, 22 February 1957). Yet for the vote on abolition of the death penalty in 1956, sixty hereditary peers appeared for the first time in the chamber "after four years of silent membership" in an attempt to defeat the bill (Shell, 1992, p. 17). Alternately, they could require peers to attend a certain number of sittings to qualify to vote, but it was feared that this would not provide a reliable solution for the problem of backwoodsmen, and risked

[66] Previously, the high extinction rate of noble families had tempered the growth rate of the Lords. A particularly stark example is how George III (1760-1820) created 388 new peerages, but in 1830, there were only 363 temporal peers in the Lords. (LH/2/13, 2 December 1957, p. 3; LH/4/15, 8 January 1956, p. 8)

expelling specialist members whose contributions to the Lords' work were infrequent but highly respected (LH/4/15, 8 January 1956; PA/ST/168, 1956). So long as low attendance rates and backwoodsmen remained the norm, the committee could not recommend that peers be salaried, necessitating an alternative solution that would enable peers of limited financial resources to attend.

The committee also dedicated substantial time to the ineligibility of peers to run for election and sit in the House of Commons. At the time, men who inherited peerages while holding a seat in the Commons were immediately ejected. In the case of older peerages, distant relatives could suddenly find themselves heirs to titles that they had never considered inheriting, and political dynasties that had once been integral participants in British politics for generations had become liabilities. However, as with life peers and women, reform through convention was impossible, since a House of Commons committee had ruled in 1895 that it was the title, and not the writ of summons, which led to the exclusion of peers from the lower house, and since an individual could not renounce their title,[67] statutory reform was required to change this convention. The government also knew that a fight was in the near future, as prominent Labour MP Tony Benn was set to inherit his elderly father's title.[68] As a Labour Lord, Benn would have a limited role in the party caucus, and would be unlikely to receive any important Cabinet position in future governments (Bromhead, 1960, pp. 503-504). At the time, both Benns sat in Parliament, the father in the Lords and the son in the Commons, ensuring that there would be at least one vociferous proponent for such a change in both chambers. Prime Minister Winston Churchill was particularly sympathetic to the cause of unwilling heirs, remarking privately to Benn that, "it's a terrible thing to doom a son to political extinction" (Benn, 1961-1962, p. 3, Vol III). As a young man, he had been only one death away from inheriting the Dukedom of Marlborough, which would have prevented him from ever entering the House of Commons. For advocates of reform, the Benn

[67] This was not, in fact, true. Pike (1894, pp. 269-272) presents extensive evidence that peerages higher than a barony could be surrendered prior to the nineteenth century, but as with life peerages, the historical record was re-interpreted for the purpose of preventing change.

[68] Benn had not been the heir apparent when his father was made Viscount Stansgate in 1941 as part of an attempt to increase the number of Labour peers under the wartime coalition government; their father had consulted with older brother Michael before accepting the peerage only after ensuring that Michael had no political ambitions, unlike the younger son. However, as happened all too often to many families during both World Wars, Michael was killed in 1944, leaving the younger son as heir to the title.

situation presented a rare opportunity to gain Labour allies for the alteration but not abolition of the hereditary principle.

In the first round of meetings, expulsion of the twenty-six Anglican bishops from England had received a disproportionate amount of the committee's attention.[69] Some members of the government viewed them as an "anachronistic" relic left over from the mediaeval conflict between church and Crown and the fight for secular law (HL/PO/1/616/3, 1956). While they still had the capacity to influence the outcome of secular legislation, most of the time they were too busy with their ecclesiastical duties to attend, except to read mandatory prayers, an obligation which they viewed as "burdensome" (HL/PO/1/616/3, 1956). Initial discussions acknowledged that it would be difficult to remove them entirely since the Church of England was established by law, and instead sought to reduce the number by more than half, but even that alteration was dropped by the time of the committee's second report, since it would likely entail admitting representatives from the Church of Scotland; if bishops from the Church of England held their seats by virtue of being from an established church, the established Church of Scotland was similarly entitled to some form of representation in the upper house (HL/PO/1/616/3, 13 June 1956, p. 3). The committee ultimately recommended that the matter should be addressed again in the future, once the upper chamber's more pressing problems had been resolved, but if it was dealt with in any way, it should be in the form of Church of Scotland representation (HL/PO/1/616/3, 9 July 1956).

Finally, and most surprisingly to those familiar with the belief that the Conservative Party was dedicated to preserving the hereditary principle, Lord Salisbury and many other Lords favoured expansion of the Scottish principle, viewing it as a potential solution to all of the committee's secondary objectives (FO 1109/350, 13 December 1956). At the time, all Scottish peers were eligible to vote and stand for one of sixteen seats reserved for them, ensuring that those who won were more likely to attend sittings and feel invested in the work of the chamber. Expansion of the Scottish principle would limit the number of hereditary peers in the upper house, making it possible to also limit the number of life peers, prevent swamping of the chamber, and provide peers with remuneration for their work. The seats for life peers could then be distributed amongst the parties based upon their showings in the most

[69] Since the Anglican churches of Scotland, Ireland, and Wales had been disestablished, all of the Lords Spiritual were from England.

recent election, making seat distribution in the upper house more reflective of general national sentiment without threatening the lower house's role as the chamber of confidence. Hereditary peers would also have a strengthened case for the right to disclaim their privileges and stand for a seat in the House of Commons, as they would not automatically otherwise have a right to a seat in the Lords. Lastly, paring down the size of the rest of the chamber would also provide justification for changes to the number of Lords Spiritual, with or without the addition of new Church of Scotland seats. The Scottish principle seemed to be the solution for all of the committee's concerns, but it meant negotiating the details would be complicated, and open up new opportunities for opponents to stall any reform bill to death.

5.3 The Two Bill Solution and the Life Peerages Act, 1958

After more than three years and fearing that a crisis might occur if they waited much longer (Raina, 2011, p. 607, Vol II), the Salisbury Committee was pressed to make its final report in November 1956, and included with it the text of two draft bills, between which the government could choose based upon potential for success. The shorter bill addressed only the two non-negotiables from the committee's reports, because they would remove the existing impediments to change from within that had been caused by a lack of constitutional precedent for women or life peers to sit in the upper house, while the longer bill attempted to address all of its concerns through extension of the Scottish principle (see Table 4, below). Lord Salisbury and the rest of the committee were clear that they had a strong preference for the long version of the bill, and they had already secured the Lords' approval for it, but they knew that it would be difficult to secure the necessary support in the Commons. Nevertheless, they recommended that the government opt for the short bill only "if all else fails" (HL/PO/1/616/3, 1956).

	Peerages Bill (Long Version)	Peerages Bill (Short Version)
Women	Women eligible to sit as both life and hereditary peers	Women eligible to sit as life peers
Non-Heredity	Maximum of 200 male and female life peers (later 250)	Male and female life peers, unlimited number
Size and Swamping	Capped at 400 (200 life peers, 200 hereditary peers; later 250 and 150)[70]	--
Alienation of Privileges	Hereditary peers could renounce certain privileges, had the right to sit in the House of Commons	Hereditary peers could renounce certain privileges
Lords Spiritual	5 Church of Scotland peers, 12 Church of England peers	--
Remuneration	Free rail travel, allowances for attendance	Free rail travel, allowances for attendance
Backwoodsmen	No automatic membership for otherwise disinterested individuals	--
Indirect Election	Hereditary peers elect hereditary members, life peers based on electoral results	--

Table 4 – Comparison of Long and Short Bills

In pursuing reform, the government would have to overcome not only the inevitable opposition from Labour over the continued presence of hereditary peers, but also a shortage of parliamentary time. Cabinet did not want upper house reform to be a potential election issue, and so it had to be dealt with during the 1956-57 session of Parliament. However, even the short bill would consume at least ten out of the forty-six sitting days, while the long bill would have to be tabled around the same time as the higher priority Finance Bill, a move which would make an already controversial bill even more so, as it would seem that the government was attempting to suppress debate by hiding Lords reform beneath the Finance Bill (FO 1109/350, 16 May 1956). The potential timeline became even more constricted following the sudden resignation of Prime Minister Anthony Eden in January 1957 over his handling of the Suez Crisis. The new Prime Minister, Harold Macmillan, was unconvinced that life peers

[70] To improve the long version's chances in the Commons, the committee had considered dropping the clause which reduced the number of hereditary peers to 200, because reducing but not eliminating them from the upper house would be seen as tacit endorsement of the hereditary principle by Labour. However, they ultimately decided to retain the relevant clause, because the strength of Labour's opposition would likely be the same whether hereditary peers were left untouched or were reduced in number as part of a broader scheme for reform (HL/PO/1/616/3, 13 June 1956). In the end, to make the bill more palatable to MPs who neither favoured the hereditary principle nor wanted to see it abolished outright, the government decided to alter the ratio of hereditary to life peers provided for by the long version, to 150 hereditary and 250 life peers.

would improve the House of Lords, fearing that they would be treated as second class peers, and consistently referred to them as "day boys"[71] (Macmillan, 1971, pp. 731-732), in the belief that they would be viewed with suspicion, doubt, and contempt by the hereditary peers, and their lack of generational ties to the House of Lords would make them less invested in its future wellbeing. However, he also accepted that the government had to make a decision quickly and proceed with reform before it was too late, and the committee, under the new leadership of Lord Home,[72] informed the Prime Minister that they had run out of time for anything but the short bill, and were "unanimous in thinking that any attempt to compromise between the present proposals and a comprehensive scheme of reform was likely to be fatal" (HO/392/1, 17 April 1957). Lord Home's decision appeared to succeed when the Labour peers agreed to support the short bill, after previously opposing any reform up until that point. Getting the bill through the Commons, however, was still uncertain, and the government had to warn the Lords that any amendments affecting the scope of the short bill – even related to female hereditary peers or the alienation of privileges, both of which would have found favour in the Commons – would not be presented to the lower house, and could risk the entire bill being withdrawn (CC 84(57)5, 12 December 1957).

The short bill was a minimalist solution to the existential crisis in the Lords, a one clause bill that limited itself to the self-contained issue of admitting life peers to the upper chamber, and would therefore limit the direction and scope of debate and amendments, without limiting the possibility for a second round of changes. Even a clause permitting female hereditary peers to sit in the Lords could not be added without widening the scope of the bill and opening it up to more potential Labour challenges as a "devious Conservative ploy to extend the hereditary principle, with the creation of Life Peers merely providing an ingenious smokescreen" (Dorey & Kelso, 2011, pp. 103-104). Home and Macmillan agreed that, should the government attempt anything more ambitious at that time, they risked having to renegotiate the entire institution in a slow, clause by clause discussion – and would likely have to jettison the bill entirely due to lack of time and higher priorities (FO 1109/350, 22 May 1957), as would ultimately happen to the Parliament (no. 2) Bill just over a decade later. Just as

[71] A pejorative reference to non-boarding students at the elite boarding schools of England. Often locals from poorer families who were on scholarship, they were typically viewed by both students and instructors as charity cases, and less deserving of their places in the schools.

[72] Lord Salisbury had resigned as Lord President of the Council only two months after Eden's departure.

importantly, the government was confident that, if they retained power following the next election, they would be given the opportunity to reopen Lords reform when Tony Benn inevitably challenged his expulsion from the House of Commons upon his father's death (HL/PO/1/477/46, 25 July 1957). Even if the Conservative Party lost the next election, the new life peers in the upper house would make it harder for Labour to find the political capital to push for the more radical type of reform they favoured. In 1911 and 1949, the narrow focus of the Parliament Acts had prevented the government from engaging in its second stage of reform, as what was meant to be a short-term solution neutralised the sense of urgency, and depleted most of the political motivation to focus on the Lords instead of other, more pressing portfolios. However, by leaving an impending conflict unresolved, the government was strategically attempting to enable further reform at a later date, while concurrently restricting the universe of possibilities which would be open for reform and its opponents at that time.

The short form Life Peerages Bill was introduced first in the House of Lords, where it received a robust yet brief debate. Most opposition contended that the bill did too little regarding attendance issues, size of the chamber, and admission of female hereditary peers. Liberal leader in the upper house Lord Rea was possibly the most prescient when he voiced his support of the bill for two reasons: "first, that it accelerates the prospect of further reform of your Lordships' House, and, secondly, that it retards the prospect of the further reform of your Lordships' House" (HL Hansard, 3 December 1957, col 626). The bill passed quickly with no amendments, but the Lords took the opportunity to also pass changes to the chamber's standing orders designed to discourage backwoodsmen, which granted automatic leaves of absence to peers who did not respond to a letter from the Lord Chancellor at the start of each Parliamentary session. While the new rules were technically unenforceable, as the chamber did not have the authority to bar a member from entry even if they were on a leave of absence, the change placed pressure on peers not to take advantage of the massive loophole which had led to the backwoodsmen problem in the first place. General attendance rates would increase over time as life peers became the majority in the upper house; in early years, more peers were on leave than attended on the average day, but by the time of the House of Lords Act in 1999, approximately twice as many Lords attended each day as were on leave (Pownall, 7 December 2010). The backwoodsman of the 1950s was rendered extinct through a toothless guideline, in a move which highlights the chamber's ability to evolve meaningfully through changing constitutional convention – so long as there are no

statutory impediments, and the chamber wants to change. In the meantime, the Life Peerages Bill was sent on to the Commons, where it encountered far more opposition than it had in the Lords.

Labour's strategy to defeat the bill in the Commons was through poison pill amendments, predominantly focussed on prohibiting the admittance of women. In 1949, the Labour Party had become the main impediment to women's entry into the House of Lords, when the chamber voted in favour of a motion to admit women, but the Labour government refused to act accordingly, since it would have legitimated the hereditary principle. Opponents to women peers within the Lords had become few in number; a memorandum from Lord Airlie lists only five peers who were openly opposed to women peers (LH/2/13, 12 December 1957). What lingering opposition to female peers remained in the Conservative caucus was driven by sexism, which was roundly mocked by fellow Conservative peers and the press as out of date. Yet within the Labour Party, opposition to women peers was driven by an anti-hereditary dogma; any change which threatened to improve the chamber without removing the hereditary peers risked strengthening the hereditary principle, making it harder to overturn in the future. Labour MP Jennie Lee summarised the reasoning for Labour's opposition to women peers when tabling an amendment which would have excluded women from receiving life peerages, reasoning that, "I am opposed to members of my own sex being given these peerages because I think they could improve the other place… If I thought that the presence of women would make the second Chamber duller, more stupid, more reactionary than it is, I would reconsider" (HC Hansard, 25 March 1958, col 353). It was a symbolic stance, but did not translate well outside of Parliament, where Labour seemed to be using women's civil rights as a bargaining chip in the fight against the hereditary principle.

The emphasis on women peers in Labour's opposition to the Life Peerages Bill becomes clearer in light of the failure of Labour's other arguments against the bill. During debates on the bill, Labour leader in the Commons Hugh Gaitskell questioned whether the government's proposal could be called reform at all, arguing that life peerages alone would bestow hereditary peers with "a cloak of respectability... when the reality is quite unchanged" (HC Hansard, 12 February 1958, cols 415-423), while women peers were dismissed as "camouflage" (HC Hansard, 25 March 1958, col 354). Gaitskell's accusations received no dispute from the government; they readily agreed that the bill could be dismissed as "tinkering", but reasoned that anything more was impossible at the time due to the Opposition's reticence to compromise upon a "comprehensive scheme of reform", pointing out that it did not preclude further

reform at a later date, and in the meantime would serve to increase the number of Opposition peers (HL Hansard, 3 December 1957, cols 610-616).

Salisbury's insistence on providing the government with a longer, comprehensive plan for more ambitious reform along with a shorter 'bare bones' version of bill had provided the government with a ready-made alternative which was objectively better, yet could have been expected to run into the same stalling tactics from Labour because it retained a limited number of hereditary peers. His solution addressed the House of Lords problem on both a direct textual level – fixing the absence of women and non-hereditary peers from the upper house – and a more abstract level, making it possible for Lords to adopt for themselves new principles of behaviour, and adapt their role to changing institutional needs. Eventually, the Commons passed the bill with minimal revision, and the Life Peerages Act received royal assent in April 1958, with the government promptly extending the offer of life peerages to ten men and four women, all of whom had been likely candidates for hereditary peerages but unlikely to have accepted them. The chamber was no longer at immediate risk of 'dying on its feet', as Lord Salisbury had warned the Prime Minister two years earlier (FO 1109/350, March 1956). Even better, from the government's perspective, they could anticipate a new prospect to reopen the matter very soon, as Viscount Stansgate was elderly, and Tony Benn just as determined as ever to refuse his father's seat in the Lords. It was one instance in which institutional crisis would be of strategic benefit, rather than harm the chance for reform.

5.4 Tony Benn and the Peerage Act, 1963

The Macmillan government won a strengthened majority in the 1959 general election, and a small but growing population of life peers was having the desired effect upon the House of Lords, both in terms of its function and popular perception. As Tony Benn later remarked, "life peers were popular… I was fighting a much more popular House of Lords in 1960 than I would have been in 1955" (Benn, 1961-1962, pp. 25-27, Vol III). Benn's efforts to obtain the right to disclaim his peerage made him unpopular with the rank and file of Labour, including party leader Hugh Gaitskell, who was "really totally unsympathetic" to the unwilling heir (Benn, 1961-1962, p. 32, Vol III). As they had shown during the debates over the Life Peerages Bill, the party would rather avoid the matter of hereditary privilege entirely if they were not abolishing it. The matter found far more sympathy with members of the governing party, who were more likely to potentially inherit titles against their will due to the

Conservative over-representation amongst hereditary peerages but still wanted to retain the hereditary principle. Despite the chamber being in a much stronger position than it had been prior to 1957, the hereditary principle was still vulnerable owing to the unequal rights of women in the Lords. Paradoxically, women could now sit as life peers, but not as hereditary peers, even though the House of Lords had repeatedly resolved to admit them. The nineteen women who held hereditary titles were in limbo, as they could not enter the chamber without statutory reform, but it was not clear whether they were allowed to instead stand for election to the Commons (PA/HL/PO/1/608/5, 6 March 1962). In Tony Benn's anticipated fight against the peerage, the government was hoping for the opportunity to alter the hereditary principle in a limited manner, without inadvertently undermining it. If Benn challenged his right to stay out of the upper house, as the government hoped he would, it would create an institutional crisis, but one of such particular and narrow focus that it would not threaten to destabilise the entire institution. Instead, this limited institutional crisis could be used to eliminate inconsistencies which the government had been forced to leave in the 1958 reform for the purpose of expediency.

Benn's father died in November of 1960, creating the opening that the government required. The narrowest possible course of action would have been to withdraw the troublesome title; when Benn's father was created Viscount Stansgate in 1941, it was done "as a special measure of state policy" to increase the number of Labour Lords to serve the wartime coalition government (22 December 1941). Given the title's peculiar origins, and the fact that William Benn had accepted the peerage only on the condition that it would not harm his now-deceased eldest son's career, the government could have chosen to undo its earlier action.[73] Withdrawing the title would have resolved Benn's case, but in the absence of concurrent statutory changes, it would have done nothing to prevent a recurrence of the problem in the future, when another unwilling heir inevitably inherited a title they did not want – petitioning Parliament each time it happened would be a costly, time-consuming process, would reopen debates about the hereditary principle each time, and would leave the matter of female hereditary peers unresolved. Some members of the Conservative Party also feared that withdrawing a title could undermine the monarchic principle, since all peerages originated from the Crown; any weakening of the

[73] Parliamentary historian Bernard Crick later criticised the Macmillan government for rejecting this approach, saying that there was "an element of ungenerosity" in saddling Benn with an involuntary peerage that had been created for the sole purpose of increasing Labour's presence in the wartime upper house, and likely would have been a life peerage had the alternative been possible at the time (Crick, 1968, p. 140).

peerage was necessarily a weakening of the royal prerogative (Sir Anthony Wagner, 15 December 1960, in Adams, 1992, p. 177). Any long-term solution would have to resolve not only Benn's dilemma, but that of future unwilling heirs, and preferably also admit female hereditary peers to the chamber.

Tony Benn had been ejected from the Commons immediately upon inheriting the Viscountcy of Stansgate, triggering a by-election in his riding to select a replacement. Despite his apparent ineligibility and opposition from the party leadership, he secured the Labour Party's nomination for the seat, and won by approximately 23,000 to 10,000 over the second place Conservative candidate, Malcolm St Clair. At the previous general election in 1959, Benn's victory over the same candidate had been narrower, at 26,000 to 20,000,[74] and so his margin of victory had grown (Raina, 2011, p. 43, Vol III). Benn knew that winning the by-election would not remove his disqualification from the Commons, but it was a necessary part of his strategy to prove how far he was willing to take his case. St Clair had promised to mount a challenge with the Election Court for his own right to the seat if Benn won the by-election, and that move ultimately benefitted Benn far more than it could have harmed him, by forcing another formal ruling on the case which would bring national attention to the absurdity of the situation. However, the Election Court went one step further, first in deciding that all of the votes for Benn were not protest votes in support of his campaign to renounce his title but wasted votes, and then by installing St Clair instead. Almost immediately, St Clair nearly resigned his seat to force another by-election, because even though the Court had ruled he had won the most valid votes, the margin of over 2:1 spoiled to legitimate ballots made his legitimacy as MP dubious. However, he was dissuaded from doing so by the fact that the Returning Officer in the district would be unable to refuse Benn's nomination papers if he chose to run in yet another by-election, and so he declared that he would resign only if Benn promised not to run again, or if the disqualification was removed (CC 46(61)4, 1961). By seating a clearly defeated candidate, the Election Court's decision effectively declared that the hereditary principle prevailed over democratic rule, finally making the issue bigger than either Benn or the peerage.

For Parliamentary historian Bernard Crick, the critical juncture in Benn's fight to remain in the House of Commons was the Election Court's decision to seat the defeated candidate, rather than hold

[74] Exact numbers for 1961 by-election are Benn 23,275, St Clair 10,231, compared to the 1959 general election results of Benn 26,273, St Clair 20,446

a new by-election,[75]yet Cabinet documents tell a different story. The government was in fact keen to "to strengthen [their] position by taking the initiative" (CC 22(61)3, 20 April 1961) on reform of the hereditary peerage. They had been anticipating – and even subtly encouraging – Benn's cage-rattling for quite some time, and only two days after the writ was dropped for the by-election in Bristol South-East, Cabinet nearly formed a joint committee to resolve the alienation question prior to the election date. This was not possible, however, because any statutory solution to Benn's predicament would take a year or longer; there was no spare time in the 1960-61 session of Parliament, and they could not leave the riding unrepresented for so long (FO 1109/360, 31 July 1961). The Joint Select Committee on House of Lords Reform was formed later that year, with the mandate of exploring broad issues related to membership but not the powers or structure of the upper house (Sainty, 1962). Prime Minister Macmillan, showing more interest in the House of Lords than he had during the previous episode of reform, had wanted to give the joint committee broader terms of reference, up to and including reconsideration of the Scottish principle from Salisbury's long form Life Peerages Bill. He thought that Benn's central role in the matter presented an opportunity to widen the divide between abolitionists and reformers in the Opposition, making it easier to secure concessions on further reforms that would "settle the composition of the House of Lords and perhaps establish it for many years to come" (FO 1109/350, 22 April 1961), but ultimately, Cabinet chose a rapid resolution over the possibility of broader changes, once again due to worries over fitting a relatively small matter into a busy parliamentary timetable (CC (61)74, 14 December 1961).

The Committee met a total of thirteen times during the 1961-62 and 1962-63 Parliamentary sessions, and it took nearly a full year for them to table their report. The most viable solution, they determined, was to create a mechanism for hereditary peers to renounce their titles, removing the encumbrance that kept hereditary peers out of the Commons without affecting the rights of other peers or the Crown. They also made membership rules more consistent, by including a clause that female hereditary peers were eligible to receive a writ of summons same as their male and female life peer counterparts, and eliminating the reduced number of seats for Scottish peers so that all Scottish peers

[75] "It is doubtful whether the [Joint Select] Committee [on House of Lords Reform] would have been appointed at all and the Bill brought forward if the Election Court had contented itself with disqualifying Benn and had not made nonsense of the electoral process by seating his opponent" (Crick, 1968, p. 145)

were now eligible to sit in the House. The committee's bill passed quickly through both chambers of Parliament with only minor amendment, and the Peerages Act received Royal Assent on 31 July 1963.

Deputy Prime Minister and Secretary of State RA Butler , in a 1961 letter to Viscount Hailsham, characterised the scope of the changes that the government was proposing with the Peerage Act as "a sensible and not very revolutionary proposal" (FO 1109/362, 21 July 1961), and at first glance, his prediction seems to have borne out. Between 1963 and 1999, seventeen hereditary peers disclaimed their titles, many of whom were the sons of peers in the first creation, including two whose fathers were made hereditary peers after the introduction of life peerages.[76] Four are still in effect, and two titles went extinct upon the deaths of their bearers. Of the remaining 11 titles, ten heirs did not disclaim, and only one did. The Viscountcy of Stansgate came out of abeyance following Tony Benn's death on 14 March 2014; his son Stephen Benn chose not to disclaim the title. Yet despite these limited numbers, Raina describes the Peerage Act of 1963 "the most fundamental reform ever to have been enacted in the centuries-old history of the House of Lords; and the credit for it goes entirely to Tony Benn's efforts" (Raina, 2011, p. 2, Vol III). It accomplished what neither Salisbury nor successive Liberal and Labour governments have managed: controlled modernisation of the hereditary principle, breaking the centuries-old convention which imposed a duty of participation in the Lords upon hereditary peers, granting women full rights to membership in the upper house, and eliminating the threat of an involuntary ennobling from destroying political careers, all without threatening the royal prerogative of the Crown. A repeat of 1940, when the more popular candidate of Lord Halifax was passed over to replace Prime Minister Neville Chamberlain in favour of Winston Churchill because his seat in the Lords would make it difficult to lead the wartime government, was no longer possible; in fact, the very next Prime Minister, Sir Alec Douglas-Home, who had overseen passage of the 1958 reforms as Lord Home, was able to assume his office following renunciation of his peerage, even though prior to passage of the bill, he had not been viewed by the party as a credible candidate for leadership due to his place in the Lords (Goodhart & Branston, 1973, p. 187).

[76] Since the House of Lords Act of 1999, it is no longer necessary for someone who inherits a peerage to disclaim it in order to sit in the Commons. Only one peer, Christopher Silkin, has disclaimed since then; his father Arthur Silkin had also previously disclaimed in 1973.

5.5 Discussion

The changes to the House of Lords between 1957 and 1963 are unique in three respects, all related to the fact that both fundamental factors for meaningful upper house reform were present. First, these are the only instances in either Canada or the United Kingdom of upper house reform attempted by the in-group party, rather than one which viewed itself as an outsider to government. Although some peers from the governing party were resistant to change, Conservative peers were instrumental in shaping government strategy and securing the Lords' approval before either bill was tabled in the lower house. The party was accustomed to working with the upper house, and so did not see crisis as a necessary precondition for reform. Second, it is also the only successful case of multi-stage reform – an impressive feat in itself, made all the more surprising since it was not initially conceived of as a two-step process, and both Acts passed in separate Parliaments under the leadership of a Prime Minister who was at first largely disinterested in the House of Lords. The government knew that it could only hope to achieve a second round of reforms, finally allowing for the admittance of female hereditary peers, if Tony Benn remained adamant in his refusal to take a seat in the Lords and triggered an institutional crisis in doing so. The viability of stage two depended entirely upon a single MP from the Opposition party; had he backed down, the government would not have had the opportunity to modify centuries-old customs of automatic hereditary rights under the pretext of democratic reform. The institutional crisis would highlight a problem that had to be left unresolved in the first round of reforms due to the need to keep the scope of reform very narrow, allowing for a second round that was even more focussed upon a single feature of the upper house. Finally and most importantly, the plan was crafted by the very chamber which was being reformed, and Lords were the most vociferous proponents of broader change. This mattered because it meant that men who already understood how the contemporary chamber actually worked, and where it was lacking, were informing the government as to what small changes would be most likely to yield the desired broader results; the reformers were using existing knowledge about the institution they were seeking to change, and were not having to develop that knowledge from scratch. When it came time to prioritize objectives, they were able distill an ambitious plan for comprehensive institutional overhaul into a minimalist proposal that made opponents appear petty, prioritising ideology over the expansion of democratic rights. These differences made the Life Peerages and Peerage Acts far more effective, both as instances of institutional

reform which produced the desired results, and for refining the purpose of parliamentary bicameralism at Westminster into a role which was more complementary to the Commons, instead of competitive.

The two Acts removed only constitutional barriers which the Lords had already agreed should be eliminated; the Lords had been willing to admit women as early as 1920 through reinterpretation of existing convention, but were prevented from doing so by the Lord Chancellor's intervention in the Lady Rhondda case. The error of the Lord Wensleydale decision, meanwhile, had become self-apparent to many Conservative peers, who now saw in life peerages the capacity for institutional renewal. Ironically, the greatest impediment to thorough overhaul of the upper house came from the party which traditionally advocated most vociferously in favour of radical change, but historically showed itself to be more interested in consolidating power in the office of the Prime Minister at the expense of both the Commons and the Lords. Salisbury's long form bill would have amounted to one of the largest constitutional overhauls in British political history, but the Labour Party's ideological stance on heredity and effective bicameralism limited the potential for statutory change. Even so, passage of the Life Peerages and Peerage Acts depended heavily on the Opposition's impatience to have the matter resolved before they returned to power. The Conservative Party reformed the upper house not through sudden shock, but a slow exhaustion of resistance to change.

The effects of the changes were subtle and slow moving, yet revolutionary. The continued lack of remuneration preserved some of the amateur elements of the upper house, but not the lackadaisical attitude to government that some members had previously shown, though reliance upon self-enforcement of new behavioural norms made the change gradual, and less outwardly apparent. Attendance rates among life peers was higher on average than for hereditary peers, but attendance among all peers increased steadily after 1958 (see Figure 3 below). Peers increasingly treated their place in the Lords as a job rather than an entitlement, so that when the government attempted to reduce the Lords' working week to 3 days in 1999, it encountered fierce opposition and was forcefully rejected by a majority of 72% in the Lords (Landale, 23 March 1999).[77] Life peers had an obvious claim to legitimacy on the basis of professional merit and expertise. Rather than undermine the legitimacy of hereditary

[77] This increased involvement comes in spite of persistent structural barriers to regular participation, including the lack of physical space at Westminster; neither chamber of Parliament is large enough to accommodate full attendance, and there continues to be desk space at Westminster Palace for only 10% of all peers, meaning that most Lords have to work off-site, with only a small stipend to rent private office space (Rush, 2005).

peers or divide the House between peerage types, their introduction accompanied the general professionalisation of Lords business and behaviour among all classes of peers.

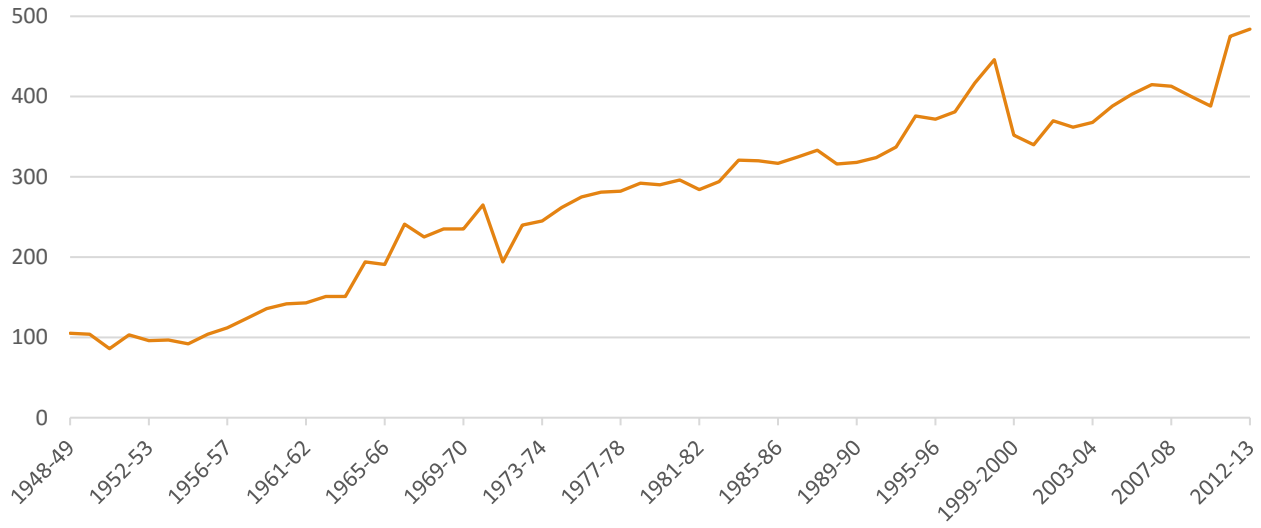

Figure 3 – Average Daily Attendance in Parliamentary Sessions, 1948-2013[78]

The Fifth Marquess of Salisbury, to an extent unmatched by other would-be reformers of the Lords, recognised that perception matters more than reality when evaluating institutional effectiveness. Unlike the reforms of 1911 and 1949, the ensuing non-statutory changes to the chamber's behaviour and self-assigned democratic functions had been Salisbury's primary objectives all along. He recognised, as many would-be reformers before him had done, how dramatic reform could be achieved simply by altering the type of people who were sitting in the chamber, and how they got there. The constitutional structure of Westminster is highly adaptable, but in this instance had been artificially stymied by the Wensleydale and Rhondda rulings, necessitating statutory reform before the chamber could admit life and women peers, as it had wanted to for some years. Salisbury recognised that this new membership could readily give the chamber just what Labour feared most: "a little more news interest and a little more brightness" (HC Hansard, 25 March 1958, col 353), with members who were there by virtue of their own expertise, and not that of a distant ancestor. Prime Ministers were now

[78] Data 1948-54 from (HL/PO/1/616/4, June 1956, p. item 9); Data 1954-2013 from (Parliament.uk, 2014). Data for 1992-93 and 1993-94 Parliamentary sessions is unavailable.

free to make types of appointments which had previously been unavailable to them, because recipients of honours no longer had to worry about their children's welfare and professional ambitions, making the chamber more socioeconomically diverse, and better reflecting the declining link between multigenerational wealth and political or economic influence in the United Kingdom. Over the course of a single administration only a few years later, hereditary peerages nearly fell into disuse in favour of a new convention favouring life peerages, which made for much better visuals for both the Prime Minister making the appointments and the chamber which was being filled with new types of appointees. Prime Minister Wilson, despite his own failure to pass statutory Lords reform (See Chapter 4.4, "Still Waiting for Crisis: the Parliament (No. 2) Bill", p79), can still be credited with engaging in significant reform of the Lords which had only been made possible by these earlier changes to the peerage rules.

Similarly, stage two of the reforms pulled off the impressive feat of actually expanding the hereditary principle by granting admittance to female hereditary peers, while giving all appearance of democratizing the system, allowing for unwilling heirs to disclaim their titles and run for seats in the Commons. There have been more female hereditary peers to sit in the upper house than there have been peers who disclaimed their titles, yet the story, if it gets recounted at all, focuses overwhelmingly on the role of Tony Benn, the unwilling Lord and perpetual commoner, because it was only through his singlehanded challenge of centuries-old custom that the second round of membership reform was even possible.

The Life Peerages and Peerage Acts accomplished meaningful institutional change by adopting a completely different approach to reform from the Parliament Acts. Institutional crisis was something to be averted through reform, rather than used as a means of justifying change. This meant that careful selection of strategy played a much more important role in the process, recognising that the link between cause and outcome can be separated by intermediary steps. Where the Parliament Acts started from the desired outcome – a functionally restrained upper house – and took direct action to impose that restraint through changes to the rules of power, the Macmillan government's reforms to the peerage attempted to utilize the changes in behaviour which are by-products of formal reform to achieve their primary objectives. Institutions are naturally inclined towards self-preservation, and so the decision to leave reform largely in the hands of the institution being reformed resulted in a plan that was both self-serving in that it created a stronger institution more resistant to traditional criticisms

levelled against it, but also beneficial for the larger political system because it recognized that those criticisms were in many ways valid, and the chamber needed to make more meaningful contributions to democratic governance if it wanted to survive. The Life Peerages and Peerage Acts did not enforce any new rules of conduct for members of the upper house, yet the effects of life and female peers on the chamber made it, as Labour had feared, appear more modern and complementary in function to the lower house. The combination of both a pro-active approach to reform and an institutionalist perspective which recognised that the chamber would change in ways that went beyond the textual proscriptions of the statutory change are what made the 1958 and 1963 reforms so revolutionary, albeit in a subtle manner.

The next time that a government sought to reform the chamber in the late 1960s, it was no longer as easy to depict the House of Lords as a backwards, reactionary institution filled with ancient Conservative families. As frustrated members of the Wilson government discovered only a decade after the Life Peerages Act, the Lords already had the appearance of being less partisan and more professional, making it harder for a Labour government to justify reforms which would further restrict the powers of the Lords. Following Wilson's failed attempt at reopening the Parliament Acts, the next credible attempt at Lords reform would not come for another thirty years, when it was merely one component of a larger constitutional reform package. The 1999 House of Lords Act has been characterised as Labour's great triumph over the hereditary Lords, finally accomplishing what the party had been unable to do in 1968 and 1949, yet as the next chapter will show, this account is at best an exaggeration; in fact, the changes brought about by Labour bear a striking resemblance to the long form bill that Lord Salisbury had urged the Conservative government to adopt in 1956, and throw into doubt the question of which chamber ultimately 'won' in 1999.

6 Salisbury's Vindication: the 1999 House of Lords Act

The fact is that the desire for reform is confined to a small section of politicians who look further ahead than the ordinary man; but they have no substantial backing in the country, and the House of Commons has no desire to increase the efficiency of the Second Chamber… On the whole, therefore, it is not impossible that it may reach a membership of over 1000 before anything serious happens to it.

-- Lord Newton, 1929 (pp 415-416)

Unlike the previous instances of attempted upper house reform in the United Kingdom, the 1999 House of Lords Act and the accompanying constitutional reforms of New Labour have already received extensive academic analysis (c.f. Bogdanor, 2009; Giddings, 2005; M. Russell, 2013; Shell, 2007). Although Cabinet documents are still confidential under the thirty-year rule, there are extensive contemporary accounts not only from participants (c.f. A. Campbell, 2007; Oliver, 2003), but academics who conducted primary research during and immediately after the proceedings (c.f. E. Crewe, 2005). From all this attention, it would be easy to make the mistake of assuming that the reforms were of monumental importance. The visuals certainly seem impressive and significant: an Act of Parliament overturned centuries of constitutional convention which had granted a small number of men and an even smaller number of women a hereditary right to participate in the legislative process, regardless of their professional qualifications. Yet as this chapter will show, the significance of the House of Lords Act has been greatly exaggerated, both in terms of the government's reforming impulse and its effective consequences. While it is an example of reform that was achieved with remarkable ease, because it dispensed with the presumptions about how reform should occur that directed earlier Liberal and Labour attempts at upper house reform, it was not an instance of successful meaningful reform, at least as far as the government was concerned, because of continued misunderstandings about the institution being reformed, and the causal link between institutional structure and behavioural outcomes. From the perspective of the man who actually engineered the deal, however, the House of Lords Act is a successful instance of meaningful reform, because it finally achieved what various Lords Salisbury and other would-be reformers within the Lords had been proposing as far back as the 1920s (CP 146(25), March 1925; CP 4039, June 1922; HL (25) 3rd Cons, 4 November 1925; HL (25) 25, 7 March 1927; 1934; PO 300/15-17, 18 February 1926): a numerical restriction upon the hereditary element in the upper

house for the purpose of improving the democratic legitimacy of the chamber as a whole. The government had managed to avoid the most common pitfall which has historically impeded meaningful reform in the UK – misidentifying institutional crisis as a necessary condition for reform – but failed at the second important task of properly identifying the likely outcomes of statutory reform, by neglecting to understand the upper house as a self-interested actor within a specific institutional context, and allowed the reform process to be co-opted by another party that did understand this.

Like the 1911 and 1949 reforms, the 1999 House of Lords Act came out of a deliberate attempt by an out-group government to change Westminster bicameralism in a fundamental way. While the formal statutory consequences certainly appeared to be dramatic, the 1999 reforms had far greater symbolic than functional significance in terms of the government's objectives. Not only did the House of Lords Act fail to accomplish what the government had initially set out to do – the complete expulsion of all hereditary peers – but it unintentionally made the intended second round of reforms all but impossible to achieve. In theory, the government's strategy was sound: concentrate on a single, self-contained objective that was the bare minimum of acceptable change, and then consider broader overhaul in a second round of reforms. It was similar to the strategy that had helped to secure success in 1958 and 1963 – two instances where statutory change to composition ultimately resulted in fundamental changes to the chamber's basic characteristics and function.

The reform of 1999 stands as an instance which, while technically a success, nevertheless fell far short of its broader objectives of completely changing the basis for membership in the upper house to be electively representative while maintaining the existing balance of power between the two houses of Parliament, because it neglected to address the second component of meaningful upper house reform identified in this study. Unlike previous attempts at reform by Liberal and Labour governments, the problem with the government's strategy resided not with its understanding of the unwritten rules of the reform process, but in its decontextualised selection of objectives, and inadequate conceptualisation of the institution it was attempting to reform. Stage 1 was able to proceed with impressive swiftness, especially in light of the government's other competing priorities for constitutional reform. The initial objective of Stage 1, however, was poorly chosen, with the expulsion of hereditary peers selected for its ideological symbolism rather than its potential to facilitate the objectives for Stage 2 through a functionalist understanding of the link between institutional structure and likely output.

On top of that, the government proved unnecessarily willing to compromise on its Stage 1 objective for the sake of its other legislative priorities, and agreed to retain a significant number of hereditary peers on the assumption that it would create an ideologically unsustainable status quo. This concession was both unnecessary, as the Conservative Party leadership had already privately instructed its members in the Lords to accept whatever deal the government offered to avoid bad press coverage, and counterproductive for the government, as it enabled a single Conservative Lord to repurpose the government's reform to achieve much of what the Fifth Marquess of Salisbury had pushed for nearly four decades earlier with his long form bill, and other would-be reformers in the Lords, including the Fourth Marquess of Salisbury, had been advocating for decades before that. The government did not consider structural questions about the proper role and function of a second house in a parliamentary system until it attempted to initiate Stage 2, at which time it realised that many of its new objectives were mutually exclusive: the government wanted a second chamber which was "more democratic and representative" (Labour Party, 1997), a euphemism which was widely inferred to mean elected, yet at the same time would remain inferior to the Commons in both power and stature. Showing far greater understanding of the potential for unintended consequences now that it had inadvertently created a stronger and more legitimate Lords in Stage 1, the government was ultimately forced to decide whether it wanted to proceed with some as yet undecided reform and risk losing some of its own power, or do nothing and retain a balance of power in which the Commons was unquestionably superior.

