

HOUSE OF LORDS LIBRARY



LIBRARY NOTE

The Salisbury Doctrine
(Updated June 2006)

Glenn Dymond and Hugo Deadman

30th June 2006
LLN 2006/006

House of Lords Library Notes are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of the Notes with the Members and their staff but cannot advise members of the general public.

Any comments on Library Notes should be sent to the Head of Research Services, House of Lords Library, London SW1A 0PW or emailed to victoryi@parliament.uk.

Contents

	Introduction	p. 1
1.	The mandate doctrine	p. 2
	(i) The Disestablishment of the Irish Church	p. 3
	(ii) The Municipal Elections Bill 1872	p. 6
	(iii) The development of the doctrine	p. 7
	(iv) The Representation of the People Bill 1884	p. 10
	(v) The Government of Ireland Bill 1893	p. 12
	(vi) The Liberal Government 1892–95	p. 13
	(vii) The Liberal Governments from 1905	p. 14
	(viii) The Parliament Bills 1910–11	p. 16
2.	The Labour Government 1945–51	p. 21
	(i) The Salisbury doctrine 1945–51	p. 21
	(ii) The Parliament Bill 1948–49	p. 23
	(iii) The Iron and Steel Bill 1948–49	p. 27
3.	The Labour Governments of 1964–70 and 1974–79	p. 31
	(i) The Aircraft and Shipbuilding Bill 1975–77	p. 32
	(ii) The Scotland Bill 1978	p. 33
4.	The Conservative Government of 1979–90	p. 36
	(i) The Local Government (Interim Provisions) Bill 1984	p. 36
	(ii) The Local Government Bill 1985	p. 39
	(iii) The Local Government Finance Bill 1988	p.42
5.	The Current Debate	p. 45
	(i) The debate on the Salisbury doctrine in the House of Lords, 19th May 1993	p. 45

(ii)	The Politeia Lecture by Lord Cranborne, 4th December 1996	p. 48
(iii)	The Mackay Commission Report, 16th April 1999	p. 52
(iv)	The Politeia Lecture by Lord Strathclyde, 30th November 1999	p. 53
(v)	The Wakeham Commission Report, January 2000	p. 55
(vi)	The debate on the Parliament Acts and the Salisbury Convention in the House of Lords, 24th January 2001	p. 57
(vii)	The Government response to the Wakeham Commission, November 2001	p. 60
(viii)	The Joint Committee on House of Lords Reform, First and Second Reports, December 2002 and April 2003	p. 61
(ix)	The DCA Consultation Paper, 'Next steps for the House of Lords', September 2003	p. 61
(x)	The Labour Peers Working Group on House of Lords Reform, 20th July 2004	p. 62
(xi)	The Politeia pamphlet 'Working in Harness' by Lord Strathclyde, April 2005	p. 64
(xii)	The DCA Paper, 'Making a Difference', May 2005	p. 65
(xiii)	The debate on the humble Address in reply to the Queen's Speech in the House of Lords, May 2005	p. 65
(xiv)	The debate on Parliament and the Legislative Process in the House of Lords, 6th June 2005	p. 67
(xv)	The Joint Committee on Conventions, May 2006	p. 68
6.	References	p. 80

Introduction

The Salisbury doctrine, as generally understood today, means that the House of Lords should not reject at second or third reading Government Bills brought from the House of Commons for which the Government has a mandate from the nation. It had its origins in the doctrine of the mandate developed by the third Marquess of Salisbury, Prime Minister in 1885 and from 1886–1892 and 1895–1902, as part of his effort to perpetuate the influence of the House in an age of widening suffrage. Salisbury, a Conservative who sat in the Lords from 1868 until his death in 1903, developed a doctrine of the mandate over this period which argued that the will of the people and the views expressed by the House of Commons did not necessarily coincide, and that in consequence, the House of Lords had an obligation to reject, and hence refer back to the electorate, particularly contentious Bills, usually involving a revision of the constitutional settlement, which had been passed by the Commons.

Since 1945, the Salisbury doctrine has been taken to apply to Bills passed by the Commons which the party forming the Government has foreshadowed in its General Election manifesto, being particularly associated with an understanding between Viscount Addison, the Leader of the House of Lords, and Viscount Cranborne (the fifth Marquess of Salisbury from 1947), Leader of the Opposition in the Lords, during the Labour Government of 1945–51; and thus is sometimes called the Salisbury/Addison doctrine. Lord Carrington later described the convention as extending to any wrecking amendment to a manifesto measure (Lord Carrington, *Reflect on Things Past: The Memoirs of Lord Carrington* (1988), pages 77–78).

This Lords Library Note describes the origins of the Salisbury doctrine in the 1860s, its development until the passing of the 1911 Parliament Act formalised certain aspects of the legislative relationship between the House of Lords and the House of Commons, and its subsequent application after 1945. The first section sets out the position taken by the Duke of Wellington as Leader of the House of Lords at the time of the Reform Act of 1832, traces the development of the mandate doctrine by the third Marquess of Salisbury, and rehearses the arguments used for and against its subsequent application during the debates on a number of controversial Bills in the House of Lords up until 1911. The second section addresses the restatement of the doctrine from 1945 to 1951, and its application during the passage of the Parliament Bill and the Iron and Steel Bill through the House of Lords. The third section refers briefly to the relationship between the House of Lords and the Labour Governments of 1964–70 and 1974–79, and in particular traces the passage of the Aircraft and Shipbuilding Industries Bill 1975–77 and the Scotland Bill 1978. The fourth section looks at the application of the Salisbury doctrine under the Conservative Government of 1979–90, in particular tracing the passage of the Local Government (Interim Provisions) Bill 1984, the Local Government Bill 1985 and the Local Government Finance Bill 1988. The fifth section of the Note outlines the development of the debate on the Salisbury doctrine since the 1990s.

The Note touches upon a number of issues relating to the debate over reform of the House of Lords. However, it does so only in as much as the Salisbury doctrine applies to that debate. The Note does not attempt to set out the arguments for and against reform of the composition and powers of the House.

The Note ends with a set of references to parliamentary, biographical and other sources.

The Note updates the previous Lords Library Notes on *The Salisbury Doctrine* of 19th March 1997 (LLN 97/004) and 14th June 2005 (LLN 2005/004)

1. The mandate doctrine

In his book on the Victorian constitution, Godfrey Le May writes of the House of Lords and its leadership by the Duke of Wellington during the passage of the Reform Act 1832, as follows:

Wellington's consistent conviction was that it was better to consent to a bad Bill than to run a serious risk of civil disturbance. This was the principle upon which he urged the Lords to pass Catholic Emancipation, Reform and the repeal of the Corn Laws. On the last of these measures, he is supposed to have told a protectionist peer who expressed a bad opinion of it: 'Bad opinion of the Bill, my lord! You can't have a worse opinion of it than I have, but it was recommended from the throne; it was passed by the Commons by a large majority, and we must all vote for it. The Queen's Government must be supported'... The greater wisdom was to pass [the Reform Act] at once, although this might seem to be against their immediate interests. This might, on a narrow view, seem tantamount to saying that the Lords could only keep their powers if they did not use them; but the argument could be developed beyond the trivial point. The House of Lords, it ran, was the ultimate guardian of the constitution. It must therefore preserve its powers intact against the day when it might have to spend them upon some great occasion.

(G. H. L. Le May, *The Victorian Constitution: Conventions, Usages and Contingencies* (1979), pp. 129–30)

Walter Bagehot summarised the subordinate position of the House of Lords in the middle of the nineteenth century as follows:

Since the Reform Act the House of Lords has become a revising and suspending House. It can alter Bills; it can reject Bills on which the House of Commons is not yet thoroughly in earnest – upon which the nation is not yet determined. Their veto is a sort of hypothetical veto. They say, We reject your Bill for this once or these twice, or even these thrice: but if you keep on sending it up, at least we won't reject it. The House has ceased to be one of latent directors, and has become one of temporary and palpable alterers.

(Walter Bagehot, *The English Constitution* (1958 edition, p. 88))

Corinne Comstock Weston, Professor of History at the City University of New York, notes that:

Both Wellington and Bagehot assumed that the House of Lords must take its direction from the House of Commons as the nation's spokesman.

But she argues that the third Marquess of Salisbury proposed a very different view of the role of the Lords, according to which:

the House of Lords had a referendal function: it had the duty of referring measures to the electorate or nation whenever important questions arose and there was ground for believing that the Government, resting on the House of Commons, lacked a mandate

for its measures. Only if a mandate was forthcoming would or should the House of Lords permit a disputed measure on a vital question to pass into law. The most striking aspect of the referendal theory was the insistence that the political barometer for the peers to watch was not the House of Commons – so central to Wellington and Bagehot – but the nation itself. To the nation the House of Lords should look for guidance and direction; and only to the nation's will, as registered at the polls, would that House bow. But that it would bow to the nation's will was stated over and over again.

(Corinne Comstock Weston, 'Salisbury and the Lords, 1868–1895', *Peers, Politics and Power: The House of Lords, 1603–1911*, eds. Clyve Jones and David Lewis Jones (1986), pp. 463–464)

This section of the Note traces the development of the mandate doctrine by Lord Salisbury from 1868 onwards through an analysis of his statements on various contentious Bills which were brought to the House of Lords after having been passed by the House of Commons as a result of a Liberal majority in that House.

(i) The Disestablishment of the Irish Church

In early 1868 Disraeli succeeded Lord Derby as Leader of the Conservative party and became Prime Minister of a Government which was in a minority in the House of Commons; Gladstone succeeded Lord John Russell as Leader of the Liberal Party.

On 30th March 1868 Gladstone moved that the Commons resolve itself into a committee to consider the Acts relating to the status of the Established Church of Ireland. Lord Stanley, the Secretary of State for Foreign Affairs, moved an amendment stating that 'any proposition tending to the disestablishment or disendowment of that Church ought to be reserved for the decision of the new Parliament'. In supporting Lord Stanley's amendment Disraeli said that the House of Commons:

was not morally competent to decide such a question, if those who have elected it had not, in the constitutional course of our public life, received some intimation that such a question was to come before it ... had the country the slightest intimation during the last few years [that this question] would be brought under discussion in Parliament? I appeal to the programme of the Prime Minister [Palmerston] of the time, which recommended a dissolution of Parliament and explained his policy to the country. There is not the slightest allusion to the state of the Irish Church ... We expressed in the amendment the opinion that ... it will be inexpedient for the House to enter into consideration of the Church in Ireland; and, at the same time we expressed our opinion that the decision upon these great points should be reserved for the new Parliament.

(*Parliamentary Debates*, Third Series, 3rd April 1868, vol. 193, cols. 897–899)

However, Gladstone's motion, and a series of resolutions supporting disestablishment were subsequently passed by the Commons. As a result Gladstone, Sir George Grey and Mr. Lawson sponsored the Established Church (Ireland) Bill, which sought to prevent for a

limited time new appointments in the Irish Church and to restrain for a period of time the proceedings of the Ecclesiastical Commissioners for Ireland. This Bill passed the Commons on 16th June 1868.

During the second reading debate on the Established Church (Ireland) Bill in the House of Lords, a number of Members applied the arguments set out by Disraeli to the particular constitutional role of the House of Lords.

The Lord Chancellor, Lord Cairns, explicitly argued that Gladstone's Bill lacked a mandate from the electorate:

My Lords, these are the vast issues involved in this Bill. These are the issues involved in your Lordships' decision now, and they are the issues yet to be presented to the country in the great appeal to its enlarged constituencies ... In that appeal ... the Government will stand as the defenders of all that this Bill and the policy of its promoters would seek to overthrow.

(*Parliamentary Debates*, Third Series, 26th June 1868, vol. 193, col. 288)

The Duke of Marlborough said that:

I have yet to learn that your Lordships' House does not represent the mind and will of the people of England ... By rejecting this Bill your Lordships will be giving an opportunity which I think should be given to the people of England, of quietly and calmly considering this question.

(*ibid.*, col. 36)

Lord Salisbury asked whether the Earl of Clarendon had:

considered for what purpose this House exists, and whether he would be willing to go through the humiliation of being a mere echo and supple tool of the other House in order to secure for himself the luxury of mock legislation? I quite admit – everyone must admit – that when the opinion of your countrymen has declared itself, and you see that their convictions – their firm, deliberate, sustained convictions – are in favour of any course, I do not for a moment deny that it is your duty to yield. But there is an enormous step between that and being the mere echo of the House of Commons.

(*ibid.*, col. 89)

On 29th June 1868 the House of Lords declined to give a second reading to the Established Church (Ireland) Bill by 192 votes to 97.

At the subsequent General Election, fought largely on the issue of disestablishment of the Irish Church, the Liberal Party was returned with a Commons majority of 112. Gladstone's new administration introduced the Irish Church Bill, which was passed by the Commons on 31st May 1869. This Bill provided for the winding up of the Irish Ecclesiastical Commission and the constitution of a new Commission, appointed for ten years, in which the property of the Irish Church, subject to life interests, would be vested from the time of the passing of the

Bill. The motion to give the Irish Church Bill a second reading was moved in the House of Lords on 14th June 1869. Weston sets out the dilemma facing those members of the House who opposed it:

Should the Irish Church Bill fail the second reading in the House of Lords, after the profuse professions of its Members that they would respect the results of the General Election, they must wreck the emergent referendal theory at the outset. Conversely, reading the Bill a second time, as was done on 19th June, must constitute a milestone of the Victorian House of Lords. Such self-restraint under the most trying circumstances could be treated as convincing evidence for the proposition that the House of Lords would not defy the nation's will, after that will had been expressed at the polls, regardless of the manner in which that House dealt with the House of Commons.

(Corinne Comstock Weston, 'Salisbury and the Lords, 1868–1895', *Peers, Politics and Power: The House of Lords, 1603–1911*, eds. Clyve Jones and David Lewis Jones (1986), p. 469)

Lord Salisbury played a key role in sustaining the Irish Church Bill in the face of considerable opposition from the Conservative benches. In his speech on the Bill's second reading on 17th June 1869 he said that:

There may be occasions in our history in which the decision of the House of Commons and the decision of the nation must be taken as practically the same. In ninety-nine cases out of 100 the House of Commons is theoretically the representative of the nation, but it is only so in theory. The constitutional theory has no corresponding basis in fact; because in ninety-nine cases out of 100 the nation, as a whole, takes no interests in our politics, but amuses itself and pursues its usual avocations, allowing the political storm to rage without taking any interest in it. In all these cases I make no distinction – absolutely none – between the prerogative of the House of Commons and the House of Lords. Again, there is a class of cases small in number, and varying in kind, in which the nation must be called into council and must decide the policy of the Government. It may be that the House of Commons in determining the opinion of the nation is wrong; and if there are grounds for entertaining that belief, it is always open to this House, and indeed it is the duty of this House to insist that the nation shall be consulted, and that one House without the support of the nation shall not be allowed to domineer over the other...

But when once we have come to the conclusion from all the circumstances of the case that the House of Commons is at one with the nation, it appears to me that – save in some very exceptional cases, save in the highest case of morality – in those cases in which a man would not set his hand to a certain proposition, though a revolution should follow from his refusal – it appears to me that the vocation of this House has passed away, that it must devolve the responsibility upon the nation, and may fairly accept the conclusion at which the nation has arrived.

(*Parliamentary Debates*, Third Series, 17th June 1869, vol. 197, cols. 83–84)

An amendment to delay giving the Irish Church Bill a second reading was defeated on 18th June 1869 by 179 votes to 146.

Weston assesses the implications of Salisbury's speech and the decision of the Lords to give the Bill a second reading as follows:

Thanks to Salisbury's leadership the House of Lords, if it chose to act again on such a theory, would enjoy a large measure of credibility ... no defeated House, in the wake of a political disaster, ever received a more effective ideological gloss than Salisbury imported in 1869. His argument for giving the Irish Church Bill a second reading was remembered as long as the referendal theory was associated with the House of Lords.

(Corinne Comstock Weston, 'Salisbury and the Lords, 1868–1895', *Peers, Politics and Power: The House of Lords, 1603–1911*, eds. Clyve Jones and David Lewis Jones (1986), p. 474)

(ii) The Municipal Elections Bill 1872

By 1872 the Liberal Government had suffered a number of by-election defeats, disappointment had been expressed by some of its supporters at compromises in the Education Act 1870, and a vigorous campaign had been conducted against its proposed licensing legislation, which was eventually passed in 1872. The Parliamentary and Municipal Elections Bill, which amended procedures at elections and introduced the secret ballot, was introduced in February 1872 and passed the Commons on 30th May. The views expressed by Lord Salisbury during the passage of the Irish Church Bill hardened into a definite principle when he urged the rejection of the Bill by the House of Lords. Writing to Lord Carnarvon on 20th February 1872 he outlined his strategy for dealing with the Bill:

I am strongly for rejecting the Bill on the second reading, for this reason. It appears to me of vital necessity that our acceptance of Bills to which we are opposed should be regulated on some principle. If we listen to the Liberals we should accept all important Bills which had passed the House of Commons by a large majority. But that in effect would be to efface the House of Lords. Another principle, – which is, so far as I can gather, what commends itself to Derby – is to watch newspapers, public meetings and so forth, and only to reject when 'public opinion', thus ascertained, growls very loud. This plan gives a premium to bluster and will bring the House into contempt. The plan which I prefer is frankly to acknowledge that the nation is our Master, though the House of Commons is not, and to yield our own opinion only when the judgement of the nation has been challenged at the polls and decidedly expressed. This doctrine, it seems to me, has the advantage of being: (1) Theoretically sound. (2) Popular. (3) Safe against agitation, and (4) so rarely applicable as practically to place little fetter upon our independence. It is therefore rather as part of a general principle than because I attach a supreme importance to the question of the Ballot, that I am most earnestly desirous of inducing [The Duke of] Richmond [Leader of the Conservatives in the House of Lords] to resist the second reading.

(Lady Gwendolen Cecil, *Life of Robert Marquis of Salisbury* (1921), vol. II, pp. 25–6)

Salisbury's speech during the debate on the motion to give the Bill a second reading on 10th June 1872 was significant for its insistence that the House of Lords, in deciding on a given measure, should look directly to the results of a General Election if its members were to learn the nation's wishes; and in its singling out of the electorate as the source of ultimate political authority.

I draw the widest possible distinction between the opinions of the House of Commons and the opinions of the Nation. Several of the speakers this evening have admitted what is the fact – namely, that neither this House nor any authority in this State or any other State can resist the deliberate and well-settled opinion of the Nation over which it rules. But that the House of Commons is the expression of the opinion of the Nation is a constitutional fiction which it is convenient for practical purposes to respect; but which is only literally true on certain occasions and on certain subjects. It is true literally when a question on which the House of Commons has been elected is under discussion – then it is undoubtedly true that the House of Commons represents the opinion of the Nation:– but when four years have gone by, and the memory of all the questions on which the House of Commons was elected has passed away, and when an obvious change has taken place in many opinions of the Government which the House of Commons was elected to support, the House of Commons represents only theoretically and not literally the opinions of the Nation ...

... the Members of the Government are not the same as they were when they went to the country – they were then mainly non-Ballot politicians ... Therefore, I maintain, the country has never had a fair opportunity of considering whether it likes the Ballot or not ... So far from admitting that because its concerns elections to the House of Commons we ought to obey the behests of that House, I should say, on the contrary, it is rather our duty to regard ourselves in this matter as agents of the Nation, and to see that the House of Commons, in thus tampering with the laws under which it was elected, has not transgressed the mandate it received.

(Parliamentary Debates, Third Series, vol. 211, cols. 1493–1495)

The Municipal Elections Bill was, however, given a second reading by the House of Lords by 86 votes to 56 on 10th June 1872.

In the General Election of February 1874 the Conservatives under Disraeli won a majority in the House of Commons and held office until 1880.

(iii) The development of the doctrine

At the General Election in 1880 the Conservatives were defeated and the Liberals returned to power with a majority in the House of Commons over the Conservatives of 137. In 1881 Lord Salisbury became Leader of the Opposition in the House of Lords and leader of the Conservative Party (a post shared until 1885 with Sir Stafford Northcote).

In opposition, Salisbury elaborated the theory of the mandate. For example, in November 1880, at a speech to the Hackney Conservative Club, he argued that the duty of the House of Lords was to represent the enduring feelings of the nation:

There are persons among us who maintain that it is the duty of the House of Lords to act as the pale shadow of the House of Commons, and to repeat in a feeble echo all that that House may decide to pass. I believe that, under any circumstances, such a doctrine cannot be sustained. Even if the alternative were, in a day which is far from us, the abolition of the House of Lords, I should still say it was better for the House of Lords to speak out its independent mind before the community, than to deceive it with the false pretences of a security that does not exist. Do not understand me to be maintaining that it is the function of the House of Lords to maintain opinions different from the mature convictions of the nation at large. Such is the constitution of our English society that such a condition of things would not only be unseemly, it would be impossible. The House of Lords will necessarily represent the durable and continued current of feeling and opinion in this country; but if I were to try to define in a sentence the function of the House of Lords, I should say its duty was to represent the permanent, as opposed to the passing, feelings of the English nation...

(Quoted in Arthur Leach, 'The House of Lords', *The Fortnightly Review*, vol. XXXII, New Series, 1882, pp. 359–60)

Elsewhere, Salisbury argued that the House of Lords, through its function of examining the mandate held by a Government when considering a Bill, could oppose an executive grown strong at the expense of the House of Commons. This point became particularly relevant after Gladstone introduced *clôture* and the guillotine to offset the obstructionist tactics of the Irish Nationalist MPs, led by Parnell, in the House of Commons. One side-effect was to strengthen the Cabinet in relationship to the House of Commons. In a speech in Liverpool in April 1882, Lord Salisbury combined his view of the relationship of the two Houses with comments on the decline of the power and representative nature of the House of Commons:

But so far as we are dependent on the Lower House of Parliament, it is proved by all experience, and by the most evident reason, that it would not be safe for the people to trust their affairs entirely to the management of one assembly elected once every seven years. Why, you know how this present House of Commons was elected. It was elected in a great storm of popular excitement, raised by means which I will not stop to characterize ... A House of Commons, enslaved by the caucus, and muzzled by the *clôture*, would be a very different body from that which has hitherto been the glory of English history.

Therefore, he went on to argue, the duty of the House of Lords was to act to give the opportunity for the nation's will to be expressed:

The cause of the animosity with which the House of Lords is occasionally pursued is because it is thought it may perform its primary duty. When people have got together a scratch and accidental majority – a majority based on no truth, bound together by no true logical doctrine of cohesion – such a majority as it is greatly feared might in the case of a dissolution never appear again, an intense desire is nourished that, before that unique majority has disappeared, it should deal some telling, some crushing, some irreparable blow, that no future Conservative Government could undo, and it is

greatly feared that, when this proposal is made, the House of Lords may possibly say, 'No, this was not the ground on which this last election was conducted; we will not allow this thing to be done until the nation has been allowed to speak'. In so acting, I hold that the House of Lords will perform its true duty as a second chamber, its highest function as the last representative of the people in this country.

(Quoted in F. S. Pulling, *The Life and Speeches of the Marquis of Salisbury* (1885), vol. II, pp. 117–118)

In an essay in *The Quarterly Review* in October 1883 Salisbury put within an historical context his contention that the House of Commons had mislaid its sense of itself as the arbiter of the nation at the expense of its subordination to the executive:

Undoubtedly, in a modern state, the only arbitration possible between classes is the judgment – the cool and deliberate judgment – of the generality of the nation. At the best it may not be an ideal form of arbitration; in ordinary circumstances its genuine decisions are hard to obtain: but it is the only one available under modern conditions of political life. The reproach to which the House of Commons acting for the nation is liable, is that it does not in its dealing between classes, even approximately, represent this deliberate judgment.

... a democracy, consisting of men who must be ordinarily engrossed by the daily necessities of self-support, only attends to public affairs partially and fitfully. During the long intervals which elapse between the periods when they do give their minds to politics and pronounce an intelligent decision, they pay no attention to the subject at all. Their voice is mimicked by some one else, who speaks in their name, and affects to act under their authority. It may be some one whom in some informal manner the majority of them have chosen; or it may be one whose mandate is altogether technical, indirect, and unreal. It matters little for those whose vital interests are practically left unprotected at his mercy. It is no longer the voice of their countrymen at large, which arbitrates between them and their opponents and decides their fate. It is the will of one man, or one set of men, – themselves holding on to power by a capricious and precarious tenure.

