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Reform of the House of Lords
an analysis of, and the lessons to be learned from, a decade of attempts at reform

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Reform of the House of Lords: an analysis of, and the lessons to be learned from, a decade of attempts at reform.

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Mark Richard Ryan

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ABSTRACT

The reform of the House of Lords has bedevilled parliamentarians ever since the Preamble to the Parliament Act of 1911 stated that it was effectively a temporary measure pending the introduction of elected members. This Portfolio of Evidence examines the last decade or so of attempts at reform of the House of Lords and the lessons to be learned thereof. It traces the chronology from the Labour Government's 2007 White Paper and somewhat inconclusive parliamentary votes which followed, together with its 2008 White Paper based squarely on the Commons voting preferences for either a wholly or largely elected House. Following the 2010 General Election, the Coalition Government took on the mantle of implementing reform with a White Paper and Draft Bill which was subject to pre-legislative scrutiny by a Joint Committee. The fully fledged Bill which followed was formally abandoned shortly afterwards in the absence of any agreed House of Commons Programme Motion. Fundamental reform has been historically a very protracted business and it is clearly in abeyance for the immediate and foreseeable future. This political impasse is largely due to a lack of parliamentary consensus on how to complete reform, as demonstrated by the somewhat contradictory votes of 2007. One unique solution proffered by the author in one of his articles is that of holding a referendum to provide a definitive public position on this controversial and divisive issue. More modest small-scale reforms have, however, been achieved and the Critical Overview Document examines the recent history of these developments. It also considers in a wider sense the process of constitutional legislative reform partly through the prism of legislation connected to the House of Lords.

CRITICAL OVERVIEW OF PORTFOLIO OF EVIDENCE

INTRODUCTION

The author has taught the core foundation and mandatory undergraduate LLB module of Constitutional and Administrative Law at Coventry University for twenty years (and has acted as its Module Leader for the past 18 years). His ongoing research (listed in Appendix A) has always informed and shaped the delivery of this module's teaching, together with its assessments. The author's interest in, and foundation for, his research in the area of Constitutional Law is firmly rooted in his undergraduate degree of BA (Hons) Irish History, Politics and Society obtained at Magee University College, University of Ulster (awarded a 2.1 with a first class dissertation and awarded top of his year). As part of his degree he studied the areas of politics, British and comparative government/politics, as well as political theory. In addition, following his Master's Degree in Law at City University (in which his dissertation presciently examined the constitutional issue of the incorporation of the European Convention on Human Rights), in February 1993 the author was called to the Bar as a barrister at the Honourable Society of Gray's Inn. The practical element of his 2006 PGCE at University College Cardiff, University of Wales, involved teaching Public Law at Coventry University.

During his time lecturing at Coventry University the author has also taught Civil Liberties and Human Rights and more recently European Union Law (in particular, its constitutional and institutional aspects). He is currently the Module Leader of the undergraduate module entitled 'The Nature of Law', which involves teaching aspects of jurisprudence, including constitutional concepts and principles. Further, for a number of years he had been the Module Leader for a variety of undergraduate projects/dissertations – a number of which involved constitutional issues, both domestic and international. In 2010 and 2012 he was nominated by his undergraduate students for the award of the (national) lecturer of the year. In 2011 he was on the Coventry University shortlist of three from the whole university academic staff (across all university Faculties) having been nominated for *Most Inspirational Lecturer* at the University by his undergraduate students.

In terms of his academic research, all his writings are in the area of Public Law. His academic articles number 21 (with 13 in peer and 9 in non-peer reviewed journals), and over the last decade he has delivered many conference papers to the Public Law Section at the Society of Legal Scholars, together with 4 internal Coventry University conference papers as part of its Faculty Conference programme. Moreover, the author has actively engaged with the United Kingdom Parliament with 25 written submissions to a range of parliamentary select committees on various constitutional issues and has been quoted or footnoted in their subsequent reports. His latest submissions made in early 2017 were, fittingly, in relation to the current size of the House of Lords and the lessons to be learned from the EU referendum.

In terms of the links that he has forged with Parliament, on occasions the Political and Constitutional Reform Select Committee has contacted him directly to ask him to submit evidence (both written and oral). In July 2012 the author was specifically invited in his capacity as a constitutional expert to give oral evidence on the issue of improving the standards of legislation (his oral evidence was televised and printed verbatim in the Select Committee's report as well as being quoted in its main body). More recently, in early 2015 he was called to Parliament and thanked in person by the Chair of the Select Committee for the contributions that he had made to its deliberations during its parliamentary lifetime of 2010-15. In fact, he has been invited to the launch of two of its reports having submitted written evidence to them.[1] In 2008 the author was listed as a parliamentary expert (in respect of the United Kingdom) by the European Centre for Parliamentary Research and Documentation.

In addition to the above publications, the author has also written - without a sabbatical or study leave - a highly successful major textbook *Unlocking Constitutional and Administrative Law* [2] (with contributions from Dr Steve Foster) which has just had its fourth edition commissioned with a scheduled publication date of 2018. As a supplement to the three paper editions, five periodic online

[1] Political and Constitutional Reform Committee, *Prospects for codifying the relationship between central and local government* (HC 2012-13, 656-I) Ev w182; *A new Magna Carta?* (HC 2014-15, 463) and *Consultation on A new Magna Carta?* (HC 2014-15, 599) AMC0079.
[2] Mark Ryan & Steve Foster, *Constitutional and Administrative Law* (3rd edn, Taylor & Francis, 2014).

updates have also been provided in order to take account of developments in this highly topical and dynamic area of law. The content of the book covers the entirety of Public Law and includes references to aspects of constitutional reform in general whenever appropriate throughout the text. This textbook forms the basis of Coventry University's LLB Constitutional and Administrative Law module and was understood to be the bestselling text in its immediate bracket of competitors. This is evidence of the author's overall standing as a constitutional lawyer as it has always been well received academically as demonstrated by the review of the second edition in *The Law Teacher* by the Head of Law at Bradford University, Professor Christopher Gayle. He stated that lecturers should be happy to recommend it as a textbook. He commented that the book had a clear and logical layout, was user–friendly, accessible and that 'It stands alone as a very respectable text for use when the topics are being discussed, but also signposts further reading for the keener student'.[3]

The focus of the author's research in the last two decades has been in the area of Public Law and in particular, in the dynamic area of constitutional reform. Within the broad area of constitutional reform, although the author has written in the fields of human rights, the Supreme Court and fixed-term Parliaments, the overwhelming majority of his research has focused specifically on the reform of the House of Lords. His articles in this area have continuously charted the ebb and flow of the attempts (and failures) at reform. His academic articles in general have been referred to in various textbooks.[4]

All of the above illustrate that the author has acquired a national profile and reputation as an academic with a specialism and expertise in constitutional reform, which has enhanced the profile of Coventry University within academic circles. In addition, through his outreach to various parliamentary select committees, he has brought the University squarely to the attention of the United Kingdom Parliament. The author provides seven outputs (which comprise six

[3] (2011) 45 *The Law Teacher* 261, 262.

[4] For example in respect of the Fixed-term Parliaments Act 2011, see Alexander Horne and Andrew Le Sueur (eds) *Parliament: legislation and Accountability* (Hart, 2016) 67; John Alder *Constitutional and Administrative Law* (10th edn, Palgrave, 2015) 262 (designated as 'Further Reading') and Roger Masterman and Colin Murray *Exploring Constitutional and Administrative Law* (Pearson 2013) 293 described the article in Further Reading as an 'illuminating discussion' with a 'detailed and clear analysis' of the Act.

articles, together with a 2016 conference paper) as part of his Portfolio of Evidence. All these articles were published in peer-reviewed journals between the years of 2009 and 2015. In addition, these will be supported by other publications including parliamentary submissions and conference papers (these are all listed in Appendix A).

The Outputs are as follows:

(A) RYAN, MR 'A summary of the developments in the reform of the House of Lords since 2005' (2012) 21 Nott LJ 65.

(B) RYAN, MR 'The latest attempt at reform of the House of Lords - one step forward and another one back' (2013) 22 Nott LJ 1.

(C) RYAN, MR 'The Constitutional Reform and Governance Act 2010: The evolution and development of a constitutional Act' (2014) 35 *Liverpool Law Review* 233.

(D) RYAN, MR 'Bills of Steel: The House of Lords Reform Act 2014' [2015] PL 558.

(E) RYAN, MR 'A consensus on the reform of the House of Lords?' (2009) 60 NILQ 325.

(F) RYAN, MR 'A referendum on the reform of the House of Lords?' (2015) 66 NILQ 223.

(G) RYAN, MR 'The process of constitutional legislation - an analysis of six case studies' (paper bank of the SLS Conference at Oxford University 2016).

The rationale behind the above-listed order of Outputs is as follows. The author considered it important to distinguish between the two different types of Output presented. Accordingly, the 7 Outputs were divided into those which were published in peer-reviewed journals (ie Outputs A – F) which were listed first, whereas, in contrast, the 7th Output (Output G) was a conference paper - albeit that it had been published on the website of the Society of Legal Scholars and delivered orally to the Public Law section of the Conference. The author considered it important to differentiate and list the Outputs in this order, even though by doing so, the Output list did not follow exactly the sequence of the

Portfolio's sub-themes (as sub-theme 3 is connected to the final listed Output G). Nevertheless, the author considered that this did not in any way affect the integrity or overall structure and cohesion of the Portfolio.

The overall chronology of, and connection between, these 7 Outputs is detailed as follows. Outputs A and B were twin articles written over the course of two years and published in the same journal in consecutive annual volumes (ie 21 and 22). In this way they are necessarily connected by providing a narrative of the ebb and flow of attempts at fundamental reform (as developed through sub-theme 1). These Outputs were followed by the Outputs C and D, both of which were also concerned with the arc of attempts at reform, albeit in relation to smaller scale reform of the Lords. In turn, Outputs C and D were themselves intimately connected in that they analysed different timelines of interim Lords reform: Output C was focused specifically on the 2010 Constitutional Reform and Governance Bill/Act, whereas, Output D was based on the 2014 House of Lords Reform Act, albeit with appropriate earlier historical references. Together Outputs C and D (with elements of B) formed the basis of sub-theme 2. Accordingly, the first 4 Outputs are necessarily connected to one another (as are sub-themes 1 and 2).

Output E is historically, the earliest article written by the author as it was composed in light of the 2007 parliamentary votes and laid the foundation and direction for the rest of the Portfolio of Evidence to follow and build around. The Output analysed the issue of consensus on Lords reform (hence the inspiration for the rest of the Portfolio) explored through the prism of the 2007 parliamentary votes set out in sub-theme 4. This Output is also directly related to Output A in terms of the latter's reference to the 2007 votes. Output F was written after two years of research and provided a practical solution to the impasse on Lords reform. The sub-theme of holding a referendum, which is developed at length in Output F, in effect brings together the other sub-themes (and so by extension, the other Outputs) by providing a possible solution to the interminable issue of Lords reform. Finally, Output G, as noted, was a conference paper which formed the basis of sub-theme 3, which examined the general process of constitutional legislation, drawing upon legislation highlighted in other Outputs viz., the House

of Lords Reform Bill 2012 (Outputs A and B); the 2010 Constitutional Reform and Governance Bill (Output C) and the House of Lords Reform Bill 2014 (Output D).

AIMS AND OBJECTIVES

The overall theme of this Critical Overview Document is an analysis by the author to chronicle the attempts to realise long-term fundamental reform in the last decade or so. It also examined the issue of incremental reform, together with the process of legislative constitutional change with reference to Lords reform. The Document also considers the lack of political consensus on how to complete the reform of the second chamber and concludes with a solution offered to help resolve this political impasse.

The specific aims and objectives are set out in the following five sub-themes:

1. To add progressively to the boundaries of knowledge and research in relation to the historic narrative arc of governmental/parliamentary attempts at long-term reform of the House of Lords in the last decade.

This first sub-theme is supported mainly by the following combined twin publications in the Nottingham Law Journal: RYAN, MR 'A summary of the developments in the reform of the House of Lords since 2005.' (2012) 21 Nott LJ 65; and RYAN, MR 'The latest attempt at reform of the House of Lords - one step forward and another one back.' (2013) 22 Nott LJ 1.

2. To add progressively to the boundaries of knowledge and research in relation to the historic narrative arc of attempts at interim reform of the House of Lords in the last decade.

This second sub-theme is supported mainly by the following three publications: RYAN, MR 'Bills of Steel: The House of Lords Reform Act 2014.' [2015] PL 558; together with elements of the following two articles: RYAN, MR 'The latest attempt at reform of the House of Lords - one step forward and another one back.' (2013) 22 Nott LJ 1; and RYAN, MR 'The Constitutional Reform and Governance Act 2010: The evolution and development of a constitutional Act.' (2014) 35 *Liverpool Law Review* 233.

3 To add progressively to the boundaries of knowledge and research in relation to the process for legislative constitutional change, with reference to the House of Lords.

This sub-theme draws upon a conference paper delivered to the SLS at Oxford University in September 2016 which examined the parliamentary process of constitutional reform. This paper was available in the online SLS paper bank (it is the intention of the author that this piece will be ready for publication in due course in an appropriate legal or political science journal).

4 To examine critically the degree of consensus, if any, within Parliament in relation to the issue of fundamental reform of the House of Lords.

This fourth sub-theme is supported by the following publication: RYAN, MR 'A consensus on the reform of the House of Lords?' (2009) 60 NILQ 325.

5 To devise and proffer a solution in order to break the current (and historic) deadlock in relation to the issue of the long-term reform of the House of Lords.

This final sub-theme is supported mainly by the following publication of: RYAN, MR 'A referendum on the reform of the House of Lords?' (2015) 66 NILQ 223.

The above are supplemented by published articles in both refereed and non-refereed journals, but equally importantly by written submissions to parliamentary select committees with their reference in these reports. In addition, chapter 10 (viz., Parliament III: the House of Lords) of the author's textbook provides general background information relating to the House of Lords. All of these provide further evidence of the author's continued and sustained research in the area of House of Lords reform and a full list of publications is listed in Appendix A.

A REVIEW OF THE EXISTING LITERATURE ON THE REFORM OF THE HOUSE OF LORDS

Two points need to be made at the outset: first, the sources for the Portfolio of Evidence are not exclusively legal, but inter-disciplinary involving an inter-play to some extent between law and politics/political science/British Government. Second, given the constant developments in Lords reform in the last decade or so, the Portfolio's subject matter is of a particularly fast-moving nature. Source material, therefore, dates rapidly as it is unable to keep pace and capture the most recent narrative of events. This explains the seeming limited number of contemporaneous articles (especially legal ones) which track the most recent narrative of Lords reform. The origin of the literature can divided as follows**:**

- Academic literature involving books and journal articles (both legal and political);
- Publications of The Constitution Unit (an adjunct of University College London);
- Government Command papers;
- Parliamentary reports issued by select committees;
- Informational material from the libraries of both the House of Commons and the House of Lords.

The literature can also be divided into the following:

- Type A: Literature/sources relating to the British constitution in general which includes reference to the House of Lords (including an overview of reform);
- Type B: Literature/sources focusing exclusively on the House of Lords as a parliamentary chamber (including reform);
- Type C: Literature/sources on constitutional reform in general, but with reference to the reform of the House of Lords;
- Type D: Literature/sources focusing specifically on charting the history of the reform of the House of Lords.

Type A:

There are many standard textbooks on Public Law and although these texts examine the House of Lords as one of the institutions of State, owing to space, they only provide a very general reference to attempts at reform of the House of Lords, and moreover, this narrative dates rapidly. For example, in the most recent edition of the long-established text by Bradley, Ewing & Knight (*Constitutional and Administrative Law*),[5] little more than a page is provided on reform since 1999. Similarly, Oxford University's *English Public Law*[6] sets out only a cursory mention of reform comprising one paragraph for the ten year period of 1999-2008. In contrast, Loveland's text, *Constitutional Law, Administrative Law and Human Rights*[7] provides a fuller and historical narrative of reform, but declines to mention the 2007 parliamentary votes and is rather brief on the most recent dynamic events of 2010-14. In addition, the long awaited fourth edition of McEldowney's text[8] in 2016 provides only a few pages on recent reform.

