



THE CENTRE FOR MARKET AND PUBLIC ORGANISATION

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Principled Defence of Democracy’:
the House of Lords on the Number of MPs and Defining their
Constituencies**

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Centre for Market and Public Organisation
Bristol Institute of Public Affairs
University of Bristol
2 Priory Road
Bristol BS8 1TX
<http://www.bristol.ac.uk/cmipo/>

Tel: (0117) 33 10752

Fax: (0117) 33 10705

E-mail: cmipo-admin@bristol.ac.uk

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Constituencies**

Ron Johnston¹ and Charles Pattie²

¹*CMPO and School of Geographical Sciences, University of Bristol*

²*Department of Geography, University of Sheffield,*

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Abstract

The Conservative-Liberal Democrat coalition government formed in May 2010 in the United Kingdom has instituted a programme of considerable electoral and constitutional reform. The first major element of this was the *Parliamentary Voting System and Constituencies Bill*, which was debated at great length in Parliament over a five-month period. During its passage through the House of Lords debate over this Bill raised a number of issues relating to both the country's constitution and the role and operations of that House. This paper uses those debates, in particular the sections dealing with the number of MPs and the rules for defining constituencies, to illustrate those substantial concerns and their implications for the future role of the House of Lords.

Keywords : electoral reform, constitution, House of Lords

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Address for correspondence

CMPO, Bristol Institute of Public Affairs

University of Bristol

2 Priory Road

Bristol BS8 1TX

R.Johnston@bristol.ac.uk

www.bristol.ac.uk/cmpos/

http://www.ggy.bris.ac.uk/staff/staff_johnston.html

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Full electoral reform, involving a change to the voting system for a country's Parliament, is rare in long-established democracies,¹ but changes within a system are much more common. Many of the modifications proposed and enacted are introduced for partisan advantage, usually of the party/parties currently in power which are able to use their majority status – especially if there are no constitutional impediments to so doing – to achieve their ends. When such proposals are brought forward, however, they usually stimulate Parliamentary, if not wider, opposition, and this can involve the application of tactics designed to manipulate Parliamentary and or constitutional procedures to thwart the government's goals.

Such was the case with the *Parliamentary Voting System and Constituencies Bill* introduced to the UK House of Commons by the new coalition government in 2010 and enacted in February 2011. As a product of the agreement establishing the coalition, this Bill combined two elements that served the partners' separate interests. The Conservative party – the major partner – had for some years been planning to reduce the number of MPs,² and also to change the rules by which Parliamentary constituencies are defined by independent, non-partisan commissions, those rules having the goal of eliminating a source of bias that the Conservatives had suffered from over several recent general elections resulting, as they perceived it, from substantial differentials in constituency electorates.³ For the junior partners, the Liberal Democrats, the Bill proposed the holding of a binding referendum on a major electoral reform, switching from the first-past-the-post (FPTP) to the alternative vote (AV) method of electing MPs. The Liberal Democrats, who were also committed in their manifesto to a reduction in the number of MPs (from the then-current 650 to 500), had long campaigned for a proportional representation electoral system but the Conservatives were not prepared to offer this. Their partners therefore accepted the offer of a binding referendum on a switch to AV as second-best – even though the Liberal Democrat leader had called it 'a miserable little compromise' earlier in the year – because its use would undoubtedly boost their representation in the House of Commons and perhaps be the first step towards a more proportional system at a later date.⁴ The Labour party was strongly opposed to the changes to the number of MPs and, especially, to the rules for defining constituencies, on partisan grounds. It was less concerned about the change to AV – indeed its then leader had proposed a similar referendum prior to the 2010 general election campaign in the hope that this would win Liberal Democrat support in negotiations over a

¹ A Renwick, *The Politics of Electoral Reform: Changing the Rules of Democracy*, Cambridge, Cambridge University Press, 2010.

² Their 2010 manifesto presented a reduction in the number of MPs (by ten per cent) as both a cost-saving measure and a response to the public mis-trust in politicians generated by the 2009 expenses scandal.

³ One newly-elected MP asked at an early hearing held by the House of Commons Political and Constitutional Reform Committee on the Bill whether expert witnesses 'regard this Bill as a partisan measure' (House of Commons Political and Constitutional Reform Committee *Third Report of Session 2010-11, Parliamentary Voting System and Constituencies Bill*, Oral Evidence, p.39).

⁴ Many Conservatives were concerned that even under AV they would never again be able to form a single-party majority government, let alone under some more proportional system. However, the party did not commit itself to support the referendum campaign – indeed at his party's annual conference that September its leader, the Prime Minister, counselled his members to stop worrying about the Bill, get it enacted and then campaign against the referendum's proposed change, while getting the other changes that would be in the party's interest.

coalition arrangement should one prove viable and his successor campaigned for a yes vote in the 2011 referendum.⁵

Debates over the *Parliamentary Voting System and Constituencies Bill* were long and frequently fraught, with Labour using a variety of tactics to delay its enactment and implementation, with major amendments if possible. Some of those tactics focused on the AV referendum but – until the end of the process when this was the only issue remaining for debate – these were largely technical and to some extent undertaken by members other than those who occupied front-bench positions, in both Houses. Instead, they focused on the Parliamentary constituencies part of the Bill, because this carried the greatest potential danger to their electoral situation – and for which some at least of their tactics could be sustained by constitutional arguments, on which some Labour peers felt very strongly that proper scrutiny was being denied to proposed major changes. For much of the debate during the period September 2010-February 2011 those arguments were conducted in the House of Lords and they covered a number of not only general constitutional issues but also others which concerned the nature and functioning of that chamber – whose future form and functions were also likely to be the subject of proposed reforms during the same Parliament. This paper follows that focus, by discussing the context for the disagreement between the parties over the number of MPs and the definition of constituencies and the constitutional issues that dominated much of the debate in the House of Lords, where most of the Bill's scrutiny took place.

CHANGING THE NUMBERS AND THE RULES: THE CONSERVATIVE POSITION

Conservative concerns about the UK electoral system, and in particular how votes are translated into seats, emerged in the 1990s. Until then, the party had been complacent about the system. It accepted, as did Labour, that most electoral outcomes under the first-past-the-post system were disproportional, with the largest party in terms of vote share getting an even larger share of seats in the House of Commons – on the grounds that this ensured that most governments had a workable majority and that when the electorate turned against an incumbent government the result was almost always its replacement by one in which the former opposition gained a clear mandate.

The Conservatives were also complacent about the procedure by which constituency boundaries were regularly reviewed, under a system established – following all-party agreement at a Speaker's Conference – by the *House of Commons (Redistribution of Seats) Act 1944*, as amended in 1958 and then replaced by the *Parliamentary Constituencies Act 1986*. The 'accepted wisdom' throughout the 'political classes' was that the Conservatives usually benefited from those regular redistributions by as many as 20 seats as the small constituencies,⁶ most of which were won by Labour, that emerged as inner city populations declined were eliminated (which was the reason why the Labour government delayed

⁵ In the AV referendum campaign, some senior party members were members of the 'No' campaign organization, whereas the party leaders and some senior Shadow Cabinet members supported the 'Yes' campaign.

⁶ The gap between redistributions has changed over the decades. Initially, they were to occur once every 3-7 years, but MPs found such frequent change too disruptive and it was changed in 1958 to every 10-15 years. It was changed again to every 8-12 years in 1992.

implementation of new constituencies in 1969⁷). That complacency was shattered in the early 1990s, however, when the Conservatives realized the Labour party had committed very substantial resources to the Boundary Commissions' Third Periodic Reviews then under way: their campaigns to convince Assistant Commissioners at Public Inquiries to recommend sets of constituencies within individual counties and boroughs that favoured Labour's electoral prospects meant that the Conservatives were outflanked and outgunned, and failed to get the full expected advantages. This realization came too late, however, to prevent the Conservative government passing, as its first piece of legislation after its 1992 general election victory, the *Boundary Commissions Act, 1992*, which required the Commissions to complete that review in time for the new constituencies to be in place for the 1997 election, on the continued assumption that their party would benefit most from that redistribution.⁸

Concerns within the Conservative party that they were disadvantaged by the operation of the electoral system slowly emerged during the first years of the Blair administrations. Until 1997, academic research had indicated that neither of the two largest parties was systematically advantaged over the other in the translation of votes into seats, apart from the disproportionality that appeared to favour both to the same extent when they obtained the larger share of the votes. What advantages there were operated differentially and balanced each other out: Labour benefited from the constituencies it won tending to be smaller (i.e. having fewer electors) than those won by the Conservatives, whereas the latter benefited from their votes being more efficiently distributed across the constituencies than Labour's. The 1997 general election saw a major change to that situation, however: the system's operation indicated very considerable bias towards Labour, so much so that if the two parties had obtained an equal share of the votes cast, Labour would have won 82 more seats than the Conservatives. For the first time, almost all of the several components of that bias favoured Labour.⁹

The pro-Labour bias was exacerbated at the 2001 election; with equal vote shares, Labour would have gained 142 more seats than the Conservatives – an increase that was in part generated by a new element to UK elections, a very low turnout (Labour seats tended to have many more abstentions than those won by the Conservatives). This situation had little apparent impact on the party that was substantially disadvantaged by it, in part because as in 1997 the Conservatives lost to Labour by a wide margin of votes and the consequent landslide was not unexpected. But the 2005 election result focused Conservative attention much more on the electoral system's operation: Labour's vote share declined substantially from its 2001 figure and the gap between the two parties narrowed to just 2.8 percentage points – but Labour was still the beneficiary of a very substantial bias; if the two parties had

⁷ For a detailed discussion of this and of the work of the Boundary Commissions more generally see D. J. Rossiter, R. J. Johnston and C. J. Pattie, *The Boundary Commissions: Redrawing the UK's Map of Parliamentary Constituencies*, Manchester, Manchester University Press, 1999.