This chapter traces the impetus behind the 1999 House of Lords Act to the origins of New Labour in the late 1980s, and the emergence of the constitutional reform movement, through a relatively quick initial round of reform, and finally until the slow death of a second attempt at institutional overhaul when the government was forced to accept that its specific objectives for the House of Lords were incompatible with its broader values of governance. It argues that, unlike in the case of the Parliament Acts and Bill, the government met the first criterion for meaningful reform by dispensing with the assumptions of an explicit shock model, but then failed to meet the second criterion when it neglected to properly understand the institution being reformed and identify the likely consequences of statutory change. During Stage 1, legislative objectives were chosen primarily for symbolic reasons, and secondly for purposes of expediency, rather than any principles of democratic governance. Temporal concerns were a major factor in leading the government to make a large – and unnecessary – concession during Stage 1, and this compromise repurposed the objective of reform from simple statutory change in

membership to enable a broader re-imagining of the institution's constitutional and legislative place from within. Stage 2 was impossible for the government to achieve both because of the unintended consequences from Stage 1 creating a more effective and emboldened institution, and because there was a fundamental conceptual disconnect between the stated objective, of creating a 'more democratic' upper house, and the government's unwillingness to see political authority decentralised, moved out of direct Cabinet control. The 1999 reforms highlight the importance of both fundamental factors for meaningful reform identified in this study. Simply dispensing with the implicit shock model of waiting for institutional crisis to create an opening for reform is not enough; reformers also need to trace the conceptual links between statutory objectives and likely outcomes, or they risk unintended consequences when the institution responds to the new statutory context by developing new values and behavioural norms which can undermine the reformers' objectives.

6.1 New Labour and Constitutional Reform

The impetus for reopening the Lords question in the late 1990s lay in Labour's ideological and policy reaction to its electoral woes of the 1980s. Finally, Labour was dispensing with the implicit shock model of reform which delayed reform until either a crisis occurred or the government was running out of time, in favour of a pre-emptive strategy like that employed by the Conservative government in 1958. Between 1977 and 1987, unicameralism was official Labour Party policy,[79] but the policy never posed a serious threat to the upper chamber. The minority Labour government possessed neither the time nor the inclination to launch itself into "another House of Lords reform suicide mission" (Dorey & Kelso, 2011, p. 171) before its defeat by Margaret Thatcher's Conservatives in 1979, at which time Labour entered its Wilderness Years, when the party's election results were so poor that it seemed as though Labour might never form another government (Shaw, 2000).

The party's disappointing showing in the 1987 general election triggered two major policy events, one of which would have major implications for the future of the Lords. First, the leadership ordered a complete reassessment of Labour's entire policy platform by special committee. While the committee's

[79] This followed a vote of the membership at a 1977 convention. Much is often made of the significance of this vote (c.f. Ballinger, 2012, p. 159), but Prime Minister James Callaghan and father of future Labour leader in the Lords Baroness Jay actually opposed the party's new abolitionist policy so vehemently that he vetoed its inclusion in the party's 1979 election manifesto (Dorey & Kelso, 2011, p. 172). It was only after Callaghan was replaced by "fervent abolitionist" Michael Foot that the party leadership became decidedly abolitionist as well (Dorey & Kelso, 2011, p. 173).

report eventually provided a foundation for the New Labour movement of the 1990s, its plan for the House of Lords was unremarkable given contemporary Labour party policy, advocating abolition followed by the establishment of a new second chamber (Labour Party, 1989). While this move away from implied unicameralism reduced what Lord Hailsham had famously warned a decade earlier was Westminster's increasing propensity towards "elective dictatorship" through domination of the legislative system by Cabinet (Massey, 14 October 1976),[80] it did not provide a road map for what the party wanted to accomplish with its reforms, aside from also stating that any legitimate chamber would have to be elected, although the type of election – direct, indirect, first-past-the-post, proportional representation, or some other scheme – was unspecified (Labour Party, 1989, p. 55).

The second policy by-product of the 1987 election, and more importantly for the future of the House of Lords, was the creation of Charter 88. A public interest group founded by intellectuals and activists from the Labour and Liberal parties who were frustrated by what they saw as the Thatcher government's abuses of power, Charter 88 was intended to be an umbrella organisation advocating for constitutional, institutional, and electoral reforms that they believed would improve democratic governance (Dorey & Kelso, 2011, p. 174). The eponymous primary objective of Charter 88 was the adoption of a written constitution in the United Kingdom (c.f. Erdos, 2009; Howe, 2009)[81], but the group also campaigned for other changes that were meant to introduce pluralist decision-making structures into the majoritarian and highly centralised institutions of Westminster. In the case of the House of Lords, this meant replacing an appointed membership with an elected one of some unspecified sort. The group's holistic approach to the constitution was both an academic decision and a strategic one, designed to replace a patchwork of single-interest pressure groups that were having little success individually against the Thatcher government (Flinders, 2009). Charter 88 initiated a paradigm shift in British constitutional politics, prompting elites to approach reform as a multidimensional process rather than as a series of insulated changes, and the group's close ties to the political elite made constitutional reform a cornerstone of New Labour.

[80] This is the same Lord Hailsham who, as Quintin Hogg (MP-Cons), had been the last person ejected from the House of Commons to take a hereditary seat in the Lords in 1950.

[81] For detailed analysis of Charter 88's origins, strategy, and significance, see Parliamentary Affairs vol. 62 no. 4, 2009, special issue "Charter 88 and the Constitutional Reform Movement: Twenty years on".

Charter 88 and the written constitution movement prompted the Labour and Liberal Democratic parties to form a joint committee, chaired by Robin Cook (MP-Lab) and Robert Maclennan (MP-Lib-Dem), to negotiate a bipartisan plan for comprehensive constitutional reform. Along with devolution, human rights legislation, and electoral reform, the committee's final report advised a two-stage process for radical reform to the House of Lords. What became known as Stage 1 would involve the ejection of all hereditary members from the chamber, after those who had made "useful contributions to the House" had been given life peerages. Following that, however, the report was unclear on what a reconstituted chamber should look like, recommending that the government should decide how to proceed by convening a joint committee of both houses to "produce recommendations for a democratic and representative second chamber" (Cook-Maclennan Report, 6 March 1997 in Raina, 2011, pp. 294-295, Vol IV bk 1). The Cook-Maclennan agreement became official Labour Party policy, and appeared as part of Labour's 1997 election manifesto (Labour Party, 1997). Labour's ideological opposition to the hereditary principle was long-standing, and the party leadership was finally determined to act on it, deliberately leaving the more controversial and abstract questions about the purpose and function of Westminster bicameralism until Stage 2.

The rebranding of the old Labour Party as New Labour,[82] the party of constitutional reform, paid off in 1997 with a landslide win for the party. It was the largest reversal in a party's electoral fortunes since Attlee's victory in 1945, similar in size to Campbell-Bannerman's landslide in 1906 – two other milestone elections which also preceded out-group reform of the upper house. Yet Labour's commitment to Lords reform was unclear, given its commitment to other, more important components of its constitutional reform package. The government would have to balance multiple competing constitutional priorities, alongside regular matters of governance, and Lords reform was unlikely to rank

[82] New Labour is most closely associated with Prime Minister Tony Blair, but it its origins lay in the brief but remarkable leadership of John Smith. Between 1992 and 1994, Smith forged close ties between Labour and the constitutional reform movement, and brought the party closer to the ideological centre by distancing himself from many of Labour's long-held socialist policies. Nationalisation was a policy liability for Labour in its attempts to woo new middle and upper class voters, and so dispensing with it in favour of Third Way policy, combining public and private ownership, made for good electoral strategy. Following Smith's sudden death, new leader Tony Blair continued the rebranding of Labour by removing the pledge to nationalise public industries from its constitution, and popularised use of the moniker New Labour to distinguish the modern, social democratic party from its earlier socialist incarnation (White, 5 October 1994).

very highly compared to the other promised constitutional reforms. It was due to these competing priorities that Labour's strategy for reform began to fall apart.

6.2 Stage 1: Competing Priorities

Upper house reform was not a major priority for the government, and held greater symbolic than functional importance. Out of fifteen significant changes to the British Constitution between 1997 and 2005, the House of Lords Act was the eleventh to be implemented (Bogdanor, 2009, pp. 4-5).[83] It was not the content of Lords reform that proved most challenging for the New Labour government in proceeding, but a matter of competing constitutional priorities. Stage 1 would have only a single objective: to expel all hereditary peers from the upper chamber. This policy had been announced in one of Tony Blair's first speeches as leader of the party in 1994 (Raina, 2011, p. 267, Vol IV bk 1), and was the only aspect of Lords reform to which the new government had clearly committed itself.[84] This desire to finish up with Lords reform quickly and efficiently meant that the government spent little time evaluating whether its primary statutory objective – the expulsion of hereditary peers, and eventually introducing a new representative element to the chamber – was complementary to its primary non-statutory objective – maintaining a weakened upper house which would not upset the balance of power at Westminster. It was a serious error, though the consequences only became apparent when the government attempted to move on to Stage 2. In the meantime, the desire to be done with Lords reform quickly and move on to other constitutional reforms created an opening for what turned out to be a complete repurposing of the reform project by Conservative Lord Viscount Cranborne, grandson of the man who had authored the 1958 Life Peerages Act.

Yet the major drawback of the comprehensive approach to reform of an unwritten constitution, at least as far as the new government was concerned, lay in the need to pass the necessary legislation as individual statutes. To make the reforms manageable, each piece of the new constitution would have to be passed separately, and constraints on Parliamentary time meant that it would have to be done in

[83] Other changes included: devolution to Scotland, Wales, and Northern Ireland (1997-98); direct election of Lord Mayor for London (1998) with opportunity for other cities to follow suit (2000); proportional representation for elections to the European Parliament (passed under Parliament Act in 1998); the Human Rights Act (1998); the Freedom of Information Act (2000); registration of political parties and an independent electoral commission (2000); and, establishment of a separate Supreme Court (2005).

[84] Aside from the text of the Cook-Maclennan agreement, Labour's 1997 electoral manifesto had contained only a vague pledge to make the Lords "more democratic and representative" (Labour Party, 1997).

succession. A bill to expel the hereditary peers could be kept short, limiting opportunities for opponents to derail it through amendment or attempts to haggle over details (Raina, 2011, pp. 302-308, Vol IV bk 1). Cabinet's belief was that the biggest threat to the success of the bill came not from anticipated opposition, but from competition with other, higher profile components of the government's constitutional reform plan which would require more time (Dorey & Kelso, 2011, p. 178; Raina, 2011, pp. 302-308, Vol IV bk 1).

Lords reform was only one of many constitutional changes that New Labour had promised in the 1997 election, most of which were far more important to the average voter. The government's top two constitutional commitments were clear: devolution and human rights. The last Labour government before the Wilderness Years had fallen due to its inaction on devolution (Balsom & McAllister, 1979; Geekie & Levy, 1989), and much of the party's victory in 1997 could be attributed to support from regions which would benefit from devolution (Raina, 2011, p. 298, Vol IV bk 1). New Labour could not afford to make anything but devolution its first constitutional priority, even though it would be a long, complicated process. The government first had to produce a white paper with a clear plan, and then pass legislation to hold referenda on the content of the white paper (Raina, 2011, p. 298, Vol IV bk 1). Only after successful referenda could the government then pass the necessary legislation to begin the formal process of devolution. The choice to prioritise devolution meant that incorporation of the European Convention on Human Rights into UK law would have to come second, since the ensuing legislation had to be in place prior to devolution in order for it to take effect in Scotland, Wales, and Northern Ireland (Ballinger, 2012, p. 165; Dorey & Kelso, 2011, pp. 78-81). Aside from those two objectives, there was no obvious order for the rest of the government's constitutional reform plan. Along with reforming the House of Lords, the Labour Party's election manifesto had promised access to information legislation, a new Supreme Court, a proportional representation system for European Parliament elections, a directly elected mayor for London and other major cities, the creation of an independent electoral commission, the expansion of quasi-autonomous non-governmental organisations (quangos), and giving the Bank of England independent control over interest rates (Labour Party, 1997). Compared to many of the other constitutional changes that Labour had planned, the expulsion of hereditary peers from the House of Lords would have minimal impact upon voters, and would be a largely symbolic change, especially if the government planned to follow it up with a thorough overhaul of the upper house. The relatively low salience of Lords reform could either work to the

government's advantage, allowing it to proceed quickly and with little controversy, or to its disadvantage, if disinterest in the project proved to be too widespread within Cabinet as well.

Most of the negotiations which led to the House of Lords Act "took place in secrecy, behind closed doors" (E. Crewe, 2005, p. 45), but were extensively documented by Emma Crewe, who was conducting an anthropological study of the Lords at the time.[85] Subsequent interviews with key veto players have confirmed much of Crewe's narrative, although, as Crewe had also pointed out about interviews she conducted as part of her research, each interviewee has had a tendency "to cast himself as hero of his own story" (E. Crewe, 2005, p. 45). Much of the following description comes from a combination of Crewe's original account, and additional materials which have been published in the intervening years.

In January 1998, after the Cabinet Subcommittee on Constitutional Reform had finished with devolution, the government told it to begin planning Stage 1 of Lords reform.[86] Despite the government's initial desire to keep Lords reform simple and straightforward, the process quickly splintered into three distinct sets of negotiations, with the cabinet subcommittee, a joint consultative committee between Labour and the Liberal-Democrats, and quadrilateral discussions between four members of the Lords all occurring simultaneously. Within the subcommittee, only Lord Richard expressed a strong interest in the reforms, while the other members were indifferent to this part of the government's constitutional reform package (Ballinger, 2012, pp. 165-168; Dorey & Kelso, 2011, pp. 177-178; Kelso, 2009, p. 158; Shell, 2007, pp. 151-152). By virtue of his position as Leader of the House of Lords, Richard was nominally in charge of Lords reform, and was eager to proceed – too eager for the government's tastes (Kelso, 2009, p. 158). Instead of drawing up a bill for Stage 1 of a two-part plan, he kept redirecting discussions to Stage 2, or pushing instead for a single combined plan to overhaul the chamber all at once (Ballinger, 2012, pp. 167-168). The government feared that Richard's premature discussions about Stage 2 could prevent Stage 1 from ever happening by unnecessarily raising constitutional questions which could derail the entire plan (Dorey & Kelso, 2011, p. 178; Shell, 2007, pp.

[85] As an anthropological study, Crewe's book is not primarily about the House of Lords Act and its passage, but the manners, rituals, and unspoken rules that govern behaviour in the Lords. This makes her work even more valuable, as she was fortuitously an accidental bystander to some of the more dramatic episodes which took place in 1998 and 1999, and the events are recorded vividly, in the qualitative methodological style of deep description typical of anthropological studies.

[86] The Cabinet sub-committee was comprised of Lord Irvine (Chairman), Lord Richard (Lord Privy Seal and Leader of the House of Lords), Jack Straw, Ann Taylor, Peter Mandelson, and Nick Brown. Although not officially on the sub-committee, Lord Carter (Government Chief Whip in the House of Lords) was also closely involved.

151-152), and viewed his enthusiasm as a potential liability (Richard & Welfare, 1999). At the same time, a Joint Consultative Committee comprised of Labourites and Liberal-Democrats was also discussing possible futures for the second chamber (Ballinger, 2012, p. 167; E. Crewe, 2005, p. 47). The joint committee met six times in all, but accomplished little. The Liberal-Democrats wanted to replace the first-past-the-post electoral system, and would not consent to any Lords reforms prior to an agreement on electoral reform, reasoning that a change to the electoral system would affect the balance of power in Parliament and inevitably change the government's objectives for upper house reform. Yet the government was uninterested in changing the electoral system, and quickly rejected the Liberal-Democrats' suggestion of a combined referendum on electoral and Lords reform (Ashdown, 2001, p. 4 October 1998). Finally, another set of quadrilateral negotiations between Lords Richard and Carter on behalf of the government and Lords Cranborne and Strathclyde from the Opposition initially yielded similar non-results (E. Crewe, 2005, pp. 45-47). Discussions were fruitless until Lord Carter, without Lord Richard's knowledge, began bilateral negotiations with Lord Cranborne. Although no deal came directly out of the discussions between Carter and Cranborne, Cranborne's willingness to negotiate and compromise identified him to the government as a good potential consensus-builder (E. Crewe, 2005, pp. 47-48). His input, almost unsurprisingly, proved to be crucial to the eventual outcome. Robert Gascoyne-Cecil had been elevated to the House of Lords in 1992 by writ of acceleration under his father's junior title, and sat in the Lords as Viscount Cranborne until he became the Seventh Marquess of Salisbury upon his father's death in 2003. In 1998, Cranborne was Leader of the Opposition in the House of Lords, but his loyalties lay first with the Lords, and secondly with his party. Once again, a (future) Marquess of Salisbury was perfectly situated to play a key role in deciding the future of the House of Lords.

Impatient for progress to be made and tired of what he saw as potentially dangerous Stage 2 talk, Tony Blair finally sacked Lord Richard as Leader of the House of Lords, replacing him with Baroness Jay in July 1998,[87] then instructed Lord Irvine to resume Carter's earlier talks with Cranborne on Privy Council Terms (E. Crewe, 2005, pp. 47-48; Shell, 2007, p. 152).[88] All discussions about Stage 2 were

[87] Baroness Jay happened to be the daughter of former Prime Minister James Callaghan, the Minister in charge of the failed Parliament (no. 2) Bill in 1968. Her father sat in the House as a life peer, leading some opponents of reform to accuse her of being an "honourary hereditary peer" (E. Crewe, 2005, p. 48).

[88] Although this meant that initial discussions were kept confidential, the details of the proceedings are now known because they were documented extensively in Emma Crewe's anthropological study of the House of Lords (E. Crewe, 2005).

promptly put on hold, and Stage 1 planning began in earnest. Almost immediately, Cranborne convinced Irvine to retain some of the hereditary peers as a temporary measure, until complete overhaul of the House could be accomplished during Stage 2 (E. Crewe, 2005, pp. 47-48).

Irvine accepted the retention of a limited number of hereditary peers for two reasons. First, the possibility of Conservative Party support for Labour-initiated Lords reform was too tempting to pass up. Irvine was being pressured by Cabinet to be done with the Lords as quickly as possible so that the government could move on to other matters (Dorey & Kelso, 2011, p. 178). Not only were other parts of Labour's constitutional reform package yet to be accomplished, but temporal concerns were also distracting the government. Alastair Campbell, Tony Blair's Director of Communications, noted in his diaries that at the same time Cranborne was negotiating with Irvine, the Prime Minister was preparing for possible air strikes against Iraq if the country did not allow UN weapons inspectors back into the country (A. Campbell, 2007, pp. 331-335), and was worried that the peace process in Northern Ireland was at risk of moving backwards, fearing that the IRA "would be going for a big assassination soon" (A. Campbell, 2007, p. 336). A bipartisan plan, Irvine logically believed, would reduce the amount of time that would have to be spent debating a reform bill, and was less likely to encounter resistance or attempts to kill the bill through superfluous amendment or debate, allowing the government to turn its attention to more pressing matters, and eventually a second round of more dramatic reforms. If the government did not accede to the compromise, Cranborne had indicated that the Conservative majority in the Lords might choose to "wreak Somme and Passchendaele for this session and the next" upon the government's entire legislative agenda (E. Crewe, 2005, p. 47).

Second, Cranborne convinced Irvine that the compromise would have important symbolic weight that the government could use to its advantage. Critics had already accused the government of not intending to pursue Stage 2 at all, using the promise of further reform only as a smokescreen to conceal the Prime Minister's actual objective of creating a fully appointed chamber of unlimited size, "a house of cronies beholden to him alone" (HC Hansard, 24 November 1998, col 24). Given the Labour Party's historical antagonism to the hereditary principle, however, retention of some hereditary peers would create a situation which would be self-evidently unacceptable to a Labour government in the long run, establishing the government's credible commitment to engage in Stage 2 to remove these last few hereditary peers (A. Campbell, 2007, p. 339; E. Crewe, 2005, p. 47; Shell, 2007, p. 152). Although this contravened Labour's electoral promise to pursue an "initial, self-contained reform, not dependent on

further reform in the future" (Labour Party, 1997), the plan would appear to be a reasonable compromise on the part of both the government, which had initially pledged to expel all hereditary Lords, and the Conservative Party, which the government had assumed would oppose the expulsion of those same peers. From the government's perspective, Cranborne's offer was surprising but welcome. He seemed to be "enjoying the drama of it, the plotting, and the fact of consorting with an enemy, a subject he joked about frequently" (A. Campbell, 2007, p. 337), warning the government that he was likely to be sacked by his party leader over the whole affair (E. Crewe, 2005, p. 49). While Campbell remarks in his diary that he "could not fathom what was really in it for [Cranborne]", (A. Campbell, 2007, p. 338), there do not appear to have been any misgivings within the Prime Minister's circle about accepting the Lords deal.

Unbeknownst to Irvine and the government, however, this solution did not represent a compromise on the part of the Conservative Party, but a personal victory for Cranborne which went against his own party leader's directives; he was in fact only pretending to lose control over his party's backbenchers in the Lords (E. Crewe, 2005, p. 46). Conservative Party leader William Hague was more concerned with the possibility of bad press coverage than saving the hereditary peers, and was unaware of Cranborne's initiative (E. Crewe, 2005, p. 49). Hague wanted any deal to be put to a shadow Cabinet vote, but fearing leaks, Cranborne convinced him to present it to a constitutional committee of Conservative MPs who could be trusted to keep the deal confidential. This committee actually rejected Cranborne's initial proposal, but maintained confidentiality, and Cranborne continued to negotiate anyway on his own terms (E. Crewe, 2005, p. 49). Cranborne was able to take advantage of his opponent's low knowledge about where the Conservative leadership actually stood on Lords reform in order to get the government to make a major compromise on a plan that ultimately more closely resembled provisions from the long form bill proposed by the Fifth Marquess of Salisbury in 1956 than it did the government's initial plans (see Chapter 5.3 "The Two Bill Solution and the Life Peerages Act, 1958" p114). Cranborne had singlehandedly and with minimal effort managed to secure the best possible outcome that any defender of hereditary membership in the Lords could have hoped for.

The extent of Cranborne's victory is even more apparent when looking at just how many hereditary peers he managed to keep. According to Crewe, although Irvine and Cranborne had already agreed upon the retention of some hereditary element, they had not yet settled upon a specific number. Irvine wanted 50 but was offering 15 in addition to life peerages for all hereditary peers of first creation

and two additional places for the ceremonial roles of Earl Marshal and Lord Great Chamberlain, while Cranborne wanted 100 but was asking for 150. They finally split the difference and settled upon 75, which represented 10% of all hereditary peers, until Cranborne suggested that an additional 15 peers should be kept to act as deputy speakers and committee chairmen, to reduce the strain on the rest of the chamber's membership (E. Crewe, 2005, p. 49). Including the two ceremonial peers, they would keep 92 in all, to be elected by the hereditary peers in proportion to their parties' contingents in the Lords – nearly as many hereditary peers as Cranborne had initially wanted, and only 50 fewer than his grandfather had sought to retain in 1956.

Nevertheless, the Prime Minister, when presented with the arrangement, seemed to accept it without hesitation (A. Campbell, 2007, pp. 336-337; E. Crewe, 2005, p. 49), but the deal was nearly scuttled when Hague informed Cranborne that he planned on mocking the government about their apparent about-face on hereditary peers during Prime Minister's Questions. Rather than allow his party leader to attack the government with his plan, potentially prompting the government to withdraw the deal entirely in retribution, Cranborne and the Lord Chancellor quickly arranged to have it presented as a cross-bench initiative by Lord Weatherhill, Convenor of the cross-bench peers (E. Crewe, 2005, p. 49), and informed the Prime Minister of Hague's intentions so that the government could plan a counter-attack (A. Campbell, 2007, pp. 338-339). Although it was Cranborne who had orchestrated the entire agreement, it would be known as the Weatherhill deal. Alastair Campbell would then announce the deal at a press conference during Prime Minister's Questions, and Cranborne would present it to the Association of Conservative Peers at a meeting that afternoon.

Cranborne's move undermined Hague's planned attack on the government, but saved the deal by turning into "a win-win situation" for the government (A. Campbell, 2007, p. 339). When Hague brought up the deal during Prime Minister's Questions as planned, despite being informed ahead of time about the ongoing press conference, the Prime Minister turned the attack back on Hague:

> We are agreed on our side... It is clear from this exchange that [Hague] no longer speaks for the Conservative party in the House of Lords… What is common sense is to get the thing [Stage 1 of reform] done with as little fuss and as easily as possible, which we can now do… When he is provided with the means of getting reform through and agreed, he is more interested in playing games about the House of Lords than getting it done. (HC Hansard, 2 December 1998, cols 875-876)

Cranborne had not only saved his deal, but got a strong statement of support for it from the government, at the expense of his own party leader's dignity. His commitment to the Lords first and his

party second was made even more apparent that afternoon at a meeting with the Association of Conservative Peers, when, with a letter of resignation already prepared, he managed to convince his colleagues to accept the deal before Hague and Conservative Party Chairman Michael Ancram could force their way into the room. The scene that followed is vividly recorded by Crewe:

> Cranborne asked whether Hague would like him to resign or be sacked. The latter. Cranborne and Strathclyde stood by the window concealing their laughter at Hague's anger. Hague asked Strathclyde to take Cranborne's place as Opposition leader in the Lords but Strathclyde, out of loyalty to Cranborne and the Weatherhill deal, declined… Hague's predicament got worse. On hearing Cranborne had been sacked, the whole Conservative Lords front-bench resigned [from the front benches]. (E. Crewe, 2005, p. 50)

Lord Strathclyde, with Cranborne's support, eventually accepted Cranborne's former position, but on the condition that he could still support the Weatherhill deal. Similarly, the front-bench Lords refused to withdraw their resignations unless the deal became party policy. A humiliated Hague was forced to relent (E. Crewe, 2005, p. 50). Cranborne had singlehandedly orchestrated one of the most dramatic reversals in historical policy patterns, as Labour was now advocating that some of the hereditary peers should remain in the upper house, while the Conservative leadership had been willing to accept their complete expulsion. Additionally, his intimate knowledge of the institution, contrasted with the government's own deliberate decision not to get too conceptual or abstract during Stage 1, had allowed Cranborne to turn the government's largely symbolic reform into one that would enable the institution to modify itself from within, in a meaningful manner that had not been intended by the government.

Concerned about any excessive delay in getting the bill passed – two other constitutional reform bills were either already awaiting or about to begin the twelve month countdown for veto override[89] – the government was much more calculating in its strategy for getting the reform bill passed than it had been in negotiating the deal in the first place. The Weatherhill deal to retain some hereditary peers was not integrated into the text of the House of Lords Bill, but was instead presented to Parliament in January 1999 as an amendment, more than a month before the rest of the bill was tabled. Officially, this was to retain the cross-bench nature of the deal (Ballinger, 2012, p. 172; Shell, 2007, p. 180), but it also gave the government substantial leverage over the House of Lords. By leaving this provision to be

[89] The European Parliamentary Elections Bill was already waiting out the suspensive veto override, and the Sexual Offences (Amendment) Bill about to have to do the same.

tabled in the upper house, it would pass only if the Lords accepted the entire bill; if, on the other hand, the Lords chose not to support the bill and exercised their suspensive veto, the amendment would be dropped under the rules of the Parliament Act, and the complete expulsion of all hereditary peers would be delayed by only a year (Shell, 2007, p. 152). In effect, it was forcing the Lords to choose between co-operation and compromise, or confrontation and capitulation. The government was relying upon the institutional impulse towards self-preservation to compel the Lords to accept the bill.

The text of the House of Lords Bill was very brief, with the centuries-long tradition that had granted bearers of hereditary titles the automatic right to sit and vote in the House of Lords eliminated with a single sentence: "No-one shall be a member of the House of Lords by virtue of a hereditary peerage" ("House of Lords Act," 1999).[90] The bill passed all stages in the House of Commons in Committee of the Whole quickly and without amendment. In the House of Lords, the bill was met with not entirely unexpected resistance. While Cranborne had handily convinced the Conservative front-benches to accept the bill, dissenters in the backbenches accused the government of acting out of "envy, spite and jealousy" (HL Hansard, 23 February 1999, col 1075). Accusations of class warfare were also rife, and some of the arguments on the virtues of the hereditary principle verged on the ridiculous, with musings about the potential merits of hiring a hereditary plumber.[91] A total of 120 amendments were presented by over 180 speakers, only two of which were accepted by the House of Commons once the bill had passed the Lords: the Weatherhill amendment, and a provision presented by Lord Strathclyde for by-elections to replace any of the elected hereditary peers who died. Initially, the government was reticent to accept by-elections, and instead preferred filling the vacancies with the runners-up from the initial election. It was compelled to relent, however, when Strathclyde reminded the government that it had agreed to the retention of some hereditary peers as an indication of its credible commitment to seeking Stage 2 of reform, and was not secretly engaging in a roundabout way of obtaining an entirely nominative upper house of unlimited size:

[90] In return for the loss of privilege, hereditary peers were granted the right to vote in general elections and sit in the House of Commons without needing to disclaim their peerage.

[91] Baroness Seccombe reasoned, "Lady Kennedy of The Shaws, had said… that she would not employ a hereditary plumber. I found that astounding as I always take note of how long a firm has been in business, and if the name includes "and Son" I think it is a bonus. The son has probably watched his father from a young age, learned his skills in a practical way, and then joined the family business. So if the noble Baroness… needs a plumber, perhaps she had better look for a hereditary one because I am sure he would serve her well." (HL Hansard, 30 March 1999, col331)

> The purpose was to try to pour some sand into the Government's shoe. It would be an irritation to them. Those of us who suspected – no doubt entirely wrongly – that the Government all along wanted to stick at a stage one nominated House saw it as an incentive to ensure that that intention never materialised. (HL Hansard, 22 June 1999, col790)

The by-elections would, ironically, purposely retain what the government perceived as the source of illegitimacy in the contemporary upper house, which they had already accepted as a positive virtue for the purpose of pursuing Stage 2 in the Weatherhill Amendment. For consistency, they could have jettisoned the Weatherhill Amendment, but the about-face on a clause which predated the rest of the bill would have provoked a confrontation with the upper house, and Lords would no longer have a disincentive for vetoing the bill. The government, more concerned with the problems facing other constitutional bills and the daily challenges of governance, had been willing to make a concession on the hereditary peers if it meant a speedier resolution that avoided using the Parliament Act for a third time within the span of two years to pass its constitutional reforms (Shell, 2007, p. 152). The House of Lords Bill, complete with the Weatherhill and by-election amendments, was passed by the House of Commons on 11 November 1999. The government had purposely withheld it until the very last day of the session so that if the Lords reneged on their support or proved too intransigent on other legislative matters, the amendments could be removed before beginning the veto override (Ballinger, 2012, p. 174).

All of the important work on the bill had occurred off the floor of Parliament, and largely in secret negotiations between only a small handful of individuals. The government was impatient to move on from Lords reform to other more high-profile components of its constitutional reform agenda, leading it to favour expediency over perfection in any plan (A. Campbell, 2007, pp. 331-336; Kelso, 2009, pp. 157-159; Raina, 2011, p. 432) . Those who were fortuitously positioned had the potential to wield immense influence over the final outcome, so long as their objectives were compatible with the government's own desire for a quick resolution. This meant that while Lord Richard's enthusiasm for Stage 2 had quickly become a liability for the government, Lord Cranborne had an ideal opportunity to secure what turned out to be a significant concession from the government that even his own party leader opposed.

During Stage 1, the government had made a significant concession to retain ninety-two hereditary peers as a symbolic admission of its sincerity to pursue Stage 2, because the Labour Party had historically been uncompromising on its ideological opposition to the hereditary principle (Shell, 2007, pp. 152-

153). From an ahistorical perspective, it also seemed to be a major compromise on the part of the Conservative Party in the Lords, which the government had assumed would fight any attempt to eliminate the hereditary element to the chamber. Yet this was a major strategic miscalculation on the part of the government, based on a pre-Parliament Act understanding of the Lords and how they identified the chamber's self-interest. In the nineteenth century, any restriction upon the hereditary principle had in fact been ideologically unacceptable to the Conservative Party, but as earlier chapters in this work have shown, over the first half of the twentieth century, a fundamental shift in thinking had occurred among Conservative Lords, who came to see voluntary restriction of hereditary membership as the means of securing the chamber's survival in an increasingly democratised and meritocratic system. The transformation of Conservative attitudes towards the hereditary principle was so dramatic that by 1956, when the Fifth Marquess of Salisbury presented his two bills for Lords reform to Cabinet, the preferred solution of Conservative reformers in the Lords was to reduce the number of seats for hereditary peers to 150, and it was only due to time considerations and expected Labour Party opposition to the retention of any hereditary seats at all that the government chose to proceed with the short form of the bill (see Chapter 5.3 "The Two Bill Solution and the Life Peerages Act, 1958", p114). When Salisbury's grandson found himself in a position to negotiate a new round of Lords reform with a New Labour government, Viscount Cranborne was able to secure a similar arrangement for the continued place of ninety-two hereditary peers in the chamber, and although life peers remained unlimited in number, the restriction upon the number of hereditary peers had the effects that Salisbury had originally hoped for nearly half a century earlier, making it more difficult when the government began to pursue Stage 2.

6.3 Stage 2: Death by Discussion

The government appears to have been sincere in its desire to pursue a second stage of reform after the first successful round, but the strategic missteps that it made in Stage 1 became even more pronounced in Stage 2, with added complications arising from the fact that it was once more facing an emboldened and more popular upper house – a wholly unintended consequence of Stage 1 on the government's part, but likely fully intended by Viscount Cranborne, who expected the retention of some hereditary peers to have consequences that went beyond the textual implications of the House of Lords Act. Lords reform never reached high priority status again for the government after the House of Lords

Act was passed, and it disappears entirely from mention in Alastair Campbell's diaries, overtaken by the crisis in Kosovo, political scandals, and then the War on Terror (A. Campbell, 2007). The overarching strategy during Stage 1 had been to get the reforms through Parliament as quickly and efficiently as possible, dispensing with the old assumption that an institutional crisis would make broader reform possible, but in its rush, the government had avoided asking itself questions about what it actually wanted a second chamber to do, and so the Stage 1 solution was chosen without reference to likely outcomes in terms of institutional behaviour as well as formal structure. At the start of Stage 2, the government found that it had to start this process from scratch, because decades of vacillating between abolitionism, radical reformism, and ambivalent bicameralism, with the only consistent position being opposition in principle to the hereditary element, had left Labour without any actionable objectives now that the hereditary peers were mostly gone from the upper house. Once again, a government wanted reform, but did not know what it wanted its changes to accomplish, and would have to go back to the Bryce Committee report of 1918 as its starting point (CM 4534, 20 January 2000, pp. 16-17). And, once again, a government's lack of decisiveness in answering basic questions of what it wanted the Lords to do, an absence of strong personalities who could push the process forward, and a fear that an improved chamber might become a competitor to the legislative authority of the Commons, abandoned Stage 2 to a cycle of death by discussion. During Stage 2, it became clear that the pursuit of meaningful reform would require more than just a willingness to rethink what constituted a proper opening for reform, but would also require a much more nuanced understanding of the institution, and the factors which influenced actor behaviour.

The Royal Commission on the Reform of the House of Lords,[92] known more popularly as the Wakeham Commission, had been established by the government in January 1999, when the House of Lords Bill was still in its earliest stages. It was intended to be the first step in Stage 2, but instead became the first of many time-consuming exercises that resulted in little change, as it became apparent that abstract promises to make the chamber "more democratic" were incompatible with the government's other structural objectives related to the balance of power in Parliament. Before the Wakeham

[92] The 12-person commission was comprised of Lord Wakeham (Chairman, Cons), Lord Butler (X-Bench), Lord Hurd (Cons), Baroness Dean (Lab), Richard Harries (Bishop of Oxford), Gerald Kaufman (MP-Lab), Kenneth Munro (head, Scottish Public Policy Centre), Bill Morris (trade union leader), Professor Anthony King, Professor Dawn Oliver, Sir Michael Wheeler-Booth, and Ann Beynon.

Commission had even met for the first time, Baroness Jay had to deny widespread accusations that it was nothing more than a delay tactic to avoid pursuing further reform (HL Hansard, 14 October 1998). As a result, the committee was under substantial pressure to produce its report quickly, despite being given little guidance in its terms of reference. The only concrete direction was that the new arrangement had to "maintain the position of the House of Commons as the pre-eminent chamber of Parliament"; otherwise, the commission had the freedom to consider anything related to the role and functions of a second chamber (CM 4534, 20 January 2000, p. iii).

This insistence upon the primacy of the Commons as the sole guiding directive for Stage 2 is a recurring theme in New Labour's constitutional reforms. Despite the party's populist rhetoric in its constitutional agenda, its governance style was characterised by centralisation of authority around the Prime Minister, strict control over the backbenches, and a weakening of parliamentary scrutiny over government actions (Cowley, 2007, pp. 16-17; Kelso, 2009, pp. 105-106). Old Labour's tolerance for sectarian division and an inability to whip its backbenches effectively had been a major factor in the government's decision to abandon the Parliament (no. 2) Bill in the late 1960s (see Chapter 4.4 "Still Waiting for Crisis: the Parliament (No. 2) Bill", p79); New Labour would not tolerate such dissent, with a culture "based upon legitimacy and obligation… to the leadership and to its judgments and decisions" (Foley, 2000, p. 307). Only two years into its mandate, the government's insistence upon loyalty to the leadership at the expense of their right to dissent had rankled many within the party, ultimately prompting Tony Benn, who had become "a thorn in the side of New Labour" for his willingness to criticise the government over its support of the war in Kosovo, to announce his decision not to seek re-election so that he would have "more time to devote to politics and more freedom to do so" (White, 28 June 1999, p. 3). Combined with a demoralised Conservative opposition still reeling from its electoral defeat and a Liberal-Democratic party that was committed to the government's constitutional reform agenda, the unusual degree of control exercised by Cabinet and the Prime Minister over the Parliamentary Labour Caucus left the government without an effective opposition, and "in many quarters, the management of the party was seen as being so severe as to threaten the independence of parliament" (Foley, 2000, p. 307). Although Labour had won on a platform which promised "democratic renewal… through decentralisation and the elimination of excessive government secrecy." (Labour Party, 1997), these changes affected Parliament's influence, while leaving the powers of the executive largely untouched. When the government insisted upon the primacy of the Commons in a

bicameral system, it was in fact arguing for the primacy of Cabinet and the Prime Minister. The government's primary concern in Stage 2 was that the Lords not become a potential rival; they might want the chamber to be "more democratic and representative", but not if it entailed sharing political power with other institutions.

The Wakeham Commission's report, tabled a month after the 1999 House of Lords Act became law, accepted without question the government's direction against creating a chamber that would be too empowered or too democratically legitimate, concluding somewhat paradoxically that:

> The reformed second chamber should be authoritative. It can and should play a vital role in scrutinising the executive, holding the Government to account and shaping legislation. It should therefore have the authority to ensure that its views and concerns are taken seriously. [But it] is essential that the second chamber's authority should not be such as to challenge the ultimate authority of the House of Commons… the greater the 'democratic legitimacy' of the second chamber, the greater the risk of damaging constitutional conflicts arising between the two Houses of Parliament. (CM 4534, 20 January 2000, p. 97)

The alternative sources of authority that the commission suggested, other than democratic election, were the same sources that the existing chamber already had at its disposal: demographic representativeness, individual experience and expertise of members, personal distinction, and independence from partisan control (CM 4534, 20 January 2000, p. 97). The committee had been unable to find a means of reliably constraining the upper chamber's ability to challenge the lower house without also deliberately limiting its democratic legitimacy, dismissing the government's earlier promises of a fully elected chamber as incompatible with the sort of asymmetrical bicameralism that the government wanted.

In all, the report contained 132 separate recommendations for further reform of the Lords, one of which is particularly significant because it presages how the abundance of choice would eventually derail the entire project. Among the recommendations was the suggestion that the size of the Lords be capped at 550 members, of which 65, 87 or 195 should be elected, while the remaining appointed members were to be selected by an Appointments Commission. The retention of a majority appointed body was intended to be a means of maintaining the cross-bench contingent in the Lords, ensuring that no single party could command a majority in the upper house, and maintaining the existing balance of power with the Commons (CM 4534, 20 January 2000, p. 102; Oliver, 2003, p. 189). Yet by not making any definitive statement as to the number of elected members the chamber should contain, the report was implying that there was an ideal and logical ratio of elected to appointed members, and the matter

could be resolved through debate and discussion. In 1956, when the Fifth Marquess of Salisbury had presented Cabinet with a plan for a chamber composed of 200 each of hereditary and life peers, he acknowledged that the numbers were ultimately arbitrary and symbolic, leading him to alter the initial plan to 150 and 250 hereditary and life peers, respectively, because a greater proportion of life peers would have useful democratic and meritocratic symbolism (HL/PO/1/616/3, 13 June 1956). The Wakeham Report reached no similar realisation, and by not being clear on the proposed ratio of elected to appointed peers, it left its solution susceptible to both deliberate and inadvertent derailing through endless negotiation and renegotiation of those initial numbers.

The Labour government expressed its support for the Wakeham Commission's recommendations in its 2001 campaign manifesto, but emphasised that the goal was to make the House of Lords "more representative and democratic, while maintaining the House of Commons' traditional primacy" (Labour Party, 2001, p. 35), a statement it repeated in its first Speech from the Throne upon returning to power in yet another landslide victory.[93] Despite the great fanfare surrounding the Commission, its report quickly joined the ranks of studies on potential Lords reform that had been touted as paradigm shifts, but have then disappeared into policy obscurity as the discussion broadens. Supremacy of the Commons – or rather Cabinet – became such an overarching concern in the ensuing search for a solution to the Lords that it was the first measure of whether or not a plan was acceptable to the government, to the exclusion of its other professed concerns about representativeness, legitimacy, and democracy.