In terms of Public Law sourcebooks, Fenwick's 2017 text[9] provides an impressive chapter on the House of Lords which includes coverage of the reform debate in a thematic, rather than strictly chronological way, and includes relevant documents. It unfortunately gives uneven treatment to events, as the 2007 votes merit a single line. As an aside, the sourcebook sets out a sizeable extract from one of the author's articles on Lords reform,[10] as well as quoting him elsewhere in the text.[11] The well-established Public Law sourcebook *British Government and the Constitution*[12] by Turpin and Tomkins, devotes only a few pages to reform. This

[5] Anthony Bradley, Keith Ewing and Christopher Knight, *Constitutional and Administrative Law* (16th edn, Pearson, 2015) 182ff. The author was referenced at page 247 in respect of his article on the Fixed-term Parliaments Act 2011.
[6] Dawn Oliver, 'The law of Parliament' in David Feldman (ed) *English Public Law* (2nd edn, OUP, 2009) 2.37.
[7] Ian Loveland, *Constitutional Law, Administrative Law and Human Rights* (7th edn, OUP, 2015) 183ff.
[8] John McEldowney, *Public Law* (4th edn, Sweet & Maxwell, 2016) 129ff.
[9] Helen Fenwick, Gavin Phillipson & Alexander Williams, *Text, Cases and Materials on Public Law and Human Rights* (4th edn, Routledge, 2017) chapter 9.
[10] ibid 390-1 in respect of his article in Public Law on the House of Lords Reform Act 2014.
[11] ibid 498 in respect of his article in Public Law on the Fixed-term Parliaments Act 2011.
[12] Colin Turpin and Adam Tomkins, *British Government and the Constitution* (7th edn, CUP, 2012) 656ff. The previous edition referenced the author's article on the Supreme Court: Mark Ryan, 'The House of Lords and the shaping of the Supreme Court' (2005) 56 NILQ 135, Colin Turpin and Adam Tomkins, *British Government and the Constitution* (6th edn, CUP, 2007) 126.

narrative ends with the 2011 Draft House of Lords Reform Bill, thereby rather neatly illustrating how rapidly source material can be overtaken by the most recent developments. In terms of much older and classic texts such as Hood Phillips,[13] though distinguished, these are of historic interest only in terms of the scope of this Portfolio. Finally, the author's own latest edition of his textbook[14] has a chapter devoted to the House of Lords, which concludes with an overview of recent reform up until 2013, although its next edition scheduled for 2018 will summarise developments up until December 2017.

In terms of the political sciences, the leading commentators King and Bogdanor have both published in the area of the House of Lords. King and his text *The British Constitution*[15] contained a chapter on the House of Lords with a few pages on reform with its commentary ending at 2007, and Bogdanor's even older text (re-printed in 2007) *The British constitution in the twentieth century*[16] ended at the even earlier reform timeline of 2000. His more recent 2009 text, *The New Constitution*[17] has a much fuller historical account and broader overview of reform in a chapter entitled 'A reformed House?', however, the period between 1997 to 2008 lacked real detail on this particularly eventful time.

As far as Type A journal publications are concerned, it is unsurprising that there is a lacuna of academic articles on the British constitution in general which include in-depth and comprehensive analysis of developments in House of Lords reform. By way of example, 'Public Law' is a quarterly legal journal which is the natural vehicle for all matters constitutional. However, although it has a periodic short section entitled 'Parliament', this only provides a somewhat terse account highlighting recent events in Parliament (including those in the House of Lords). Indeed, the dearth of information on Lords reform was neatly demonstrated by the fact that the author was unable to locate any detail on the 2007 parliamentary votes in any of the issues of the 2007 or 2008 editions of the journal. In contrast,

[13] O Hood Phillips and Jackson, *Constitutional and Administrative Law* (8th edn, Sweet & Maxwell, 2001) 190ff.
[14] (n 2) chapter 10.
[15] Anthony King, *The British Constitution* (OUP, 2007) chapter 12.
[16] Rhodri Walters, 'The House of Lords' in Vernon Bogdanor (ed), *The British constitution in the twentieth century* (OUP, 2007) chapter 6.
[17] Vernon Bogdanor, *The New British Constitution* (Hart, 2009) chapter 6.

the author's combined Outputs of E and A provided comprehensive and critical analysis of this development. Accordingly, the overall aspiration behind the author's Portfolio of works was to close the crucial gap in legal knowledge and critical analysis in existing legal journals (both legal and political), together with the lacuna identified in the textbooks above.

Type B:

Although now dated, one of the classic texts in historic terms to focus specifically on the House of Lords is Shell's *The House of Lords* (re-issued in 2013).[18] This provides an overview of composition, functions, powers and reform, with coverage of the latter being supplemented by a 2007 Addendum to summarise briefly the period of 2006-07. Professor Russell's more recent text *The contemporary House of Lords*[19] authoritatively focuses on the chamber post 1999 and includes a specific chapter entitled 'The politics of Lords reform', which ends its narrative at events in mid-2013.

Although there are some journal articles in respect of Type B publications (ie articles exclusively on the House of Lords as a parliamentary chamber), these have been written in the areas of, for example: its powers,[20] composition,[21] or the (now defunct) judicial aspect of the House.[22] As noted, overall, the author in his Portfolio of works has endeavoured to fill the vacuum in the lack of contemporary articles devoted to developments in Lords reform.

Type C:

There are a number of generic books on constitutional reform which examine the reform of the British constitution as a whole, but include detail on Lords reform.

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[18] Donald Shell, *The House of Lords* (Manchester University Press, 2013). See also, Donald Shell, *The House of Lords* (Hemel Hempstead, 1992).

[19] Meg Russell, *The contemporary House of Lords: Westminster Bicameralism revived* (OUP, 2013).

[20] For example, Denis Carter, 'The Powers and Conventions of the House of Lords' (2003) 74 *Political Quarterly* 319. See also Meg Russell and Maria Sciara, 'The Policy Impact of Defeats in the House of Lords' (2008) 10 *British Journal of Politics and International Relations* 571.

[21] For example in relation to the spiritual element, see Anna Harlow, Frank Cranmer and Norman Doe, 'Bishops in the House of Lords: a critical analysis' [2008] PL 490.

[22] For example, see Brice Dickson, 'The processing of appeals in the House of Lords' (2007) 123 LQR 571 and the author's article on the creation of the new Supreme Court: Ryan, 'The House of Lords and the shaping of the Supreme Court' (n 12).

These include the now somewhat dated Bogdanor's *Power and the People*[23] in 1997 and Blackburn and Plant's *Constitutional Reform*[24] two years later. In addition, Brazier's *Constitutional Reform* [25] contains a chapter entitled 'The Second-Chamber paradox', but is of limited value to the Portfolio as it only covers events up until 2007. Indeed, even in the most recent edition of *The Changing Constitution,*[26] the Lords reform developments between 1997 and 2014 account for only two pages. Similarly, in terms of a general historical account and development of the constitution, Lyon's 2015 text[27] sets out the most recent period of Lords reform in a matter of pages.

The Constitution Unit has expertise of reporting on all aspects of constitutional reform, including that of the House of Lords. The Unit issues apposite reports and briefings on issues as they arise. By way of example, in 2011 it produced an invaluable report addressing the issue of the excessive number of peers.[28] It also produces a regular bulletin called *The Monitor* which provides a brief summary of the most recent constitutional events (including those relating to the House of Lords),[29] and in recent years, has been supplemented by an online blog. The Unit's reports, briefings and publications are regularly referred to by both parliamentarians and academics. In fact, the leading expert on reform of the House of Lords, Professor Meg Russell (who is now Deputy Head of the Constitution Unit), has written extensively in the area of Lords reform for the last two decades and is referenced frequently by academics and select committee/ parliamentary publications.

In terms of Type C articles concerned with constitutional reform in general, it is

[23] Vernon Bogdanor, *Power and the People: A guide to constitutional reform* (Victor Gollancz, 1997) chapter 4.
[24] Robert Blackburn, 'The House of Lords' in Robert Blackburn and Raymond Plant (eds), *Constitutional Reform: The Labour Government's constitutional reform agenda* (Longman, 1999) chapter 1.
[25] Rodney Brazier, *Constitutional reform: Reshaping the British Political System* (3rd edn, OUP, 2008) chapter 5.
[26] Lord Norton, 'Parliament: A new assertiveness?' in Jeffrey Jowell, Dawn Oliver and Colm O'Cinneide (eds), *The Changing Constitution* (8th edn, OUP, 2015) 189-90.
[27] Ann Lyon, *The constitutional history of the UK* (2nd edn, Routledge, 2016) 419-422.
[28] Meg Russell, et al, *House Full, time to get a grip on Lords appointments* (The Constitution Unit, 2011).
[29] For example on the House of Lords Reform Act 2014, see *The Constitution Unit*/*Monitor* 57/June 2014 'Parliament: A Lords reform finally happened: but who knew?' 3. http://www.ucl.ac.uk/constitution-unit/publications [last accessed July 18 2015].

not a surprise that there exists a lacuna of generic journal articles on constitutional reform which include comprehensive reference to Lords reform. This is no doubt partly due to its subject matter being both dynamic and complex, as it can only be truly understood in its full historical and political context. In relation to the process of constitutional reform, although there is existing authoritative work[30] on the procedural aspects of the passage of Bills of a constitutional nature, it is now somewhat dated (ie it related to 1997-2005). Accordingly, the author in Output G attempted to fill the vacuum in respect of more contemporary legislation with a critical analysis of the comparative parliamentary process of six constitutional Bills dating from 2005 to 2016 (most of which were connected to the House of Lords). In this way the author has added to the legal and parliamentary knowledge on the legislative process for constitutional reform. The unique nature of this Output is demonstrated by the fact that that no journal article (legal or political) has subjected these selected Bills to focused examination and in doing so, revealed the vagaries of the parliamentary process for these measures.

In terms of the general constitutional process of reform, the author's Output F to some extent bridged the gap between the literature and sources of Types C and D. This Output proposed a bespoke resolution to the interminable problem of Lords reform through the constitutional mechanism of holding a referendum in order that the constitutional reform process could be determined by means of direct democracy. Such is the unique and innovative nature of the Output, that the author is unaware of any modern academic journal article (legal or otherwise) which has proposed and substantiated a case for a referendum on the reform of the House of Lords as a practical solution to the political impasse on this issue.

Type D:

This type of source is naturally highly specialist. One of the most recent texts is Dorey and Kelso's *House of Lords reform since 1911*,[31] which provided a comprehensive chronological history of reform from 1911, albeit the detail is a

[30] Robert Hazell, 'Time for a new convention; parliamentary scrutiny of constitutional bills 1997-2005' [2006] PL 247.

[31] Peter Dorey and Alexandra Kelso, *House of Lords reform since 1911: Must the Lords go?* (Palgrave Macmillan, 2011) 208-216.

little sparse on the period of 2005 to 2010. Similarly, Ballinger's *The House of Lords 1911-2011*[32] captures twentieth century reform in detail, together with some narrative from 2005 to the 2012 House of Lords Reform Bill. In 2011 a highly specialist collection of essays relating to the 2011 Draft Bill was published with Fitzpatrick as its editor.[33] Other books specifically on Lords reform include the classic *Reforming the House of Lords lessons from overseas* [34] by Russell, who placed reform in a comparative context. A slightly older textbook is Richard & Welfare's *Unfinished business*[35] which concludes reform just at the start of 1999. At the time of writing, it is rather propitious that in late June 2017, Norton published a brief guide to the reform of the House Lords.[36] This evidently drew upon his earlier work in 1982[37] and provided an interesting and novel thematic approach based on the four R's: *Retain, Reform, Replace, Remove altogether*. Although it provides a summary of events, this is necessarily brief in line with the nature of the book as part of its '*Pocket Politics*' series. Finally, from a purely historical perspective, in 2015 the fourth volume of Raina's history of the House of Lords[38] was published, which brought together related reform documents.

The libraries of both the House of Lords and Commons periodically produce reports on matters relating to Lords reform, an illustration being the very useful report on the votes of MPs on Lords reform in 2007.[39] In addition, Governments of all hues have issued Command Papers, typically in the form of a White Paper (for example, the Labour Government's paper in 2007).[40] In addition, select committees from both Houses, as well as joint ones, have published a number of apposite reports. For the purposes of the ambit of this Portfolio, however, the work of the (now defunct) House of Commons Political and Constitutional Reform Select Committee has been particularly valuable, for example, on interim Lords

[32] Chris Ballinger, *The House of Lords 1911-2011: A century of non-reform* (Hart, 2012) 195-210.
[33] Alexandra Fitzpatrick, *The end of the peer show? Responses to the draft bill on Lords reform* (CentreForum, 2011).
[34] Meg Russell, *Reforming the House of Lords: Lessons from overseas* (OUP, 2000).
[35] Ivor Richard and Damien Welfare, *Unfinished Business: Reforming the House of Lords* (Vintage 1999).
[36] Phillip Norton, *Reform of the House of Lords* (Manchester University Press, 2017).
[37] Phillip Norton, The Constitution in Flux (Martin Robertson, 1982), chapter 6.
[38] Peter Raina (ed), *House of Lords Reform: A history, Volume 4 1971-2014* (Peter Lang, 2015).
[39] Richard Cracknell, *Commons divisions on House of Lords Reform: March 2007* (SN/SG/4279, House of Commons Library, 2007).
[40] HM Government, *The House of Lords: Reform* (Cm 7027, 2007).

reform.[41] The publications of the above punctuate the author's Outputs and are mentioned throughout the Portfolio of Evidence where appropriate.

Finally, in terms of academic journal articles, although there have been individual publications on aspects of the developments in respect of the reform of the House of Lords (for example, McClean et al on the 2003 votes in the Commons),[42] these have been somewhat *ad hoc* pieces and have been referenced where relevant in the author's Outputs. Moreover, these have tended to be published in political science journals,[43] rather than purely legal ones. In fact, in terms of the decade or so covered by the timeline of this Portfolio, there has been an evident lacuna in journal articles focusing exclusively on the reform of the House of Lords. As noted, this is no doubt partly due to the ephemeral nature and ever-shifting pace of the subject matter. By way of illustration of the gap in knowledge and understanding of Lords reform, in the journal Public Law (which by its constitutional nature would be a natural repository for articles on the House of Lords), the author could only identify a handful of articles between 2007 and 2015 related to the House of Lords. These included a somewhat broad piece on reform by Lord Bingham which floated a proposal to replace the House with a 'Council of the Realm',[44] as well as an article on the contribution of the Bishops in the chamber (identified earlier in Type B).[45] Indeed, it is rather fitting for the purposes of the Portfolio that during this period, the only piece relating to contemporary concrete proposals for Lords reform in the journal was written by the author (on the 2014 House of Lords Reform Act).[46]

In short, there is no single authored contemporaneous journal article (legal or otherwise) which connected, charted and integrated a timeline for the key period of 2005- 2013 in respect of attempts at fundamental reform of the House of Lords. Outputs A and B of the author filled that lacuna by providing a full

[41] Political and Constitutional Reform Select Committee, *House of Lords reform: what next?* (HC 2013-14, 251-I)
[42] Iain Mclean, Arthur Stirling and Meg Russell, 'None of the above, the UK House of Commons votes on reforming the House of Lords, February 2003' (2003) 74 *Political Quarterly* 298.
[43] For example in the Political Quarterly, see Edward Pearce, 'An elected upper House and other fallacies' (2009) 80 *Political Quarterly* 495 and Meg Russell, 'House of Lords reform: Are we nearly there yet?' (2009) *Political Quarterly* 119.
[44] Lord Bingham. 'The House of Lords: its future?' [2010] PL 261.
[45] Harlow, 'Bishops in the House of Lords: a critical analysis' (n 21).
[46] Mark Ryan, 'Bills of Steel: The House of Lords Reform Act 2014' [2015] PL 558.

synthesis of the attempts at wholesale reform during those years. Furthermore, Output E examined in comprehensive detail the 2007 parliamentary votes and its originality is underscored with there being no other legal article which examined, interpreted and analysed the underlying patterns of these votes. Similarly, in respect of the timeline of interim reform (ie 2007-2015), Outputs C and D provided a full and original synthesis of the attempts to achieve small-scale changes. Indeed, Output C stands alone as an article providing a comprehensive and critical examination of the Constitutional Reform and Governance Act 2010 and Output D was the only detailed contemporary article published on the House of Lords Reform Act 2014.[47] In conclusion, the collection of works contained in the author's Portfolio have provided an invaluable contribution to the issue of Lords reform and helped close the gap in knowledge and understanding in both textbooks and journal articles.