⁸ R. J. Johnston, C. J. Pattie, D. Dorling and D. J. Rossiter, *From Votes to Seats: the Operation of the UK Electoral System since 1945*, Manchester, Manchester University Press, 2001.

⁹ There are main components to the bias, those related to: differences in constituency electorates; differences in constituency turnout rates; differences in the performance of other parties' in the constituencies; and differences between the two main parties in the efficiency of the distribution of their support across all constituencies.

gained an equal share of the votes (33.8 per cent each) Labour would have won 112 more seats than their opponent.¹⁰

This outcome became the focus of much Conservative attention. They claimed that it took many more votes on average for the Conservatives to win a seat than for Labour: in 2005, they got one seat for every 44,516 votes, whereas the ratio for Labour was one to every 26,921. (In 2001, the gap was even larger: 50,625 votes per seat for the Conservatives and only 26,111 for Labour.) The reason for this, they argued, was that Conservative-held seats were much larger than those held by Labour: in 2005, the average Labour-won constituency contained 66,802 electors, compared to 72,950 in the average Conservative-won constituency. This, it was argued, must be a result of the way that the Boundary Commissions define constituencies: those bodies are fiercely independent and non-partisan, so the pro-Labour biases must be a necessary inbuilt consequence of the procedure. Academics continued to argue that the production of bias was more complex than a consequence of electorate-size variations alone; indeed that source was a relatively small component of the total – demonstrated even further by greater sophistication in bias measurement.¹¹ Some argued that in the contemporary situation of an increasingly multi-party polity and lower turnouts, the entire electoral system, and not just the procedure for defining constituencies, was not ‘fit for purpose’, but the Conservatives remained firmly committed to first-past-the-post and a belief that changing the procedure would alter their fortunes. The 2010 general election result failed to sustain their case: if they and Labour had obtained equal votes shares then, Labour would have won 54 more seats – and only a small part of that advantage accrued from differences in constituency electorates. Calculations showed that, given the geography of party support in 2010, Labour could win a majority in the House of Commons with only a two percentage points lead over the Conservatives, whereas for the latter to gain a majority their lead over Labour would need to be at least eight points.¹²

Making a change: the Parliamentary Voting System and Constituencies Bill

The formulation of a strategy to counter this bias and its assumed major cause began with a pamphlet by Andrew Tyrie MP, published by Conservative Mainstream – *Pruning the Politicians: the Case for a Smaller House of Commons*. Although, as the title and subtitle suggest, his main focus was a reduction of the number of MPs, Tyrie also addressed what he termed the ‘unequal representation’ that the Conservatives suffered. He noted that there were substantial variations in constituency electorates, not only among the UK’s four constituent countries but also within each, which is a product of a number of factors including that the electoral map is frequently out-of-date: redistributions tend to take a long time and the constituencies used for a general election could be based on electoral data as

¹⁰ For the bias estimates at the 2001 and 2005 elections see R. J. Johnston, D J Rossiter, C J Pattie and D Dorling, ‘Labour Electoral Landslides and the Changing Efficiency of Voting Distributions’, *Transactions of the Institute of British Geographers*, NS27: 3 (2002), pp.336-361, R J Johnston, D J Rossiter and C J Pattie, ‘Disproportionality and Bias in the Results of the 2005 General Election in Great Britain: Evaluating the Electoral System’s Impact’, *Journal of Elections, Public Opinion and Parties*, 16:1 (2006), pp.37-54.

¹¹ G Borisyuk, R J Johnston, M Thrasher and C Rallings, ‘A Method for Measuring and Decomposing Electoral Bias for the Three-Party Case, Illustrated by the British Case’, *Electoral Studies*, 29: 6 (2010), pp.733-745.

¹² J Curtice, ‘So what went Wrong with the Electoral System? The 2010 Election Result and the Debate about Electoral Reform’, *Parliamentary Affairs*, 63:4 (2010), pp.623-638.

much as eighteen years old. (Each constituency is supposed to have an electorate as close as practicable to the relevant country's electoral quota— basically its average constituency electorate – but other factors taken into account by the Commissions ensured considerable variation about that figure.) In some parts of the country a single vote has more weight than a vote elsewhere, leading to the conclusion that 'Inequality of representation is unfair to electors. It is also unfair between parties' (p.16).

Labour benefits from that 'unfairness' and the Conservatives lose. (There is no mention in Tyrie's pamphlet, as there rarely is in such discussions, that the system is even more biased against the Liberal Democrats and smaller parties; not surprisingly the Liberal Democrats see changing the Boundary Commission rules as little more than 'moving the seats on the decks of the Titanic' and favour an electoral system based on proportional representation.¹³) Tyrie also pointed to what academic commentators have identified as a 'ratchet effect' which virtually ensures that each redistribution results in an increase in the number of MPs,¹⁴ while the 'confusion inherent in the rules' allows the parties (p.20)

...to dress up schemes that give them an advantage [in representations to the Commissions and their public inquiries], claiming that they reflect local ties. It is inevitable that parties should seek advantage in their submissions to inquiries – they would be perverse if they did not. But the scope for discretion is too large.

As well as proposing a reduction in the number of MPs, Tyrie also made suggestions for rule changes to remove the 'unequal representation'. They included abolition of the four Commissions, replacing them by one for the entire UK with a single electoral quota. (Before 2004, Wales and Scotland were substantially over-represented relative to England; after 2005, Scotland was less so because of the reduction of its number of MPs following creation of the Scottish Parliament.¹⁵) In addition, that new Commission should be given a much stricter size limit within which all constituencies were to be placed, 'from which there should be no discretion or exceptions, ... no constituency is permitted to deviate from the national quota by more than 5 per cent' (p.24) – even if this meant crossing ward boundaries in order to ensure equal electorates; crossing local government boundaries should also no longer be considered undesirable if equality is to be achieved. In addition, redistributions should be undertaken more frequently and Commissions should take projected population changes into account.

Tyrie's arguments soon took shape in a formal proposal to change the rules, in a *Parliamentary Constituencies (Amendment) Bill* introduced to the House of Lords as a Private Member's Bill by Lord Baker (a former MP and Cabinet Minister under Margaret Thatcher and John Major). It had its second reading debate on 18 May 2007, and was committed to a Committee of the Whole House – but was not debated then; its third

¹³ On the Liberal Democrats' disadvantage, see G. Borisyuk et al., 'A Method for Measuring and Decomposing...'

¹⁴ On the 'ratchet effect' see D. Butler and I. McLean, 'The Redrawing of Parliamentary Boundaries in Britain' in I. McLean and D. Butler, editors, *Fixing the Boundaries: Defining and Redefining Single-Member Electoral Districts*, Aldershot, Dartmouth Publishing, 1996,, pp.1-38.

¹⁵ It was not widely appreciated that the use of the same quota for Scotland and England was for the next review only. Thereafter, it was very likely, because of the impact of the 'ratchet effect' there, that Scotland's MPs would increase again relatively more rapidly than those in England, slowly reinstating the size differential between the average electorate in the two countries.

reading (again with no debate) was on 23 July, when it was passed and sent to the House of Commons, where it was never debated.¹⁶ It set the number of MPs as 'not ... greater than or substantially less than 581' (581 would mean a decrease in the number of MPs by 10 per cent on the then current complement), with a UK-wide electoral quota. No constituency electorate should either exceed 105% or be less than 95% of that quota, and in applying that rule the Electoral Commission (which presumably would take over the task of redistributions from the Boundary Commissions) should have regard to local government boundaries. There was no mention of the frequency of redistributions but Lord Baker did raise the issue of the savings that could be made – later taken up by his party leader in the light of the expenses scandal.

Electoral equality across all UK constituencies was clearly the major goal: there would be, as Lord Baker expressed it in the second reading debate, a 'standard electorate size, which is only just and fair',¹⁷ denying that there was any need to overcompensate Scotland and Wales – which would lose 8 MPs (from 59) and 11 (from 40) respectively given the reduction to a total of 581. Other peers agreed with the general case, although some extended it to issues of electoral and House of Lords reform: Lord Baker concluded by calling for consensus between all parties – reached, perhaps, through a Speaker's Conference – reflecting a commitment to a major review: it never happened.

The Conservative party continued to work on proposals based on Tyrie's and Baker's, and in October 2009 the then party chairman – Eric Pickles – convened a meeting of academics and others interested in the topic to discuss a range of issues related to a draft Bill with similar content as Lord Baker's, which he indicated would have priority should the Conservatives form a government after the scheduled 2010 general election. That intent was further made public when three senior MPs tabled an amendment to the then Labour government's *Constitutional Reform and Governance Bill*. This too proposed a reduction of the number of MPs by 10% and established a UK-wide electoral quota; like Baker's bill it made electoral equality the predominant criterion to be applied by the Boundary Commissions in any redistribution, but further constrained variations around that figure to 3.5% – i.e. no constituency should have an electorate either more than 103.5% of the UK average or less than 96.5% (all constituency electorates would thus be within the range 75,000-80,400, given an average for the 585 constituencies of c.77,700).¹⁸ The amendment was not debated, but gave a very clear public indication of the Conservative party's intent. In that context, the British Academy, whose Policy Centre had previously published an informational monograph on aspects of electoral reform – *Choosing an Electoral System*¹⁹ – decided to commission a follow-up publication which would consider the issues raised by any proposals to legislate early in the next Parliament, should a Conservative government be elected. In the event, a Conservative-Liberal Democrat coalition emerged after the election. The

¹⁶ See I McLean, R J Johnston, C J Pattie and D J Rossiter, 'Can the Boundary Commissions Help the Conservative Party? Constituency Size and Electoral Bias in the United Kingdom', *The Political Quarterly*, 80:4 (2009), pp.479-494.