(‘Disintegration’, reproduced in *Lord Salisbury on Politics: A Selection from his Articles in the Quarterly Review, 1860–1883*, ed. Paul Smith (1972), pp. 345–346)

Le May, writing of the Victorian constitution, considers Salisbury’s arguments as suggesting that:

The national will was supreme, and the Conservative Party represented it. The House of Lords was the instrument that ensured the national will should be respected.

(G. H. L. Le May, *The Victorian Constitution: Conventions, Usages and Contingencies* (1979), p. 144)

Gladstone, in a speech in August 1884, disputed any suggestion that the enduring national will was identical to the views of the Conservative Party:

How is it with regard to the solid and permanent opinion of the nation? ... I want to know, looking back for a period of more than fifty years, which represented the solid permanent conviction of the nation? – the ten parliaments that were elected upon ten out of the twelve dissolutions, or the one parliament that chanced to be elected from the disorganized state of the Liberal party in the early part of the year 1874?

(Quoted in John Morley, *The Life of William Ewart Gladstone* (1903), vol. III, p. 128)

(iv) The Representation of the People Bill 1884

The Representation of the People Bill 1884, which became the Representation of the People Act 1884 (or third Reform Act), proposed to enfranchise householders and lodgers in the counties and introduce a standard £10 occupation qualification for both boroughs and counties, and so establish a uniform franchise throughout the country. This led to a crisis between the two Houses when the Conservatives in the Lords refused to pass the Bill unless it was accompanied by provisions to redistribute seats, fearing that their party would be disadvantaged by an extension of the franchise in constituencies as currently constituted, particularly in Ireland, and that Gladstone might call a General Election before introducing a Redistribution Bill in order to increase his majority. They therefore sought to force the Government to pass a Redistribution Bill at the same time as the Representation of the People Bill, or to force a General Election on the existing franchise.

When the debate on the second reading of the Representation of the People Bill took place in the House of Lords, Lord Salisbury opposed it on the grounds that it failed to couple the extension of the franchise with a redistribution of seats in the House of Commons. Additionally, he argued, such a critical shift in the nation's polity should be put before the electorate for settlement. He declared:

In the presence of such vast proposals we appeal to the people ... If it is their judgment that there should be enfranchisement without redistribution, I should be very much surprised: but I should not attempt to dispute their decision. But now that the people have in no real sense been consulted, when they had, at the last General Election [in 1880], no notion of what was coming upon them, I feel that we are bound, as guardians of their interests, to call upon the government to appeal to the people, and by the result of that appeal we will abide.

(*Parliamentary Debates*, Third Series, 8th July 1884, vol. 290, cols. 468–469)

Salisbury's remarks led to a discussion as to whether the Lords were seeking the right to determine when Parliament was dissolved. Gladstone considered, as he observed to the Queen:

... that at no period of our history, known to him, has the House of Commons been dissolved at the call of the House of Lords, given through an adverse vote; that in his opinion the establishment of such a principle would place the House of Commons in a

position of inferiority, as a legislative Chamber, to the House of Lords; and that the attempt to establish it would certainly end in organic changes, detrimental to the dignity and authority of the House of Lords.

(*Letters of Queen Victoria*, ed. G. E. Buckle, 14th July 1884, 2nd Series, vol. III, pp. 517–518)

Lord Salisbury, in a speech to representatives of the Conservative Associations of London and Middlesex in 1884, denied that the House of Lords claimed the power to force a dissolution. But he held that the government in power should withdraw any vital constitutional measure which the Lords judged lacked a mandate, so that it could be submitted to the people in a General Election:

... there is the question, how far it is legitimate for the House of Lords to press for a dissolution. Well, I think that any such claim on the part of the House of Lords simply would not be justified by the Constitution. But the House of Lords has a right to say this – ‘We do not approve of the measure you bring before us. If you like to accept its rejection, well and good; if you object to its rejection your remedy is to appeal to the people’. And we do not think that under the Constitution there is any other remedy than that. But with respect to the right, not only in the House of Lords but in all of us, of pressing for a dissolution of Parliament, I admit that if it was to be done in respect to ordinary measures of controversy, or the ordinary legislation on which we have to decide, it would be matter of considerable inconvenience if we were to interfere with the discretion which is ordinarily reposed in the advisers of the Crown. But the fallacy, the fundamental fallacy of all the reasonings of Ministerial arguers upon this point is that they ignore the fact that it is not a common question of legislation, it is a vital question, it is a question of the revision of the Constitution.

(Quoted in F. S. Pulling, *The Life and Speeches of the Marquis of Salisbury* (1885), vol. II, pp. 224–225)

After a period of public agitation a compromise was agreed, and the Lords passed the Representation of the People Bill after a Redistribution Bill had been introduced into the Commons.

In June 1885 Gladstone resigned following a defeat in the House of Commons and Salisbury formed a minority Government. At the General Election on the new franchise in November and December 1885 the Liberals gained 335 seats, the Conservatives 249 and the Irish nationalists 86. Thus the Conservatives and Irish Nationalists combined exactly balanced the Liberal Party in the House. Gladstone took office as Prime Minister at the head of a Government with a precarious position in the House of Commons. His Government of Ireland Bill, providing for the establishment of an Irish Parliament, was denied a Commons second reading after dissentient Liberals joined with the Conservatives to reject it. The issue of Home Rule split the Liberal Party. At the ensuing General Election, in July 1886, the dissentient Liberals stood as Liberal Unionists in alliance with the Conservatives against Liberals who supported Home Rule. Salisbury then became Prime Minister at the head of a Conservative Government which, with Liberal Unionist support, had an overall majority of 118 seats in the House of Commons over the Liberals and Irish Nationalists.

At the General Election in 1892 Gladstone, standing on the 'Newcastle Programme', an extensive programme of proposed reforms headed by Home Rule, was returned with an overall majority of 40 seats – including those of the Irish Nationalists – in the Commons.

(v) The Government of Ireland Bill 1893

The second Government of Ireland Bill was introduced into the House of Commons in February 1893. It differed from the Home Rule Bill of 1886 in providing that Ireland should elect Members to the Westminster Parliament, although only to vote there on matters of Irish or imperial concern. As in the earlier Bill, army, navy, customs, trade and foreign relations were excluded from the scope of the proposed Irish legislature. The Bill passed its second reading on 21st April 1893, but confidence in it flagged as it progressed through the House. At committee stage, it was amended so that Irish Members at Westminster were accorded full rights to vote on all matters. The Bill was given a third reading in the Commons on 1st September with a majority of 34. In the House of Lords, where the Conservative Peers had been allied with the Liberal Unionist Peers since 1886, it was refused a second reading by 419 votes to 41 on 8th September 1893.

In his speech during the second reading debate, Lord Salisbury contended that the extensive reform programme put forward by the Liberals at the 1892 General Election meant that:

... no human being can tell on what question the majority which put the present Government in power was returned. No doubt some electors voted for Home Rule, but it is quite certain that a larger number voted for disestablishment, or local option, or for parish councils, or for changes in the incidence of taxation in towns, or for changes in the labour laws ... I deny that the House of Commons received any mandate upon Home Rule at all at the last election.

(Parliamentary Debates, 8th September 1893, vol. 17, cols. 27–31)

In his speech, he also extended the concept of the mandate to include as a pre-requisite the consent of the predominant partner, arguing that both England and Scotland, as predominant partners in the United Kingdom, had to agree before Ireland could receive Home Rule.

Subsequently, in his speech during the Lords debate on the Address on 12th March 1894, Salisbury developed further the concept of the predominant partner, arguing that:

Nobody believes that as long as England refuses Home Rule, Home Rule can be established in Ireland. On the other hand, everybody is aware that if England is willing to accept Home Rule, the resistance of its antagonists will not prevail. I freely admit that if Scotland had as strong an aversion to Home Rule as England has that would be a bar to its adoption; but, dealing with the matter as we stand, the opinion of England for or against is the deciding judge in this issue of Home Rule. Well, then, the sooner we have the judgment the better; and the clearer the issue is presented in the constituencies the more satisfactory it will be to carry the decision and conviction that it is required.

(Parliamentary Debates, 12th March 1894, vol. 22, cols. 22–23)

Andrew Adonis considers that:

For his part, Salisbury carefully manipulated the mandate doctrine. Before the 1895 election he declared that the Liberals could not claim a genuine mandate for Home Rule simply by winning a General Election: they also had to secure a majority 'of the nation in all its main divisions' – a goal he knew [Gladstone] could not achieve.

(R. Adonis, *Making Aristocracy Work: The Peerage and the Political System in Britain, 1884–1914* (1993), p. 115)

(vi) The Liberal Government 1892–95

In Volume 14 of the *Oxford History of England*, Sir Robert Ensor contended that during the lifetime of the Liberal Government 1892–95 the Conservatives began to use the Unionist majority in the House of Lords to oppose a wide range of Government proposals for legislation that had been approved by the Commons. The House of Lords had:

rejected home rule and crabbed the reform of local government, [and] the House of Lords killed (by inserting a contracting-out clause) an Employers' Liability Bill which Asquith [the Home Secretary] had piloted. These were all the government's important Bills to date; and as the Lords in the previous six years had never touched a conservative measure, the partisan use of their powers began to be undisguised...

From first to last the House of Lords gave [the Government's] Bills no quarter, and intimated a virtual veto on the whole of its legislation. In so acting it succeeded on the short reckoning ... But on a longer view the Lords' tactics (which went completely counter to Disraeli's wisdom) may be differently estimated. A second chamber could never hope to perpetuate its powers if it used them solely and indiscriminately against one of the two parties. Still less could it hope to keep effective the edges of its weapon for defeating Irish home rule if it blunted them by hacking blindly at every other Bill it saw.

(R. C. K. Ensor, *England 1870–1914* (1936), pp. 214–216)

Lord Rosebery, who succeeded Gladstone as Liberal Prime Minister in March 1894, summarised his view of this situation in a Memorandum to Queen Victoria of 7th April 1894:

When the Conservative Party is in power, there is practically no House of Lords: it takes whatever the Conservative Government brings it from the House of Commons without question or dispute; but the moment a Liberal Government is formed, this harmless body assumes an active life, and its activity is entirely exercised in opposition to the Government ... It is in fact a permanent barrier raised against the Liberal Party.

I point this out to show the practical difficulty. For it is of no use to say of the House of Lords that the Peers are conscientious in their action, that they are honestly Tory

and honestly Unionist, for the point of the objection is that they are so honestly of one party that they feel it is their duty on all occasions to oppose the other...

(Quoted in Marquess of Crewe, *Lord Rosebery* (1931), vol. II, pp. 453–454)

Lord Rosebery resigned as Prime Minister in June 1895 and following the subsequent General Election the Conservatives and Liberal Unionists, standing as Unionists, were returned with a combined majority of 81 seats over the Liberals and Irish Nationalists. Lord Salisbury again took office as Prime Minister. In 1900, the Unionist Government was again returned at the General Election with an increased majority of 134 seats. Salisbury resigned as Prime Minister in 1902 and was succeeded by Arthur Balfour.

In December 1905 Balfour resigned and was followed as Prime Minister by Campbell-Bannerman. At the 1906 General Election the Liberals were returned to Government under Asquith with a majority of 134 seats in the House of Commons over the Opposition.

(vii) The Liberal Governments from 1905

At an election meeting at Nottingham on 15th January 1906 Balfour had suggested that, notwithstanding the possible results of the General Election, the Unionists would retain an influential role in Parliament:

... if times change and the tide should turn ... you will feel that this is of all others the moment, the crisis of fate, when it is the bounden duty of each one of you in his separate sphere and with such power of influence as he has been endowed with to do his best to see that the great Unionist party shall still control, whether in power or whether in opposition, the destinies of this great Empire.

(*The Times*, 16th January 1906)

In opposition, the Unionist leaders adopted a variable approach in the use of their preponderance in the House of Lords against Government Bills brought from the Commons.

In July 1906, Balfour set out a strategy for responding to the Government's Education Bill in a memorandum circulated to Unionist peers:

I assume that the House of Lords will read it [the Bill] a second time, and that they will amend it drastically in committee. I assume the first because I think its rejection on second reading is a policy which so far commends itself to no responsible Members of the Opposition, and I assume the second, because the strong feelings which the Bill has aroused in every part of the country would not, I think, be satisfied with merely surface amendments.

(Quoted in Blanche Dugdale, *Arthur James Balfour* (1935), vol. II, p. 36)

The Lords gave the Education Bill a second reading without a division. However, Unionist amendments, including one insisting on the rights of parents who desired denominational teaching for their children, were subsequently agreed to by the Lords. The Lords

amendments were rejected by the Commons, and insisted upon by the Lords. As a result, the Government decided in December 1906 not to proceed with the Bill.

In the same year, however, the Trade Disputes Bill 1906, which placed trade unions in a privileged position in law, and had not been proposed to the electorate in the form in which it left the House of Commons, was brought before the Lords. The Leader of the Unionist peers, Lord Lansdowne, argued that the Bill should be allowed to pass without significant objection:

... let us ... be sure that if we join issue we do so upon ground which is as favourable as possible to ourselves. In this case I believe the ground would be unfavourable to this House, and I believe the juncture is one when, even if we were to win for the moment, our victory would be fruitless in the end. I shall not vote against the Bill. I regard it as conferring excessive privileges upon the Trade Union ... but I also hold that it is useless for us, situated as we are, to oppose this measure.

(HL *Hansard*, 3rd December 1906, vol. 166, cols. 903–904)

In the event, the Bill was passed without significant amendment. Le May summarises this strategy in the House of Lords as follows:

... The Unionists were prepared to ignore their doctrine of the mandate when an insistence upon it might bring them into direct conflict with organised Labour. In other matters, however, they resorted to challenging the Government to put their measures, one by one, to the judgment of a General Election.

(G. H. L. Le May, *The Victorian Constitution: Conventions, Usages and Contingencies* (1979), p. 191)

In a speech at Manchester in October 1907, Balfour emphasized that the Unionists were prepared to use their preponderance in the House of Lords against Government Bills, in accordance with the doctrine of the mandate:

The power which the House of Lords has, and which it undoubtedly ought to exercise, is not to prevent the people of this country having the laws they wish to have, but to see that the laws are not ... the hasty and ill-considered offspring of one passionate election.

(Quoted in Blanche Dugdale, *Arthur James Balfour* (1935), vol. II, p. 33)

Le May has commented that:

This was to return to Salisbury's contention that it was impossible to deduce from an election whether any simple item in a party's programme had received an endorsement. On Balfour's side, it must be said that the electorate seemed to be indifferent to the fate of Liberal legislation. There was no great public outcry when the House of Lords mutilated or rejected Bills on education, plural voting, licensing

hours and the conditions of Scottish freehold. It could be argued that these were purely sectional measures, to gratify the intense minorities within the Liberal Party.

(G. H. L. Le May, *The Victorian Constitution: Conventions, Usages and Contingencies* (1979), p. 190)

(viii) The Parliament Bills 1910–11

The Chancellor the Exchequer, David Lloyd George, brought forward a Budget in 1909 in a Finance Bill which included a supertax on high incomes and capital gains on land sales. The House of Lords voted not to give the Finance Bill a second reading. Following the ensuing General Election of January 1910, fought by the Liberals on the issue of the 'Peers versus the People', the Liberal majority was greatly reduced and the balance of power in the Commons was held by Labour and Irish Nationalist members. Nonetheless, the new Liberal government was determined to introduce a Parliament Bill which would redefine the powers of the House of Lords and enable financial proposals approved by the Commons to become law, if necessary without the consent of the Lords. Despite a conference between the Liberal and Unionist parties it proved impossible to reach agreement on the outlines of a Parliament Bill to redefine the powers of the House of Lords. A Parliament Bill was nonetheless introduced by the Government and passed by the Commons. However, its second reading debate was adjourned in the House of Lords on 21st November 1910, and a series of resolutions, presented by Lord Lansdowne, was approved. These provided for a joint sitting of both Houses to be called to settle disputes between the Houses arising on ordinary Bills and persisting for over a year; a referendum to settle a similar dispute when it arose on 'a matter of great gravity which had not been adequately submitted to the judgment of the people'; and a joint committee presided over by the Speaker to determine whether a Bill was a Money Bill. Provided such a joint committee were established the Lords were 'prepared to forego their constitutional right to reject or amend Money bills of a purely financial character'. On the failure of the Bill, the King agreed to a second dissolution of Parliament, but a second General Election in December 1910 produced a similar overall balance of power in the House of Commons.

On 15th May 1911 the Parliament Bill, which provided that Money Bills could become law without the assent of the Lords and that other Bills would also become law if they passed in the Commons and failed in the Lords three times in two years, was passed by the House of Commons. When the Bill was debated at second reading by the House of Lords on 23rd May 1911, several Unionist peers made clear their view that, despite the outcome of the recent General Elections, they did not accept that there was an unqualified mandate for the Parliament Bill.

Lord Middleton, for example, admitted:

that this measure was placed before the country in December, 1910, but I say that it was so placed before the country, and the election was so timed, as to preclude any possible alternative being discussed by the country.

(HL *Hansard*, 23rd May 1911, vol. 8, cols. 710–711)

Similarly Lord Salisbury (the 4th Marquess, 1861–1947) analysing the mandate held by the House of Commons, claimed that:

It is admitted on all hands that a House of Commons is elected without, as the phrase is, any mandate for particular measures, and yet is entitled to deal with them. I have no objection to that myself. By all means let them deal with them; but you must not say that the House of Commons in these respects represents the exact opinion of the people. It does not follow. It may be so; it may not be so. And according to our ancient Constitution the only means of preventing a miscarriage of justice in consequence of the possibility of the House of Commons legislating in conflict with the wishes of the people lay in the power of your Lordships' House to refer such Bills to the people.

(*ibid.*, cols. 784–785)

However, Lord Lansdowne made it clear that although he would not oppose the Bill's second reading, he intended subsequently to table amendments:

I may be asked why, holding the views I hold about this Bill, I shall not go into the Lobby against it if the House should divide. My answer is that our action must certainly not be interpreted as any indication that we accept, either permanently or provisionally, the place which it is sought to assign to this House under the Bill. But we admit that after the two last elections you have a right to legislate upon this question, and we believe there is some ground which is common to both sides. We therefore hold it desirable that we should enter upon the Committee stage and discuss the provisions of the Bill in detail, and that we should put upon the Paper such Amendments as the measure may seem in our view to call for.

(*ibid.*, col. 962)

The Bill was given a second reading without a division.

The Lords committee stage of the Parliament Bill has been described by Lord Jenkins of Hillhead as 'a six-day massacre of the Government's proposals' (Roy Jenkins, *Mr. Balfour's Poodle: An Account of the Struggle between the House of Lords and the Governments of Mr. Asquith* (1954), p. 144). On 4th July, Lord Lansdowne introduced an amendment to exclude from the Bill's provisions any Bills affecting the Crown, devolution and any 'issue of great gravity upon which the judgment of the country has not been sufficiently ascertained', and to subject them to the Referendum 'in a manner to be hereafter provided by Act of Parliament'. His amendment provided that a Committee consisting of the Lord Chancellor, the Lord Chamberlain, a Lord of Appeal, the Speaker, the Chairman of the Ways and Means Committee and an MP selected by the Speaker would judge the questions of what constituted 'great gravity' and what constituted a sufficient mandate from the electorate.

In introducing his amendment, Lord Lansdowne said that under the provisions of the Bill as put forward by the Government:

a majority of the House of Commons has only to insist for two years upon any measure for that measure to become law, not only over the heads of your Lordships' House, but over the heads of the country. And it is necessary to bear in mind that the

majority which may bring this about may be a wholly insignificant majority in point of numbers. It may also be a majority having no relation whatever to the number of votes by which it is supported in the country. It may be a majority reflecting the gross anomalies of our electoral system as we know it to-day. In fact, it is not too much to say it may be a majority representing only a minority of the votes of the electors throughout the country. Then, my Lords, it may be a precarious and dwindling majority, a majority no longer in what the Prime Minister describes as the “plenitude of its powers”. Again, it may be an ill-assorted majority, not representing some great concentrated body of public opinion, but a majority representing, as it were, a patchwork of causes and political creeds. And finally it may be a majority which has been returned not upon one issue, but upon half a dozen different issues. A majority so composed may have been secured by those methods of curtailing discussion in the House of Commons with which we are becoming more and more familiar with every year that passes. From such a majority under this Bill literally nothing – nothing whatever – is safe. The most fundamental issues are at its mercy. It may insist upon the passage of measures inflicting irreparable injury upon our most cherished institutions. The Crown is not safe, the Constitution is not safe, the Union is not safe, the Church is not safe, our political liberties are not safe – literally no institution, however much revered and respected in this country, is beyond the reach of a majority of the kind which I described just now.

(*HL Hansard*, 4th July 1911, vol. 9, cols. 100–101)

In his speech on the amendment, the Lord President of the Council, Lord Morley of Blackburn, himself deployed the argument of the mandate against the Unionists’ proposals:

In all seriousness do you reasonably expect that the House of Commons, chosen only six months ago, after months and months of incessant public discussion, is going to part wholesale with its own supremacy – it was a conspicuous issue at the election – and then to entrust its proceedings under penalty of an appeal to the country to this Committee? I cannot think so. Can any one seriously pretend that any single elector in any constituency was thinking, when he gave his vote, of this scheme? He had never heard of it. When you reprove us for confusing the issues there was not a single elector – I am not sure that there were many of your Lordships who assented to the Second Reading of the Bill – who thought for a moment that the end of it was to be supersession of the House of Commons and the erection of the supremacy of this House through the medium of a Joint Committee.

(*ibid.*, cols. 119–120)

None the less, on a division on 5th July the amendment was passed by 253 votes to 46. This amendment, and others made by the Lords at the committee and report stages, had the result that, as Lord Morley of Blackburn commented during the Lords third reading debate on 20th July 1911:

The Bill that is now before us is not the Bill that was submitted to the judgment of the country. It is not the Bill that was passed by a great majority in the House of

Commons. It is not the Bill to which your Lordships were good enough to give a Second Reading without a Division.

(*Parliamentary Debates*, 20th July 1911, Fifth Series, vol. 9, col. 573)

Lord Jenkins of Hillhead has commented that:

the salient feature of the committee stage (and the position was in no way retracted at the report stage, which took place on 13th July) was that the House of Lords had declined to accept the verdict of the second 1910 General Election and had thrown out an unmistakeable challenge to the Government.

(Roy Jenkins, *Mr. Balfour's Poodle: An Account of the Struggle between the House of Lords and the Government of Mr. Asquith* (1954), pp. 144–45)

Following consideration, the House of Commons voted to disagree to a number of the amendments to the Parliament Bill which had been made by the Lords. Finally, on 10th August 1911 the Lords agreed not to insist on those amendments to the Parliament Bill to which the Commons had disagreed. This followed the disclosure by the Government of the King's agreement to create, if necessary, up to 500 new peers to ensure the passage of the Bill. The Bill was passed by the House without the Lords amendments by 131 votes to 114. 37 Unionist peers voted with the Government, against the votes of the diehards, led by Lord Halsbury, who wished to continue resistance. Some 300 Unionist peers, including Lansdowne and Curzon, abstained.

The Parliament Act 1911 marked a sea-change in the constitutional position of the House of Lords. Weston traces a link between Salisbury's mandate doctrine and the confrontations which culminated in 1911:

The Conservative Leader was gone from the scene, to be sure, but he had left his party a fateful ideological heritage that would lead in due course to the Parliament Act of 1911.

Corinne Comstock Weston, *The House of Lords and Ideological Politics: Lord Salisbury's Referendal Theory and the Conservative Party, 1846–1922* (1995), p. 15)

However, she also points out that Salisbury's development of the mandate doctrine had provided a means of defining the balance between the two Houses of Parliament over a period when the progressive extension of the franchise was radically altering the constitutional context within which they operated:

Despite the unblushing partisanship with which the referendal theory was exercised, the House of Lords now had at hand, for the first time, a democratic rationale for its legislative veto. Here was a truly indispensable acquisition, one well suited to the age of mass politics that followed the second Reform Act [of 1867]; and it opened up new possibilities for the House of Lords...

(Corinne Comstock Weston, 'Salisbury and the Lords, 1868–1895', *Peers, Politics and Power: The House of Lords, 1603–1911*, eds. Clyve Jones and David Lewis Jones (1986), p. 464)

The formation of the mandate doctrine provided a precedent which was restated and further developed from 1945 onwards. Weston states that:

Lord Salisbury's definition of the referendal theory in late Victorian England, and the techniques which he adapted to defend it, brought that House a generation of legislative independence ... Moreover, the theory enjoyed an Indian summer of popularity in Conservative ranks in the late 1940s and early 1950s when the Lords were confronted with Attlee's nationalisation programme.