[47] The other (brief) paper was Neil Parpworth, 'The House of Lords Reform Act 2014' (2014) CILExJ 43-4.

RESEARCH METHODOLOGY

In broad overview, the methodology employed involved a doctrinal, integrated and qualitative approach using both primary and secondary sources. The Critical Overview Document involves five inter-connected, sub-themes within the overarching common theme of reform of the House of Lords. In general, the methodology employed, and sources utilised, was to some extent tailored to each of the various discrete sub-themes. Furthermore, at the outset it must be emphasised that there are, of course, difficulties in providing a methodology in view of the inherent (and necessarily) retrospective nature of works written over a number of years, which are thereafter drawn together and compiled - and then connected - in a Portfolio of works.

In terms of primary sources, the general methodology involved identifying parliamentary legislative measures pertinent to the reform of the House of Lords, together with selected general constitutional reform measures. The Bills located included both those in draft form, as well as those which were fully-fledged (some of which also became Acts). The origin of the Bills examined also differed in that they comprised both those introduced by the Government (ie Public Bills), as well as those drafted by backbenchers in both Houses (ie Private Member's Bills). The detail, context and implications of these Bills - including apposite extracted specified clauses - were analysed and critiqued.

The general methodology also made invaluable use of a wide range of secondary material obtained from various sources which were synthesised with the primary sources in order to supplement and contextualise these primary materials. The academic treatment of the secondary sources involved examining and interpreting official parliamentary debates, motions and voting lists detailed in *Hansard,* together with an analysis of the reports and findings of various select committees. In terms of the latter, this also included utilising apposite parliamentary submissions (written and oral) made by the author to support his contentions. These were supplemented by an evaluation of a range of pertinent papers and briefings from the libraries of the House of Lords and House of Commons. In addition, Government papers in the form of a number of Command Papers (White and Green) were critically examined, together with party political

materials in the form of general election manifestos and the 2010 Coalition Agreement. Finally, publications drawn from the Constitution Unit, together with appropriate academic opinions and articles, were evaluated and integrated with the aforementioned sources. Given the nature of a Portfolio of works, of necessity, these academic articles included the author's own publications (Outputs A to F), but was not confined simply to the Outputs listed, as it included other works of his as well.

These primary and secondary sources were interwoven and synthesised to identify and create a full historic and analytical narrative connecting the complex series of attempts at both fundamental and more small-scale reform of the House of Lords (Outputs A to D). In order to uncover original detail relating to the comparative parliamentary passage of constitutional reform Bills; six measures were selected for scrutiny. Using mainly parliamentary and Government materials, these Bills were then critically examined in order to assess and critique their compliance with a transposed bespoke procedural checklist recommended by a House of Lords select committee. The results of this research were compiled in a number of originally constructed Tables in which the findings were displayed in comparative format (Output G).

The parliamentary voting figures on a range of options for Lords reform were located in *Hansard* and thereafter the voting patterns extracted, cross-referenced and interpreted in order to arrive at a conclusion about a consensus, or otherwise, on completing long-term reform. In addition, through the prism of parliamentary and Government sources in particular, the arguments for and against an elected House (and Lords reform in general) were extracted, analysed and critiqued (Output E). Finally, the recommendation of a parliamentary Joint Committee which had adopted the author's suggestion for holding a referendum on Lords reform was explored in detail. This drew upon a range of secondary sources, but made particular use of academic journals (especially political ones) in the area of referendums and democratic principles. These issues of constitutional, legal and political theory were then analysed and synthesised. In this way, it was somewhat more inter-disciplinary than the other strands of the Portfolio, but was necessary in order to contextualise some of the theoretical arguments for a referendum (Output F).

THE AUTHOR'S RESEARCH AND PUBLICATIONS IN THE AREA OF THE REFORM OF THE HOUSE OF LORDS

1. A narrative arc and synthesis of long-term reform of the House of Lords 2005-2013

This first sub–theme provides an historic chronological narrative which connects and synthesises the various attempts at reform of the House of Lords in the last decade or so commencing in 2005. As an aside, that year also witnessed a structural reform of the House with the enactment of the Constitutional Reform Act. This provided for the creation of a separate Supreme Court and the passage of the judicial aspect of this legislation was examined in a lengthy article in Northern Ireland Legal Quarterly.[48] The period covering 2005-2012 is examined in the author's article which was published in Nottingham Law Journal[49] (hereafter Output A). The significant developments which followed during the dynamic period of 2012-13 are analysed in a second follow-up article (Output B).[50] In fact, Output A was specifically accepted by Nottingham Law Journal on the understanding that it would form part of an overall two-part integrated chronicle of reform. In this way, Outputs A & B are inextricably linked. The author understands that there are no contemporaneous legal journal articles which synthesised, analysed and chartered this period. These twin Outputs, therefore, provide an original and invaluable contribution to the debate on Lords reform.

The starting point for Output A was the Labour Party's 2005 General Election manifesto[51] which promised to proceed with reforming the House of Lords by

[48] See Ryan, 'The House of Lords and the shaping of the Supreme Court' (n 12). This article was based on written evidence submitted in April 2004 to the House of Lords Select Committee on the Constitutional Reform Bill, *Constitutional Reform Bill* (HL 2003-04, 125-II) 401. In November 2007 this article was referred to by the Master of the Rolls in a lecture delivered at Hertfordshire University and also that year was quoted by Dickson 'The processing of appeals in the House of Lords' (n 22) at footnote 26. For an earlier and briefer article on the Supreme Court written prior to the Bill proceeding to the statute book, see Mark Ryan, 'A Supreme Court for the United Kingdom?' (2004) 17 *Talking Politics* 18.

[49] Mark Ryan, 'A summary of the developments in the reform of the House of Lords since 2005' (2012) 21 Nott LJ 65.

[50] Mark Ryan, 'The latest attempt at reform of the House of Lords - one step forward and another one back' (2013) 22 Nott LJ 1.

[51] Labour Party Manifesto 2005, *Britain Forward not back* (Labour Party, 2005) 110.

including a free vote on how it should be composed. In due course, in February 2007,[52] the Labour Government published its third White Paper on Lords reform, which followed on from those previously issued in 1999[53] and 2001,[54] together with a 2003 Consultation Paper.[55] The purpose of the 2007 White Paper was to set the context for the parliamentary votes scheduled to take place one month later on the future composition of a fully reformed House of Lords. The Paper mooted that if a hybrid option was to be adopted, once it had bedded down, it could have its proportions reviewed, which as the author argued, implied that this hybrid option was an inherently unstable constitutional solution.[56] The series of votes which followed in both Houses in March 2007 embraced a range of options from a wholly appointed House through to an elected one, with hybrid options in between. In fact, these models were the same as those voted on by Parliament in the previous parliamentary vote in early 2003[57] (which had been preceded by a Joint Committee).[58] The problem with the outcome of the 2007 votes was that there was disagreement between the two Houses, as although the Commons had voted for an 80 per cent and a fully elected chamber, the Lords had voted overwhelmingly for a fully appointed House. A detailed analysis of the consensus, or otherwise, of these votes is examined in sub-theme 4.

Output A then moved on to critique the broad principles detailed in the Labour

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[52] (n 40).

[53] HM Government, *Modernising Parliament: Reforming the House of Lords* (Cm 4183, 1999). On this White Paper (and the 1999 House of Lords Bill), see Mark Ryan, 'Reforming the House of Lords - A deceptively simple process?' (1999) 4 *Coventry Law Journal* 5. On the 2000 Royal Commission which followed the White Paper, see Mark Ryan, 'The Royal Commission on the reform of the second chamber: A case of constitutional evolution rather than revolution' (2000) 5 *Coventry Law Journal* 27.

[54] HM Government, *Completing the reform, A Government White Paper* (Cm 5291, 2001).

[55] HM Government, *Government Consultation paper, constitutional reform: Next steps for the House of Lords* (CP 14/03, 2003). On this paper see Mark Ryan, 'Reforming the House of Lords: A 2004 update' (2004) 38 *Law Teacher* 255.

[56] Ryan, A summary of the developments in the reform of the House of Lords since 2005' (n 49) 66 and Ryan, 'The latest attempt at reform of the House of Lords' (n 50) 4.

[57] For an analysis of these votes see M Ryan, 'Parliament and the Joint Committee on House of Lords reform' (2003) 37 *Law Teacher* 310. Also see Mclean, et al, 'None of the above, the UK House of Commons votes on reforming the House of Lords, February 2003' (n 42).

[58] Joint Committee on House of Lords Reform, *House of Lords Reform (first report)* (2001-2002, HL 17, HC 171). On this report see Mark Ryan, 'The House of Lords: Options for reform' (2003) 16 *Talking Politics* 29.

Government's 2008 White Paper[59] which followed on directly from the above votes. The Government invited responses to the contents and the author duly made a written submission. For this he received a personal detailed three-page reply from the Constitutional Settlement Division of the Ministry of Justice which responded point by point to his critique, and thanked him for his views which would be used to help inform the reform process.[60] The 2008 White Paper was framed purely by the votes cast by MPs in March 2007 with the result that the options for reform were confined solely to either a wholly or a largely elected chamber. The author was critical of the Labour Government's failure to provide a clear steer to Parliament or the public as to which of these models was preferable. This was because these two options were not merely differences of degree, but instead different in kind (i.e. the principle of absolutism versus hybridity), and so represented fundamentally different constitutional propositions.[61] This point was also made by the author in his submission to the Ministry of Justice, which resulted in the reply that the White Paper had simply not taken a view between these two options.[62] Output A then set out the various elements of the composition (e.g. staggered long-terms, etc.), and the author was critical that the Government had failed to put forward its preferred electoral system.[63]

The 2008 White Paper stated that the 'Next steps' were for a manifesto commitment to be formulated for the next General Election. The period of 2009-10, however, involved an (albeit largely unsuccessful) attempt at more modest reform via the vehicle of the Labour Government's 2009-10 Constitutional Reform and Governance Bill, which is examined in the first aspect of sub-theme 2. After the inconclusive result of the 2010 General Election, the Coalition Government agreed to establish a cross-party committee on House of Lords reform,[64] which

[59] Ministry of Justice, *An Elected Second Chamber: Further reform of the House of Lords* (Cm 7438, 2008). The author examined this paper in the New Law Journal (and formed its lead article), Mark Ryan, 'The House that Jack built.' (2008) 158 NLJ 1197.
[60] Mark Ryan, Submission to the Ministry of Justice (19 November 2008) and its response: Letter from Eileen Vagg (House of Lords Reform Team) to Mark Ryan (17 December 2008).
[61] Ryan, 'A summary of the developments in the reform of the House of Lords since 2005' (n 49) 67.
[62] Letter from Eileen Vagg (n 60).
[63] Ryan, 'A summary of the developments in the reform of the House of Lords since 2005' (n 49) 67.
[64] The Cabinet Office, *The Coalition: our programme for government* (2010) 27.

in due course produced a White Paper which included a Draft House of Lords Reform Bill.[65]

Output A then surveyed the key elements of the Draft Bill which the author regarded as hardly authoritative given that it was hedged with reservations. The Draft included a hybrid chamber of 300 members, serving single terms amounting to around three parliaments (i.e. electoral periods). The author identified that shortly after the publication of this White Paper, the problem of variable parliaments had to some extent been resolved with the enactment of the Fixed-term Parliaments Act 2011 which introduced five-year fixed terms.[66] The Draft Bill prescribed no extra legal powers for the House and the author pinpointed its '*General saving clause'* which had asserted that the Act would *not* affect either the primacy of the Commons or the existing conventions regulating the two Houses. The author regarded both of these propositions as contestable and are explored in sub-theme 4. A Joint Committee of both Houses of Parliament was then established to provide pre-legislative scrutiny of the Draft Bill. This was evidence of good constitutional legislative practice – a procedural issue examined in sub-theme 3.

Output B, which formed the lead article for the Nottingham Law Journal's annual volume, detailed the chronology of the second period of reform in this sub-theme (i.e. 2012 to 2013). The Joint Committee on the Draft House of Lords Reform Bill (hereafter the Joint Committee) issued its report in April 2012.[67] The author's Output drew upon his written evidence submitted to it,[68] elements of which were quoted and footnoted in the report.[69] Output B was also based upon his

[65] HM Government, *House of Lords Reform Draft Bill* (Cm 8077, 2011). On these events, see a short summary by Mark Ryan, 'The reform of the House of Lords - A brief update' (2011) 16 *Coventry Law Journal* 64.
[66] On the Fixed-term Parliaments Act 2011, see Mark Ryan, 'The Fixed-term Parliaments Act 2011.' [2012] PL 213. This article was based on written evidence (FTP 32) submitted to the House of Lords Select Committee on the Constitution and was quoted and footnoted in its report *Fixed-term Parliaments Bill* (HL 2010-11, 69) 12 & 21-2.
[67] Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill (report)* (2010-12, HL 284-I, HC 1313- I).
[68] Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill (report)* (2010-12, HL 284-III, HC 1313- IIII) 172.
[69] *Draft House of Lords Reform Bill (report)* (n 67) 31, 42, 45, 49 & 94.

conference paper[70] delivered to the 2012 SLS Conference at Bristol University, which examined the recommendations of the Joint Committee. The Output considered this far from unanimous report, which to the author was unsurprising given that at the time he had questioned whether such a large committee (comprising 24 members) would be able to produce a report without division.[71] Further, in a highly unusual move, a minority of members of the Joint Committee were moved to issue their own separate, but parallel, report (viz, the *Alternative Report*).[72] In particular, it insisted that the powers, functions and roles of the second chamber should be determined prior to its composition. In other words, form should follow function.[73] The author had also made this point earlier in his written submission to the Ministry of Justice in the context of the 2008 White Paper. This Paper had been driven by the 2007 votes which, in turn, had focused solely on composition, without reference to the role of the House.[74]

Output B began by examining the key aspects of the Joint Committee's report and assessed that it had to a large extent endorsed the Draft Bill. The Joint Committee took the view that the proposal of a chamber of 300 members was too small, and in so doing, supported and footnoted[75] the author who had argued this in his written evidence.[76] As the Output stated, a key point in relation to size was that it should not compromise the ability of the House to carry out its functions.[77] Although the Joint Committee agreed that a 15 year term was preferred, the author had asserted that in international terms this was an inordinately long

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[70] Mark Ryan, 'The Joint Committee on the Draft House of Lords Reform Bill' (Society of Legal Scholars, Bristol, September 2012) historically was available at http://www.legalscholars.ac.uk.
[71] Ryan, 'The reform of the House of Lords - A brief update' (n 65) 65. On a related issue, the author in written evidence to the Political and Constitutional Reform Select Committee (hereafter PCRC) argued that in the absence of any political imperative to compromise, no agreement on a codified constitution could realistically be reached. As a case in point, he used the perennial issue of the House of Lords, with each party faction insisting on its preferred vision of reform *Consultation on A new Magna Carta?* (n1).
[72] Alternative Report, *House of Lords Reform: An alternative way forward* (April 2012). http://www.houseoflordsreform.com/ accessed 9 July 2012.
[73] ibid 3.39.
[74] Ryan, Submission to the Ministry of Justice (n 60).
[75] *Draft House of Lords Reform Bill (report*) (n 67) 31.
[76] *Draft House of Lords Reform Bill (report*) (n 68) 173. As a mark of consistency, in his 2014 written evidence to the PCRC on a new constitution, the author criticised the proposed 240 member second chamber as a seemingly small figure, see *Consultation on A new Magna Carta* (n 1).
[77] Ryan, 'The latest attempt at reform of the House of Lords' (n 50) 3 and in written evidence, *Draft House of Lords Reform Bill (report*) (n 68) 173.