¹⁷ House of Lords *Hansard*, 18 May 2007, column 339.

¹⁸ The number of MPs had increased since Baker's Bill was published, following redistributions by the English, Northern Irish and Welsh Boundary Commissions, hence the slightly larger number consequent on a 10% reduction.

¹⁹ S Hix, R J Johnston and I McLean, *Choosing an Electoral System*, London, The British Academy, 2010, available at <http://www.britac.ac.uk/policy/policy-centre-reports.cfm>.

coalition agreement indicated a continued commitment to reducing the number of MPs and greater equality in constituency electorates. (Both parties favoured the former though to a different extent – one Liberal Democrat MP had introduced a Bill calling for a House of Commons of just 500; greater equality was a Conservative manifesto commitment, which was further justified as a response to the ‘expenses scandal’ of 2009, with the Prime Minister claiming that reducing the number of MPs would not only save money – the figure of £12million annually was often quoted – but also help to rebuild public trust in politicians.)

The coalition agreement also contained a commitment to hold a referendum on changing the electoral system from first-past-the-post to the alternative vote. The full package – which also included a separate bill setting a fixed term of five years for each Parliament – was outlined by the Deputy Prime Minister and the *Parliamentary Voting System and Constituencies Bill* was published in July 2010: the British Academy paper analyzing it – *Drawing a New Constituency Map for the United Kingdom*²⁰ – was published in September, prior to the second reading debates in the House of Commons. Several think-tanks later published critiques, including Policy Exchange (which largely supported the proposals – indeed its Research Note, *Local Seats for Local People?*, suggested that the Bill ‘does not go far enough, fast enough’) and particularly Democratic Audit, which was much more critical.

With regard to the number of MPs and the definition of constituencies, the Bill made several major proposals:

- Reducing the number of MPs from 650 to 600 (i.e. a reduction of 7.8% rather than the 10% originally proposed);
- A single UK electoral quota but retaining the four Boundary Commissions;
- No constituency to cross the boundaries between the four constituent countries, and the allocation of seats to each to be determined by the Sainte Laguë rule;
- No constituency to have an electorate greater than 105% or less than 95% of the UK quota;
- Two Scottish constituencies placed outside that size limit (one for the Orkney and Shetland Isles, and one for the area of Comhairle nan Eilean Siar – commonly known as the Western Isles);
- No constituency should have an area exceeding 12,000 square kilometers, and if one has to be proposed which is that large then the +/-5% size constraint does not apply. As it will have a smaller electorate than the quota, other constituencies in that country will have to be on average slightly larger as a consequence. (This will only apply in Scotland, and almost certainly to one constituency only.)
- The UK quota to be determined by dividing the total registered electorate – less that of the two identified Scottish constituencies – by 598;
- A range of factors that Commissions could take into account when defining constituencies within the 5% size constraint – special geographical considerations, local government boundaries, local ties that would be broken and inconveniences caused by changes in constituency boundaries, and regional boundaries within England;

²⁰ M Balinski, R J Johnston, I McLean and P Young, *Drawing a New Constituency Map for the United Kingdom*, London, The British Academy, 2010, available at <http://www.britac.ac.uk/policy/policy-centre-reports.cfm>.

- The next review of all constituencies to be completed by 1 October 2013 (i.e. 18 months before the scheduled date of the next general election) and subsequent reviews to be conducted on a five-yearly cycle; and
- An extended period of twelve weeks for public representations to be made after a Commission has published its provisional recommendations for constituencies in an area, but no public inquiries thereafter.²¹

The Conservatives thus not only incorporated all of Andrew Tyrie's recommendations but added further constraints – notably the five-yearly cycle and the prohibition of public inquiries. The outcome, if the Bill were enacted, would be more frequent redistributions and only small variations in constituency electorates around a UK-wide electoral quota. In that way they would hope to remove the Labour party's advantages in the translation of votes into seats – at least to the extent that they resulted from differences in electorate size.

LABOUR'S RESPONSE

The Labour party was, not surprisingly, prepared for the Conservative's proposals – if not for their conjunction in a single Bill with that for a referendum on the alternative vote. They perceived them as posing a major threat to their electoral prospects in a number of ways, and rapidly started to refer to them as a 'gerrymander'.²² It feared that it would be disadvantaged in a number of ways.

1. The reduction in the number of MPs from 650 to 600, associated with the uniform electoral quota, could hurt Labour much more than the other parties. The 50-seat reduction would particularly affect the three smaller countries that have been over-represented relative to England: Scotland would lose 7 seats, Wales 10, and Northern Ireland 2 – 38 per cent of the total reduction although those three countries returned only 18% of MPs to the House elected in 2010. As Labour is very much stronger in Scotland and Wales than the Conservatives, many of the 17 seats to be lost there could be Labour-held.

Within England, the initial expectation was that Labour would lose most seats there too, because it was stronger in the urban areas where most of the smaller constituencies were located (the Northwest region would lose six, for example, the West Midlands and Greater London five, and Yorkshire and the Humber four). Later calculations published by Democratic Audit suggested that the Conservatives may be the main losers in some English regions and that the differential may be not as large as first feared – although it was recognized that the large number of different ways in which the new constituency boundaries could be drawn meant that there was a degree of uncertainty about the figures: whereas the 'best case' simulation for the Conservatives had them losing just

²¹ Under the 1944 Act, as amended in 1958, Commissions were required to hold public inquiries if either a local authority in the area or 100 electors objected to the provisional recommendations. These inquiries were chaired by Assistant Commissioners, who reported on their proceedings and made recommendations to the relevant Commission regarding possible changes to their provisional recommendations.

²² As in a pamphlet by David Blunkett published in January 2010, long before the election, in which he accused the Conservatives of gerrymandering their way to power, as *The Times* described it (<http://www.timesonline.co.uk/tol/news/politics/article6993149.ece>); the pamphlet was published by Progress and is available at http://clients.squareeye.com/uploads/prog/documents/pamph_150110.pdf; it is entitled *The Hidden Agenda: the True face of Cameron's Conservatives*.

three seats, the ‘worst case’ increased that to 30 – with a median of the Conservatives losing 17 and Labour 18.²³ Nevertheless, there was continued Labour concern that they would be the main losers – so much so that there were occasional claims that the figure of 600 had been chosen because that would produce the best outcome for the Conservatives.²⁴

2. The specific, and tight, constraint of +/-5% around the UK quota into which all constituencies had to be fitted also threatened some Labour strongholds. The Boundary Commissions under the existing rules fitted constituencies within major local government boundaries, especially in England where county and London borough boundaries were specifically mentioned in the rules for redistribution. Some – mainly urban – local government areas entitled to a small number of constituencies were allocated seats with electorates well below the quota. If, for example, the quota was 70,000 a borough with an entitlement of 2.7 seats would probably be allocated three, with an average electorate of 63,000 whereas a county with an entitlement of 12.7 would be allocated 13 with an average electorate of 68,400. Although some London and metropolitan boroughs were paired by the Boundary Commission for England in its fifth review to avoid extreme deviations from quota, most of the smallest constituencies with electorates under 60,000 were in urban areas – and most of them seats that Labour would expect to win. This advantage could be lost with the greater equalization.
3. Labour’s advantage in the smaller constituencies that would be removed by equalization both across and within each of the four countries increased during the lifetime of each set of Parliamentary constituencies,²⁵ because the main feature of population change during the last six decades (though less so in the last two than in the first four) was a decline of inner urban and a growth of suburban, smaller town and rural populations. As Labour tended to be the stronger of the two main parties in the former type – already on average smaller – its advantage increased over time as its seats became smaller and its opponent’s larger, only to be rectified after each Boundary Commission review.²⁶ But that advantage would largely disappear with the new rule that redistributions take place every five years. The first, to be reported on by 1 October 2013, would use electoral data collected in late 2010 and collated in the following February; the general election to be held in 2015 would thus be held in constituencies that were ‘five-years old’, and they would then be replaced by a new set for publication in 2018, based on (probably) 2015 data.

²³ One Liberal Democrat peer, Lord Rennard, argued on the Liberal Democrat Voice website that the net change may ‘well be negligible compared to what would have happened in a normal boundary review’; he also claimed that ‘Labour peers in the opinion of many abused parliamentary procedures to try and block this Bill’: <http://www.libdemvoice.org/chris-rennard-electoral-reform-23113.html>. Another commentator on that medium claimed that Labour’s tactics had ‘driven Conservative and Liberal Democrat peers closer together’ (<http://www.libdemvoice.org/labour-electoral-reform-23044.html>) and probably ensuring that crossbench peers would become annoyed and more sympathetic to the government position (<http://www.libdemvoice.org/house-of-lords-labour-filibuster-22869.html>).

²⁴ Given the many possible combinations of small areas to create constituencies, such an exercise would not have been possible!

²⁵ Though of course Labour does not contest seats in Northern Ireland and the Conservatives only formed a pact with the Ulster Unionists in 2010

²⁶ It was for this reason that Labour prevented introduction of the new constituencies proposed by the Boundary Commissions in 1969; see Rossiter et al., *The Boundary Commissions*.

4. Linked to the previous issues, Labour feared that in the first review under the new scheme they would be further disadvantaged because of the incompleteness of the electoral roll. The Electoral Commission had recently estimated that some 3.5 million people – some 8 per cent of the total – who were eligible to be on the electoral roll were not (although registration is a legal requirement).²⁷ Further, these ‘absent electors’ were concentrated among younger persons, especially students, members of ethnic minorities, renters of private properties, and mobile households, large proportions of whom live in urban areas, especially inner cities, as estimated data produced by the Office of National Statistics indicated; they might be expected to vote predominantly for Labour should they enroll and vote. If they were all enrolled, the distribution of seats between urban and rural areas might be changed from that which the Boundary Commissions will produce in the first redistribution under the new rules – which should favour Labour.