There was in fact a distinct shift in political discourse surrounding House of Lords reform after the 2001 election, but it was not to reformers' advantage, as it became increasingly clear that representativeness would be incompatible with a politically constrained upper house. Many of the Wakeham Commission's recommendations appeared in the government's subsequent 2001 white paper, "The House of Lords: Completing the Reform", although they added a membership cap of 600 members, 120 of whom were to be elected with the express purpose of representing the nations and regions of the United Kingdom (CM 5291, 7 November 2001). One notable difference was the rejection of a statutory independent appointments commission – a proposal that had also been tabled as an amendment during the debate on the House of Lords Bill, but was rejected by the government as "unnecessary and even potentially damaging to smooth progress" (HL Hansard, 22 June 1999, col 845).

[93] The Labour Party received 43% of the vote, and won 413 seats – only 5 fewer than in the 1997 election.

In March 2000, the government had set up a non-statutory appointments commission, tasked with vetting peerage nominations coming from the party leaders, and recommending names of potential cross-bench peers. However, the Prime Minister still retained control over how many appointments would be made at any time, the distribution of available seats between the parties, and delivering the names of nominees to the Queen. Although this change ultimately improved public confidence in the nomination process (UCL Constitution Unit, 12 December 2007), it did not fundamentally change the type of appointee; Bogdanor notes that even the cross-bench nominations, which are entirely at the discretion of the Appointments Commission, have consisted "largely of nominations of 'the great and the good', people who might well have been nominated under the old system" (2009, p. 158). The Appointments Commission was conceived as a transitional body, meant to bestow the nomination process with greater legitimacy until Stage 2 could be completed, and although it appears to have become a permanent part of the appointments process, its non-statutory basis means that it exists only at the continued discretion of the Prime Minister.

Despite the similarities to Wakeham, the White Paper received little support in either the Lords or the Commons, even though the earlier report had received widespread support in both chambers (Clarke & Purvis, 2009, pp. 6-7). This apparent rejection of the White Paper in the Commons set off a wave of different plans from different actors, and the era of apparently easy constitutional reform had ended, as the many potential veto players became increasingly divided. First, both the Conservatives and the Liberal Democrats issued their own proposals. While both parties' proposals called for a 300-member body with 80% elected members, the Conservative plan called for first-past-the-post elections, while the Liberal Democrats wanted some form of proportional representation (Dorey & Kelso, 2011, pp. 193-194). A report published by a House of Commons Select Committee recommended a body that was 60% elected, 20% appointed by political parties, and 20% appointed by an independent commission (HC 494, 12 February 2002, point 96). There were getting to be too many potential options on the table, with little decisive leadership on which direction to take.

The government then established yet another joint committee in an attempt to achieve consensus on Lords reform, and when it issued its report in late 2002, it concluded that the matter of composition had to be decided before it could make any further progress (HC 171, 9 December 2002, p. 6). However, it did not advance towards a decision on composition, instead more than doubling the number of options which had been contained in the Wakeham report, presenting a choice of seven different forms

of composition to Parliament including fully appointed, fully elected, and three different options that were partially elected, partially appointed. Subsequent debates in the Lords made it apparent that the Lords considered proposals for a partially elected, partially appointed upper house to be fundamentally flawed, and given the choice between a fully elected or fully appointed upper house, the Lords opted overwhelmingly for a fully appointed structure (HL Hansard, 21 January 2003). However, opinion in the Commons was reversed, with most MPs supporting a fully elected house, a preference shared by the Prime Minister (HC Hansard, 29 January 2003). The one commonality between the Lords and the Commons was that both rejected the hybrid model. In one vote on possible seat distributions, the Lords supported a fully appointed house by a ratio of three to one, while the Commons rejected all options, including one for the establishment of a unicameral parliament, though it rejected the plan for an 80% elected chamber less strongly than the rest (HC 668, 29 April 2003, p. 7). The Labour Party retained its ideological opposition to the principle of appointment, but the government was equally committed to the retention of a chamber which was incapable of mounting a serious challenge to its authority.

Despite the failure to achieve a plurality in support for even one of the options for membership, the government made overtures to proceed with structural reform of the Lords, announcing in a Department of Constitutional Affairs consultation paper (CP 14/03, 2003) that they would abolish the office of the Lord Chancellor and establish a Supreme Court outside of the Lords. The initial plan involved removing the remaining hereditary Lords without concurrently adding any elected seats to the house, despite the government's previous promise not to eliminate the hereditary Peers until Stage 2 was ready. This caused an uproar in both the Commons and the Lords, as it appeared that the government was seeking to create an entirely unelected upper house, the option which had been the least popular when the Commons voted earlier that year (HC Hansard, 18 September 2003; HL Hansard, 18 September 2003). When the Constitutional Reform Bill arrived in the House of Lords, it was sent to committee, and the Lords began obstructionist procedures to prevent its passage. In April of 2004, the government finally had to remove the provisions regarding hereditary Lords, and limit the bill to the establishment of a Supreme Court by moving the Law Lords to their own institution, though they would

receive peerages for life upon retirement from the bench.[94] While the remaining parts of the bill slowly worked their way through Parliament, finally receiving Royal Assent just prior to the 2005 election, a series of committees and working groups in both houses continued to study the House of Lords question, some proposing potential solutions, while the government continued to promise further reform after the next election.

It was at this point that the government appears to have given up on the hope that Stage 2 was still possible; in both 2002 and 2003, only two new appointments were made to the upper house, the lowest numbers in modern history. In 2004, however, the normal pattern resumed, and there were 47 new life peerages (Beamish, 2014b). Too much talk and not enough guidance left the reform agenda without clear goals pertaining to how a reformed institution should operate, and what role it should ideally play in a parliamentary system; unlike during Stage 1, there was no leadership from a well-placed individual who cared enough to push for reform, but did not care so much that it jeopardized the chance of success for trying to do too much at once. Stage 1 was nearly scuttled by Lord Richard's over-enthusiasm and was brought back on track by Lord Cranborne's surgical approach, but Stage 2 was dead on arrival due to a complete absence of either enthusiasm or purposeful intent.

Although all three major parties publicly pledged Lords reform during the 2005 general election, little happened for the remainder of Labour's time in government, under either Tony Blair or Gordon Brown, and this was in large part due to the unintended consequences of Stage 1.[95] There was yet another round of White and Green Papers (c.f. CM 7027, February 2007; CM 7170, 3 July 2007), as well as joint and select committees (c.f. CM 7438, 14 July 2008; HL 265, 3 November 2006), but none of the projects yielded any practical results. What the government had not anticipated was increased support among both backbench MPs and voters for the Lords' use of their legislative prerogatives up to and including the defeat of government bills, a trend first noted in 2005 by University College London's

[94] It is for this reason that the establishment of the Supreme Court does not warrant discussion as a distinct instance of upper house reform. Lay peers had effectively relinquished their jurisdiction over judicial matters following the Appellate Jurisdiction Acts. A lay peer attempted to vote on a case as late as 1883, but his opinion was thrown out by the other judges on the bench, and since then, no peer without adequate legal training has attempted to render legal judgment on cases brought before the Lords (Waddams, 1992, pp. 44-45). For over a century, the Law Lords had already been functioning as a Supreme Court, and the Constitutional Reform Act of 2005 formalized this institutional practice.

[95] The only reform passed under Gordon Brown's tenure was as part of the 2010 Constitutional Reform and Governance Act, which mandated that members of the Lords pay taxes in the United Kingdom, and introduced procedures for expulsion due to wrongdoings, both of which had been demanded by the Lords. The Constitutional Reform and Governance Act is far more significant for finally creating a statutory basis for the civil service.

Constitution Unit (UCL Constitution Unit, 12 December 2005). The government had spent its first years in office systematically dismantling parliament's ability to hold it to account, with changes ranging from reduction of time for Prime Minister's Questions to a single session per week, to the regular imposition of the guillotine to limit debate. Between 1997 and 2001, the Cabinet-controlled Select Committee on the Modernisation of the House of Commons issued only two proposals to enhance the powers of the Commons vis-à-vis the executive (Cowley, 2007, p. 19). The Lords, on the other hand, found itself in a politically stronger position. The government could no longer characterise opposition from the Lords over its legislative agenda, which had actually increased since 1999, as an ideologically motivated attack by a Conservative shadow anti-government, because it was no longer a Conservative-dominated institution. While Labour controlled a plurality of seats in the upper house, the large contingent of cross-bench peers meant that no party held a majority (Cowley, 2007, p. 32). At the same time, the Lords found itself in the position of being able to claim that it was in some ways more representative than the House of Commons, as after the 2005 election its seat distribution more closely resembled the national popular vote than the Commons (M. Russell, 2003), yet the Prime Minister had already ruled out the possibility of electoral reform for the Commons (Ashdown, 2001, pp. 306-319; Norton, 2007, p. 115).

The expulsion of most hereditary peers had, much like the introduction of life peers half a century earlier, permitted the chamber to reinvent itself, and emboldened the chamber as traditional outlets for contestation against the government appeared to lose their effectiveness. While the House of Lords remained a flawed source of opposition – the government was regularly accused of packing it with "Tony's cronies", and the Appointments Commission's refusal to approve four of the government's recommendations for peerages in 2005 triggered the "Cash-for-honours" scandal when it emerged that the government had effectively been 'selling' life peerages in exchange for large donations to the Labour party (The Guardian, 11 October 2007) – it had carved out for itself a political role as one of the most effective sources of opposition. Recognition that the chamber's non-elective status was what made it possible for the Lords to act as a check on an increasingly Cabinet-centric style of governance, long acknowledged within the academic literature (Shell, 2007, pp. 112-113), slowly began to spread outwards. By 2007, 78% of Peers felt that the House of Lords Act had made the chamber "more legitimate", a statement also agreed to by 75% of Labour MPs (UCL Constitution Unit, 29 March 2007). Popular attitudes were also changing; when asked to rank the importance of possible features for an

ideal second chamber, voters placed greatest emphasis on the chamber's revising functions, followed closely by trust in the appointment process, while the election of members ranked last. In fact, the same study found that voters felt the House of Lords was fulfilling its policy role better than the House of Commons (UCL Constitution Unit, 12 December 2007). So long as the House of Commons failed to address its own democratic shortcomings, it would be difficult for the government to mount an effective democratic challenge against the Lords, especially if it wanted the Lords to remain inferior to the Commons as a legislative body. Non-action was the safest choice for a government uninterested in reforming the entire parliamentary structure and risking its own dominance of the political system. The government's failure to plan for the side-effects of eliminating most hereditary peers in Stage 1 directly resulted in the collapse of Stage 2.

6.4 Discussion

The story of the House of Lords Act emphasises the importance of both contributing factors for meaningful reform being present when reform is attempted. Stage 1 dispensed with the implicit crisis model of reform which had informed prior Liberal and Labour attempts at reform, and so was remarkably successful at effecting change, encountering only moderate resistance from some of the most conservative and reactionary elements of the upper house. Especially when compared to the passage of the 1911 Parliament Act, when some Lords seemed ready to force the government to flood the upper house with new members in order to secure passage of the legislation (see p67), the debates over the virtues of hereditary plumbers which were the highlight of the debates in 1999 seem anticlimactic. Yet because the government did not strategise beyond that first symbolic step of removing most hereditary peers, it found itself in a worse position for Stage 2, when it realised that its two objectives of a more democratic upper house and more representative composition were in many ways mutually exclusive. The House of Lords Act constitutes meaningful reform only from the perspective of reformers who shared the same values as Lord Salisbury in 1956; otherwise, from the government's perspective, it is an example of reform which backfired due to poor integration of reform strategy with a conceptual understanding of the relationship between structural rules and institutional behaviour.

Prior to the House of Lords Act, every peer of the realm had the hypothetical right to sit and vote on any piece of legislation which came before the chamber, including approximately 750 hereditary

peers and around 660 life peers.[96] The deal with Cranborne to kick out all but 92 of those 750 hereditary peers seemed like a major concession on the part of supporters of the hereditary principle, when in reality it expelled only a small portion of those who actually attended with regularity. Since the 1970s, the vast majority of the chamber's active membership was drawn from the life peers, and many hereditary peers had already voluntarily given up their right to attend and vote through informal practice (LLN 2014/014, 26 March 2014, p. 9; Shell, 2007, pp. 32, 48). Ten of the most active hereditary peers did not even have to stand for one of the hereditary spots after the government announced that all hereditary peers of first creation[97] and former leaders of the Lords would be granted life peerages (Parker, 3 November 1999). Only 223 hereditary peers ultimately stood for the 92 seats, and there was stiff competition for only some of those seats, with a wide gap between average number of votes received by winning and losing candidates (LLN 2014/014, 26 March 2014, p. 15). Compared to the dissolution of the monasteries in the sixteenth century, which ejected over half of the House's active membership (Pike, 1894, p. 340), the consequences of the House of Lords Act amounted to a relatively small change to effective composition.

Since the 92 hereditary peers who were chosen to remain in the Lords were selected by their colleagues for their contributions to the house, the House of Lords Act had the consequence – unintended on the part of the government, but likely deliberate on Cranborne's part – of legitimising the legislative role occupied by the remaining hereditary Peers, and it became harder to dismiss them as archaic remnants of the country's less democratic past. They also made the chamber as a whole appear more democratically legitimate, which improved the stature of the entire chamber, especially when contrasted with the shortcomings of the Cabinet-dominated lower house. Despite the small effective change to membership, the reform had significant consequences for the professionalisation of the Lords, and has led to an increasingly combative relationship between the upper and lower houses of Westminster. The enhanced role that the Lords play in the legislative process has been recognised

[96] Estimated numbers for both life and hereditary peers vary widely, sometimes by over a hundred for each category. Even official government documents are inconsistent, with some counting only those peers who have attended the most recent session of Parliament, while others include minors, the infirm, peers who are ineligible due to seats on the judiciary, those who have taken leaves of absence, and others who have taken only their oath of office but never attended any sittings.

[97] Hereditary peers who came to their title through personal ennoblement and creation of a new hereditary title, rather than through inheritance of an existing title.

through expansion of institutional resources available to its members: prior to the reforms, there had been desk space for only 150 Lords out of approximately 1500 who were entitled to sit in the chamber, but by 2005, that number had risen substantially, to space for 600 of approximately 700 peers (Rush, 2005).

These unintentional consequences of the reforms mean that existing analyses of the 1999 House of Lords Act are marked by a degree of uncertainty rarely seen in political studies. One analysis summarised the reform process as "a compromise followed by a hapless White Paper followed by a U-turn followed by a farce followed by another U-turn" (Cowley, 2007, p. 30). Of all the constitutional reforms undertaken by New Labour, only pieces about the House of Lords Act tend to have a question mark as part of the title, betraying hesitation over what to make of the reform attempt and its results (c.f. Ballinger, 2012, p. 159; Bogdanor, 2009, p. 145; Dorey & Kelso, 2011; M. Russell, 2003; 2010, p. 866; Shell, 2007, p. 107). The government's approach to Lords reform is frequently criticized for failing to enact any Stage 2, and those who advocate for further reform are unsure what to make of the new status quo, in which hereditary lords are fewer in number yet enjoy greater legitimacy than they have in more than a century (Ballinger, 2012, pp. 209-210; Bogdanor, 2009, p. 160; Dorey & Kelso, 2011, pp. 184-215; Kelso, 2009, pp. 155-183; Norton, 2007, pp. 108-109; Shell, 2007, pp. 155-159). What these conventional analyses miss is how the negotiation process itself created this ambiguous outcome – unintentionally on the government's part, but deliberately on the part of Lord Cranborne.

There had been no figure within the government who was willing to put forth a coherent structural vision for a reformed chamber and what role it should play at Westminster, creating openings first for Cranborne to hijack the proceedings and apply his own structural vision in its stead, one which closely mirrored the ethos of his grandfather the Fifth Marquess of Salisbury's long bill plan from 1956, and then for the Lords as a whole to capitalize off the visuals of what looked like a dramatic change, reasserting itself as a viable and important check on an increasingly executive-dominated system. By adopting a two-stage process, the government had hoped to avoid the same problems which had doomed Labour's last attempt at upper house reform in the 1960s. Stage 1 was envisioned as a means of accomplishing the single most important objective of reform, which could stand alone as an acceptable change even if Stage 2 never came. In that respect, it was successful, as Stage 1 passed with little trouble in either house of Parliament. The problem lay in the discrepancy between the

government's statutory and non-statutory objectives, which were in many ways at odds with one another.

There was a disconnect between the Labour Party as an ideological group, and New Labour as a constitutionally-minded government. The Labour Party wanted to expel all hereditary peers from the upper house, but were willing to settle for most of them, as an indication of their seriousness in pursuing their additional objectives of improving the chamber's democratic legitimacy. Yet the New Labour government also, paradoxically, wanted a well-respected and at least partially elected chamber which would continue to occupy the inferior legislative position of the existing Lords. Constitutional scholar Vernon Bogdanor points this out in his analysis of the failure of Stage 2, asking "what person of merit would wish to stand for election to a toothless chamber? It is… inconsistent to seek to rationalise and legitimize the composition of the Lords while at the same time reducing its powers" (Bogdanor, 2009, p. 170). The Lords had originally assumed its secondary status in Parliament as a self-preserving response to the expansion of the franchise, which had made the Commons a truly representative chamber, and undermined the Lords' ability to act as legislative equal to the lower house. It was only during Stage 2 that the government was forced to recognise that to make the upper house similarly representative would have removed the impetus for the chamber's self-restraint, replacing it with an incentive to assert itself as a legitimate chamber of representation. The government had allowed the party's ideology to decide priorities in Stage 1, so that when it came time for structural concerns in Stage 2, the government realised that it had inadvertently created a chamber which more closely met its second round objectives than any hybrid solution that the Wakeham Commission or any of its successors had managed to design – the reformed chamber enjoyed higher public confidence than before, yet posed no threat to the supremacy of the Commons due to its continued unelected status.

The strongest effect of the House of Lords Act was one which was entirely contrary to the government's original intention, and illustrates the importance of not only identifying the primary statutory objective of reform, but tracing the likely conceptual links between structural changes and functional outcomes at the earliest stages. Unintended consequences were a common problem among Labour's constitutional reform initiatives, including most prominently an increase in Scottish separatism resulting from devolution, conflicts between the government and the Supreme Court over provisions of the Human Rights Act, neglecting to protect policy advice given to ministers under the Freedom of Information Act, and the rejection of directly elected mayors in most urban areas (Norton, 2007, pp.

117-119). The one thing that the government did not want from Stage 2 was a stronger upper house which could challenge the existing balance of power between the two houses of Parliament, while at the same time wanting a chamber with improved democratic and political legitimacy. It had inadvertently created just such a house in Stage 1, and all of the other options it was considering for Stage 2 would have involved an increase in both democratic legitimacy and institutional strength.

The government does not appear to have expected Stage 1 to have any consequences beyond its direct statutory effects, and documents show that it expected to be able to proceed with Stage 2 as though the hereditary Lords had never been there. What it did not anticipate was a change in behaviour and institutional values as an endogenous response to the statutory changes and a parliamentary environment in which there was no longer a reliable check on the executive in the Commons. While the decision to leave actual planning for Stage 2 until later was a wise decision the part of a government that wanted Stage 1 accomplished quickly and with minimal chance for distraction, the failure to at least define conceptual objectives, and consider how careful planning in Stage 1 could be used to facilitate Stage 2, was a strategic failure on the government's part, but a stroke of genius on Lord Cranborne's. Cranborne, understanding the capacity for small statutory reform to result in major change by initiating movement within an institution, negotiated a seemingly small symbolic concession out of the government that would keep a non-trivial number of hereditary peers around for the institutional realignment which would result from the removal of the other hereditary peers. The government had failed to anticipate that there would likely be structural consequences resulting from the expulsion of most or all hereditary peers, that the institution would adapt to its new context and assume new behaviours that leveraged its relative increase in democratic legitimacy to carve out for itself a modified place in the legislative process.

The House of Lords Act is a striking example of upper house reform which was concurrently successful and a failure – successful in the sense that it passed and had significant consequences for the institution, but a failure in terms of achieving what the government ultimately wanted. A significant number of hereditary peers not only retained their seats in the upper house following Stage 1, but came out of the reform process with greater legitimacy than they had enjoyed prior to the reforms. In Stage 2, the government was forced to relent on introducing an elective element to the chamber once it realised that its concurrent objectives of increased democratic legitimacy for the upper house and maintenance of the existing balance of power in Parliament were mutually exclusive objectives. This

discrepancy was primarily due to the government's hurried strategy to get the legislation passed, and a major conceptual disconnect between stated objectives and principles of governance. The government simply had no clear conceptual vision to inform its decision-making process in regards to Lords reform – the behaviours that they wanted a reformed institution to engender, and the democratic values that the institution would prioritise. This experience reinforces the dual nature of meaningful reform: it does not have to wait for an opening in the form of an institutional crisis, and may actually benefit from proceeding without one, and must also be intimately familiar with the institution being reformed as it currently exists, and the likely consequences of change that extend far beyond the textual proscriptions of statutory reform.

The final two chapters of this study now move across the Atlantic to consider the Senate of Canada, where nearly a century and a half of ruminations about upper house reform have produced not a single substantial reform, for many of the same reasons why the House of Lords Act was conceptually a failure. Effective upper house reform requires both distinct statutory objectives, and realistic expectations for the functional consequences of change. With no clear idea of what a reformed second chamber should actually do and only the vaguest idea of what it should look like, generations of Canadian political elites have been stuck in a repeating cycle of high profile discussions, a multitude of ambitious plans, and constitutional defeat of a magnitude that should make those who fret about the difficulties of upper house reform at Westminster reconsider how much harder it could be.

7 Muddling Through: 1980-1992 Megaconstitutional Politics

Probably on no other public question in Canada has there been such unanimity of opinion as on that of the necessity for Senate reform.

-- Robert MacKay, 1926 (p 206)

Like its British counterpart, the Canadian Senate is a perennial target of aspiring legislative reformers, as the only other entirely unelected upper house in an advanced industrialised democracy.[98] Talk about reform to the Senate began almost immediately after Confederation in 1867, but there was no credible attempt at changing the upper house in any significant way until the era of megaconstitutional politics, culminating in the Meech Lake Accord of 1987-1990, and the Charlottetown Accord of 1992.[99] Meech was first accompanied by a promise for future reform, but then in the final days before the deal was defeated, a new contingency plan was added on which would have alleviated, though not fixed, one of the major complaints which a new generation of reformers were levelling against the institution. The Charlottetown Accord, on the other hand, had it not been rejected in a nationwide referendum, would have resulted in revolutionary overhaul of the upper house. Yet in the decade leading up to the Charlottetown referendum, very few conceptual debates had taken place to determine what the reforms were meant to accomplish, and what democratic role the new upper house should play.

The two Accords' failures is typically blamed upon their wholesale approach to constitutional reform, leaving the content of their Senate plans to be dismissed as an irrelevant aside. This has left the Meech and Charlottetown Senates under-studied from a theoretical perspective, in terms of both the strategy that the government used to manoeuvre through the reform process, and the content of the proposed reforms themselves. The era of megaconstitutional politics in Canada underscores the need for proper deliberation about the underlying concepts which are guiding reformers to aid in the selection of the most appropriate plan, instead of treating the Senate like a mix-and-match body.

[98] Not including micro-states of less than 1 million people, the undemocratic countries of Jordan and Lesotho are the only two other states with entirely appointed upper houses.

[99] It is beyond the scope of this work to provide an in-depth analysis of either Accord, their negotiation (aside from discussions pertaining to the Senate), and their other provisions, but there is extensive existing literature on both accords, notably including Russell (1993), McRoberts and Monahan (1993), Johnston et al (1993), Blais et al (1996), Coyne (1992), and Monahan (1991).

Without any conceptual underpinnings, elites had no motivation to choose one plan and stick with it; everything about the Senate was up for negotiation, and if a particular arrangement appealed to a potential veto player, they would attempt to incorporate it, even if it meant making another change to satisfy another veto player that was now dissatisfied with this new deal. The Canadian experience underscores the need for deliberation about the goals of the new system, and a willingness to negotiate over the small details to secure the support of potential veto players yet from a conceptual perspective. Charlottetown highlights the importance of the second factor of meaningful reform identified in this study, that formal reform include a discussion which goes beyond the failings of the current system, and into the theoretical basis for democratic representation and bicameralism.

This chapter begins with an overview of the history of Senate reform rhetoric in Canada from Confederation to 1980, just after the Supreme Court ruled on the first upper house reference case (1 SCR 54 (1980), 1979) and established a clear set of guidelines as to which changes could be accomplished unilaterally. This history is then contrasted with the rise of the Triple-E model starting in 1981 to highlight the speed and extent to which this new plan for Senate reform represented a complete paradigm shift compared to nearly everything that had come before. Where earlier plans had linked abstract concepts of federalism with devolution of appointment powers to provincial governments, Triple-E employed a very rudimentary calculus by equating elections with democracy and legislative effectiveness, and equal representation of the provinces with fairness. In this respect, it was much like the Parliament Acts in the UK, in that there was a very short causal chain between identified problem and preferred solution, and relatively little thought about side-effects and unintended consequences of those changes. In the third and fourth sections, this chapter then looks at how this under-conceptualisation of the Senate allowed for it to be used as a bargaining chip in two consecutive rounds of megaconstitutional reform.

The Triple-E model, and its proposed variants in the Meech Lake and Charlottetown Accords, was used primarily as a tool for getting potential veto players to sign on to constitutional overhaul, and not as a mechanism for improving the functions of the upper house. The Mulroney government behind the two accords was strategic in using an issue that many provincial governments cared deeply about in an attempt to reach consensus on reform, but the simplistic formula used to identify the problems in the existing chamber and subsequent solutions was so flawed that, even if either Accord had passed, it is unlikely that the changes would have satisfied the somewhat vague objectives of reformers. Even so,

however, the federal government's strategy was not without its flaws, as its unwillingness to bring potential veto players into the process early on created trouble later, when changing the plan would have meant losing political face by appearing to give in to demands from the provinces. Of the two factors for meaningful upper house reform identified in this study, only one, the strategic use of written and unwritten rules for reform, was partially present. Even though the Triple-E model had been around for more than a decade by the time of the Charlottetown referendum, advocates had failed to engage in any process tracing of likely consequences, and even more importantly, never established a clear causal link between their proposed textual changes and what they claimed would be the outcomes. Had either Accord been enacted, it is unlikely that reformers would have been content with the results.

7.1 The Chamber of Federalism: Confederation to 1980

Despite extensive discussion during the Confederation debates (see Chapter 2.3, "Deliberate Design: Canadian Confederation, 1867", p23) concerns about regional representation at the federal level were not dispelled by the Senate established in 1867. Like the Senate, Canadian federalism has been under constant renegotiation ever since Confederation, but unlike the Senate, the federal system has been more amenable to both formal and informal reforms. Underlying nearly every Senate reform plan discussed by a major political party, in government documents, or by private members in Parliament, is the belief – either implicit or explicit – that the Senate should be the chamber of federalism. As a result, trends in rhetoric surrounding the Senate have tended to follow and react to the historical changes in Canadian federal theory and practice, although it is typically been couched in democratic or representative terms. This section provides an overview of Senate reform rhetoric from Confederation until the Supreme Court of Canada ruled on the Trudeau government's Upper House Reference (1 SCR 54 (1980), 1979), and shows how most plans were developed by examining how the Senate could be reformed in order to further the federal principle; this created a larger theoretical distance between objectives and outcomes, signifying that would-be reformers were thinking at least somewhat abstractly about the Senate, its democratic functions, and the causal link between institutional structure and outcome.

Calls for the 'democratic' reform of the Senate began almost immediately after Confederation, but there was no consistent plan for what alternative functions the Senate should perform, or how to achieve these objectives through institutional design. In large part, this is because before 1960, tabling

Senate reform was an overwhelmingly solitary exercise, the domain of individual backbenchers. While there was near-constant talk of reform among the political elite for the first century after Confederation, it rarely came to the floor of Parliament or made it onto the agenda at Dominion-provincial conferences, making the early plans haphazard and undeveloped. There was, however, consistency in the justification for reform, in that most would-be reformers were trying to create a chamber of federalism, though their particular solutions would vary up until the emergence of the House of Provinces model as the preferred solution in the 1960s.

References to the federal principle and responsible government appeared repeatedly as justification for change, but the logic of early reform proposals was rudimentary; would-be reformers were frequently starting from a preferred solution and then working backwards to identify a singular change that could be made to the existing structure, without reference to surrounding institutions or principles of democratic representation. This tendency was present in the very first Parliamentary motions for Senate reform, tabled in 1874 and 1875 by Liberal MP David Mills, who called for devolution of Senate appointments to the provincial governments under the reasoning that appointment by the national government was "inconsistent with the Federal principle" (Ross, 1914, p. 91). A resolution which received unanimous support at the 1893 Liberal Party Convention reinforced this idea that the Senate should be restructured in accordance with the federal principle, but did not offer any solutions, only going to far as to say that it "should be so amended as to bring it into harmony with the principles of popular government" (Liberal Party of Canada, 1893, p. 134); it was a trend which would hold constant until the 1960s, though the precise solution would vary, if one was proposed at all.

The years immediately before the First World War saw a flurry of Senate reform proposals, as the talk of reform in Britain spread across the Atlantic, but unlike in the UK, any actual plans were developed by lone individuals, while parties continued to make only vague promises. At least seven different proposals were tabled in Parliament between 1906 and 1911, but all were either withdrawn or defeated (HCC Hansard, 30 April 1906, col 2276; Hopkins, 1908, p. 436; Ross, 1914, p. 94). In 1908, when Robert Borden's Liberal-Conservatives made the first promise for Senate reform in the party's official electoral platform, the sophistication of reform rhetoric was unchanged, and was summarised in a single meaningless phrase that promised "such reform in the mode of selecting members of the Senate as will make the Chamber a more useful and representative legislative body" (Hopkins, 1908, p. 460). These types of vague promises for Senate reform became such a frequent fixture in election campaigns that

when it appeared in the Liberal Party's 1925 platform, Conservative leader Arthur Meighen remarked, "so that old bird is to be provided with wooden wings and told to fly again" (Joyal, 1999).

Calls for Senate reform, while popular in political rhetoric, never made any significant progress for nearly a century after Confederation, in large part due to the nature of federal-provincial relations at the time. During the eras of imperial (1867-1890), classical (1890-1914, 1919-38), and emergency federalism (1914-18, 1939-45), the constitutional agenda was controlled exclusively by the federal government (Malcolmson & Myers, 2012, pp. 64-65). At the 1927 Dominion-Provincial Conference, the government of William Lyon Mackenzie King flatly refused to discuss a demand from some provincial First Ministers for election of Senators, reasoning that election was "at variance with the British system of government" (RG 47, 3-10 November 1927, p. 10), and the matter went no further. Without a federal government keen on Senate reform, no change was forthcoming.

The Senate remained a popular subject of political discussion, but there was no urgency for reform, and no incentive for the government to prioritise change to the Senate over other areas of the constitution. It was not until the 1960s, with the transition to co-operative federalism (circa 1950-1970) and then executive federalism (1970-1990) (Malcolmson & Myers, 2012, p. 65), that Senate reform began to look like a credible possibility, because there was finally a dominant model for reform which appeared to have support from within a federal government which was willing to negotiate with the provinces. The new co-operative model of federalism, which emphasised greater power-sharing and consultation between levels of government, was inherently sympathetic to increased provincial influence in federal governance (P. H. Russell, 1993, p. 97), while executive federalism saw the provincial governments demand a greater role in national affairs (P. H. Russell, 1993, pp. 81-85). When combined with the traditional understanding of the Senate as the chamber of federalism, Senate reform seemed like a natural corollary, and usually involved devolution of appointment powers to the provinces. At their core, they were an attempt to apply the logic of co-operative federalism to the Senate.

Although these plans are frequently known as the Bundesrat model, after the German federation's upper chamber (Smiley, 1985, p. 2), they are more appropriately classified as House of Provinces models because of some significant differences between the Bundesrat and what these models were proposing to do. The German Bundesrat, unique among federal upper houses, is comprised exclusively of ministers from the sub-national Länder governments, and uses weighted regional voting blocs to balance the relative influence of Länder which vary significantly in size, much

like the Canadian provinces (Bundesrat (Hsrg), 1979). Although it was initially designed simply to protect regional interests from a strong national government by giving sub-national Länder governments a veto over certain areas of national policy, the institution had quickly claimed for itself the inverse function, of developing and implementing a cohesive national policy (Bundesrat (Hsrg), 1979; Pierk, 2001, pp. 15-18). The House of Provinces plans, by contrast, did not want to create a new chamber that would be the exclusive playground for a cadre of provincial ministers, but instead typically involved devolution of existing appointment powers from the federal to provincial governments;[100] provincial appointment was generally meant to improve representation of the people, not the governments, of the provinces.

A familiar cycle of consultations, conferences, and committees emerged in the 1960s and 1970s, as the House of Provinces gained some popularity at both levels of government, but each stage produced a slightly different version of the model. Among the more prominent of these were an agreement in principle at the 1969 Constitutional Conference to allow for some degree of devolution in order to secure formal and direct expression of provincial interests in the Senate (JL 69 A3 1969 A12, 12 February 1969), though it left the specifics of such an arrangement unaddressed, with no consensus on the proportion of Senators that would be provincial appointees, or whether they would be appointed by the executive or legislature in each province. Three years later, a Special Joint Committee on the Constitution tabled a report which included a rudimentary Senate plan based upon the 1969 First Ministers' agreement: half of all Senators would be provincial appointments, the western provinces would have their number of seats doubled, and the Senate's formal powers would be reduced to a suspensive veto of six months (Parliament of Canada, 1972). The Special Joint Committee's report illustrates the general difficulty of translating abstract beliefs into actionable institutional reform, not

[100] There were two significant exceptions to this. First was *British Columbia's Constitutional Proposals, Paper no. 3: Reform of the Canadian Senate* (Province of British Columbia, 1978), which proposed that there be a lead Senator from each province who would be a provincial Cabinet minister, and the chamber would have an absolute veto over all matters related to provincial jurisdiction. The British Columbian proposal was also explicit in its belief that the proper role of Canadian bicameralism was to function as an apparatus of federalism, with the opening remarks of the document emphasising that "major Senate reform should be the main feature of the over-all reform of federal institutions… it is in creative and far-reaching reform of the Senate that our main hope for better decision-making in the country lies" (Province of British Columbia, 1978). The second exception to non-Bundesrat style plans came from the Pépin-Robarts Commission, which proposed a Council of the Federation comprised of delegations from provincial governments (Task Force on Canadian Unity, 1979, p. ch7). The Task Force on Canadian Unity saw Senate reform purely as an exercise in federalism, and showed little understanding of the Senate as it existed at the time, or the possible functions that a second chamber in a bicameral system could perform.

just in relation to the Senate; while it contained grandiose suggestions for the redistribution of constitutional powers, it was roundly criticised for failing to address the implications of change, the potential for unintended consequences, or to even establish the causal link between the suggestions and desired results (Cheffins, 1972, p. 574). Unsurprisingly, the report had little long-term impact on either the Senate or the rest of the constitutional reform process. However, the Special Joint Committee's report signalled an end to self-contained Senate reform proposals, and the beginning of Senate reform as part of overall constitutional reform packages, a trend which persisted until the defeat of the Charlottetown Accord in 1992.

Unlike Charter 88 in the UK, which came out of Labour's frustrations with the Conservative government's abuses of power, the Canadian constitutional reform movement came directly from the current executive, with Prime Minister Pierre Trudeau keen on patriating the Canadian constitution. In 1978, the Trudeau government tabled its white paper on constitutional reform, *A Time for Action: Toward the Renewal of the Canadian Federation* (Parliament of Canada, 1978). The successive Liberal governments of Lester B Pearson and then Pierre Trudeau had been attempting to patriate the constitution since 1963, but each previous attempt had failed due to the government's inability to secure the support of provincial first ministers (Hogg, 1979; Simeon, 1979, pp. 10-12).[101] The 1978 white paper promised to proceed unilaterally first, and then involve the provinces in a second stage once reform was complete at the federal level. The Senate was included in the first round of unilateral reforms as part of a comprehensive package of institutional change, tabled in as the omnibus bill C-60 that summer. Alongside changes to the House Commons and Supreme Court, as well as introducing a new charter of rights, Bill C-60 would replace the Senate with an indirectly elected[102] House of the Federation which would have only a 120-day suspensive veto over Parliamentary legislation (Parliament of Canada, 1978). The government's logic was that it could reform any institution that was under sole jurisdiction of the federal government under section 91(1)[103] of the British North America Act of 1867

[101] The most notable attempts by the federal government to patriate the constitution were the Fulton Formula (1961), the Fulton-Favreau Formula (1964), and the Victoria Charter (1971).

[102] Of the 118 members, half would be elected by provincial legislatures, half by the House of Commons.

[103] The relevant section granted the federal government sole jurisdiction over "The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province" ("Constitution Act, Canada," 1867, pp. 91(91) (amended 1949, repealed 1982))

– after all, the introduction of a mandatory retirement age for Senators had been achieved by act of Parliament alone in 1965 (1 SCR 54 (1980), 1979, pp. 76-77; Coyne & Valpy, 1998, p. 135; Romanow et al., 2007, p. 9; P. H. Russell, 1993, p. 100). This logic was hotly contested by both opposition parties and the provincial governments. In the House of Commons, the plan was criticised for being paternalistic and likely to provoke a reaction from Québec's separatist government (HCC Hansard, 12 June 1978, col 6287). Among the provincial leaders, however, it was challenged at a constitutional level, eventually prompting the federal government to present a reference case to the Supreme Court (Coyne & Valpy, 1998, p. 135; Romanow et al., 2007, pp. 12-16).

In the meantime, however, more proposals appeared. By the end of the 1970s, there was no shortage of competing plans for either the Senate or the Constitution. In a contemporary analysis of *A Time for Action* and the 1979 Task Force on Canadian Unity report – which inexplicably included a radical plan to replace the Senate with a council comprised of delegations from provincial governments and transfer all of the Senate's current responsibilities to the House of Commons (Task Force on Canadian Unity, 1979, p. ch7) – Alan Cairns remarked upon the abundance of similar-yet-distinct proposals, counting an additional eight plans that had gained some degree of national prominence, noting that in all of them, Senate reform was being used "to make Ottawa more sensitive to the regional diversities of the country" (Cairns, 1979, p. 349). Senate reform had become enmeshed with broader constitutional reform, and was an accepted vehicle for federal renewal.

The subsequent ruling on the government's submission to the Supreme Court, *Reference re: Authority of Parliament in Relation to the Upper House* (1 SCR 54 (1980), 1979), ultimately scuttled the government's most ambitious plans for the Senate, and by extension for the constitution as well. The 1979[104] reference case consisted of two main questions. First, it asked whether Parliament alone could abolish the Senate, and second, whether Parliament had the authority to change six different features of the upper house: its name, the distribution of seats, qualifications for membership, length of tenure, selection methods,[105] and the absolute veto. To the questions of abolition, changes in apportionment,

[104] The ruling was handed down on 21 December 1979, but was part of the 1980 Supreme Court session, and so it is frequently referenced as being from 1980.

[105] In its reference, the government provided four different possible models for changes to the selection method, including three different mechanisms for devolution to provincial legislatures and direct election by voters (1 SCR 54 (1980), 1979, p. 55).

selection through direct election, and veto override, the Court's answer was a categorical no, while the answers to all other questions were dependent upon context. In clarifying the scope of 91(1), the court ruled that any changes which would "affect the fundamental features, or essential characteristics, given to the Senate as a means of ensuring regional and provincial representation in the federal legislative process" could not be made by Parliament alone (1 SCR 54 (1980), 1979, p. 56).[106] The ruling explicitly referenced the introduction of a compulsory retirement age in 1965 as a reform which could be accomplished unilaterally, because it did not substantially reduce Senators' terms of office or change the nature of a lifetime appointment, but there was the potential that too short a term of office could impair the Senate's function as chamber of sober second thought. The Supreme Court was acknowledging the extent to which Senate reform would affect not just the upper house, but the operations of the lower house as well, and the very character of the federal-provincial relationship in Canada.

Although most proponents of a House of Provinces had not been as abstract in their thinking about the Senate in bicameral and federal context as the Supreme Court was in its ruling, there was still an implicit acknowledgment that Senate reform would have consequences beyond the institution itself. In stark contrast to the era that would follow, the belief that the Senate should be a chamber of federalism reflects that there was at least a rudimentary conceptualisation of the upper chamber's existing and potential role and functions, as well as an understanding of how changes to membership would have broader implications for the institution's behaviour in a bicameral context. With few exceptions,[107] however, this involved a fairly short causal chain from Senate reform to federal renewal, requiring some assumptions about how the changes would produce the desired results, and little to no familiarity with existing academic research on the Senate. Senate reform was not included in the 1982 patriation of the constitution, but it was not because of this relatively simplistic theorising about the

[106] Even provincial involvement in the appointment process was a dubious proposition, because it "would involve an indirect participation by the provinces in the enactment of federal legislation" (1 SCR 54 (1980), 1979, p. 77).

[107] The British Columbian government's *Paper no. 3: Reform of the Canadian Senate* (Province of British Columbia, 1978) (see also footnote 100, p111) is a notable exception to this. The paper took a deliberately conceptual approach to the question of upper house reform, making it the closest Canadian counterpart to the 1919 Bryce Conference Report in the United Kingdom (see Chapter 4.2 "Of Committees and Conferences: The Interwar Years" p44). Rather than begin with an analysis of the contemporary Senate and its failings, the report opens with a historical consideration of the intended function and role for the existing structure based upon Joseph Pope's collection of Confederation documents (Browne & Pope, 1969), and a discussion of the Senate's evolution since 1867. It also extensively referenced Robert Mackay's *The Unreformed Senate of Canada* (1926), a seminal work on the Senate in theory and practice.

Senate; instead, it was because the House of Provinces model was in the process of being supplanted by an even more simplistic plan, which nevertheless had not yet reached a critical mass of support.