period and was footnoted in its report.[78] The author also considered it somewhat odd that one of the Joint Committee's reasons justifying this length was to actually weaken the democratic mandate of the second chamber, *vis a vis* the Commons.[79] The Joint Committee agreed that terms should be non-renewable, however, the author[80] footnoted in its report,[81] had stressed that the essence of accountability lay in the necessity for re-election. Further, as the Draft contained no recall mechanism, the author had proposed one in his written evidence which was footnoted by the Joint Committee[82] which then recommended that provision be made for one in the fully-fledged Bill.[83] The author had contended that the need for the upper chamber members to be subject to the possibility of recall was even more important than for MPs given the proposed lengthy term.[84] As an aside, the Coalition Government's Formal Response acknowledged this recommendation and stated that it would consider it once the impending select committee report on the recall of MPs had been published.[85]

The Output noted that the most divisive areas of the Draft Bill were the inextricably linked issues of the electoral mandate and powers. The author argued the point that to 'democratise' the House (the *raison d' etre* of reform) necessarily required the conferment of additional powers to reflect this new-found democratically legitimate status.[86] He also contended that consideration should have been given to the question of whether the House should be granted extra powers in relation to Constitutional Bills,[87] given its commonly agreed role as a constitutional safeguard. In fact, in 2011 the House of Lords Select Committee on the Constitution had quoted the author who had asserted in his written evidence that the role of the House of Lords should be strengthened in order that the 'role and responsibility in relation to scrutinising constitutional measures' should be

[78] *Draft House of Lords Reform Bill (report*) (n 67) 45.
[79] Ryan, 'The latest attempt at reform of the House of Lords' (n 50) 4.
[80] Ryan, 'The latest attempt at reform of the House of Lords' (n 50) 5.
[81] *Draft House of Lords Reform Bill (report*) (n 67) 42.
[82] *Draft House of Lords Reform Bill (report*) (n 67) 49.
[83] *Draft House of Lords Reform Bill (report*) (n 67) 49.
[84] Ryan, 'The latest attempt at reform of the House of Lords' (n 50) 5.
[85] HM Government, *Government Response to the Report on the Draft House of Lords Reform Bill* (Cm 8391, 2012) 17.
[86] Ryan, 'The latest attempt at reform of the House of Lords' (n 50) 5.
[87] *Draft House of Lords Reform Bill (report*) (n 68) 173 and Ryan, 'The latest attempt at reform of the House of Lords' (n 50) 6.

given a more formal role.[88] Further, a point the author had submitted in his written evidence to the Joint Committee was that an elected House would be more aggressive and that it was not fanciful to suggest that these 'newly elected members emboldened by their democratic credentials' could prove to be strategically and practically obstructive in terms of Government business.[89] Moreover, in the Output the author criticised the Joint Committee's contention that a more assertive House would *not* enhance the role of Parliament in respect of the Government of the day[90] (something which the Coalition Government in its Formal Response also rejected).[91] Both the *Alternative Report* and the author disputed that primacy would be safeguarded under the Draft Bill. The former stated that the evidence the Joint Committee had received (which included that by the author),[92] did not accept that primacy would remain undisturbed.[93] Finally, the Joint Committee recommended a referendum which, therefore, supported the author's suggestion (this is examined in sub-theme 5).

The Output then examined the Government's Formal Response which was issued in June 2012 in parallel with the publication of its fully-fledged House of Lords Reform Bill. In broad terms, the Government accepted the general thrust of the Joint Committee's report and accordingly the fully-fledged 2012 Bill was similar to its original incarnation as a Draft. There were some differences, however, and the Output identified two pertinent ones. First, the Government accepted the recommendation in relation to size and increased the chamber to 450 members in the Bill.[94] Second, the Government – rather controversially - stated that the semi-open list system would replace the STV set out in the Draft Bill. This was notwithstanding the fact that this meant that there would be two electoral systems for the same chamber raising issues of competing legitimacies. In addition, it meant that this electoral system had not received pre-legislative scrutiny (a crucial aspect in the legislative process for constitutional Bills, see

[88] Select Committee on the Constitution, *The process of constitutional change* (HL 2010-12, 177) 22.
[89] *Draft House of Lords Reform Bill (report*) (n 68) 173 and Ryan, 'The latest attempt at reform of the House of Lords' (n 50) 6.
[90] Ryan, 'The latest attempt at reform of the House of Lords' (n 50) 6.
[91] *Government Response to the Report on the Draft House of Lords Reform Bill* (n 85) 6.
[92] *Draft House of Lords Reform Bill (report*) (n 68) 173.
[93] *House of Lords Reform: An Alternative way forward* (n 72) 45.
[94] *Government Response to the Report on the Draft House of Lords Reform Bill* (n 85) 11.

sub-theme 3). Finally, the Government rejected the Joint Committee's call for a referendum.

Output B then provided an original analysis of the fully-fledged Bill during its two-day Second Reading in the Commons. This revealed that the debate had essentially divided into two broad themes. First, that relating to a Programme Motion to accompany the Bill. The second, and more dominant area of the debate, covered the issues of primacy and inter-House constitutional relations. As the Bill was not a free vote, unlike those in 2003 and 2007, the author highlighted the issue of whether party whipping should ever take place on a constitutional Bill.[95] Through original examination of the voting patterns of the main parties, the author identified that of the 124 MPs who voted against the Bill; over two thirds were Conservative, despite the fact that it was consistent with their 2010 General Election manifesto for a largely elected House. The author even identified one Parliamentary Private Secretary who resigned his position in order to vote against the Bill.[96] The Labour Party's policy was to support the Bill, notwithstanding it was contrary to their 2010 manifesto for a wholly elected House (although the author did identify 26 Labour MPs who voted against the measure). Original research conducted by the author also ascertained that not only did most speakers oppose the Bill, but that over 20 MPs spoke in favour of a referendum (see sub-theme 5). In the absence of any Programme Motion, the Coalition Government abandoned the Bill shortly thereafter, Output B concluded by considering the position as it stood in spring 2013. In essence, it was clear that long-term reform was moribund and at that point in time, the prospects for short-term reform looked unpromising (see sub-theme 2). At the time of writing, the point that long-term reform is off the political table for some time to come, has been underlined by the new 2017 Conservative Government which has stated in its manifesto that comprehensive Lords reform was not a priority.[97]

The lesson for long-term reform of the House of Lords is that despite the recent events in the last decade, it is highly unlikely to occur in the immediate future. Not only is the political will lacking, but owing to its divisive nature, any fundamental

[95] Ryan, 'The latest attempt at reform of the House of Lords' (n 50) 12.
[96] Connor Burns MP, Conservative Parliamentary Private Secretary.
[97] *Forward Together: Our plan for a stronger Britain and a prosperous Future* (Conservative and Unionist Party Manifesto, 2017) 43.

Lords Reform Bill would struggle to navigate its way through both Houses of Parliament. There is division over composition as well as no universal agreement on the constitutional impact an elected House of Lords would have on the principle of primacy and the constitutional relationship with the Commons (see sub-theme 4). Outputs A & B neatly illustrate that Lords reform is a highly complex and multi-faceted affair, as it affects other aspects of the constitution. In short, fundamental reform of the House of Lords may unfortunately appear to be at a superficial level, a deceptively simple process, which rather fittingly, was the essence of the title of the author's very first article on this issue.[98]

2. A narrative arc and synthesis of interim reform of the House of Lords up until 2015

Whereas the first sub-theme concluded on the failure to achieve long-term reform, sub-theme 2 focuses instead on two aspects of more modest, small-scale changes to the House (one instigated by Government and one by an MP). Indeed, in his written evidence in 2013 to the Political and Constitutional Reform Select Committee (hereafter the PCRC), the author had argued that it was crucial that incremental reforms were undertaken as doing nothing was not viable. He predicted (correctly) that new peers would be inevitably appointed in due course, thereby further expanding the House.[99]

The first historic aspect of interim reform examined the largely unsuccessful attempt by the Labour Government to implement a number of small-scale changes through the vehicle of its 2009-2010 Constitutional Reform and Governance Bill. This was analysed in various aspects of an article[100] (Output C) which had been published in the journal of Liverpool Law Review (and is understood to be the only academic journal article written exclusively on the antecedents, process and all aspects of the content of this Act). It drew upon a

[98] Ryan, 'Reforming the House of Lords - A deceptively simple process' (n 53).
[99] Political and Constitutional Reform Select Committee, *House of Lords reform: what next?* (HC 2013-14, volume II, 251-II) Ev w9. See also Ryan, 'A summary of the developments in the reform of the House of Lords since 2005' (n 49) 71.
[100] Mark Ryan, 'The Constitutional Reform and Governance Act 2010: The evolution and development of a constitutional Act' (2014) 35 *Liverpool Law Review* 233, 238-43, 250.

paper which the author had delivered to the 2010 SLS conference at Southampton University.[101] This attempt at reform was notwithstanding the Labour Government's earlier stated intention to leave reform as a manifesto commitment (see sub-theme 1). The antecedents of the Constitutional Reform and Governance Bill were located in its earlier incarnation as the 2008 Draft Constitutional Renewal Bill, which had been subject to pre-legislative scrutiny by a Joint Committee.[102] The author submitted written evidence to this Committee and was quoted ten times throughout its report issued in July 2009.[103]

The elements of the Constitutional Reform and Governance Bill concerning Lords reform included the abolition of hereditary by-elections, resignation and enhanced disciplinary powers; however, these were subsequently excised from the fully-fledged Bill during the wash up prior to the 2010 General Election.[104] In particular, in Output C the author examined the issue of the abolition of hereditary by-elections (which take place on the death of an hereditary peer) the aim of which was to ensure that the hereditary numbers would gradually wither on the vine. The author asserted that this was a highly controversial proposal among peers as there is debate as to whether their depletion - in advance of Stage 2 wholesale reform - would represent a breach of the 1999 undertaking[105] (a compromise agreed in order to facilitate the passage of the 1999 House of Lords Bill). The author had earlier suggested to the Ministry of Justice that the abolition of these by-elections could prove problematic in the context of the 2008 White Paper's proposal to remove them *during* the transition to a fully reformed chamber.[106] More recently, in 2013 the author repeated this concern in a written submission[107] which was quoted by the PCRC in its report investigating the issue of interim reform in which it revisited the abolition of hereditary by-elections.[108]

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[101] Mark Ryan, 'The Constitutional Reform and Governance Act 2010' (Society of Legal Scholars, Southampton, September 2010) historically was available at http://www.legalscholars.ac.uk.
[102] On this draft Bill see Mark Ryan, 'Sum of constituent parts' (2008) 158 NLJ 739.
[103] Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill (report)* (2007-08, HL 166-I, HC 551-I) 14, 33, 36, 43, 45, 59, 60 (twice), 61 & 99.
[104] On these elements, see also Ryan, A summary of the developments in the reform of the House of Lords since 2005' (n 49) 68-9.
[105] Ryan, 'The Constitutional Reform and Governance Act 2010' (n 100) 240.
[106] Ryan, Submission to the Ministry of Justice (60).
[107] *House of Lords reform: what next?* (n 99) Ev w9. This was reaffirmed in written evidence in January 2017 (HOL 13 – published on its website) to the Public Administration and Constitutional Affairs Select Committee (hereafter PACAC) which was examining the size and composition of

One reform element of the Bill concerning Lords reform that did make it onto the statute book was that relating to tax arrangements. Section 41 of the Constitutional Reform and Governance Act 2010 requires that parliamentary members are to be deemed resident and domiciled in the UK for tax purposes. The content of this provision was not particularly controversial, and in fact was welcomed by the author.[109] The difficulty lay in that it was inserted into the Bill at the end of the Committee Stage in the Commons. In fact, later in April 2012 in written evidence to the PCRC, he pertinently argued that Parliament should restrict late amendments.[110] Although this tax provision had not been subject to pre-legislative scrutiny, as the author noted, it had at least followed on from two Private Members' Bills which had pursued similar objectives.[111] The failure to provide pre-legislative scrutiny applied also to the other elements of Lords reform listed above, although as the Output pointed out, these issues were hardly unknown to parliamentarians having been considered in the context of previous comparable Private Members' Bills.[112]

In respect of the Draft Constitutional Renewal Bill, the author had drawn attention *en passant* to the position of the House of Lords in the context of the codification of the *Ponsonby rule* regarding the ratification of treaties. He argued that a credible argument could be had in the future that its current subordinate role would have to be revisited in the event that the House ever became wholly or largely elected. In other words, the *Ponsonby rule* was being codified in the context of an unreformed second chamber, a point quoted by the Joint Committee on the Draft Constitutional Renewal Bill in its report.[113] Furthermore, the author contended that this neatly illustrated a broader constitutional point that reform of the British constitution cannot be undertaken in a legal and political

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the House of Lords. Unfortunately, it was disbanded before reporting owing to the 2017 General Election.

[108] *House of Lords reform: what next?* (n 41) 10.

[109] Ryan, 'The Constitutional Reform and Governance Act 2010' (n 100) 243, 246-7.

[110] Political and Constitutional Reform Select Committee, *Ensuring standards in the quality of legislation* (HC 2013-14, Volume II, 85) Ev w54.

[111] In the House of Commons, see Gordon Prentice's 2007 Disqualification from Parliament (Taxation Status) Bill, Bill 24 and in the House of Lords, see Lord Oakeshott's 2008 House of Lords (Members' Taxation Status) Bill, HL Bill 38. In particular, the latter was explored by the author, together with the late Tim Vollans (Principal Lecturer in Law), in two 2009 conference papers ("The House of Lords (Members' Taxation Status) Bill") at the SLS (Keele) and TRN (Cardiff).

[112] Ryan, 'The Constitutional Reform and Governance Act 2010' (n 100) 250.

[113] *Draft Constitutional Renewal Bill (report)* (n 103) 59.

vacuum, without secondary effects reverberating elsewhere in our constitutional arrangements.[114] This is a point that the author has made on a number of occasions and represents a crucial lesson for constitutional reform.[115]

The second historic aspect of interim reform concerned the successful passage of Dan Byles Private Member's Bill which became the House of Lords Reform Act 2014. This measure, which had its antecedents in the five unsuccessful Private Member Bills of Lord Steel of Aikwood,[116] achieved modest Lords reform concerning resignation and expulsion of members from the House. The 2014 Act was examined in an article (Output D) which was published in the journal of Public Law. The Output analysed the antecedents, content and passage of the Bill through Parliament and drew upon a written submission made by the author in 2013 to the PCRC on interim Lords reform.[117] This evidence was quoted and footnoted multiple times in the body of its report.[118] The originality of the author's Output is highlighted by the only other contemporaneous article on the Act being a very brief publication in 2014.[119]

Output D began by considering the Act in the context of overall reform of the House of Lords in the light of the abandonment of the Coalition Government's 2012 Bill (see sub-theme 1). The author pointed out that fundamental reform had been elusive due to there being no real consensus on composition (see sub-theme 4), together with the contentious preoccupation with form over function.[120] The Output identified the debate as to whether Lords reform was more likely to be achieved via incremental (and less ambitious) cumulative measures, rather than by one major reform. The author acknowledged the very real difficulty that by addressing anomalous small-scale issues that the press for more fundamental reform further down the road could be dissipated. In his written evidence to the PCRC he noted that the fear for some is that implementing interim reform could

[114] Ryan, 'The Constitutional Reform and Governance Act 2010' (n 100) 230.
[115] For example, see *Draft House of Lords Reform Bill (report*) (n 68) 173.
[116] Ryan, 'Bills of Steel (n 46), 562-4. An extract of this article was reproduced in Fenwick, *Text, Cases and Materials on Public Law and Human Rights* (n 9) 390. On the 2007 incarnation of Lord Steel's Bill, see Mark Ryan, 'Bringing the House down' (2007) 157 NLJ 1752.
[117] *House of Lords reform: what next?* (n 99) Ev w9.
[118] *House of Lords reform: what next?* (n 41) 8, 10, 12, 15, 20, 22, 26 (twice), 34.
[119] Parpworth, 'The House of Lords Reform Act 2014' (n 47).
[120] Ryan, 'Bills of Steel' (n 46) 559. Also see the author's contention that composition must be determined by role in his written submission to the Ministry of Justice (n 60).