5. One major procedural change in the new rules for redistribution set out in the *Parliamentary Voting System and Constituencies Bill* was the prohibition on public inquiries which have been held in most areas – and certainly those where substantial changes to constituency boundaries were proposed – as part of the public consultation process. These allowed local residents and interest groups, as well as the political parties, to argue against the Commissions’ provisional recommendations and, particularly in the case of the political parties (predominantly Labour and the Conservatives²⁸), to promote alternative configurations aimed, in almost all cases, to advantage their own party electorally over others. During the Third Periodic Review in England Labour began to realise the potential that these Inquiries offered to further their electoral interests if they were well prepared and two members (Edmund Marshall, a mathematician who was Labour MP for Goole, 1971-1983, and Gerry Bermingham, who was a Sheffield City Councillor and MP for St Helens South, 1983-1997) did the ground work which led to the case against the Boundary Commission brought by four senior members of the party (as individuals, not as party representatives) which claimed that it had ‘misdirected’ itself in its relatively flexible interpretation of the rules.²⁹ That case failed, but in the late 1980s the party gave one of its staff, David Gardner, the task of developing a preferred set of constituencies for every part of the country, which was then used at all of the relevant public inquiries during the fourth review – with strong backing from senior party MPs to ensure that local parties conformed, whatever their own preferred configurations. The strategy was very successful and was repeated for the fifth review, though with less overall success because the Conservatives were better prepared. Whether they could again outflank the Conservatives at the sixth review may have been doubtful, but removal of the public inquiries would ensure that they did not have the opportunity not only to argue for their preferred options but also, through cross-examination (often by barristers), to counter their opponents’ proposals; in future, under the *Parliamentary Voting System and Constituencies Bill* they could only make written submissions. The lack of public inquiries would significantly limit the

²⁷ The Electoral Commission, *The Completeness and Accuracy of Electoral Registers in Great Britain*, The Electoral Commission, London, March 2010.

²⁸ The Liberal Democrats have not made substantial contributions to a large number of the consultations.

²⁹ For full details see Rossiter et al., *The Boundary Commissions*, p.113ff.

transparency of the decision-making during a review, it was claimed, and undermine the credibility of its outcome.

Labour coupled this removal of the public inquiries with concerns for the community basis of constituencies, arguing that alongside the arithmetic requirement of near electoral equality the then-current rules also incorporated an organic element, requiring that if at all possible community ties should not be broken by the redrawing of constituency boundaries, and Commissions when proposing changes should take into account the inconveniences that changes would create. The +/-5% variation constraint reduced the potential for those community ties to be taken into account, and the absence of public inquiries would make it more difficult for them to be promoted in arguments for alternative configurations. One front-bench spokesman claimed during a Westminster Hall debate on 11 January 2011 that the Commissions 'quite often get it wrong ... invariably, as they have admitted, the first version has not fitted the bill'³⁰ so, in his view, inquiries have been necessary in order to remedy the situation. That argument is not sustained by the evidence: most of the inquiries during the fifth review resulted in very few changes from the Commissions' provisional recommendations, the main exceptions being in areas where the number of seats was to be either increased or reduced and the whole map had to be redrawn: elsewhere, more than minor changes involving a very few wards only were rare³¹ – although such 'minor' changes could be crucial electorally.³² But where cases were made, whether by the political parties or others, community ties dominated the arguments as to why one set of constituencies was better than another, with a very wide range of factors being cited in evidence.³³ The combination of the greater equality requirement, the downgrading of local authority boundaries as a factor to be taken into account by the Commissions,³⁴ and the lack of public inquiries created the fear that the arithmetic would triumph over the organic and parties would have a much reduced opportunity to use the latter to promote their electoral cause.

This combination of five major issues convinced Labour that the Bill's proposals were not in their interest. They therefore could seek to defeat it outright and return to the status quo; or they could seek to modify it, so as to retain those aspects of the previous system that they benefited from – while proclaiming that they accepted the Bill's fundamental goal, greater electoral equality; or they could delay it, so as to prevent its implementation in time for new constituencies to be in place for the 2015 election.

PARTISAN ADVANTAGE MEETS THE CONSTITUTION IN THE HOUSE OF LORDS

Labour's strategy was countered by the coalition government's arguments which focused on two main features of the constituencies part of the Bill: greater equality of constituency

³⁰ Chris Bryant, House of Commons *Hansard*, Westminster Hall, 11 January 2011, column 33WH.

³¹ See R J Johnston, C J Pattie and D J Rossiter, 'Far too Elaborate about so Little': New Parliamentary Constituencies for England', *Parliamentary Affairs*, 61:1 (2008), pp.4-30.

³² Johnston et al., *From Votes to Seats*, p.147ff.

³³ Rossiter et al., *The Boundary Commissions*, p.308ff.

³⁴ It was clear that to meet the equality constraint not only would most county boundaries in England have to be crossed by one or more constituencies but also that wards would have to be subdivided – something that had not previously occurred: Balinski et al., *Drawing a New Constituency Map...*

electorates is fairer than the present situation; and the need to have new constituencies in place for 2015, otherwise that election would be fought in constituencies defined using electoral data for 2000 in England, and 2-3 years later elsewhere in the UK. They also needed the Bill to be enacted by early 2011 at the latest because the proposed referendum on AV was scheduled to be held on 5 May 2011. Labour's several offers that if the Bill were split into two parts it would allow the section on the referendum to pass while scrutiny of the other part continued were rejected by the government. The coalition needed both parts passed together if each party was to get what it wanted from the Bill by 2015, and indeed the two parts were yoked: if the referendum approved a change in the voting system nevertheless it would only be introduced when the new constituencies were implemented by Parliament following the Commissions' reviews.

The Bill had its first reading in the House of Commons in July 2010 and began its second reading stage in September. The timetabling of Commons business meant that although there were long debates across eight days in total many of the large number of amendments tabled had not been addressed when the debates closed, and thus much of the discussion about the issues identified above took place in the House of Lords. An amended Bill returned to the Commons on 15 February 2011, when the Minister in charge of its progress (Mark Harper, Parliamentary Secretary at the Cabinet Office) reported that debate in the Lords had taken place on 17 separate days and involved over 100 hours, with the second-longest recorded committee stage for any Bill in that House.

Those debates in the House of Lords were dominated by amendments put down by Labour peers, either by the front bench or by others with a major interest in electoral issues, some of them working with the front bench. Three members of the government front bench responded (two of them Liberal Democrats); there were several interventions from a small number of other peers from the coalition parties (notably two Liberal Democrats), but few from any others – a point remarked upon several times by members of the Labour front bench. Until the later stages of the debate, there were few interventions from crossbench peers, which studies of the House in recent years have suggested is not unusual; many of them have outside interests/jobs and are only likely to participate fully in debates that relate to their particular interests.³⁵

It was soon very clear that Labour's goal in the debates was to delay passage of the Bill, so as to win concessions; they were prepared to allow the AV referendum to go ahead but intended to give the Parliamentary constituencies clauses the detailed scrutiny that they had not received in the House of Commons. This led on several occasions to personal attacks, which are unusual in the Lords, and to claims that the normal method of inter-party consultation (the 'usual channels') used to expedite business was not being deployed successfully. Such issues occupied a considerable part of the debating time during the second reading committee stage, with numerous references to constitutional issues that some saw as threatening the House of Lords' roles and functioning.

The Bill and the constitution

³⁵ M Russell and M Sciarra, 'Why Does the Government get Defeated in the House of Lords? The Lords, the Party System and British Politics', *British Politics*, 2:2 (2007), pp.299-322.

Reform of the House of Lords has long been a topic of political debate, but little was achieved during most of the twentieth century. The *Parliament Act* of 1911 removed any absolute Lords veto over legislation passed to it by the House of Commons which the Speaker certified as a money Bill and allowed it only a suspensory veto (the ability to delay for three sessions only) on any other Bill passed by the Commons. The House of Commons thus predominated; the Lords' only remaining absolute power was that it had to approve any extension of a Parliament's life (i.e. postpone a general election). The Lords could, however, 'wreak havoc' with a government's programme through delay as they scrutinized and amended Bills,³⁶ although after 1945 (when for the first time there was a majority Labour government in the House of Commons, the Lords having an inbuilt Conservative majority among the hereditary peers) it adopted the 'Salisbury-Addison convention', whereby the House of Lords would not impede progress on Bills implementing the government's manifesto, on which it had a mandate from the electorate.³⁷ The main role of the Lords was thus to scrutinize legislation and suggest to the Commons how it might be amended, but not to insist on changes if they were resisted in the other House.

The next major change came at the end of the century, when the *House of Lords Act, 1999*, removed all but 92 of the hereditary peers. This changed its character very substantially: life peers now predominated, and no party had a majority – indeed three groups (Conservative, Labour, and the crossbenchers – those without party affiliation and adherence to a whip) are of approximately equal size.³⁸ It also changed patterns of behaviour. The House of Lords believed it had greater legitimacy than under the previous regime and was more prepared to defeat the government even if eventually it yielded when amended Bills were returned to it in either their original form or something close to it.³⁹ This changed situation was reflected in the work of a cross-House Joint Committee on Conventions convened in 2006 to consider 'the practicality of codifying the key conventions on the relationship between the two Houses', with regard to the Salisbury-Addison convention, the convention that 'Government business in the Lords should be considered in reasonable time', and the conventions governing the exchange of amendments. This recommended a 'Government Bill Convention' that a manifesto bill should be given a second reading, should not be subject to 'wrecking amendments' (which would defeat the government's purpose) and should be returned to the House of Commons in reasonable time for consideration of amendments. Neither 'manifesto bill' nor 'reasonable time' was defined, however; indeed, the report said that without a definition of both, the convention would be both flexible and unenforceable!⁴⁰

This situation sets the context for the debates on the *Parliamentary Voting System and Constituencies Bill* in late 2010-early 2011. The Labour peers claimed that as their role was

³⁶ V Bogdanor, *The New British Constitution*, Hart Publishing, Oxford, 2009, p.151.