7.2 Paradigm Shift: The Triple-E Model, 1980s

Senate reform scarcely appears in contemporary and historical accounts about the patriation of the constitution, but this was primarily because there was no single scheme for reform that was broadly popular at the time. The patriation of 1982 happened to coincide with the decline of the House of Provinces model, and the beginning of the rise of the Triple-E model. It is worth taking a closer look at Triple-E, since by the time of Meech and Charlottetown, it had become the default starting point for Senate reform negotiations. The ubiquity of the Triple-E model highlights just how little contextual knowledge was being used to inform Senate plans during the era of megaconstitutional politics. Where the House of Provinces model at least had a modest and relatively believable causal chain to link structural changes with desired outcomes, Triple-E used a singular causal link to connect its eponymous objectives with asserted results. While the plan itself holds little academic value in relation to the Senate, its massive popularity is another matter. All three Es were motivated by generic discontent with democratic governance at the federal level, indicating a strong belief that the way parliament operated was fundamentally unfair and undemocratic. Triple-E was not a Senate reform model, but an expression of deep-seated democratic malaise; despite increased talk, conceptual considerations about the upper house were even more lacking than before, involving only the briefest of assumed causal chains between reforms and desired outcomes that had little evidentiary support.

The Triple-E model originated in a short book published in 1981 by the Canada West Foundation which advocated for a Senate with an equal number of representatives per province rather than by region, the direct election of members, and effective legislative powers that were capable of challenging the House of Commons (McCormick et al., 1981). Coming shortly after a spike in western alienation following outrage over the Trudeau government's National Energy Policy, Triple-E quickly replaced the House of Provinces as the dominant model for Senate reform (Lusztig, 1995, p. 37). The plan never achieved the same popularity outside of Alberta as it did within, but it gained enough adherents, including the Alberta government in 1985 (Horsman, 1989, p. 8), to influence the direction of subsequent reform dialogue (Special Senate Committee on Senate Reform, 2006, p. 13). The Triple-E model was fundamentally about abstract principles of fairness and democracy; each E was linked

directly to either factor in the model's logic. An equal distribution of seats would be fair, an elected legislature would naturally be democratic, and effective powers would be both.[108] The evidence for these assumed links, however, was never clearly established.

Triple-E was structurally based upon the American congressional model (Lusztig, 1995, p. 41), and in none of the Es were its American origins more visible than in the first. The popularity of the House of Provinces model had already changed the logical basis of geographical representation from region to provincial unit, but Triple-E extended the principle much further; rather than weighted distribution by constituent territory, as in the German Bundesrat or even the Swiss cantonal system, it advocated the uniform distribution of seats, with six Senators for each province, though some variants allowed for slightly greater representation of the two largest provinces (Special Senate Committee on Senate Reform, 2006, p. 4). Although some advocates (c.f. Business Council on National Issues, 1983, p. 11) insisted that Triple-E was more similar to the Australian system, this was largely an attempt to avoid criticisms similar to those laid against equal seat distribution in the American Senate for being inherently unequal. As of the 1981 census, the difference in population between the largest and smallest Australian states stood at a ratio of 14:1 (Australian Bureau of Statistics, 2001, p. 23). In Canada, that same ratio was 70:1,[109] the same as that between largest and smallest American states today, where equal seat distribution has been described as an "extraordinary inequality" and an unjustifiably anti-democratic feature of the American constitution by democratic scholar Robert Dahl (2001, p. 50). When excluding the small island state of Tasmania, this ratio drops to a mere 4:1; Australia has only one outlier state, whereas more than half of all Canadian provinces have 4.2% or less of the total population. Under Triple-E, the six Senators from Ontario would have to represent as much of the Canadian population as the forty-eight Senators from the eight smallest provinces, combined (see Figure 4, Figure 5 below). Equality of the provinces under Triple-E was only equality in a strictly quantitative, not meaningfully qualitative sense.

[108] The "effective" E was, by the admission of even the staunchest Triple-E advocates (c.f. Horsman, 1989, p. 13; McCormick et al., 1981), the least developed of the three concepts, and so often was simply assumed to mean whatever the proponent of the model wanted it to.

[109] That gap could only be expected to grow; by the 2011 census, the ratio had already risen to 92:1 (Statistics Canada, 2011a, 2011b).

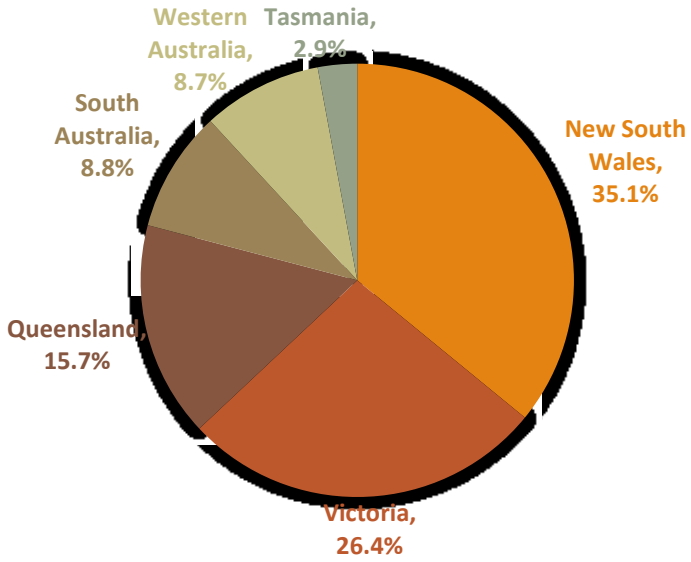

Figure 4 – Population Distribution, Australia 1981 (not including territories) (Data from Australian Bureau of Statistics, 2001)

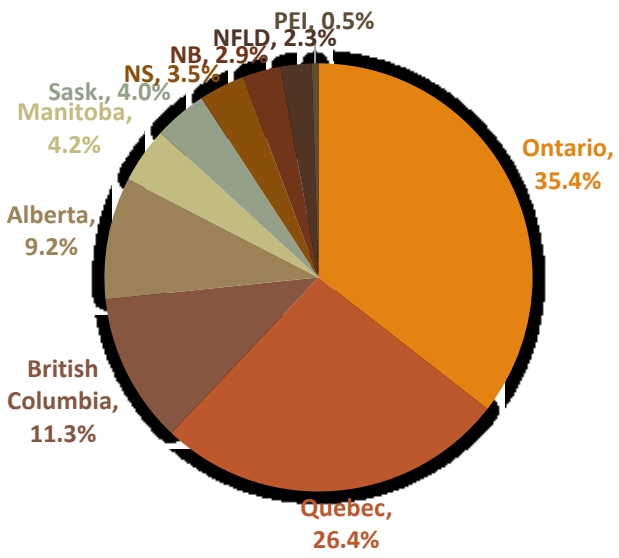

Figure 5 – Population Distribution, Canada 1981 (not including territories) (Data from Statistics Canada, 2011a)

The remaining two Es were conceptually inextricable from one another in a circular manner. Legislative effectiveness was possible only if the chamber was elected, while election alone would legitimate effective legislative action by the upper house. The two changes would have amounted to a dramatic transformation of the Canadian polity. As discussed in Chapter 2.3 ("Deliberate Design: Canadian Confederation, 1867", p23), the Canadian Senate had been deliberately designed to lack democratic legitimacy in order to ensure objective oversight capabilities, maintain the principles of responsible government, and protect the rights of political minorities. Triple-E, by contrast, rejected the notion that any legislative institution could be either legitimate or representative without election. The underlying goal was to make a Senate which could – and would – regularly challenge the legislative supremacy of the House of Commons, yet somehow leave responsible government untouched. Although rarely discussed at all, when the matter of responsible government came up, Triple-E advocates would simply assert that an elected and effective Senate would not have the power to bring down a government; typically, this involved the creation of a new three to six month suspensive veto (Gibbins, 1983, pp. 27-30; Government of Alberta, March 1985; Parliament of Canada, 1984, p. 29; Privy Council Office, 1985) – ironically, an even briefer version of the arrangement which had been used to decrease the legislative effectiveness of the upper house in the United Kingdom. Other Triple-E advocates would simply trust that the elected and effective Senate would "hopefully function on the

basis of free votes [and be immune to] partisanship and party discipline" (Business Council on National Issues, 1983, p. 14). Yet with fewer seats and larger constituencies, leading to more expensive campaigns, Triple-E advocates were consistently vague as to how the new Senate would ensure either financial or political independence of its elected membership. Some contemporary academics attempted to point out this paradox (c.f. Smiley, 1985), yet more often, there was a disconnect between the logic in which elections and effectiveness were basic democratic requirements, and the desire to maintain Westminster bicameralism. One early academic Triple-E discussion paper advocated for a suspensive veto to avoid upsetting the balance of power in Parliament, before conceding that "once the Senate has an electoral mandate, and once it has the power to veto or amend, the imposition of effective constraints on its legislative powers will be extraordinarily difficult to achieve. Senate reform is a slippery slope at the bottom of which lies American congressional politics" (Gibbins, 1983, p. 31). By its strongest advocates' own admission, Triple-E would indelibly change the fundamental characteristics of the upper house, though to what extent went largely unstudied; it is for this reason that it is unclear whether even a pure Triple-E model would have met its own standard of effectiveness for the upper house, in a reflection of the plan's overall haphazard approach to abstract concepts.

Over a short period of time in the early 1980s, fashions in Senate reform changed dramatically. The House of Provinces model and its variants were out, the Triple-E vision of federalism was in – at least in Alberta.[110] During the House of Provinces era, direct election had been rejected because reformers felt it would undermine the authority of the Commons, privilege party concerns at the expense of provincial interests, and produce a chamber which was less diverse, and less representative of minorities than an appointed chamber (Stillborn, 2003, p. 34). By 1989, however, public opinion surveys found that there remained "virtually no support for provincial appointment" (Watts & Brown, 1989, p. 199). The idea that an unelected chamber could be either legitimate or representative had all but disappeared from Senate reform discourse, and instead all major plans would "simply assert, as a self-evident truth, that only elected status can provide the Senate with the needed legitimacy" (Stillborn, 2003, pp. 36-37). Yet one fashion that did not change was the cycle of slightly different yet

[110] Triple-E had failed to gain much momentum outside of Alberta by the time that the Alberta government convened its own Special Select Committee on Upper House Reform in 1985, a fact which was noted with some dismay in the committee's final report (Government of Alberta, March 1985, p. 13)

distinct plans, offering enough potential choice to make any decision controversial, necessitating yet another round of design; in 1984 and 1985 alone, there were three notable Senate reform plans that gained national attention. The Special Joint Committee on Senate Reform report (Parliament of Canada, 1984),[111] the Alberta Special Select Committee on Upper House Reform report (Government of Alberta, March 1985), and the Royal Commission on the Economic Union and Development Prospects for Canada report (Privy Council Office, 1985)[112] were all direct responses to the original Triple-E model, and each provided their own unique variant. By 1987, when work on the Meech Lake Accord began, the provinces that had a preference for Senate reform overwhelmingly favoured something based upon Triple-E – the question was only which version.

7.3 The Meech Lake Accord, 1987-1990

The Meech Lake Accord was the first time that Senate reform became a real possibility during the megaconstitutional era, even though it was not initially included in the deal. The Accord was an attempt by Prime Minister Brian Mulroney to put his own mark on the Constitution. In a classic instance of executive federalism, it was negotiated exclusively between the eleven First Ministers, with only minimal participation from the territorial governments,[113] and no involvement at all from First Nations, regional linguistic minorities either inside or outside of Québec, or any other non-governmental groups (Monahan, 1991, pp. 20-22). The Accord had a three-year deadline for ratification by all provincial governments. Symbolically, the Québec government had been first to pass it on 23 June, 1987, meaning that the other provinces had until 23 June, 1990 to follow suit. By spring of 1990, however, changes in three provincial governments, combined with harsh criticism of the "11 men in suits" negotiation style that had led to the agreement (Papillon and Simeon in Meekison, Telford, & Lazar, 2004, p. 121), put the Accord's future in jeopardy.

The Accord initially did not directly include Senate reform, much to the chagrin of the Alberta government, which had been eager to reach a deal on the Senate in the initial agreement (Monahan,

[111] Also known as the Molgat-Cosgrove Committee after its two chairs.
[112] Also known as the MacDonald Royal Commission after its chair.
[113] The two territories were initially going to attend as well, despite no need to be included under existing constitutional amendment rules, but a week prior to the meeting, the Prime Minister revoked their invitations on the basis that they could not affect important decisions. The governments of the Yukon and North-West Territories instead participated by video conference.

1991, pp. 81-82). Instead, the Accord promised that the Senate would be the top priority for discussion at annual First Ministers' meetings to renegotiate the upper house's "role and functions… its powers, the method of selecting Senators and representation in the Senate" until the chamber was overhauled (Government of Canada, 1987). However, any changes to the Senate would have to receive unanimous support from all ten provinces and the federal government, in accordance with the Accord's changes to the constitution's amending formula (Government of Canada, 1987). The federal government seemed unconcerned by this prospect, reasoning that any deal which brought Québec into the constitution would require unanimous consent anyway (Horsman, 1989) – a questionable assertion, since once Québec's concerns were resolved through the initial Accord, the province would have little reason to continue pressing for constitutional reform. Until an agreement could be reached, the Prime Minister was to appoint new Senators from lists submitted by provincial governments, though there was no similar provision for territorial appointments. Paradoxically, the interim solution adopted the now-disfavoured House of Provinces model's provision for provincial appointment, and the higher threshold for further reform meant that this change had the potential to become permanent if the Accord passed.

By May of 1990, three provinces had yet to approve the Accord, or had withdrawn their prior approval. Manitoba had yet to even begin mandatory public consultations on the Accord (Monahan, 1991, p. 191). New Brunswick, following a landslide victory in which Frank McKenna's Liberal Party won all fifty-eight seats in the provincial legislature, had been first to withdraw its support in 1987, and refused to reconsider it until at least some of the province's concerns about the Accord's implications for the Charter of Rights and Freedoms were addressed (Conway, 1992, p. 132; Monahan, 1991, p. 181). The government of Newfoundland followed suit after the Liberal Party's victory in 1989 on a distinctly anti-Meech platform, and new Premier Clyde Wells, along with advisor Deborah Coyne, became some of the Accord's most outspoken critics. The Newfoundland House of Assembly first approved a private members' bill which condemned the Accord in November 1989, then rescinding its previous approval entirely in April 1990 (Coyne, 1992, pp. 68-69; Monahan, 1991, pp. 234-235). Both McKenna and Wells had publicly stated that the federal government should not proceed with Meech until after the Senate was reformed (Coyne, 1992, p. 29; Monahan, 1991, pp. 181-182). By 1989, all four western provinces and New Brunswick had committed themselves in principle to the Triple-E Senate idea. Meech had progressed as far as it did in large part due to the federal government's assurances that Senate reform would be next, yet by the spring of 1990, the deal appeared to be unravelling, though both McKenna

and Wells had indicated that they might reconsider if the deal were amended to include Senate reform (Coyne, 1992, pp. 29-30; Ghiz, 20 October 1993; Monahan, 1991, pp. 212-217; Simeon, 1990).

In a last-ditch effort to rescue the Accord, the Prime Minister held a non-stop marathon of closed-door talks with all ten premiers, finally reaching a unanimous deal on 9 June, only two weeks before the final deadline. This time, Senate reform would be included in Meech – sort of. The amendment consisted of a contingency plan which agreed that, if unanimity for a new elected, effective, and "more equitable" Senate could not be reached by 1 July 1995, seats within the existing Senate would be redistributed (see Table 5 below), but all other features of the existing Senate would remain the same (Government of Canada, 1990). This modest change to membership was similar to many of the Triple-E alternatives which had had difficulty accepting the principle of equal seat distribution when there were such disparities in population between largest and smallest provinces (see p171),[114] while still addressing what had become Alberta's main complaint against the existing Senate (Horsman, 1989).

Province	Current	Redistributed
Ontario	24	18
Quebec	24	24
British Columbia	6	8
Alberta	6	8
Manitoba	6	8
Saskatchewan	6	8
Nova Scotia	10	8
New Brunswick	10	8
Newfoundland	6	8*
Prince Edward Island	4	4
Northwest Territories	2	2
Yukon	2	2
TOTAL	104	104
* This would also entitle Newfoundland to an additional seat in the House of Commons under Section 51 A of the constitution		

Table 5 – Proposed redistribution of seats under the 1990 Constitutional Agreement

[114] By this time, the disparity in size between Ontario and Prince Edward Island had grown to 78:1 (Statistics Canada, 2014a, 2014b).

It was a deal that sprang from political bargaining under duress. Both Premier Gary Filmon of Manitoba and Premier Wells complained publicly about the "nastiness" and "threats" during the week-long meetings, with Manitoba eventually deciding to back the deal out of "fear of retribution" (Conway, 1992, p. 132). Wells agreed to the deal only provisionally, on the condition that he could still submit the Accord to either the people of Newfoundland in a referendum or the House of Assembly in a free vote for ratification (Blake, 2007, p. 273). Alberta's demand for equal representation by province was unpopular with Ontario and Québec, but Ontario Premier David Peterson was agreeing to give up six seats as an indication of his willingness to negotiate further change to the regional representation formula, though it would still have to be ratified by the provincial legislature (Government of Ontario, 1990). Mention of Quebec and its twenty-four Senate seats were conspicuously absent from the section of the agreement which laid out the contingency plan.[115]

Initially, it appeared as though the deal would work. Mulroney made a good faith gesture when, on 11 June, he announced the appointment of Stan Waters, Reform Party member and winner of the 1989 Alberta "Senate election",[116] to the upper chamber (Newman, 2011, p. 128). Five other Progressive Conservative Party Senators from two other provinces had already been appointed under the provisional terms of Meech (Library of Parliament, 2014),[117] and so the Prime Minister's decision to choose a name from the list which had been presented to him by the Alberta government was not unsurprising in itself. The timing, however, offered strategic value to the Prime Minister, because it indicated that he, too, was willing to compromise by appointing a Reform Senator in order to secure the

[115] The relevant section reads: "the number of Senators by which a province is entitled to be represented in the Senate will be amended so that, of the total one hundred and four Senators, the representation of Ontario will be eighteen Senators, the representation of Nova Scotia, New Brunswick, British Columbia, Alberta, Saskatchewan, Manitoba, and Newfoundland will be eight Senators each, **and the representation of all other provinces and territories will remain unchanged.**" (Government of Canada, 1990, p. 2, emphasis added).

[116] In 1989, the Alberta government decided to hold an election to choose the name of a nominee that the Premier would submit to the Prime Minister under the temporary provisions of the Accord. After the Prime Minister indicated that he would not accept a list with only a single name on it (Watts & Brown, 1989, p. 271), the Alberta government submitted the names of all candidates who had run in the election, with the note that Waters had been "the people's choice" (Reid in Watts & Brown, 1990, p. 239). Although the process was declared to be "unconstitutional and confusing" by Senator Lowell Murray (Reid in Watts & Brown, 1990, p. 244), and Waters died only a year into his term, his appointment has taken on monumental significance to would-be reformers favouring an elected Senate (Canada West Foundation, 1998; Harper, 2006; J. Smith, 2009). For further discussion of the symbolic importance of Water's appointment, see Chapter 8 "Rules Matter: 2006-2014 Unilateral Reform Attempts", p130.

[117] Along with Stanley Waters (Reform-AB), the other Senators appointed from provincial lists were Gerald Ottenheimer (Cons-NFLD), Gérald Beaudoin (Cons-QC), Roch Bolduc (Cons-QC), Solange Chaput-Rollange (Cons-QC), and Jean-Marie Poitras (Cons-QC).

Accord's ratification, and was open to further constitutional renegotiation of the Senate afterwards. The Waters appointment came at a critical juncture in the countdown to the ratification deadline, and so it also served as a message to the three holdout Premiers: pass the Accord by the deadline, or lose out on Senate reform. The Prime Minister had used the First Ministers meeting to extract concessions and force compromise; now he was appointing the first "elected" Senator to the upper house, the symbolism of which would not be lost on the three holdout Premiers, all of whom were in favour of a Triple-E Senate.

That same day, however, the process began to unravel. Mulroney admitted in the same interview during which he announced Waters' appointment that he had purposely delayed the final conference until the last minute to "ensure a crisis atmosphere" and prevent Premier Wells from calling a referendum in Newfoundland; the Prime Minister was admitting that it was purely a strategic, election-style "roll [of] the dice" (Coyne, 1992, p. 137). Previously, he had maintained that the meeting had been left until beginning of June because the government was searching for sufficient common ground to justify a meeting, but the blatant admission of politicking seemed to confirm previous indictments of the process, inciting an "electric" reaction from opponents of Meech (Coyne, 1992, pp. 136-137). A day later, the Manitoba legislature attempted to go into emergency voting procedures to bypass the mandatory public consultation process on the Accord, which would have required unanimity in the provincial legislature. The motion was repeatedly denied by lone aboriginal MLA Elijah Harper, who objected to the lack of First Nations involvement in the Accord (Manitoba Hansard, 14 June 1990, cols 5962-5964). Despite Premier Gary Filmon's warnings that this might be the province's last chance to renegotiate the terms of federalism, and possibly even secure reserved Senate seats for the representation of women, First Nations, and minority groups (Manitoba Hansard, 20 June 1990, cols 5997-5998), Harper never agreed, and Manitoba consequently never approved the deal. Following the Manitoba decision, the Newfoundland Legislative Assembly called off its free vote on the Accord. The 23 June deadline passed without ratification, and the possibility of Senate reform appeared to die alongside the Meech Lake Accord.

The use of Senate reform as a bargaining chip during the Meech Lake process – first, as a promise to negotiate reform at a later date, and then incorporating a contingency plan for reform into the deal just weeks before the deadline for ratification – was typical of Canadian Senate reform plans in general, and the previous decade of experience in particular. At no point during the process was the purpose of

each veto player's desired changes assessed for consistency in principle or even logical viability. The actual content of the reforms – either the initial temporary deal for provincial nominations, or the later agreement for seat redistribution – were irrelevant to the process, they were simply used to lure reticent premiers into accepting the Accord. Had the House of Provinces model still been the default favourite of reformers, aspects of it would have been incorporated into the deal just as readily, with little effect on other parts of the agreement. Meech was nearly a monumental instance of blind reform; the Prime Minister's "roll of the dice" could have resulted in a completely accidental Senate resolution, with the final form decided by happenstance rather than a deliberate pursuit of clear objectives as part of a plausible causal chain.

7.4 The Charlottetown Accord, 1992

Preparations for another round of constitutional reform began almost immediately, spurred by fears that Meech's disastrous failure would strengthen the separatist movement in Québec (Ghiz, 20 October 1993, pp. 5-6). This time, significant Senate reform was included from the beginning, but first there would be one more major Triple-E variant to consider. During negotiations for the Charlottetown Accord, proposals for the Senate were evaluated not based upon their ability to improve democratic governance, but whether it would bring in the support of enough provinces. The Charlottetown Senate was a quintessentially Canadian plan, a hodgepodge of nearly every prior popular proposal in an attempt at a hybrid chamber that would satisfy all types of reformers; features were added and dropped with little consideration of the consequences for these new arrangements. Then suddenly at a last minute meeting, the deal was stripped down from Triple-E to a One-and-a-Half-E chamber: it would be equal, perhaps elected, but even less effective than it was in its current form. As this final section shows, the federal government's overall strategy for pursuing reform was largely unproblematic, but the government's eagerness to reach a solution led it to skip the second vital factor for meaningful upper house reform, of ensuring there is reliable process tracing to link structural reforms with the desired results.

In terms of process, the Charlottetown Accord was the anti-Meech, with an abundance of meetings and consultations. Before any plan was drafted, the government convened three different national commissions to report on issues related to national unity: the Spicer Committee (November 1990 – June 1991) (Parliament of Canada, June 1991a), the Beaudoin-Edwards Committee (December

1990 – June 1991) (Parliament of Canada, June 1991b), and the Beaudoin-Dobbie Committee (June 1991 – February 1992)[118] (Parliament of Canada, February 1992). While these were still ongoing, the government released *Shaping Canada's Future Together: Proposals* (Government of Canada, 1991) in an attempt to stir up some enthusiasm for yet another round of constitutional negotiations (P. H. Russell, 1993, p. 237; Watts, 2003, pp. 96-97). The book was divided evenly between constitutional and non-constitutional changes the government was recommending Beaudoin-Dobbie consider; the bulk of these constitutional changes dealt with the Senate. There were two fatal flaws in the existing Senate, according to the publication, which were to serve as the starting points for the committee's Senate reform agenda: it was unelected, and provided inadequate representation for provincial interests. In describing the first problem, the terms "unelected" and "federal appointment" were used interchangeably, with no mention of alternatives other than direct election, and the legislative illegitimacy of an unelected chamber was presented as a self-evident and absolute truth (Government of Canada, 1991, S2.2). While the rest of the Senate plans were at least nominally open-ended, there was a strong implicit preference for some variation on Triple-E.

The Senate model in the final Beaudoin-Dobbie report was a pastiche of earlier models. For inspiration, they had started from the Triple-E model, consulted the MacDonald Commission report, and, surprisingly, also looked at the German Bundesrat (Government of Canada, 1991S2.2), though they did not incorporate elements from it into their model. The report even included three different models for the potential distribution of seats in the new upper house – two in the main report, and one in a dissenting proposal from a Liberal member of the committee (Special Joint Committee on a Renewed Canada, 1992). Beaudoin-Dobbie is notable mostly for its demonstration of the fluidity of logic which was driving Senate reform: the link between theoretical chains of causation and functional outcomes were merely assumed to exist as a matter of self-evidence. The only abstract discussion about principles came when rejecting Triple-E's assertion that federalism mandated equal representation by province in the upper house, by reasoning that the principle of equality applied to both provinces and provincial populations. Given the vast population disparities between largest and smallest provinces (see Figure 5, p171), the two equalities had to be balanced through asymmetric seat distribution. But even here,

[118] Gérald Beaudoin, a noted constitutional legal scholar, had been one of six Senators appointed under the provincial list process during the Meech years.

the logic was flawed: the report also went on to conclude that, if federalism truly did mandate equality of representation for constituent territorial units as under Triple-E, then that would entitle the territories to the same number of seats as any province (Special Joint Committee on a Renewed Canada, 1992). Whether the committee deliberately chose to ignore the different constitutional status of provinces and territories in order to give a seemingly principles-based reason for rejecting equal seat distribution, was seeking to redefine Canadian federalism in a manner not otherwise discussed in its report, or was somehow unaware of what those differences meant for the distribution of powers within the federal system, it indicates that the full implications of Senate reform – for the institution itself, for Parliament, and for Canadian federalism – had not been adequately examined.

Nevertheless, the time for abstract thinking about institutional design and democratic principles was finished, and the Accord would be negotiated from that point forward as a political bargain. In spring of 1992, there were five separate national conferences on constitutional reform (Rebick, 1993, pp. 102-103), culminating with the Multilateral Meeting on the Constitution, chaired by Minister of Constitutional Affairs Joe Clark. Clark had spent much of the previous year meeting with provincial leaders in order to determine whether an agreement would even be possible, and under what conditions. What he had discovered was that most provinces would refuse to co-operate at all unless their primary concerns were addressed (Ghiz, 20 October 1993, p. 6). For Québec, these were the same five demands that the province had made prior to Meech: distinct society status for the province, curtailment of federal spending power in areas of exclusive provincial jurisdiction, increased provincial control over immigration, constitutional entrenchment of both the Supreme Court of Canada and the custom of drawing three of the nine judges from Québec's civil law system, and changes to the 1982 amending formula (Ghiz, 20 October 1993, p. 6). As an additional complication, however, under a new law passed following the collapse of the Meech Lake Accord, the provincial government would not engage in any more direct negotiations with the federal government; Ottawa would have to approach Québec with any new constitutional offers that it reached with the other nine provinces (Johnston, 1993, p. 43; Mendes, 1993, p. 164). This effectively temporarily left Québec out as a potential veto player in negotiations, despite remaining a major veto player in the overall process. The western provinces, for their part, were uninterested in discussing constitutional reform unless Senate reform was on the agenda – specifically a Triple-E Senate (Gibbins, 2005, pp. 1-2; Johnston, 1993, p. 44). Ontario wanted a social and economic charter (Bakan & Schneiderman, 1992), and many of the

Maritime provinces wanted to revisit equalization and regional development agreements (Bickerton, 2008, p. 107). Meanwhile, the federal government also felt that if they were re-opening the constitution anyway, then they should take the opportunity to rewrite Section 121 in order to facilitate interprovincial trade (Choudhry, 2001, p. 53)

Despite the daunting and complex task of balancing all these interests, Clark proceeded with multilateral negotiations on behalf of the federal government with the nine Anglophone premiers, two territorial heads, and aboriginal leaders. In March, the Multilateral Meetings on the Constitution began, with a deadline of May 30 and four issues on the agenda: the Canada Clause, institutions of governance in general and the Senate in particular, First Nations, and spending powers. Of the four, it was a deal on the Senate that proved to be most elusive (Leydet, 2004, p. 247; Lisée, 1994, p. 214). Alberta, Saskatchewan, Manitoba, and Newfoundland all wanted a Triple-E Senate (Leyton-Brown, 1998, p. 192),[119] but Ontario and the federal government strongly opposed Triple-E, a stance which Clark expected would also be shared by Québec (Ghiz, 20 October 1993, p. 8). The remaining provinces were all desirous of reform, but unconvinced over Triple-E, sharing the Premier of Prince Edward Island's opinion that it would be "most inappropriate" for the less populous provinces to demand equal representation with Ontario and Québec in the upper house (Ghiz, 20 October 1993, p. 8). The elected and effective components of the Triple-E plan were uncontroversial, accepted with little discussion of their justification, and with no record of any debate about potential alternatives (Johnston, 1993). The only province which had strong reservations about election was the absent government of Québec, where only 27% of the population supported the idea of an elected Senate (McLaughlin, 1994, p. 20), but this concern does not appear to have factored into the premiers' discussions. Instead, it was seat distribution, the most rudimentary feature of the model, which continually stood in the way of reaching an agreement.

The divide was so substantial that the original deadline had to be pushed back to June 30, and when there was still no deal on the Senate, one final meeting, attended only by Clark and the nine Anglophone premiers, was set for July 3, 6, and 7 (Leydet, 2004, p. 248). Even on the last morning, it

[119] Some accounts add Nova Scotia to this Triple-E group (c.f. Monahan, 1993, p. 235), but Premier Don Cameron's support of Triple-E came much later than the other Premiers, as he had initially favoured abolition (Leyton-Brown, 1998, p. 192).

seemed as though the entire constitutional renegotiation process would fail over the issue of seat distribution in the upper house, much to the disappointment of the participants.[120] During lunch, however, Premier Bob Rae of Ontario suddenly addressed the Triple-E Premiers about the underlying logic of Triple-E: since seat distribution in the lower house was based upon representation by population, there should be representation by constituent part in the upper house. However, Rae pointed out, seats in the Commons were not distributed by population, but instead by a combination of both population and territorial unit. If the Triple-E premiers would accept representation by population in the lower house – which would mean eighteen additional seats for Ontario– then he would accept their demands for representation by province in the upper house (Ghiz, 20 October 1993, p. 8). Pointing out this discrepancy was the closest in four months of negotiations that participants at the meetings came to questioning the logic and philosophy behind Triple-E.

The Pearson deal, as it came to be known, traded the overrepresentation of smaller provinces in a Triple-E Senate for an end to the underrepresentation of Ontario in the House of Commons. Both Clark and Rae had contacted Bourassa to see whether any variant on Triple-E could be made acceptable to the province, and while they had not been given a clear go-ahead by the Québec Premier, they had not been given a clear no, either (Lisée, 1994, p. 220). But with Québec absent from the meetings and Clark lacking clear guidance from the Prime Minister on the limits of what he could offer the provinces (Behiels, 2007, pp. 280-282; Monahan, 1993, p. 235), Ontario, as the only strong opponent of Triple-E at the bargaining table, was able to singlehandedly establish the initial terms for resolution of the Senate disagreement that finally led to consensus (absent Québec) on Triple-E.

The last minute deal on the Senate came as a surprise to the Prime Minister, who was attending the G-7 Summit in Munich at the time and had already gone to bed for the night under the impression that the negotiations had failed by the time the last-minute deal was reached (Ghiz, 20 October 1993, p. 9). Both Mulroney and Bourassa had expected the meetings to fail over the issue of the Senate,

[120] Joseph Ghiz, then Premier of Prince Edward Island, described the centrality of the Senate question to negotiations: "After we adjourned on June 30, it appeared certain that the process would fall over the issue of the Senate. Joe Clark agreed to bring us together for one final meeting on July 3 which was extended to July 6 and 7. On the final day, July 7, we met during the morning and there was virtually no movement on the issue of the Senate. You could cut the air of doom and gloom in the room on the morning of July 7. We were coming to realize that four months of intense and tiring constitutional discussions were going to end in failure. We adjourned for lunch and the mood was somber" (Ghiz, 20 October 1993, p. 8).

creating an excuse for the federal government to proceed unilaterally by presenting an offer directly to Québec (Behiels, 2007, p. 280). As expected, Premier Bourassa of Québec was publicly unhappy with the proposed Triple-E Senate, declaring that it "was unacceptable to Québec and needed to be reconsidered" (Behiels, 2007, p. 281), a position which the Prime Minister attempted to use to force the Triple-E premiers to back down (Ghiz, 20 October 1993, p. 9). Despite no desire on the part of any of the premiers to compromise on either the Senate or aboriginal rights (Behiels, 2007, p. 281), the Prime Minister called a final round of meetings in Ottawa and Charlottetown scheduled for the end of the month.

The Senate which emerged from the final negotiations, held between 18 and 28 August, was a far cry from the one that Clark and the nine premiers had agreed to on 7 July. With Québec and the Prime Minister now in attendance, the Triple-E bargain had new opponents at the table, and each was able to secure a key amendment to the Pearson deal. The most obvious change was that provinces would have the choice between direct election of Senators, or appointment by the provincial legislature (Government of Canada, 28 August 1992, p. S II.A.7). This form of appointment, virtually absent from Senate reform proposals since the House of Provinces model was supplanted by Triple-E in the early 1980s, would potentially give a provincial government direct influence in the federal legislature. It was not, however, a resurrection of the House of Provinces, or a principled recognition of demands for greater provincial influence over national policy, but a straightforward political bargain to secure Québec's consent for what was still being called a Triple-E Senate. Reaction in Québec to the full agreement reached between Clark and the nine premiers had been swift, and thoroughly negative (McLaughlin, 1994, p. 24). In addition to objections which were unrelated to the Senate deal, a Triple-E Senate meant that the province's influence in the upper house would decrease considerably, and the government needed more than a guaranteed minimum number of seats in the lower house to make the change palatable (Behiels, 2007, pp. 280-281).

The Prime Minister, for his part, secured his own concession from the premiers on the E of effectiveness, a fact which is often overlooked by most accounts, which attribute differences between the 7 July Senate and the Charlottetown Senate to "amendments required to get Bourassa on board" (Behiels, 2007, p. 282). This change to the original deal, however, had nothing to do with getting Québec's support. The new Senate's constitutional role and powers would be subject to what were formally only two minor tweaks: a deadline of thirty sitting days to dispose of bills already approved in

the House of Commons, and a change in the dispute resolution mechanism from the existing navette system to the use of joint sittings (Government of Canada, 28 August 1992, S II.A.12). In practice, however, the deadline effectively limited the Senate to a very brief suspensive veto, making it harder for the Senate to continue its extensive time-consuming research and revision functions. Once the deadline had passed, ordinary legislation would be sent to a joint sitting of both chambers, yet with only around 62 Senators compared to 337 MPs, the much smaller Senate's ability to challenge the Commons with any efficiency would be severely limited except under minority government conditions. The only areas in which the Senate retained a true veto was over French language and culture bills, which would require a double majority of both Francophone Senators and the Senate at large to pass, and over tax policy related to natural resources, which would require only a simple majority to pass. The Francophone veto was clearly intended to appeal to Québec, but the rest of the change to the Senate's legislative powers stemmed from Mulroney's continued dislike for a Triple-E upper house which could threaten the primacy of the lower house (Johnston, 1993, p. 47).

Ironically, the only E in the Pearson deal which remained untouched was the one which had threatened to prevent any sort of constitutional agreement during the four months of negotiations between the nine premiers. Each province was to have six Senators, and each territory one, for a total of 62, plus an as-yet undetermined number of aboriginal seats (Government of Canada, 28 August 1992, S II.A.9). Ontario and Québec both retained the eighteen additional seats apiece in the Commons that they had secured under Premier Rae's representation by population deal with the Triple-E premiers, as well as the 25% floor for Québec's future representation in Parliament. As a result of the last-minute deals, the initial Triple-E deal of 7 July was reduced to a one-and-a-half-E Senate: equal, possibly elected, but certainly not efficient.

Most academic narratives about the Accord and its rejection mistakenly either do not address the Senate deal and its role in the referendum debate, or even argue that the Senate was "the most popular part of the Charlottetown Accord"; and in public opinion surveys conducted during the Charlottetown referendum, LeDuc and Pammett (1995, p. 16) found that 75% of respondents, when given the choice between the existing Senate and the Charlottetown Senate, preferred the Charlottetown model. However, another study by Johnston et al (1993, p. 47) found that, when given the choice between the existing Senate, the Charlottetown Senate, and abolition, a plurality of respondents would have

preferred abolition. The compromise was more popular than what already existed, but less popular than another hypothetical solution that wasn't even an option.

The Charlottetown Senate was a manifestation of everything that was wrong with the Accord, in trying to be everything to everyone yet only exacerbating the divide between regions of the country which felt that they had received too little, and others too much. In Québec, the Senate plan signalled the triumph of pure majoritarianism over minority rights. An equal Senate would leave both Québecois and Francophone Senators greatly outnumbered, for which the 25% floor in the Commons and veto over language rights in the Senate were viewed as inadequate compensation (Janda, 1994, p. 2). Once again, it seemed as though Québec was being compelled to practice federalism on bended knee in order to appease the rest of the country, and this time they were being forced to give up asymmetrical federalism (Behiels, 2007, p. 281). The new Senate was even a hard sell in the provinces which had been most eager for Senate reform. The Triple-E premiers had failed to obtain the promise of a second chamber which could challenge the authority of the Commons; in fact, the new deadlock resolution mechanism left the new upper house weaker than the existing Senate, or even the major Triple-E variants which had accepted the need for some length of suspensive veto. The option for appointment instead of election meant that some province's Senators – particularly, it was feared, those appointed by a separatist government in Québec – might behave as agents of their provincial governments, and not as representatives of provincial voters (Janda, 1994, p. 2). Only the four provinces which had been demanding a Triple-E Senate could reliably be expected to opt for direct election, but the remaining five provinces, two territories, and any future First Nations seats were undeclared, meaning that appointed Senators could potentially outnumber elected ones. The Charlottetown Senate was a full one and a half Es short of the Triple-E model that Alberta, Saskatchewan, Manitoba, and Newfoundland wanted, and the Triple-E premiers could only say "that it was an honourable and workable compromise, but had difficulty making a principled defence of the actual institution proposed" (Janda, 1994, p. 2). Although the government had maintained a steady desire to see reforms accomplished efficiently and through the appropriate procedure, it consistently failed in the second factor for meaningful upper house reform, by treating the Senate like an institution which could be altered at will with little effect on its functions, so long as broader constants remained the same. This neglect of the more conceptual aspects of reform may not have doomed the Charlottetown Accord, but it did nothing to recommend it to voters.

7.5 Discussion

This chapter has shown how important the second identified criterion is for meaningful upper house reform. Although the federal government followed all of the rules and did not design its strategy around imaginary barriers to change, as the authors of the Parliament Acts had done, that did not mean that, had any of the ventures during the megaconstitutional era succeeded, they would have satisfied reformers. During the megaconstitutional era, the Senate was a useful bargaining chip, malleable for the purpose of gaining the support of potential veto players in the process. First, during the negotiation of the Meech Lake Accord, the promise of future Senate reform and an interim alternative process for selection, was meant to secure the support of Western provinces, which were reluctant to accept a deal that they believed favoured Québec. When Meech was amended to include a contingency plan to redistribute Senate seats only days before the end of the three year deadline, it was meant as a reminder to the three reticent provinces that had yet to pass the Accord – all of which had premiers who had previously spoken in favour of Triple-E – that they might be giving up any chance they had for Senate reform if the Accord failed. Then, during negotiations for the Charlottetown Accord, the Triple-E agreement worked out by the nine Anglophone premiers and the federal government was quickly whittled down to two and a half when Québec was brought on board, and then only one and a half Es when the Prime Minister amended the deal. These changes, and the specific content of the proposed reforms, had little to do with how veto players wanted the chamber to look and behave, and more to do with finding the right combination of constitutional features that would satisfy all parties' political concerns.

Elites do not have to be thinking conceptually about an institution that they are trying to reform; in fact, they do not even have to understand its origins, purpose, or the link between structure and institutional output. The underlying logic changed little between 1978 and 1992, yet the preferred solutions were always evolving. The House of Provinces model was, at its core, about empowering the provinces and improving regional representation – just like Triple-E, which offered a vastly different solution to these same problems. Once Triple-E had become the dominant model for Senate reform, it was easier for would-be reformers to simply tweak each successive model in turn than to reconsider whether the plan's basic structural changes would in fact bring about the types of behavioural changes that reformers wanted. They were proceeding as if this step had been done, yet no work which was

comparable in scope and quality to the UK's Bryce Report had any noticeable influence over either the national dialogue or subsequent Senate proposals. Yet the government persisted with this strategy because it was appealing to political elites tired from years of seemingly unending constitutional negotiations, by appearing to provide a rapid and facile solution for at least one part of the constitutional project, thus avoiding the need for a protracted debate between vastly disparate alternatives and, by implication, competing visions for the country.