'merely serve to cement an appointed House'.[121] The Output then identified the inconsistent policy approach of past Governments (Labour and Coalition) towards interim Lords reform measures including the former's *volte fac*e in relation to hereditary peer by-elections identified earlier in Output C.[122]

Part of the rationale behind the Act was to help reduce the bloated size of the House and this concern was examined in Output D. In fact, this still remains the most pressing issue facing the chamber.[123] The author argued in his 2017 written submission to the Public Administration and Constitutional Affairs Select Committee (hereafter the PACAC), that the constant ratcheting-up of numbers had made the House unnecessarily large.[124] Output D identified the concerns regarding size expressed both within the Lords via two Motions (one calling for restraint in appointments[125] and one on the case for reducing its size)[126] and outside Parliament (i.e. the Constitution Unit).[127] It then considered some of the ways that the chamber could be reduced. These included a mandatory retirement provision, something which the author supported with reservations, and footnoted by the PCRC,[128] though ultimately rejected by it. He nevertheless made the same point in January 2017 to the PACAC that its key value would be immediately to reduce the size of the House.[129] A further possibility was a fixed time-limit for new appointments, an option supported by the author,[130] although the PCRC preferred to support a non-statutory scheme. Another option was a general moratorium on new peers, a suggestion which the author recommended[131] and although the PCRC acknowledged and footnoted it, did not consider it popular.[132] In fact, in September 2011 the author had earlier stated in his written evidence to the Joint Committee that no new appointments should be

[121] *House of Lords reform: what next?* (n 99) Ev w9. Also see Ryan, 'Bills of steel' (n 46) 559-60.
[122] Ryan, 'The Constitutional Reform and Governance Act 2010' (n 100) 241.
[123] In July 2017 the size of the House (excluding ineligible members) numbered 806 (www.parliament.uk/mps-lords-and-offices/lords/composition) accessed on 5 July 2017. Due to concern about its burgeoning size, in December 2016 a cross-party Lords Speaker Committee under Lord Burns was established to examine proposals to reduce its numbers and is due to report in late 2017.
[124] (n 107).
[125] See also Ryan, 'The latest attempt at reform of the House of Lords' (n 50) 13-14.
[126] Ryan, 'Bills of Steel' (n 46) 561.
[127] Russell, *House Full, time to get a grip on Lords' appointments* (n 28).
[128] *House of Lords reform: what next?* (n 41) 20.
[129] (n 107).
[130] *House of Lords reform: what next?* (n 99) Ev w10.
[131] *House of Lords reform: what next?* (n 99) Ev w10.
[132] *House of Lords reform: what next?* (n 41) 16.

made until the shape of the reformed House had been generally agreed.[133] In 2017 in a written submission to the PACAC, he repeated this as a solution to the bloated size of the contemporary chamber.[134]

The Output then examined the three key elements of the Act. Section 1 enabled peers to retire from the chamber and although the author noted that this was an eminently sensible provision,[135] in constitutional terms it was significant as it broke the historic link between life members and the peerage.[136] He also identified the constitutional problem that resignation raised for some commentators which was the absence of a 'cooling off' period specified in the Act provided a possibility that departing members could then simply 'spring' into the Commons.[137] The author had previously made reference to this potential problem in the context of the 2009-10 Constitutional Reform and Governance Bill.[138] Although no cooling-off period formed part of the original incarnation of the Byles Bill, it was amended by MPs to close off re-admission to the Lords and so prevent the constitutional undesirability of members shuttling between chambers. The Output questioned the practical impact of the Act in significantly reducing the size of the House as it was pointed out that those who did retire would necessarily include those already on Leave of Absence. As such, this would only really therefore reduce the House's notional size on paper.[139] In any case, the author submitted to the PCRC that there was no financial incentive encouraging retirement, something which while it acknowledged and footnoted, felt there was little support for from its witnesses.[140]

Section 2 enabled members to be expelled for non-attendance and the author agreed that this was wholly sensible, a point made to, and footnoted by, the PCRC in its report.[141] The drafting of this section was, nevertheless, open to

[133] *Draft House of Lords Reform Bill (report*) (n 68) 174.
[134] (n 107).
[135] Ryan, 'Bills of Steel' (n 46) 565. Also see Ryan, 'The Constitutional Reform and Governance Act 2010' (n 100) 241.
[136] The author was quoted in Fenwick, *Text, Cases and Materials on Public Law and Human Rights* (n 9) 391.
[137] Ryan, 'Bills of Steel' (n 46) 566-7.
[138] Ryan, 'The Constitutional Reform and Governance Act 2010' (n 100) 241-2.
[139] Ryan, 'Bills of Steel' (n 46) 567.
[140] *House of Lords reform: what next?* (n 41) 22. Nonetheless, the author repeated this in his 2017 written submission (HOL 13) to the PACAC and suggested that this payment should also be extended to those who had already retired under the 2014 Act (n 107).
[141] *House of Lords reform: what next?* (n 41) 12.

criticism as the author contended that the attendance provision should have been made not only more rigorous, but retrospective. As an aside, in his 2017 written evidence to the PACAC, he argued that to encourage participation in the chamber the attendance threshold should be higher.[142] The third aspect of the Act enabled members to be expelled for conviction for a serious criminal offence. The author had supported this as it was axiomatic that *lawbreakers* should not be *lawmakers*[143] and that this principle had particular poignancy when these lawmakers were unelected. In his written evidence, he argued that there should be parity between MPs and peers in respect of criminal offences. This was supported and footnoted[144] by the PCRC, as it recognised that there was unanimous support for the principle that those convicted of criminal offences should be expelled.

The lesson for Lords reform from Outputs A to D is that change is more likely to be achieved by incremental steps, rather than as a single all-embracing fundamental Reform Bill. Even then, smaller-scale reforms will only follow if they enjoy broad parliamentary support and do not appear to be controversial. The originality of the author's Outputs is demonstrated by the seeming absence of any contemporary academic legal journals which provided a full synthesis and historic arc in respect of interim Lords reform of the last few years.

3. The legislative process of constitutional reform with reference to the House of Lords

This sub-theme drew upon a written submission made by the author in 2011 to the House of Lords Select Committee on the Constitution (hereafter the House of Lords Select Committee) which was examining the process of legislative constitutional change.[145] In its report, it recognised the absence of any single procedure for constitutional Bills and recommended the introduction of a consistent process for them. This would involve a Minister in charge of a Bill issuing a written statement setting out whether seven procedural elements had

[142] (n 107).
[143] *House of Lords reform: what next?* (n 99) Ev w10.
[144] *House of Lords reform: what next?* (n 41) 26.
[145] *The process of constitutional change* (n 88) CRP 4.

been complied with.[146] This sub-theme referenced a written and oral submission made by the author in 2012 to the PCRC on improving the standards of legislation.[147]

In particular, this sub-theme is based squarely upon a more recent (and very lengthy) paper entitled 'The process of constitutional legislation - an analysis of six case studies'[148] delivered to the 2016 SLS Conference held at St Catherine's College, Oxford University (Output G). This undertook innovative and completely original research into the process of six selected constitutional measures of the last decade and compared them with the House of Lords Select Committee's checklist in order to assess their degree of compliance. This research produced a number of original Tables where the information complied by the author was displayed in a comparative format. The Bills surveyed included four which were directly relevant to the reform of the House of Lords: the 2009-10 Constitutional Reform and Governance Bill (sub-theme 2), the 2012 House of Lords Reform Bill (sub-theme 1), the 2013-14 House of Lords Reform Bill (sub-theme 2) and the 2004-05 Constitutional Reform Bill (as noted at the outset of sub-theme 1, this involved a structural reform of the House with the removal of the serving law lords). Although all these Bills (to a greater or lesser extent) were connected to the reform of the House of Lords, for the sake of completeness, the last two Bills surveyed were the 2015-16 Scotland Bill and the 2010-11 Fixed-term Parliaments Bill.

The Output identified that the surveyed measures were all Public Bills introduced by the Government of the day. The exception was the Private Member's Bill of MP Dan Byles which in turn, raised an interesting legislative procedural question as to whether a constitutional Bill should ever take the form of a non-Public Bill.[149] The Output then explored the question of what qualified as being classified as a constitutional Bill. The author in his 2011 written submission to the House of Lords Select Committee had argued that it was important to distinguish between constitutional and non-constitutional/ordinary measures, because

[146] *The process of constitutional change* (n 88) Chapter 3.
[147] *Ensuring standards in the quality of legislation* (n 110).
[148] Mark Ryan, 'The process of constitutional legislation - an analysis of six case studies' (Society of Legal Scholars, Oxford, September 2016) historically was available at http://www.legalscholars.ac.uk.
[149] ibid 2 & 5. For example, see Ryan, 'Bills of Steel' (n 46) 564.

constitutional changes should require a special procedure to reflect their fundamental nature.[150] It then quoted him in his contention that the powers of the second chamber should be strengthened (including in the context of a reformed House) in respect of scrutinising constitutional legislation.[151] Later the author accepted in his oral evidence to the PCRC that there was no sharp line delineating public and private laws and in response to Committee member MP Simon Hart's question as to how the constitution could be defined, the author provided a broad common sense definition. He stated that constitutional legislation 'relates to the structure of government, its powers and responsibilities and how it is controlled. It is also about how the individual relates to state institutions.'[152] When pressed later on this by the Committee Chair (Graham Allen MP), the author answered that one could not be too prescriptive as 'you *know* when something is constitutional' (emphasis added).[153] For its part, the PCRC accepted that constitutional law was qualitatively different from other types of law and that it could 'be identified through experience and common sense'.[154] The author maintained that all the Bills surveyed in the Output were clearly constitutional measures.

A second, but connected, debate concerned whether constitutional Bills could be further sub-divided on a first and second-class basis. As an aside, in his oral evidence to the PCRC the author listed a number of recent first-class Bills. He was then asked by the Committee Chair to clarify and classify the definitional aspects of higher order laws, to which he replied that it was not absolute, but that in general terms 'it is first-class if it fundamentally affects the state', whereas a second-class Bill altered 'the system of governance'.[155] All the Bills surveyed were classified by the author in Table 1 as first-class. In fact, even though the House of Lords Reform Bill appeared, superficially, to be a minor constitutional

[150] *The process of constitutional change* (n 88) CRP 4.
[151] *The process of constitutional change* (n 88) 22. In 2017 the author repeated this in his submission (HOL 13) to the PACAC in respect of its inquiry into the House of Lords, when he proposed the reversal of the Parliament Act 1949 to enable the House to delay constitutional Bills for longer (n 107).
[152] Political and Constitutional Reform Select Committee, *Ensuring standards in the quality of legislation* (HC 2013-14, volume I, 85) Q171.
[153] ibid Q 198. The House of Lords Select Committee on the Constitution also footnoted the author on a very similar point *The process of constitutional change* (n 88) 9.
[154] *Ensuring standards in the quality of legislation* (n 152) 45.
[155] *Ensuring standards in the quality of legislation* (n 152) Q 197.

Bill, as noted in sub-theme 2, the lack of a 'cooling-off' period had the potential to have fundamental unintended long-term consequences for the House.[156] The Output highlighted the first-class nature of the Bills in the survey and then examined their complexity, coherence and controversy with the results set out in comparative context in Table 1.

The Output noted that, by default, over the years the reports of the House of Lords Select Committee had highlighted key constitutional standards, which had then been extracted by the Constitution Unit and brought together in a single Code.[157] In terms of general legislative standards, the author pointed out that in 2013 the PCRC had recommended the creation of a Joint Legislative Standards Committee[158] (something which the author had supported in written evidence),[159] albeit this was rejected by the Coalition Government. In its 2011 report, the House of Lords Select Committee had recommended that in the context of its recommended checklist, a Minister would be required to issue a parliamentary statement setting out whether their Bill provided for significant constitutional change. Although the Coalition Government did not implement this checklist, the author considered it a valuable academic research exercise to correlate selected Bills (most of which related to Lords reform) with this checklist and assess their compliance as if the checklist had been in place. The key results of this original research were detailed in comparative terms in Table 2.

The first requirement concerned the constitutional impact of the proposed Bill and the author deemed it laudable to focus Government attention on the consequences of its proposed legislation. It is pertinent that in the author's written evidence to the House of Lords Select Committee, he had argued that there needed to be an appreciation as to how proposed legislative reforms would fit within the existing constitutional arrangements.[160] It is a constitutional maxim that the British constitution cannot be altered in a legal and political vacuum, and the Output provided illustrative examples including that of the 2012 House of

[156] Ryan, 'Bills of Steel' (n 46) 566-7.
[157] Jack Simson Caird, Robert Hazell and Dawn Oliver, *The constitutional standards of the House of Lords Select Committee on the Constitution* (2nd edn, The Constitution Unit, 2015).
[158] *Ensuring standards in the quality of legislation* (n 152) 47.
[159] *Ensuring standards in the quality of legislation* (n 110).
[160] *The process of constitutional change* (n 88) CRP 4.

Lords Reform Bill and the Fixed-term Parliaments Bill.[161] Further, the Government of the day does not own the constitution, nor is it the property of any particular political party. A point made by the author in oral evidence to the PCRC in which he vigorously asserted that the British constitution belonged to the people[162] (a demonstration of political, rather than legal sovereignty).