³⁷ The predecessors of the Liberal Democrats were not a party to this post-1945 convention, and the current party feels unconstrained by it.

³⁸ In March 2011 there were 219 Conservative peers, 242 who took the Labour whip, and 94 Liberal Democrats, alongside 183 crossbenchers, 25 Bishops and 29 categorised as 'others' (plus 20 on leave of absence, 2 whose membership was suspended, 15 disqualified because they held senior legal positions, and one serving MEP).

³⁹ M Russell and M Sciarra, 'The Policy Impact of Defeats in the House of Lords', *British Journal of Politics and International Relations*, 10:4 (2008): pp.571-589.

⁴⁰ House of Lords and House of Commons, Joint Committee on Conventions, *Conventions of the UK Parliament, Report of Session 2005-06. Volume 1*, HL Paper 265-I, HC1212-I, London, The Stationery Office, 2006.

one of detailed scrutiny, and especially since the Bill had not received that in the House of Commons, they should take whatever time was necessary to achieve the necessary full scrutiny. To boost that argument they claimed that the Bill involved a major change to the UK's constitution because it was both changing the size of the House of Commons – the pre-eminent chamber in a bicameral system where the other chamber had no democratic mandate – and setting a precedent for future constitutional change.⁴¹ This argument did not cover all of the issues in the Bill with which the party was concerned, but it was the focus of much discussion about certain parts.

The core of the Labour argument regarding the proposed constitutional change was that the proposed reduction in the size of the House of Commons had not been subjected to pre-legislative scrutiny. No Green Paper or White Paper had been published as consultation documents prior to the Bill's appearance on 22 July 2010, and very little time had been allowed for either scrutiny by Select Committees prior to debate in the House of Commons or consultation with the devolved administrations. This point had been made by the House of Commons Constitutional and Political Reform Select Committee, whose first report on the Bill stressed that it had been denied 'an adequate opportunity to scrutinize the Bill before second reading' by the government's timetable.⁴² (In a letter to the Deputy Prime Minister it pointed out that it had only two sitting days to consider and take evidence on the Bill.) Its further report extended that point (p.3):⁴³

We regret that it [the Bill] is being pushed through Parliament in a manner that limits both legislative and external scrutiny of its impact, and may consequently undermine the Government's intention to restore the public's faith in Parliament.

There was no government response to either report until after the Bill was passed in February 2011. When it appeared, the government argued (as it did to the Welsh Affairs Select Committee; see below) that it 'was appropriate to make quick progress on the Bill in order to deliver the Coalition's commitment to bring forward proposals for reform in this

⁴¹ An illustration of the nature of that feeling of 'constitutional outrage' is given by a contribution to the *Open Democracy* blog's section on *Our Kingdom: Power & Liberty in Britain*, by Lord Wills, who was a minister responsible for constitutional affairs in the previous Labour government: '... the Bill is characterised by breathless speed and absence of consultation; speed in rushing it through Parliament, speed in holding a referendum less than six months from the presumed passage of the Bill onto the statute book, and unprecedented speed in completing the wholesale revision of constituency boundaries. Why the rush? Surely such important constitutional measures deserve appropriate pre-legislative and legislative scrutiny? Surely people should have the time and opportunity to have their day on the shape of the constituencies in which they live. ... Constitutional changes of this significance should be drafted to endure, whether they're in place for this coming General Election or the next one really should not weigh in the balance. ... When our electoral arrangements become the subject of partisan dispute, it corrodes public trust and undermines the foundations of our democracy. For many years our political parties sought consensus on such issues and, for the most part, succeeded in finding it. This Bill is an exception to this good practice and a shameful one': <http://www.opendemocracy.net/ourkingdom/michael-wills/house-of-lords-is-right-to-challenge-coalition-on-where-we-vote>

⁴² House of Commons, Political and Constitutional Reform Committee, *Parliamentary Voting System and Constituencies Bill: Report for Second Reading, First Report of Session 2010-11*, HC 422, London, The Stationery Office.

⁴³ House of Commons, Political and Constitutional Reform Committee, *Parliamentary Voting System and Constituencies Bill: Report together with formal minutes, oral and written evidence, Third Report of Session 2010-11*, HC 437, London, The Stationery Office, 2010.

area as a matter of priority',⁴⁴ that adequate time had been allowed for debate in both Houses which ensured 'very considerable scrutiny'⁴⁵

Nor was there a timely response to the House of Lords Select Committee on the Constitution, whose November 2010 report on the Bill also pointed to 'important issues which in our view should have been subject to consultation and scrutiny before the Bill was presented to Parliament',⁴⁶ following this up with a statement in bold that included:

... we regard it as a matter of principle that proposals for major constitutional reform should be subject to prior public consultation and pre-legislative scrutiny.

They were particularly concerned with that part of the Bill dealing with the size of the House of Commons and the redrawing of constituency boundaries, concluding that 'the Government have not calculated the proposed reduction in the size of the House of Commons on any considered assessment of the role and functions of MPs' and 'Pre-legislative scrutiny and public consultation would have enabled a better assessment of whether the new rules as to equalisation are overly rigid' (pp.8, 12: again these were highlighted in bold).

The House of Commons Welsh Affairs Committee similarly complained about the timetable.⁴⁷ It received a response stating that 'The Government is committed to implementing much needed political reform as soon as possible' (p.4), and that 'Parliament is having ample opportunity to debate the proposals in full' (p.8) – before complaining that at Committee stage in the House of Commons 'some Members took the opportunity to engage in political grandstanding instead of debating the proposals' (p.8).⁴⁸ The time allowed for debate in the House, plus consideration by select committees, comprised, according to the Government response, 'a robust scrutiny process' (p.9).⁴⁹ One defence offered by government spokesmen in the Lords was that the Bill enacted manifesto commitments and that in any case a new government when elected had to proceed with its planned programme: their opponents pointed out that although a reduction in the size of the House of Commons was in both of the coalition parties' manifestoes neither proposed 600 as the new size nor provided a detailed justification for the reduction: the AV referendum was in neither manifesto (though Labour had included it in its!).

In their contributions to the debate Labour peers focused on the government's failure to provide any justification for a reduction at all, let alone to 600. The only response to

⁴⁴ *Government Response to the Political and Constitutional Reform Committee's Report on the Parliamentary Voting System and Constituencies Bill*, Cm 7997, London, The Stationery Office, #16.

⁴⁵ *Government Response*, #18.

⁴⁶ House of Lords Select Committee on the Constitution, *Parliamentary Voting System and Constituencies Bill, Seventh Report of Session 2010-11*, London, The Stationery Office, 2010, p.4.

⁴⁷ House of Commons, Welsh Affairs Committee, *The Implications for Wales of the Government's Proposals on Constitutional Reform – Government Response to the Committee's First Report of Session 2010-11*, HC 729, London, The Stationery Office, 2010.

⁴⁸ House of Commons, Welsh Affairs Committee, *The Implications for Wales of the Government's Proposals on Constitutional Reform, First Report of Session 2010-11*, HC 495, London, The Stationery Office, 2010.

⁴⁹ In this context, it is interesting to note the Constitutional Unit's conclusions in its 1996 report on *Delivering Constitutional Reform* that although prior consultation should result in more widely acceptable and technically accurate legislation, in effect 'history shows that few attempts at consultation have resulted in legislation which had cross-party support' (p.7): Chapter 5 of that report sets out the evidence on which that conclusion was based.

questions about the exact number in the House of Commons debates was a statement by the Deputy Leader of the House that it was ‘an arbitrary number but feels about right’ whereas the leader of the House of Lords referred to it as a ‘good round number’.⁵⁰ Peers argued in some detail that MPs’ workloads had increased substantially over recent decades and that their numbers had not increased proportionately either to population/electorate growth or the demands on them from constituents plus their work as either members of the government, the opposition front bench, or backbenchers. Without such analyses to back any reduction, retaining the status quo was proposed in an amendment, as were other possible sizes. There was also discussion about whether the number of MPs should be reduced without a parallel reduction in the numbers holding government office (which was coupled with concerns about the recruitment of sufficient MPs to give Bills detailed scrutiny in Select Committees) and whether the Commons should be reduced in size when the House of Lords was being increased.

Peers were also unconvinced by arguments that reducing the number of MPs would result in substantial savings – in salaries and in expenses. They pointed out that the suggested reduction in the costs of the House of Commons – £12million was a commonly-quoted figure – was a trivial basis for such a major constitutional change. They also argued that they could be offset by increased expenses for the remaining MPs who would have larger caseloads, and by the costs of more frequent Boundary Commission reviews.⁵¹

An associated issue concerned the role of Parliament – in effect, the government – in determining the size of the House of Commons. The last time this had been prescribed was in the Great Reform Act of 1832; after every subsequent reform (in 1866, 1885, 1918 and 1944) the number of MPs had been determined by the Boundary Commissions during their redistributions. The rules introduced in the 1944 Act set targets – for Wales, not less than 35; for Scotland, not less than 71; for Northern Ireland, 12; and for Great Britain not substantially greater or less than 591. (The Northern Ireland target was changed, after a Speaker’s Conference, to 17, with the Boundary Commission having power to vary that to between 16 and 18; the *Scotland Act 1998* required its Boundary Commission to use the same quota as England at the next redistribution, resulting in its number of constituencies being reduced from 72 to 59 in 2004.) Some argued that a government should not have this power; alternatives offered in amendments – none of which were pressed to a vote – included: leaving it to the Boundary Commissions’ discretion, within a specified target range; holding a Speaker’s Conference to seek all-party agreement on the number; or convening an independent body, including outsiders, to make proposals. One suggestion, voted down, was for a committee to undertake a pre-legislative review of a wide range of

⁵⁰ This was also the argument made in the Government Response, #41, which states that if the House of Commons were reduced to 500 MPs with electorates of c.90,000, ‘For this size to become commonplace would perhaps be too great a departure from what Members and the public are accustomed to. 600 would therefore seem to strike the right balance’ – though what is being balanced is not indicated!