Yet ultimately, this focus on expediency did not make resolution any easier, and instead contributed to the impasse. Rather than engage in a meaningful debate over the functions of a well-designed Senate and then proceeding inductively, each new plan would take an existing model, identify a likely undesirable consequence, and then work backwards to tweak it accordingly. This left a trail of slightly different yet distinct Senate models, all of which were tailored to appeal to a particular group over another version of the same plan, yet it was difficult to generate broad enthusiasm for any these variants when the emphasis was on generating consensus, not building a well-functioning institution. Despite the popularity of Senate reform proposals between 1980 and 1992, none of them ever addressed the Senate problem as a Senate problem; instead, the Senate was treated as a blank canvas for federalists and would-be democratic reformers to imprint their constitutional vision of Canada upon. The consequent structure was not designed in a holistic manner, as part of a bicameral Parliament, but as a hermetically isolated institution which was being created to function as adversary to the majoritarian House of Commons, without consideration of what effect this would have on the functions of the Commons. The rapid and complete displacement of the House of Provinces model with Triple-E as the default choice of would-be reformers was not a break in the logic of Senate reform plans, but one of the more dramatic illustrations of this pattern. Both the House of Provinces and Triple-E designs relied upon the same federalist principle which held that upper houses in federations should provide for representation of the constituent territories, and the vastly divergent solutions that each model offered stemmed from exogenous concerns that had more to do with changing notions of federalism or democracy than of abstract conceptualisations of bicameralism.

Charlottetown was a squandered opportunity for the Senate. There was consensus on the need for some form of change, yet the perceived failings of the existing institution were not being examined causally in order to develop a tailored solution through process tracing. Instead, these assumptions were accepted by reformers as incontrovertible proof of the need for change, yet these same reformers

had difficulty translating their vignettes of a "fixed" Senate into prescriptive solutions because they were answering only the superficial question of how they wanted the new Senate to look, rather than answering more abstract questions about the fundamental purpose of representative bicameralism. This oversight meant that reformers could impugn the existing institution quite effectively, but were incapable of justifying their own solution through reference to concepts which linked structure and outcome in an evidence-based manner, preventing consensus among veto players from coalescing around any one solution.

Charlottetown had presented the federal and provincial governments with an opportunity to break away from this pattern of design by dialectics. The failure of Meech had shown that, even though a plurality of Canadians outside of Québec listed Senate reform as their number one priority in constitutional negotiations (Monahan, 1993), the specifics were too vague for either the first ministers or voters to be able to predict how the new chamber would function (McCormick & Elton, March 1987, p. 52), and the promise of reform was not strong enough alone to pass a new constitution. The Multilateral Meetings on the Constitution presented the nine premiers, two territorial heads, aboriginal leaders, and the federal government with a blank slate for constitutional overhaul, with few limiting conditions. And Senate reform, while popular as a vague idea, had little existing public consensus; although Canadians agreed that reform was needed, there was no substantial support around any one plan, or even a set of principles to guide the reform. Senate reform was important enough to prevent the first ministers from reaching a constitutional agreement, yet ultimately, the desire to make a deal was stronger than the desire to design a good institution.

The reasons why the Charlottetown Senate failed in the second factor of meaningful reform and ended up being yet another exercise in constitutional compromise rather than institutional innovation lie with the veto players and the immense pressure on them to compromise. As the only institution of Canadian governance up for complete renewal in the meetings, the Senate took on an importance beyond its function in a bicameral parliament, and became a locus for a program of renewal for Canadian democracy and federalism. The absence of representatives from the Québec government at the multilateral meetings may have made the negotiations as a whole easier, but it made a Senate particularly hard to design. Any new Senate would have to fulfil Québec's demands for increased autonomy of provincial governments, yet without representatives from the government present, the other delegates had to rely upon their assumptions about what would or would not be acceptable to

the province. The first ministers had to design an upper house which would be acceptable to a powerful veto player whose interests were often at odds with their own, and with whom they could not consult and negotiate. If they failed to do so, it had the potential to renew the sentiment that Québec's interests were being disregarded by the rest of the country, and provide added fuel for the separatist movement which had been in resurgence since the failure of Meech. Additionally, failure to reach an agreement meant that the Prime Minister would proceed with one-on-one negotiations with the government of Québec, excluding them entirely; the nine premiers could either compromise and hope for the best, or effectively relinquish their right to participate in the constitutional renegotiation process.

At the same time that they were worrying about the potential response of an absent veto player, delegates at the multilateral meetings had to satisfy their own provinces' interests. For the Triple-E provinces, particularly the government of Alberta, Senate reform was not so much about obtaining an ideal parliamentary upper house, but righting the perceived wrongs of Confederation which had concentrated political power in the more populous provinces. Western alienation focussed on the Senate as potential site for change because the inherent ambiguity of Canadian parliamentary bicameralism had left the fundamental role and purpose of the Senate up for reinterpretation. By leaving the seat distribution and powers of the House of Commons unchanged, it gave the appearance of an attempt to strike a fair balance between representation by population and representation by territory, but Triple-E advocates failed to ever develop a satisfying conceptual justification for equal representation by territory in a country with as few constituent units as Canada, and with such disparities in population distribution.

These two impulses – to satisfy an absent veto player, and satisfy their own interests – made politicking, not principle, the dominant force in determining the outcome of negotiations. The resulting plan has often been characterised as a combination of all the different plans for an elected Senate which had been tossed about since the early 1980s (c.f. Stillborn, 2003). Instead, it would be better to classify it as a Frankenstein Senate. Rather than the deliberate and fluid amalgamation depicted in the common narrative, it was an awkward and inconsistent mess, for which no attempt had been made to reconcile potentially mutually exclusive objectives into a single cohesive institution. It was trying to be everything to everyone, and ended up satisfying no one: a Triple-E Senate for the west and Newfoundland, an avenue of provincial governmental influence for Québec, a bargaining chip for Ontario to secure more seats in the Commons, and a roundabout way of maintaining the existing balance of power in Parliament

while giving the illusion of massive institutional transformation for the Prime Minister. To depict the Charlottetown Senate as anything more sophisticated would be imagining logical reason and deliberate action where none actually took place – it was a solution without a problem.

For over a decade, it seemed as though the prospects for meaningful Senate reform had in fact disappeared with the defeat of Charlottetown, as the three subsequent prime ministers assiduously avoided the issue. Although popular support for the idea of Senate reform remained high – a decade after Charlottetown, ninety percent of Canadians wanted either Senate reform or abolition (Docherty, 2002, p. 45) – it seemed as though Canadians had lost the appetite for constitutional reform, with under 40% of Canadians identifying Senate reform as a priority (IPSOS-Reid, May 1998), and no government would risk the constitutional chaos that reopening the issue promised to bring with it. Then suddenly, Senate reform returned to the federal government's agenda, this time attempting to accomplish much of what the Triple-E reformers had tried and failed to do, but without any provincial consultation. The government insisted that it could proceed with reform unilaterally, using the same logic as Trudeau's White Paper in 1978. It is in this case that the most unusual combination of factors for meaningful upper house is seen: not only was the federal government once more applying the same flawed rhetoric and logic that had done no favours for the Senate plans of Meech or Charlottetown, but it was now attempting to cut constitutionally entrenched veto players out of the process by relying upon semantically-dependent and unwritten interpretations of the written rules for change. It is the only case in this study where both of the factors required for meaningful upper house reform were absent, and as a result offers some important lessons to other governments wishing to avoid the constitutional route for Senate reform.

8 Rules Matter: 2006-2014 Unilateral Reform Attempts

No sane government would open up the constitutional can of worms that is Senate reform.

-- David Docherty, 2005 (p 196)

After the failure of Meech Lake and Charlottetown, as well as the ensuing near-fracturing of the Canadian state in the second Québec secession referendum, successive Canadian Prime Ministers were content to leave the issue of Senate reform dormant for fear of re-igniting constitutional crisis. Kim Campbell, Jean Chrétien, and Paul Martin all assiduously avoided the issue of formal Senate reform.[121] Yet following the Liberal Party's disastrous showing in the 2006 election, formal Senate reform suddenly reappeared on the federal government's agenda, as new Conservative government promised to implement yet another variant of the Triple-E plan, but this time using only non-constitutional action by the federal government, so as to avoid the need for provincial consent (Conservative Party of Canada, 2006). This decision to seek reform without provincial consent was not in itself flawed; it was the decision to pursue objectives which were widely accepted by constitutional experts to be excluded from the unilateral control of the federal government that made the entire pursuit futile.

Analysis of this case in the same manner as prior instances is particularly difficult due to just how recent it is, and how impracticable the government's stated objectives were. Cabinet documents covering the full duration of the case will not become available until 2044. As with any government, there were discrepancies between rhetoric and actual governance style, and so official government statements cannot be taken at face value. Additionally, the Prime Minister in charge of the plans was notorious for retaining tight control over his government, as Cabinet ministers and civil servants were both barred from speaking to the press without prior approval from the PMO (Canadian Press, 7 June 2010), leading constitutional expert CES Franks to dub him "King Stephen the First" (Franks in Foot, 2010), in reference to King Charles I's attempts to govern without the consent of Parliament prior to the English Civil War. This case shows the difficulty of relying upon official rhetoric for analysis of

[121] It should be noted that Campbell had little opportunity to effect any significant change to the Senate during her short tenure, as outgoing Prime Minister Brian Mulroney had taken the unusual step of filling all eleven existing Senate vacancies in the month prior to his leaving office (Library of Parliament, 2014). Martin did, however, appoint a greater proportion of opposition and independent Senators than any prior Prime Minister (Library of Parliament, 2014).

government intent, as not only were the speeches announcing various proposals for upper house reform often ambiguous and vague, but there was a strong disconnect between rhetorical intentions and the government's defence of its actions in the ensuing Supreme Court of Canada reference case. The plan never had a high likelihood of success because most experts regarded it as constitutionally infeasible, but the government was able to proceed as though it were for as long as it did because of the absence of the second factor for meaningful upper house reform, the need to properly conceptualise the institution and trace the likely effects of change; the experience highlights the importance of the second factor in both securing meaningful reform, and preventing wasted time in pursuit of unfeasible objectives.

The unilateral reforms attempted between 2006 and 2014 by the Conservative Party government of Canada are unique in this study for exhibiting neither of the two factors required for meaningful upper house reform. First, the government pursued a strategy which was unconstitutional from the start. Despite warnings from some academics, the Senate, and the Québec government, the federal government did not amend its objectives accordingly, but instead attempted to reinterpret the existing rules for change to its own advantage. Key veto players were deliberately excluded for the purpose of expediency and convenience, not because the rules allowed it. Second, the conceptual understanding of what the government was attempting to do with reform was no more sophisticated than it had been during the era of megaconstitutional politics, when reform nearly happened in spite of an absence of broad discussion about the values and purpose of parliamentary bicameralism. The Triple-E metric of equating elections with democracy remained the key feature of the new government's plan, while implications of election for the functions of the chamber were deliberately minimized by a government seeking to avoid provincial involvement above all else. The concurrent decisions to avoid both careful strategizing about the process of reform and conceptual debates about the goals and objectives of the changes the government was attempting to undertake makes this the only case in this study where no significant change occurred, either deliberately or accidentally. Whereas in the other cases, the absence of one factor led to limited or unintended changes, the absence of both factors in the attempts at unilateral reform in Canada between 2006 and 2014 prevented even small informal reforms from occurring.

This chapter begins with an explanation of the four different amending formulae in the constitution which can apply to Senate reform. While the government would challenge the boundaries

of these rules in its 2014 Supreme Court reference case, most constitutional experts were in agreement about how the different amending formulae would apply to Senate reform even before the government came to power. Every type of Senate reform requires approval from Parliament, with varying degrees of involvement from the provinces. Extremely important reforms, like complete abolition of the upper house, requires unanimous consent of all ten provincial governments, most reforms require consent of seven provinces representing at least 50% of the national population, a single specific reform requires the consent of only Québec, and only small matters of housekeeping can be done unilaterally (1 SCR 54 (1980), 1979, pp. 64-66; BP-283E, January 1992, p. 18). In spite of widespread pre-existing consensus about the written rules for change, the Conservative government attempted to undertake unilateral reforms under the last of these amending procedures, eliminating the provinces from input over changes which should have involved them. The chapter then proceeds to discuss the government's reform strategy, distinguishing between three distinct phases. While the chance of success and conceptual sophistication of the plans remained minimal throughout all three phases, the overall strategy varied slightly. Although both factors for meaningful reform are absent throughout this case of attempted upper house reform, the earlier phases are worth a closer examination because of how Phase 3 in fact forced Canadian elites to begin a dialogue about the rules and objectives for change. The chapter concludes with a look forward, both in terms of the immediate effects that this dialogue had on the government's Senate policy, and more abstractly, in terms of what Phase 3 could mean for future Senate reform attempts.

In Phase 1, 2006-2008, the government's sole strategy was to both speak and behave as if its plans for unilateral action were constitutionally permissible, while creating credibility through an inconsistently applied policy of non-appointment to the upper house. This process of creating credibility, however, also created a burgeoning institutional and constitutional crisis that went unnoticed by either political elites or academics who were more concerned with the legislative agenda than the government's refusal to fill a growing number of empty Senate seats. Phase 2, ushered in by the first prorogation crisis in late 2008, utilised the same rhetoric, but was accompanied by a hedging strategy of appointing party loyalists to the Senate, which belied the government's confidence in its own logic of reform, but backed away from the crisis-building policy of non-appointment. It was not until Phase 3, when the Québec government launched a reference case with the provincial Appeals Court in 2012, that the government was finally forced to develop a coherent rationalization for its plan

and submit its own set of questions in a Supreme Court reference case. This time, after the government lost on all important reference questions it had put to the Supreme Court, and in the context of unprecedented academic and political interest in the Senate, its purpose, and basic functions, the constitutionality of non-appointment finally came under challenge. The Supreme Court reference case marked the first time since Confederation that political elites had to consider the Senate in a conceptual manner, and so while the unilateral attempts at reform ultimately failed to effect either formal or informal change to the upper house, the dialogue that it prompted in its final phase may at least prove useful in future attempts that seek legitimate non-constitutional means of significantly changing the upper house. As a whole, the experience reinforced the importance of both factors for significant reform – careful understanding of appropriate procedure and adequate conceptualisation of the institution being reformed – because not only were those two factors emphasised in the Supreme Court's ruling, but their absence virtually guaranteed failure from the start, resulting in wasted Parliamentary and judicial time on an ultimately misguided quest. However, the Supreme Court reference finally forced elites and Canadian academics to debate the proper function, role, and membership of the upper house, providing what may become the foundation for the second necessary factor in future attempts at upper house reform.

Between 2006 and 2012, the government tabled eight pieces of legislation seeking to change Senators' terms of office and introduce elections for upper house members, most of which were slight updates or combinations of previous draft bills. Opposition Senators were also responsible for one amendment to the government's term limits legislation, and three further pieces of legislation seeking to remove the $4000 real property requirement. Figure 6, page 195 below, shows the timeline of the government's attempts to reform the Senate from 2006 to 2014.

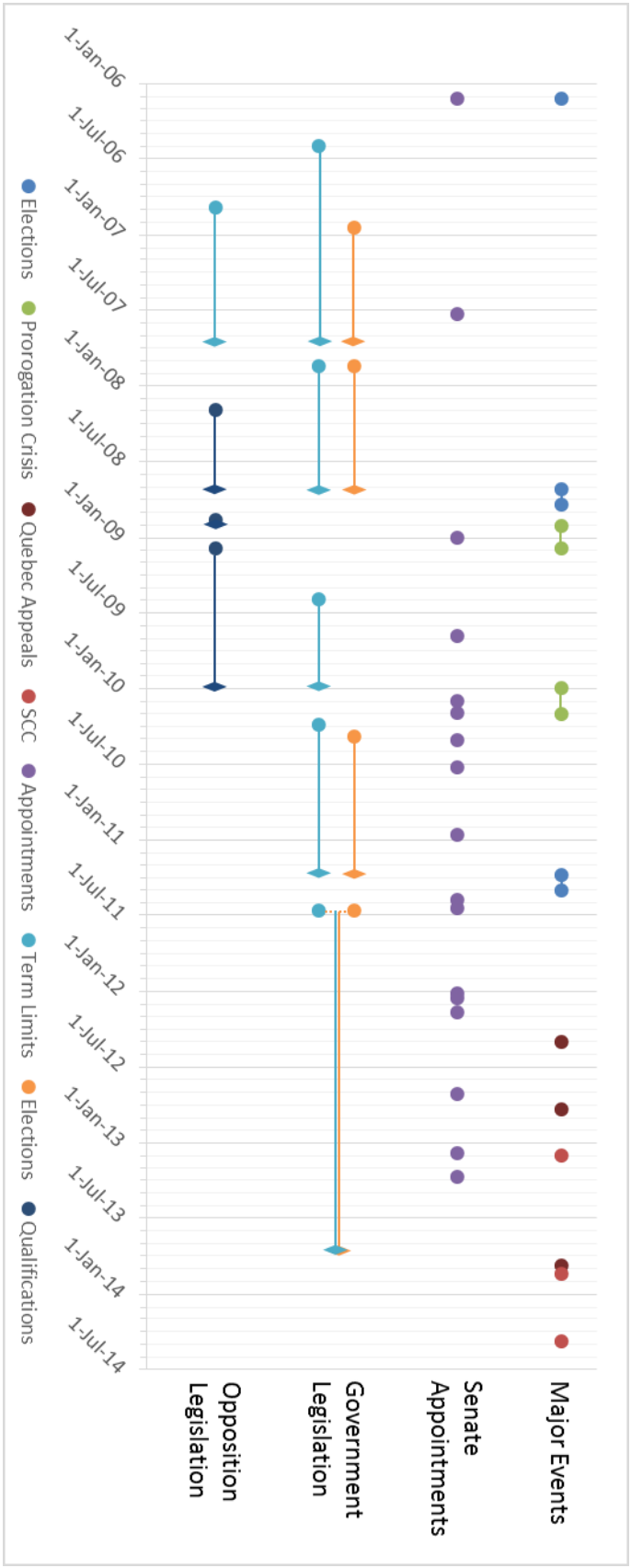

Figure 6 – Timeline of Senate Reform in Canada, 2006-2014

8.1 Contemporary Amendment Procedures

Unlike in the case of Meech and Charlottetown, where unanimous consent of the provinces was necessary to pass Senate reform because it was part of a complete constitutional overhaul, the nuances of contemporary constitutional amendment procedures require a closer look in order to properly contextualise what the government was attempting to do between 2006 and 2014. Since the failure of the Charlottetown Accord, it had become accepted wisdom in Canadian politics that the major and formal Senate reform was untenable without reopening the constitution (c.f. Joyal, 2003; D. E. Smith, 2003), yet the government was insistent that it had found a way to do so. Whether the government ever sincerely believed its official stance, or was simply using it as a strategy that it hoped would work, is unclear.[122] The process got as far as it did in large part because the government consistently claimed that there was ambiguity within the constitution's amending procedures, in a manner nearly identical to the reasoning used by the Trudeau government in the late 1970s. When the constitution was patriated in 1982, it contained four different amending formulae that could potentially apply to future Senate reforms, depending on the extent of the changes. In decreasing order of complexity, these are the unanimity rule, the general amending formula, multilateral agreement, and unilateral action.

Senate reform is not explicitly mentioned in Section 41 ("Constitution Act, Canada," 1982, S41), which requires the unanimous consent of all ten provinces and the federal government, but it does require unanimous consent in order to amend the powers of the Governor-General, and change the minimum number of seats to which a province is entitled in the House of Commons. As a result, before the 2014 Supreme Court ruling, most academics and legal scholars agreed that the unanimity rule applied to Senate abolition for two reasons (Fournier, 2007; Murray, 2003, p. 140; Paré, 2009; Segal, 2006, p. 177; D. E. Smith, 2003, p. 235; Watts, 2003, p. 87). First, the Governor-General formally summons Senators to the upper house, and so the removal of that power would alter the Governor-General's constitutionally appointed role. And second, since a 1915 constitutional amendment, provinces are also entitled to at least as many seats in the lower house as they have in the upper house ("Constitution Act, Canada," 1867, 51A) abolition would render this clause meaningless, leaving a

[122] While in Opposition, the future Prime Minister had also made the nonsensical claim that a Conservative government could prohibit same-sex marriage without resorting to use of the notwithstanding clause in the Constitution, but never got the chance to act on his threat to do so after a free vote in 2005 implicitly rejected any potential use of the notwithstanding clause to ban same-sex marriage (Hébert, 6 January 2014).

constitutional void in need of revision. Abolition has historically been the preferred solution of both the CCF and its successor the NDP, but the federal government did repeatedly threaten the upper house with abolition when its attempts at passing Senate reform unilaterally were challenged (Prime Minister of Canada, 2007; Van Loan, 2007). In the 2014 Supreme Court case, the federal government would argue that abolition fell, in fact, under the slightly more lenient rules of Section 38(1) (Attorney General of Canada, 2013a, para 73).

Most constitutional reform in Canada falls under Section 38(1) of the Constitution Act ("Constitution Act, Canada," 1982, S38(1)), which requires the consent of Parliament, as well as two-thirds of provincial legislatures representing at least 50% of the population. Commonly referred to as the 7/50 rule because it means that seven provinces must consent to the change, it applies not only to any amendments which do not fall explicitly under any of the subsequent amending formulae, but also to a number of changes mentioned in Section 42, which names the Senate's powers, seat distribution, residency requirements, and selection method as all falling under the general amending formula of the constitution. During the court references, however, the federal government argued that only the matters explicitly listed under Section 42 fell under the general amending formula (Attorney General of Canada, 2012, para 5; 2013a, para 112), and even then, these rules could be circumvented by formally non-binding legislation (Attorney General of Canada, 2013a, para 21).

The most frequently overlooked amending procedure that can affect the Senate is Section 43 ("Constitution Act, Canada," 1982, S43), which applies to changes that affect only one or some provinces, but not all. Historically, this has been the most common form of constitutional amendment since 1982, typically used for updating a province's terms of entry into Confederation (Newman, 2011, pp. 385-387).[123] Under the terms of an agreement originally intended to ensure representation of the province's English minority population (Moore, 2015, p. 98; Rémillard & Turner, 2003, pp. 111-114), Senate seats in Québec are district-based, rather than at-large constituencies, and the Senators must either reside in or own real property in that district. The Supreme Court had originally suggested in the 1979 Upper House Reference that the property requirement for Senators could be eliminated

[123] Changes have included replacing ferry service to Prince Edward Island with a fixed link bridge, creating language- rather than religious denomination-based schoolboards in Québec, making French and English language rights co-equal in New Brunswick, and modifying the province of Newfoundland's full official name to include Labrador (Newman, 2011, pp. 385-387)

unilaterally (1 SCR 54 (1980), 1979, p. 76), but under the amending rules of the 1982 Constitution, since Québec districting was guaranteed by Section 23(6) of the British North America Act ("Constitution Act, Canada," 1867, S23(6)), the provincial government's approval would either be required for repeal, or Québec Senators would have to reside in their assigned districts. This provision did not factor at all into the government's proposals for reform, but came into the debate when Liberal and Independent Conservative Senators tabled bills to eliminate the property requirement ("Constitution Act, 2008 (Property qualifications of Senators)," 2008), knowing that Québec would object most vociferously to attempts at reforming the Senate without its consent (Gouvernement du Québec & Pelletier, 4 June 2008).

Finally, there is also a limited possibility for unilateral reform, subject to approval by parliament alone, under Section 44 ("Constitution Act, Canada," 1982, S44). Even prior to the 2014 Supreme Court reference, most academics and legal scholars agreed that this applied only to matters of basic organisation and operation not covered by the other amendment procedures (BP-283E, January 1992, p. 18; D. E. Smith, 2003, pp. 229-230). Until 1982, much of this clause was Section 91(1) of the British North America Act, and formed the basis of the Trudeau government's argument in favour of unilateral Senate reform in its upper house reference case (1 SCR 54 (1980), 1979, p. 59) – an argument which had already been rejected by the court in that same ruling (1 SCR 54 (1980), 1979, pp. 64-66). Nevertheless, Section 44 formed the basis for the Harper government's argument in favour of unilateral Senate reform in its own Senate reference case, which attempted to reason that anything not explicitly covered under Section 38(1) fell under Section 44 (Attorney General of Canada, 2012, para 8; 2013a, para 79).

What is striking about this case of attempted reform is just how similar the reasoning used by the Harper government was to the Trudeau government's own discredited logic for unilateral patriation of the Constitution in the late 1970s. It also went beyond that in two respects after its strategy in Phase 1 proved ineffective, firstly by arguing that patriation of the constitution had made the 1979 Upper House Reference no longer binding, meaning that the ruling prohibiting unilateral changes to fundamental features of the upper house was no longer valid jurisprudence (Attorney General of Canada, 2013a, para 82), and secondly by claiming that even changes which were explicitly excluded from Section 44, like selection method, could be made to fit under Section 44 so long as Senate elections were not called elections, but "non-binding consultations" (Attorney General of Canada, 2013a, para 21; Harper, 2006). The reasoning was regarded as highly tenuous by most constitutional experts, but it was enough to

prolong the process for nearly eight years, because it capitalised off the Parliamentary concentration of power in the executive, and lack of broad knowledge among elites concerning the Senate and its reform, and while some academics spoke out against the unconstitutionality of the plans, they had little effect upon the process (c.f. J. Smith, 2009; Special Senate Committee on Senate Reform, 7 September 2006). Without any mechanism for preventing the government from wasting parliamentary time on constitutionally infeasible options, the government was able to behave as if its objectives were plausible for most of the time that it said it was attempting to reform the Senate.

8.2 Phase 1: Creating Credibility and Crisis, 2006-2008

When the Conservative Party came to power with a minority government in 2006, it quickly promised major overhaul of the upper house without constitutional reform (Harper, 2006). Senate reform had been a key policy plank of the Conservative Party since its founding in 2003 (Conservative Party of Canada, 2004, p. 13; 2006, p. 44), as it was for its Alliance and Reform Party predecessors in the 1990s (Canadian Alliance, 2000, p. 20; Reform Party of Canada, 1993; 1996, p. 22), but that was not enough to make the party's promise of reform convincing, since similar promises had also appeared in every major party's platform on and off for most of the twentieth century (see Chapter 7.1 "The Chamber of Federalism: Confederation to 1980", p162). During Phase 1, the government had to create both credibility and crisis in the hopes of appearing serious about reform and legitimating its constitutionally questionable strategy, and it did this by concurrently tabling its reform as two separate pieces of legislation, and holding off on most new Senate appointments. Phase 1 is when the government was most determined to reinterpret the written rules for change by replacing them with an unwritten set of conventions that favoured unilateral action over provincial involvement.

The first part of the government's strategy was to divide its objectives into two separate pieces of legislation, reasoning that alone, each bill constituted small enough change that they could avoid the need for provincial involvement under the formal rules for change (J. Smith, 2009, pp. 2-3). One bill would impose term limits on all incoming Senate appointments, while a separate bill would mandate "consultative" elections for the selection of new Senators. In May 2006, the government tabled bill S-4 in the Senate, which would limit Senate tenure to eight years. The bill's preamble reasserted the government's claim that it could make this change under the unilateral amendment rules of Section 44 because of the precedent set in 1965; at this point, it is unclear whether the government was yet arguing

against the continued validity of the 1979 Supreme Court ruling in the Upper House case, because it went on to assert that term limits would "maintain the essential characteristics of the Senate within Canada's parliamentary democracy as a chamber of independent, sober second thought" ("An Act to amend the Constitution Act, 1867 (Senate tenure)," 2006).[124] Many Senators, however, disagreed, and recommended that the matter be referred to the Supreme Court of Canada before proceeding with the committee stage (Special Senate Committee on Senate Reform, 26 October 2006), a request which was dismissed by the government.[125] In response, the Senate sent it to the Special Senate Committee on Senate Reform, where the government's eagerness to get the bill passed quickly became evident when the Prime Minister testified before the committee – the first time a sitting Canadian Prime Minister had ever done so in the Senate (Special Senate Committee on Senate Reform, 7 September 2006).

It is at this early point that the Senate's differing opinion about the rules for change become apparent. During the committee's meetings, much of the debate centred on whether the bill was too narrow in its scope by changing the tenure of Senators without first correcting regional disparities within the chamber (Special Senate Committee on Senate Reform, 7 September 2006, 26 October 2006). In its report, tabled October 2006, the committee presented an amendment to S-4 which would increase the number of Senate seats for the western Canadian provinces by making British Columbia its own region with twelve seats, redistributing the western division's existing seats to give seven to both Manitoba and Saskatchewan, and ten to Alberta (Special Senate Committee on Senate Reform, 2006). Known as the Murray-Austin Amendment after Independent Progressive Conservative Senator Lowell Murray and Liberal Senator Jack Austin, it was a deliberate attempt to make the government reconsider its earlier decision not to seek advice from the Supreme Court. The amendment would have natural appeal to the government's base of support in the western provinces, where Senate reform in general and the West's underrepresentation in particular had retained much of their salience since the defeat of Charlottetown (Ivison, 2012). More importantly from a strategic perspective, it would necessarily

[124] It is unclear when exactly the shift in opinion occurred, or if the government was always of this opinion but never stated it publicly, because even within the Supreme Court reference case, the government was insisting that its proposed changes would not affect the fundamental characteristics of the upper house, but now also argued that this was irrelevant due to irrelevance of the 1979 ruling following patriation (Attorney General of Canada, 2013a, para 82).

[125] Had the matter, in fact, been referred to the Supreme Court when first recommended by the Senate, the reform attempts likely would have proceeded no further, and this chapter would not have been written. It is the government's continued insistence upon the constitutionality of its plan, and proceeding "as if", that warrants this case's inclusion in this study.

invoke the 7/50 rule, taking unilateral control over Senate reform away from the government by requiring provincial consultation since section 42 of the constitution explicitly identified any change to seat distribution in the Senate as falling under the purview of the 7/50 rule in section 38(1).

Nevertheless, the government continued with its original plan, and in December 2006, it tabled a second and what would prove to be more controversial bill in the Commons for Senate elections. The text of Bill C-43 took great pains to refer to the elections as "consultations". The word "consult" and its derivatives appear almost twice as often as "election" and its related terms,[126] and what references are made to elections refer predominantly to the Chief Electoral Officer, who was to oversee the process, and suggestions that the Senate consultations be timed to coincide with provincial elections ("Senate Appointment Consultations Act," 2006).[127] In a slight departure from the government's assertion with Bill S-4 that it was empowered to undertake Senate reform unilaterally, the preamble to C-43 also mentioned that it was to be only a temporary measure, "pending the pursuit of a constitutional amendment under subsection 38(1) of the Constitution Act, 1982 to provide for a means of direct election" ("Senate Appointment Consultations Act," 2006, p. preamble). If the promise of seeking after-the-fact approval from the provinces to entrench the election process in the constitution was meant to placate opponents who doubted the constitutionality of the government's overall Senate plan, it did not have the desired outcome, but instead underscored the need for those questions to be resolved (Gouvernement du Québec & Pelletier, 4 June 2008). Officially, the purpose of the bill was "to create a method for ascertaining the preferences of electors in a province on appointments to the Senate within the existing process of summoning senators" ("Senate Appointment Consultations Act," 2006, p. preamble), but the preamble's admission that constitutional entrenchment of the practice would require provincial consent only reinforced the semblance that the government wanted to reform the Senate in its own way first, and then maybe ask the provinces for permission later. Furthermore, unlike in the last-minute amendment to the Meech Lake Accord, there was no deadline for the necessary constitutional change; if subsequent negotiations ever occurred, and then stalled or provinces refused

[126] In the English language version, words like consult, consultation, and consulting appear 158 times, while words like election, electoral, electing appear 82 times ("Senate Appointment Consultations Act," 2006).

[127] Interestingly, the bill does not specify how the costs associated with the elections would be split between federal and provincial governments in the case of these combined election-consultations.

the changes, C-43 would still be in effect, meaning that the government's changes would stand whether or not the provinces agreed to them formally

The government was adamant that this detail was enough to make the entire plan constitutional. During second reading of the bill, when asked to respond to accusations from constitutional experts that the bill was unconstitutional, deputy Government House Leader Scott Reid went so far as to declare that:

> I have not been aware of any credible arguments that it is not constitutional. **This legislation successfully attempts to skirt the constitution** by limiting itself and by not actually calling for the election of senators, which would be democratic but not constitutional because it would violate the constitutionally enshrined principle that senators are appointed by the Governor General… We do have two precedents for this. One is the recent announcement of the appointment of Bert Brown,[128] who was elected through a consultative election in the province of Alberta, to the Senate. Nobody is contesting the constitutionality of that. The second one was the appointment a decade ago of Stan Waters to the Senate by the Governor General on the advice of Prime Minister Mulroney after being elected in a similar manner in the province of Alberta. I think the constitutional scholarship would all be on one side that in fact this is entirely constitutional by acting as a piece of legislation and being truly advisory. (HCC Hansard, 7 May 2007, col 1209)

At the same time that the lower house was beginning its second reading of C-43 and the deputy Government House Leader was denying any knowledge of expert opinion that any part of the government's plan was unconstitutional, the upper house was considering S-4 in its Standing Committee on Legal and Constitutional Affairs in order to answer questions about its constitutionality. Contrary to Reid's assurances, the government of Québec had previously challenged the constitutionality of S-4 in an appearance before the Special Senate Committee on Senate Reform in the fall of 2006, and held the same position regarding C-43 (Gouvernement du Québec & Pelletier, 4 June 2008; Procureur général du Québec, 2013, para 10). The committee had heard from a series of constitutional experts, nearly all of whom quickly dismissed the argument that a bill limiting tenure to eight years could be passed by Parliament alone (Special Senate Committee on Senate Reform, 7 September 2006). The committee's final report also noted the adamant opposition to S-4 from the governments of governments of British Columbia, Saskatchewan, Ontario, Quebec, New Brunswick, Newfoundland and Labrador, and Nunavut (Special Senate Committee on Senate Reform, 26 October 2006). Rather than risk proceeding only to have the entire process ruled unconstitutional and overturned by the Supreme Court, the Senate

[128] Brown's appointment to the Senate was announced in advance of the pending retirement of Senator Dan Hays, just a week before the Commons began its second reading of C-43.

ultimately agreed to the committee's recommendation that the bill be dropped from the Senate Order Paper until the Court could rule on its constitutionality (Senate Hansard, 19 June 2007, col 1620). This was followed in November of that year by a motion passed in Québec's provincial legislature, declaring that "any change to the Canadian Senate could not be accomplished without the consent of the Government of Québec and the National Assembly"[129] (translation of Procureur général du Québec, 2013, para 11). The federal government still expressed no interest in sending the issue to the top court.

Both S-4 and C-43 officially died on the order papers with the end of the parliamentary session in September 2007, giving the government the opportunity to re-introduce both bills almost immediately after the start of the new session. This time, rather than risk delay in the Senate due to scrutiny or questions of constitutionality, both bills were tabled on the same day in the Commons. Bill S-4 was reintroduced as C-19 with only a minor alteration for the purpose of clarification – and without the Murray-Austin amendment. C-43 was then reintroduced as C-20, again with only superficial adjustments. Each iteration of both government (term limits and elections) and opposition (property) legislation are found in Figure 7 below.

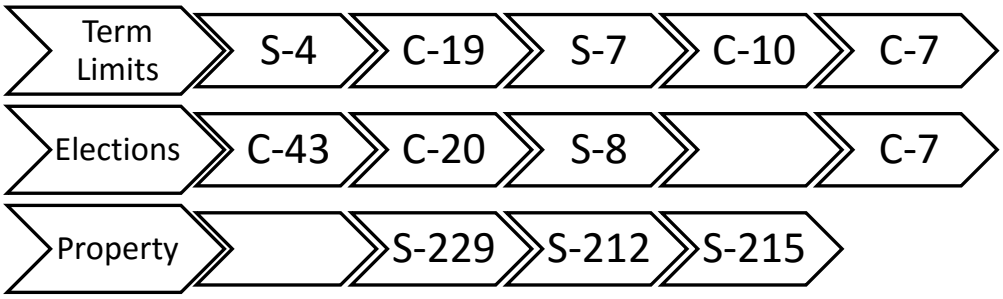

Figure 7 – Government and opposition Senate reform legislation, 2006-2014

To show its good faith in wanting reform, but only if accomplished constitutionally, and apparently also in an attempt to bring Québec more clearly into the role of veto player, the Senate drafted and quickly passed a short bill which would have removed the property qualification for Senators. Given that in modern times, the $4000 real and personal property requirement has only been an impediment to the appointment of one Senator – Sister Peggy Butts, a Catholic nun who had taken a vow of poverty, appointed to the Senate in 1997 by Jean Chrétien (Rootsweb Obituaries, 10 March 2004) – the relevant

[129] Original text: "toute modification au Senat canadien ne peut se faire sans le consentement du gouvernement du Quebec et de l'Assemblee nationale"

constitutional clause was easy to criticise for being anachronistic and archaic. Yet the rule was still being observed, as Sister Butts had only been able to take her seat in the Senate after her religious order transferred a small portion of land in New Brunswick to her name. The text of the bill deliberately invoked the same rhetoric as the government's reform bills, referring to elimination of the property requirement as a matter of modernisation and democratisation ("Constitution Act, 2008 (Property qualifications of Senators)," 2008). Under the logic of the 1979 Upper House ruling integrated into the existing amending procedure, which the government was not yet openly challenging as valid jurisprudence, this bill would not have required provincial consent, except in the case of one province – Québec. To remove the districting in Québec, which following removal of the property requirement would mandate that Québec Senators reside in their districts, a constitutional amendment would have to occur under the terms of Section 43, with a multilateral agreement between the Québec and federal governments. Bill S-229 died on the order papers when Parliament was dissolved for the 2008 general election, but versions of it were tabled shortly after the start of the next two Parliamentary sessions. The bill died for a final time at the end of 2009, when the Liberal Party lost its majority in the upper house, and a private member's bill was no longer a feasible option.

The second major component of the government's strategy was a decision was not make any new Senate appointments – with two expedient exceptions. Prior to taking office, Conservative Party leader Stephen Harper had promised not to appoint anyone to either Cabinet or the Senate unless they had been elected (Conservative Party of Canada, 2004, p. 13; 2006, p. 44). Immediately, he had to break both promises in order to secure adequate regional representation in Cabinet – the Conservative Party had failed to win a single seat from the island of Montréal, and so the Prime Minister used his prerogative to create a new Senator from Québec who could sit in Cabinet (CBC News, 6 February 2006). It was a move which initially harmed the Prime Minister's credibility about his dedication to Senate reform (Deveau, 28 February 2006; Livesey, 27 August 2015); the fact that other Prime Ministers who had talked of Senate reform, including Pierre Trudeau and Joe Clark,[130] had used Senate appointments for the same purpose of securing regional representation in Cabinet only reinforced disbelief that the new government's Senate reform program would turn out any differently.

[130] Pierre Trudeau appointed a number of Senators to Cabinet after the Liberal Party failed to win any seats west of Manitoba in the 1972 election, and Joe Clark followed suit in 1979 to secure Cabinet representation for Québec (Docherty, 2002, p. 31)

This was followed soon thereafter by a second appointment, which the government touted as the first of many "elected" Senators, despite those "elections" being conducted under markedly undemocratic conditions. Following the retirement of Alberta Senator Dan Hays in mid-2007, the Prime Minister announced that he would be appointing long-time Triple-E advocate Bert Brown to fill the vacancy (Prime Minister of Canada, 10 July 2007).[131] The government presented him as the legitimate winner of Alberta's "Senate elections", and an instance of the government's Senate reform policy in practice (Carlson, 6 January 2012; HCC Hansard, 7 May 2007, col 1209; Prime Minister of Canada, 10 July 2007), but like the appointment of a new Senator to represent Montréal in Cabinet, it was born more out of opportunism, reflecting the flexible nature of the government's pro-election stance. Although Alberta had held Senate elections in 1998 and 2004, and would again in 2012, they were conducted under far less democratic conditions from those which led to the selection of Stan Waters in 1989, which had been declared at the time to be "unconstitutional and confusing" (Senator Lowell Murray in Watts & Brown, 1990, p. 244). After participating in the 1989 race, the Liberal party would boycott the 1998, 2004, and 2012 races on the grounds that they were "unconstitutional and undemocratic" (Canada West Foundation, 1998, p. 14), while the NDP, opposed in principle to the existence of a bicameral parliament, has never run a candidate in any of the four 'Senate elections' (Canada West Foundation, 1998, p. 15; Elections Alberta, 2010). On top of that, approximately 20% of all voters either refused or spoiled their Senate ballots, leaving turnout at a mere 35% (Elections Alberta, 2010). Brown had won his seat with support from 15% of all eligible Albertan voters in an ad hoc race which was ignored by all but fellow Triple-E Senate reform ideologues (Elections Alberta, 2010). The Prime Minister could not have hoped for a process more ideal for churning out his ideal type of Senate appointee. Nevertheless, Brown's appointment served an important symbolic function, creating the illusion that, Montreal Cabinet representation notwithstanding, the government was actually serious about its intent to reform the Senate unilaterally through statutory means.