The Output then examined the second element which was the extent of engagement with the public in the initial policy-making stage. The third element related to Cabinet scrutiny, which the author questioned as an unrealistic recommendation, given that it was seeking transparency of the executive decision-making process.[163] The fourth element concerned the question as to whether a Green Paper had been published together with the degree of public engagement. The author specifically critiqued the concept of public consultation in relation to the Constitutional Reform Bill having been confined simply to detail and mechanics, rather than the overall policy of a new Supreme Court which had already been determined by the Labour Government.[164] The importance of consultation, public engagement and public ownership were reaffirmed by the author in written evidence to the PCRC in the context of any future proposal for a new constitution.[165]

The fifth element concerned the publication of a White Paper and pre-legislative scrutiny. The House of Lords Select Committee noted that witnesses (including the author, who was footnoted) had argued that constitutional measures should include a White Paper and a draft Bill subject to pre-legislative scrutiny.[166] In this way, the author, together with others who had submitted evidence, had helped to inform and shape this checklist. The author's research detailed in Output G supplemented Professor Hazell's earlier study of Constitutional Bills, which had identified that only 3 out of 55 had being issued in draft and subject to pre-

[161] Ryan 'The Fixed-term Parliaments Act 2011 (n 66) 219. The author was footnoted by the House of Lords Select Committee on the Constitution in terms of the lack of consultation with the devolved institutions on this Bill and in terms of the undesirability of a clash between the devolved and Westminster elections, *Fixed-term Parliaments Bill* (n 66) paras 75-6.
[162] *Ensuring standards in the quality of legislation* (n 152) Qs 173-6.
[163] Ryan, 'The process of constitutional legislation (n 148) 12-13.
[164] Ryan 'The House of Lords and the shaping of the Supreme Court' (n 12) 137.
[165] *Consultation on A new Magna Carta?* (n 1).
[166] *The process of constitutional change* (n 88) 28. The importance of pre-legislative scrutiny was repeated by the author in oral evidence, *Ensuring standards in the quality of legislation* (n 152) Q 173.

legislative scrutiny.[167] The Output demonstrated that there had been improvements in this respect since Hazell's study. This revealed that two Bills (the 2009-10 Constitutional Reform and Governance Bill and the 2012 House of Lords Reform Bill) out of the survey of six Bills had been issued in draft and subject to pre-legislative scrutiny by a Joint Committee of both Houses of Parliament. The author pointedly highlighted the contrast in time allocated to these two Joint Committees.[168] The Output also stated that as the 2004-05 Constitutional Reform Bill had not been issued in draft, to some extent the House of Lords tried to rectify this by, very unusually, referring the Bill to an evidence-taking select committee (to which the author submitted written evidence).[169] More recently, in written evidence in relation to the Fixed term-Parliaments Bill, the author asserted that Bills published in draft should be standard legislative practice[170] and he welcomed that afforded the 2015 Scotland Bill.[171] In oral evidence[172] to the PCRC the author proposed a Joint Constitutional Committee to examine constitutional Bills in draft. Although it did not recommend this, the PCRC did state that once its Code (if adopted) had bedded down, then the issue of whether there should be such a constitutional legislative scrutiny committee could be re-considered.[173]

The penultimate element concerned the Government's justification for a referendum (see sub-theme 5). The author critically pinpointed that the emphasis in this aspect of the checklist was that of the Government having to *justify* holding a referendum. The issue of a national referendum did not apply to any of the Bills surveyed, although as noted in sub-theme 1, a number of MPs did call for a

[167] Hazell, 'Time for a new convention: parliamentary scrutiny of constitutional bills 1997-2005' (n 30) 280.
[168] See also Ryan, 'The latest attempt at reform of the House of Lords' (n 50) 2 and *Draft House of Lords Reform Bill (report*) (n 68) 172. In addition, the author (Ev w5) was critical of the Government's consultation period in respect of its Cabinet Manual and his written evidence was footnoted in the following report: Political and Constitutional Reform Select Committee, *Constitutional implications of the Cabinet Manual* (HC 2010-11, 734) 26.
[169] *Constitutional Reform Bill* (n 48) 401.
[170] Political and Constitutional Reform Select Committee, *Fixed-term Parliaments: the final year of a Parliament* (HC 2013-14, 976) FTF0002. Also see, *Draft House of Lords Reform Bill (report)* (n 68) 172.
[171] Political and Constitutional Reform Select Committee, *Constitutional implications of the Government's draft Scotland clauses* (HC 2014-15, 1022) DSB0002. In 2011 the author suggested that the Government's Draft Cabinet Manual should place more emphasis on the importance of pre-legislative scrutiny, particularly for constitutional Bills (n 168) Ev w5.
[172] *Ensuring standards in the quality of legislation* (n 152) Q 170.
[173] *Ensuring standards in the quality of legislation* (n 152) 46.

referendum on the 2012 House of Lords Reform Bill. As an aside, in September 2011 in relation to the Fixed-term Parliaments Bill, the author lodged a call for a referendum on whether the parliamentary term in the legislation should be four or five years. The final requirement of the checklist was the most neglected area of the legislative process, that of post-legislative scrutiny. The author identified that the only Bill which this involved was the Fixed-term Parliaments Bill. For the sake of completeness, the Output also examined other elements recommended by the House of Lords Select Committee (and produced original comparative information in Table 3). These detailed the time between First and Second Readings, timely Government responses to select committee reports and the wash-up process.

The House of Lords Select Committee had also asserted that constitutional Bills should receive an appropriate level of parliamentary scrutiny and to this end the author's Table 4 set out the findings of his original research comparing procedural aspects of the Bills surveyed (it supplemented Hazell's work a decade earlier). In particular, the author made reference to Programme Motions and in his oral submission[174] to the PCRC had questioned whether such a Motion should ever accompany a constitutional Bill on the basis that debate on such issues should not be restricted. Original research conducted by the author on the time spent at Second Reading in the Commons was comparable with findings from earlier parliamentary committee research which had indicated that a six hour debate was the norm[175] (although the debate on the 2012 House of Lords Reform Bill was double this).[176] Similarly, the author discovered that the time spent in a Committee of the Whole House was also comparable with Hazell's earlier findings. Finally, original research suggested that the limited time spent at Third Reading indicated that it was of little value, rendering this stage merely perfunctory. Most recently, in the context of the impending Brexit legislation, the author in written evidence to the House of Lords Select Committee asserted that

[174] *Ensuring standards in the quality of legislation* (n 152) Q 175. Also see, *The process of constitutional change* (n 88) CRP 4.
[175] House of Commons Modernisation Committee of Parliament, *The Legislative process* (HC 2005-06, 1097) 19.
[176] Ryan, 'The process of constitutional legislation' (n 148) 21.

primary legislation in general needed much more effective scrutiny by Parliament.[177]

As there is no single legislative procedure for constitutional changes, the lesson for Lords reform (and the constitution in general) is that there needs to be a more consistent approach. The author regretted the failure to adopt the checklist and its legislative standards which would undoubtedly improve constitutional legislation. There is a serious argument to be had that Bills of a constitutional nature should be afforded much more rigorous scrutiny as well as involve more public engagement. Moreover, reform of the Lords - as a constitutional change - should ideally only be implemented through the vehicle of a Public Bill. The innovation and originality of this Output is demonstrated by the fact that no publication has subjected the six Bills selected to the comparative procedural analysis undertaken by the author in Output G.

4. No consensus on fundamental reform of the House of Lords

As constitutional reform affects the national framework of the State, arguably, it should require the widest possible political consensus. In fact, the author in his 2011 written evidence to the House of Lords Select Committee stated that although it was unrealistic to expect complete unity on constitutional reform, as much agreement as possible was nevertheless needed.[178] As noted in sub-theme 1, in 2007 the House of Commons voted for the options of a wholly and an 80 per cent elected chamber, whilst in contrast, the House of Lords approved a fully appointed House. In July 2007 the then Lord Chancellor stated that as a result, there was the potential to reach cross-party consensus on Lords reform.[179] The author, however, critiqued and questioned the assumption that these votes represented any real meaningful parliamentary or political consensus. He did so by providing an original and inventive interpretation of the parliamentary patterns of votes of both MPs and peers on the options for the composition of a fully

[177] House of Lords Select Committee on the Constitution, *The 'Great Repeal Bill' and delegated powers* (HL, 2016-17, 123) LEG0034 and referenced in relation to delegated powers 14.
[178] *The process of constitutional change* (n 88) CRP 4.
[179] HC Deb, 19 July 2007, vol 463, cols 450-1.

reformed House of Lords. This article (Output E) was published in 2009 in the journal Northern Ireland Legal Quarterly. It had been partly informed by the constitutional expert Professor Dawn Oliver and based closely on a paper delivered to the 2008 SLS conference[180] at the London School of Economics. For comparative purposes, this Output also had echoes from the author's earlier research in his article published in The Law Teacher in respect of the earlier parliamentary votes on Lords reform in 2003.[181] In addition, in 2004, he had predicted that agreement in the near future was highly unlikely following the results of the votes in 2003.[182]

Output E made it clear at the outset that it was not considering the issue of the functions the House should perform, but instead was confined strictly to composition, as the votes had been.[183] Notwithstanding the premise of the publication, it did initially identify two areas on which there was general parliamentary agreement. First, there was clear support (albeit not unanimous) within both Houses for bicameralism. Research undertaken by the author of the 2007 parliamentary voting lists revealed that although 163 MPs had supported abolition, they virtually had all then proceeded to vote on the various options within the context of a bicameral system. It is arguable, therefore that this skewered the overall votes to some extent, therefore, given that their primary objective was for a single-chamber Parliament.

The second issue on which there was broad support was the Motion to remove the rump of remaining hereditary peers; however, there was disagreement on the exact timing as to when they should exit. The author identified that a majority of Conservative MPs had voted against their removal without preconditions, as they had earlier supported an (albeit defeated) amendment to the above Motion which proposed to only remove the hereditaries once elected members sat in the reformed House. The author pointed out that the expulsion of the hereditary peers would, of necessity, have a disproportionate impact on the strength of the Conservative Party in the House, given that they are the largest hereditary

[180] Mark Ryan, 'The reform of the House of Lords' (Society of Legal Scholars, LSE, September 2008) historically was available at http://www.legalscholars.ac.uk.
[181] Ryan 'Parliament and the Joint Committee on House of Lords reform (n 57).
[182] Ryan 'A Supreme Court for the United Kingdom? (n 48) 20.
[183] Ryan, 'A consensus on the reform of the House of Lords?' (2009) 60 NILQ 325, 326.

grouping.[184] In terms of the view within the House of Lords, Output E identified that there was a general recognition (albeit with some minority resistance) that these remaining hereditary places should cease. The Output then charted the Labour Government's 2008-09 change in policy towards the abolition of hereditary by-elections (see sub-theme 3). It is clear that the hereditary peers will not form part of any long-term solution.

The fully elected option was approved in the House of Commons by 113 votes. This was politically significant as MPs had, unlike in 2003, finally approved the principle of an elected second chamber and with a seemingly significant majority. However, on closer examination, unpicking of the figures by the author revealed that this majority was perhaps not as commanding as it might superficially suggest. The author critiqued it for a number of reasons. For one thing, both Labour and Conservative MPs were clearly internally divided on this option and in fact, the majority of both parties had voted against this option in 2003. There was also no inter-House consensus as it was comprehensively rejected by the House of Lords in 2007 (as well as four years earlier), and no recent governmental or parliamentary report had recommended this option.

A final critique was a suggestion that the legitimacy of the votes had been compromised by the suspicion of tactical voting. Indeed, a sizeable number of MPs (72) had voted for the diametrically opposite options of a wholly appointed and a wholly elected House. Most of these were Labour MPs and original research undertaken by the author revealed that 42 of these had also supported abolition. In short, they had rather curiously voted for all three extreme options (abolition, fully appointed and fully elected). The author raised with the Ministry of Justice whether consideration had been given to the issue of tactical voting, but this was dismissed on the basis that MPs had to be bound by the vote that they had cast.[185] Quite apart from these odd voting patterns, an original calculation by the author indicated that if the votes of the abolitionist MPs who had voted in respect of the fully elected option were removed from the equation, the majority of 113 would fall to only 46. The author suggested that a resolution to this concern of tactical voting was to have another, but separate, free-standing vote.

[184] ibid, 328.
[185] Letter from Eileen Vagg (n 60).

The second option of an 80 per cent elected House was voted for by the slimmer majority of 38. This was critiqued by the author for three reasons: First, it was less than half of the total membership of the House of Commons and the majority of both Labour and Conservative MPs had rejected it (even though it appeared consistent with the latter's 2005 manifesto commitment) as they had both done in 2003. It was also rejected by the House of Lords in 2007 and previously in 2003[186] by very similar majorities. In contrast to the block of MPs who had voted for the fully appointed and fully elected options, original research undertaken by the author identified that only five MPs voted for both the wholly appointed and 80 per cent elected models.

The Output finished by critiquing the arguments for and against an elected chamber and this was done through the prism of the MPs and peers during their debates (it also had echoes of the author's earlier article in relation to the 2003 votes).[187] It noted the fully elected option had the largest majority and an original calculation by the author involving a conflation of the Commons votes in 2003 with that in 2007 demonstrated that the 80 per cent vote compared unfairly with the wholly elected option. In particular, the author highlighted that a wholly elected House avoided the potential problems associated with hybridity such as a clash of two classes of member, the debate over the acceptable proportional balance, and the fear of it being an inherently unstable settlement in the absence of an entrenched codified constitution.[188] In contradistinction, the arguments in favour of a hybrid option were that it was consistent with two of the 2005 manifestoes as well as parliamentary and governmental reports in the last decade. Original research undertaken by the author indicated that if the 2007 votes of the abolitionist MPs are removed from the equation, it revealed that the majority for an 80 per cent elected House increased to 110. In addition, this option was narrowly defeated in 2003.[189]

[186] Ryan 'Parliament and the Joint Committee on House of Lords reform' (n 57) 323.
[187] Ryan 'Parliament and the Joint Committee on House of Lords reform' (n 57) 314-19 & 322-5.
[188] See the author's written evidence, *Draft House of Lords Reform Bill* (report) (n 68) 173-4. In fact, earlier in 2008 in a submission to the Ministry of Justice, he had suggested that to overcome the 80 per cent model becoming an unstable settlement, a provision should be inserted that provided that this ratio was unalterable in order to act as a moral and constitutional (albeit non-legal) deterrent from reducing the appointed element. The Labour Government's reply was that this was something that could be considered at a later date (n 60).
[189] Ryan 'Parliament and the Joint Committee on House of Lords reform' (n 57) 323.

Output E concluded by returning to the question of consensus and made it clear that universal agreement was simply impossible. It raised the question as to a consensus between whom and on what? The parliamentary votes clearly indicated that there was no inter-House agreement as the Lords had voted overwhelmingly (and consistently) for an appointed House and had rejected decisively all other options. The author stressed that, nonetheless, the 2008 White Paper had dismissively ignored the wishes of peers. This led, in turn, to consideration of a possible conflict between the two Houses in the event of any long-term Reform Bill being presented to peers. The Output also noted the peculiarity of the British constitution that such reform did not legally require the consent of either the second House or the people in national referendum (on the latter see sub-theme 5). Nor was there any inter-political party consensus, as other than the Liberal Democrats, the two main political parties were split on Lords reform.

What is also clear is that there is no widespread agreement on the electoral system. The author reiterated this point to the Ministry of Justice in 2008 that it would be very difficult to obtain agreement on this issue.[190] One issue critiqued in relation to both the 2003 and 2007 votes was that the term 'election' had not been particularised. This was critical because some electoral systems are seen as more acceptable than others. In addition, it raised other connected (but contested), electoral issues such as cycles, constituency sizes, etc. The author also reaffirmed that the electoral system for the Lords could not be determined in hermetically sealed isolation from other constitutional changes (future or otherwise) to the House of Commons – a point reaffirmed to the Ministry of Justice in 2008.[191] Finally, there is debate over powers. As pointed out by the author, it appears logical and indeed constitutional that a more democratic House should enjoy a corresponding increase in its powers[192] (see sub-theme 5).

The Output stated that although most may agree reform is necessary, there is no uniform agreement as to how it should be secured. This helps to explain why, from an historical perspective, long-term reform has not been realised (see sub-

[190] Ryan, Submission to the Ministry of Justice (60).
[191] Ryan, Submission to the Ministry of Justice (60).
[192] Ryan, 'A consensus on the reform of the House of Lords?' (n 183) 340-1. Also see *Draft House of Lords Reform Bill (report*) (n 68) 173.

theme 1). Indeed, the Output predicted (accurately) that for the 2011 centenary celebrations, the composition of the House would be in the same partly reformed state as it had been at the time of the journal publication in 2009. Moreover, in his 2004 article the author had rather presciently asserted that as Parliament had failed to give a clear signal in its 2003 votes, the one option which had not been voted on - that of the status quo - may well by default, be the one which prevails for the foreseeable future.[193] Thirteen years later we are still in that status quo.

The lessons for Lords reform are that, notwithstanding the votes of 2007, there is no inter-House or inter-party consensus within Parliament on how to complete the reform of the House of Lords. It is equally clear that any future proposal for wholesale reform will be bicameral and exclude any hereditary element. The key lesson is that constitutional reform cannot be moulded in a vacuum immune from other secondary effects reverberating elsewhere throughout the constitution. The originality of the Output is underscored by the fact that it is understood that no other academic legal journal article has examined, interpreted and analysed the underlying patterns of the 2007 parliamentary votes.