(Corinne Comstock Weston, *The House of Lords and Ideological Politics: Lord Salisbury's Referendal Theory and the Conservative party, 1846–1922* (1995)).

2. The Labour Government 1945–51

(i) The Salisbury doctrine 1945–51

Following the General Election held in July 1945 the Labour Party were returned to power with an overall majority in the House of Commons of 156. This section of the Note describes the basis on which the front benches in the House of Lords, headed by the Leader of the Lords, Viscount Addison (Secretary of State for Dominion Affairs, 1945–47 and Lord Privy Seal 1947–51), and Viscount Cranborne (who became the 5th Marquess of Salisbury in 1947) reached agreement on the passage of major Government Bills through the House. It discusses the restatement of the Salisbury doctrine in 1945, the debate over the Parliament Bill in 1948–49, and the treatment by the House of Lords of the Iron and Steel Bill in 1948–49.

Kenneth and Jane Morgan set out the difficulties facing Viscount Addison in dealing with the relations between the Lords and Commons from 1945:

In the face of an overwhelming Conservative majority, he was responsible for the safe passage of a large and far-reaching, even revolutionary legislative programme. Under the Parliament Act of 1911, the Lords retained the right to delay Bills that had passed through the Commons (other than money Bills as so certified by the Speaker) for two years. This could cause a Government real embarrassment, as it had done to some degree the second Labour Government of 1929–31; it could lead to the last two years in the life of a Parliament becoming moribund. If there had been difficulty between the two Houses in 1906–10 it could, in theory, be all the more intense now since the political differences between a socialist-dominated House of Commons and a largely Tory Upper House were all the more profound. In fact, by general agreement, Addison handled this difficult task of political management quite superbly, and proved to be one of the most able leaders that the Lords had ever known. He was much aided by the cordial personal relationship that he enjoyed with Lord Salisbury, the Leader of the Conservative peers. The two struck up a personal understanding that does much credit to the wisdom of both men: Salisbury himself, twenty-four years the younger, called it a ‘father and son’ relationship.

(Kenneth and Jane Morgan, *Portrait of a Progressive: the Political Career of Christopher, Viscount Addison* (1980), pp. 251–252)

Addison described the situation facing the Labour Party in the Lords in the following terms:

... in the House of Lords the Labour Benches are, as it were, but a tiny atoll in the vast ocean of Tory reaction. And yet we – this little handful – have the task of putting through the Labour Programme punctually and without sacrifice of essentials as it comes up to us from the comparatively slow-grinding Parliamentary machine in the Commons.

For example, the Coal Bill took five calendar months from the day of its presentation by the Minister of Fuel and Power in the Commons before it reached us in the House of Lords for its first reading on 21st May, but we are expected to have carried this

great measure through the House of Lords and to safeguard it from mutilation by the middle of July. And the job will be done.

We are, in fact, continually occupied in the House of Lords in fitting a square peg into a round hole without losing its corner.

I'm now boasting of the fact that at the moment we are fully up to the timetable with all the Government Bills, but it is a privilege to be the Leader of as gallant a band of upholders of Labour principles and tenets as could be found anywhere ... But in the Lords "we wear our rue with a difference", and, under Lord Cranborne's leadership, the Tory Opposition has shown hitherto a disposition to sink mere prejudice and to join with us on the Government Benches in helping the House of Lords to perform its proper function as a Second Chamber, namely, that of revision and acceptable amendment, rather than in using it as a Tory engine for the frustration of the Labour Government summoned to office and to power by the nation.

(*Forward*, 27th July 1946)

Viscount Cranborne set out the approach of the Conservative opposition in the Lords in an exposition of the mandate doctrine during the Lords debate on the King's Speech which had contained the programme of the new government:

Whatever our personal views, we should frankly recognize that these proposals were put before the country at the recent General Election and that the people of this country, with full knowledge of these proposals, returned the Labour Party to power. The Government may, therefore, I think, fairly claim that they have a mandate to introduce these proposals. I believe that it would be constitutionally wrong, when the country has so recently expressed its view, for this House to oppose proposals which have been definitely put before the electorate.

(*HL Hansard*, 16th August 1945, vol. 137, col. 47)

He developed this position during a debate on the Supplies and Services (Transitional Powers) Bill on 31st October 1945:

If the country is behind them, their mandate will be renewed. If the country votes against them, it is clear that their policy is not approved. That is the proper constitutional course ... First, there is the Government: over them comes the authority of Parliament: and over Parliament the authority of the British people. That is the structure of the British Constitution. If the Government are hampered in their work, they can always go back to the sovereign people of this country from which Parliament gets its authority. But what is entirely contrary to the spirit of the Constitution is to attempt to stifle the free decisions of Parliament.

(*HL Hansard*, 31st October 1945, vol. 137, cols. 613)

He later recalled this period as Leader of the Opposition in the Lords:

Because of the large Labour majority in the Commons in 1945, it was therefore possible for us who belonged to the opposition to make it our broad guiding rule that

what had been on the Labour Party programme at the preceding General Election should be regarded as having been approved by the British people. Therefore ... we passed all the nationalisation Bills, although we cordially disliked them, on the second reading and did our best to improve them and make them more workable at committee stage. Where, however, measures were introduced which had not been in the Labour Party Manifesto at the preceding Election, we reserved full liberty of action.

(HL *Hansard*, 4th November 1964, vol. 261, col. 66)

Lord Carrington recalls that:

Cranborne reckoned that it was not the duty of the House of Lords to make our system of government inoperable. Nor, he considered, was it justified that the Opposition peers should use their voting strength to wreck any measure which the Government had made plain at a General Election that they proposed to introduce ... [this] meant that the Lords should, if they saw fit, amend, but should not destroy or alter beyond recognition, any Bill on which the country had, by implication, given its verdict. The Lords, in other words, should not frustrate the will of the people. I doubt if this amounted to a formal constitutional doctrine but as a way of behaving it seemed to be very sensible ... Cranborne had to allow some robust words and tactics, but still retain sufficient control to prevent the passing by the Opposition of 'wrecking' amendments – as opposed to those which could perhaps draw a good deal of the poison from a Bill without seeming to destroy it utterly. There was, of course, argument about what constituted a wrecking amendment and what did not: but, by and large, the Salisbury strategy worked and the Salisbury convention – of no wrecking amendments – was observed. To this day the convention continues ... Later in life I applied the same convention myself.

(Lord Carrington, *Reflect on Things Past: The Memoirs of Lord Carrington* (1988), pp. 77–78)

(ii) The Parliament Bill 1948–9

The Parliament Act 1911 abolished the power of the Lords to reject Money Bills and substituted for their power to reject other public Bills a power to delay such Bills for a period of two years spread over three sessions. Were the Lords minded to challenge Bills which had passed the Commons in the first three years of a Parliament, it would still be possible for those Bills to pass into law. However, the Lords had the power to frustrate legislation approved by the Commons in the last two years of a full Parliament's life.

Clement Attlee wrote that:

... things had changed since the great fight over the Lords' veto in 1910. The Peers had in Lord Salisbury a wise leader and we had in Lord Addison a skilful and conciliatory spokesman. Thus, for our first three years we experienced no trouble. The House of Lords fulfilled a useful role as a debating forum and a revising Chamber.

It was, however, clear that the Iron and Steel Bill would not get through the Lords without the use of the Parliament Bill. In my view, the period of delay imposed by this measure before the will of the elected Chamber could prevail was too long. Accordingly it was decided to introduce a measure shortening the period by which measures passed in the Commons could be held up. In due course, in November 1947, a Bill to amend the 1911 Act was introduced by [Herbert] Morrison [Lord President of the Council]. This Bill said that any measure rejected by the Lords would become law if it had been passed by the Commons in two successive sessions instead of three (as under 1911 Act) and provide that one year (instead of two) had elapsed between its first appearance for the second reading and its passage through the Commons for a second time. The Conservatives naturally put up a strong opposition to this Bill.

(Clement Attlee, *As It Happened* (1954), p. 167)

In his speech opening the debate on the second reading of the Parliament Bill on 27th January 1948, Lord Addison, disputed the validity of the theory of the mandate:

Many a time in this House, as I have sat here, I have had to listen to the question whether this or that proposal of the Government was in accordance with the mandate of the people, or words to that effect. I want to say a word on this “mandate” claim, with complete frankness, if I may.

The claim to decide whether a subject is or is not in accordance with the mandate of the people contains this implication that, if this House is of opinion that it is not in the mandate, this House is at liberty to reject it; that is the deliberate and obvious implication. We challenge that implication from the very start. We claim that it is for the elected representatives of the people to decide whether an issue is or is not the subject of Parliamentary activity...

We do not accept, and we do not intend to accept, that this House, entirely unrepresentative, shall be the final arbiter as to what is and what is not the opinion of the people...

Of necessity in the life of any Parliament, a large number of issues must arise which were not foreseen or which were not in anybody’s mind at the time of the Election. That must be so. Let me give you two or three examples of that in this Parliament, which have not given rise to difficulty and which have been accepted. It is not a question of there being any mandate. Take the Indian Independence Act. None of us had foreseen at the time of the General Election the circumstances which existed at the time of the passing of that Act; they could not be foreseen. But that fact gave rise to no difficulty. It was not a subject of mandate – that is the point I am making. Various Acts under the Emergency Legislation provisions are of the same kind. But it may well happen that, before the end of this Session, we shall have before us a Bill which will give rise to differences of opinion. Some time ago there were two special all-party committees set up to deal with inequalities that had arisen through changes in the distribution of the population and also with the question of electoral law. I understand that there is a Bill dealing with the representation of the people. These conditions were not foreseen, and could not very well be foreseen at the time of the

General Election. But that does not in any way invalidate the claim or the right of the representative House to introduce measures on these matters. There is no question of mandate at all.

(HL *Hansard*, 27th January 1948, vol. 153, cols. 634–635)

Lord Salisbury moved an amendment – which included the statement that the House declined to give a second reading to a Bill ‘for which the nation has expressed no desire’ – arguing in similar terms to those used on earlier occasions by his grandfather. It was, he said:

... an entirely false argument that the views of a temporary majority in the House of Commons and the will of the people are inevitably identical ... After all, this argument of the Government rests on a fundamental misconception of the whole nature of the British Constitution. Ministers talk as if the House of Commons were a sovereign body – a sovereign body under His Majesty, the King; but, in fact, the House of Commons is not a sovereign body at all. It never has been. There is only one sovereign body under His Majesty the King, so far as I know, and that is the broad mass of the British people. It is perfectly true that, for convenience’s sake, the electorate delegate certain powers to their elected representatives. But they never surrender their ultimate authority; and they would be most unwise if they did so. Experience shows that the elected representatives, whether of the Right or of the Left – it applies equally to both – very easily get out of touch with their electors. They may become the representatives, the voting counters, of a small clique holding certain views which are not in the least representative of the broad views of public opinion...

In such circumstances, it is clearly essential that some machinery should exist which can enable great issues, on which the views of the people are not certainly known, to be adequately considered, and if necessary, referred back to the electors for their considered decision. That is the main purpose of the delaying powers which were reserved to the Second Chamber under the Parliament Act of 1911. They do not constitute, as is constantly said, quite wrongly, a power of veto. There has been no power of veto since the Parliament Act of 1911, except in the case where a Government attempts to prolong the life of Parliament; and that particular case is not touched by this Bill. At the most, the present power of the Second Chamber is power to refer back to the electors, the general mass of the people, questions on which there is genuine doubt. And evidently it is a power which can be used only seldom and in a great emergency. If any Second Chamber were to abuse that power irresponsibly or frivolously, it would sign its own death warrant...

We believe that the power of a Second Chamber to refer back to the electorate doubtful measures which deal with issues of the first importance is absolutely vital to the survival of democracy. We believe that that power provides probably the most essential safeguard in the Constitution. After all, the value of a Second Chamber does not lie merely in the fact that it exists; that is not the difference between people who believe in single Chamber Government and those who believe in bicameral government. It does not even lie merely in the fact that it can rectify the errors and omissions of the First Chamber, though that is indeed a valuable function, as the events of the last two years clearly show.

The main importance of a Second Chamber, I submit to your Lordships, is not, indeed, as the Prime Minister said, “to act as a brake” – that, I should have thought, was the wrong metaphor. Rather is it like the apparatus in the automatic pilot of an aeroplane which prevents the machine swinging too far either to the right or to the left. As I see it, that is the function of a Second Chamber. And that equilibrium can be maintained only by some power of delay.

(HL *Hansard*, 27th January 1948, vol. 153, cols. 644–647)

On 4th February 1948 the debate on Lord Salisbury’s amendment was adjourned on the Motion of Lord Addison, who had stated the terms on which the Government were willing to enter into conference on proposals for the reform of the House without prejudice to either side. The White Paper, *Parliament Bill 1947: Agreed Statement on Conclusion of Conference of Party Leaders, February–April 1948* (Cmd 7380), issued on 4th May as a result of these talks, reiterated the distinct positions occupied by the Labour and Conservative Parties over the mandate issue. The Government:

Expressed their willingness to see a Second Chamber possessed of proper facilities for debating public affairs and for revising legislation ... Each House should have a proper time for the consideration of amendments to Bills proposed by the other; but the Second Chamber should not be able to impose its will on the House of Commons and to force the Government to seek a General Election against its own inclination and that of the Commons. The principal organ of democratic government is the House of Commons, which is elected by the People. The danger in modern conditions was that the machinery of democratic government may act too slowly rather than too quickly. Under the Parliament Act of 1911 the procedure enables a House of Lords hostile to the Government of the day to render the legislative programme of the Government ineffective in the fourth and fifth sessions of a quinquennial Parliament. In the result, the will of the Government and of the People could be thwarted by a Second Chamber which, not being elected, is not directly responsible to the People. The Government representatives agreed that it is important that points of dispute between the two Houses should be appreciated by the public, they considered that the Parliament Bill adequately safeguards constitutional rights in this respect, and affords sufficient time for public opinion (which formulates more rapidly in modern conditions than was the case 30 years ago) to understand and pronounce upon a disputed issue.

(*Parliament Bill 1947: Agreed Statement on Conclusion of Conference of Party Leaders, February–April 1948* (Cmd 7380))

The Conservatives found themselves:

unable to agree to what they regard as the virtual elimination of the suspensory period. They feel that this would be in conflict with the whole intention of the Parliament Act of 1911. They hold that the purpose of the power of delay, which formed an integral part of the Parliament Act procedure, has never been to enable the Second Chamber to thwart the will of the People. It is an essential constitutional safeguard to ensure that, in the event of serious controversy between the two Houses of Parliament, on a measure on which the view of the electorate is doubtful, such a

measure shall not pass into law until sufficient time has elapsed to enable the electorate to be properly informed of the issues involved and for public opinion to crystallize and express itself.

(*ibid.*)

The Parliament Bill was eventually passed in December 1949 without the consent of the Lords under the provisions of the Parliament Act 1911.

(iii) The Iron and Steel Bill 1948–9

On pages 157–176 of *The House of Lords and Contemporary Politics 1911–1957*, Peter Bromhead, then of the University of Durham, discussed in detail the passage of this Bill and that of other contentious measures during the period of the Labour governments. He considered that, during this period, in the main, the House of Lords acted as a revising chamber; and that its work on the nationalisation Bills was mainly concerned with the discussion of points of detail.

The Labour Party Manifesto for the 1945 General Election, *Let Us Face the Future: A Declaration of Labour Policy for the Consideration of the Nation*, stated that:

... the Labour Party submits to the nation the following industrial programme:–

... Public ownership of iron and steel – Private monopoly has maintained high prices and kept inefficient high-cost plants in existence. Only if public ownership replaces private monopoly can the industry become efficient. These socialised industries are to be taken over on a basis of fair compensation, to be conducted efficiently in the interests of consumers, coupled with proper status and conditions for the workers employed in them.

(*British General Election Manifestos, 1900–1974*, ed. F. W. S. Craig (1975), p. 127)

The Iron and Steel Bill provided for the nationalisation of all the major firms engaged in the basic processes of the iron and steel industry and their subsidiary companies, and for the licensing of smaller firms. Compensation in the form of Government stock was to be issued amounting to £300 million. Having passed the Commons, it was debated on second reading in the House of Lords on 24th May 1949. Conservative peers denied that the Government had a mandate for the Bill. Lord Swinton said it:

Bears no resemblance to anything in the Election programme, or even to the Government's intentions as expressed in the Motion submitted in another place in 1946, to which the noble Viscount referred, which was to transfer to the ownership of the nation appropriate sections of the iron and steel industry. No one could imagine that we should see a Bill which, while leaving large parts of the so-called appropriate section of iron and steel making outside, embraces huge engineering enterprises

which are not steel-making at all. Indeed, whatever claim the Government could advance for a mandate to nationalise iron and steel, they have no authority whatever for this particular Bill.

(HL *Hansard*, 24th May 1949, vol. 162, col. 994)

However, Lord Salisbury in his speech acknowledged that:

No doubt there are those in this House who might fairly advocate the propriety of throwing it out now, on the second reading, for the purpose of providing a breathing space to enable the British public to give it further consideration before it is passed into law. But, my Lords, I say frankly that I feel very reluctant to advise this particular course if we can avoid it; for though we have no obligation to do so – and indeed in certain circumstances our duty might very well lead us in the opposite direction – we have, in this House since the last Election made it a general practice, when a measure has been on the programme of the Labour Party at the last General Election, to give it a second reading and to do our best to amend it and improve it: and quite frankly, I dislike the idea of altering this general practice for a single Bill, however important, especially if we can achieve what we want – an opportunity for further consideration by the people – by another method. Fortunately, I believe that in this case that is possible.

What I am going to recommend to your Lordships is this. Let us give this Bill a second reading. Let us amend and improve it as best we can on the committee stage – and, heavens knows, it will need plenty of amendment, for, as Lord Swinton has pointed out, some of the clauses were not discussed at all in another place. And, in particular, let us put in an amendment that the Bill shall not come into operation until October 1, 1950 – that is, after the latest date of the next General Election. That will give the electorate a chance of having another look at it and coming to considered conclusions. If the electorate return the present Government to power, nothing can prevent this Bill coming into law, however pernicious we ourselves may think it. The people will have decided on it. If, on the other hand, the Government are not returned to power at the Election, then it is evident that the people will have rejected nationalisation of iron and steel.

(*ibid.*)

The Bill was given a second reading by the House of Lords, without a division, on 25th May 1949.

During the Bill's committee stage on 29th June 1949, Lord Salisbury explored the argument of the mandate in greater detail:

Not only do the great majority on both Conservative and Liberal Benches dislike and distrust this Bill, not only do we believe that it is against the best interests of the country, but we have every reason to think that we have behind us a substantial majority in the country. During the second reading debate, I mentioned the fact that the Government were elected on a minority of the votes cast at the last General Election. I would emphasise this by quoting the figures. At that Election, the Labour Party received just under 12,000,000 votes – very little below, a few thousands below.

The Liberal Party received 2,200,000 votes and the Conservative Party received 10,000,000 votes. If noble Lords will add those last two figures together, they will see – and I do not suggest otherwise – that there was a majority against the Government. It was a very small majority, but it was certainly not a majority in favour of a Bill of this kind.

(*HL Hansard*, 29th June 1949, vol. 163, cols. 551–552)

He then argued that, even had the Labour Party received a mandate in 1945 (which he disputed), the issue of nationalisation had altered:

... it is evident that nationalisation has not produced the results that were sincerely hoped for by its champions. This beyond all doubt, has already made an impression, not only on the workers themselves in the nationalised industries, but on the minds of many electors who were ready in 1945 to give it a chance and judge by results. Even if, therefore, the Government could claim a mandate for this measure at the time of the General Election – and I think that is not borne out by the figures – I should have thought it inconceivable that they should say that they are confident that they have a mandate now. Moreover, the issue before the country in 1945 was not the same as that before Parliament to-day. What was then contemplated, as I understand it, was nationalisation of the primary processes in iron and steel production. Even in 1946 the Government confined themselves to “appropriate sections” of the industry.

But this Bill goes much further than that. It enables the Government to engage in far more extensive operations, with potential ramifications over a wide field of British industry. That proposition was never before the British people. For these reasons I say again that I believe this House might well have felt justified in rejecting this measure on second reading and, in doing so, they might fairly have claimed that they had the majority of the people behind them. If I did not advise that course to your Lordships it was because I have always believed that it is the function of your Lordships’ House not so much to interpret the will of the people as to give the people an opportunity of expressing their own views...

Surely, in such circumstances, the proper constitutional course would be to give the electorate a chance of expressing a further considered view. Our simple device – and it is extremely simple – for producing that result is to postpone the coming into operation of this Bill until October 1, 1950, and the vesting date until July 1st, 1951. That is the subject of this particular group of amendments which we are now discussing. They would enable the Government to make certain whether they have the support of the people with regard to this measure before they actually bring it into force. We are happy to have been able to give them the chance of adopting this thoroughly democratic course.

(*ibid.*, cols. 552–553)

This argument was rejected by Lord Addison on behalf of the Government:

We have taken the view, and we stand unalterably upon it, that we will not accept that this unrepresentative House, completely unelected, shall be able to demand a second mandate of the people and shall refuse to give authority to Bills introduced in the

fourth Session of a Parliament by a Government with a large majority in the representative Chamber. We refuse absolutely to accept that position. I say to your Lordships that the Labour Party never will accept it, and it will be a very undesirable thing if this House insists upon it.

(*ibid.*, col. 566)

At committee and report stages, the House agreed Lord Salisbury's amendments to alter the vesting date (the date of transfer of the industries into public ownership) until after the date of the next General Election. Eventually a compromise was reached, by which the Government effectively accepted the principle underlying the Opposition's wishes. By inserting a new provision to the effect that no member of the Iron and Steel Corporation was to be appointed before 1st October 1950, the Government conceded the substance of the Conservative demand that nationalisation should not take effect until after the General Election. In his speech accepting the Government's compromise amendment, Lord Salisbury argued in terms of the mandate doctrine:

Much though we dislike this Bill – and I would emphasise that we still regard it as thoroughly pernicious, and likely to be disastrous to one of our greatest and most prosperous industries – we have not throughout these discussions, as noble Lords opposite know, regarded it as our function to reject the Bill. If we had wished to do that, we should have voted against the second reading. And that we did not do. On the contrary, we went to considerable pains to amend and improve the Bill as best we could. But we did regard it as vital, and we have said so from the start, that the British people should be given another opportunity of looking at this measure – which, I would remind the Government, is, in fact, quite different and far wider than that envisaged at the last General Election – and of expressing a considered opinion upon this new proposal.

(*HL Hansard*, 24th November 1949, vol. 165, cols. 958–959)

3. The Labour Governments of 1964–70 and 1974–79

In the debate on the Address on 4th November 1964 Lord Carrington, the Leader of the Opposition, stated that his approach to proposals for legislation brought to the Lords by the Government would follow that of Lord Salisbury under the Attlee Government:

Because of the composition of this House and its large Conservative majority – not so large as it used be, but, nevertheless, still very big – the Government, if they are a Socialist Government, are placed in a position of there being one House of Parliament which they do not control. I have already seen the question asked how in these circumstances the Conservative Party in this House will conduct itself. I should not have thought it necessary to ask that question, nor indeed do I think that any noble Lord opposite has asked it, since it is within all our recollections that there was a situation of a broadly similar character in 1945–51. Under the leadership of my noble friend Lord Salisbury, the Opposition conducted itself with wisdom and with restraint, and I do not think there was any occasion on which there was a serious danger of a clash between the two Houses.

Now, as then, we recognise that the people of this country have chosen, for the time being, to be governed by the party of the noble Lords opposite – not it is true, with anything like the same emphasis as in 1945, when, both in votes and in seats, the Labour Party were in an enormous majority ... Nevertheless, we recognise that there is this majority in another place, which is the elected Chamber, and we believe also that it is the wish of the majority of people of this country that the Government should be given a fair trial.

We on this side of the House shall not oppose purely for the sake of opposition. We shall certainly not be destructive in our criticism – and we shall criticise; we shall aim to be constructive. We shall try to improve Bills which are brought to this House in discussion and by amendment, and we shall ask searching questions as to the merits of any legislation brought forward by the Government. If they take up measures which seem to us to be in the interest of the country, they can count on our support, but if their proposals seem to us to be harmful or irrelevant we shall not hesitate to say so, for in all things it will be the aim of those who sit on these Benches to put the interests and welfare of the country before the interests of Party.