Phase 1 triggered the start of an academic consideration of the Canadian Senate, as academics once content to ignore the Senate as a "dusty, obscure Arcadia filled with aged and retired political war horses" (Franks, 1999, p. 151) began brushing up on their knowledge about the upper house. There

[131] Brown first gained national notoriety in 1984 as chairman of the Canadian Committee for a Triple-E Senate when he ploughed "Triple-E Senate or else" into his neighbour's barley field (Parliament of Canada, 2014a). Why he did so in his neighbour's field rather than his own 1120-acre field is unclear.

was even an entire book dedicated to assessing the constitutionality of the government's Senate plans (J. Smith, 2009), yet all of this literature focussed on the statutory part of the government's strategy. Not a single major work was published during this time which examined whether this first part of the government's strategy was even constitutional. The government's policy of non-appointment, if carried out for long enough, would amount to indirect constitutional change; eventually, the gradual decline in membership through attrition would impede the upper house's capacity to function as a legislative, research, and revisory body. Additionally, the text of the Constitution Act clearly states that filling empty Senate seats is not optional on the part of the Prime Minister. Writing in 1965, Kunz is the only major work to discuss the constitutional implications of allowing vacancies in the Senate to accumulate, in a relation to a similar situation that arose in 1955, which warrants extensive quoting here:

> The maintenance… of the specified number of member in the Senate was very carefully provided for by the wording of two sections of the BNA Act. In addition to section 24, which provides for the appointment of Senators, section 32 says: "When a vacancy happens in the Senate, by resignation, death, or otherwise, the Governor-General shall by summons to a fit and qualified person fill the vacancy." The reason that the Senate does not have a provision similar to the one in force in the House of Commons regarding a time limit within which vacancies must be filled is that the constitution itself is so clear and plain upon that subject. **It distinctly says that appointments shall (not "may") be made when the vacancies occur.** This certainly does not mean the moment they occur because that would be impracticable. The principle in interpreting directives of this kind is that action must be taken within a reasonable time. (Kunz, 1965, p. 57, emphasis added)

In 1955, the long tenure of the Liberal Party had resulted in the accumulation of twenty-one vacancies in the upper chamber, leaving a mere seven Conservatives alongside seventy-five Liberals. By the end of the year, the number of Conservative Senators was expected to drop below five, which would have meant losing official party status. Concerned that the vacancies and party imbalance were "contrary to the public interest [and] a challenge to the usefulness of the Senate [which] threatens the integrity of this branch of Parliament" (Senate Hansard, 11 May 1955, col 447), Senator William Euler[132] introduced a largely symbolic private member's bill modelled after the 1919 House of Commons Act which would have amended the BNA Act to mandate that vacancies in the Senate be filled within six months. Although the bill was rejected on second reading in large part to a avoid embarrassing the government (Senate Hansard, 25 May 1955, cols 539-540), it was enough to compel some action at the

[132] Appointed to the Senate by William Lyon Mackenzie King in 1940, Euler was notable for having been mayor of Berlin Ontario during the First World War, when anti-German sentiment forced the city to hold an unpopular referendum which changed the name to Kitchener.

time on the part of Prime Minister Louis St-Laurent. That same summer, a slate of new appointments included nearly half who would sit either as independents or Conservative Senators. For Kunz, it was clear that a government which allowed an unreasonable number of vacancies to accumulate was violating the spirit of the constitution (Kunz, 1965, pp. 56-59), yet it was not until late 2014 that the matter was raised in relation to the government's non-appointment policy (CBC News, 15 December 2014).

The two-pronged approach to Senate reform during Phase 1 succeeded only because the government was behaving as if its objectives were constitutionally possible, rather than an attempt to legislate what was beyond its jurisdiction. Without any stronger mechanism for ruling on the constitutionality of proposed legislation, the Senate could only amend and make recommendations. There was no mechanism, meanwhile, to prevent the Prime Minister from refusing to make his constitutionally mandated Senate appointments, and the general low interest in the Senate among both academics and political elites allowed a symbolic yet highly unconventional policy to stand unchallenged. Both of the necessary factors for meaningful upper house reform were absent as far back as Phase 1, but no potential veto players were positioned close enough to agenda-setting players to stop the attempt from proceeding any further. Despite a flawed reinterpretation of the rules for reform with barriers as being much lower than they actually were, the government was able to behave as though its objectives were constitutionally feasible for another five years after the end of Phase 1, serving as an important reminder that poor understanding of the rules for change does not hasten an attempt's end, but only makes it harder to succeed.

8.3 Phase 2: Hedging the Bet and Burning Bridges

Phase 2 began abruptly, initiated by the prorogation crisis in late 2008 and early 2009. By that time, there were eighteen vacancies in the upper house, five of which had been empty for more than two years (Library of Parliament, 2014).[133] This changed, however, when the government prorogued Parliament in order to avoid losing a vote of non-confidence to a coalition of opposition parties only a few months after the 2008 general election (Foot, 2010). During prorogation, the Prime Minister began

[133] Liberal Senators outnumbered Conservative Senators by almost three to one, a ratio which would only continue to widen as Brian Mulroney and Joe Clark's appointees rapidly approached retirement age, although the Conservative appointments made by Prime Ministers Jean Chrétien and Paul Martin were all still in the Senate at the time.

making mass Senate appointments, filling all of the existing vacancies so that they would not be inherited by a new government if the Conservatives lost power to the coalition once Parliament resumed (CBC News, 22 December 2008; Livesey, 27 August 2015). The eighteen appointees were the closest that a Canadian Prime Minister has ever come to swamping the upper house, a constitutionally dubious phenomenon which is nevertheless a recurring fear in the United Kingdom due to the lack of a formal size limit on the upper house, but almost unheard of in Canada due to the need to keep the 105-member body operational.[134] Once again, this highlights the importance of the second factor for meaningful reform, for both ensuring that a plan will accomplish its stated objectives, and is even constitutionally feasible.

While there was a sense that the Prime Minister was being duplicitous by swamping the upper house with appointees after he had pledged not to appoint any unelected Senators (CBC News, 2008), as in the case of the non-appointment policy, the action's constitutionality went completely unexplored at the time by either elites or academics. A Prime Minister exercises their authority only so long as they can command the confidence of the House of Commons; if not, the Governor-General is tasked with either asking another party to form the government, or dissolve Parliament entirely to hold new elections, per their royal prerogative. The first prorogation crisis happened as a direct result of the government's attempts to avoid a scheduled vote of non-confidence in the Commons which would have undoubtedly brought the government down (CBC News, 2008); the chamber's confidence in the government was at the very heart of the crisis during which the Prime Minister was making these appointments, and it was unclear whether he would be able to command the confidence of Parliament when it reconvened. The appropriateness of the Governor-General's acquiescence to the erstwhile Prime Minister's request to swamp the Senate during the prorogation, along with making a new Supreme Court appointment that would forego the usual interview by members of Parliament, remains highly questionable.

[134] The eighteen new Senators appointed in January 2009 were twice the next highest number of mass appointments, a record previously shared by Paul Martin when he first assumed office, and Brian Mulroney when he invoked the additional appointment powers in Section 26 during the 1990 GST debate. There was one vacancy in the Senate at the time, and so Prime Minister Mulroney appointed nine new Senators at the same time to get the GST bill passed. One was appointed by the Governor-General in the usual manner, but the other eight had to be appointed directly by the Queen, under the terms of the Letters Patent of 1947 which invested in the Governor-General all powers of the monarch except for those explicitly granted to the sovereign in the Constitution.

It would not only have been within the Governor-General's prerogative, but in keeping with precedent, to refuse any new appointments until Parliament's confidence in the government could be ascertained. In 1896, Conservative Party Prime Minister Sir Charles Tupper was defeated in the general election by Sir Wilfrid Laurier's Liberal Party. After the election but before resigning from office, Tupper, who had made only one Senate appointment up to that point, requested that the Governor-General Lord Aberdeen fill the four empty seats in the upper house with the defeated Prime Minister's choice of appointments. In a move which elicited very little controversy either at the time or since, Aberdeen refused to comply unless Tupper could show that he commanded the confidence of the Commons (Forsey, 1946; Senate Hansard, 1 April 1908, col 751); Tupper had no choice but to relent, leaving the empty seats unfilled for the incoming Sir Wilfrid Laurier. Similarly, in 1963, Prime Minister John Diefenbaker tried to fill three vacancies in the Senate after being defeated on a motion of non-confidence, but before the election in which he was eventually defeated took place. Even though Diefenbaker was unambiguously still the Prime Minister, unlike Sir Charles Tupper, Governor-General Georges Vanier refused to make the appointments until Parliament was once again in session and confidence in the government could be established (Dunsmuir, 1990). Both exercises of royal prerogative were contingent decisions, informed by the Governor-General's role in the preservation of responsible government, until the Prime Minister could show that he had the confidence of the Commons. Both instances are often discussed matter-of-factly as legitimate examples of the Governor-General's royal prerogative regarding Senate appointments (Dunsmuir, 1990; Forsey, 1946; Joyal, 2003, p. 312fn). Luckily for both the Prime Minister and the office of the Governor-General, the coalition collapsed before Parliament resumed later that month, and the ramifications of approving Senate appointments without clear confidence in the government never had to be explored.

Once Parliament resumed, the Prime Minister continued to fill the Senate as seats became vacant, abandoning the earlier strategy of non-appointment in favour of one which both hedged his position and closed the door on previously viable alternatives, because even though the government's official legislative objectives remained unchanged, the context was completely transformed by this change in appointment behaviour. The strategy was now to stay the course with the two bills, while concurrently continuing regular appointments to the upper house, a decision that reiterated the government's determination to proceed statutorily, and not through development of new constitutional convention.

This was ostensibly a win-win strategy for the Prime Minister. If he ultimately failed to reform the Senate in the manner he wanted, the chamber would still have a cadre of loyal Conservative Party Senators who would remain long past his own departure from office. With upcoming retirements, the Conservatives would be able to gain a majority in the upper house within the year, which would make it easier for the government to pass its legislative agenda through the Senate (Parliament of Canada, 2014b). In the meantime, the government could continue to table new iterations of S-4 and C-43 (see Figure 7, p203), banking on the credibility of intent that it had gained during Phase I of its reform plan.

An election bill reappeared in Parliament after the second prorogation crisis as S-8 in 2010, but this time there was no explicit mention of forthcoming constitutional reform under Section 38(1) ("Senatorial Selection Act," 2010). This final version of standalone legislation for elections stands out as the only one out of the seven different bills tabled by the government in its first four years in office to be noticeably different from a previous or subsequent version.[135] Rhetorically, the most noticeable change was the replacement of the term “consultations” with “selection”, while the biggest substantial distinction was that it no longer attempted to export the Alberta system of preferential voting to the rest of the country, but instead would simply use the same plurality electoral system as for the House of Commons ("Senatorial Selection Act," 2010). Despite the textual modifications, however, the implications of the bill were in effect the same as before. It specified that the Prime Minister was tasked with a “duty” to consider the most recent Senate election results when making recommendations to the Governor-General ("Senatorial Selection Act," 2010, p. 3) – a technically non-binding clause, but when combined with the proscription for officially mandated elections, the overarching objective was to abolish the Prime Minister’s appointment powers in favour of de facto direct election.

There is no evidence to indicate that, as the government continued to table successor bills to S-4 and C-43, the government was exploring alternatives to consultative elections or eight-year term limits. When appearing before the Special Senate Committee on Senate Reform in 2006, constitutional

[135] The bill was much shorter than its two predecessors, despite finally containing a clause specifying that candidates had to be eligible for nomination under the terms of Section 23 in the *Constitution Act, 1867*. Previous versions of the bill had neglected to specify any eligibility criteria aside from Canadian citizenship – in contravention of Section 23, which allows for natural-born or naturalized subjects of the Queen to be appointed to the Senate, a category that includes non-Canadian citizens of other Commonwealth countries. Otherwise, candidates did not have to be residents of the province where they were running or wanted to represent. Heard (2008, p. 1) even points out that, under the terms of C-43 and C-20, a candidate could potentially run in one province, but be appointed to represent another.

scholars Peter Hogg, Patrick Monahan, and Stephen Scott had all agreed that the government could choose to set up an appointments commission to provide the Prime Minister with recommendations for Senate vacancies, without the need for provincial consent (Special Senate Committee on Senate Reform, 7 September 2006, 26 October 2006). Yet there is no indication that the government took this suggestion seriously after Phase 1 had failed. Instead, the Prime Minister began filling the chamber with party loyalists, becoming the only Prime Minister to serve for more than two years without appointing a single Senator from a party other than his own (Parliament of Canada, 2014b). Prime Ministers are not bound to recommend appointments that will sit with their own party, and even though it is a rare occurrence, unlike in the House of Lords where cross-bench of opposition appointments comprise between 38 and 83% of all new peerages (M. Russell & Semlyen, 2015, p. 13),[136] it had reached a high of 30% immediately before Stephen Harper came to office, a custom which the new Prime Minister could have continued in an attempt to establish constitutional convention. Figure 8 below shows historical Senate appointments by prime minister, with black bars representing Liberal Party appointments by Liberal prime ministers, dark grey bars representing Conservative Party appointments by Conservative prime ministers, while light grey bars indicate appointees that did not sit with the governing party. The decision to not set up either an advisory committee or deliberately make cross-party appointments was a missed opportunity for a government bent on reform.

[136] Edward Heath created only 8 Conservative peers out of a total of 45 new peers during his tenure, while as of the end of 2014, David Cameron created 76 Conservative peers out of a total 187 (M. Russell & Semlyen, 2015, p. 13)

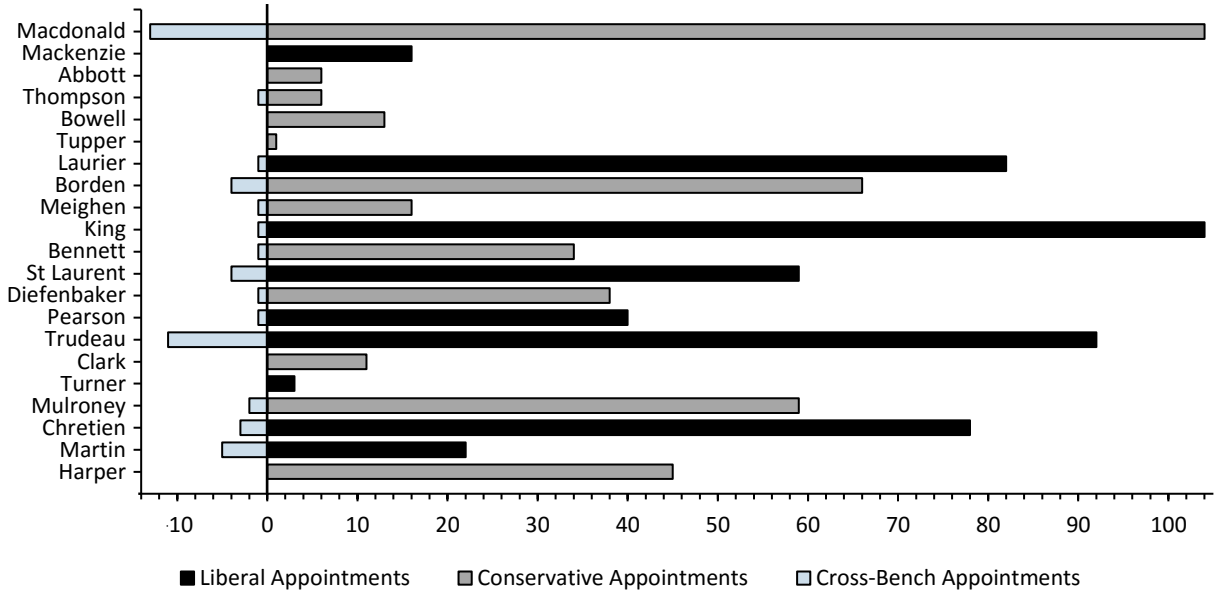

Figure 8 – Senate Appointments in Canada. Data from (Library of Parliament, 2014)

Apparently growing impatient, the government combined both term limit and election bills into a single piece of legislation in June 2011. None of the bill's content was new, but it clearly signalled the government's growing impatience with the Senate reform process. Whereas earlier bills had, by the government's own admission, attempted to skirt constitutional reform procedures by breaking the plan down into two separate bills (HCC Hansard, 3 October 2011, col 1108; 7 May 2007, col 1209), the new C-7 simply combined the most recent iterations of S-4 and C-43 to create a comprehensive Senate reform bill with provisions for both nine year term limits – a one year increase over the previous versions – and consultative elections in the same piece of legislation ("Senate Reform Act," 2011).

Debate over Bill C-7 in the House of Commons was largely ineffective, with an Opposition New Democratic Party that effectively accepted the legitimacy of the government's unilateral strategy, and a weakened Liberal party with its lowest number of seats since Confederation (CBC News, 3 May 2011). The NDP supported the government's desire to engage in Senate reform without provincial involvement, yet at the same time wanted to hold a national referendum on abolition, and attempted to dodge questions about how they would secure the required unanimity of the provinces without igniting constitutional debate by admonishing Liberal Party questioners "not to get caught up in constitutionality" (HCC Hansard, 27 February 2012, col 1241). Just like the Labour Party had done in

1958 when it attempted to block the admission of female peers to the House of Lords in order to push for abolition, the NDP's response was prioritising party dogma over meaningful conceptual evaluation of the proposed legislation, and failed to put up an adequate challenge to the bill. Liberal Party critics, on the other hand, focussed almost entirely on the question of constitutionality. They accused the bill of playing with semantics in order to pretend that it was constitutionally permissible; it could not be both nominally elected yet technically appointed, nor could the chamber be elected without being politically empowered (HCC Hansard, 27 February 2012, cols 1200-1210). Aside from repeating the same issues of constitutionality which had been raised ever since Bill S-4 was first tabled in 2006, Liberal commentators also noted that these questions would have to be resolved satisfactorily one way or another, since the government of Québec had already stated its intention to challenge the constitutionality of the bill if the federal government insisted upon proceeding without provincial consultation (HCC Hansard, 24 September 2011, col 1299).

Phase 2 was the longest lasting of the three phases of attempted unilateral reforms, yet the least eventful, in terms of either progress by the government's bills or responses from the opposition. However, it did represent a consolidation of the government's commitment to an all-or-nothing approach to reform, and a deliberate rejection of intermediate compromises which relied on evolving constitutional custom and convention. It also, in retrospect, once more shows how important it is for both elites and academics to have a conceptual understanding of the institution being reformed, as well as the rules for change, because this time the unconstitutionality of the government's plan had the potential to affect the office of the Governor-General. Finally, the tabling of Bill C-7 finally prompted the Québec government to respond with a constitutional challenge that questioned the legitimacy of the entire reform process that the government was attempting to follow, effectively giving way to the third and final phase of the Harper government's attempts at reforming the upper house.

8.4 Phase 3: Confrontation and Defeat

Phase 3 of the government's attempts to reform the Canadian Senate began in earnest with the Québec government's decision to present a reference case to the Québec Court of Appeals in May 2012, asking the court to rule on the constitutionality of C-7's proposed changes under the terms set out in the constitution's amending formula (Québec Court of Appeal, 2012). Hearings on the Québec appeal began that fall, eventually prompting the federal government to declare its own intent in February 2013

to finally have the Supreme Court rule on the constitutionality of its Senate reform agenda (Québec Court of Appeal, 2012). It is during Phase 3 that the government's procedural strategy finally broke down, because it finally had to enunciate its desired interpretation of the rules for change before the courts; even though most constitutional experts would agree that the process that the government was advocating had been unconstitutional from the start, there was no earlier mechanism for interrupting the process, so long as the government continued to insist that its plan was constitutional and no alternative source of a legal opinion was forthcoming. It is also during Phase 3, however, that the question of what place the upper house should have in Canada's parliamentary system first appears in mainstream political rhetoric; up until that point, the government's logic had been the same as that underlying the Triple-E movement, but in their responses to the reference case, the provinces and other intervenors finally had to engage with these more abstract concepts of bicameralism and institutional design that had previously been absent. Phase 3 has the most to tell us about both how veto players understood the written and unwritten rules for institutional change, and how those same actors came to conceptualise the functions and purpose of an upper house in the Canadian parliamentary system. Both factors for institutional change played prominent roles in the Supreme Court proceedings, revealing how this attempt's success was jeopardized from the start due to a flawed procedural approach, yet was allowed to proceed for so long because of continued political ambiguity and uncertainty about the role of the Senate in Canadian democracy. For this reason, it is appropriate to discuss the legal arguments used by the government and the interveners, from the perspective of their logical implications upon the two factors for meaningful change, although a full legal analysis is beyond the scope of this work.

The Supreme Court reference case contained six questions in all, offering different scenarios, some of which had already appeared in proposed legislation, and others which were entirely new to the Senate reform agenda (Privy Council Office, 1 February 2013). The first question offered seven different options related to term limits, including terms of eight to ten years, renewable terms, and retroactive application of the term limits. The second and third questions dealt with the constitutionality of

consultative elections, the fourth with removing the $4000 property requirement,[137] and the final two offered scenarios for abolition (Privy Council Office, 1 February 2013). Every provincial and territorial government, save that of the Yukon, submitted a factum to the Court outlining its position on the reference questions, along with another five factums from independent interveners and associations.[138] Not a single intervener agreed with all of the Attorney General's positions, and what support the government did get from the interveners was inconsistently spread between the questions.[139] The only exception was regarding elimination of the property requirement, to which every intervener that took a position answered in the affirmative, though many also noted that full repeal would require Québec's consent under Section 43 (Amicus Curiae, 2013; Attorney General of New Brunswick, 2013; Attorney General of Nova Scotia, 2013; Attorney General of Saskatchewan, 2013; Joyal, 2013; Procureur général du Québec, 2013). It was also the only question for which the Supreme Court's ruling was in agreement with the Attorney General's opinion (2014 SCC 32, 2014).

This was the first time that the government had been forced to formally elucidate the logic of its claim that the desired changes could be made unilaterally, and, if the Attorney General's filings in both the Québec and Supreme Court references is an honest reflection of the government's logical and not just legal position,[140] it reveals clearly why the manoeuvre failed. The core of the Attorney General's

[137] This was the only question related to the opposition Senate reform bills, and would not have been necessary to ask if the government had accepted the continued validity of the 1979 ruling.

[138] These were from Senators Anne Cools and Serge Joyal, the Fédération des communautés francophones et acadienne du Canada (FCFAC) and the Société de l'Acadie du Nouveau-Brunswick (SANB), and an Amicus Curiae brief submitted by two constitutional lawyers.

[139] With few exceptions, the provinces' legal stances on the reference questions closely mirrored their governments' ideological positions. Both of the provinces which had already passed legislation for the direct election of Senators – Alberta and Saskatchewan – sided in favour of consultative elections (Attorney General of Alberta, 2013; Attorney General of Saskatchewan, 2013). Yet British Columbia and New Brunswick, which had both openly contemplated but not passed legislation relating to Senate elections, along with every other province and territory, argued in favour of the 7/50 rule for elections. The governments of British Columbia, Alberta, and Saskatchewan, all of which supported the possibility of abolition, were the only interveners to say that anything less than unanimity would be required to abolish the upper house (Attorney General of Alberta, 2013; Attorney General of British Columbia, 2013; Attorney General of Saskatchewan, 2013). However, the other three provinces in favour of abolition – Ontario, Manitoba, and Nova Scotia – argued along with the anti-abolition interveners for unanimity (Attorney General of Manitoba, 2013; Attorney General of Nova Scotia, 2013; Attorney General of Ontario, 2013). Ontario was the only province to show broad support for the idea of term limits, agreeing to unilaterally imposed term limits of at least nine years or three Parliaments, though this support was conditional upon other portions of the court's ruling (Attorney General of Ontario, 2013). Saskatchewan was the only other province to agree with the possibility of unilateral term limits, but only if they were for ten years or longer (Attorney General of Saskatchewan, 2013).

[140] It will be difficult to verify this definitively until the thirty-year embargo on Cabinet documents expires in 2044.

submissions was that only the narrowest literal reading of a legal text is relevant for determining the constitutionality of a bill; this meant arguing that Section 38, despite its formal title, was not in fact a general amending formula for the constitution, but applied only to the specific changes enumerated in the Section 42(1), which was supposedly an "exhaustive" list: "the framers identified those four matters alone as the Senate features that could not be changed unilaterally by Parliament. Except for those four matters, Parliament has plenary power to make changes to the Senate" by virtue of Section 44 (Attorney General of Canada, 2013b, paras 16-17). In effect, the federal government was attempting to claim all residual constitutional authority over the executive, the Senate, and the House of Commons that were not explicitly denied to it by sections 41 and 42, and was asking the courts to read the amending formula in a purely literal sense, looking only at its textual form, without reference to context of structure, linguistic construction, history, and jurisprudence.[141]

The Courts' decisions were remarkably similar to the ruling in the 1979 Upper House Reference, in large part because the underlying logic of the Harper government was remarkably similar to that used by the earlier Trudeau government. The key difference lay in the fact that now, there was a formal amending formula, which was not an obstruction that had to be creatively side-stepped in order to change an undesirable status quo, but an agreement made in 1982 "to postpone further discussion [on Senate reform] while specifying the applicable amending procedure to incorporate an eventual consensus in the Constitution" (2013 QCCA 1807, 2013, para 40). The difficulty in achieving consensus and the desirability of reform had no legal bearing on the constitutionality of the government's approach, but instead reinforced the importance of adhering to the procedures of the amending formula.

The two reference cases hold significance beyond any legal arguments over constitutionality, especially in the context of this study. While the government's interpretation of the written rules for

[141] This was a potentially revolutionary reinterpretation of the Constitution's amending procedures, and would have upended the balance of power in Canadian federalism, had the Court accepted it. The Attorney General of Manitoba, in that province's intervener factum, argued that it would have meant that in 1981, the premiers in the Gang of Eight had designed an amending formula that voluntarily relinquished their provinces' fundamental right to participate in almost any future Senate reforms barely two years after they believed that they had won that right in the Upper House Reference. It also directly contradicted contemporary statements to the contrary, including testimony before the Special Joint Committee on the Constitution of Canada in 1982 which had specified that Section 44 was not intended to change any of the federal government's constitutional amending powers, and was in fact not as broad as its predecessor, Section 91(1), but related only to the executive (Attorney General of Manitoba, 2013, para 10).

change were flawed from the start, conceptual discussions about the upper house in Canada had been largely absent up to this point. Although the bulk of the intervener responses were based in jurisprudence, some responses also explored more conceptual aspects of the Senate, and its role in a properly functioning democracy. Even though these discussions came at the end of the entire reform attempt, they are worth a closer examination, because it marked the first time since Confederation that Canadian political elites from different provinces have been forced to contemplate the fundamental logic of Canadian bicameralism, instead of dealing with the imaginary Senate that dominated prior plans for reform.

After the Upper House Reference, the most commonly cited case in both the dissenting intervener factums and the court rulings was the Québec Secession Reference (2 SCR 217, 1998), which appeared even more frequently than the Patriation Reference. Where the Upper House and Patriation references provided the foundation for the case's textual legal arguments, the Secession Reference formed the basis of the purposive side of the case, and it is here that the second factor for meaningful reform began to emerge. In its ruling on the Secession Reference, the Supreme Court had described the unwritten constitution as "the foundational principles governing constitutional amendments" (2 SCR 217, 1998, para 34), meaning for this case that even incidental consequences of Senate reform on the unwritten aspects of federalism and democracy should be taken into consideration when determining constitutionality. Every single provincial and territorial intervener sided in favour of meaningful Senate reform, but nearly every one also accused the government of asking the courts to rule based on the desirability of reform, rather than the constitutionality of its plan, on the grounds that it would be too difficult to obtain the necessary provincial consensus (c.f. Attorney General of British Columbia, 2013, para 124; Attorney General of Manitoba, 2013, para 38; Attorney General of New Brunswick, 2013, para 27; Attorney General of Nova Scotia, 2013, para 50; Procureur général du Québec, 2013, para 12). This prompted the Attorney General of New Brunswick to note that "the Attorney General of Canada's position in this reference reduces to the proposition that convenience should trump federalism… Convenience, however, is not a cornerstone of a federal constitutional democracy" (Attorney General of Manitoba, 2013, para 39). Senate reform, by the courts' logic in their rulings, involved the unwritten as much as it did the written constitution, necessitating a closer consideration of the bicameral concept in federal context.

The first matter in which this increased attention to the underlying principles of federalism and the upper house came up was in regards to the term limits question, which the Attorney General of Manitoba argued invoked "principles of federalism and who should decide whether Senators should be appointed for a prescribed term" (Attorney General of Manitoba, 2013, para 15), especially if Senators could hope for reappointment at the end of their terms. Many interveners noted how both nine-year and renewable terms had been explicitly rejected at Confederation, even by "ultra-democrat" George Brown (Province of Canada Legislative Assembly, 8 February 1865, p. 90).[142] The term limit question highlighted Senatorial tenure, and more specifically the democratic importance of having a chamber that could not be captured by a single party within a short period of time. At the end of 2014, there were sitting Senators appointed by five different Prime Ministers; a change to fixed terms which would allow a single Prime Minister to appoint the entire chamber within eight to ten years would give individual Prime Ministers the unprecedented ability to control both houses of Parliament within a relatively short period of time. Many provinces came to the conclusion that term limits and reappointment went "to the very heart of what 'sober second thought' means. This concept necessarily includes the expectation of speaking truth to power, and analysing and approving legislation outside of the cut-and-thrust of the House of Commons and partisan politics" (Attorney General of Saskatchewan, 2013, para 45). Long terms of Senatorial office, from this perspective, were a democratic protection against the power of the executive. Brief terms of office and increased Prime Ministerial control over the upper house, on the other hand, would change the balance of power at the federal level in a manner which "cannot be easily reconciled with either the principle of Federalism, or, to use the terms of Bill C-7, with a modern democracy" (Attorney General of Alberta, 2013, para 48), while prohibiting re-appointment would require a textual amendment to the Constitution, in order to add "has not previously been a Senator" to the existing list of eligibility criteria (Attorney General of British Columbia, 2013, para 92; Attorney General of Nova Scotia, 2013, para 38). As a concept, term limits were not fundamentally incompatible with the Senate's role as chamber of sober second thought, but determining where that distinction lay was determined to be "at heart a matter of policy. The very process of subjectively identifying a term long enough to leave intact the Senate's independence

[142] This concern of Brown's is notably absent from the Attorney General's factum, which otherwise attempts to paint the ultra-democrat Brown as sympathetic to the idea of both election and term limits for the Senate (Attorney General of Canada, 2013a, para 47-52), when he was in fact staunchly opposed to both.

engages the interests of the provinces and requires their input" (2014 SCC 32, 2014, para 82). As in the 1979 ruling, the subjectivity of Senate arrangements was what made provincial involvement so vital.

Consultative elections drew even more conceptual consideration from the interveners because of the government's need to rely on a pastiche of democratic theories to claim that the consultations were not elections, either in intent or effect, but merely a means to "inform" the Prime Minister about the "preferences of electors", and the legislation did not officially create an obligation "to appoint a nominee from the list of nominees selected for a province or territory" (Attorney General of Canada, 2012, paras 26-27). The government's position was that consultations and elections were "distinct processes" (Attorney General of Canada, 2013a, para 121-123), with the consultations closer akin to referenda, which produced formally non-binding results so as to not infringe upon the powers of the Crown (Attorney General of Canada, 2013b, para 22). Additionally, it was a strategy which asked the courts to ignore years of press releases, official statements, and even appearances before Parliament which referred to the consultations as elections either in law or by convention (Harper to "Senate Reform Act," 2011; HCC Hansard, 30 September 2011, col 1344-4; Heard, 2008; Special Senate Committee on Senate Reform, 7 September 2006).[143] The question of whether consultations were different from elections was quickly dismissed by most interveners, reasoning that, "it cannot be the case that those seeking to justify an initiative to democratize the Senate can find constitutional justification for their reform through promising never to be bound by the democratic process they so badly want and that they claim to be so uniquely legitimate" (Whyte, 2009, p. 105).[144]

The doctrine of colourability[145] was either explicitly or implicitly invoked in nearly every intervener factum, as well as both courts' final rulings. The only way for consultative elections to be constitutional, even by the government's own admission, was for the establishing legislation to be substantively ineffective; the bill had to maintain Prime Ministerial discretion, yet it had no fundamental purpose

[143] The text of Bill C-7, for example, makes extensive use of electoral terminology: "the list of Senate nominees for a province or territory [is] to be determined by an election held in the province or territory," and then the candidate who receives the most votes is "declared elected" by the chief electoral officer. ("Senate Reform Act," 2011, p. Schedule clauses 2 and 22)

[144] This quotation, although it comes from Smith's (, 2009 #2) earlier edited volume, was referenced extensively in intervener filings, in a rare case of political science influencing politics (c.f. Procureur général du Québec, 2013, para 148).

[145] The doctrine of colourability prohibits one level of government from surreptitiously legislating in an area reserved for another by masking the substance of legislation in "the formal trappings of a matter within jurisdiction, but is in reality addressed to a matter outside of jurisdiction" (Hogg, 1985, p. 322)

other than to constrain that same discretion; the principles of the unwritten constitution made it all but impossible in principle for a Prime Minister to reject the results of a consultative election (Heard Opinion on Bill C-7 in 2014 SCC 32, 2014, para 52; Attorney General of Nunavut, 2013, para 50-51; Attorney General of Ontario, 2013, para 56; Cools, 2013, para 100; Fédération des communautés francophones et acadienne du Canada, 2013, para 52; Joyal, 2013, para 103; Procureur général du Québec, 2013, pp. Vol. V, 44-45). There could be no principled reason for these contradictions other than to create a loophole through which the government could evade constitutional rules through backdoor, colourable legislation that created "a de facto elected Senate, while maintaining the veneer of an appointed Senate" (see also 2014 SCC 32, 2014, para 62; Attorney General of Ontario, 2013, para 2). The unwritten, implicit constitutional principles of federalism and democracy were invoked to give meaning to the literal text of the constitution. In this view, the federalism protected by the amending formula was an important value of Canadian democracy, and not just a structural reality that had to be accommodated. Major changes to the federal bargain, and particularly the reform of an institution which was structured by the federal principle of provinces as co-equal partners in Confederation, could not be undertaken unilaterally by only one level of government, but required national consensus because of the abstract principles it invoked.

The final two questions, regarding abolition of the Senate, provoked some of the most colourful responses from interveners because of the tactic that the government used in attempting to argue for application of the 7/50 rule for abolition instead of the unanimity rule. Because Senate abolition was not explicitly mentioned as one of the changes requiring unanimous consent, the Attorney General's factums argued that it fell under 7/50 (Attorney General of Canada, 2013a, para 113-118, 120, 127]. This logic was roundly rejected by all interveners but Alberta {Attorney General of Alberta, 2013 #754), pointing out that such an interpretation would also make it easier to abolish the Supreme Court than alter the regional composition of its bench (see also Attorney General of New Brunswick, 2013, para 62; Attorney General of Newfoundland and Labrador, 2013, para 131-134; Attorney General of Nova Scotia, 2013, para 63; Attorney General of Nunavut, 2013, para 60-62; Attorney General of Prince Edward Island, 2013, para 104-108; Cools, 2013, para 59). Written constitutions unavoidably contain gaps because they cannot contemplate all possible future amendments; it is why unwritten constitutional conventions and principles featured so prominently in the Québec Secession Reference, which similarly addressed the procedure for amendments to the Constitution which had not been included explicitly in

the amending formula. In that ruling, the Supreme Court had noted that, while "the Constitution is silent as to the ability of a province to secede from Confederation," there were unwritten constitutional principles that applied (2 SCR 217, 1998, para 84). Among the most important of these which also applied to Senate abolition were democratic and minority rights, which the court had previously ruled "cannot be divorced from constitutional obligations" (2 SCR 217, 1998, para 150), since abolition would amount to eliminating the federal principle from the legislative structure of Parliament.

As many interveners pointed out, the institutional structure of the Senate illustrates the delicate constitutional balance which exists between majoritarian democracy and the protection of minority rights under the Canadian Constitution. If the 7/50 rule applied to abolition, the very "jurisdictions in Canada which have the most immediate need of [enhanced] vocal representation in the federal law-making process" (Attorney General of Nunavut, 2013, para 65), namely the territories and Maritime provinces, would be least able to prevent a change which would bring them under pure majoritarian rule. The promise of an unelected Senate in a bicameral legislature had been "pivotal to Confederation", without which the unification of British North America would have been impossible (see also Attorney General of New Brunswick, 2013, para 68-69; Attorney General of Nova Scotia, 2013, para 64); compensatory overrepresentation of democratically underrepresented groups had been a founding purpose for the upper chamber, even if democratic understanding of what constituted an underrepresented group had expanded to include women and First Nations in the intervening years. Even the two largest provinces agreed that the Senate was "a key element of the federal bargain," and basic democratic values held that "elimination of a core institution so central to the foundation of the country should not occur without the same unanimous agreement of all of the members of the federation" (Attorney General of Ontario, 2013, para 66; see also Procureur général du Québec, 2013, para 200). Logically, this meant that abolition had to involve unanimous provincial consent, for the simple reason that the federal principle prohibited the harming of a province's constitutional interests without that province's consent (2014 SCC 32, 2014, para 36). Doing otherwise would threaten the federal principle, and harm the regions (2013 QCCA 1807, 2013). The Senate could be neither reformed nor abolished without appropriate consultation with the groups that would be most damaged by the changes, a negotiation which would necessarily confront the fuzzier aspects of representation, bicameralism and federalism in Canada, requiring greater conceptualisation of the second factor for meaningful reform by affected actors.

In the immediate aftermath of the ruling, the government attempted to paint the Supreme Court's decision as a political rather than legal one (Government of Canada, 25 April 2014), and some critics of progressive judicial interpretation have since described the ruling as one which makes the Constitution "constructively unamendable" (Albert, 2014), leaving formal constitutional amendment in Canada possible only through the courts (Glover, 2014, p. 254). Meanwhile, the government also appears to have returned to its Phase 1 strategy of non-appointment, and did not fill a single Senate vacancy after the launch of the reference case. By the end of 2014, there were eighteen vacancies in the upper house,[146] the same as there had been prior to the first prorogation crisis. Yet this time, the strategy of non-appointment did not go unchallenged; noticing that this could ultimately result in abolition through attrition, and amounted to an abrogation of the Prime Minister's constitutional responsibility to make appointments in a timely manner, as described half a century earlier by Kunz (1965, p. 57) an application was submitted requesting judicial review of the matter (CBC News, 15 December 2014). Although the suit became moot when the government lost power in the 2015 election, the ability to challenge the government's Senate reform policy on a conceptual level was a major development resulting directly from the increased dialogue involved in the Supreme Court challenge; the same policy which, during Phase 1, had gone unnoticed by elites and academics alike, now brought widespread national attention to its constitutional consequences.

The government's claims about the rules for change and conceptual understanding of the upper house were no different in Phase 3 than they were in Phase 1, yet the entire process was allowed to stretch on for over eight years in all. The only effective veto players, the provinces, had little recourse to stop the process prior to the launch of the Québec Court of Appeals and Supreme Court reference cases. Yet it was at this time, when forced to explain why the government's strategy was unconstitutional, that some of the provinces began to explore the broader underlying issues at work in Senate reform: federal principles, democratic representation, and bicameral purpose. The intervener factums in the Supreme Court case stand as the closest that Canadian elites have come to having a broad conversation about the purpose and function of the Senate since Confederation, and may prove

[146] Total vacancies by province as of January 2015 were: British Columbia 1; Manitoba 3; Ontario 5; Québec 4; New Brunswick 2; Nova Scotia 2; and Prince Edward Island 1

useful in future academic research on the Senate, as well as attempts at reform through informal changing of constitutional convention.

8.5 Discussion

This chapter has shown the futility of attempting to engage in upper house reform when both factors for meaningful reform are absent. The most recent instance of attempted upper house reform in Canada is the most perplexing case examined in this study. Neither of the necessary factors for meaningful upper house reform were present, and this was not through oversight or misidentification of important preconditions, but a deliberate choice of strategy meant to subvert the formal rules for change. The constitution's amending formula was clear about how much the federal government could do to the upper house without provincial consent, yet the government continually pushed this boundary. The reform bills' objectives were largely unchanged from the Triple-E plans of the Meech and Charlottetown era, meaning that the government was attempting to reshape the Senate without a clear understanding of what the chamber should look like or even the overarching purpose of reform. In fact, lack of clarity was a major component of the government's overall strategy in pursuing reform, because of the process it had chosen to pursue by seeking to exclude key veto players; so long as effects of the proposed legislation were unclear, the government could continue to claim that the changes were not substantive enough to constitute amendment to the composition of the upper house.

The government's prioritization of avoiding provincial involvement makes its inflexibility and unwillingness to explore alternative options for non-constitutional reform all the more perplexing. During Phase 2 of reform, the Prime Minister had the opportunity to establish constitutional convention in his choice of appointments, but chose instead to appoint strictly along party lines, and without advice from an independent advisory commission, as had been suggested in committee. It would be unilateral constitutional reform or nothing, as there was no contingency plan with alternatives to the legislative route, which both the Senate and Québec government had already questioned on constitutional grounds. Even though the Québec provincial government had consistently said that it would challenge the constitutionality of unilateral Senate reform from the very first bill presented to Parliament, the government did nothing to establish constitutionality of either its term limit or consultative election legislation until hearings had already started in the Québec Court of Appeals. Instead, the government

tabled nearly identical legislation over and over again, as though expecting provinces' constitutional objections to simply go away rather than multiply and become more vehement over time.

That the reform process was allowed to go on for so long reinforces just how serious the lack of knowledge about the Canadian Senate had become among both political elites and academics in Canada. Twice, the Prime Minister was able to carry on with unconstitutional strategies that had significant constitutional implications beyond the Senate – first, for the entirety of Phase 1 in a policy of non-appointment, gathering eighteen empty seats because he refused to appoint "unelected" Senators, and second, at the start of Phase 2 by swamping the chamber when it appeared as though he might lose power, even though he could not show that he commanded the confidence of the Commons at the time. In both cases, this was allowed to occur with no apparent objections from either scholars or fellow politicians, who were more concerned about blocking the statutory changes that the government was attempting to push through than they were about what the government was already doing. Yet the Supreme Court reference case appears to have been a game-changer, both in this particular instance of attempted reform, and for Canadian Senate reform in general. After the Court's ruling at the end of Phase 3, a return to the flawed strategy of non-appointment in Phase 1 was directly challenged on the grounds of its unconstitutionality in a manner which had not been considered during Phase 1.

The unilateral attempts at Senate reform between 2006 and 2014, despite their failure and ultimate futility, offer valuable insights for both scholars and elites, all of which underscore the importance of the two key factors for meaningful upper house reform as correlated phenomena. First and most importantly, the rules for change matter. Formal rules cannot be changed at-will simply because it is too difficult to reach the required level of consensus. Second, this means that reform through informal mechanisms may be particularly worthwhile to explore, especially if the barriers to formal reform are high. As the example of the Life Peerages Act from the UK shows, sometimes relatively small statutory can have the largest effects, if they are well-designed through adequate process tracing of likely consequences. The government had been given options for non-constitutional change that would have improved the Senate appointments process without inciting constitutional crisis (Special Senate Committee on Senate Reform, 7 September 2006, 26 October 2006), yet chose to continue its pursuit of broad, formal reform without the involvement of key veto players. This leads into the third key lesson, that proper process tracing to identify likely outcomes of changes is key; when the possibility for statutory change is limited, it is all that much more important to be textually

parsimonious, yet conceptually broad. Knowing the rules for reform and the likely consequences of change are both vital to the success of meaningful reform ventures. With the 2014 Supreme Court reference case, Canada finally reached the same point that the UK had reached nearly a century earlier with the Bryce Commission report on upper house reform; it remains to be seen whether the dialogue initiated by the reference case will go the same way as the conclusions from Bryce, or whether they will prove useful in future attempts at reform through non-constitutional means.