5. A referendum on fundamental reform of the House of Lords

The conclusion of sub-theme 4 was that there was no political or parliamentary consensus on the issue of how to complete the reform of the House of Lords. This political impasse leads into the final sub-theme in which the author called for a nation-wide referendum to be held on Lords reform. In essence, he argued that the Coalition Government ought to have acceded to the recommendation of the 2012 Joint Committee that the House of Lords Reform Bill should have been subject to a nation-wide referendum. This sub-theme had its antecedents in a 2014 SLS conference paper delivered at Nottingham University[194] and, thereafter, a revised version (Output F) was published in Northern Ireland Legal Quarterly[195] (a piece described in editorial review as strong). These in turn, had

[193] Ryan 'Parliament and the Joint Committee on House of Lords reform' (n 57) 327.
[194] Mark Ryan, 'A referendum on the reform of the House of Lords?' (Society of Legal Scholars, Nottingham, September 2014) historically was available at http://www.legalscholars.ac.uk.
[195] Mark Ryan, 'A referendum on the reform of the House of Lords?'(2015) 66 NILQ 223.

previously drawn upon a written submission in September 2011 to the Joint Committee on the Draft House of Lords Reform Bill, which had adopted the author's proposal for a referendum.[196] His suggestion was also supported in the *Alternative Report* written and published separately by a number of members of the Joint Committee[197] (see sub-theme 1). The author's view that a referendum should take place also formed part of his oral evidence in July 2012 to the PCRC.[198] In fact, this was given the week before the Second Reading of the House of Lords Reform Bill, during which around 20 MPs had supported holding a referendum (see sub-theme 1). Some of these MPs did so by expressly mentioning the Joint Committee's recommendation[199] (which, of course, had adopted the author's view).

As an aside, in September 2011 the author placed on the HM Government's website a call for a national referendum to take place on the Coalition Government's 2011 Draft House of Lords Reform Bill (i.e. whether the House should be largely or wholly elected). This followed the author's written evidence to the House of Lords Select Committee in 2011 that referendums should be held on major constitutional issues (including the House of Lords).[200] Output F concluded that the failure to hold a referendum was not only a lost opportunity in 2012, but that in the event that proposals for long-term reform of the House of Lords appear again on the political agenda, the arguments advanced made a compelling case for a national referendum to be held. At the time of writing, the prospects of such were highly unlikely given the incumbent Conservative Government's May 2017 manifesto commitment on long-term Lords reform not being a priority.

The Output provided a brief history of recent attempts at Lords reform in order to place the proposal of a referendum in its context and was informed by, and drew upon, various articles written by the author (see sub-theme 1). It then explored the position of the referendum in the context of the British constitution, which historically has been seen as alien to the constitutional and political traditions of

[196] *Draft House of Lords Reform Bill (report)* (n 67) 94-6.
[197] *House of Lords Reform: An Alternative way forward* (n 72) 32.
[198] *Ensuring standards in the quality of legislation* (n 152) Q 177.
[199] For example MPs, Rory Stewart, HC Deb 9 July 2012, vol 548 col 36 and Sadiq Khan at col 45.
[200] *The process of constitutional change* (n 88) CRP 4.

the United Kingdom, as well as having been executive driven.[201] Direct democracy has been viewed as undermining parliamentary sovereignty and representative democracy, as it allows for the displacement of the Burkean concept of a judgement made by elected parliamentarians. Notwithstanding, the concept of a referendum on constitutional issues has some weighty provenance as it was proposed by the legal theorist Professor Dicey over a century ago.[202] He approved of selective referendums in order to give effect to the will of the people as a negative (and so conservative) device. In fact, such is the increasing prominence of domestic referendums that in 2009 the House of Lords Select Committee was moved to investigate the role of referendums in the United Kingdom. Its conclusion was that if they were to be held, they should be 'used in relation to fundamental constitutional issues', but that Lords reform (other than its abolition) was not one.[203] This proposition was one which the author vigorously contested and posited four key arguments for a referendum on the reform of the House of Lords.

The first argument was that it was necessary owing to the envisaged change in composition to a largely elected House, which would represent a seminal constitutional reform of the United Kingdom's uncodified constitutional arrangements. Output F then critiqued the House of Lords Select Committee's failure to designate and include the reform of the House of Lords as a fundamental constitutional issue warranting a referendum. The author argued in the Output, as well as earlier in his written evidence to the Joint Committee,[204] that the constitution could not be changed in a vacuum, as reform of the second chamber would necessarily have secondary effects reverberating elsewhere. He argued that an elected House would have a profound effect on two key constitutional relationships, viz, inter-House relations and executive/Parliament relations. In other words, an increase in the democratic legitimacy of the second chamber by virtue of election would go hand in glove with an increasing

[201] The author also made this point in the following written submission, Public Administration and Constitutional Affairs Select Committee, *Lessons learned from the EU referendum* (HC 2016-17, 496) EUR0116.
[202] Albert Venn Dicey, 'Ought the referendum to be introduced into England?'(1890) 57 *Contemporary Review* 489 and 'The referendum and its critics' (1910) 212 *Quarterly Review* 538.
[203] House of Lords Select Committee on the Constitution, *Referendums in the United Kingdom* (HL 2009-10, 99) 27.
[204] *Draft House of Lords Reform Bill (report)* (n 68) 173.

assertiveness and corresponding potential threat to the primacy of the Commons (see sub-theme 1). He asserted in written evidence to the Joint Committee that these elected members inevitably would feel emboldened by their new-found democratic legitimacy. This, in turn, would require a rewiring of the existing conventions which regulate the House to take account of the new constitutional landscape within Parliament.[205]

The Output observed that the conclusion of the House of Lords Select Committee was implicitly (albeit not expressly) rejected by the Joint Committee. The latter stated that by any standard the shift to an elected House would be 'of major constitutional significance'[206] and in light of such constitutional change, recommended that 'the Government should submit the decision to a referendum'.[207] Moreover, the *Alternative Report* asserted that, in practice, such constitutional changes to the second chamber could not be done *without* a referendum.[208]

A second argument was that a constitutional and political precedent had already been laid down with the national referendum in May 2011 on the electoral system for MPs.[209] The author posed the question that if it could be argued that a possible change in the electoral system from one majoritarian system to another warranted a referendum; then why not one on introducing the principle of election into the upper House? In short, it was constitutionally inconsistent not to hold one, a point also asserted in his written evidence to the Joint Committee.[210] The Output also argued that once the principle of holding a national referendum to settle a constitutional issue had been conceded, politically it was difficult to prevent it being invoked in relation to other (and arguably more significant) constitutional issues. On a broader point, in his oral evidence to the PCRC the author argued that there should be referendums on significant constitutional issues.[211] In fact, as noted the *Alternative Report* contended that it would be

[205] *Draft House of Lords Reform Bill (report)* (n 68) 173.
[206] *Draft House of Lords Reform Bill (report)* (n 67) 92.
[207] *Draft House of Lords Reform Bill (report)* (n 67) 96.
[208] *House of Lords Reform: An Alternative way forward* (n 72) 76.
[209] A point also made by the author in oral evidence to the PCRC, *Ensuring standards in the quality of legislation* (n 152) Q 177.
[210] *Draft House of Lords Reform Bill (report)* (n 68) 173.
[211] *Ensuring standards in the quality of legislation* (n 152) Q 199.

unwise to proceed with major national constitutional change without first seeking a direct mandate from the people.

The Coalition Government countered that as reform of the House of Lords had been set out as policy in all three 2010 manifestoes of the main political parties, a referendum was not necessary. The author identified that a similar argument had also been used by the previous Labour Government (i.e. that Lords reform had been pre-figured in the 2005 manifestoes). It is rather fitting that according to the PCRC in its recent report of July 2014 on a written constitution for Britain, there were now constitutional conventions developing as to when referendums should take place. In particular, it posited a referendum should be held when novel constitutional arrangements were being proposed.[212] This fitted in seemlessly with the author's referendum proposition, as an elected House would neatly fall into this developing category.

A third argument for a referendum was based on the fact that it avoided an introspective parliamentary approach to this fundamental constitutional issue. Although the British constitution can be altered without any reference to the people, it is also a maxim that the constitution is not the preserve of any one political party, let alone a transient Government of the day,[213] and that an insular attitude has been the historic hallmark of debate on Lords reform (see sub-theme 1). In fact, the Joint Committee quoted the author in the following terms: 'Mark Ryan, Senior Lecturer in Constitutional and Administrative Law at Coventry University, maintained that a referendum was necessary as "constitutional reform has been far too parliamentary-centric and introspective without any real reference to engaging the wider public."'[214] The *Alternative Report* also stated that: 'On public engagement we agree with the evidence of Mark Ryan, Senior Lecturer at Coventry University.'[215] The author also made this point in his oral

[212] *A new Magna Carta?* (n 1) 394. In his written evidence on this issue, the author had suggested that constitutional Bills should be subject to a referendum: *Consultation on A new Magna Carta* (n 1).
[213] *The process of constitutional change* (n 88) CRP 4.
[214] *Draft House of Lords Reform Bill (report)* (n 67) 94.
[215] *House of Lords Reform: An Alternative way forward* (n 72) 32. In 2011 the author stated in an Oxford Nuffield grant bid entitled 'Informing the parliamentary process towards completing the House of Lords reform through an examination of the public perspective' that the views of the public should be fed into the debate on Lords reform in order to offer a non-Westminster perspective. The leading expert Professor Meg Russell expressed an interest in the findings of

evidence to the PCRC when he asserted that Parliament 'needs to engage more with the people.'[216] In other words, the votes on Lords reform in both 2003 and 2007 had essentially been exclusively parliamentary affairs. In contrast, a national referendum on Lords reform would serve the political principle of participatory government and also confer constitutional and democratic legitimacy on any reform endorsed. The author argued strenuously that the significant changes which would necessarily ensue warranted express public approval from the 'constituent power'. In his oral evidence to the PCRC he added that he was in favour of referendums because 'After all, the people are the constituent power.'[217]

Output F then placed the issue of the legitimacy of the people as the constituent power in its proper theoretical constitutional context with particular reference to the writings of Professors Tierney,[218] Loughlin[219] and Lindahl.[220] The Publication also critiqued the idea that the public lacked the information to be able to make an informed decision and that a referendum was unnecessary because the public view was already known. Indeed, the author pointed out in his oral evidence to the PCRC that recent polls indicated that people were generally in favour of referendums.[221] The Output pointed out that it would have had an educative effect[222] and critiqued the assumption that the public lacked the capacity to participate.

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the survey. Although the bid was ultimately unsuccessful, it was described in review as 'with merit'.

[216] *Ensuring standards in the quality of legislation* (n 152) Q179.

[217] *Ensuring standards in the quality of legislation* (n 152) Q199. More recently, see the author's written evidence to the PACRA, *Lessons learned from the EU referendum* (n 201).

[218] Stephen Tierney, 'Constitutional Referendums: A Theoretical Enquiry' (2009) 72 MLR 360 and *Constitutional Referendums* (OUP, 2012).

[219] Martin Loughlin, *The Idea of Public Law* (OUP, 2003) and Martin Loughlin 'Constituent Power Subverted: From English Constitutional Argument to British Constitutional Practice' in Martin Loughlin and Neil Walker (eds), *The Paradox of Constitutionalism* (OUP, 2007), p 27.

[220] Hans Lindahl, 'Constituent Power and Reflexive Identity: Towards an Ontology of Collective Selfhood' in Martin Loughlin and Neil Walker (eds), *The Paradox of Constitutionalism* (OUP, 2007), p 9.

[221] *Ensuring standards in the quality of legislation* (n 152) Q199.

[222] In his written evidence in 2017 to the PACAC the author argued the more the public were informed, the more vibrant and healthier a democracy was, *Lessons learned from the EU referendum* (n 201). In addition, in 2014 his evidence (VUK31) was footnoted in relation to improving voter engagement through the education of young people and thereafter the PCRC recommended that educational citizenship courses should include discussion of elections, Political and Constitutional Reform Select Committee, *Voter engagement in the UK* (HC 2014-15, 232) 73-4.

A fourth argument was that it would provide some much needed clarity on an issue which has dogged parliamentarians for over a century. As demonstrated in sub-theme 4, there is no inter-House agreement or consensus between (or even within) the main two political parties in respect of the 2007 parliamentary votes. The Output critiqued the idea that the 2010 manifestos meant that no referendum was necessary, as for one thing, the issue of Lords reform was subsumed within a sea of other political issues. Secondly, drawing upon the mandate theory was problematic as the manifesto commitments of the two parties in the Coalition Government were contradictory,[223] as the Conservatives had supported a hybrid chamber, whereas the Liberal Democrats had pledged a wholly elected House. These were not matters of degree, but of kind – a point made in the author's written evidence to the Joint Committee,[224] but fudged in the 2010 *Coalition Agreement*. Finally, on a purely practical level, the author posed the question of how a voter who supported an appointed House could have registered this preference at the 2010 General Election?[225] The author stated that the importance of Lords reform warranted a stand-alone referendum in order that this issue could be isolated. He stressed that as the United Kingdom has had experience of national referendums, there was a compelling case for one to take place in 2012, as well as in the future should concrete proposals be presented again.

The final aspect of Output F provided an original, unique and inventive practical solution as to when the referendum should have taken place, together with the nature of the questions to be asked. In brief, the author devised and proposed an original and bespoke two-part question in the form of a pre-legislative 'preferendum'. This was in order to avoid an ambiguous result and ameliorate any political resistance in the House of Lords in respect of a Lords Reform Bill. The author recognised that in mid-2012 this was a politically unlikely solution for the Coalition Government to adopt and so proposed an alternative, post-legislative referendum which would have involved a sunrise clause being inserted into the Bill in order to activate the legislation.

[223] *Draft House of Lords Reform Bill (report)* (n 68) 174.
[224] *Draft House of Lords Reform Bill (report)* (n 68) 173.
[225] A very similar point was raised with the Ministry of Justice, see Ryan, Submission to the Ministry of Justice (n 60).

The lesson for Lords reform is that there is clearly an arguable case for directly engaging with the people as the constituent power in order to provide a solution to this perennial constitutional issue. The author is unaware of any modern academic journal article which has specifically proposed a referendum on the reform of the House of Lords and this article provided an original and practical solution to the political impasse on Lords reform.

CONCLUSION

In his Portfolio of Evidence the author has provided a thematic, rigorous and integrated analysis of attempts at reform of the House of Lords and the lessons to be learned. His Outputs A to D provided a full synthesis of the events in the ebb and flow of both long-term and interim Lords reform in recent years and have added progressively to this ongoing debate. In particular, the key lesson for Lords reform is that fundamental reform is highly unlikely in the near future given the lack of political drive and a general unwillingness to compromise on such a divisive issue. The only reform likely is incremental, through more modest and non-controversial steps. Output G applied a methodology (in the form of the House of Lords Select Committee's checklist) which was then applied to select constitutional Bills, most of which had a connection to the House of Lords. The author regrets the failure of Government to adopt this checklist and the lesson for legislative constitutional reform is that a more consistent approach is required for constitutional changes. In Output E the author challenged the notion of there being any real consensus for completing the reform of the House of Lords which the 2007 votes might otherwise have suggested. The lack of consensus extended to the impact introducing the principle of election would have on the Commons and the Government, thus illustrating that Lords reform is not only complicated and multifaceted, but cannot be undertaken in a vacuum, isolated from its effects on other aspects of the constitution Finally, Output F developed an original solution to help try to break the deadlock on this issue and provided a rigorous case for engaging directly with the people in the form of a referendum.

Although long-term reform of the House of Lords remains unrealised, events will continually unfold. By way of example, the Burns Speaker Committee is scheduled to report in late 2017, which may well lead to concrete proposals to reduce the size of the burgeoning House. It also remains to be seen how the Salisbury Convention will operate in the context of a minority Conservative Government with all the constitutional, legal and political implications that this raises. Indeed, this neatly illustrates that Lords reform bridges the gap between law and the political sciences. In the future, the author will continue to assiduously research the area of constitutional reform (and the reform of the House of Lords in particular) and actively engage with, and outreach to,

Parliament and its select committees on these matters.

In conclusion, the author has researched and taught Lords reform for two decades and acquired considerable expertise in this area. His Outputs and writings represent an original, integrated and coherent body of work which, collectively, have added significantly to the debate and narrative on this topical and long-standing issue. In fact, partly due to the dynamism of events, there is a dearth of legal articles tracking the events of Lords reform and the author has endeavoured to fill this deficiency. He has contributed to the academic community through publications in well-respected legal journals and delivered multiple conference papers at the Society of Legal Scholars (as well as being referenced in legal textbooks). In addition, he has gained recognition in a wider political and parliamentary context through written submissions to various parliamentary select committees and been invited to provide oral evidence as a legal expert witness. Not only have these committees quoted and footnoted the author on numerous occasions, but in doing so, he has helped to shape and inform their reports/recommendations. In short he has earned a credible reputation as a constitutional academic with a specialism in the area of the reform of the House of Lords. The author, accordingly, wishes to be considered for a PhD by Portfolio in the form of this Critical Overview Document and Portfolio of Evidence.