(HL *Hansard*, 4th November 1964, vol. 261, cols. 43–44)

An analysis of the relationship between the Lords and the Government between 1964 and 1970 can be found in Janet Morgan, *The House of Lords and the Labour Government, 1964–1970* (1975). This addresses in detail the major points of contention over the Southern Rhodesia (United Nations Sanctions) Order 1968 and the House of Commons (Redistribution of Seats) (No. 2) Bill 1969, which touch upon the relationship between the Lords and the Commons and the power of a Conservative majority in the Lords during a Labour Government. As neither of these issues arose from a manifesto commitment, they are not discussed in this Note.

(i) The Aircraft and Shipbuilding Industries Bill 1975–77

The Aircraft and Shipbuilding Industries Bill followed from a pledge in the Labour Party's election manifestos of February and September 1974. The manifesto of September 1974 stated that:

We shall also take ports, ship-building, ship-repairing and marine engineering, and the aircraft industries into public ownership and control.

(‘Britain Will Win With Labour’ quoted in *British General Election Manifestos, 1900–1974*, ed. F. W. S. Craig (1975), p. 457)

The Aircraft and Shipbuilding Industries Bill, originally published in May 1975, outlined the powers and responsibilities of two new public corporations, to be known as British Aerospace and British Shipbuilders. The former would take over the aviation and guided weapons interests of the British Aircraft Corporation (BAC), Hawker Siddeley Aviation, Hawker Siddeley Dynamics and Scottish Aviation, while the companies to be vested in British Shipbuilders comprised 31 shipbuilding and ship-repairing groups, five manufacturers of slow-speed marine diesel engines and three training companies. Compensation would be in government stock, the amount being determined by reference to the average value of securities of the companies named in the Bill during the six months up to and including 28th February 1974 (the date of the General Election).

The Bill failed to reach its second reading stage in the Commons during the 1974–75 parliamentary session due to the pressure of other legislation, and was reintroduced in November 1975. However, the Bill again failed to reach the statute book before the end of the 1975–76 session because of disagreement between the two Houses of Parliament.

Having passed the Commons on 29th July 1976 the 1975–76 Bill was debated on second reading by the House of Lords on 28th September 1976. Lord Carr of Hadley, for the Opposition, said that:

I must tell your Lordships straight away that we on this side of the House are strongly opposed to this Bill...

It is therefore with great reluctance that we have decided that we ought to uphold the established convention that the House of Lords does not actually vote against the second reading of a major Bill which was included in the Election programme of the party with the majority in the other place. It is with great reluctance that in this case we felt it our duty to uphold that convention. We are going to do so; but I want to warn the Government that we shall examine this Bill with very great thoroughness during the later stages. I hope that they will be prepared for all the time that they will require.

We shall vigorously seek to move and to carry a considerable number of amendments to this Bill. These amendments will include, for example, the removal from the Bill of certain parts of the industries included. They will include the curbing of the excessive and unprecedented ministerial powers at present proposed ... We also intend

to move to reform the present gravely unfair terms of compensation ... [and] to move major amendments in the field of bringing about really genuine worker participation.

(HL *Hansard*, 28th September 1976, vol. 374, cols. 182–185)

The Aircraft and Shipbuilding Industries Bill was given a second reading by the Lords without a division on 28th September 1976.

During the committee and report stage in the Lords the Government was defeated on several amendments, among them a number designed to remove ship-repairing companies from the Bill. Other amendments made included the deletion of certain powers of the Secretary of State for Industry to make regulations by statutory instruments in relation to either British Aerospace or British Shipbuilders, the exclusion of naval shipbuilders from the Bill, a requirement for consultation with trade unions, the delaying of nationalisation until after a subsequent General Election, a requirement the Secretary of State to consult Parliament before asking for the extension of the borrowing powers of the aircraft and shipbuilding corporations, and a series of amendments establishing the right of persons engaged in shipbuilding or ship-repairing to object to the trading practices of British Shipbuilders or its wholly-owned subsidiaries.

The Lords amendments were disagreed to by the Commons on 11th November 1976. However, the amendments removing the ship-repairing companies were reinstated by the Lords on 16th November, again rejected by the Commons on 18th November and insisted upon again by the Lords on 22nd November. On the same day the Commons rejected the Lords amendments for the third time. The Bill was then reintroduced in the Commons, in the 1976–77 session, on 26th November 1976, under the Parliament Acts of 1911 and 1949. In its final form the legislation as enacted omitted ship-repairing from the nationalisation measure, as the Examiner of Private Bills judged that the inclusion of the ship-repairing companies meant that the Bill was hybrid. As a result, the Government withdrew these companies from the second schedule of the Bill in order to dispatch its progress more rapidly, and the Bill finally received the Royal Assent on 17th March 1977 without the Parliament Acts being invoked.

(ii) The Scotland Bill 1978

The Scotland Bill, which provided for a directly elected assembly in Edinburgh, was passed by the House of Commons on 22nd February 1978.

In the course of the second reading debate in the House of Lords on 14th March 1978 Lord Wilson of Langside, a former Labour Lord Advocate, moved an amendment which declined to give the Bill a second reading on the grounds of the unacceptable threat its enactment would present to the unity of the United Kingdom and sovereignty of Parliament, and the adverse effect its enactment would have on the effectiveness and efficiency of government in Scotland.

Lord Ferrers, Deputy Leader of the Opposition, said that while he had much sympathy with the views expressed by Lord Wilson of Langside:

Whatever our personal views may be, we have to recognise that another place, despite its obvious and open unhappiness with the Bill, nevertheless gave it a third reading and passed it. It was in the Labour Party's Manifesto and therefore, by convention, the Government are deemed to have a mandate for it. It is therefore not our duty to prevent its consideration ... In my view it would be unthinkable and constitutionally disastrous if your Lordships declined to give this Bill a second reading. It would, furthermore be damaging and unhelpful to seek at this stage to separate by vote the opinion of your Lordships. On the other hand, much as it is appropriate for your Lordships to give the Bill a second reading, it would really be too much, for any of your Lordships who hold deep reservations about the Bill, to be expected to vote against the amendment and so, by implication, to be appearing to give your Lordships' approval of the Bill.

I assure the noble and learned Lord, Lord Wilson, that, if he were to press his amendment tomorrow, he would fragment opinion in a way which would be as unwelcome as it would be false. I hope that wiser counsels will prevail and that the noble and learned Lord will realise that, having made his point by tabling the amendment, he will nevertheless not seek to press it and thereby deny the Bill a second reading. That is not our role. Our role is that of a revising Chamber and it is not, and it will not be, part of our intention as an Opposition, as we progress through the committee and report stages of the Bill, deliberately to frustrate the Government's timetable. We have, though, a duty to perform – to scrutinise, to inquire, to illuminate and, if possible, to improve. That duty we must do.

(HL *Hansard*, 14th March 1978, vol. 389, cols. 1202–1203)

Lord Hughes, for the Government, said that:

It is not the function of this House to reject legislation which has been passed by another place, particularly ... when there is a convention that having got such a Bill into their Election Manifesto, the Government have the mandate to carry it out ... the function of this House is a revising one and, given the operation of the guillotine in another place, we have been presented with an admirable opportunity for revising the Bill.

(*ibid.*, col. 1214)

On 15th March 1978 Lord Wilson of Langside withdrew his amendment and the Bill was given a second reading without a division.

During the Bill's committee, report and third reading stages in the Lords 239 amendments were made, of which 96 were submitted by the Government, 46 represented Government concessions to arguments and presentations made by the Lords, and 97 were put forward from other parts of the House. These included 29 amendments carried against the Government, which included provisions relating to election of members of the Scottish Assembly by proportional representation, the use of the Civil Service in the referendum on

devolution and in the new Assembly, the 'West Lothian' question, and other subjects. Many of these amendments were overturned when the House of Commons considered them.

The House of Lords gave the Bill a third reading on 29th June 1978, having defeated by 55 to 53 an amendment, moved by Lord Wilson of Langside, to append a note warning the people of Scotland to the 'contradictions and deficiencies [of the Bill] and to the financial fiscal and constitutional problems which remain unresolved ...' During the debate on Lord Wilson of Langside's amendment Lord Ferrers reviewed the work of the Opposition:

In no way have we sought to wreck the Bill. That was not our role. The Bill had the approval of another place; the inhabitants of Scotland will have the chance of giving a view. Whatever our views on referenda or devolution in general may be, it would have been wrong had we sought to destroy the Bill. We have not done so. Not one of the amendments which we have passed is wrecking Amendment. Not one of the amendments is such that it could not be accepted by another place. It is true that some amendments may be controversial, in so far as they may not meet with the approval of everyone. But that is not surprising in a Bill which touches delicate sensitivities all around the clock.

(*HL Hansard*, 29th June 1978, vol. 394, col. 493)

The Commons considered the Lords amendments from 4th July onwards. Over half of them were accepted, although the new clauses dealing with proportional representation and an amendment clause relating to Scottish MPs at Westminster voting on legislation relating only to English affairs after the setting up of the Scottish Assembly were rejected.

When the Bill returned to the Lords on 20th July the Government were again defeated on appointments of civil servants to serve in the Scottish administration, the future voting of Scottish MPs at Westminster, and the removal of forestry from the schedule of devolved matters. On 26th July the Commons rejected the first of the new Lords amendments by 301 votes to 268, but the new clause on Scottish MPs and the amendment on forestry were carried against the Government. The Lords agreed to the Bill in its final form on 27th July and it received the Royal Assent on 31st July 1978.

4. The Conservative Government of 1979-90

Although the Salisbury/Addison doctrine originated as an understanding between the Conservative Party and the Labour Party, applicable when the latter was in government, it is arguable that its applicability broadened during the Conservative Government of 1979-90, being relied on by that Government to oppose amendments proposed by the Opposition parties or by Conservative backbenchers in the Lords. In particular, this may be seen during the passage of the Local Government (Interim Provisions) Bill 1984, the Local Government Bill 1985 and the Local Government Finance Bill 1988, all of which were based on previous manifesto commitments.

(i) The Local Government (Interim Provisions) Bill 1984

This was a paving Bill in preparation for a further Bill (which followed in 1985 – see below) which would provide for the abolition of the Greater London Council and six metropolitan county councils. Pending that abolition, the paving Bill made provisional arrangements for matters which had to be in place before abolition could be achieved, the key provision being the suspension of forthcoming elections to the various councils and the transfer of their functions to appointed transitional bodies.

In moving the Second Reading of the Bill in the House of Lords, Lord Bellwin, Minister of State, Department of the Environment, stated that the Bill was in fulfilment of “another of the Government’s major manifesto commitments on local government – the abolition of the GLC and the metropolitan county councils” (HL *Hansard*, 11th June 1984, vol. 452, cols. 886-887).

Lord Hooson, Liberal Spokesman on Law, moved an amendment to the motion that the Bill be read a second time to insert at the end that the House regarded the Bill as a dangerous precedent in that “it seeks to give to non-elected bodies the powers of properly constituted councils; notes that it was not in the Conservative Party’s election manifesto; and regrets its introduction before Parliament has decided whether or not to abolish these councils” (HL *Hansard*, 11th June 1984, vol. 452, col. 897).

Lord Hooson said that his criticisms of the Bill were fourfold: (a) there was no precedent for what it was sought to do in the Bill, and, if passed, the Bill would itself form a very dangerous precedent; (b) it sought to do something which was constitutionally unacceptable; (c) the Government did not have, and had never sought, an electoral mandate for this particular Bill; (d) it went against the whole spirit and convention of parliamentary practice (HL *Hansard*, 11th June 1984, vol. 452, col. 898).

On the third charge, that the Government had no mandate from the electorate to bring in this particular Bill, Lord Hooson quoted from the Dimpleby Lecture of 1976, *The Elective Dictatorship*, given by the Lord Chancellor, Lord Hailsham, “that a party is not obliged to carry out every job and title of its manifesto and that the mere fact that a proposal is within a manifesto does not necessarily mean that the Government formed by that party later have to carry it out. He used the memorable phrase, ‘and the measures proposed in the manifesto

often include the impossible, the irrelevant and the inappropriate' ” (HL *Hansard*, 11th June 1984, vol. 452, col. 901).

Baroness Birk, Opposition Spokesman on the Environment and Home Affairs, supported Lord Hooson's amendment, saying that the Bill was based “on the assumption that the six metropolitan counties and the Greater London Council must disappear and that they must disappear in 1986. On that central assumption is built the whole edifice of these interim arrangements” (HL *Hansard*, 11th June 1984, vol. 452, col. 905). The Bill, she continued, was not essential to the Government's abolition proposals. “There is no reason – other than political policy – why the main Bill due in the next Session should not itself include a limitation on the term of office of elected councillors once abolition has been approved” (HL *Hansard*, 11th June 1984, vol. 452, col. 907).

Lord Molson (Conservative) also supported Lord Hooson's amendment. He said that he would not vote against the Second Reading of the Bill, explaining, “As was established by the late Lord Salisbury, it has become a constitutional custom that when the other place has passed a Bill we do not vote against the Second Reading. We do, however, preserve the right to ask the Government in this place to consider amendments and to make alterations” (HL *Hansard*, 11th June 1984, vol. 452, col. 920). He was not voting against abolition of the GLC and the metropolitan county councils but he was voting in favour of drastic amendment of this Bill during its Committee stage, as it was irrational and undemocratic that members of a large local authority elected in 1981 should be replaced by nominees of smaller local authorities elected in 1982 to discharge entirely different duties in their smaller local areas (HL *Hansard*, 11th June 1984, vol. 452, col. 920).

Lord Hooson's amendment was not agreed by 238 votes to 217 and the Bill was given a Second Reading (HL *Hansard*, 11th June 1984, vol. 452, cols, 981-985).

However, at Committee stage on 28th June 1984 the Government suffered a defeat when the House agreed to an all-party amendment which would prevent the Secretary of State ordering the cancellation of elections to the GLC and the metropolitan county councils until the main abolition Bill was approved by Parliament.

The amendment was moved by Lord Elwyn-Jones, Opposition Spokesman on the Home Office and Legal Affairs, stating:

We submit that the Bill as it stands raises major constitutional issues. The Secretary of State has announced that he will not make the order cancelling the elections to the Greater London Council and the metropolitan county councils until the House of Commons has agreed the Second Reading of the main abolition Bill. When that happens he will make the order. In my submission, what is proposed is based on wholly unacceptable assumptions. No true parliamentarian, no true believer in the parliamentary process, would take it for granted (as the Government apparently do) that both Houses of Parliament, whatever the majority of the Government party may be, will necessarily pass a measure in the future on the strength only of a Second

Reading in the House of Commons – unless, of course, there is all-party agreement to what is proposed, and that is certainly not suggested here (HL *Hansard*, 28th June 1984, vol. 453, col. 1036).

Lord Molson thought that the Bill infringed the spirit and conventions of the constitution, but asked for an arrangement which would be acceptable “to Tory Peers who cannot go along with the Government as this Bill is at present drafted but who support the main objective” of abolishing the GLC and metropolitan county councils (HL *Hansard*, 28th June 1984, vol. 453, col. 1040).

Lord Bellwin, for the Government, said that the amendment’s effect would be to undermine the paving Bill, explaining that if at any stage the main Bill were to fall, then the paving Bill itself already contained the means of restoring the status quo (HL *Hansard*, 28th June 1984, vol. 453, col. 1061).

Lord Hooson said that the House was not considering the merits or demerits of abolishing the GLC and metropolitan county councils, but considering this paving Bill. The amendment was not a wrecking amendment, but an amendment couched deliberately out of the terms in which the Bill itself was couched (HL *Hansard*, 28th June 1984, vol. 453, cols. 1065, 1066). Lord Hooson continued:

It seems to me that the crisis before your Lordships’ House is this. When there has been a Labour Government, on occasions your Lordships have passed what have been called wrecking amendments ... On the other hand, when there is a Conservative Government, what this House has relied on is, as it were, transmitting the feeling of the House through the usual channels; that is, the Leader of the House has, I think, interpreted to the Cabinet of the day how this House has felt – not, as it were, how it voted. Because of its traditional Conservative majority, this House has always voted with a Conservative Government but, in fact, the Leader of the House has transmitted to the Cabinet the feelings of the House, although perhaps not reflected in the vote. I doubt whether that process is effective today. I think that probably it is necessary for your Lordships to pass an amendment like this to bring home to the Government exactly how your Lordships feel on this matter (HL *Hansard*, 28th June 1984, vol. 453, col. 1067).

The House went on to agree to the amendment by 191 votes to 143 (HL *Hansard*, 28th June 1984, vol. 453, cols. 1069-1071).

Later that day, the Leader of the House, Viscount Whitelaw, when asked by the Leader of the Opposition, Lord Cledwyn of Penrhos, what was the Government’s response to the vote on the amendment, stated that he accepted that the amendment was not a wrecking amendment (HL *Hansard*, 28th June 1984, vol. 453, col. 1096). Subsequently, on 5th July 1984 Viscount Whitelaw made a statement to the House saying that the Government had decided to table amendments at Report stage to the effect that the present members of the GLC and metropolitan county councils would continue in office until 1986 but without elections the next year, explaining that this meant that the nominated transitional councils and interim commissions (as originally envisaged in the Bill) had been dropped (HL *Hansard*, 5th July 1984, vol. 454, cols. 407,408).

These amendments were tabled by Viscount Whitelaw on 16th July 1984, pointing out that the Government had accepted the view of the House as regards the transitional authorities and therefore that the present membership of the GLC and metropolitan county councils should be extended until those authorities ceased to exist as a result of the main abolition Bill, if that Bill was approved by Parliament (HL *Hansard*, 16th July 1984, vol. 454, cols. 1182-1183).

Lord Molson said that the amendments met the concerns of Tory peers that he had expressed at Committee stage (see above) (HL *Hansard*, 16th July 1984, vol. 454, col. 1190).

The amendments introduced at Report stage were subsequently agreed by the House (HL *Hansard*, 16th July 1984, vol. 454, cols. 1212, 1305-1308) and, the amendments having also been agreed by the House of Commons, the Bill received the Royal Assent on 31st July 1984.

(ii) The Local Government Bill 1985

This was the abolition Bill (providing for the abolition of the GLC and the six metropolitan county councils) in preparation for which the paving Bill had been passed in the previous year.

At the Committee stage in the House of Lords a large number of amendments were discussed, three of which drew comments that they infringed the Salisbury Convention. These were discussed at the beginning of the Committee stage on 29th April 1985.

The first amendment, moved by Baroness Birk, Opposition Spokesman on the Environment and Home Affairs, proposed the setting up, not later than one month after the passing of the Act, of an Independent Committee of Inquiry into the best means for securing the future provision of services undertaken by the GLC and metropolitan county councils before 1 April 1986 (the abolition date) and the committee should report no later than 1 February 1986 (HL *Hansard*, 29th April 1985, vol. 463, cols. 9-10). Baroness Birk stated that the Government had not held such an inquiry and that it had never been known in recent times for a major reorganisation of that sort to take place without an inquiry or a Royal Commission preceding it. "Under the amendment there would be no delay. The Secretary of State would be able to choose to act, or not to act, on the findings. Parliament would also have a chance to vote, before abolition became effective, on any order which the Secretary of State may decide to lay before it" (HL *Hansard*, 29th April 1985, vol. 463, col. 10).

Lord Elton, Minister of State, Home Office, described the amendment as "a 'wrecking' amendment designed to overturn the principle enshrined in the Bill which has been endorsed by your Lordships by a very substantial majority" (HL *Hansard*, 29th April 1985, vol. 463, col. 16).

Lord Campbell of Alloway (Conservative) also thought that the amendment would defeat the Bill, saying that it "would be contrary to the spirit of both the Salisbury and the Carrington Conventions – that resort to the delaying power should not be had to defeat a Bill which was passed in another place which reflects a manifesto commitment and which thwarts - these are the words of the Carrington Convention – the will of the electorate as expressed in another place" (HL *Hansard*, 29th April 1985, vol. 463, col. 22).

Lord Diamond, Social Democrat Spokesman on Economic Affairs and the Treasury, did not agree that the amendment was a wrecking amendment. He said:

We all know that we have a duty to improve a Bill which has been passed by another place, and to reject it. It is because of that that, when the Second Reading of this Bill

recently came before your Lordships' House, we were all extremely careful that no word was put on the Order Paper which would have delayed the passing of this Bill by one moment... The normal form of a wrecking amendment occurs on Second Reading, where we have a clear convention, so far as we on these benches interpret it, that we do not vote against a Bill which has been passed in another place, they being the elected Chamber and we not. We do not need anyone to suggest that the justification for that is that the Bill was preceded by a statement in the party's manifesto at election time. I think that too much can be made of manifestos. In so far as we interpret the situation, it matters not to us whether it was in the manifesto or not in the manifesto. We already know that a vast majority of people are totally unaffected by what is stated in the manifesto... Therefore it remains our view that whether it is in the manifesto or not, we are still committed in your Lordships' House by convention – as indeed everything is by convention in your Lordships' House – not to support an amendment which would have a wrecking effect; that is to say, delay the implementation of a Bill coming from the other place if it has been passed by that elected Chamber.

(*HL Hansard*, 29th April 1985, vol. 463, cols. 26-27)

In response to a question from Lord Campbell of Alloway as to whether he agreed that it was an integral part of the Salisbury Convention that it was a commitment in the manifesto, Lord Diamond replied that of course, he agreed, but went on:

We have gone beyond that. This House develops its procedure by convention, and in my view it has developed by now a clear convention, acceptable on both sides of the House, that it does not vote against Bills which have received a Second Reading in another place. I say further that that convention applies whether or not that Second Reading was preceded by, and therefore to a tiny extent supported by, a previous statement in the party's manifesto.

(*HL Hansard*, 29th April 1985, vol. 463, col. 27)

The current amendment was not a wrecking amendment, argued Lord Diamond, because it contemplated the passing of the Act, providing a date for the Committee of Inquiry to report (1st February 1986) which was before the Act came into effect (1st April 1986), and there was a further amendment saying that if the Government had any real doubt as to whether they could achieve that date they could choose a date one year later (*HL Hansard*, 29th April 1985, vol. 463, col. 28).

After further debate the amendment was rejected by 196 votes to 137 (*HL Hansard*, 29th April 1985, vol. 463, cols. 50-52).

The second amendment which drew comments on the Salisbury Convention was moved by Lord Broadbridge (Crossbencher), calling for referenda to be held before the provisions of the Act regarding the GLC and metropolitan county councils came into force on 1st April 1986. Lord Broadbridge argued:

“In almost every other democracy this legislation would be subject to some constitutional check so that the evident misgivings of many of our Parliament and people could find expression. In Britain no such check exists, and furthermore our

elected system allows a party representing the largest minority to interpret its mandate in any way it pleases. It is the false doctrine of the mandate which lies at the root of the trouble. Even if one ignores the fact that the Government's parliamentary majority rests on the support of just over two out of five voters, there is no way of determining whether or not even those who actually voted Conservative sought to authorise the abolition of the GLC and the metropolitan counties as a specific issue. Let us remember that when the Government proposed in their manifesto to abolish these bodies it was not apparent that no elected body would supersede them. The Government argue that devolution of powers is to elected district councils whose people will therefore get their own way, but that is not so... In these circumstances, only one instrument exists which can determine whether electors approve a specific proposal, and that is the referendum. It alone offers a check upon Government which is truly popular and democratic. Although this House, through the so-called Salisbury Convention, lacks the constitutional authority to kill the Bill, it can nevertheless seek to make its coming into effect dependent upon popular approval. This would allow Conservative Peers to express their anxieties without openly opposing the Government too".

(*HL Hansard*, 29th April 1985, vol. 463, col. 58)

Lord Elton, responding to the debate for the Government, said that the Bill carried out an undertaking that was in the manifesto on which the Government was elected. The electors were not being disenfranchised; they had already cast their votes. Although the validity of a manifesto had been questioned, the plain fact was that everybody knew that under the constitution as we now had it any party is not only free but is expected to honour its election manifesto during the life of the following Parliament. The amendment under discussion sought to reopen the question as to whether the Bill should be implemented, but the House had already decided that question (*HL Hansard*, 29th April 1985, vol. 463, col. 72).

The amendment was rejected by 173 votes to 23 (*HL Hansard*, 29th April 1985, vol. 463, cols 74-75).

The third amendment drawing discussion on the Salisbury Convention was moved by Lord Graham of Edmonton, Opposition Spokesman on the Environment and Defence, proposing changing the abolition date from 1986 to 1987. Lord Graham argued that the amendment did not deny the Government the Bill, but that time was needed for the Government to work in collaboration with the staffs of the GLC and metropolitan counties (*HL Hansard*, 29th April 1985, vol. 463, col. 92).