9 Conclusion

Even studies of reforms to the House of Lords, which have with only a single exception always succeeded once the issue reached Cabinet's agenda, note how the reform issue "has never been satisfactorily resolved [and] even those reform attempts which have resulted in legislation have not often fulfilled the objectives of… reformers" (Ballinger, 2006, p. 349). This study has sought to explain this phenomenon of unsatisfactory reform through examination of each time a credible attempt was made at upper house reform in both the United Kingdom and Canada, in order to identify the factors which affect the capacity for meaningful reform. Meaningful upper house reform – defined as significant and noticeable change to the powers, role, or composition of the second chamber – is distinguished from both general institutional tweaking and significant changes that produce unintended consequences, by actually succeeding in producing the specific and self-recreating institutional changes that were actually intended by reformers. This qualification means that, while the Parliament and House of Lords Acts were technically successful, they did not hold the meaningfulness that reformers wanted, and ultimately proved unsatisfactory.

Throughout all instances of attempted significant upper house reform examined in this study, two themes emerge, which this work hypothesises are the key factors for meaningful reform, or independent variables. The presence or absence of each factor has implications for the other, and for the process at large. First, meaningful reform requires that elites must have a proper understanding of the written and unwritten rules for change. Misunderstandings of unwritten rules as being more complex than they are can insert unnecessary delays into the process while they wait for what they believe to be necessary preconditions, and jeopardise the chances of success. Delay then often means having to opt for less ambitious changes as a result of decreased parliamentary time. At the other end of the spectrum is the error of attempting to reinterpret the written rules for change as being less complex than they are. While it may be tempting to reinterpret the rules in a manner that facilitates change, this is ultimately counterproductive, because written rules create competing veto players that are unlikely to consent to being eliminated from the process, and may lead to wasted time in pursuit of untenable objectives.

A major implication of this first factor is that the rules for change may make ideal reforms too difficult to achieve, which leads to the importance of the second factor. Meaningful reform also requires

that reformers understand the institution that they are attempting to change in a conceptual rather than purely legalistic manner, identifying plausible links between their proposed changes and desired outcomes. This involves identification of the institution's basic purpose, fundamental functions, and place in the overall system of governance. The more that a clear link can be drawn between limited textual change and functional outcomes, the more likely meaningful reform is to succeed. Otherwise, even technically successful instances risk having the reforms prove to be unsatisfactory for reformers' objectives, or the reforms could even backfire, inadvertently creating conditions that actually worsen reformers' complaints against the institution, or cause an entirely new set of problems. While this does not guarantee the success of meaningful change, because this factor is not invoking a path-dependent and deterministic model for change, it increases the likelihood simply due to the benefits of better planning. It is important for reformers, faced with the reality of existing written and unwritten rules for change, to prioritise and then distill a set of objectives into their core values which would be engendered by specific institutional changes.

The absence of one factor can harm the chances of success, or increase the chances for unintended consequences, while an absence of both factors makes meaningful reform nearly impossible to achieve. This hypothesis contributes to the growing literature showing that institutional reform does not require exogenous shocks, but can occur gradually, with or without formal statutory reform to the factors which are changing. In fact, this study found that reform through crisis, as in the exogenous shock model, actually harms the likelihood for meaningful reform because either waiting for crisis can lead to unnecessary delays, or planning in response to rapidly changing temporal concerns leads to a solution that satisfies few of the necessary veto players in the long run.

9.1 The Record of Reform: A Summary

The upper houses of the United Kingdom and Canada are two of the oldest democratic senates in the world. Chapter 2 traced the historical origins of these two upper houses, starting with the House of Lords' origins in the rudimentary associations and abstract pre-Normal values about consent of the governed, through the split of Parliament into two separate bodies, to the zenith of the chamber's power during the Regency era in the early nineteenth century. The Canadian Senate was then presented as a deliberate institutional innovation, responding to concerns about both the House of Lords and the neighbouring American Senate, which first combined the principles of bicameralism with federalism. It

shows how, while the House of Lords was a by-product of historical accident and happenstance, the Canadian Senate emerged from very different circumstances, of extensive debate and careful design. Yet despite these vastly different origins, the two chambers ultimately came to have many of the same accusations levelled against them during the twentieth century, as shown by the following chapters.

Chapter 3 provided an overview of existing literature about the two chambers examined in this study, as well as the literature on bicameralism and institutional reform. It showed how bicameralism as a topic is generally understudied in political science, and lacks a concrete theory. Despite some broad cross-national trends, like a tendency for federal states or former British colonies to adopt bicameralism, both scholars and elites are unclear on why, exactly, states adopt bicameral legislatures, and what values the embody or functions they perform. The closest that academics have come is what Riker (1992, p. 113) calls the "normative justification for bicameralism", or a functionalist explanation of deliberate redundancy and a built-in mechanisms for quality control. The literature overview then turned to evaluate the two main competing models for institutional change – the change by exogenous shock model, and the change by endogenous modification model. These two theories figured prominently throughout this study, typically as implicit models informing the strategic choices of key players.

In the first of the main analytical pieces, Chapter 4 looked at how an implicit model of reform by exogenous shock actually led to unnecessary delays in attempts to pass the Parliament Acts of 1911, 1949, and the Parliament Bill of 1968-69. As the governments waited for what they believed were inevitable and necessary crises to create openings for reform, believing that crisis would create popular and political consensus for broad change, they were leaving for themselves less time for getting their reform legislation passed. The first two times, this gambit did not jeopardise the entire process, as the governments ultimately succeeded in passing legislation to limit the Lords' veto powers, yet their inadequate understanding of the institution and of the likely consequences that reducing the Lords to a suspensive veto would have upon the behaviour of those within the institution led to a suboptimal solution that satisfied few reformers. The final time a further limitation of the suspensive veto was attempted, in the late 1960s, the delays proved too costly for a suboptimal bill that nobody wanted, and the entire reform attempt failed. The Parliament Acts and Bill were also hampered by a flawed conceptualisation of the upper house and the likely consequences of change; rather than restrict the Lords' capacity to challenge the lower house, the move to the suspensive veto actually emboldened the

upper house, making it more willing to challenge the Commons because the veto could be overridden, and therefore its use was less consequential than an absolute veto had been.

Chapter 5, on the other hand, looked at a completely different scenario, in which a very limited yet carefully designed reform was able to bring about the exact changes that had been desired by reformers, in the Life Peerages and Peerage Acts of 1958 and 1963. Even though their overall objectives had to be pared down due to time constraints and fear of filibustering from the opposition, they were able, through careful process tracing, to determine the changes most likely to result in a self-replicating process that would engender the types of long-term behavioural effects that reformers wanted. The Life Peerages and Peerage Acts are the most often overlooked by other studies of the House of Lords, yet this chapter showed that they were the most meaningful changes of all the instances examined in this study because of the presence of both factors for meaningful reform. The textual effects of both Acts may have been limited, but their main objective was to change the basis for admission to the upper house, changing it from primarily hereditary to merit, with the side-effect of legitimating the remaining hereditary membership, and in that case it was an unmitigated success.

In the final chapter dealing with attempted reform of the House of Lords, Chapter 6 examined what happens when the strategy is sound, but conceptualisation is flawed, in the case of the 1999 House of Lords Act. The government was strategic about its reform process, seeking to minimise unnecessary delays without excluding any potentially vital veto players, yet neglected to closely examine its motivations, or identify any objectives beyond the highly symbolic change of Stage 1. This oversight allowed for the process to be hijacked by a single actor who was misidentified by the government as a potential veto player, and repurposed into a reform that actually improved the legitimacy of the remaining hereditary peers in the upper house. It also made it nearly impossible for the government to pursue broader reform in Stage 2, because the change from Stage 1 had not only failed to create a better context for a second round of reforms, but actually improved the existing situation to a degree that would be difficult to replicate if the government's textual objectives for Stage 2 were to be accomplished. The House of Lords act highlights the importance of the second factor for reform, in making sure that reform is actually meaningful in the manner that its designers intend.

Chapter 7, the first of the two chapters dealing with attempts at reforming the Senate of Canada, looked at the ups and downs during the era of megaconstitutional politics, when the promise of Senate reform was used as a means of sweetening the constitutional deal for reticent provinces. Traditional

accounts have underplayed the role that the Senate plan had in leading to the defeat of Charlottetown and Meech, but this chapter argued that the absence of much conceptual debate over the proper nature and role of the Canadian Senate contributed to the difficulty in achieving meaningful reform during this era, and would have undoubtedly resulted in suboptimal outcomes if it had passed. The government followed all of the necessary rules for change, without adding any unnecessary barriers to potential success, yet the plans were focussed more on placating potential veto players than they were on constructing a useful legislative chamber. Elites were unable to coalesce around support for a single consensus because the Senate was treated as a deal to be tweaked whenever a province appeared ready to leave the negotiations. The megaconstitutional Senate, and its origins in the Triple-E model for Senate reform, had no conceptual underpinnings aside from a very rudimentary equation of elections with democracy, while equality of seat distribution with fairness.

Finally, Chapter 8 looked at what happens when neither of the two necessary factors for meaningful reform are present, with the attempts between 2006 and 2014 to implement unilateral reforms upon the Senate of Canada. While looking much like the megaconstitutional era in terms of objectives, the strategy was a direct response to the national unity problems caused by the failure of the megaconstitutional era, and a desire to effect change without admitting provincial involvement. The general dearth of conceptual thought about the Canadian Senate, among either elites or academics, allowed for the government to pursue two unconstitutional strategies in its bid to reform the Senate through statutory means, first by refusing to make any new Senate appointments during Phase 1 and then by flooding the upper house with new members at a time when the Prime Minister was unable to prove that he commanded the confidence of Parliament at the start of Phase 2, but it did not make the government's chances for success any greater. The plan never had any credible chance of success, despite the government proceeding as if it did; it took eight years and a Supreme Court reference case before the government finally backed down, but in the course of that process, the provinces were finally forced to participate in a dialogue about the Senate, and its role in a federal system of government with a bicameral parliament, in a manner unseen since Confederation. While the instance stands as the only case of complete failure to effect any sort of meaningful reform to the upper house, intentionally or unintentionally, it nevertheless could prove to be suitable groundwork for future, better informed attempts at changing the upper house within the confines of existing rules.

9.2 Suggestions for Future Research

The most natural extension of this work which would be fruitful for study in the future would be expanding this study beyond Canada and the United Kingdom, to further test the hypotheses for factors of meaningful upper house reform and their ability to travel beyond the unelected Westminster parliamentary democracies. The United States and New Zealand offer two more Anglo-American examples of upper house reform, while Norway and Iceland would test this beyond the Anglo-American sphere.

In the United States, decades of attempts to reform the selection method of Senators finally culminated in the passage of the Seventeenth Amendment of 1913. A preliminary examination would appear to reinforce the conclusions of this study: attempts by progressive reformers to change from appointment by state legislatures to direct election of Senators failed repeatedly throughout the nineteenth century because they were blocked by the existing Senate, which benefitted from the status quo (Farrand, 1904; Haynes, 1906, 1911; Phillips, 1906; Pope & Treier, 2011). Change only came when it seemed as though reformers had enough support at the subnational level to initiate a constitutional conference independently of the federal Congress (Zywicki, 1994, pp. 1015-1020). Fearing that a constitutional conference would have the undesirable effect of reopening the entire constitution for renegotiation, Congress suddenly capitulated and passed the Seventeenth Amendment for direct election of Senators in an act of preventive reform (Dahl, 2003, p. 28; Zywicki, 1994, pp. 10121-10126). However, despite the success of the progressive movement with the Seventeenth Amendment, the change did not have the desired effects, eventually resulting in the same underlying problem of unrepresentativeness that had plagued state-made Senate appointments (Dahl, 2003, pp. 144-145; Zywicki, 1997).

New Zealand had an upper house modelled after the House of Lords from 1853 to 1950, until it was abolished. The story behind the abolition has been documented in WK Jackson's (1972) history of the New Zealand Legislative Council, in which it is described as a process which was achievable only "by keeping abolition and unicameralism distinct" (Jackson, 1972, p. 197). This would appear to indicate that, while the first necessary factor for meaningful reform was present, and the government was approaching abolition strategically, the second factor was likely absent, and the long-term implications of a switch to unicameralism were not fully explored.

Other countries beyond the Anglo-American democracies also provide further opportunities for theory refinement by identifying phenomena which exist across different institutional settings, particularly the Scandinavian countries which have experience with transition from bicameralism or semi-bicameralism to unicameralism. Until 1991, Iceland's 63-member Icelandic Althingi would divide in two after election, with one third of its members entering the Upper Chamber, and two thirds remaining in the Lower Chamber. Until 2009, the 169-member Norwegian Storting would select one quarter of its members to sit in the Lagting, which was to function as an upper house, while the rest would form the Odelsting, a lower house. Both chambers have since transitioned from de facto bicameralism to formal unicameralism. It could prove valuable to take a closer look at the two necessary factors for meaningful reform in the context of these two cases.

9.3 Final Words

Despite continued eagerness on the part of British and Canadian elites to reform their respective upper houses, the content of these proposed changes, as well as the motives behind the reforms, rarely receive adequate attention from either reformers or academics. Institutions have a profound effect upon actor behaviour, policy options, and quality of governance, yet the upper house reforms seen in the United Kingdom and Canada are often ad hoc solutions chosen for ideological or strategic reasons as opposed to carefully designed plans for institutionalizing principle and theory. Although a wide public debate about the options for upper house reform would likely be counterproductive, there is still a need for the elites who control the reform agenda to be aware of the democratic implications of various institutional arrangements. Senates are central institutions of governance; their reform is about much more than the upper house, and should not be taken lightly.

Works Cited

Archival Material

CAB 1/7. (7 September 1909). *Effect of the Rejection of the Finance Bill by the House of Lords, Confidential Memorandum by Sir George Murray*. Westminster.

CAB 21/3721. (4 November 1955). *Letter from Sir Norman Brook to PM Anthony Eden*. Westminster: The National Archives.

CAB 27/562. (December 1933). *House of Lords Reform Cabinet Committee*. Westminster.

CAB 37/103/24. (22 June 1910). *Cabinet Memorandum*. Westminster.

CAB 41/38/1. (15 November 1910). *Letters from the Prime Minister to the Sovereign re: Cabinet Business*. Westminster: The National Archives.

CAB 124/1123. (1953). *Reform of the House of Lords, Note by Lord Llewellin*. Westminster.

CAB 128/10. (7 August 1947). *Cabinet Conclusions*. Westminster.

CAB 128/46/17. (28 June 1966). *Cabinet Minutes, Confidential Annex*. Westminster.

CAB 129/13. (15 October 1946). *Memorandum by the Leader of the House of Lords, "Amendment to the Parliament Act"*. Westminster.

CAB 130. (9 January 1968). *Inter-Party Conference, 7th meeting*. Westminster.

CAB 130. (12 December 1967). *Inter-Party Conference, 4th Meeting*. Westminster.

CAB 130. (28 November 1967). *Inter-Party Conference, 3rd meeting*. Westminster.

CAB 130/37. (3 March 1948). *Party Leaders' Conference, Third Meeting*. Westminster.

CAB 130/340. (29 December 1967). *Note by the Secretary, Memorandum on A Two Tier House of Lords*. Westminster.

CAB 130/357. (11 January 1968). *Memorandum by the Secretaries, Two Tier Scheme: Re-admission to Voting Rights*. Westminster.

CAB 130/359. (29 March 1968). *Memorandum by the Lord Privy Seal, the Earl of Jellicoe and the Lord Byers; Selection of Cross-Bench Life Peers and Review of the Working of the House of Lords After Reform*. Westminster.

CC 10(69)2. (27 February 1969). *Cabinet Conclusions*. Westminster: The National Archives.

CC 12(69)1. (12 March 1969). *Cabinet Conclusions*. Westminster: The National Archives.

CC 18(69). (16 April 1969). *Cabinet Conclusions*. Westminster: The National Archives.

CC 22(61)3. (20 April 1961). *Cabinet Memorandum*. Westminster: The National Archives.

CC 26(53)4. (14 April 1953). *Cabinet Memorandum*. Westminster: The National Archives.

CC 26(53)4. (26 April 1953). *Cabinet Memorandum*. Westminster: The National Archives.

CC 32(66)2. (28 June 1966). *Cabinet Conclusions, Confidential Annexe*. Westminster: The National Archives.

CC 46(61)4. (1961). *Cabinet Memorandum*. Westminster: The National Archives.

CC 49(68)3. (5 December 1968). *Cabinet Memorandum*. Westminster: The National Archives.

CC 63(53)5. (5 November 1953). *Cabinet Conclusions* Westminster: The National Archives.

CC 84(57)5. (12 December 1957). *Cabinet Memorandum*. Westminster: The National Archives.

CC 150/52/5. (30 December 1952). *Cabinet Conclusions*. Westminster: The National Archives.

CC (53)114. (23 March 1953). *Marquess of Salisbury, Cabinet Memorandum*. Westminster: Parliament.
CC (61)74. (14 December 1961). *Cabinet Memorandum*. Westminster: The National Archives.
CC (69)37. (February 1969). *Parliament (no. 2) Bill, memorandum by Gardiner*. Westminster: The National Archives.
CM 9(48)1. (2 February 1948). *Cabinet Memorandum*. Westminster: The National Archives.
CM 28(48)5. (15 April 1948). *Cabinet Memorandum*. Westminster: The National Archives.
CM 60(40)2. (20 June 1946). *Cabinet Minutes*. Westminster: The National Archives.
CM 87(47)3. (13 November 1947). *Cabinet Memorandum*. Westminster: The National Archives.
CM 4534. (20 January 2000). *A House for the Future: Royal Commission on the reform of the House of Lords*. Westminster: Cabinet office Retrieved from https://www.gov.uk/government/publications/a-house-for-the-future-royal-commission-on-the-reform-of-the-house-of-lords.
CM 5291. (7 November 2001). *The House of Lords: Completing the Reform*. Westminster: Parliamentary Command Papers Retrieved from http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/constitution/holref/holreform.htm.
CM 7027. (February 2007). *The House of Lords: Reform*. (CM 7027). Westminster: White Paper.
CM 7170. (3 July 2007). *Green Paper: The Governance of Britain*. Westminster: Parliamentary Command Papers.
CM 7438. (14 July 2008). *An Elected Second Chamber: Further Reform of the House of Lords*. (CM 7438). Westminster: White Paper.
CM (47)80. (14 October 1947). *Cabinet Minutes, Confidential Annex*. Westminster.
CM (48) 9. (4 February 1948). *Conclusions, Item I*. Westminster.
Cmd 3799. (1968). *White Paper: House of Lords Reform*. Westminster: Parliamentary Command Papers.
Cmd 7380. (May 1948). *Parliament Bill, 1947: Agreed statement on Conclusion of Conference of Party Leaders February-April 1948*. Parliamentary Command Papers.
Cmd 9038. (April 1918). *Conference on the Reform of the Second Chamber*. Westminster: Parliamentary Command Papers.
CP 14/03. (2003). *Constitutional Reform: Next steps for the House of Lords*. The National Archives.
CP 27(26). (1927). *Recommendations from the Cabinet Committee Report*. Westminster.
CP 146(25). (March 1925). *House of Lords Reform, Secret Memorandum by the Lord Chancellor, Lord Cave*. Westminster.
CP 4039. (June 1922). *Scheme for the Reform of the House of Lords, Memorandum by the Secretary of State for Foreign Affairs, Lord Curzon*. Westmisnter.
CP (46)376. (11 October 1946). *Cabinet Papers*. Westminster: The National Archives.
CP (46)382. (15 October 1946). *Cabinet Papers*. Westminster: The National Archives.
CP (47) 299. (28 October 1947). *Cabinet Papers*. Westminster.
FO 1109/350. (13 December 1956). *Memorandum by the Lord President of the Council (CP/56/275)*. Westminster.
FO 1109/350. (16 May 1956). *Memorandum for Lord Privy Seal RA Butler*. Westminster: The National Archives.
FO 1109/350. (22 April 1961). *Memorandum from Prime Minister Macmillan*. Westminster: The National Archives.

FO 1109/350. (22 May 1957). *Extract from Conclusions of a meeting of the Cabinet*. (CC/57/42). Westminster.
FO 1109/350. (March 1956). *Memorandum from Marquess of Salisbury*. Westminster: The National Archives.
FO 1109/360. (31 July 1961). *Letter from J Boyd-Carpenter to RA Butler*. Westminster.
FO 1109/362. (21 July 1961). *Letter from RA Butler to Viscount Hailsham*. Westminster.
HL 265. (3 November 2006). *Conventions of the UK Parliament*. (HL 265, HC 1212). Retrieved from http://www.publications.parliament.uk/pa/jt200506/jtselect/jtconv/265/265.pdf.
HL (25) 3rd Cons. (4 November 1925). *Secret: Draft Conclusions of Meeting of the Committee held in the Lord Chancellor's Room, House of Lords, on Wednesday, November 4th, 1925 at 3.30pm*. Westminster.
HL (25) 25. (7 March 1927). *House of Lords Reform Committee Draft Resolutions, Secret note by the Lord Privy Seal*. Westminster.
HL/PO/1/477/42. (23 June 1966). *Memorandum by the Lord Chancellor and the Lord Privy Seal*. Westminster.
HL/PO/1/477/46. (25 July 1957). *Lord Hailsham to the Lord President*. Westminster.
HL/PO/1/616/3. (9 July 1956). *Document 10: Gen 541/1st meeting, Cabinet Committee on House of Lords Reform, Conclusions*. Westminster: Parliamentary Archives.
HL/PO/1/616/3. (13 June 1956). *Document 8: Conclusions of Second Official Meeting, House of Lords Reform Committee*. Westminster: Parliamentary Archives.
HL/PO/1/616/3. (1956). *Document 6: House of Lords Reform, Draft Memorandum by the Lord President of the Council*. Westminster: Parliamentary Archives.
HL/PO/1/616/4. (June 1956). *Notes on New Peerages and Attendance, Scottish Representatives, and Union with Ireland*. Westminster.
HL/PO/300/15. (24 April 1927). *House of Lords Reform, Interwar Years: Memorandum by the Secretary of State for Dominion Affairs and the Colonies*. Westminster: Parliamentary Archives.
HL/PO/CP/1/2/2. (4 August 1967). *PL(67) 9, Cabinet Ministerial Committee on Powers of the House of Lords*. Westminster: Parliamentary Archives.
HL/PO/CP/1/2/2. (28 March 1967). *PL(67) 2, Report of the Official Committee: The Powers of the House of Lords Over Legislation, by George Coldstream*. Westminster: Parliamentary Archives.
HL/PO/CP/1/2/3. (7 March 1969). *PL(69) 4, Parliament (no. 2) Bill, Memorandum by the Lord Chancellor*. Westminster: Parliamentary Archives.
HL/PO/CP/1/2/5. (8 September 1967). *Misc 154(67)6, Composition of the House of Lords, Memorandum by the Lord Chancellor*. Westminster: Parliamentary Archives.
HL/PO/DC/CP/30/8. (December 1957). *Note on the position of hereditary peeresses*. Westminster: Parliamentary Archives.
HL/PO/JO/5/2/150. (1956). *Attendance Sheets of the House of Lords, 1956*. Parliamentary Archives Retrieved from http://lifepeeragesact.parliament.uk/lifePeeragesAct/detail.php?id=92.
HL/PO/LB/1/23/1. (undated). *Schemes for the Reform of the House of Lords, XIXth and XXth Centuries*. Unpublished manuscript: Parliamentary Archives.
HO/392/1. (17 April 1957). *Committee Memorandum to Lord Home*. Westminster: Parliamentary Archives.
JL 69 A3 1969 A12. (12 February 1969). *Second meeting. Fundamental rights and reform of federal institutions; comprehensive review of the Constitution: Conclusions of the meeting*. Ottawa:

Parliament of Canada Retrieved from http://www.parl.gc.ca/parlinfo/compilations/constitution/ConstitutionalConferences.aspx.
LH/2/13. (2 December 1957). *The Hereditary Element in the House of Lords*. Westminster.
LH/2/13. (12 December 1957). *Notes on Amendments - House of Lords, by Lord Airlie*. Westminster.
LH/4/1. (9 January 1948). *Letter from CW to Lord Addison regarding Parliament Act amendment bill*. Westminster: Parliamentary Archives.
LH/4/1. (10 January 1948). *Letter from CW to Lord Addison regarding Parliament Act amendment bill*. Westminster: Parliamentary Archives.
LH/4/1. (22 February 1957). *Peers' Attendance at Sittings of the House, compiled by Francis Lascelles*. Westminster.
LH/4/15. (8 January 1956). *Report by the Select Committee on the Powers of the House in Relation to the Attendance of its Members*. Westminster.
Nicolas, S. H. (1834). *A Letter on the propriety and legality of creating Peers for life; addressed to the Duke of Wellington* (Third Edition ed.). London: William Pickering.
PA/HL/LH/4/16. (17 June 1954). *Letter from Sir Charles Hendricks to Lord Salisbury*. Parliamentary Archives.
PA/HL/PO/1/477. (18 May 1966). *Personal letter, Chief Whip Lord Shepherd to Longford*. Westminster: Parliamentary Archives.
PA/HL/PO/1/477. (19 May 1966). *Lords Reform*. Westminster: Parliamentary Archives.
PA/HL/PO/1/477/67. (4 March 1969). *Cabinet Conclusions*. Westminster: Parliamentary Archives.
PA/HL/PO/1/608/5. (6 March 1962). *Memorandum on Peeresses in their Own Right*. Westminster: Parliamentary Archives.
PA/LH/4/2. (1 April 1935). *Cabinet Political Committee, minutes of 6th meeting*. Westminster: Parliamentary Archives.
PA/LH/4/24. (8 May 1953). *GEN 432*. Westminster: Parliamentary Archives.
PA/ST/168. (1952). *Letter from Lord Exeter*. Westminster.
PA/ST/168. (1956). *Memoranda by Exeter and the Lord Chancellor*. Westminster: Parliamentary Archives.
PO 300/1. (1 July 1908). *Suggestions with Regard to Official and Life Peerages*. Westminster.
PO 300/15-17. (18 February 1926). *Strictly Confidential: Report of Second Chamber Executive Committee*. Westminster.
PO/300/6. (2 October 1917). *Second Chamber Conference, Minutes of Proceedings*.
PO/300/7. (5 October 1917). *Second Chamber Conference, 2nd Sitting*.
PO/300/8. (22 October 1917). *Note by Lord Lansdowne on the Reconstitution of the Second Chamber*.
PO/300/11. (14 November 1921). *Adjustment of Differences. Proposed joint sitting of both houses.* Westminster: Parliamentary Archives.
PO/300/11. (26 October 1921). *Meeting Minutes*. Westminster: Parliamentary Archives.
PO/300/12. (14 June 1922). *Scheme for Reform of the House of Lords*. Westminster: Parliamentary Archives.
S (4) 187/1-12. (April 1943). *Papers of the Fourth Marquess of Salisbury*. Hatfield House.
S(4) 239/7-9. (1 March 1910). *Memorandum*. Hatfield House: Salisbury Papers.
S(4) 239/7-9. (undated (1911?)). *Regarding Direct Election*. Hatfield House: Salisbury Papers.
SAM/A/30. (17 December 1912). *Confidential Cabinet Memorandum: Suggestions for a Second Chamber constituted mainly by indirect election*. Westminster: Parliamentary Archives.

SAM/A/30. (24 November 1913). *Confidential Cabinet Memorandum: Reconstitution of the Second Chamber*. Westminster: Parliamentary Archives.
WHE/2/4. (6 April 1967). *Ministerial Committee on Powers of the House of Lords, Memorandum by the Chief Whip, House of Lords*. (PL(67)3). Westminster: Parliamentary Archives.
WHE/2/4. (1967). *MISC170 Papers on Parliament (no. 2) Bill, Collected by Michael Wheeler-Booth*. Westminster.
WHE/2/6. (5 July 1968). *Ministerial Committee on the House of Lords, Draft Report, Note by the Secretaries*. Westmisnter.
WHE/2/7. (8 July 1968). *Cabinet Minutes*. Westminster: Parliamentary Archives.
WHE/2/7. (15 April 1969). *Cabinet Memorandum*. (PL(69) 4th meeting). Westminster: Parliamentary Archives.
WHE/2/7. (23 September 1968). *Cabinet Minutes*. Westminster: Parliamentary Archives.

Primary Document Collections

Ajzenstat, J., Gentles, I., & Romney, P. (Eds.). (2003). *Canada's founding debates*. Toronto, Ont.: University of Toronto Press.
Browne, G., & Pope, J. (1969). *Documents on the confederation of British North America : a compilation based on Sir Joseph Pope's Confederation documents supplemented by other official material*. Toronto; Montreal: McCelland and Stewart.
Raina, P. (2011). *House of Lords reform: A history*. New York: Peter Lang.

Government and Parliamentary Publications

BP-283E. (January 1992). *The Constitution of Canada: A brief history of amending procedure decisions*. Ottawa: Library of Parliament Retrieved from publications.gc.ca/Collection-R/LoPBdP/BP/bp244-e.htm.
Bundesrat (Hsrg). (1979). *30 Jahre Bundesrat 1949-1979. Beiträge zum dreißigjährigen Bestehen des Bundesrat*. Bonn.
Fournier, J. M. (2007). *Parliamentary Reform: Working Document : Proposals of the Government House Leader and Minister Responsible for Parliamentary Reform*. Québec: Assemblée nationale du Québec Retrieved from http://books.google.ca/books?id=ZNYRcgAACAAJ.
Gouvernement du Québec, & Pelletier, B. (4 June 2008). *Intervention de M. Benoît Pelletier devant le Comité législatif de la Chambre des communes chargé de l'étude du projet de loi C-20*. Ottawa: Gouvernement du Québec.
Government of Alberta. (March 1985). *Strengthening Canada, Reform of Canada's Senate*. Edmonton.
Government of Canada. (28 August 1992). *Consensus Report on the Constitution*. Charlottetown: Government of Canada Retrieved from https://www.saic.gouv.qc.ca/publications/Positions/Part3/Document27_en.pdf.
Government of Canada. (1987). *1987 Constitutional Accord (Meech Lake Accord)*. Retrieved from http://www.parl.gc.ca/Content/LOP/researchpublications/bp406-e.pdf.
Government of Canada. (1990). *Final Communique, Federal-Provincial Conference of First Ministers on the Constitution, Ottawa, June 9-10, 1990*. (JL 69 A3 1990 June A13). Ottawa: Government of Canada Retrieved from http://books.google.com/books?id=x9_voAEACAAJ.
Government of Canada. (1991). *Shaping Canada's Future Together*. Ottawa: Queen's Press.

Government of Ontario. (1990). *Report on the 1990 Constitutional Agreement*. Toronto: Legislative Assembly of Ontario Retrieved from http://archive.org/stream/reporton1990cons00onta/reporton1990cons00onta_djvu.txt.
Senate Reform, (2006).
HC 171. (9 December 2002). *House of Lords Reform: First Report*. (HL 97, HC 171). Westminster Retrieved from http://www.parliament.the-stationery-office.co.uk/pa/jt200203/jtselect/jtholref/17/17.pdf.
HC 494. (12 February 2002). *Fifth Report*. Westminster Retrieved from http://www.publications.parliament.uk/pa/cm200102/cmselect/cmpubadm/494/49402.htm.
HC 668. (29 April 2003). *House of Lords Reform: Second Report*. (HC 668, HL Paper 97). Westminster Retrieved from http://www.parliament.the-stationery-office.co.uk/pa/jt200203/jtselect/jtholref/97/97.pdf.
HC Hansard. (2 December 1909). House of Lords (Refusal to Pass Finance Bill). *13*, cc546-581.
HC Hansard. (2 December 1998). Prime Minister Engagements. *321*, cc874-882.
HC Hansard. (4 May 1965). House of Commons Debates.
HC Hansard. (12-26 February 1969). Debates. *Vol 777*.
HC Hansard. (12 February 1958). Life Peerages Act. *Vol 582*.
HC Hansard. (17 April 1969). Parliament (no. 2) Bill. *Vol 781*.
HC Hansard. (18 September 2003). Debates. *Vol 410*.
HC Hansard. (24 November 1998). Debates. *Vol 321*.
HC Hansard. (25 March 1958). Life Peerages Act. *Vol 585*.
HC Hansard. (29 January 2003). Debates. *Vol 398*.
HCC Hansard. (3 October 2011). Debates. *Vol 146*(col 24).
HCC Hansard. (7 May 2007). House of Commons Debates: 39th Parliament, 1st Session. *Vol 141*(col 148).
HCC Hansard. (12 June 1978). Debates. *Vol 6*.
HCC Hansard. (24 September 2011). House of Commons Debates: 41st Parliament, 1st session. *Vol 146*(col 24).
HCC Hansard. (27 February 2012). House of Commons Debates: 41st Parliament, 1st Session. *Vol 146*(col 84).
HCC Hansard. (30 April 1906). Debates. *Vol 2*.
HCC Hansard. (30 September 2011). House of Commons Debates: 41st Parliament, 1st session. *Vol 146*(col 24).
Heard, A. (2008). *Constitutional Doubts about Bill C-20 and Senatorial Elections*. Retrieved from Kingston:
HL Hansard. (3 December 1957). Life Peerages. *Vol 206*.
HL Hansard. (14 March 1910). Debates. *Vol 5*.
HL Hansard. (14 October 1998). Hereditary Peerage (Election) Bill [H.L.]. *Vol 593*.
HL Hansard. (17 March 1953). Peers' Attendances and Voting Rights. *Vol 181*(cols 5-23).
HL Hansard. (18 September 2003). Debates. *Vol 652*.
HL Hansard. (21 January 2003). Debates. *Vol 643*.
HL Hansard. (22 June 1999). Appointments Commission. *Vol 602*(cols 823-53).
HL Hansard. (23 February 1999). House of Lords Reform. *Vol 597*(cols 992-1098).
HL Hansard. (30 March 1922). Debates. *Vol 49*.

HL Hansard. (30 March 1999). House of Lords Bill. *Vol 599*(cols 204-430).
HL Hansard. (30 November 1909). Finance Bill. *Vol 4*(cols 1233-349).
House of Lords. (1907). *Sessional Papers*. Westminster.
House of Lords. (1934). *Sessional Papers*. Westminster.
LLN 2005/07. (November 2005). *The Parliament Act, 1949*. Westminster.
LLN 2014/014. (26 March 2014). *Hereditary Peers in the House of Lords since 1999*. Westminster: House of Lords Library.
Manitoba Hansard. (14 June 1990). Debates and Proceedings. *Vol 147*.
Manitoba Hansard. (20 June 1990). Debates and Proceedings. *Vol 151*.
Paré, J.-R. (2009). *Senate Reform in Canada*. (PRB 09-08E). Ottawa: Library of Parliament Retrieved from http://www2.parl.gc.ca/Content/LOP/ResearchPublications/prb0908-e.pdf.
Parliament of Canada. (1972). *The Constitution of Canada: Final Report of the Special Joint Committee of the Senate and House of Commons*. Ottawa: Queen's Printer.
Parliament of Canada. (1978). *A Time for Action: Toward the Renewal of the Canadian Federation*. (303-4/62). Ottawa: Supply and Services Canada Retrieved from http://www.parl.gc.ca/Parlinfo/Compilations/FederalGovernment/PaperDetail.aspx?Paper=c6a4db8e-e464-430b-bbfe-ca77532e9ccb&Document=5a4ad7e7-84d3-4ace-87a2-1e9111aaa943&Language=E.
Parliament of Canada. (1984). *Report for the Special Joint Committee of the Senate and of the House of Commons on Senate Reform*. Ottawa.
Parliament of Canada. (2014b). *Party Standings (1867 to date) (Senate)*. Ottawa: Library of Parliament Retrieved from http://www.parl.gc.ca/Parlinfo/lists/PartyStandingsHistoric.aspx?Menu=SEN-Politic&Section=b571082f-7b2d-4d6a-b30a-b6025a9cbb98.
Parliament of Canada. (February 1992). *Report*. Ottawa.
Parliament of Canada. (June 1991a). *Citizens' Forum on Canada's Future*. (CP32-57/1991). Ottawa Retrieved from http://publications.gc.ca/collections/collection_2014/bcp-pco/CP32-57-1991-eng.pdf.
Parliament of Canada. (June 1991b). *The Process for Amending the Constitution of Canada*. Ottawa Retrieved from http://www.solon.org/Constitutions/Canada/English/Committees/Beaudoin-Edwards/cons-process-for-amending-the-cons-of-canada-beaudoin-edwards-1991-06-21.pdf.
Pownall, M. (7 December 2010). *Members Leaving the House - Leader's Group on Members Leaving the House. Appendix 2: Memorandum from the Clerk of the Parliaments*. Westminster Retrieved from http://www.publications.parliament.uk/pa/ld201011/ldselect/ldleader/83/8306.htm.
Privy Council Office. (1 February 2013). *PC 2013-70*. Ottawa: Government of Canada.
Privy Council Office. (1985). *Royal Commission on the Economic Union and Development Prospects for Canada, Volume 3*. Ottawa Retrieved from http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/mcdonald1985-eng/mcdonald1985-eng.htm.
Province of British Columbia. (1978). *British Columbia's Constitutional Proposals, Paper no. 3: Reform of the Canadian Senate*. Retrieved from https://primarydocumbents.ca/api/text/filename/BCPropSenReform1978Sep.txt.
Province of Canada Legislative Assembly. (8 February 1865). *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces*. Kingston.
RG 47. (3-10 November 1927). *Dominion-Provincial Conference 1927*, Ottawa.

Senate Hansard. (1 April 1908). Debates of the Senate of the Dominion of Canada.
Senate Hansard. (11 May 1955). Debates. *Vol 1*.
Senate Hansard. (19 June 2007). Debates. *Vol 143*(col 100).
Senate Hansard. (25 May 1955). Debates of the Senate. *Vol 1*.
Special Joint Committee on a Renewed Canada. (1992). *A Renewed Canada*. Ottawa: Parliament of Canada.
Special Senate Committee on Senate Reform. (7 September 2006). *Issue 2 - Evidence*. Ottawa Retrieved from http://www.parl.gc.ca/Content/SEN/Committee/391/refo/02ev-ehtm?Language=EParl.
Special Senate Committee on Senate Reform. (26 October 2006). *First Report*. Ottawa Retrieved from http://www.parl.gc.ca/Content/SEN/Committee/391/refo/rep/rep01oct06-e.htm.
Special Senate Committee on Senate Reform. (2006). *Second Report: Motion to amend the Constitution of Canada (western regional representation in the Senate)*. Ottawa Retrieved from http://www.parl.gc.ca/39/1/parlbus/commbus/senate/com-e/refo-e/rep-e/rep02oct06-e.pdf.
Task Force on Canadian Unity. (1979). *A Future Together: Report of the Pepin-Robarts Task Force on Canadian Unity*. Ottawa: Minister of Supply and Services Canada.
Winetrobe, B. K. (20 May 1997). *The Commons Committee Stage of "Constitutional" Bills*. (Research Paper 97/53). Westminster: House of Commons Library.

Legislation and Bills

An Act respecting the selection of senators, S-8, Parliament of Canada (2010).
An Act respecting the selection of senators and amending the Constitution Act, 1867 in respect of Senate term limits, C-7, Parliament of Canada (2011).
An Act to amend the Constitution Act, 1867 (Property qualifications of Senators), S-229, Parliament of Canada (2008).
An Act to amend the Constitution Act, 1867 (Senate tenure), S-4, Senate of Canada (2006).
An Act to provide for consultations with electors on their preferences for appointments to the Senate, C-43, Parliament of Canada (2006).
Constitution Act, Canada, (1867).
Constitution Act, Canada, (1982).
House of Lords Act, Eliz II Chapter 34, Parliament of the United Kingdom (1999).
Parliament Act, 1 and 2 Geo 5 Chapter 13, Parliament of the United Kingdom (1911).
Sex Disqualification (Removal) Act, 9 and 10 Geo 5 Chapter 71, Parliament of the United Kingdom (1919).

Legal Documents

1 SCR 54 (1980). (1979). *Reference re: Authority of Parliament in Relation to the Upper House*. Ottawa: Supreme Court of Canada.
2 SCR 217. (1998). *Reference re: Québec secession*. Ottawa.
2013 QCCA 1807. (2013). *Projet de loi fédéral relatif au Sénat (Re)* Montréal: Cour d'appel.
2014 SCC 32. (2014). *Reference re: Senate Reform*. Ottawa: Supreme Court of Canada.
Amicus Curiae. (2013). *Intervener Factum, 2014 SCC 32. (2014)*.
Attorney General of Alberta. (2013). *Intervener Factum, 2014 SCC 32. (2014)*.
Attorney General of British Columbia. (2013). *Intervener Factum, 2014 SCC 32. (2014)*.

Attorney General of Canada. (2012). *Respondent's Memorandum: Senate Reform Reference – Quebec Court of Appeal*. Ottawa: Government of Canada.
Attorney General of Canada. (2013a). *Appellant Factum*.
Attorney General of Canada. (2013b). *Appellant Reply*.
Attorney General of Manitoba. (2013). *Intervener Factum, 2014 SCC 32. (2014)*.
Attorney General of New Brunswick. (2013). *Intervener Factum, 2014 SCC 32. (2014)*.
Attorney General of Newfoundland and Labrador. (2013). *Intervener Factum, 2014 SCC 32. (2014)*.
Attorney General of Nova Scotia. (2013). *Intervener Factum, 2014 SCC 32. (2014)*.
Attorney General of Nunavut. (2013). *Intervener Factum, 2014 SCC 32. (2014)*.
Attorney General of Ontario. (2013). *Intervener Factum, 2014 SCC 32. (2014)*.
Attorney General of Prince Edward Island. (2013). *Intervener Factum, 2014 SCC 32. (2014)*.
Attorney General of Saskatchewan. (2013). *Intervener Factum, 2014 SCC 32. (2014)*.
Cools, A. (2013). *Intervener Factum, 2014 SCC 32. (2014)*.
Fédération des communautés francophones et acadienne du Canada. (2013). *Mémoire de l'intervenante*.
Joyal, S. (2013). *Intervener Factum, 2014 SCC 32. (2014)*.
Procureur général du Québec. (2013). *Mémoire de l'intervenante*. Ottawa: Supreme Court of Canada.