⁵¹ There was much anecdotal discussion, mainly by Labour ex-MP peers, about increasing case loads. D. R. Thorpe reports in his *Alec Douglas-Home*, London, Sinclair-Stevenson, 1996, p.54 that one MOP claimed that he visited his constituency (other than at election time, it is assumed) five times in thirty years. In his life of Hugh Gaitskell (*Hugh Gaitskell: a Political Biography*, London, Jonathan Cape, 1979), P. Williams reports that in the 1950s 0 when he was first shadow Chancellor of the Exchequer and then Leader of the Opposition, Gaitskell received an average of 20 letters a month whereas another Leeds MP held no constituency surgeries. The demands now are immensely greater, as peers made clear during the debate.

issues – which would delay any changes and met with the government response that it was determined to have new constituencies in place in time for the 2015 general election.

Associated with these arguments were claims that to enact the Bill would be setting a very clear precedent that any future government with majority support could change the size of the House of Commons, providing that it could get the legislation through Parliament. Indeed, some suggested that this freedom might apply to a wider range of constitutional issues concerning the size and nature of Parliament. The unwritten constitution would then in effect embed the ‘elective dictatorship’ identified by Lord Hailsham in his 1976 Dimpleby Lecture:⁵² the constitution could be changed without any checks on the elected majority.

A further constitutional issue that attracted considerable attention concerned public consultation, which Labour (and some other, largely crossbencher) peers were concerned about for a variety of reasons. The 1944 Act established a procedure for public consultation for Boundary Commission proposals including public inquiries, which were more precisely specified in the 1958 amendments. The period allowed for written representations after publication of Commission recommendations was only four weeks – which the Commissions asked on several occasions to have extended, without success: the Cabinet Office Code of Practice criteria require twelve weeks. Because of the short period, in most cases the public inquiries that followed have been extremely important;⁵³ the reports (and where relevant recommended changes to proposed constituencies) produced by the Assistant Commissioners have been crucial influences on Commissions’ final decisions whether to alter their original recommendations, while publication of the written submissions, the inquiry transcripts (and documents tabled then), plus the Assistant Commissioners’ reports have sustained the exercise’s credibility through transparency.

The Bill proposed to lengthen the period for receiving written representations to twelve weeks, but said nothing about their subsequent publication and specifically stated that ‘a Boundary Commission may not cause a public inquiry to be held for the purposes of a report under this Act’. The transparency and credibility of the procedure was under threat of compromise, which raised constitutional issues. Lord Woolf – a crossbencher and former Lord Chief Justice of England and Wales – spoke of the problems that the absence of public inquiries might generate; in particular it might stimulate claims for judicial review.⁵⁴ This concern was taken up, most notably by a number of crossbench peers who convinced the government that it should yield to Labour’s pressure for public inquiries to be reinstated. The government was concerned that this would substantially extend the time taken for the redistributions (especially in England), threatening its determination to have new constituencies in place by October 2013. However, after an intervention by the convenor of the crossbenchers, the government compromised by agreeing to table an amendment at report stage which would expand the nature of the public consultation without threatening its timetable. This mandated at least two but not more than five public hearings (not inquiries) in each of Northern Ireland, Scotland, Wales and the nine English regions, to be

⁵² Lord Hailsham, *Elective Dictatorship. The Richard Dimpleby Lecture*, London, BBC Publications, 1976.

⁵³ In many cases, those wishing to present an alternative set of constituencies for consideration were unable to do so, and instead merely lodged an objection to ensure that an inquiry was held; their proposed set of constituencies was tabled at the inquiry.

⁵⁴ House of Lords *Hansard*, 31 January 2011, column 1217.

held not after the submission of written representations but during weeks 5-10 of that 12-week period. A further amendment required these hearings to last no more than two days each, and gave their chairpersons powers to regulate the nature of the presentations and questioning: for the government Lord Wallace of Tankerness claimed that the current inquiries were no longer 'fit-for-purpose',⁵⁵ because they were dominated by the parties and their lawyers, so they were to be replaced by hearings (based on an Australian model) which were less conflictual because lengthy cross-examination would be precluded. But there was no requirement for the chairperson to report on the hearing to the Commission, which would simply receive a transcript. The amendment also required the Commissions to publish not only the representations received during the 12-week consultation period (termed the 'initial consultation period') but also any counter-representations received during a subsequent four-week 'secondary consultation period'.

In the subsequent debate Lord Woolf argued that 'the scale of changes involved means that the public must have a proper hearing'.⁵⁶ Using planning inquiries as an analogy, he argued that a hearing, to 'serve its purpose', should offer 'an opportunity to be heard, which is then reported on by a neutral and independent person, normally someone with skill and experience in the area in question'. Without such an independent report those appearing at the hearing could think that 'their words are apparently disappearing into the ether with no conclusion being given on them' (column 139). The Commission should receive not only a transcript of the hearing but also 'the views of the chairman on what has occurred. If that is not done, a very strange animal indeed will be produced'. In response to a question, he then added that 'there is a greater risk of judicial review if you do not allow the chairman to put before the Boundary Commission the information that it will need to make a decision' (column 140). He argued that the Commissions should be given the widest discretion and flexibility with which to undertake their task. Lord Pannick, a crossbench peer who is a barrister, concurred with Lord Woolf's opinion, claiming that the absence of a report from the chairman would 'exacerbate ... the sense of grievance that has led people to make representations in the first place' (column 143). The opposition moved an amendment seeking to reinstate the previous system of public inquiries, but this was lost by just four votes: the government's amendment containing proposals for hearings, with an associated schedule detailing their number, length and format, was then accepted.⁵⁷ When that amendment was discussed in the House of Commons the minister concerned argued that they had listened to the arguments regarding the need for oral hearings, had introduced a 'new schedule enabling an outlet for local opinion', replacing 'the largely discredited legalistic inquiry process', and that these changes were accepted without a House of Lords division.⁵⁸

⁵⁵ House of Lords *Hansard*, 8 February 2011, column 149. This point is reiterated in the Government response: 'local inquiries are far more effective in principle than in practice. They do not in general drive real engagement by the general public; rather, the process is dominated by political parties and their legal representatives', #85.

⁵⁶ House of Lords *Hansard*, 8 February 2011, column 138.

⁵⁷ There was a sequence of amendments: once one had been lost the others were not formally debated and pressed to a vote.

⁵⁸ House of Commons *Hansard*, 15 February 2011, column 841: he did not comment on the close vote on the opposition's proposed amendment seeking to reinstate inquiries.

The issue of judicial review challenges was also raised in another context late in the sittings. Lord Pannick claimed that while there may be judicial review challenges these would fail because the rules gave the Commissions flexibility to exercise their judgement; further the courts would realise the need to deal with them swiftly, and would do so.⁵⁹ His comments were made in the context of an amendment that he, with three other crossbenchers, moved very late in the report stage that would allow the Commissions discretion to apply a 7.5 per cent variation rather than 5 per cent in exceptional circumstances where it was considered necessary, given extremely compelling reasons, to create a 'viable constituency'.⁶⁰ It was moved, after discussion with government ministers, as an attempt to break the deadlock between the government and opposition parties over the equalization issue. This was opposed by the government but carried with the support of all of the Labour peers present and voting plus a larger turnout of crossbenchers than normal during those proceedings. (They voted 75:10 in favour.) The amendment was rejected by the House of Commons and an attempt by Lord Pannick to reinstate it when the Bill returned to the House of Lords failed by one vote.

The Bill and House of Lords procedures

Proceedings in the House of Lords differ from those in the House of Commons in a number of ways, and management of the conduct – including the timetabling – of business in the Upper House normally involves interaction and cooperation between the parties. At a number of stages during debates on the Bill, however, it was claimed that these 'usual channels' were not operating, that the spirit as well as the practice of cooperation had broken down, which was threatening the House's reputation and, to some, bringing its proceedings into disrepute. At one point at least, the convenor of the crossbenchers brokered a deal between government and opposition, and ministers – including the Prime Minister and the Deputy Prime Minister – were involved in discussions designed to ensure that the timetable of Royal Assent by 16 February was met in order that the AV referendum could be held on 5 May.⁶¹ It was even argued that an unprecedented guillotine motion was threatened to end the debate because of the alleged Labour 'filibuster'.⁶² It was claimed that this possibility was blocked through the opposition of crossbench peers.⁶³

To break the deadlock and reinstate the 'usual channels' operation the convenor of the crossbench peers – Baroness D'Souza – introduced a compromise amendment (to one proposed by a Labour peer requiring public inquiries under the same terms as the

⁵⁹ House of Lords *Hansard*, 9 February 2011, column 232.

⁶⁰ House of Lords *Hansard*, 9 February 2011, columns 232-233.

⁶¹ See statements by the Leader of the House and by Lord Falconer of Thoroton for Labour; House of Lords *Hansard*, 31 January 2011, column 1214.;

⁶² Although Labour strenuously denied that they were filibustering, or that they had arranged a rota of speakers during the all-night sessions to ensure that debates continued, others argued that the length and repetitiousness of the debates suggested otherwise: one crossbencher stated that 'when a debate on one amendment takes three and three-quarter hours and is not followed by actually asking the House to decide on it [i.e. vote on the amendment], that is the point at which the Cross-Benchers wonder – I personally wonder and I believe I am not alone – what is actually going on' (House of Lords *Hansard*, 17 January 2011, column 18).