Lord Campbell of Alloway said that the amendment defeated the Bill. "It thwarts the will of the electorate in another place which reflects the manifesto commitment. It is contrary to any convention that I have been able to discover to resort to the delaying power in such circumstances on the assumption that the resort to the delaying power is to enable the House to invoke its revisory role. Such, indeed, has never been within the spirit of the Salisbury or the Carrington conventions and to carry this amendment would therefore constitute a very substantial departure" (*HL Hansard*, 29th April 1985, vol. 463, cols. 92-93).

Lord Wilson of Langside, Social Democrat Spokesman on Legal Affairs and Scotland, disagreed with Lord Campbell of Alloway regarding the Salisbury and Carrington

conventions, but thought that even if he were right that was not fatal to the argument in support of the amendment (HL *Hansard*, 29th April 1985, vol. 463, col. 93).

The Earl of Gowrie, Chancellor of the Duchy of Lancaster, noted the comments made about the Salisbury convention and said that “this House has every right, indeed a duty, to try to improve Bills by revising them. Our problem in this case is that some latitude has been given to the word ‘revision’ by a series of amendments which are designed to stop the Bill from coming into effect” (HL *Hansard*, 29th April 1985, vol. 463, col. 97).

The amendment was negatived without a vote (HL *Hansard*, 29th April 1985, vol. 463, col. 101). Having passed its further stages in the Lords, the Bill received the Royal Assent on 16th July 1985.

(iii) The Local Government Finance Bill 1988

Following the commitment in the Conservative Party General Election manifesto of 1987 to “legislate in the first Session of the new Parliament to abolish the unfair domestic rating system and replace rates with a fairer community charge”, this Bill had its Second Reading in the House of Commons on 19th December 1987. The main provisions of the Bill concerned the abolition of domestic rates and their replacement by the community charge (popularly known as the “poll tax”).

In both Houses, amendments were moved attempting to alter the basis of the community charge, which the Bill envisaged as a flat rate charge. These amendments were supported by a number of Conservative Members as well as Members of other parties (and in the Lords by a number of Crossbenchers), although in the event both were defeated.

In the Commons at Report stage, Michael Mates (Conservative) moved an amendment which proposed a scale of personal community charge payments, based on an individual’s liability to pay income tax. After lengthy debate, the amendment was rejected by 320 votes to 295 (HC *Hansard*, 18th April 1988, vol. 131, cols. 572–648).

In the Lords at Committee stage, Lord Chelwood (Conservative) moved an amendment which would have required the Secretary of State, within one year after the coming into force of the Act, to provide in regulations that from 1st April 1990 liability to personal community charges and liability to contributions to collective community charges should be related to ability to pay. The amendment was also in the names of Baroness Faithfull, Lord Auckland and Lord Ellenborough (Conservatives).

Lord Chelwood said:

The amendment specifies how the community charge will be related to ability to pay. It articulates a nationwide concern that the poll tax is not fairer than the present archaic system and the overwhelming view that the tax – it is a tax and not a charge – should take account of ability to pay. The amendment gives the Government a year to produce a scheme which relates the tax to ability to pay ... Finally, the amendment asks that the new Government proposal should be subject to affirmative resolutions, thus making Parliament the arbiter ... I regard the attempt to divert attention from the

amendment by suggesting that it may somehow infringe Commons financial privilege as quite unnecessary. The best available advice has convinced me that the amendment is in order in every way and that it is no way likely to offend against Commons financial privilege. We are a revising Chamber seeking to exercise restraint on the otherwise unfettered power of the elected House. I do not think that the amendment would prove to be intolerable. If it does, under Standing Orders the Speaker is required either to make up his own mind that it is intolerable or to invite another place to express their opinion. That would be the end of the matter.

If the Government claim to have a (highly doubtful) mandate – my noble and learned friend Lord Hailsham has described it as unconstitutional – we should be barred from amending the Bill because the Commons financial privilege had not been waived.

(*HL Hansard*, 23rd May 1988, vol. 497, cols. 641–642)

Lord Chelwood concluded by stating that it was nonsense to say that there was some great constitutional issue at stake in regard to the amendment, which had been described as a wrecking amendment. “I am told on very good authority that there cannot be a wrecking amendment in this Chamber. I do not believe that there is such a thing although that may be a matter of opinion. There is just an honest difference of opinion between the two Houses of Parliament about this matter. It will sort itself out given the goodwill that exists at both ends of the corridor” (*HL Hansard*, 23rd May 1988, vol. 497, col. 646).

Viscount Whitelaw, former Leader of the House of Lords, believed that the proposals in the Bill were basically right and had no doubt that the amendment sought to change the whole basis of the bill. He continued: “If this Chamber decides that it will stand against the Government, and indeed the elected Chamber – whatever one may like to say and however one dresses it up – by passing an amendment such as this, it will be confronting the Government in the elected Chamber, the majority in the elected Chamber, whatever may be said about the other place” (*HL Hansard*, 23rd May 1988, vol. 497, col. 651).

Lord Hailsham, former Lord Chancellor, said that he spoke as “one who, with the noble Lord, Lord Carrington, had a good deal to do with Conservative opposition when some noble Lords on the Front Bench opposite were responsible for government. I can assure noble Lords opposite, looking behind me this time, that there were a number of horses that were rather difficult to hold by the noble Lord, Lord Carrington, and myself. If the precedent is now set that this House on a major Bill is going to treat itself as a general court of appeal from the House of Commons, it is a precedent which they may regret having made if ... they were to win this Division” (*HL Hansard*, 23 May 1988, vol. 497, col. 657).

Baroness Faithfull said that they did not wish to wreck a Bill or to have conflict with the Commons but simply that they wished the Commons to think again, explaining that “... we are not constitutionally trying to transgress the laws of this place; we are only putting forward our views for the other place to consider ... I do not feel that I am taking part in a wrecking amendment. I am only asking the House of Commons to think again. The amendment asks that personal community charges and liability to contributions to collective community charges shall be related to ability to pay” (*HL Hansard*, 23rd May 1988, vol. 497, col. 659).

Lord Barnett (Labour) supported the amendment. Although he had always opposed the rating system because it was basically unfair, there was at least some relation to ability to pay by

reason of the fact that if we lived in a very large house we would pay more rates than if we lived in a very small house. But the poll tax went much further than that, as it imposed exactly the same rate on everybody, regardless of income, and the cost of collection would be three times as much. “I shall vote for this amendment because it gives another place the chance to think again ... The plain fact is that if your Lordships, on a major issue of this description, can never ask the other place to think again, I urge your Lordships to ask yourselves what role is left for the House of Lords” (HL *Hansard*, 23rd May 1988, vol. 497, col. 662).

Lord Marsh (Crossbencher) disagreed with Lord Hailsham and agreed with Baroness Faithfull and Lord Barnett on the constitutional position, saying that the House of Lords should not see itself as a court of appeal for decisions of the Commons. “I believe that the doctrine of the Commons, right or wrong, is no more acceptable than the concept of my Government, right or wrong. If members of the Committee feel that the Commons has produced something so important and fundamentally flawed that they cannot accept it, I think that they have no alternative but to seek to reject it. If that were to mean that it brought into question the future of this House, so be it” (HL *Hansard*, 25th May 1988, vol. 497, col. 664). However, Lord Marsh thought that the amendment itself was not a practical proposition, arguing that the way to deal with people’s inability to pay was to ensure that the benefits they received from the Exchequer were sufficient to enable them to enjoy a proper life (HL *Hansard*, 23rd May 1988, vol. 497, col. 665).

The Earl of Caithness, Minister of State, Department of the Environment, said that although Lord Chelwood was asking the Government to think again, the Government had considered with the utmost care all the alternatives to the discredited rating system and believed their solution to be the best and fairest. He agreed with Viscount Whitelaw that this amendment would wreck the Bill. The community charge would be fair and the new system as a whole would be clearly related to ability to pay (HL *Hansard*, 23rd May 1988, vol. 497, cols. 681–682).

The amendment was rejected by 317 votes to 183.

Having passed its remaining stages in the House of Lords and having previously passed all stages in the House of Commons, the Bill received the Royal Assent on 29th July 1988.

5. The Current Debate

Since the 1990s the debate on the Salisbury doctrine has developed considerably. Some argue that what began as a compact between the Conservative and Labour Parties to deal with the relationship between a Labour Government and a House of Lords with an overwhelmingly large and hereditary Conservative Opposition, has now been extended, since the House was reformed with the addition of life peers and women, and no party no longer has a built-in majority, to become a constitutional convention further limiting the powers of the Lords. Others argue that, as originally conceived, the doctrine has outlived its usefulness, particularly in light of the House of Lords Act 1999, and that there is now a need to redefine the relationship between the two Houses. Yet others argue that since no single party any longer has an absolute majority in the Lords the doctrine is completely obsolete. Whilst still others hold that the doctrine remains valid notwithstanding any alteration in the composition of the Lords because it is founded on the principle of the electoral mandate, which in turn reflects the supremacy of the Commons as the embodiment of that mandate, although some have questioned whether the concept of the mandate should be based on manifestos. On the limb of the convention which includes wrecking amendments there is some discussion as to what constitutes a “wrecking amendment”.

The development of the debate is outlined below.

(i) The debate on the Salisbury doctrine in the House of Lords, 19th May 1993

On 19th May 1993 Lord Simon of Glaisdale initiated a debate to draw attention to the Salisbury doctrine and other practices which qualify the parliamentary role of the House of Lords. He said that:

I do not think that any of your Lordships would have doubted that measure [the Salisbury doctrine] at the time it was propounded when there was a Labour Government with a strong majority in the other place and a reforming programme and an overwhelming Conservative majority in your Lordships’ House. I think your Lordships would readily agree that that was a very sensible proposal.

Of course it is arguable that now your Lordships’ House is differently constituted your Lordships can abandon that course. I myself would venture to counsel against that. There are several circumstances in which your Lordships can undoubtedly vote against a Second Reading – for example, on a Private Member’s Bill, on a free vote of the other place and on other such occasions. I only want to mention two circumstances where it would involve a breach of the Salisbury doctrine to do so. One is where a Bill is quite outrageous constitutionally. I have mentioned the Child Support Act. Not only was it a skeleton Bill but it committed practically every constitutional enormity in the book.

The other circumstance where your Lordships can properly refuse a Second Reading is when your Lordships are given insufficient time to discuss a measure of great importance. I think, on reflection, we ought to have voted against the Education Bill

on the ground that prolonging discussion until the early hours of the morning was an abuse of your Lordships' House.

(HL *Hansard*, 19th May 1993, vol. 545, col. 1783)

Lord Shackleton recalled his time as Leader of the House of Lords in the Labour Government of 1964–70:

I was Leader of the House at one time when we had to apply our procedures in difficult circumstances. We managed well largely because we contrived to speak in a friendly way to our opponents. There was a degree of understanding in another place which is not so strong now as it was when we were there. That is a fundamental point in the working and procedure of the House ... Lord Salisbury produced a solution that made it possible for this House to function and to do its duty as well as it could under difficult circumstances.

(*ibid.*, col. 1786)

Lord Rippon of Hexham questioned the validity of the inclusion of a policy in an election manifesto as a basis for determining the activities of the House:

In modern times election manifestos, as I know, have become increasingly long and turgid and are rarely read even by candidates themselves. Moreover, the Bills that are subsequently produced in alleged furtherance of a manifesto pledge often bear little or no relation to the one or two lines or paragraphs presented notionally to the electors. I believe that there is therefore much merit in the suggestion by the noble and learned Lord, Lord Simon of Glaisdale, that one might consider that there is a right to delay if insufficient time has been provided to anybody inside or outside Parliament to consider measures of great importance, even if they are briefly referred to in an election manifesto.

The doctrine of the mandate should apply only where (as, perhaps, I may suggest, in the case of the Maastricht Bill) a party has made its policy perfectly clear at a General Election; or where (again as in the case of the Maastricht Bill) there has been a full discussion of the issue in another place. If the power to delay a Bill is one to be used only rarely, I do not believe that any such inhibition should necessarily apply to amendments, in particular those designed to limit the power of the Executive.

(*ibid.*, cols. 1787–1788)

Lord Beloff followed up Lord Rippon's point about the Treaty of Maastricht:

What the doctrine meant was not that something appeared in print in a manifesto, but that the country, in the course of a General Election, had clearly decided on the issues raised. That is to say, were a Labour Government to be elected next time on a programme of renationalising utilities and, after a hard fought election in which that policy was central to their position, they succeeded in obtaining a majority, clearly an unelected Chamber would have reservations about opposing such a programme.

But that does not always happen. I find myself obliged to disagree with my noble friend Lord Rippon that the Salisbury doctrine could possibly apply to the Bill to implement the unfortunate Treaty of Maastricht. Although that appeared in the manifesto of a governing party, it appeared also in the manifestos of the two opposing parties. To my recollection it was never debated or discussed during the election. The country gave no verdict on it one way or another.

(HL *Hansard*, 19th May 1993, cols. 1796–1797)

Lord Richard, the Leader of the Opposition, said that:

I am not sure whether the Salisbury doctrine, pure and simple, can any longer be wholly sufficient to cover the position [of the House of Lords] in this day and age...

The doctrine clearly helped to lead in the past to the identification of a relatively clear role for the Second Chamber; namely, the revision of Commons' Bills; the initiation of non-controversial legislation; and the limited use of delay to permit detailed consideration of Bills and full debate on general issues of policies. There still seems to be a consensus in the House on the desirability of what, I suppose, I can call the general practice of self-restraint when it comes to legislative matters. But it is important to acknowledge that as the House has become busier, questions will increasingly be raised, and have been raised, about the viability of its former role. Perhaps it is time for the House to examine its workload, the question of its powers, and its relation to the other place.

The function of the House, though, has changed, as I see it, from being primarily a revising Chamber. One of the main functions the House now has in relation to the other place, is that it is effectively the only place in which the legislature can curb the power of the executive. If this House is the place in which detailed scrutiny of legislation is taking place, it is because legislation is being guillotined or rushed through in the other place. One aim that we could perhaps push for collectively is less legislation, more elegantly and precisely drafted, which is less likely therefore to need widespread redrafting when it arrives in the House.

(*ibid.*, col. 1804)

Lord Hesketh, the Government Chief Whip, indicated that he supported the Salisbury doctrine:

That is the convention that the House will not oppose legislation for which a government with a majority in another place have a mandate; that means in practice that the House does not seek to vote down a manifesto Bill at second or third reading. Like the noble Lord, Lord Shackleton, I am an unashamed supporter of the doctrine. It is not merely true that it has served the House well. It has, I think, become essential to our parliamentary system. I remind the House that the doctrine had – and, as this debate has shown, still has – support from all sides of the House.

(*ibid.*, cols. 1808–1809)

He then answered the suggestion that the Salisbury doctrine should not be applicable in the case of framework Bills:

The noble and learned Lord, Lord Simon of Glaisdale, and the noble Earl, Lord Russell, sought to make a case for departing from the Salisbury doctrine in circumstances where the legislation in question is constitutionally objectionable in form. The Child Support Act was cited as a case in point. I repeat that it is of course for the House to determine whether the doctrine should continue to apply and, if not, why not. But I believe that it is difficult to distinguish categories of Bills to which the doctrine should not apply. Not only would the House set itself against the express will of the other place, but it would involve also the development of new constitutional doctrine. I do not know what a constitutionally objectionable Bill might be, and nor would it be easy to define one. The phrase would be likely to be used in respect of a large number of pieces of legislation which might not find favour in some parts of your Lordships' House.

(HL *Hansard*, 19th May 1993, col. 1809)

Of Lord Simon's point concerning the amount of time allocated to the scrutiny of legislation he said:

The noble and learned Lord suggested that there should be a departure from the Salisbury doctrine in cases where insufficient time was given to consider legislation. I do not see that noble Lords can object to a Bill on second reading on the grounds that it will be considered at a late hour in committee. That would put us in an extremely difficult position. I remind your Lordships that in my brief span in this House – in the happy days of 1988 and 1989 – I remember very well my noble friend Lady Young moving an amendment at 5.30 in the morning on the Education Reform Bill...

(*ibid.*, col. 1809)

(ii) The Politeia Lecture by Lord Cranborne, 4th December 1996

On 4th December 1996, Lord Cranborne, the Lord Privy Seal and Leader of the House of Lords, addressed the constitutional position of the House of Lords in a lecture to the think tank *Politeia*. This section of the Note summarises only those parts of the lecture, and subsequent responses to it, which relate to the Salisbury doctrine.

Lord Cranborne argued that the Lords in recent times had exercised great restraint when considering Bills sent from the House of Commons:

Never since 1947 has the House of Lords pushed a Labour Government into using the Parliament Acts. The only instance of that since then has been of the House of Lords forcing a Tory Government to do so in the case of the War Crimes Bill.

While we are on the subject of restraint let me emphasise that this is not only a matter of trusting the House of Lords' judgement but in one important respect has become

the subject of constitutional practice. That practice is known as the Salisbury/Addison doctrine.

He then commended the doctrine as follows:

It is a doctrine that has become accepted in constitutional circles: so much so that it has come to be known as the Salisbury Convention: that is, it has been raised in the language of politics into a constitutional convention. That means that it is definitely part of our constitution. I certainly regard it as such, and so does our party.

In the fifty years since 1945, the House of Lords has never opposed measures proposed by any Government in the manifesto on which it was elected.

In my view it follows that it would be – in my grandfather’s phrase – ‘constitutionally wrong’ – for any party or individual to suggest that, whatever the outcome of the General Election, this convention would not hold. It would be implicitly to accuse the House of Lords collectively of being willing to act unconstitutionally.

I can think of no reason for making such an accusation, except to bolster a case for reform of the House of Lords by scare tactics: that is, to make the absurd suggestion that the Lords would seek to oppose the will of the people expressed in a General Election and thereafter, through the House of Commons.

However, were the Lords to be reformed, the House might choose to renounce the doctrine:

After all, by definition a reformed House of Lords would take power and authority from the House of Commons, and, as I said a moment ago, being tempted to use it, might succumb to temptation.

The Salisbury Convention started as a compact between two parties, one of which enjoyed a commanding majority in the House of Lords. By extension we now recognise that the convention has become more than that at a time when the House of Lords no longer has a built in majority of any party as a result of the reforms which rejuvenated the House of Lords in 1958 and 1963 by introducing Life Peers and women. It has now become a further limitation on the powers of the House of Lords in its relationship with the House of Commons, whatever government is in power.

Now I’m very happy to see well established practices accepted as constitutional conventions, as I think I have made clear. I am sure therefore that the Labour Party will welcome what I have said today about the Salisbury/Addison accord. After all, they will think it suits them.

He then asked that another precedent be followed:

There is a convention that the committee stage of constitutional measures are taken on the floor of the House of Commons. There is a good reason for this. The Labour Government of 1945 was elected on a platform which envisaged massive reform. Such reforms need much legislation and there was a risk that the Government would not get its business in Parliament. The 1945 House of Commons therefore introduced a new practice of taking the committee stages of most Bills upstairs in committee

rooms, thereby freeing the Chamber for other business and increasing the volume of legislation it could pass.

Setting aside the question of whether it's desirable to legislate in such volume and indeed whether much of the content was wise, the rule that constitutional matters should be discussed on the floor of the House was, and is, an important safeguard against overmighty government.

The Constitution Unit, in a thorough analysis of the parliamentary mechanics of how the Labour Party might secure the passage of its constitutional proposals in the House of Commons, pointed out that their own chance of doing so would be to take at least part of the committee stage off the floor of the House – against convention.

Is the Labour Party planning, whilst insisting on the preservation of the Salisbury Convention in the House of Lords, to overturn this crucial convention – let us call it the Attlee Convention – in the House of Commons?

If so, Labour would be dismantling the very parliamentary safeguards Mr Attlee had thought so important.

In conclusion, Lord Cranborne said that he favoured reform, as it would increase the power of the House:

... it is important for me to emphasise that I am not against reform in principle. Paradoxically, since any reform would give more authority to the House of Lords, as a supporter of the second chamber, I should be for reform. If the electorate and the House of Commons want to reform us, the Salisbury Convention would apply. This means that the House of Lords would not vote against the second reading of a bill whose principle had been set out in a new Government's manifesto. We would still have a constitutional obligation to improve the quality of any legislation by amending it in detail insofar as we think this is justified.

He then defined the role of the Lords as follows:

Any House of Lords therefore cannot be the House of Commons' poodle. What it can be is like a trusted independent advisor to the headstrong head of a family. The adviser cannot prevent him ruining himself but he can warn and once at least ask him to reconsider. And in that context it is not for the House of Lords to provoke a confrontation with the House of Commons in which the people support the Commons. We do better when it is clear the people support the House of Lords in asking the House of Commons to think again.

Writing in *The Times*, Peter Riddell noted that:

Lord Cranborne said the current convention that the committee stages of [constitutional] Bills should be on the floor of the Commons was an important parliamentary safeguard. He linked this to the Salisbury convention on the powers of

the Lords, with the implication that if Labour changes the way constitutional matters are considered in the Commons this will affect their treatment in the Lords.

(‘Elegantly put case tainted by romanticism’, Riddell on Politics, *The Times*, 5th December 1996)

The *Daily Telegraph* reported that Lord Cranborne:

... is proposing to formalise the Salisbury doctrine, turning it from an unwritten agreement into a constitutional convention.

This could not only prove the Tory commitment to the constitution but also show the willingness of Tory peers to be accountable to the Commons...

Tory peers say the proposals will make Labour’s plans for constitutional reform more difficult. They will use their willingness to adhere to the Salisbury doctrine to put pressure on Tony Blair to fulfil another parliamentary convention – that all constitutional legislation is dealt with at all stages on the floor of the Commons, not in small committees of MPs. They believe it could ruin the first year of a Labour Government’s legislative programme because the Chamber would be blocked up with minute detail. Labour prefers constitutional reforms to be dealt with on the committee corridor.

(‘Peers plot downfall of voting reforms’, *The Daily Telegraph*, 3rd December 1996)

A leading article in *The Guardian* commented that:

The crucial part of Viscount Cranborne’s lecture reiterated the so-called Salisbury/Addison doctrine under which the Lords do not oppose Government manifesto commitments. On the face of it, that pledge would seem to imply that the Tories of 1997 will not “die in the ditch” (as their 1910 predecessors intended to do against Asquith’s reforms) to oppose Labour’s plans. If that is what Viscount Cranborne means, then it is a welcome provisional acceptance of the democratic will.

But Viscount Cranborne’s pledge doesn’t quite say that. It appears to be conditional upon Labour agreeing that the whole committee stage of its constitutional reform Bills will be taken by the full House. Such a condition, though superficially attractive, is unreasonable. It cannot be right for legislative convention to make constitutional Bills practically unpassable in a modern parliament. It needs to be reformed so that standing committees have a scrutiny role as they do in all other Bills. And in any case the unelected Lords should not apply conditions to their acceptance of the will of the electorate. Lords reform may not be the talk of the taverns yet, but it is a popular and progressive reform. For his own good and for ours, Viscount Cranborne should resist the temptation to rattle hereditary sabres.

(‘No half-way House: Labour mustn’t do deals over Lords reform’, *The Guardian*, 5th December 1996)

The Economist, citing Viscount Cranborne's reference to the Salisbury doctrine, went on to ask whether manifesto commitments still formed the most appropriate basis for a claim to a mandate:

In the classical model of the British constitution, manifestos had a hallowed place. In them, political parties set out the policies which they intended to implement if the electorate entrusted them with office. Voters chose between the manifesto packages on offer, and the government they chose had a mandate to implement those policies.

Elements in this model preserve a vestigial presence in modern constitutional thinking. For example, the Salisbury doctrine on the House of Lords – recently reiterated by Lord Cranborne, the Tory leader in the Lords – states that peers should not vote down any government manifesto policy, which is presumed to carry the imprimatur of the people. But most of what is said about manifestos is palpable nonsense. Few voters read manifestos.

If manifestos no longer perform their classical function, it is hard to see what function they do perform. As the launch-pad for new policies? No. It would be surprising if Mr Major's manifesto contained anything which had not been trailed by ministers at the last Tory conference or subsequently. As big news events? Again, no. Modern news-management obliges parties to release stories one at a time, to maximise coverage. Although serious newspapers give dutiful coverage to manifestos, publication has become less and less of an event. As vote winners? It is hard to recall a recent manifesto, Tory or Labour, which had had that effect, although not so hard to remember some that have lost them...

The manifesto's chief residual function is different. It represents the terms of a truce between the factions that are inevitably present in any political party.

The cost of these commitments, however, is that the government gets nailed down on policies which, even if they make sense at the time, may cease to make sense with passage of time.