Doctoral Dissertations and Master's Theses

Ballinger, C. (2006). *An Analysis of the Reform of the House of Lords, 1911-2000.* (PhD), University of Oxford, Oxford.

Memoirs and Official Biographies

Adams, J. (1992). *Tony Benn*. London: Macmillan.
Ashdown, P. (2001). *Diaries: Volume Two 1997 – 1999*: Allen Lane.
Asquith, M. (1920). *An Autobiography*. New York: G.H. Doran.
Attlee, C. R. (1935). *The Will and the Way to Socialism*: Methuen.
Benn, T. (1987). *Out of the wilderness : diaries, 1963-67*. London: Hutchinson.
Benn, T. (2012). *Years of Hope: Diaries, Letters and Papers 1940-1962*: Random House.
Benn, T. (2013). *The Benn Diaries: 1940-1990*: Random House.
Campbell, A. (2007). *The Blair years : extracts from the Alastair Campbell diaries*. London: Hutchinson.
Coyne, D. (1992). *Roll of the Dice: Working with Clyde Wells During the Meech Lake Negotiations*: James Lorimer Limited, Publishers.
Crewe, R. O., & Crewe-Milnes, A. (1931). *Lord Rosebery*. London: J. Murray.
Crossman, R. H. S. (1975). *The diaries of a Cabinet Minister*. London: Hamilton : Cape.
Eden, A. (1960). *Full circle; the memoirs of Anthony Eden*. Boston: Houghton Mifflin.
Ghiz, J. A. (20 October 1993). *An Insider's Perspective of Meech Lake & Charlottetown*. Paper presented at the The Dick, Ruth, and Judy Bell Lecture, Carleton University, Ottawa.
Horne, A. (1989). *Harold Macmillan*. New York, N.Y., U.S.A.: Viking.
Macmillan, H. (1971). *Riding the storm, 1956-1959*. London: Macmillan.
Newton, T. W. L. (1929). *Lord Lansdowne, a biography*. London: Macmillan.
Spender, J. A. (1923). *The life of the Right Hon. Sir Henry Campbell-Bannerman, G.C.B*. London: Hodder and Stoughton.

Spender, J. A., & Asquith, C. (1932). *Life of Herbert Henry Asquith, Lord Oxford and Asquith*. London: Hutchinson & Co.

Audio and Video Recordings

Benn, T. (1961-1962) *"Persistent Commoner", interviews with Anthony Wedgwood Benn on the Stansgate/Benn peerage case/Interviewer: D. Butler*. Nuffield College Oral History Project, Nuffield College Oxford, Oxford.

Massey, P. (Writer). (14 October 1976). Lord Hailsham: Elective Dictatorship [Radio]. In E. Mirzoeff (Producer), *The Richard Dimbleby Lecture*. BBC One: BBC One.

Books and Book Sections

Adonis, A. (1993). *Making aristocracy work: the peerage and the political system in Britain, 1884-1914*: Oxford University Press on Demand.

Ajzenstat, J. (1992). *Canadian Constitutionalism: 1791-1991*: Canadian Study of Parliament Group.

Ajzenstat, J. (2009). Harmonizing Regional Representation with Parliamentary Government: The Original Plan. In J. Smith (Ed.), *The Democratic Dilemma: Reforming the Canadian Senate* (pp. 191). Montreal: McGill-Queen's University Press.

Bagehot, W. (1867). *The English Constitution*. New York: Oxford University Press.

Bakan, J., & Schneiderman, D. (1992). *Social Justice and the Constitution: Perspectives on a social union for Canada*: Cambridge Univ Press.

Ballinger, C. (2012). *The House of Lords 1911-2011 : a century of non-reform*. Oxford; Portland, Or.: Hart Pub.

Behiels, M. D. (2007). Mulroney and a Nationalist Quebec: Key to political realignment in Canada? In R. Blake (Ed.), *Transforming the Nation: Canada and Brian Mulroney*. Montreal: McGill-Queen's University Press.

Benz, A., & Broschek, J. (2013). *Federal dynamics continuity, change, and the varieties of federalism*. Oxford: Oxford University Press.

Blais, A., Gidengil, E., Nevitte, N., & Johnston, R. (1996). *The Challenge of Direct Democracy: The 1992 Canadian Referendum*.

Blake, R. B. (2007). *Transforming the Nation: Canada and Brian Mulroney*. Kingston: McGill-Queen's University Press.

Blewett, N. (1972). *The peers, the parties and the people; the general elections of 1910*. London: Macmillan.

Blom-Cooper, L., Dickson, B., & Drewry, G. (2009). *The Judicial House of Lords 1876-2009*. Oxford; New York: Oxford University Press.

Bogdanor, V. (2009). *The New British Constitution*. Portland: Hart Publishing.

Brady, H. E., & Collier, D. (2004). *Rethinking Social Inquiry: Diverse tools, shared standards*. Lanham, Md.: Rowman & Littlefield.

Bromhead, P. A. (1958). *The House of Lords and Contemporary Politics, 1911-1957*. London: Routledge & K. Paul.

Burgess, M., & Gagnon, A. (2010). *Federal democracies*. London; New York: Routledge.

Campbell, C. (1978). *The Canadian Senate: A lobby from within*. Toronto: Macmillan of Canada.

Carpenter, E. (1908). *British Aristocracy and the House of Lords*: A.C. Fifield.

Charley, W. T. (1895). *The crusade against the constitution an historical vindication of the House of Lords*. London: Sampson Low, Marston & Co.
Conway, J. F. (1992). *Debts to pay: English Canada and Quebec from the conquest to the referendum* (2004 ed.). Toronto: J. Lorimer.
Cook, C., & Cook, C. (2005). *The Routledge companion to Britain in the nineteenth century, 1815-1914*. London; New York: Routledge.
Cowley, P. (2007). Parliament. In A. Seldon (Ed.), *Blair's Britain, 1997-2007*. Cambridge, UK; New York: Cambridge University Press.
Coyne, D., & Valpy, M. (1998). *To match a dream : a practical guide to Canada's constitution*. Toronto, Ont.: McClelland & Stewart.
Crewe, E. (2005). *Lords of Parliament: Manners, rituals and politics*: Manchester University Press.
Crick, B. (1968). *The reform of Parliament* (2nd ed.). London: Weidenfeld and Nicolson.
Dahl, R. A. (2001). *How democratic is the American Constitution?* New Haven: Yale University Press,.
Dorey, P., & Kelso, A. (2011). *House of Lords reform since 1911 must the Lords go?* New York: Palgrave Macmillan.
Edgcumbe, S. R. (1907). *The House of Lords and the Unjust Veto*. London: Cassell and Company.
Evans, P. B., Rueschemeyer, D., & Skocpol, T. (1985). *Bringing the State Back In*. New York: Cambridge University Press.
Fair, J. D. (1980). *British interparty conferences: a study of the procedure of conciliation in British politics, 1867-1921*: Clarendon Press.
Feeley, M., & Rubin, E. L. (2008). *Federalism : political identity and tragic compromise*. Ann Arbor: University of Michigan Press.
Fielding, T. (1907). *The House of Lords: Its History, Rights and Uses: with a Short Summary of the Past Actions of Some of Our Old Nobility*: [London]: Simpkin, Marshall, Hamilton, Kent.
Filippov, M., Ordeshook, P. C., & Shvetsova, O. (2003). *Designing federalism : a theory of self-sustainable federal institutions*. New York: Cambridge University Press.
Firth, C. H. (1910). *The House of lords during the civil war*. London, New York etc.: Longmans, Green, and co.
Foley, M. (2000). *The British presidency : Tony Blair and the politics of public leadership*. Manchester; New York: Manchester University Press.
Franks, C. (1999). Not Dead Yet, But Should It Be Resurrected? The Canadian Senate. In S. C. Patterson & A. Mughan (Eds.), *Senates: Bicameralism in the contemporary world* (pp. xii, 360 p.). Columbus: Ohio State University Press.
Gagnon, A., Keil, S., & Mueller, S. (2015). *Understanding federalism and federation*.
George, A. L., & Bennett, A. (2005). *Case studies and theory development in the social sciences*. Cambridge, Mass.: MIT Press.
Giddings, P. J. (Ed.) (2005). *The Future of Parliament: Issues for a new century*. New York: Palgrave Macmillan.
Goodhart, P., & Branston, U. (1973). *The 1922; the story of the Conservative backbenchers' parliamentary committee*. [London: Macmillan.
Goodin, R. E., & Klingemann, H.-D. (1996). *A New Handbook of Political Science*. New York: Oxford University Press.
Hogg, P. W. (1985). *Constitutional Law of Canada*. Toronto, Canada: Carswell.

Hopkins, J. C. (1908). *The Canadian Annual Review of Public Affairs*: Canadian Review Company, Limited.
Hueglin, T. O., & Fenna, A. (2006). *Comparative federalism : a systematic inquiry*. Peterborough, Ont.; Orchard Park, NY: Broadview Press.
Iwi, E. (1954). Women and the House of Lords. In S. D. Bailey (Ed.), *The Future of the House of Lords*. London: Chiswick Press.
Jackson, W. K. (1972). *The New Zealand Legislative Council: a study of the establishment, failure and abolition of an upper house*. Toronto: University of Toronto Press.
Johnson, A. W. (1938). *The Unicameral Legislature*. London; Minneapolis: H. Milford, Oxford University Press ; University of Minnesota Press.
Johnston, R., Blais, A., Gidengil, E., & Nevitte, N. (1993). The People and the Charlottetown Accord. In R. L. Watts & D. M. Brown (Eds.), *Canada: The State of the Federation 1993* (pp. 19-43). Kingston: Queen's University Press.
Joyal, S. (Ed.) (2003). *Protecting Canadian Democracy: The Senate you never knew*. Montreal: McGill-Queen's University Press.
Karmis, D., & Norman, W. J. (2005). *Theories of federalism : a reader*. New York, N.Y.: Palgrave Macmillan.
Katznelson, I., & Milner, H. V. (2002). *Political Science: State of the discipline*. New York; Washington, D.C.: W.W. Norton ; American Political Science Assn.
Kelso, A. (2009). *Parliamentary Reform at Westminster*. New York: Manchester University Press.
Kincaid, J., Tarr, G. A., International Association of Centers for Federal, S., & Forum of, F. (2005). *Constitutional origins, structure, and change in federal countries*. Montreal: Published for Forum of Federations and International Association of Centers for Federal Studies by McGill-Queen's University Press.
King, G., Keohane, R. O., & Verba, S. (1994). *Designing social inquiry: Scientific inference in qualitative research*: Princeton University Press.
King, P. T. (1982). *Federalism and federation*. Baltimore, Md.: Johns Hopkins University Press.
Kunz, F. A. (1965). *The Modern Senate of Canada, 1925-1963: A re-appraisal*. Toronto: University of Toronto Press.
Laski, H. J. (1938). *Parliamentary Government in Britain*. London: Allen and Unwin.
Lees-Smith, H. B. (1923). *Second chambers in theory and practice*: Allen and Unwin.
Levi, L., & Casalegno, L. (2008). *Federalist thinking*. Lanham, Md.: University Press of America.
Leyton-Brown, D. (1998). *Canadian Annual Review of Politics and Public Affairs 1992*. Toronto: University of Toronto Press.
Lijphart, A. (1999). *Patterns of democracy : government forms and performance in thirty-six countries*. New Haven: Yale University Press.
Lijphart, A. (2012). *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*: Yale University Press.
Lisée, J.-F. (1994). *The Trickster: Robert Bourassa and the Quebecers, 1990-1992* (R. Chodos, S. Horn, & W. Taylor, Trans.): J. Lorimer.
Longley, L. D., & Olson, D. M. (1991). *Two Into One: The politics and processes of national legislative cameral change*. Boulder: Westview Press.
MacKay, R. A. (1926). *The unreformed Senate of Canada*. London: Oxford University Press, H. Milford.

Mahoney, J., & Thelen, K. A. (2010). *Explaining institutional change : ambiguity, agency, and power*. Cambridge; New York: Cambridge University Press.
Malcolmson, P., & Myers, R. (2012). *The Canadian Regime*: University of Toronto Press.
Marriott, J. A. R. (1910). *Second Chambers: An inductive study in political science*. Oxford: Clarendon Press.
May, T. E. (1863). *The constitutional history of England, 1760-1860 since the accession of George the Third* (Second Edition ed.). London: Longman, Green, Longman, Roberts, and Green.
McLaughlin, D. (1994). *Poisoned Chalice: How the Tories Self-Destructed*: Dundurn.
McRoberts, K., & Monahan, P. J. (1993). *The Charlottetown Accord, the Referendum, and the Future of Canada*. Toronto: University of Toronto Press.
Meekison, J. P., Telford, H., & Lazar, H. (2004). *Reconsidering the Institutions of Canadian Federalism* (Vol. 86): McGill-Queen's University Press.
Mendes, E. (1993). Sinking Again into the Quagmire of Conflicting Visions, Groups, Under-inclusion, and Death by Referendum. In K. McRoberts & P. J. Monahan (Eds.), *The Charlottetown Accord, the Referendum, and the Future of Canada*. Toronto: University of Toronto Press.
Monahan, P. J. (1991). *Meech Lake: The Inside Story*: University of Toronto Press.
Monahan, P. J. (1993). The Sounds of Silence. In K. McRoberts & P. J. Monahan (Eds.), *The Charlottetown Accord, the Referendum, and the Future of Canada* (pp. 222-248). Toronto: University of Toronto Press.
Moore, C. (2015). *Three Weeks in Québec City: The Meeting that Made Canada*. Toronto: Allen Lane.
Morgan, J. H. (1914). The Second Chamber Problem, What the experience of other countries has to teach us (pp. 82 p.). London: The New Statesman.
Morgan, J. P. (1975). *The House of Lords and the Labour government, 1964-1970*: Clarendon Press.
Murray, L. (2003). Which Criticisms are Founded? In S. Joyal (Ed.), *Protecting Canadian Democracy: The Senate you never knew*. Montreal: McGill-Queen's University Press.
Newman, P. C. (2011). *The Secret Mulroney Tapes: Unguarded Confessions of a Prime Minister*. Toronto: Random House of Canada.
Norton, P. (2007). The Constitution. In A. Seldon (Ed.), *Blair's Britain, 1997-2007*. Cambridge, UK; New York: Cambridge University Press.
Oliver, D. (2003). *Constitutional Reform in the United Kingdom*. Oxford: Oxford University Press.
Osborn, J. L. (1910). *Second Chambers at Home and Abroad: A comparison and contrast*. London: Francis Griffiths.
Pelz, S. (2001). Toward a new diplomatic history: Two and a half cheers for international relations methods. In C. Elman & M. F. Elman (Eds.), *Bridges and Boundaries: Historians, Political Scientists, and the Study of International Relations* (pp. 85-110). Boston: MIT Press.
Pierk, M. (2001). *Der Bundesrat im politischen System der Bundesrepublik Deutschland*: GRIN Verlag.
Pierson, P. (2004). *Politics in time: History, institutions, and social analysis*: Princeton University Press.
Pierson, P., & Skocpol, T. (2002). Historical institutionalism in contemporary political science *Political science: The state of the discipline*.
Pike, L. O. (1894). *A constitutional history of the House of Lords: From original sources*. London: B. Franklin.
Presthus, R. V. (1973). *Elite accommodation in Canadian politics*: Cambridge University Press.
Presthus, R. V. (1974). *Elites in the policy process*: Cambridge University Press.
Ragin, C. C. (2000). *Fuzzy-set social science*. Chicago: University of Chicago Press.

Ragin, C. C. (2008). *Redesigning Social Inquiry: fuzzy sets and beyond*. Chicago: University of Chicago Press.
Rebick, J. (1993). The Charlottetown Accord: A Faulty Framework and a Wrong-headed Compromise. In K. McRoberts & P. J. Monahan (Eds.), *The Charlottetown Accord, the Referendum, and the Future of Canada*. Toronto: University of Toronto Press.
Rémillard, G., & Turner, A. (2003). Senate Reform: Back to Basics. In S. Joyal (Ed.), *Protecting Canadian Democracy: The Senate you never knew* (pp. xxviii, 371 p.). Montreal: McGill-Queen's University Press.
Rhodes, R. A. W., Binder, S. A., & Rockman, B. A. (Eds.). (2006). *The Oxford Handbook of Political Institutions*. Oxford: Oxford University Press.
Richard, I., & Welfare, D. (1999). *Unfinished business: reforming the House of Lords*. London: Vintage.
Riker, W. H. (1964). *Federalism: origin, operation, significance*. Boston: Little, Brown.
Roberts, G. B. (1926). *The functions of an English second chamber*: G. Allen & Unwin.
Romanow, R. J., Whyte, J. D., & Leeson, H. A. (2007). *Canada... notwithstanding: the making of the Constitution, 1976-1982*. Toronto; New York: Carswell/Methuen.
Ross, G. W. (1914). *The Senate of Canada: Its constitution, powers and duties, historically consideredp*. Toronto: The Copp, Clark company limited.
Rush, M. (2005). Career Patterns and Professionalisation. In P. J. Giddings (Ed.), *The Future of Parliament: Issues for a new century* (pp. 287). New York: Palgrave Macmillan.
Russell, M. (2013). *The Contemporary House of Lords: Westminster Bicameralism Revived*: OUP Oxford.
Russell, P. H. (1993). *Constitutional Odyssey: Can Canadians Become a Sovereign People?* Toronto; Buffalo: University of Toronto Press.
Segal, J. (2006). Judicial Behaviour. In R. A. W. Rhodes, S. A. Binder, & B. A. Rockman (Eds.), *The Oxford Handbook of Political Institutions* (pp. xvii, 816 p.). Oxford: Oxford University Press.
Shaw, E. (2000). The Wilderness Years 1979–1994 *The Labour Party* (pp. 112-142): Springer.
Shell, D. (1992). *The House of Lords* (2nd ed.). New York: Harvester Wheatsheaf.
Shell, D. (2007). *The House of Lords*. Manchester: Manchester University Press.
Simeon, R. (1990). Why Did the Meech Lake Accord Fail? In R. L. Watts & D. M. Brown (Eds.), *Canada: the State of the Federation 1990*. Kingston: Queen's University Press.
Smith, D. E. (2003). *The Canadian Senate in Bicameral Perspective*. Toronto: University of Toronto Press.
Smith, J. (Ed.) (2009). *The Democratic Dilemma: Reforming the Canadian Senate*. Montreal: McGill-Queen's University Press.
Smith, P. V. (1884). *The House of Lords and the Nation* (2nd ed.). London.
Spalding, T. A. (1894). *The House of Lords, a Retrospect and a Forecast*. London: TF Unwin.
Stillborn, J. (2003). Forty Years of Not Reforming the Senate. In S. Joyal (Ed.), *Protecting Canadian Democracy: The Senate you never knew* (pp. xxviii, 371 p.). Montreal: McGill-Queen's University Press.
Streeck, W., & Thelen, K. (2005). *Introduction: Institutional change in advanced political economies*. Oxford: Oxford University Press.
Tsebelis, G., & Money, J. (1997). *Bicameralism*. Cambridge, U.K. ; New York: Cambridge University Press.

Uhr, J. (2006). Bicameralism. In R. A. W. Rhodes, S. A. Binder, & B. A. Rockman (Eds.), *The Oxford Handbook of Political Institutions* (pp. xvii, 816 p.). Oxford: Oxford University Press.
Waddams, S. M. (1992). *Law, Politics, and the Church of England: The Career of Stephen Lushington, 1782-1873*: CUP Archive.
Ward, A., & Ward, L. (2009). *The Ashgate research companion to federalism*. Farnham, Surrey, England; Burlington, VT: Ashgate.
Watts, R. L. (1999). *Comparing federal systems*. Montreal; Ithaca: Published for the School of Policy Studies, Queen's University by McGill-Queen's University Press.
Watts, R. L. (2003). Federal Parliamentary Systems. In S. Joyal (Ed.), *Protecting Canadian Democracy: The Senate you never knew*. Montreal: McGill-Queen's University Press.
Watts, R. L., & Brown, D. M. (Eds.). (1989). *Canada: The State of the Federation, 1989*. Kingston: Queen's University Press.
Watts, R. L., & Brown, D. M. (Eds.). (1990). *Canada: The State of the Federation 1990*. Kingston: Queen's University, Institute of Intergovernmental Relations.
Wheeler-Booth, M. (2003). The House of Lords. In R. Blackburn & A. Kennon (Eds.), *Parliament: Functions, practice, and Procedures*. London: Sweet & Maxwell.
Whyte, J. D. (2009). Senate Reform: What Does the Constitution Say? In J. Smith (Ed.), *The Democratic Dilemma: Reforming the Canadian Senate*. Montreal: McGill-Queen's University Press.
Wylie, J. (1908). *The House of Lords: Historical sketches*. London: Arnold Fairbanks & Co Ltd.

Journal Articles

Albert, R. (2014). Constructive Unamendability in Canada and the United States. *Supreme Court Law Review, 67*.
Balsom, D., & McAllister, I. (1979). The Scottish and Welsh devolution referenda of 1979: constitutional change and popular choice. *Parliamentary Affairs, 32*(1), 394-409.
Bickerton, J. (2008). Equalization, Regional Development, and Political Trust: The Section 36/Atlantic Accords Controversy. *Const. F., 17*, 99.
Bogdanor, V. (1995). The monarchy and the constitution.
Bromhead, P. A. (1960). Mr Wedgwood Benn, the Peerage and the Constitution. *Parliamentary Affairs*, 493-506.
Cairns, A. C. (1979). Recent Federalist Constitutional Proposals: A Review Essay. *Canadian Public Policy / Analyse de Politiques, 5*(3), 348-365. doi:10.2307/3550223
Cheffins, R. I. (1972). *Canadian Journal of Political Science / Revue canadienne de science politique, 5*(4), 574. doi:10.2307/3231740
Choudhry, S. (2001). Strengthening the Economic Union: The Charter and the Agreement of Internal Trade. *Const. F., 12*, 52.
Crick, B. (1957). The Life Peerages Act. *Parliamentary Affairs, 11*(4), 455-465.
Dahl, R. A. (2003). Toward a People's Constitution. *Cal. L. Rev., 91*, 621.
Docherty, D. C. (2002). The Canadian Senate: Chamber of sober reflection or loony cousin best not talked about. *Journal of Legislative Studies, 8*(3), 27-48.
Erdos, D. (2009). Charter 88 and the Constitutional Reform Movement: a Retrospective. *Parliamentary Affairs, 62*(4), 537-551. doi:10.1093/pa/gsp022
Farrand, M. (1904). Compromises of the Constitution. *The American Historical Review, 9*(3), 479-489. doi:10.2307/1833471

Flinders, M. (2009). Charter 88, New Labour and Constitutional Anomie. *Parliamentary Affairs, 62*(4), 645-662. doi:10.1093/pa/gsp023
Forsey, E. (1946). Appointment of Extra Senators under Section 26 of the British North America Act. *Canadian Journal of Economics and Political Science*, 159-167.
Geekie, J., & Levy, R. (1989). Devolution and the Tartanisation of the Labour Party. *Parliamentary Affairs, 42*(3), 399-411.
Glover, K. (2014). Structure, Substance and Spirit: Lessons in Constitutional Architecture from the Senate Reform Reference. *Supreme Court Law Review, 67*(221).
Hall, P. A., & Taylor, R. C. (1996). Political science and the three new institutionalisms. *Political Studies, 44*(5), 936-957.
Haynes, G. H. (1911). "People's Rule" in Oregon, 1910. *Political Science Quarterly, 26*(1), 32-62.
Hogg, P. W. (1979). Constitutional Reform in Canada-a Comment on the Canadian Constitutional Crisis. *Yale Stud. World Pub. Ord., 6*, 285.
Horsman, J. (1989). Senate Reform and Meech Lake. *Canadian Parliamentary Review, 12*(1), 7-9.
Howe, S. (2009). Some Intellectual Origins of Charter 88. *Parliamentary Affairs, 62*(4), 552-567. doi:10.1093/pa/gsp026
Janda, R. (1994). Canada's Failed Senate Reform Initiative: On Legitimate and Illegitimate Compromise. *Windsor Rev. Legal & Soc. Issues, 5*, 1.
Johnston, R. (1993). An Inverted Logroll: The Charlottetown Accord and the Referendum. *PS: Political Science and Politics, 26*(1), 43-48.
Joyal, S. (1999). Reflections on the Path to Senate Reform. *Canadian Parliamentary Review, Autumn*, 5.
Kornblith, M. (2013). Chavismo After Chávez? *Journal of democracy, 24*(3), 47-61.
LeDuc, L., & Jon, H. P. (1995). Referendum Voting: Attitudes and Behaviour in the 1992 Constitutional Referendum. *Canadian Journal of Political Science / Revue canadienne de science politique, 28*(1), 3-33. doi:10.2307/3232122
Levitsky, S., & Way, L. (2013). The Durability of revolutionary regimes. *Journal of democracy, 24*(3), 5-17.
Leydet, D. (2004). Compromise and public debate in processes of constitutional reform: the Canadian case. *Social science information, 43*(2), 233-262.
Lusztig, M. (1995). Federalism and Institutional Design: The Perils and Politics of a Triple-E Senate in Canada. *Publius: The Journal of Federalism, 25*(1), 35-50.
Mahoney, J. (2000). Path dependence in historical sociology. *Theory and society, 29*(4), 507-548.
Pierson, P. (2000). The Limits of Design: Explaining Institutional Origins and Change. *Governance, 13*(4), 475-499. doi:10.1111/0952-1895.00142
Pope, J. C., & Treier, S. (2011). Reconsidering the Great Compromise at the Federal Convention of 1787: Deliberation and Agenda Effects on the Senate and Slavery. *American Journal of Political Science, 55*(2), 289-306. doi:10.1111/j.1540-5907.2010.00490.x
Pross, A. P. (1975). Canadian pressure groups in the 1970s: their role and their relations with the public service. *Canadian Public Administration, 18*(1), 121-135.
Ridley, J. (1992). The Unionist Opposition and the House of Lords, 1906–1910. *Parliamentary History, 11*(2), 235-253.
Riker, W. (1992). The Merits of Bicameralism. *International Review of Law and Economics, 12*(2), 166-168.

Riker, W. H. (1992). The Justification of Bicameralism. *International Political Science Review, 13*(1), 101-116. doi:10.1177/019251219201300107
Russell, M. (2003). Is the House of Lords Already Reformed? *Political Quarterly The Political Quarterly, 74*(3), 311-318.
Russell, M. (2010). A Stronger Second Chamber? Assessing the Impact of House of Lords Reform in 1999 and the Lessons for Bicameralism. *Political Studies, 58*, 866-885.
Sainty, S. J. (1962). The Joint Committee on House of Lords Reform and the Peerage Bill. *The Table, 31*, 13-25.
Thelen, K. (1999). Historical institutionalism in comparative politics. *Annual Review of Political Science, 2*(1), 369-404.
Tsebelis, G. (1999). Veto players and law production in parliamentary democracies: An empirical analysis. *American Political Science Review*, 591-608.
Weston, C. C. (1968). The Liberal Leadership and the Lords' Veto, 1907-1910. *The Historical Journal, 11*(3), 508-537.
Weston, C. C., & Kelvin, P. (1984). The'Judas Group'and the Parliament Bill of 1911. *English Historical Review*, 551-563.
Zywicki, T. J. (1994). Senators and Special Interests: A Public Choice Analysis of the Seventeenth Amendment. *Or. L. Rev., 73*, 1007.
Zywicki, T. J. (1997). Beyond the shell and husk of history: The history of the seventeenth amendment and its implications for current reform proposals. *Clev. St. L. Rev., 45*, 165.

News Sources

Canadian Press. (7 June 2010). PMO holds grip on message control: records. Retrieved from http://www.cbc.ca/news/politics/pmo-holds-grip-on-message-control-records-1.888793
Carlson, K. B. (6 January 2012). Harper's Senate reform plans may forever change how Canada is governed. *National Post*. Retrieved from http://news.nationalpost.com/2012/01/06/harpers-senate-reform-plans-may-forever-change-how-canada-is-governed/
CBC News. (3 May 2011). Michael Ignatieff quits as Liberal leader. Retrieved from http://www.cbc.ca/news/politics/michael-ignatieff-quits-as-liberal-leader-1.1036481
CBC News. (6 February 2006). Cabinet includes defector and senator-to-be. Retrieved from http://www.cbc.ca/news/canada/cabinet-includes-defector-and-senator-to-be-1.627094
CBC News. (15 December 2014). Stephen Harper's unappointed Senate seats unconstitutional, Vancouver lawyer says. Retrieved from http://www.cbc.ca/news/canada/british-columbia/stephen-harper-s-unappointed-senate-seats-unconstitutional-vancouver-lawyer-says-1.2873629
CBC News. (22 December 2008). Wallin, Duffy among 18 named to fill Senate seats. Retrieved from http://www.cbc.ca/news/canada/wallin-duffy-among-18-named-to-fill-senate-seats-1.715239
CBC News. (2008). Wallin, Duffy among 18 named to fill Senate seats. Retrieved from http://www.cbc.ca/canada/story/2008/12/22/senate-harper.html
Deveau, S. (28 February 2006). Fortier's Senate appointment confirmed. *Globe and Mail*. Retrieved from http://www.theglobeandmail.com/news/national/fortiers-senate-appointment-confirmed/article20409019/
Editorial. (17 October 1947). *Tribune*.

Foot, R. (2010, January 18, 2010). Only in Canada: Harper's prorogation is a Canadian thing. *National Post*. Retrieved from http://www.nationalpost.com/Only+Canada+Harper+prorogation+Canadian+thing/2446705/story.html

Hébert, C. (6 January 2014). Why Harper won't override Supreme Court prostitution ruling. *The Toronto Star*. Retrieved from http://www.thestar.com/news/canada/2014/01/06/why_harper_wont_override_supreme_court_prostitution_ruling.html

IPSOS-Reid. (May 1998). *Canadians and the Senate*. Retrieved from Ottawa: www.ipsos-reid.com/search/pdf/media/pr110598.pdf

Ivison, J. (2012, May 31, 2011). Ask Canada about Senate Reform. *National Post*. Retrieved from http://fullcomment.nationalpost.com/2011/05/31/john-ivison-ask-canada-about-senate-reform/

Landale, J. (23 March 1999). Peers vote to block 3-day week. *The Times*.

Livesey, B. (27 August 2015). Why Harper Corrupted the Senate.

Parker, A. (3 November 1999). Labour Criticised Over New Life Peers. *Financial Times*.

Phillips, D. G. (1906). The Treason of the Senate. *Cosmopolitan,* 100.

Spectator. (19 February 1910). The Problem of the Lords. *The Spectator*.

Times. (22 December 1941). Four New Labour Peers: strengthening the party in the Lords. *The Times*.

Times. (24 April 1918). House of Lords Reform. *The Times*.

Times. (29 November 1957). Labour Challenge to the Life Peerages Bill. *The Times of London*.

Times. (30 December 1968). How Mr Wilson Reformed the Lords with 107 Life Peers. *The Times*.

Tony Benn dies: his most memorable quotes. (14 March 2014). *The Telegraph*. Retrieved from http://www.telegraph.co.uk/news/politics/labour/10697145/Tony-Benn-dies-his-most-memorable-quotes.html

White, M. (5 October 1994). Blair defines the new Labour. *Guardian*. Retrieved from http://www.theguardian.com/politics/1994/oct/05/labour.uk

White, M. (28 June 1999). Benn's Declaration of Independence. *Guardian*. Retrieved from http://www.theguardian.com/uk/1999/jun/28/michaelwhite1

Wood, D. (24 February 1969). Fight to the death for Bill nobody wants. *The Times*.

Press Releases

Business Council on National Issues. (1983). Senate Reform and Regional Representation in Canada [Press release]

Government of Canada. (25 April 2014). Harper Government addresses Supreme Court ruling on Senate Reference [Press release]. Retrieved from http://www.democraticreform.gc.ca/eng/content/harper-government-addresses-supreme-court-ruling-senate-reference

Prime Minister of Canada. (10 July 2007). *Prime Minister Stephen Harper Confirms Albertans' Choice for Senate: Bert Brown joins the upper chamber*. Calgary Retrieved from http://pm.gc.ca/eng/news/2007/07/10/prime-minister-stephen-harper-confirms-albertans-choice-senate-bert-brown-joins.

Prime Minister Harper addresses Australian parliament in Canberra, Australia, (2007).

Québec Court of Appeal. (2012). Reference to the Québec Court of Appeal regarding the constitutionality of the Senate Reform Bill (Bill C-7 - first reading, June 21, 2011) [Press release]. Retrieved from http://www.tribunaux.qc.ca/c-appel/english/Current/releases/docs/pressrel_ndh_20120815_en.pdf

Russell, M., & Semlyen, T. (2015). *Enough is Enough: Regulating Prime Ministerial Appointments to the Lords*. London: The Constitution Society Retrieved from http://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/161.pdf.

UCL Constitution Unit. (12 December 2005). Lords should block government bills, say public and MPs: University College London Press Release.

UCL Constitution Unit. (12 December 2007). Poll shows surprise result on public priorities for Lords reform - Poll of peers confirms growing confidence of the House of Lords: University College London Press Release.

UCL Constitution Unit. (29 March 2007). Evidence mounting of more assertive House of Lords says Constitution Unit: University College London Press Release.

Van Loan, P. (2007). *The Federal Government Introduces Legislation to Create a Democratic, Accountable Senate*. Ottawa Retrieved from http://www.democraticreform.gc.ca/index.asp?lang=eng&Page=news-comm&Sub=news-comm&Doc=20071113-eng.htm.

Pamphlets, Reports, and Conference Proceedings

Bailey, S. D. (1954). *The Future of the House of Lords: A Symposium*: Hansard Society.

Bank of Canada. (2005). *The History of the Canadian Dollar*. Retrieved from Ottawa:

Bedock, C., Mair, P., & Wilson, A. (2012). Institutional Change in Advanced European Democracies: An Exploratory Assessment.

Brogan, D. (1954). The House of Lords and its Reform. *Lloyds Bank Review*(31), 16-30.

Canada West Foundation. (1998). Senate '99: Expanding the Blueprint for Senate Reform. *For the Record: Alberta's 1998 Senate Election*.

Canadian Alliance. (2000). A Time for Change. In C. A. Party (Ed.), *https://www.poltext.org/sites/poltext.org/files/plateformes/can2000all_plt_en._14112008_173717.pdf*.

Clarke, C., & Purvis, M. (2009). *House of Lords Reform Since 1997: A Chronology (updated July 2009)*. (LLN 2009/007).

Conservative Party of Canada. (2004). Demanding Better. In C. P. o. Canada (Ed.), *https://www.poltext.org/sites/poltext.org/files/plateformes/can2004pc_plt_en._14112008_171920.pdf*.

Conservative Party of Canada. (2006). Stand Up for Canada. In C. P. o. Canada (Ed.), *https://www.poltext.org/sites/poltext.org/files/plateformes/can2006pc_plt_en._14112008_165519.pdf*.

Davis, S. R. (1983). *The Living Constitution: A Critique of the Federal Critiques*: Australian National University.

Dunsmuir, M. (1990). *The Senate: Appointments Under Section 26 of the Constitution Act, 1867*: Research Branch, Library of Parliament.

Elections Alberta. (2010). The Report of the Chief Electoral Officer on the Provincial Senate Nominee Election Monday, November 22, 2004 Retrieved from http://www.elections.ab.ca/public%20website/files/Reports/2004SNErpt.pdf

Gaudreault-DesBiens, J.-F. (2005, 2005). *Le fédéralisme dans tous ses états : gouvernance, identité et méthodologie*, Cowansville, Québec.

Gibbins, R. (1983). *Senate Reform: Moving toward the slippery slope*. Kingston, Ont.: Institute of Intergovernmental Relations, Queen's University.

Gibbins, R. (2005). *Western Asymmetry*: Institute of Intergovernmental Relations, Queen's University.

Haynes, G. H. (1906). *The Election of Senators*. New York,: .H Holt and company.

Hinchingbroke, V., & King-Hall, S. (1954). Should Peers be Paid? Two views. In S. D. Bailey (Ed.), *The Future of the House of Lords*. London: Chiswick Press.

Jennings, I. (1941). *Parliament Must be Reformed: A Programme for Democratic Government*: London, Trench.

Labour Party. (1964). 1964 Labour Party Election Manifesto: The New Britain. Retrieved from http://www.politicsresources.net/area/uk/man/lab64.htm

Labour Party. (1966). Time for Decision. Retrieved from http://www.politicsresources.net/area/uk/man/lab66.htm

Labour Party. (1989). *Meet the challenge, make the change: a new agenda for Britain : final report of Labour's Policy Review for the 1990s*: Labour Party.

Labour Party. (1997, 22 October 2012). New Labour: Because Britain Deserves Better. Retrieved from http://www.politicsresources.net/area/uk/man/lab97.htm

http://www.labour-party.org.uk/manifestos/1997/1997-labour-manifesto.shtml

Labour Party. (2001). *Ambitions for Britain*.

Liberal Party of Canada. (1893). *Official Report [of the Liberal Convention Held in Response to the Call of Hon.Wilfrid Laurier: Ottawa, Tuesday, June 20th, and Wednesday, June 21st, 1893*: Robertson Publishing House.

Macpherson, W. C. (1893). *The Baronage and the Senate: Or, The House of Lords in the Past, the Present, and the Future*: London: J. Murray.

McCormick, P., & Elton, D. (March 1987). The Western Economy and Canadian Unity *Western Perspectives*. Calgary: Canada West Foundation.

McCormick, P., Manning, E., & Gibson, G. (1981). *Regional Representation: The Canadian Partnership: A Task Force Report*. Retrieved from Calgary:

McKechnie, W. S. (1909). *The reform of the House of Lords, with a criticism of the report of the select committee of 2nd December, 1908*. Glasgow: MacLehose and Sons.

Muir, R. (1910). Peers and bureaucrats. *London. Constable*.

Reform Party of Canada. (1993). New Directions. In R. F. Canada (Ed.), *https://www.poltext.org/sites/poltext.org/files/plateformes/can1990r_plt_en_12072011_125411.pdf*.

Reform Party of Canada. (1996). Blue Book 1996-1997 Principles & Policies of the Reform Party of Canada. In R. P. o. Canada (Ed.), *https://www.poltext.org/sites/poltext.org/files/plateformes/can1996r_plt_en_12072011_124840.pdf*.

Simeon, R. (1979). *Intergovernmental Relations and the Challenges to Canadian Federalism*. Paper presented at the Institute of Intergovernmental Relations, Kingston.

Smiley, D. V. (1985). *An elected senate for Canada? : Clues from the Australian experience*. Kingston, Ont.: Institute of Intergovernmental Relations, Queen's University.
Stead, W. T. (1907). *Peers Or People? The House of Lords Weighed in the Balances and Found Wanting: An Appeal to History*: TF Unwin.
Turk, S. (1962). Some Notes on Foreign Exchange in Canada before 1919. *Bank of Canada memorandum, 27*.

Web Pages

Australian Bureau of Statistics. (2001). *Census of Population and Housing Population Growth and Distribution Australia, 2001*. Canberra Retrieved from http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/Lookup/D9379A6FFA24473CCA256D470005CC1C/$File/20350_2001.pdf.
Bank of Canada. (2016). Inflation Calculator. Retrieved from http://www.bankofcanada.ca/rates/related/inflation-calculator/
Beamish, D. (2014a). Peerages created under the Life Peerages Act 1958. *United Kingdom peerage creations 1801 to 2014: a list compiled by David Beamish.* Retrieved from http://peerages.info/peerages5.htm
Beamish, D. (2014b, 17 March 2015). United Kingdom peerage creations 1801 to 2015: a list compiled by David Beamish. Retrieved from peerages.info
Bureau of the Census. (1949). *Historical Statistics of the United States 1789-I945*. Washington DC: US Government Printing Office Retrieved from http://www2.census.gov/prod2/statcomp/documents/HistoricalStatisticsoftheUnitedStates1789-1945.pdf.
Library and Archives Canada. (2014). About the 1861 Census. Retrieved from http://www.bac-lac.gc.ca/eng/census/1861/Pages/about-census.aspx
Library of Parliament. (2014). Senators. Retrieved from http://www2.parl.gc.ca/Parlinfo/lists/senators.aspx?Parliament=dd38a650-668c-459e-98aa-11d38d623631&Name=&Party=&Province=&Gender=&Current=True&PrimeMinister=&TermEnd=&Ministry=&Picture=False&Language=E
Madison, J. (1788). Federalist no. 62: The Senate. Retrieved from http://www.constitution.org/fed/federa62.htm
Parliament of Canada. (2014a). Bert Brown - Conservative Party of Canada. Retrieved from http://www.parl.gc.ca/ParlBusiness/Senate/Committees/Committee_SenBio.asp?comm_id=5&Language=E&M=M&Parl=40&senator_id=2796&Ses=3
Parliament.uk. (2014). Attendance for previous sessions. Retrieved from http://www.parliament.uk/about/faqs/house-of-lords-faqs/lords-sittings/
Rootsweb Obituaries. (10 March 2004). Sister Peggy Butts, Canadian activist, senator, dies at age 79. Retrieved from http://boards.rootsweb.com/topics.obits2/30121/mb.ashx
Statistics Canada. (2011a). *Population, urban and rural, by province and territory (Ontario)*. Ottawa Retrieved from http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo62g-eng.htm.
Statistics Canada. (2011b). *Population, urban and rural, by province and territory (Prince Edward Island)*. Ottawa Retrieved from http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo62c-eng.htm.

Statistics Canada. (2014a). Visual census, Population, Ontario. Retrieved from http://www12.statcan.ca/census-recensement/2006/dp-pd/fs-fi/index.cfm?LANG=ENG&VIEW=D&format=flash&PRCODE=35&TOPIC_ID=3

Statistics Canada. (2014b). Visual census, Population, Prince Edward Island Retrieved from http://www12.statcan.ca/census-recensement/2006/dp-pd/fs-fi/index.cfm?LANG=ENG&VIEW=D&format=flash&PRCODE=11&TOPIC_ID=3

The Guardian. (11 October 2007). 'Cash-for-honours' Timeline. Retrieved from http://www.theguardian.com/politics/2007/oct/11/partyfunding.uk