⁶³ See articles in *The Guardian*, <http://www.guardian.co.uk/politics/2011/jan/31/voting-reform-lords-deadlock-eased>; <http://www.totalpolitics.com/blogs/index.php/2011/01/31/strathclyde-s-adviser-defends-the-guillo>; <http://www.telegraph.co.uk/news/newstoppers/politics/8292287/David-Cameron-to-step-in-to-end-Lords-debate.html>; and <http://www.bbc.co.uk/news/uk-politics-12327408>.

Parliamentary Constituencies Act 1986) stating that the Boundary Commissions were not obliged to hold local inquiries but might do so if an 'objection raises substantive issues that might benefit from further comment or representation from other interested parties or individuals' and that any associated counter-proposals were within the rules.⁶⁴ The government had already agreed to introduce a 'secondary consultation stage' in which counter-representations could be made to those submitted in the initial 12-week period and agreed to come forward with proposals for public hearings (as discussed above). As a consequence both the Labour amendment and Baroness D'Souza's counter-amendment were withdrawn; Baroness D'Souza commented that 'The facility and opportunity to express views is something we should always cherish' and that 'the Government have gone very far in meeting our requirements'.⁶⁵

This intervention, and in particular the threat of a guillotine motion (which would probably not have received much support among crossbenchers and therefore, if they voted in sufficient numbers, have been defeated, as Labour would have voted against – as might some Conservative peers concerned about the House's procedures and integrity), was not the only feature of these debates that caused procedural problems. On both 17 and 19 January motions 'that the question be now put' (closure motions) were moved, the first by a hereditary peer who takes the Conservative whip, who claimed that many of the speeches on the amendment being considered 'are an abuse of the procedures of this House and others have been demeaning to this House in the face of a wider public',⁶⁶ and the second by a Liberal Democrat life peer. Such restrictions on debate, which must be voted on immediately without further debate, are very rare in the House. Its *Companion to the Standing Orders ...* states (p.72) that when closure is moved the chair of the debate must draw 'attention to its exceptional nature' and give 'the member concerned the opportunity to reconsider, by reading the following paragraph to the House before the Question is put':⁶⁷

[To be read slowly] "I am instructed by order of the House to say that the motion "That the Question be now put" is considered to be a most exceptional procedure and the House will not accept it save in circumstances where it is felt to be the only means of ensuring the proper conduct of the business of the House: further, if a member who seeks to move it persists in his intention, the practice of the House is that the Question on the motion is put without debate".'

In both cases the peer who moved closure insisted (in the latter case, because what he perceived happening was 'an organized filibuster'⁶⁸). Closure was voted for by 219:130 on the first occasion (with only 15 crossbenchers voting, 11 in favour) and by 229:188 on the second (when 35 crossbenchers voted, 28 of them against); in the first case the amendment being debated was not then pressed to a vote.

Use of a further procedural device also caused dissension on several occasions. In the House of Lords, as in the Commons, the second stage of any Bill's process has three distinct

⁶⁴ House of Lords *Hansard*, 31 January 2011, column 1216.

⁶⁵ House of Lords *Hansard*, 31 January 2011, column 1223.

⁶⁶ House of Lords *Hansard*, 17 January 2011, column 138.

⁶⁷ House of Lords *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, London, House of Lords, 2010.

⁶⁸ House of Lords *Hansard*, 19 January 2011, column 400.

sections: second reading debate, at which the general principles are discussed; committee stage, when the Bill is considered in detail (line by line if necessary) – with a Bill of constitutional importance such as the *Parliamentary Voting Systems and Constituencies Bill*, this is done by the full House; and a report stage, when amendments are usually moved. During the committee stage, amendments may be tabled and debated. Many of these are what are known as ‘probing amendments’: those tabling them use the debate to take the sense of the House and may withdraw them rather than insist on a vote being taken either if it is clear that what they propose has little support or the government indicates that it they will consider the points raised and – perhaps after consultation with the amendment’s movers and others – bring forward their own amendment at report stage responding to the concerns expressed: otherwise, the mover may press for a vote in order to ‘test the opinion of the House’.

When a Committee of the Full House is considering a Bill at second reading, it is necessary for the House to vote, both that it ‘resolve itself into a committee’ prior to the debate commencing, and that ‘the House do now resume’ if, although the committee stage is incomplete, those debates should be temporarily ended in order that other business be undertaken. Such motions are normally uncontroversial, but this was not so on several occasions during debates on the *Parliamentary Voting Systems and Constituencies Bill*. On 17 January, for example, after the first successful vote for closure, three votes were taken on whether the House should resume, thus ending the sitting. Before the first – moved by a Labour front-bencher – it was claimed that passage of a closure motion was edging the House towards adopting a guillotine, so that ‘what makes this House exceptional – namely that there can be indefinite debate, particularly on constitutional issues – would be lost’. Although the House had by then been sitting that day for more than nine hours, the motion was lost by 124:188 (with eight crossbench peers voting on each side), and debate continued. Lord Falconer again moved resumption nearly four hours later (at 3:15am), arguing that as far as the opposition was concerned there was no urgency, but the vote was lost 77:126 (i.e. with a turnout only two-thirds that on the previous such motion). Six hours later (at 9.01 am) Lord Falconer tried again, arguing that the House normally did not sit in mornings because many (unpaid) peers had other business to pursue, but he again lost – 69:146. The sitting eventually ended at 12:52pm on the day after debate began.⁶⁹

The issue reappeared on 19 January, immediately after the second closure motion, Lord Bach for the Labour front bench moving ‘that the House do now resume ... [as] the only way of showing our distaste and anger at the use of the procedure of closure’.⁷⁰ This led a crossbench peeress to note that two uses of the closure motion ‘is edging us towards a guillotine. If this House introduces a guillotine, scrutiny will be impossible’, adding that ‘the repetitive and irrelevant comments, whether co-ordinated or not, made in many speeches

⁶⁹ The *Companion to the Standing Orders* states (p.38) that ‘It is a firm convention that the House normally rises by about 10 p.m. on Mondays to Wednesdays, by about 7 p.m. on Thursdays, and by about 3 p.m. on Fridays. The time of meeting of the House can be varied to meet the convenience of the house..’. Much was made in the media of the preparations made by the House managers – such as creating temporary dormitories – for the planned ‘all night sittings’ which the opposition claimed were in violation of the convention, and which it had not agreed to through the ‘usual channels’. A House of Lords booklet *The Work of the House of Lords* (London, House of Lords, 2010) indicates an average of 45 late-night (post-10p.m.) sittings during the four more recent full Parliamentary sessions, when the average number of days when the House sat was 162.

⁷⁰ House of Lords *Hansard*, 19 January 2011, column 399.

by noble Lords on the opposition benches ... is an abuse of the procedures of this House [as is] ... the resort to the Motion for closure'.⁷¹ Because the guillotine is used extensively in the House of Commons,

... much legislation reaches us undiscussed, undigested and unscrutinised. The function that we try to carry out is important. It is not the grandest function but it is essential. Until things are changed, we have a duty to preserve that function. We will lose it if collectively we adopt tactics that either amount to a filibuster, even if they were not co-ordinated as such, or that amount to a guillotine, even if they are not so labelled.

The motion was not pressed to a vote, its mover being impressed by the debate that it had generated, the apparent 'spirit of desire for negotiations' and the hope that further closure motions would not be called for.⁷²

Other procedural issues were also raised during the debates, and in some cases the conventions were over-turned. Some peers were accused of ignoring the convention that a member speaks only once during a debate (this does not apply at committee stage), of using interventions to make speeches, and also of violating another convention that speeches should not be longer than 15 minutes – except those made either opening or winding-up a debate (for which 20 minutes is the expected maximum). And a query was made when a major amendment – designed to break the deadlock over the 5% constraint – was introduced by four crossbench peers, after consultations with the government and others. A Conservative peer, while praising the amendment for the compromising spirit within which it had been framed, stated that, in the light of the possibility of the convention of no guillotine motions being put:⁷³

I presume to say that another convention might be under threat. We all respect the Cross Benchers for the individual independence of mind and experience that they bring to this House. The suggestion that there should be a Cross-Bench position on this is not the sort of House I expected to find.

He immediately said that he was sure that there wasn't, and accepted Lord Pannick's response that 'There is no official position' – but the point had been made.

The timetabling of Bills in the Lords requires minimum intervals between each stage: two weekends between first and second reading; fourteen days between second reading and the start of committee; fourteen days between the end of the committee stage and report (for Bills of considerable length and complexity); and three sitting days between the end of the report stage and third reading. These gaps are to allow, among other things, for negotiations through the usual channels, and for amendments to be conceived and tabled after issues have been debated (notably between the committee and report stages at second reading). With this Bill, however, the committee stage ended on 2 February and

⁷¹ House of Lords *Hansard*, 19 January 2011, column 400.

⁷² House of Lords *Hansard*, 19 January 2011, column 405. On the BBC Radio 4 *Today* programme the following day, Lord Butler of Brockwell, a former Cabinet Secretary, accused Labour peers of behaving as if the House of Lords were 'an elected house', claiming that although the Lords should scrutinize and, where relevant, seek to amend Bills, it should not frustrate the government achieving its legislative goals – the interview can be heard at http://news.bbc.co.uk/today/hi/today/newsid_9367000/9367736.stm.