(‘A burning issue: party manifestos’, *The Economist*, 25th January 1997)

(iii) The Mackay Commission Report, 16th April 1999

Following an announcement by William Hague, Leader of the Conservative Party, on 13th July 1998, the Conservatives set up a Constitutional Commission to look at Lords reform, chaired by the former Lord Chancellor, Lord Mackay of Clashfern.

In its report, *The Report of the Constitutional Commission on options for a new Second Chamber* (16th April 1999), the Commission proposed two models for a Second Chamber, to be called the Senate: the first was a Senate of mixed composition, embracing appointment, and direct and indirect election; the second was a Senate constituted on a basis of direct elections (p. 31). When considering the power of such a reformed chamber to reject Commons' Bills, the Commission concluded that “the Salisbury Convention has worked

well. It is, however, undeniable that the conditions under which the Convention grew up will disappear when the reformed chamber is in place” (p. 15).

The Commission continued:

We do not consider that it should be assumed that the reformed chamber will be irresponsible in its use of its powers: such an assumption would be a ridiculous basis on which to frame those powers. What is more, we are unwilling to deny to the reformed chamber the power to reject outright a piece of legislation which it considered to be seriously misguided. Such a rejection would constitute a warning of the most serious kind. After all, the legislation could subsequently be passed under the Parliament Acts. What is more questionable is whether legislation should be rejected by an advisory or revising Chamber in the first instance, except in the rarest of circumstances (which may of course be the most important). For those reasons, we are opposed to any amendment to the Parliament Acts which would limit the right of the reformed chamber to reject legislation. If such an amendment were to be made, we consider that it should be limited only to rejection of a bill at Second Reading, on the first time it was introduced into the reformed chamber, the reformed chamber thereafter retaining the power to reject the bill at Third Reading and leaving it open for the bill to be reintroduced into the Commons in the next Session under the Parliament Acts, together with any amendments already agreed to by the reformed chamber.

(The Report of the Constitutional Committee on options for a new Second Chamber, chaired by Lord Mackay of Clashfern, 16th April 1999, pp. 15–16).

(iv) The Politeia Lecture by Lord Strathclyde, 30th November 1999

On 30th November 1999, shortly after the enactment of the House of Lords Bill, Lord Strathclyde, Leader of the Opposition in the House of Lords, delivered a *Politeia* lecture on *Redefining the Boundaries between the Two Houses*. In relation to the Salisbury doctrine, he stated:

I agree profoundly with Baroness Jay when she wrote – and here I quote – the House of Lords Act ‘is bound to have an impact on the dynamics of the House, and on its relationship with the House of Commons’ (*House Magazine*, 27th September 1999). She is right. The dynamics *have* changed. And, because, as she puts it, every member of it has earned his place, she anoints this a ‘more legitimate’ House, ‘able to speak with more authority’, and whose decisions ‘will carry more weight’. Shall we call that the Jay Doctrine? But if the dynamics have changed, again, the question is how ... A plough has been drawn across the settled landscape of the constitution ... In the process boundary stones were uprooted ... Until we define new boundaries, relations between the two Houses will inevitably be uncertain, sometimes strained ... If we do not do so, the executive may move fast to throttle the new House by more peerage creations, and changes in procedure to follow them. The old boundary markers were arrived at by custom, use, agreement. So it was with the Salisbury doctrine – perhaps the most famous – or notorious – boundary marker on the old landscape. ... The Salisbury-Addison agreement was just that – an agreement.

Because of it, despite the Party imbalance, the Queen's Government was carried on, which is, after all, for a good Tory, the essence of the whole plot. Custom hallowed it so that, 50 years after it was first promulgated, Lord Salisbury's grandson, Robert Cranborne, before a *Politeia* audience in 1996, declared it had become 'definitely part of our constitution'.

(p. 7)

Lord Strathclyde then went on to argue that most of the conditions that gave rise to the Salisbury doctrine have gone. He said:

Some might therefore conclude that the doctrine itself, as originally conceived, has outlived its usefulness. I would be less dogmatic. Certainly it needs to be re-examined in the new conditions that arise. It may well need to be re-defined over the next few years, as the House of Lords and House of Commons work in partnership to rework the boundaries between them. What is *not* possible to state is that nothing has changed. Baroness Jay tried this in answer to a recent parliamentary question. She said that the Salisbury doctrine remains [HL *Hansard*, 3rd November 1999, col. WA95–96]. That sounds remarkably to me like having your cake and eating it. ... I am no more qualified than Baroness Jay to settle a new boundary now. But let me make some guesses. The Salisbury-Addison agreement in essence held that the House of Lords would not vote against manifesto items at Second Reading, nor would it introduce wrecking amendments to such programme Bills. The House of Lords is not suddenly going to change all that. It will always accept the primacy of the elected House. It will always accept that the Queen's Government must be carried on. But, equally, it should always insist on its right to scrutinise, amend and improve legislation. Even Salisbury-Addison did not remove that right – even on major Bills. The new House will clearly be unabashed in exercising that right. For that right is also its purpose – and its duty.

(pp. 8–9)

Quoting from the *Economist* article of 25th January 1997 (mentioned above) which said that a manifesto represents the terms of a truce between the factions that are inevitably present in any political party and that manifesto commitments may cease to make sense with the passage of time, Lord Strathclyde questioned why "the small print of a treaty within a single party" should bind a House of Parliament for five years "in a modern, fast-changing, flexibility-first world". He continued:

We should all be a little less grim-jawed about the Salisbury doctrine. Perhaps we might be trusted to look at things on their merits ... We should not be bogged down in the theology of a doctrine whose time may have passed with the circumstances that created it. What matters is to produce legislation of quality, equity and clarity. If Parliament does that then Parliament works. And if, in working, Parliament feels its way to acceptable new boundaries between the Houses, then so be it. After all, if ever the House of Lords oversteps the bounds, it will be left in no doubt of that by the voice of public opinion. And, if it then still persists, the device of the Parliament Acts is there to ensure that the elected House can, and will, prevail.

(p. 9)

Shortly after Lord Strathclyde's lecture, Baroness Jay of Paddington, Lord Privy Seal and Leader of the House of Lords, affirmed the Government's position that the Salisbury doctrine still held. Replying to a starred question in the House of Lords from Lord Campbell of Alloway as to whether the Government favoured retention of the Salisbury convention when the Opposition had no voting majority in either House, Baroness Jay stated:

... the Salisbury/Addison convention has nothing to do with the strength of the parties in either House of Parliament and everything to do with the relationship between the two Houses. The other House – and, with it, the Government – is elected on a universal franchise and ... it must remain the case that it would be constitutionally wrong, when the country has expressed its view, for this House to oppose proposals that have been definitely put before the electorate.

(HL *Hansard*, 15th December 1999, col. 214)

(v) The Wakeham Commission Report, January 2000

In January 2000 the Royal Commission on the Reform of the House of Lords, chaired by Lord Wakeham, concluded that the principles underlying the Salisbury convention remained valid and should be maintained, as follows:

4.21 Second, we agree with those who argue that the principles underlying the Salisbury Convention⁷ remain valid and should be maintained. The convention amounts to an understanding that a 'manifesto' Bill, foreshadowed in the governing party's most recent election manifesto and passed by the House of Commons, should not be opposed by the second chamber on Second or Third Reading. This convention has sometimes been extended to cover 'wrecking amendments' which "destroy or alter beyond recognition"⁸ such a Bill. It has played a key part in preventing conflict between the two Houses of Parliament during periods of Labour Government. Some have argued that its main effect has been to provide a rationale for Conservative peers to acquiesce in legislation which they found repugnant; and that once the situation had been reached in which no one party could command a working majority in the second chamber there would be no need to maintain the Salisbury Convention. In our view, however, there is a deeper philosophical underpinning for the Salisbury Convention which remains valid. This arises from the status of the House of Commons as the United Kingdom's pre-eminent political forum and from the fact that general elections are the most significant expression of the political will of the electorate. A version of the 'mandate' doctrine should continue to be observed: where the electorate has chosen a party to form a Government, the elements of that party's general election manifesto should be respected by the second chamber. More generally, the second chamber should think very carefully before challenging the clearly expressed views of the House of Commons on any issue of public policy.

4.22 There is an important and delicate balance to strike here. Our proposals envisage a reformed second chamber with the authority and self-confidence to take a stand on any issue where it believes that the Government and the House of Commons should be required to think again. But the value of the reformed second chamber will be undermined if it exercises its powers indiscriminately or too frequently.

4.23 As to how the convention should be expressed, there are substantial theoretical and practical obstacles to putting any formal weight on manifesto commitments. Only a tiny minority of the electorate ever reads party manifestos; and as it is most unlikely that any voter will agree with every sentence of any manifesto, it is rarely possible to interpret a general election result as evidence of clear public support for any specific policy. In any event, manifestos are political documents, not legal texts, and proposed legislation designed to implement political commitments will usually be far more detailed than, and therefore different from, what was in the manifesto. Thinking on any given issue inevitably develops or changes over time and legislation introduced in the third or fourth session of a Parliament may differ significantly from the relevant manifesto commitment. To deny such legislation constitutional protection, while providing additional safeguards for other proposed legislation simply because it happened to be truer to the original commitment, would be unreasonable. Also, issues that require legislation may arise during the course of a Parliament and could not therefore have been mentioned in the parties' manifestos.

4.24 There is no straightforward answer to these various difficulties. An updated version of the Salisbury Convention should express the new balance of political authority between the two Houses of Parliament and the Government; but it is unlikely to be possible to reduce it to a simple formula. The reformed second chamber will need to work out this new convention pragmatically. The House of Lords has been rather good at reaching generally satisfactory understandings about how business should be carried forward and we have every confidence that the reformed second chamber will be able to do the same.

Recommendation 7: The principles underlying the 'Salisbury Convention' remain valid and should be maintained. A version of the 'mandate' doctrine should continue to be observed: where the electorate has chosen a party to form a Government, the elements of that party's general election manifesto should be respected by the second chamber. More generally, the second chamber should be cautious about challenging the clearly expressed views of the House of Commons on any public policy issue. It is not possible to reduce this to a simple formula, particularly one based on manifesto commitments. The second chamber should pragmatically work out a new convention reflecting these principles.

7 Enunciated by the then Viscount Cranborne in 1945, but which built on an earlier version of the doctrine of the 'mandate' developed by his grandfather the Third Marquess of Salisbury in the late 19th century. See House of Lords, *The Salisbury Doctrine*. Library Notes. LLN 97/004. 1997.

8 Lord Carrington, *Reflect on things past: the memoirs of Lord Carrington* (1988), page 77.

(Royal Commission on Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000)

Following the Wakeham Report, Lord Campbell of Alloway asked a starred question in the House of Lords on 7th February 2000 as to whether the Government would review the Salisbury Convention in advance of any response to the Report. Baroness Jay of Paddington, Lord Privy Seal and Leader of the House of Lords, replied that the Government saw no need to change the conventions under which the House operated during the lifetime of the transitional House. The Salisbury/Addison Convention gave effect to the important principle

of the difference between the Lords and the Commons, which was elected on a universal franchise. She continued:

The recommendation of the Royal Commission in this area seems to me to underline what I have been saying. Its proposal and the arguments put forward for the composition of a new second Chamber stated that ... something like the Salisbury Convention should continue to regulate the relationship between the two Houses.

(HL *Hansard*, 7th February 2000, col. 392)

In reply to a supplementary from Viscount Cranborne positing that although there has been a consensus since 1945 that the Salisbury Convention exists, there has been a certain amount of argument over how it is defined, Baroness Jay stated: "... I believe that it is relevant to look at this point in the context of the full long-term reform of this House as proposed by Lord Wakeham" (HL *Hansard*, 7th February 2000, col. 394).

(vi) The debate on the Parliament Acts and the Salisbury Convention in the House of Lords, 24th January 2001

On 24th January 2001 Lord Simon of Glaisdale initiated a debate to call attention to the Parliament Acts and the Salisbury Convention in the light of recent constitutional developments. This section of the Note focuses on contributions relating to the Salisbury Convention.

Lord Simon of Glaisdale stated that a two-chamber Parliament had been widely accepted in all the constitutional debates on parliamentary reform. But that meant that whenever differences arose between the two chambers methods must be found to resolve them. One method was the Parliament Acts and another the Salisbury doctrine. On the latter he argued that when that was enunciated there was a large Labour majority in the Commons and a large inbuilt Conservative majority in the Lords. There was no doubt that the main Labour proposals of nationalisation had been firmly before the electorate in the preceding General Election. Lord Simon then continued:

So it seems entirely reasonable that the Salisbury doctrine should be enunciated in the terms that it was. There was always something unreal about it in its reference to a manifesto, because a manifesto does not contain just a list of proposals which are committed for approval to the electorate. One can have an election of that kind. Many American states do. But a manifesto in this country is certainly not a list for which the approval of the electorate is asked individually.

However, the great thing about the Salisbury convention is that it works. Generally, that is enough in this country. I think it is quite enough. The last comment to make about it is that it is a constitutional convention and not constitutional law. In other words, it is binding only politically and morally but not legally, and only so long as it is convenient.

(HL *Hansard*, 24th January 2001, col. 266)

Lord Simon went on to refer to three constitutional developments: firstly, that there was no longer an inbuilt Conservative majority in the Lords; secondly, the increasing domination of the Commons by the executive; and, thirdly, the acceptance of the referendum as part of the constitutional system. He concluded by saying that as the Salisbury convention was a convention only, it would be advantageous to leave it for its residual use when necessary (HL *Hansard*, 24th January 2001, col. 267).

Lord Peston thought the Salisbury convention had a role to play because the Government was entitled to get its business through Parliament. But if the House were 100 per cent elected “the whole world would change. In that case, the Parliament Acts would have to disappear, because they would have no meaning, as would the Salisbury/Addison doctrines. In my judgment, if this were a 100 per cent. elected Chamber, it would have to be equal to the other Chamber” (HL *Hansard*, 24th January 2001, cols. 268–269).

Viscount Cranborne agreed substantially with Lord Peston. He said:

I suspect that we may have a little more authority now, but, semi-reformed as we are, we still lack the authority that we need ... the Salisbury convention did not begin as a convention at all but rather as an agreement between my grandfather and the then Leader of the House, Lord Addison ... But since then this temporary agreement has been transmogrified into a convention ... The convention says that the House will not vote at Second Reading against a manifesto Bill or pass a wrecking amendment during the remaining stages. After consultation with the learned Clerks, I understand that, in the final analysis, it is for this House to determine what constitutes a wrecking amendment.

Although ... I am sceptical about the doctrine of the manifesto, I find it difficult to see that it would be wise for this House, reformed or not, to oppose a specific commitment which formed part of the election platform of a new Government. Equally, in purely practical terms, I think it is a little silly for us to vote at Second Reading against a Bill which we wish to delay. After all, it sets the Parliament Act clock ticking rather earlier than would otherwise be the case.

(HL *Hansard*, 24th January 2001, col. 272)

Lord Dahrendorf also doubted the doctrine of the manifesto. He said that although he did not want to devalue elections “there is a kind of fallacy of misplaced concreteness in the uncritical identification of the will of the country with a party manifesto and also in that of legitimacy with majorities constituted by say 43 per cent. in general elections”. He concluded that “we must not turn the Salisbury convention into the dogma of sacred party manifestos nor should we doubt the right of your Lordships’ House, as constituted today, to scrutinise, amend and, from time to time, reject legislation” (HL *Hansard*, 24th January 2001, cols. 274–275).

Lord Rees criticised the doctrine of the mandate in similar terms, seeing no reason why a second Chamber, as an institution, should not be accorded a measure of legitimacy acquired by time and the successful discharge of its functions and thought the current House could qualify on that basis (HL *Hansard*, 24th January 2001, col. 288).

Similarly, Lord Rodgers of Quarry Bank criticised the doctrine of the mandate, saying that it was not the basis on which the Salisbury doctrine should rest, as elections were not fought and won on the basis of manifestos, but according to the state of the country, the opposition and the leadership of the parties. Lord Salisbury in 1964 had referred to the doctrine as a “broad guiding role” and that was how it should be approached. “We should do so in the light of the deeply flawed doctrine of the mandate, and exercise our own judgment when it is, and when it is not, appropriate to carry out the letter of what it suggests” (HL *Hansard*, 24th January 2001, cols. 291–292).

Lord Norton of Louth agreed with the argument advanced by the Royal Commission, saying that the Salisbury doctrine should be reviewed and new criteria generated to determine when the House should refuse a Second Reading. He referred back to the two criteria identified by Lord Simon of Glaisdale in the 1993 debate (see above, p. 36) and suggested they could build on those.

Lord Campbell of Alloway was also in favour of a revised form of the Salisbury doctrine, perhaps, he suggested, in the form of a convention for the House to delay Bills by rejection or amendment where the nation was substantially divided or Bills which substantially affected the constitution, and perhaps some accommodation could be had enabling the Government, save in exceptional circumstances, to have their business irrespective of any mandate at a general election (HL *Hansard*, 24th January 2001, col. 285).

Lord Barnett thought the Salisbury doctrine was very uncertain and so preferred statutory certainty (HL *Hansard*, 24th January 2001, col. 287).

Lord Desai believed the Salisbury doctrine had had its day and should be “retired”. He questioned whether “the Salisbury doctrine 1” was now of any relevance, saying that “once you move away from a fundamental difference – namely, what the 1945 Labour Party represented in terms of the notion of property ownership – the Salisbury doctrine 1 becomes a further limitation on the powers of this House; in other words, it is not part of 1911 nor part of 1945. It is a further restriction; in other words, that this House will not do certain things, which it perfectly legitimately can do”. He agreed with Lord Norton of Louth that Salisbury or no Salisbury, “we must exercise our powers, limited though they are, to the full”. He also believed that manifestos were not serious documents (HL *Hansard*, 24th January 2001, cols. 279–281).

Earl Ferrers also thought the Salisbury doctrine was no longer relevant as the composition of the House was now “totally different” (HL *Hansard*, 24th January 2001, col. 283).

Lord Strathclyde echoed the comments he made in his *Politeia* lecture of November 1999, saying that, given the new composition of the House “the Salisbury convention deserves to be reviewed”, although he did not believe that even the new House had the right to challenge the Commons on Second Reading or by tabling wrecking amendments to core manifesto items. But he agreed with those Lords who had spoken about the status of manifestos. “Election promises can be vague and easily manipulated by governments, who reserve the right to jettison manifesto promises if things change. If governments can have the right, why cannot Parliaments too have a say on circumstances as they change? While the case for giving manifesto promises a relatively easy ride in the first few Sessions of a Government’s life is largely unassailable, subject only to Parliament’s overriding duty to safeguard the constitution, it does not mean that that should automatically extend to the whole five years”.

He further argued that the Government could not seriously claim that votes of the Lords must echo votes of the Commons on every issue, under threat of the Parliament Acts. “That way unicameralism lies” and “Lurking behind unicameralism is a threat of a new presidentialism, with no effective containing power” (HL *Hansard*, 24th January 2001, cols. 294–295).

The Attorney-General, Lord Williams of Mostyn, stated that the House of Lords was unable “continually to fail the determined, settled will of the Commons. That is what the 1911 and 1949 Acts provide, and they are quite independent, in that connection, of the Salisbury convention. Therefore, it is not a question of convention alone; it is enshrined in two statutes”. The supremacy of the Commons, he went on, ultimately depended on the reflected virtue of their popular election. “The basis of the Salisbury convention, therefore, does not change by virtue of any alteration in the composition of this House”. He did not believe that the Salisbury convention had fallen into disuse. “It is a doctrine that has become accepted in constitutional circles, so much so that it has come to be known as the ‘Salisbury convention’. It has been raised in the language of politics to become a constitutional convention. That means it is definitely part of our constitution” (HL *Hansard*, 24th January 2001, cols. 296–298).

Turning to what had been said in the debate about manifestos, Lord Williams of Mostyn said that it may be that not everyone believes every dot and comma of every manifesto, but the election engaged the public mind on perfectly known propositions and he suggested that whether people read manifestos or not was not really the point. “If we have to look at the edges and margins of the Salisbury convention let us do so. I do not believe in the unicameral system” (HL *Hansard*, 24th January 2001, col. 298).

(vii) The Government response to the Wakeham Commission, November 2001

In November 2001 the Government published its response to the report of the Wakeham Commission. It noted that a framework of constraints had evolved over time to enable effective government and give it the ability to honour its mandate. The key elements were acceptance of the Commons financial privilege, conventions on the pre-eminent authority of the Commons over legislation and other measures required to implement a Government’s election manifesto, and the Parliament Acts.

The Government would prefer to continue this broad structure for defining the relationship of the authority of the two Houses. Matters in this area are not readily susceptible to legislative provision, beyond what is already set out in the Parliament Acts.

Nothing in the proposed reform of the House of Lords does, or should, affect Commons financial privilege or the need for the Lords to continue to observe restraint in the way it exercises extensive powers. This is the inevitable corollary of maintaining the formal powers at their present level. As the Royal Commission noted, ‘the second chamber should be cautious about challenging the clearly expressed views of the House of Commons on any public policy issue’ (Recommendation 7).

(Lord Chancellor's Department, *The House of Lords – Completing the Reform*, Cm 5291, November 2001, paras. 27 and 28).

(viii) The Joint Committee on House of Lords Reform, First and Second Reports, December 2002 and April 2003

In its First Report in December 2002, the Joint Committee identified two “significant conventions” which, they said, were of a self-restraining nature and impacted profoundly on the relations between the two Houses and needed to be understood “as a vital part of any future constitutional settlement”. The first convention, that the House of Commons should finally have its way, was embodied in the Salisbury Convention, and the second was that the Government was entitled to have its business considered without undue delay. The Joint Committee went on:

Taken together, these conventions govern the day-to-day relations between the Houses during a parliamentary session, contributing in a significant way to the overall effectiveness of Parliament as a place where business is transacted efficiently. The House of Lords could depart from any of these conventions at any time and without legislation, and might well be more inclined to do so if it had been largely (and recently) elected. But the continuing operation of the existing conventions in any new constitutional arrangement will be vital in avoiding deadlock between the Houses – which could all too easily become an obstacle to continuing good governance. We therefore strongly support the continuation of the existing conventions. When the views of the Houses on composition are made known, we will return to the detailed matter of how these important conventions should be maintained in a new constitutional settlement between the Houses.

(Joint Committee on House of Lords Reform, *House of Lords Reform: First Report*. HL Paper 17, HC 171, 2002–03, December 2002, paras. 11 and 12)

In their Second Report, the Joint Committee further commented:

A reformed House might look upon its relations with the Commons with a fresh, more assertive stance. We therefore consider that the manner of maintaining these conventions requires careful attention and could form one part of the continuing programme of reform.

(Joint Committee on House of Lords Reform, *House of Lords Reform: Second Report*, HL Paper 97, HC 668, 2002–03, April 2003, para. 15)

(ix) The DCA Consultation Paper, ‘Next steps for the House of Lords’, September 2003

In September 2003, the Department for Constitutional Affairs published a Consultation Paper, *Constitutional reform: next steps for the House of Lords*, commenting on

the Salisbury doctrine as follows:

14. The Salisbury-Addison Convention has worked well since it was formulated, and has been honoured by all the major parties. It has become accepted as a limitation on the powers of the House of Lords in its relations with the House of Commons, whatever Government is in power, even though it was born out of the peculiarities of the composition of the House of Lords at the time it was articulated.
15. The Salisbury-Addison convention is partnered by a second, which says that the Government is entitled to have its business considered in reasonable time.
16. The Government believes that these arrangements for regulating both the formal and effective powers of the House of Lords can remain effective during this next stage of reform. It does not see any need to propose changes to them at this stage.

(Department for Constitutional Affairs, *Constitutional reform: next steps for the House of Lords*, CP14/03, September 2003, paras. 14–16)

(x) The Labour Peers Working Group on House of Lords Reform, 20th July 2004

On 20th July 2004 the Labour Peers Working Group on House of Lords Reform published a report on the *Reform of the Powers, Procedures and Conventions of the House of Lords*. The report recommended, inter alia, that key conventions, principally the Salisbury doctrine, should be codified (p. 2).