On-going work and aspirations beyond PhD:

(a) In the short term (i.e. the second half of 2017) the author will continue to work on providing the completed, and fully revised, manuscript of the fourth edition of his textbook (this edition had been specifically requested by the publisher - Routledge: Taylor & Francis Group - owing to the popularity of the book). This will be a very comprehensive revision given the monumental changes since the last edition and will include references to the reform of the House of Lords.

(b) At the same time and during 2018 the author will continue with his research into the dynamic area of constitutional reform (and the House of Lords in particular) with the overall objective of progressing to a Reader in

Law. He will specifically work on an article on a written constitution for the United Kingdom (including the position of a second chamber). In addition, he will work on a broader and more ambitious research project into the process of constitutional legislation (on this the author has been in contact with Professor Feldman of Cambridge University who has kindly offered to review it in due course). In order to support this major project, the author will investigate and try to secure a research grant for it.

(c) In the longer term it is the author's intention to write a comparative (and completely original) analysis of the Irish and British Constitutions, thereby drawing upon both his undergraduate studies and two decades of teaching and as a researcher.

APPENDIX A: PUBLICATIONS AND CV

Authored book(s):

Ryan M and Foster S, *Unlocking Constitutional and Administrative Law* (4th edn, Taylor Francis, scheduled for 2018).

Ryan M and Foster S, *Unlocking Constitutional and Administrative Law* (3rd edn, Taylor Francis 2014).

Ryan M and Foster S, *Unlocking Constitutional and Administrative Law* (2rd edn, Hodder 2010).

Ryan M and Foster S, *Unlocking Constitutional and Administrative Law* (1st edn, Hodder 2007).

In addition, we have provided the following online updates to accompany the textbook:

Online update 2008 (Hodder: https://www.unlockingthe law.co.uk)

Online update 2009 (Hodder: https://www.unlockingthe law.co.uk)

Online update 2010 (Hodder: https://www.unlockingthe law.co.uk)

Online update 2011 (Hodder: https://www.unlockingthe law.co.uk)

Online update 2014 (Taylor & Francis: https://www.routledge.com)

Refereed journals:

Ryan M, 'The European Convention and the Millennium Parliament' (1999) 11 *Talking Politics* 42.

Ryan M, 'Parliament and the Joint Committee on House of Lords reform' (2003) 38 *Law Teacher* 310.

Ryan M, 'The House of Lords: Options for reform' (2003) 16 *Talking Politics* 29.

Ryan M, 'A Supreme Court for the United Kingdom?' (2004) 17 *Talking Politics* 18.

Ryan M, 'Reforming the House of Lords: A 2004 update' (2004) 38 *Law Teacher* 255.

Ryan M, 'The House of Lords and the shaping of the Supreme Court' (2005) 56 NILQ 135.

Ryan M, ‘A consensus on the reform of the House of Lords?’ (2009) 60 NILQ 325.

Ryan M (2012) ‘The Fixed-term Parliaments Act 2011’ [2012] PL 213.

Ryan M (2012) ‘A summary of the developments in the reform of the House of Lords since 2005’ (2012) 21 Nott LJ 65.

Ryan M (2013) ‘The latest attempt at reform of the House of Lords - one step forward and another one back’ (2013) 22 Nott Law J 1.

Ryan M (2014) ‘The Constitutional Reform and Governance Act 2010: The evolution and development of a constitutional Act’ (2014) 35 Liverpool Law Review 233.

Ryan M (2015) ’Bills of Steel: The House of Lords Reform Act 2014’ [2015] PL 558.

Ryan M (2015) ’A referendum on the reform of the House of Lords?’ (2015) 66 NILQ 223.

Non-refereed journals:

Ryan M, ‘A Bill of Rights and the Millennium Parliament’ (1997) 2 *Coventry Law Journal* 17.

Ryan M, ‘The Human Rights Bill’ (1997) 2 *Coventry Law Journal* 32.

Ryan M, ‘Reforming the House of Lords: A deceptively simple process?’ (1999) 4 *Coventry Law Journal* 5.

Ryan M, ‘The Royal Commission on the reform of the House of Lords: A case of constitutional evolution rather than revolution’ (2000) 5 *Coventry Law Journal* 27.

Ryan M, ‘Bringing the House down’ (2007) 157 NLJ 1752.

Ryan M, ‘Sum of constituent parts’ (2008) 158 NLJ 739.

Ryan M, ‘The house that Jack built’ (2008) 158 NLJ 1197.

Ryan M, ‘Central-local government relations’ (2009) 14 *Coventry Law Journal* 18.

Ryan M, ‘The reform of the House of Lords - A brief update’ (2011) 16 *Coventry Law Journal* 64.

Scheduled future research articles/projects:
Ryan M ‘A written Constitution for the UK?’

Ryan M (broad based research project for 2018) ’A review of legislative standards for constitutional legislation?’

Conference papers (external): Society of Legal Scholars and others
Ryan M, ‘The reform of the House of Lords.’ (SLS, London School of Economics, 2008).

Ryan M and Vollans T, ‘The House of Lords (Members’ Taxation Status) Bill.’ (SLS, Keele University, 2009).

Ryan M and Vollans T, ‘The House of Lords (Members’ Taxation Status) Bill.’ (TRN, Cardiff University, 2009).

Ryan M, ‘The Constitutional Reform and Governance Act 2010.’ (SLS, Southampton University, 2010).

Ryan M, ‘Fixed-term Parliaments.’ (SLS, Cambridge University, Downing College 2011).

Ryan, M, ‘The Joint Committee on the Draft House of Lords Reform Bill (SLS, Bristol University, 2012).

Ryan M, ‘A referendum on the reform of the House of Lords?’ (SLS, Nottingham University, 2014).

Ryan M, ‘A tale of two reports’ (SLS, York University, 2015). Nominated for best paper from the Public Law section.

Ryan M ‘The process of constitutional legislation- an analysis of six case studies’ (SLS, Oxford University, St Catherine’s College, 2016).

Conference papers (internal): Coventry University Faculty Conference
Ryan M, ‘The House of Lords.’ (BES Internal conference, Coventry University, 2010).

Ryan M, ‘The Fixed-term Parliaments Act 2011.’ (BES Internal conference, Coventry University, 2012).

Ryan M, ‘The reform of the House of Lords.’ (BES Internal conference, Coventry University, 2013).

Ryan M, ‘A written constitution?’ (BES internal conference, Coventry University, 2016).

Written evidence to parliamentary committees/Government

Ryan M (2004) Submission to the House of Lords Select Committee: *Constitutional Reform Bill* (HL 2003-04, 125-II, 401).

Ryan M (2008) Submission to the Joint Committee on the Draft Constitutional Renewal Bill: *Draft Constitutional Renewal Bill* (2007-08 HL 166-II, HC 551-II, Ev 36 405). This evidence was referred to, and quoted, on a number of occasions in the body of the main report (Volume I).

Ryan M (2008) Submission to the Ministry of Justice on the 2008 Government White Paper on House of Lords reform.

Ryan M (2010) Submission to the House of Lords Select Committee: *Fixed-term Parliaments Bill* (HL 2010-11, 69) - evidence FTP 32 published online at www.parliament.uk/hlconstitution and was quoted in the main body of the report.

Ryan M (2011) Submission to the House of Commons Political and Constitutional Reform Select Committee: *Constitutional implications of the Cabinet Manual* (HC 2010-11, 734) - evidence Ev w5 published online at www.parliament.uk/pcrc, and was footnoted in the main body of the report.

Ryan M (2011) Submission to the House of Lords Select Committee on the Constitution: *The process of constitutional change* (HL 2010-12, 177) - evidence CRP 4 published online at www.parliament.uk/hlconstitution, and was quoted in the main body of the report.

Ryan M (2012) Submission to the House of Lords Select Committee on the Constitution: *Judicial Appointments* (HL 2010-12, 272) - evidence published online at www.parliament.uk/hlconstitution.

Ryan M (2012) Submission to the Joint Committee on the Draft House of Lords Reform Bill: *Draft House of Lords Reform Bill (report)* (2010-12, HL 284-III, HC 1313-III) 172 - this evidence was quoted directly in the main body of the report. In addition, he was also quoted in the *Alternative Report, House of Lords: An alternative way forward* (April 2012) issued by a minority of members of the Joint Select Committee on the Draft House of Lords Reform Bill.

Ryan M (2013) Submission to the House of Commons Political and Constitutional Reform Select Committee: *Prospects for codifying the relationship between central and local government* (HC 2012-13, 656-I) Ev w182. In January 2013 the author was formally invited to the reception of the launch of this report.

Ryan M (2013) Written submission to the House of Commons Political and Constitutional Reform Select Committee on Legislative Standards: *Ensuring standards in the quality of legislation* (HC 2012-13, volume II 85) Ev w53.

Ryan M (2013) Oral submission of evidence to the House of Commons Political and Constitutional Reform Select Committee on Legislative Standards: *Ensuring standards in the quality of legislation* (HC 2012-13, volume I 85). He was quoted in the main body of the report.

Ryan M (2013) Submission to the House of Commons Political and Constitutional Reform Select Committee: *House of Lords Reform; what next?* (HC 2013-14, 251) Ev w9. This evidence was quoted in the main body of the report.

Ryan M (2013) Submission to the House of Commons Political and Constitutional Reform Select Committee: *Constitutional role of the judiciary if there were a codified constitution* (HC 2013-14, 802) CRJ0001.

Ryan M (2014) Submission to the House of Commons Political and Constitutional Reform Select Committee: *Fixed-term Parliaments Act: the final year of a Parliament* (HC 2013-14, 976) FTF 0002. This evidence was quoted in the main body of the report.

Ryan M (2014) Submission to the House of Commons Political and Constitutional Reform Select Committee on voter engagement: *Voter engagement in the UK* (HC 2014-15, 232) VUK 0031. This evidence was referenced number of times in the main body of the report.

Ryan M (2015) Submission to the House of Commons Political and Constitutional Reform Select Committee on the Cabinet Manual - the author had been invited by the Select Committee to submit evidence in order to supplement his previous submission on the Cabinet Manual (*Revisiting the Cabinet Manual* (HC 2014-15, 233) RCM 04.

Ryan M (2015) Submission to the House of Commons Political and Constitutional Reform Select Committee on increasing voter engagement (a follow up report). The Select Committee had contacted the author to ask him to submit evidence: *Voter engagement in the UK: follow up* (HC 2014-15, 938) PVE0050.

Ryan M (2015) Submission to the House of Commons Political and Constitutional Reform Select Committee on whether a written constitution should be introduced – the Chair of the Select Committee had contacted the author to ask him to submit evidence: *Consultation on A new Magna Carta?* (HC 2014-15, 599) AMC0079. In March 2015 (at the invitation of the Chair of the Select Committee) he attended Parliament for the launch of 2015 document 'The UK constitution'.

Ryan M (2015) Submission to the House of Commons Political and Constitutional Reform Select Committee in relation to pre-legislative scrutiny of the clauses of the 2015 Draft Scotland Bill: *Constitutional implications of the Government's draft Scotland clauses* (HC 2014-15, 1022) DSB0002. He was referenced a number of times in the body of this report.

Ryan M (2015) Submission to the House of Commons Political and Constitutional Reform Select Committee in relation to the 'Pocket Constitution' - no report was issued as the Select Committee was not reappointed for the following Parliament.

Ryan M (2016) Submission to the House of Lords Select Committee on the Constitution: *The 'Great Repeal Bill' and delegated powers* (HL, 2016-17, 123) LEG0034. This evidence was referenced in relation to delegated powers.

Ryan M (2017) Submission to the House of Commons Public Administration and Constitutional Affairs Select Committee on the lessons to be learned from the EU referendum: *Lessons learned from the EU referendum* (HC 2016-17, 496) EUR 116.

Ryan M (2017) Submission to the House of Commons Public Administration and Constitutional Affairs Select Committee on the issue of the current size of the House of Lords. The author's evidence was published online (HOL 13) by the Select Committee, however, the Committee was disbanded shortly before the snap 2017 General Election before it could issue a report.

Ryan M (2017) Submission to the House of Lords Select Committee on the Constitution on the issue of the pre-legislative process - this evidence was published online (LEG0005), but owing to the snap 2017 General Election, no report to date has been issued by the Committee.

Ryan M (2017) Submission to the House of Commons Public Administration and Constitutional Affairs Select Committee on Brexit. Although this evidence was composed by the author, due to the snap 2017 General Election, the Committee was unable to accept submissions.

ESTEEM INDICATORS

In November 2007 the Master of the Rolls referred to one of the author's articles in a lecture delivered at Hertfordshire University.

The author's written evidence in April 2004 to the House of Lords Select Committee on the Constitutional Reform Bill argued (together with other submissions) that the choice of candidates for a Supreme Court Justice proposed in Clause 21 (ie between 2 to 5) would confer an 'unacceptably wide' margin of discretion on the executive. He suggested that consideration be given to confining the number of candidates. The Bill was subsequently amended by the Select Committee so as to allow the presentation of one candidate at a time - now section 29 of the Constitutional Reform Act 2005.

In October 2009 he was referred to by the House of Commons Library Research Paper (Paper 09/73) on the Constitutional Reform and Governance Bill (a paper supplied to MPs in order to inform debate on the above Bill).

In 2008 the author was listed as a parliamentary expert (in respect of the United Kingdom) by the European Centre for Parliamentary Research and Documentation.

In 2010 and 2012 he was nominated by his undergraduate students for the award of the (national) lecturer of the year.

In 2011 he was on the Coventry University shortlist of three from the entire university staff having been nominated for *Most Inspirational Lecturer* at the University.

In 2015 the Chair of the Political and Constitutional Reform Select Committee thanked the author for the contributions that he had made to the committee during its parliamentary lifetime.

In the last five years the author has been approached and asked to write a Constitutional Law textbook by both Oxford University Press and Taylor & Francis, but had to decline owing to pressure of work.

OUTLINE CV

Academic:

1988 BA (Hons) Irish History, Politics and Society (Magee University College, University of Ulster) (2:1)

1990 CPE in Law (City University, London)

1991 MA in Law (City University, London)

1992 Bar Vocational Course (Inns of Court School of Law)

1993 Called to the Bar at the Honourable Society of Grays' Inn

1996 PGCE University College Cardiff, Cardiff University

Employment history (lecturing):

1996 Lecturer at Mid-Warwickshire College of Further Education

1997 Associate Lecturer in Law at Coventry University

1998 Lecturer in Law at Coventry University

2004 Senior Lecturer in Law at Coventry University

APPENDIX B: TABLES

Bills (including those in draft) and Acts of Parliament:

Draft Constitutional Renewal Bill 2008.
Draft House of Lords Reform Bill 2011.

House of Lords Reform Bill 2012.
Disqualification from Parliament (Taxation) Bill 2007.
House of Lords (Members' Taxation Status) Bill 2008.

Constitutional Reform and Governance Bill/Act 2010.
House of Lords Reform Bill/Act 2014.
Constitutional Reform Bill/Act 2005.
Scotland Bill/Act 2016.
Fixed-term Parliaments Bill/Act 2011.

Acronyms:

Joint Committee (Joint Committee on the Draft House of Lords Reform Bill 2011-12) to be distinguished from the Joint Committee on the Constitutional Renewal Bill 2008.

House of Lords Select Committee House of Lords Select Committee on the Constitution

PCRC Political and Constitutional Reform Select Committee (2010-15).

PACAC Public Administration and Constitutional Affairs Select Committee (post 2015).

SLS (Society of Legal Scholars).

Alternative Report (Alternative Report, *House of Lords Reform: An alternative way forward* (April 2012)).

PORTFOLIO OF EVIDENCE

(OUTPUTS A – G)