⁷³ House of Lords *Hansard*, 9 February 2011, column 235.

report began five days later. At the outset of the latter stage, Lord Falconer noted that the 14-day gap had not been observed which impeded proper scrutiny of a 'significant constitutional Bill' that had not been subject to proper prior scrutiny and that negotiations to allow the report stage to proceed, on an agreed tight timetable, had only succeeded through the participation of crossbenchers.⁷⁴

After a Bill has completed all stages in the House of Lords it is returned to the Commons, which has to vote on whether to accept any (assuming there are some) of the Lords' amendments. If it rejects any, then the Bill returns to the Lords to see if it wishes to insist on the amendments, or withdraws them. This is known as 'ping-pong'. For the *Parliamentary Voting System and Constituencies Bill* this took place on one day – 16 February, the final day for debate before the House of Lords' recess. (The Commons again restricted debate through a programme motion that limited it to a maximum of ten hours, with a further hour only if any amendments should be further returned.) The Commons did indeed reject several Lords' amendments. The Lords agreed to sustain one – on a turnout threshold of 40% before the result of the AV referendum should be considered binding – by 277:215, and failed to insist on another – the 7.5% discretionary size constraint for constituencies – by just 242:241 votes. The first of those amendments was thus returned to the House of Commons at 7:14pm, which again rejected it at 8:14pm. The Lords reconvened at 10:30pm, and the amendment was again moved. Lord Falconer noted the compressed timescale, indicating that he had not been able to read the Commons debates in *Hansard* since that was not yet available, and had to rely on an oral report from a peer who had been present in the Commons (and who claimed that the fundamental issue had not been addressed). Lord Falconer argued:

This is an important constitutional Bill. It seems wrong that we should make our decision on this important issue on the basis of a debate that we cannot even read in *Hansard*, eight days after it was raised for the first time last Wednesday. ... if we are serious guardians of the constitution, then eight days is not enough. A debate that we cannot read is not enough, and the issue is sufficiently important for us to ask the Commons respectfully to think again.⁷⁵

But the House had also heard from a Conservative peer that 'while I continue to have considerable and very grave doubts about the course on which my government are embarking, I am afraid that I have now concluded, after two disoblging votes, that the time has come for the Members of the elected Chamber to make a final decision, because they alone will have to live with the consequences of their deliberations'.⁷⁶ And that carried the House, by a margin of 221:153. The House was informed that the Bill had received Royal Assent at 11:46pm.

Conclusion

The Constitutional Unit report on *Delivering Constitutional Change* argued that 'There is a strong expectation that constitutional reform be based on broad public and cross-party

⁷⁴ House of Lords *Hansard*, 7 February 2011, column 14.

⁷⁵ House of Lords *Hansard*, 16 February 2011, column 784.

⁷⁶ House of Lords *Hansard*, 16 February 2011, column 783.

consultation' (p.7).⁷⁷ It recognized that achieving this will never be easy, but if the politics of consensus do not prevail (p.56):

... reforms are likely to be either piecemeal – introduced on the basis of whatever agreement was reached, not the comprehensive reforms originally intended – or rejected by the Opposition parties. There is significant scope for tactical manoeuvring by Opposition parties during the talks, or even for frustrating the very establishment of talks by non-participation.

There are many examples of such occurrences in recent decades (see, for example, Flinders, 2010). Speaker's Conferences may be used to promote such consensus-building, but their record is not very impressive and in recent years select committees, whose proceedings are open, have been seen as better vehicles. But they have not achieved much in terms of constitutional change either; one attempt by the Home Affairs Select Committee in 1998 was readily fended off by the government.⁷⁸ Constitutional – including electoral system – changes under Labour during the period 1997-2010 were largely achieved on the basis of its substantial majority, although some of the arrangements for the devolved bodies were prepared before the 1997 general election by a bipartisan committee involving the Liberal Democrats; there were also, as Lord Ashdown has revealed,⁷⁹ discussions about further reforms, which stalled because the Prime Minister lost interest once he had won a large House of Commons majority and other senior members of his party were opposed.

The *Parliamentary Voting System and Constituencies Bill* clearly exemplifies the Constitution Unit's conclusion regarding 'tactical manoeuvring' by opposition parties, in this case Labour. Much of that manoeuvring occurred because the Labour party believed it was in its short-, and probably long-term electoral interests to oppose the reforms, especially those regarding the number of MPs and the definition of Parliamentary constituencies. In this, they felt able (with some justification on certain issues) to invoke constitutional concerns to justify what they were doing to ensure that the Bill received the full scrutiny that it had not received either from the general public or in the 'other place'. And in doing so, they also raised concerns – not least among the crossbench peers – about procedures within the House of Lords, thereby raising a range of other constitutional issues regarding relationships between the legislature and the executive.

The House of Lords has become more assertive in recent years as a result of the removal of most of the hereditary peers. As a result, there were more government defeats each year after the 1999 reform (63 per annum between 2001 and 2005, for example, compared to only 12 in 1992-1997 – under John Major – and 27 in 1997-1999 – the first years of the Blair administrations).⁸⁰ Further, those defeats in the Lords were associated with greater insistence that the Commons accept their amendments. Apart from the public demonstrations of this greater assertiveness, the Lords have also achieved greater strength in negotiations over policy as a result of their willingness to inflict defeats on the

⁷⁷ The Constitutional Unit, *Delivering Constitutional Change*, London, University College London, The Constitutional Unit, 1996.

⁷⁸ House of Commons, Home Affairs Select Committee, *Redistribution of Seats*, HC97-1, London, HMSO, 1987, and H M Government, *Response to Redistribution of Seats*, Cmnd 308, London, HMSO, 1988.

⁷⁹ P Ashdown, *A Fortunate Life: the Autobiography of Paddy Ashdown*, London, Aurum Press, 2009.

⁸⁰ M Russell, 'A Stronger Second Chamber? Assessing the Impact of House of Lords Reform in 1999 and the Lessons for Bicameralism', *Political Studies*, 58:6 (2010), pp.866-885.

government – and therefore a substantial impact on policy⁸¹ – in part because of the cohesiveness of the party blocks in whipped votes.⁸² Many of the traditional conventions of and about the House of Lords are being challenged, if not overturned – and the long debates on the *Parliamentary Voting System and Constituencies Bill* very clearly exemplify this. To one member, speaking to what is to many the ‘conventional wisdom’:⁸³

The Second Chamber should have the powers to revise, to amend, to scrutinize, but not finally to frustrate the programme of a legitimately-elected government.

In the end, this was the outcome in 2011: the government got the AV referendum on 5 May 2011 – thereby fulfilling the Liberal Democrat element of that part of the coalition agreement – and the speeded-up review of constituencies based on a greater equalization of electorates, satisfying the Conservatives’ wishes, was largely achieved: the one major concession insisted on by the Lords – the holding of public hearings – almost certainly only slightly watered-down their goals.⁸⁴ But it was a close-run thing, and a number of constitutional issues were raised that have wider future implications.

Those issues and implications are of very considerable importance because the coalition government had made clear that once the *Parliamentary Voting System and Constituencies Bill* had been enacted it would proceed – beginning with a White Paper – with proposals for reform of the House of Lords, which would include making it a largely, if not wholly, elected chamber (the expectation is for a proposal that 80 per cent will be elected). The legitimacy of the House will then be changed, much more so than was the case after 1999, and the relative roles of the two chambers subject to considerable negotiation – on which situations like that which emerged during the debates on the *Parliamentary Voting System and Constituencies Bill* will be of considerable importance, and may promote the cause of a written constitution, which would require a ‘coherent strategic vision’.⁸⁵

The evolving UK constitution has become a topic of very considerable debate in recent years, stimulating a large number of books and other publications.⁸⁶ All focus, to a greater or lesser extent, on the constitution and functions of the House of Lords: most see it – whether democratically elected or not – as a necessary check on the ‘elected dictatorship’ of the executive through its majority in the Lower House. For Bogdanor, if elected the House of Lords (or whatever it might be called) will become more powerful ‘and it would, as a result, make Britain more difficult to govern’.⁸⁷ Do the debates on the *Parliamentary Voting*

⁸¹ Russell and Sciarra, ‘The Policy Impact ...’.

⁸² Russell and Sciarra, ‘Why Does the Government get Defeated?’.

⁸³ House of Lords *Hansard*, 31 January 2011, column 1215.

⁸⁴ There were other concessions, not discussed here, because they were not the subject of inter-party conflict. They included making the Isle of Wight a special case, alongside the two Scottish island constituencies, albeit in a rather odd way (the number of MPs is to be reduced, but the Isle is to have two rather than one, as previously), and the Boundary Commissions may take the boundaries of existing constituencies into account when undertaking a review.

⁸⁵ J Baker, ‘Our Unwritten Constitution’, *Proceedings of the British Academy*, 167 (2011), p.115.

⁸⁶ A King, *The British Constitution*, Oxford, Oxford University Press, 2007; V Bogdanor, *The New British Constitution*, Hart Publishing, Oxford, 2009; I McLean, *What’s Wrong with the British Constitution?*, Oxford, Oxford University Press, 2009; R Gordon, *Repairing British Politics*, Hart Publishing, London, 2010.

⁸⁷ Bogdanor, *The New British Constitution*, p. 172. The extent of this difficulty will in part reflect its composition. All the indications are that the elected component will be produced using a proportional representation system from multi-member constituencies, almost certainly ensuring that there is no single-party majority there.

System and Constituencies Bill illustrate how those difficulties might develop, and the challenges to the constitution and Parliamentary procedure they encapsulate? Or might it be that, as King concludes, if the Lords 'take it into their hands continually to harass and frequently to thwart the government of the day ... [might it] suddenly be in a government's interests to abolish the House of Lords, radically to alter its composition and/or to further restrict its already restricted powers'?⁸⁸

⁸⁸ King, *The British Constitution*, p.312.