The report argued that the growing assertiveness of the current House, and the likelihood of further reform of its composition, demanded more clarification of the appropriate powers of the Second Chamber, including the current conventions, the most important being the Salisbury/Addison convention. Those conventions were so important that there should not be any doubt or ambiguity as to their application in all circumstances. The Working Group considered two ways of formalising the Salisbury/Addison convention. One was full entrenchment through legislation, which would ensure that the Lords' powers were clearly understood. However, the Working Group concluded that the drafting of such legislation would present challenges with the possibility of legal disputes over interpretation of party manifestos. They therefore recommended that an agreement on the convention should be reached by all major groups in the House of Lords which would then approve the agreement by resolution and that agreement would then become part of the Companion to the Standing Orders of the House. But if this method proved unworkable the legislative option would have to be seriously reconsidered (pp. 11–12).

The report was debated in the House of Lords on 26th January 2005. This section of the Note will focus on contributions commenting on the Salisbury doctrine.

The debate was initiated by Lord Hunt of Kings Heath, who chaired the Working Group. He said:

Alongside the Parliament Acts, we think it is important to codify the conventions. Of course, the most important of these is Salisbury/Addison. Its practical effect is that

the Lords will not assert its right to vote against a manifesto Bill at Second or Third Reading or pass a wrecking amendment. This convention is so important that there ought to be no doubt or ambiguity about its application in all circumstances, and we make proposals for codification of the conventions. We would prefer an agreement between the major parties in the House rather than legislation, but legislation must be kept as an option in reserve.

(HL *Hansard*, 26th January 2005, col. 1333).

Lord Wakeham said the report made “a powerful case for codifying the key conventions but, on balance, it is not, in my view, the right thing to do. It would encourage Oppositions to stick to the letter of the rules and in practice I suspect that would lead to more delay, not less. The House of Lords has a high reputation for working things out pragmatically, and a degree of flexibility is required from everyone’s point of view, including the Government’s” (HL *Hansard*, 26th January 2005, cols. 1335–1336).

Lord Rodgers of Quarry Bank argued that “even if the conventions between the House and the House of Commons, which is usually a euphemism for the Government, have recently been tested as the Government claim, it is far too soon to conclude that existing undertakings are fatally fractured. In that respect, the report leans the wrong way” (HL *Hansard*, 26th January 2005, col. 1337).

The Convener of the Crossbench Peers, Lord Williamson of Horton, said: “on the codification of conventions, I would myself find no difficulty in embedding the Salisbury/Addison convention by including it in an agreement of all major groups to be approved by resolution. That is, not legislation but a resolution. I would not find great difficulty with that” (HL *Hansard*, 26th January 2005, col. 1338).

Lord Hunt of Wirral thought that the Salisbury doctrine was a good one and that the proposal to codify was “wise and workable” (HL *Hansard*, 26th January 2005, col. 1352).

The Leader of the Liberal Democrats in the House of Lords, Lord McNally, said that the Salisbury convention was designed to protect the non-Conservative government from being blocked by a built-in hereditary-based majority in the Lords. It was not designed to provide more power for “an elective dictatorship” in the Commons against legitimate check and balance by the Lords. “Unless changes in the powers of the Lords are accompanied by real reform to strengthen the democratic legitimacy of both Houses, along with a strengthening of the powers of both Houses to call the executive to account, the Lords will be right to resist any piecemeal and arbitrary attempts to limit its powers. The paper calls for streamlining, better focus and codification of conventions. In doing so, it shows a disregard for the realities of parliamentary life. What it offers is a Chief Whip’s charter for a quieter life” (HL *Hansard*, 26th January 2005, col. 1371).

Lord Strathclyde was “instinctively against codification and firm rules”, asserting that the Commons had plenty of codes, “but it has precious few freedoms from government control” (HL *Hansard*, 26th January 2005, col. 1375).

The Lord Chancellor, Lord Falconer of Thoroton, in winding up the debate, said that over many years the House of Lords had by convention exercised restraint on the use of its nominal powers and those conventions, alongside the Parliament Acts, had guided and

determined its relationship with the Commons. He agreed with Lord Hunt of Kings Heath that uncertainty about the functions, powers and procedures of the House were bad for the House and for parliamentary democracy, but he also agreed with Lord Wakeham that there needed to be flexibility. As to the questions the Working Group's report raised about the conventions being dealt with by a non-legislative agreement approved by resolution of the House, Lord Falconer said that it was "better for the Government not to have a view in relation to the way in which this House would run its own affairs or pass particular resolutions in that regard" (HL *Hansard*, 26th January 2005, cols. 1378, 1382).

(xi) The Politeia pamphlet 'Working in Harness' by Lord Strathclyde, April 2005

In April 2005 Lord Strathclyde, Leader of the Opposition in the House of Lords, published a *Politeia* pamphlet, *Working in Harness: parliamentary government and the role of the Lords*, in which he developed the themes he talked about in his *Politeia* lecture in November 1999.

On the Salisbury doctrine he argued as follows:

Of course, it will remain the case that however constituted, even an elected House which is not fully elected or one in which, because of the longer terms of its members, mandates are more decayed, a second Chamber in our modern Parliamentary tradition should normally defer to the first.

But we have good existing procedures to allow that to happen and the Parliaments Acts as the final guarantee that the Commons can prevail.

The flexibility and effectiveness of present arrangements is not fully appreciated. In the 2003–4 session we even agreed to resurrect a Bill that the incompetence of John Prescott and his officials had caused technically to be lost. That was the responsible thing to do: a word most of us still understand. The glory of the British constitution has surely always been the flexibility of its unwritten nature – and its evolving conventions.

So even if the Salisbury Convention evolves or withers, as the hereditary Tory-dominated House that it was created to deal with fades in memory, there will still be ways, with a will, to ensure that the Queen's business should be carried on.

And the Lords must have a right to stand firm on issues like the overthrowing of Habeas Corpus and a permanent power to detain British citizens without trial.

It must have the right to be toughly and tenaciously sceptical about ideas, like the abolition of the office of Lord Chancellor, that are introduced with no Manifesto promise, no consultation, no forethought and no initial concern for the independence of the judiciary.

It is obvious to me also that the Salisbury doctrine never did and never should apply to on-the-hoof, in-a-huff legislation of this kind.

(pp. 15–16)

(xii) The DCA Paper, ‘Making a Difference’, May 2005

On 11th May 2005 the Department for Constitutional Affairs published a paper, *Making a Difference: Taking Forward Our Priorities*, setting out the Department’s policies in a number of areas, including “further reform of the House of Lords”. The paper stated:

Our steps to further reform the House of Lords will include a joint committee to review its conventions. This will be followed by legislation to change the procedures so that there is a maximum limit on the time bills stay in the upper house. We will remove the remaining hereditary peers and allow a free vote on the future composition of the House of Lords.

(Department for Constitutional Affairs, *Making a Difference: Taking Forward Our Priorities*, May 2005, p. 8)

At a press conference to introduce the Paper, the Lord Chancellor, Lord Falconer of Thoroton, was reported in the *Financial Times* as insisting that “although the Government wanted to codify the unwritten curbs on the Lords’ powers, it had no plans to legislate to enforce those restraints” (*Financial Times*, 12th May 2005, p. 2).

(xiii) The debate on the humble Address in reply to the Queen’s Speech in the House of Lords, May 2005

In the debate in the House of Lords on the humble Address in reply to the Queen’s Speech, a number of peers commented on the Salisbury doctrine.

On the first day of the debate, the Leader of the Liberal Democrats in the Lords, Lord McNally, questioned the current role of the convention:

If the Government move to reform with a real generosity of spirit and real desire to make something that sticks and gives a proper and good governance, they will have our support. Regarding what comes next, before the general election the Lord Chancellor put great emphasis on the Salisbury convention—that if it was in the Labour manifesto, that should be enough. I do not believe that a convention drawn up 60 years ago on relations between a wholly hereditary Conservative-dominated House and a Labour Government who had 48 per cent of the vote should apply in the same way to the position in which we find ourselves today.

I hope that the Lord Chancellor will approach the issue in a constructive way. However, if the Government’s aim is simply to clip the wings of this House, so that a Government who have already demonstrated hubris and impatience on any check to their powers check the powers of this House even further without proper reforms both down the corridor and in general governance, then Salisbury convention or no Salisbury convention, we will fight those proposals tooth and nail.

(HL *Hansard*, 17th May 2005, cols. 20–21)

On 23rd May 2005, continuing the debate on the Address, the Lord Chancellor, Lord Falconer of Thoroton, restated the proposals set out in the DCA Paper of 11th May 2005, *Making a Difference*. He said that the Government would bring forward measures to address four key elements in the continuing reform of the House. These included:

... a committee of both Houses to identify and set out the key conventions of the House and a reasonable time limit for Bills to proceed through the second Chamber. That limit – 60 sitting days – would not be less than the period which this House has taken to consider Bills in the past. It would not prevent this House amending or deleting parts of legislation in accordance with its current powers and conventions. The key elements also include removal of the remaining hereditary peers and a free vote on the composition of the House ... The Government are keen for there to be a proper process of deliberation and debate on all of these elements. Once that deliberation is complete, a Bill will be brought forward to give effect to the conclusions reached.

(HL *Hansard*, 23rd May 2005, cols. 243–244)

Baroness Anelay of St. Johns said that the Opposition would co-operate fully with the Joint Committee but “the remit of that committee must be far wider than that currently proposed by the Government. Any Joint Committee must be able to range over the functions and operations of both Houses and their joint relationship” (HL *Hansard*, 23rd May 2005, col. 247).

Lord Goodhart asked whether the proposed Joint Committee to consider the conventions governing the relationship between the two Houses would accept that the Salisbury convention was “long out of date” and should be scrapped. He continued: “It will not. I believe that the committee’s real purpose in the Government’s eyes is to give its blessing to the report of the Labour Back Benchers’ committee, chaired by ... Lord Hunt of Kings Heath” (HL *Hansard*, 23rd May 2005, col. 253).

Lord Sewel thought there was “a need to codify and reform our conventions, understandings and practices, in terms of both our relationship with the other House – in the context of Parliament as a whole – and of how we work in this Chamber” (HL *Hansard*, 23rd May 2005, col. 257).

Lord Thomas of Gresford rehearsed the history of the Salisbury doctrine, formed “towards the end of the Victorian period and reinstated in 1945” and thought the doctrine did not apply in “today’s very different conditions”. He said: “Of course, the elected Chamber will remain the superior Chamber, and, by and large, it should have its programme. It has, through the Parliament Acts, the instrument by which it can in the long term ensure that its will prevails ... The Government should not rely on an outdated convention but should argue for their programme on its merits”. He concluded by arguing that the manifesto was “just an advertising document containing various slogans but when the legislation comes forward it is in much more sinister terms. The Salisbury convention has run its day and should be abolished” (HL *Hansard*, 23rd May 2005, cols. 274–275).

Lord Donaldson of Lymington agreed with the Liberal Democrats that “the day of the Salisbury convention has come and gone ... the origin of the Salisbury convention was when

there was an overweening majority in this House, which has gone” (HL *Hansard*, 23rd May 2005, col. 290).

**(xiv) The debate on Parliament and the Legislative Process in the House of Lords,
6th June 2005**

On 6th June 2005 the House of Lords debated the report of the Lords Select Committee on the Constitution, *Parliament and the Legislative Process* (29th October 2004, HL Paper 173, 2003–04).

The former Government Chief Whip, Lord Carter, raised the issue of “the Salisbury/Addison convention” in the course of his speech. He said that Lord McNally “seems to have declared UDI” on the convention and went on to ask Lord Strathclyde to state the official Conservative Opposition view of the convention, pointing out that Lord Strathclyde “wrote to me before the 1997 election confirming that if Labour were to form the Government the Conservative Opposition would observe the Salisbury convention. Has that position changed?” (HL *Hansard*, 6th June 2005, cols. 735–736). Lord Carter concluded his speech by quoting from his own contribution to *Parliament in the 21st Century*, edited by Nicholas D. J. Baldwin (2005) as follows:

‘Whatever the eventual reformed composition of the Lords, whether appointed, elected, or a mixture of the two, the powers, procedures and conventions of the Lords will have to be re-examined ... There has to be a balance between the right of the Lords to revise and scrutinise legislation and, indeed, delay it, and the right of the elected Government to obtain its programme of legislation.

A settlement between the political parties in the two chambers in setting out the agreed modalities of the legislative process will have to be reached. To codify such a settlement completely in legislation is possible but this would be an inflexible solution. It would be better to reach agreement on a concordat setting out the relative powers of the two chambers of Parliament and the conventions which should govern the proper conduct of the Lords. Without such an agreement and understanding the House of Lords will have the considerable power of a House where the government of the day is always in the minority without the responsibility or accountability of an elected House where the majority party forms the Government.’

(HL *Hansard*, 6th June 2005, col. 736)

Replying to the point raised by Lord Carter, Lord McNally said:

Now to resurrect a 60 year-old convention that was offered by a Conservative-dominated hereditary House to a Labour government with 48 per cent. of the vote, and then to say that that should still apply to a Labour Party that is now the largest party in this House, but is a government with 36 per cent. of the vote, is stretching the limits of the convention ... If the Government wish to clip the wings of the House of Lords—and there are many hints to that effect—without making such actions part of a wider reform that would place other checks and balances on the power of the Executive, I shall use every power at my disposal, irrespective of the Salisbury

convention, to preserve those checks and balances. That is a proper approach and the continual plea to the Salisbury convention is the last refuge of legislative scoundrels.

(HL *Hansard*, 6th June 2005, cols. 759–760)

Lord Carter then interjected to ask Lord McNally how he reconciled this view with the statement he made in his contribution to *Parliament in the 21st Century* that he had no wish to challenge the primacy of the Commons. Lord McNally responded that it was reconcilable in that the supremacy of the Commons could not be challenged as the Parliament Act was in place (HL *Hansard*, 6th June 2005, col. 760).

Lord Strathclyde replied to Lord Carter's query about the Opposition's view on the Salisbury convention as follows:

... Lord Carter challenged me to say something about the Salisbury convention. He referred to the letter that I sent him before the 1997 election, when we had a House that was largely hereditary and the Conservative Party had about 40 per cent. of the membership. That House has now changed. As ... Lord McNally, explained, the Parliament Acts ensure that the Commons can prevail. But those Acts have rarely been used since this House does not seek to wreck core government legislation. That remains the position.

As I said, however, the House of the Salisbury convention does not exist any more. Today's House was created by this Government in 1999. Labour is now the largest party and no one sits by right of birth alone. Inevitably a different House will behave differently. The Government said at the time that it should be more assertive and so it has been. You cannot put the clock back to before 1999 or even as far back as 1945.

I am one of those who very much welcome the strengthening of this House and believe that the process should go further. But while I still accept the essence of Salisbury—namely, that the principle of Bills foreshadowed in the manifesto should be honoured—in this changed world, we will not allow the doctrine of a single party's manifestos to override the powers of this House or the pledges given to this House in 1999. I think that that very much echoes what has been said by ... Lord McNally. It is also worth noting that nothing within the Salisbury convention should stop this House from proposing, agreeing and improving amendments to manifesto Bills. After all, that is what we are for.

(HL *Hansard*, 6th June 2005, col. 763)

(xv) The Joint Committee on Conventions, May 2006

A Motion proposing the creation of a Joint Committee to consider codification of the key conventions on the relationship between the two Houses was introduced in the Lords on 25th April 2006 (HL *Hansard*, 25th April 2006, vol. 681, cols. 74-94). Having been agreed by the Lords, a similar Motion was introduced in the Commons on 10th May 2006, which included the naming of their Members of the committee (HC *Hansard*, 10th May 2006, vol. 446, cols. 436–474). Following the Commons agreement to the Motion, the Lords were then

invited to name their Members on 22nd May 2006 (HL *Hansard*, 22nd May 2006, vol. 682, cols. 582-596).

Lords debate, 25th April 2006

In the Lords the Motion to appoint a Joint Committee was introduced by the Lord President of the Council and Leader of the House, Baroness Amos. The Motion proposed that, accepting the primacy of the House of Commons, the Joint Committee should “consider the practicality of codifying the key conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation, in particular:

- (A) the Salisbury/Addison convention that the Lords does not vote against measures included in the governing party’s manifesto;
- (B) conventions on secondary legislation;
- (C) the convention that the government’s business in the Lords should be considered in reasonable time;
- (D) conventions governing the exchange of amendments to legislation between the two Houses;

and that the committee should report by Friday 21st July 2006” (HL *Hansard*, 25th April 2006, vol. 681, cols. 74–75).

In moving the Motion, Baroness Amos pointed out that “The Joint Committee will, of course, be free to consider other conventions which it thinks fall within its terms of reference” and that the Motion reflected the Government’s manifesto commitment to a review by a Joint Committee “ ‘to seek agreement on codifying the key conventions of the Lords’ ” (HL *Hansard*, 25th April 2006, vol. 681, col. 74).

Lord Cope of Berkeley, Opposition Chief Whip, said that as the proposal was in the Labour manifesto there had been discussions on the terms of reference between the parties and “we accept the terms set out in the resolution”. However, Lord Cope continued, some people saw this operation as one to limit the powers of the Lords. “They read codification of the conventions as some kind of code for restricting the powers. I point out that the terms of reference do not ask the new committee to consider or to propose any revision or modification of the conventions, only to consider the practicality of codifying the existing conventions. Some may, of course, be best left to conventions, which is a method that has served the British constitution well over many years. We see no case for restricting the powers of the present House. The argument about the powers of either House of the legislature is not that they are too strong, but they are too weak relative to the Executive, the Government” (HL *Hansard*, 25th April 2006, vol. 681, col. 75).

Lord Cope then pointed out that, as far as the committee was concerned, the first difficulty was what sort of codification. He recalled the report of the Labour Peers Working Group on House of Lords Reform, chaired by Lord Hunt of Kings Heath, which concluded that statutory codification would present drafting difficulties. They also realised that if that were the route chosen, future arguments about, for example, the interpretation of manifestos, would have to be fought out in the courts. Lord Cope thought that, instead of the statutory

route, the conventions could be set out in the Standing Orders of both Houses and in the *Companion* to the Standing Orders of the Lords and, in fact, the conventions on secondary legislation and ping-pong (B and D in the Motion) were currently set out to a great degree in Standing Orders and the *Companion* (HL *Hansard*, 25th April 2006, vol. 681, col. 75).

But, Lord Cope continued, as well as the problems of practicality and the desirability of codifying the conventions, the new Joint Committee would have to decide what the current conventions were. He said:

That is not a wholly straightforward matter. Anyone who thinks that Salisbury/Addison is a clear, well understood and established convention that can be stated in sentence or two simply has not looked into the matter. In the 1945 Parliament, a new formulation was evoked between the Labour and Conservative Parties, but the Liberal Party of the day and the Crossbenchers were not involved, and the convention, whatever it is, did not extend to them. In my case, we now live in a different era with a different House of Lords. There has been plenty of argument about how the convention applies now, if at all. The House then had a built-in Conservative majority; now no party has a majority. It was then entirely hereditary, but since then life peers have been introduced by the Conservatives and most of the hereditaries have been kicked out by Labour. It was then entirely male, but the Conservatives introduced female peers, both hereditary and for life ... When Salisbury/Addison has been debated in recent years, there has not been unanimity about its relevance or applicability today.

(HL *Hansard*, 25th April 2006, vol. 681, col. 75)

After commenting on the other conventions mentioned in the Motion, Lord Cope concluded that “the committee has a difficult but limited job. Some press leaks suggest that the codification of the conventions would provide a basis for the future if changes were to be made in the composition of the House. I do not believe that. If there were to be a change to a fully or substantially elected House, the conventions we are talking about would change too, whether or not they have been codified”. He quoted the example of the debates on ping-pong on the recent Identity Cards Bill, saying that the principle argument of the Minister, Baroness Scotland, was that the views of the elected House should prevail. But if the second Chamber were elected that argument would vanish and “indeed, it would work in the opposite direction and the convention of which we speak would be on the slide. So, whatever the Joint Committee proposes will not last beyond the present composition of the House” (HL *Hansard*, 25th April 2006, vol. 681, col. 77).

Lord McNally, Leader of the Liberal Democrat Peers, said:

It is known, certainly on my Benches, that when this committee was first proposed I was very reluctant for the Liberal Democrats to participate in it; not least because I thought it simply gave momentum to what was at that stage one of those Downing Street briefings – that the Prime Minister was determined to clip the wings of the House of Lords ... I have been willing to go along with this group because parallel with it is an initiative by the Lord Chancellor that will look at reform and composition, and I do not think that you can separate composition and powers in the way that the Government are trying to do. I do think that the useful analysis of the noble Lord, Lord Cope of Berkeley, has already established that the group will have

some difficult tasks to perform. The House of Lords, by one of those paradoxes of history, now has a higher reputation than perhaps at any time in the recent past, partly because it uses its limited powers prudently but constructively, and I am determined that it should retain the right to say no. Unless it retains that right we are on our way to a unicameral Parliament, with a debating Chamber at this end, and with that would come all threats of the elective dictatorship which Lord Hailsham warned us about 30 years ago

(HL *Hansard*, 25th April 2006, vol. 681, cols. 78-79)

Lord Williamson of Horton, Convenor of the Crossbench Peers, said that it would be a mistake to assume that there was something wrong in the current relations between the Houses and their respective powers, although other aspects of the House of Lords, such as the presence of hereditary peers or the question whether there should be an elected element were the subject of much debate and disagreement. On the subject – matter of the Motion, he believed the public were generally very satisfied with the performance of the House of Lords, and hoped that the Joint Committee would stay strictly within the proposed mandate to examine the practicality of codifying certain conventions and not change their substance (HL *Hansard*, 25th April 2006, vol. 681, col. 79)

Turning to the conventions, on the Salisbury/Addison convention Lord Williamson of Horton stated:

Of course I, like others, cannot forebear to mention that the Crossbench Peers were not party to the creation of the convention, although, like good soldiers, we have respected it. I recognise without reservation the force of the convention – namely, that the House of Lords should not reject a manifesto Bill of the democratically elected government, nor should it amend it in a way that would destroy or completely alter the measure. But it can, of course, in its normal revising role make working amendments which do not breach that principle. However, if there is to be any further codification, it would be desirable to identify more clearly what constitutes the core programme of the Government and to indicate to manifesto Bills in that programme.

(HL *Hansard*, 25th April 2006, vol. 681, cols. 79-80)

Lord Williamson concluded by pointing out a matter which, he said, was not directly a concern of the Joint Committee but was a backdrop to its considerations. “If in due course a decision is made to make this House a largely elected Chamber the primacy of the other House will remain. But its result would evidently be that the public would attribute to their Member of the House of Lords the same legitimacy in his or her parliamentary functions as they would attribute to a Member of the other House. To that extent the bicameral nature of our parliamentary system would perhaps be even more evident and worthy of protection than it is now” (HL *Hansard*, 25th April 2006, vol. 681, cols. 80-81).

Other peers also made various comments on the Salisbury Convention.

Lord Waddington, a former Leader of the House of Lords, said that the way the House was composed and the powers it was given must have a great bearing on the relevance and appropriateness of its conventions. Already there were differences of view and debate about the relevance of the Salisbury convention, now the House was no longer in any way like the

House that existed when the convention came into existence. When the composition of the House was changed again it would be appropriate to examine the Salisbury convention, but not now, when the future was uncertain (HL *Hansard*, 25th April 2006, vol. 681, col. 82).

Lord Phillips of Sudbury, Liberal Democrat Spokesperson on the Home Office, pointed out that the size of manifestos was growing, the last Labour Party manifesto being more than 100 pages long. To try to fix the Salisbury convention on every single statement within a massive manifesto was to dishonour the circumstances in which that convention was brought forward. It would be an extremely difficult issue for the Joint Committee to address in a manner that would lead to codification (HL *Hansard*, 25th April 2006, vol. 681, col. 82).

Lord Renton (Conservative) thought the conventions for consideration were “based on what was, not what is or what should be”, the Salisbury/Addison convention, for example being formulated when the House of Lords consisted entirely of the Bishops and hereditary peers. In considering the future of the House and that of the Commons it was necessary to change the conventions (HL *Hansard*, 25th April 2006, vol. 681, col. 83).

Lord Crickhowell (Conservative) said there were quite good reasons for reconsidering conventions such as Salisbury/Addison. He agreed with Lord Phillips of Sudbury that it would be absurd that every tiny reference in a vast manifesto should necessarily bind the House and prevent it voting on an important issue, particularly constitutional and electoral matters. He then referred, as an example, to the Government of Wales Bill, which contained very important changes to electoral arrangements and also provided for Orders in Council as a method of conducting primary legislation. He commented that the fact that somewhere in the Welsh manifesto a few sentences had been inserted which enabled Ministers to say that it was a Government manifesto commitment and that the House therefore could not stand in the way was very dangerous indeed. Lord Crickhowell concluded that it would be a profound mistake to codify existing conventions without considering their possibly very damaging impact (HL *Hansard*, 25th April 2006, vol. 681, col. 84).

Lord Bridges (Crossbencher) took up the point made by Lord Crickhowell in relation to the Government of Wales Bill, concerning “the effect of a commitment made in the Labour Party manifesto for the Welsh Assembly elections”. He went on to say:

The noble Lord, Lord Davies of Oldham, said in terms on 19th April, as reported at col. 1102 of *Hansard*, that the commitment that Assembly Members would not be available for appointment to fill a regional vacancy was to be regarded as a manifesto commitment in terms of the Salisbury convention, although the commitment was made in the manifesto issued in the context of the Welsh Assembly elections. So far as I know, until it was touched on by the noble Lord, Lord Crickhowell, this aspect has not been properly examined. Perhaps I may suggest that if we are to accept the terms of reference to the Joint Committee this point would merit [its] attention. If every political party were to raise an issue in the context of an election to a devolved assembly and not in its principal political manifesto, the assumption is likely to be made that the party did not regard the issue as one of national importance, however significant in the regional context.

(HL *Hansard*, 25th April 2006, vol. 681, col. 85)

Lord Richard, a former Leader of the House of Lords, said that a commitment made in the Labour Party manifesto for the Welsh Bill was not in respect of the Welsh Assembly election, but was in the Welsh manifesto issued for the general election, which put the matter in an entirely different context. The fact was that all parties did this: there was a national manifesto, a Welsh manifesto, a Scottish manifesto and probably one for Northern Ireland. In those circumstances it was impossible to argue that the matter was not a manifesto commitment, and if it was such a commitment the question the House had to ask itself was what effect that would have (HL *Hansard*, 25th April 2006, vol. 681, col. 85).

In response to Lord Richard's comments, Lord McNally asked whether he was now saying that the Salisbury convention applies to sub-manifestos as well, arguing that the legitimacy of the Salisbury convention was that a proposition had been put to the general electorate. But, Lord McNally asked, should the elector in County Durham be careful to ensure that there was nothing in the Welsh manifesto to which he or she objected? (HL *Hansard*, 25th April 2006, vol. 681, col. 86).

Lord Richard replied that it was extraordinary to propose that the population of Durham should have the final say on something that affected only Wales and the Assembly elections there. If the Welsh people had shown, by the election results, that they had appreciated the importance of a manifesto commitment then, under the terms of the Salisbury convention, the House should accept that (HL *Hansard*, 25th April 2006, col. 681, vol. 86).

Lord Tyler (Liberal Democrat) pointed out that the Salisbury/Addison convention had strict limitations. Not only was it a deal between two parties – rather than all the parties and the Crossbenchers – but, strictly speaking, it was a time-limited anachronism. For example, under the present electoral system the Government of the day, the governing party, could easily find themselves in office without the biggest single portion of the votes (HL *Hansard*, 25th April 2006, vol. 681, col. 878).

Winding up the debate, Baroness Amos said:

... the Joint Committee is being asked to consider the practicality of codifying the key conventions. In the Motion, a number of conventions have been established. This is the Government's way of trying to indicate the areas that we think it would be helpful for the Joint Committee to look at. What the conventions are, will be for the committee to establish. The proposed terms of reference are intended to give the Committee the maximum freedom to decide on the best course of action. The intention is not to tie the Committee down to any particular approach. One thing that the Committee might well wish to take as its starting point is the report published by the Royal Commission chaired by the noble Lord, Lord Wakeham, which looked at some of these issues.

(HL *Hansard*, 25th April 2006, vol. 681, col. 91)

Baroness Amos concluded by commenting on the process envisaged by the Government, which, she said, was set out in their manifesto. "The Government made it clear then that they were committed to a further free vote on composition. We would like that free vote to be informed by whatever comes out of the Joint Committee. That was always the intention, and it remains so. A number of speakers in the House this afternoon have indicated that they think the issue of composition comes before a discussion of what this House is here for. I do

not agree with that; it is important that we are clear about what we are here for and to do, which will then inform the issue of composition. Clearly there are two different views around the House. Since the Government's commitment to the Joint Committee and to the free vote on composition, my noble and learned friend the Lord Chancellor has begun a process of consultation with the parties, looking at the issue of composition to see if there is consensus which could inform that free vote. Those discussions are at an early stage" (HL *Hansard*, 25th April 2006, vol. 681, col.91).

The Motion was agreed by 179 votes to 95 (HL *Hansard*, 25th April 2006, vol. 681, col. 93).

Commons debate, 10th May 2006

A similarly worded Motion was tabled in the Commons by the Leader of the House, Jack Straw. In speaking to the Motion, Mr. Straw said that it fulfilled the commitment given by the Government in their manifesto last year and continued:

The focus of our debate is on the Joint Committee's terms of reference and its membership from the Commons, rather than the wider question of House of Lords reform, including the future composition of the upper House. However ... our debate takes place in the context of the commitment by all three principal parties and some of the minority parties to look at the composition and powers of the House of Lords. It was our judgement before the election – and it remains our judgment – that as the issue of the composition and thus the powers of the Lords were to be the subject of live debate in this Parliament it was essential that we establish a baseline by reaching a common understanding of the existing balance of powers between the Lords and the Commons.

I am talking not about the way in which the Lords manages itself – that is a matter for their Lordships and no one else – but about the extent to which the House of Lords seeks to check and balance the powers of the Commons. Both Houses have a legitimate interest in the matter and, ultimately, it is for the elected Chamber to make decisions. If there had not been any debate about that, if there had not been any argument in the country and if political parties had not sought to put the issue on the national agenda there would be no need for the Joint Committee. However, those issues arise periodically – they were live issues in the last Parliament – so there is cross-party determination to try to seek a consensus on the composition of the Lords. We therefore need prior agreement on powers, and we need a common understanding of the existing powers.

(HC *Hansard*, 10th May 2006, vol. 446, cols. 441–442)

Responding to remarks made by Richard Shepherd (Conservative), who had questioned the doctrine of the manifesto, Mr Straw said that the doctrine of the manifesto was the basis of our politics, and then explained how the Committee would operate:

The four conventions listed in the motion and other arrangements are already the subject of explanation in "Erskine May" and other authoritative textbooks.

Up to now, however, there has not been a description of those conventions by Members of this House and the other place, or an attempt to secure that. The

Committee that we establish may conclude that the conventions are impossible to describe in the words of the English language, but that would be astonishing. It is possible to describe the conventions and for the Committee to go on to make recommendations about the manner in which they might be codified. It is for the Committee to make recommendations, and for the House and the other place to dispose of the matter.

The manner in which the conventions could be codified ranges from a codification in the body of the Committee's report, to a code that has been negotiated by both Houses and which we endorse in resolutions, through to its inclusion in Standing Orders or its enshrinement in law. That is a subsequent matter.

(*HC Hansard*, 10th May 2006, vol. 446, col. 442)

Dr. Tony Wright, Chairman of the Public Administration Committee, interjected that as it was the nature of conventions to change and as the relationship between the Commons and the Lords was presently changing and would change even further and faster after the promised second stage of Lords reform, there was a practical difficulty in trying to freeze the definition of conventions at a moment in time, when they would necessarily be changed by what they did on a wider front (*HC Hansard* 10th May 2006, vol. 446, col. 444). Mr. Straw answered:

The question whether conventions are frozen relates to the question of the status of the Committee's recommendations and conclusions. The House might take the view that it should simply receive the report and for the time being not decide to elevate the description of the conventions into a document that has any greater status than that. My hon. Friend has made the case for setting a baseline. All hon. Members understand that if the composition of the other place is to change to any significant degree – in particular, by moving towards an elected element – it is bound to affect the balance of power between the two Houses. It is therefore as well for everybody to understand that we cannot have a discussion about composition without also acknowledging the crucial inter-relationship of powers. We might as well have an agreement about where we are starting from and what the common understanding is before we move on.

(*HC Hansard*, 10th May 2006, vol. 446, col. 445)

Mrs. Theresa May, Shadow Leader of the House of Commons, said:

On the basis that it represented a fulfilment of a manifesto commitment by the Labour party and on the basis of discussions between the parties, we supported the motion in the other place. I intend to support this motion, but, as has been made clear by Lord Strathclyde, the Leader of the Opposition in the other place, we do not accept any reduction in the powers of the House of Lords. It is on that basis that we have agreed to the establishment of the Committee. I therefore think it important to set out exactly what we understand it will do.

There has been some interaction between the Leader of the House and hon. Members, and indeed between hon. Members, on the Committee's role and on what its role should be. It is important to note that the terms of reference do not even ask it to

codify the conventions of the House of Lords: they ask it to consider the practicality of codifying the key conventions relating to the relationship between the two Houses, which is one step back from setting out the conventions in any form.

(*HC Hansard*, 10th May 2006, vol. 446, cols. 450–451)

Mrs. May continued that there was a danger that codification could remove the flexible relationship between the two Houses that enables better governance; indeed, in some cases, such a relationship enabled the Government to pass business that would be difficult to get through if the codification was as suggested in the Labour Party manifesto (*HC Hansard*, 10th May 2006, vol. 446, cols. 452–453).

Turning to the Salisbury/Addison convention, Mrs. May agreed with a point made by Richard Shepherd (Conservative) that there was a problem in defining manifesto commitments, saying:

It is one of the greatest problems that the Committee will face when considering the Salisbury-Addison convention. One example is the recent debate on the Identity Cards Act 2006, in which the Labour party's commitment to voluntary identity cards was challenged by the Opposition, because we believed that the manner in which they would be introduced effectively meant that they would be compulsory – because of the increasing requirement to hold a passport. If an identity card becomes automatic on having a passport, holding the identity card effectively becomes compulsory. That was a debate on the definitions of voluntary and compulsory in this House, and it shows how difficult it will be to define manifesto commitments ... Manifestos are often drawn very wide, so it is difficult for anyone to say exactly what was meant in terms of legislation. The danger is that codification will mean that decisions as to what such manifesto commitments mean are not taken by elected representatives in this House, but are left to lawyers, who will have to find a way through the problems caused by trying to codify the conventions. The Committee will face real difficulties in attempting such codification.

Why has this issue come up now, juxtaposed as it is with the whole question of House of Lords reform, ... The problem is that it is a circular argument. The hon. Member for Rhondda [Chris Bryant] said that form should follow function, but the problem is that function may be determined by form in relation to the House of Lords. The functions that one would anticipate an unelected House undertaking. Therefore, if one identified the function and then fit the form to it, the function might change once the form had been decided. I am sure that the hon. Gentleman will say that one has to break the circular argument at some point, but in this instance the function of the House of Lords will be determined by the form of the House of Lords.

(*HC Hansard*, 10th May 2006, vol. 446, col. 453)

Mrs. May concluded by asking whether, if the Committee decided that it was not practical to codify the conventions and did not produce recommendations for improving the present arrangements, the Government would undertake not to produce a unilateral Bill constraining the powers of the Lords. "That might achieve the same end by another means, but it would lead to confrontation with the House of Lords and with some Members of this House" (*HC Hansard*, 10th May 2006, vol. 446, col. 455).

David Heath, Liberal Democrat Spokesperson on Constitutional Affairs, said that the Liberal Democrats were extremely reluctant to enter into the arrangements for the Committee, explaining:

We were worried when the idea was first suggested by the Lord President of the Council because, at that time, it was proposed in isolation. There was no suggestion that we would make further progress on reform of the upper House, or that the Committee would form part of an integrated approach on the whole question of the relationship between the Houses. It was predicated on an assertion by the Prime Minister in an unguarded moment that he wished to clip the wings of the Lords. He was expressing irritation, which is frequently shared by Ministers and Government Back Benchers, that the House of Lords occasionally does not do exactly what the Government wish it to do when considering Bills.

(*HC Hansard*, 10th May 2006, vol. 446, col. 459)

Mr. Heath continued that it was impossible to divorce form and function in the House of Lords. “We cannot separate out the way in which we arrive at a composition for the House of Lords and what its function within Parliament will be. Nor can we divorce either of those considerations from the way in which we do our business in this place. Reform of the House of Commons is just as important as reform of the House of Lords” (*HC Hansard*, 10th May 2006, vol. 446, col. 461).

On the Salisbury convention, Mr. Heath thought it was “on the back of history. It was a cosy arrangement between the Conservative and Labour parties – our party was not a party to it, nor were the other parties – and it does not have any relevance to politics in this country. The day that we have justiciable manifestos is the day that we finally reach the asylum. Judges should not assume responsibility to interpret manifestos – if they did so, the proposal for compulsory ID cards would have been an instructive test case” (*HC Hansard*, 10th May 2006, vol. 446, col. 461).

William Cash (Conservative) interjected to ask whether Mr. Heath accepted that many people thought the Salisbury convention was not a convention at all, and that, with an elected House of Lords, the Salisbury convention and the credibility of the manifesto would fall. Mr. Heath replied that he agreed (*HC Hansard*, 10th May 2006, vol. 446, col. 461).

Mr. Heath continued that if the Committee were successful it would provide information for both Houses about codification. But he worried what the word “codification” meant, saying:

Does it mean “statute”? I hope not. The matter should not be bound by statute. If it is bound by statute, I would argue for much wider statutes – a proper written constitution in statute form, a proposition which I do not believe the Government are prepared to accept.

At the very least, however, I hope we arrive at a concordat – that is the present term of art between the two Houses – which will be derived from the future form and functions of the two Houses ... Those who argue vigorously for the primacy of this House and also argue vigorously for a largely or wholly elected element at the other end of the Corridor are deluding themselves. The two are not entirely compatible. We can say that this House has reserved competences, which may include the

formation of the Government from its number and as a result of its composition. We may argue that at the end of the day this House should win an argument between the two Houses, but we should understand that if we have an elected or predominantly elected second Chamber, it will have a legitimacy that it does not currently have.

(HC *Hansard*, 10th May 2006, vol. 446, col. 462)

When the House of Commons was asked again about House of Lords reform, concluded Mr. Heath, they had to have a much clearer view about what functions were properly reserved to the Commons and to the Lords and how the two interrelated and how to establish legitimacy for both Houses (HC *Hansard*, 10th May 2006, vol. 446, col. 463).

After further debate the Motion was agreed by 416 votes to 20 (Deferred division, HC *Hansard*, 17th May 2006, vol. 446, col. 1070).

The Joint Committee's First Special Report

On 25th May 2006 the Joint Committee on Conventions published its First Special Report (Joint Committee on Conventions, *First Special Report*, HL Paper 189, HC 1151, 2005-06, 25th May 2006).

The Committee considered that their deadline of reporting by 21st July 2006, was too short and invited both Houses to amend their orders of appointment, so as to make a final report by the end of the current Session (para. 3).

The Committee then set out their method of proceeding, pointing out that their inquiry was set in the context of a debate about House of Lords reform, their remit being to “seek consensus on the conventions applicable now, and to consider the practicality of codifying them”, but not to consider the composition of a future Second Chamber (para. 5) The Committee also stated that they assumed the House of Lords would retain its present self-regulatory procedures, and that codification would not involve giving new powers to the Lord Speaker (para. 6) nor involve increased oversight of Parliament by the courts (para. 7). The Committee did not offer a definition of “convention”, commenting: “We believe will know one when we see it” (para. 8).

The Committee then went on to list the questions to be answered in relation to each of the conventions they had been required to consider. On the Salisbury/Addison convention, the Committee state:

The Salisbury-Addison convention is described in the report of the Royal Commission on the Reform of the House of Lords (Cm 4534, 2000) as “an understanding that a ‘manifesto’ Bill, foreshadowed in the governing party’s most recent election manifesto and passed by the House of Commons, should not be opposed by the second chamber on Second or Third Reading” (para 4.21). The convention is also suggested to include the principle that the Lords will not pass wrecking amendments to such a Bill.

1. Is this an accurate description of the convention? Is it sufficiently comprehensive?

2. Can “manifesto bills” be properly identified? Is a manifesto an appropriate basis for codification?
3. Have there been any breaches of convention in this area?
4. How can the convention be codified? If it is codified, how can it be enforced?

(Joint Committee on Conventions, *First Special Report*, HL Paper 189, HC 1151, 2005–06, 25th May 2006. pages 4–5)

6. References

- A burning issue: party manifestos, *The Economist*, 25th January 1997
- A lordly plot to save their place, *The Independent*, 4th December 1996
- Adonis, Andrew, *Making Aristocracy Work: The Peerage and the Political System 1884–1914* (1993)
- Asquith, The Earl of Oxford and, *Fifty Years of Parliament* (1926)
- Attlee, Clement, *As It Happened* (1954)
- Bagehot, Walter, *The English Constitution* (1872)
- Baldwin, Nicholas D. J., ed., *Parliament in the 21st Century* (2005)
- Blake, Robert (Lord Blake), *Salisbury: The Man and his Policies* (1987)
- Blewett, Neal, *The Peers, the Parties and the People: The General Elections of 1910* (1972)
- Brazier, Rodney, *Constitutional Practice* (2nd ed., 1994)
- Brazier, Rodney, 'Defending the hereditaries: the Salisbury convention' [1998] PL 371
- Bromhead, P. A., *The House of Lords in Contemporary Politics, 1911–1957* (1958)
- Brooks, David (ed.), *The Destruction of Lord Rosebery: From the Diary of Sir Edward Hamilton, 1894–1895* (1986)
- Burridge, Trevor, *Clement Attlee: A Political Biography* (1985)
- Cannadine, David, *Aspects of Aristocracy: Grandeur and Decline in Modern Britain* (1994)
- Cannadine, David, *The Decline and Fall of the British Aristocracy* (1990)
- Carrington, Lord, *Reflect on Things Past: The Memoirs of Lord Carrington* (1988)
- Cecil, Lady Gwendolen, *Life of Robert, Marquis of Salisbury* (4 volumes, 1922 and 1932)
- Constitution Unit, *Reform of the House of Lords* (1996)
- Craig, F. W. S. (ed.), *British General Election Manifestos, 1900–1974* (1975)
- Cranborne, Viscount, *Speech on the Constitution to Politeia*, Conservative Party Press Notice 762/96 (December 1996)
- Cranborne, Viscount, *The Individual, the Constitution and the Tory Party* (1996)

Crewe, Marquess of, *Lord Rosebery* (2 volumes, 1931)

Department for Constitutional Affairs, *Constitutional reform: next steps for the House of Lords*, CP 14/03, September 2003

Department for Constitutional Affairs, *Making a Difference: Taking Forward Our Priorities*, May 2005

Egremont, Lord, Balfour: *A Life of Arthur James Balfour* (1980)

Elegantly put case tainted by romanticism, *The Times*, 5th December 1996

Emden, Cecil S., 'The Mandate in the Nineteenth Century', *Parliamentary Affairs*, vol. XI, 1957–58, pp. 260–272

Ensor, R. C. K., *England 1870–1914* (1936)

Epstein, Klaus, *The British Constitutional Crisis, 1909–1911* (1987)

FitzMaurice, Lord Edmond, *The Life of Granville George Leveson Gower, Second Earl Granville, 1815–1891* (2 volumes, 1905)

Green, E. H. H., *The Crisis of Conservatism: The Politics, Economics and Ideology of the British Conservative Party, 1880–1914* (1995)

Hanham, Harold (ed.), *The Nineteenth Century Constitution, 1815–1914: Documents and Commentary* (1969)

Harris, Marc Anthony, *Gladstone and the House of Lords: A Study in Political Conflict, 1860–94* (1978)

House of Lords Select Committee on the Constitution, *Parliament and the Legislative Process*, 29th October 2004, HL Paper 173, 2003–04

James, Robert Rhodes, *Rosebery: A Biography of Archibald Philip, Fifth Earl of Rosebery* (1963)

Jenkins of Hillhead, Lord, *Asquith* (1986)

Jenkins of Hillhead, Lord, *Gladstone* (1995)

Jenkins of Hillhead, Lord, *Mr Balfour's Poodle: An Account of the Struggle between the House of Lords and the Government of Mr Asquith* (1954)

Joint Committee on Conventions, *First Special Report*, HL Paper 189, HC 1151, 2005–06, 25 May 2006

Joint Committee on House of Lords Reform, *House of Lords Reform: First Report*, HL Paper 17, HC 171, 2002–03, December 2002

Joint Committee on House of Lords Reform, *House of Lords Reform: Second Report*, HL Paper 97, HC 668, 2002–03, April 2003

Jones, Harry, *Liberalism and the House of Lords: The Story of the Veto Battle, 1832–1911* (1912)

Kennedy, A. L., *Salisbury, 1830–1903: Portrait of a Statesman* (1953)

Labour peers hit back over reform warning, *The Scotsman*, 5th December 1996

Labour Peers Working Group on House of Lords Reform, *Reform of the Powers, Procedures and Conventions of the House of Lords*, 20th July 2004

Le May, G. H. L., *The Victorian Constitution: Conventions, Usages and Contingencies* (1979)

Leach, Arthur, 'The House of Lords', *Fortnightly Review*, vol. XXXII, New Series, 1882, pp. 359–60

Lord Chancellor's Department, *The House of Lords – Completing the Reform* (Cm 5291, November 2001)

MacKay, Ruddock, *Balfour: Intellectual Statesman* (1985)

Marriott, J. A. R., *English Political Institutions: An Introductory Study* (3rd ed., 1925)

Marsh, Peter, *The Discipline of Popular Government: Lord Salisbury's Domestic Statecraft, 1881–1902* (1978)

Marsh, Peter, 'Salisbury's definition of the powers of the Lords' (2003) *Parliamentary History*, pp. 91–99

Marshall, Geoffrey, *Constitutional Conventions: The Rules and Forms of Political Accountability* (1984)

Marshall, Geoffrey, *Constitutional Theory* (1971)

Minney, R. J., *Viscount Addison: Leader of the Lords* (1958)

Ministers press on with Lords reform, *Financial Times*, 12th May 2005

Morgan, Janet, *The House of Lords and the Labour Government, 1964–1970* (1975)

Morgan, Kenneth and Jane, *Portrait of a Progressive: The Political Career of Christopher, Viscount Addison*, (1980)

No half-way House: Labour mustn't do deals over Lords reform, *The Guardian*, 5th December 1996

Parliament Bill, 1947: Agreed Statement on Conclusion of Conference of Party Leaders, February–April 1948 (Cm 7380) (May 1948)

Peers plot downfall of voting reform, *The Daily Telegraph*, 3rd December 1996
Pulling, F. S., *The Life and Speeches of the Marquis of Salisbury* (2 volumes, 1885)

Ramm, Agatha, *The Political Correspondence of Mr Gladstone and Lord Granville, 1876–1886* (1962)

Report of the Constitutional Commission on options for a new Second Chamber, chaired by Lord Mackay of Clashfern, 16th April 1999

Royal Commission on the Reform of the House of Lords, *A House for the Future* (Cm 4534, January 2000)

Salisbury, 3rd Marquess of, ‘Constitutional Revision’, *National Review*, vol. 117 pp. 295–299 (November 1892)

Shannon, Richard, *The Age of Salisbury, 1881–1902: Unionism and Empire* (1996)

Smith, E. A., *The House of Lords in British Politics and Society, 1815–1911* (1992)

Smith, Paul (ed.), *Lord Salisbury on Politics: A Selection from his Articles in the Quarterly Review, 1860–1883* (1972)

Southern, David, ‘Lord Newton, the Conservative Peers and the Parliament Act of 1911’, *Peers, Politics and Power: The House of Lords, 1603–1911* eds. C. Jones and D. L. Jones (1986), pp. 527–540

Strathclyde, Lord, ‘Redefining the Boundaries between the Two Houses’, *Politeia Lecture*, 30th November 1999

Strathclyde, Lord, ‘Working in Harness: parliamentary government and the role of the Lords’, *Politeia Address Series No. 15*, April 2005

Taylor, Robert, *Lord Salisbury* (1975)

Weston, Corinne Comstock, *The House of Lords and Ideological Politics: Lord Salisbury’s Referendal Theory and the Conservative Party, 1846–1922* (1995)

Weston, Corinne Comstock, ‘Salisbury and the Lords, 1868–1895’, *Peers, Politics and Power: The House of Lords, 1603–1911*, eds. C. Jones and D. L. Jones (1986) pp. 461–488

Weston, Corinne Comstock, ‘The Liberal Leadership and the Lords’ veto, 1907–10’, *Peers, Politics and Power: The House of Lords, 1603–1911*, eds. C. Jones and D. L. Jones (1986) pp. 489–518

Woodward, Sir Llewellyn, *The Age of Reform, 1815–1870* (2 volumes, 1962)

Young, Kenneth, *Arthur James Balfour* (1963)