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House of Lords Reform: Two Views

There is a widening consensus that the House of Lords requires reform. The day of the hereditary principle has passed. The replacement of hereditary peers with government appointees is inappropriate. There is therefore agreement that Labour's plans for democratic reform of the Lords are incomplete if they simply abolish the hereditary peers and do not encompass thorough-going change.

Beyond this, consensus breaks down. There is little agreement on the precise role, authority and therefore composition of the Upper House in the British system. There are a plethora of ideas, but the IPPR detect a broad division into two main camps. On the one hand there are those who argue for a type of upper chamber appropriate for what will essentially remain a unitary state (with the Scottish Parliament to be seen as a one-off anomaly). The second camp maintains that devolution has only just begun and will continue. The UK may not be moving towards a federal system, but there will be an asymmetry with provincial or regional structures more like Spain than Germany. Therefore the House of Lords should be reformed to be the capstone of this diverse structure, and the place to resolve disputes between the regions, rather than these going to the courts.

IPPR presents two papers here which are examples of the two schools. Both make the case for reshaping the House of Lords from a national embarrassment into a positive feature of a modernised constitution, but offer radically different solutions. Quarmby argues that, as an essential function of a second chamber is to act as a constitutional check on the lower house, it needs a direct mandate to provide it with sufficient "democratic clout". Furthermore, if the upper chamber is to be directly elected, there is no need to proceed in stages. Quarmby therefore advocates a "big bang" approach - a move to direct election would be much more difficult to oppose than a move to a wholly-appointed chamber.

Osmond recommends a more evolutionary approach. He sees the reform of the House of Lords as part of the trajectory towards regional governance in England. Rather than a newly constituted House of Lords continuing as a competing legislative chamber, Osmond argues that it should be an indirectly-elected chamber representing the regions and nations of Britain. It would then function as a forum for negotiation and act to resolve financial differences and conflicts.

Labour is committed to removing the voting rights of hereditary peers as a first step, promising to follow this with further consideration of a more fundamental reform. IPPR hopes that in presenting these two papers, it can help move the debate.

The views and proposals presented in these two papers are those of the authors. They are not necessarily endorsed by the IPPR, its staff or trustees.

Gerald Holtham
Director

STRAIGHT TO THE SENATE

Katharine Quarmby

CONTENTS

Page

Introduction

The House of Lords should be abolished and replaced by an elected Senate which has the legitimacy to act as an effective check on the Executive. This cannot be achieved by a chamber living in constant fear of abolition. An appointed upper house will lack the legitimacy to provide an effective counter to an increasingly powerful and presidential Executive. It will still fear that if it proves too awkward or independent, it will be abolished.

The case for reform is strengthened by the General Election result. After the weakness of the Major years, the conditions Lord Hailsham described as elective dictatorship are back. This makes reform more urgent, but also more achievable. With a Labour majority of 179, there is unlikely to be any difficulty getting a Bill through the Commons. Only mismanagement on the scale achieved by Harold Wilson in 1968 would cause problems in the Lower House. And the Upper House, though it can delay reform, cannot block it completely.

Too many proposals for Lords' reform concentrate on the process and problems of transition, compromising objectives in order to get reform though Parliament. The danger of this approach is that the opportunity to regenerate our democratic system will be missed through excessive timidity. Creating an elected Senate could be part of a transformation of British political life and would be much to the credit of the Government responsible. Conversely, in the current climate of concern about sleaze and patronage, creating an appointed upper house, which could be represented as the apogee of the patronage state, would do little to restore the reputation of politics and politicians.

This paper looks first at the proper role of a second chamber, considering and rejecting the case for unicameralism. Britain needs a second chamber to check the power of the Executive, particularly over constitutional matters and civil rights. The upper house plays an essential part in revising and improving legislation. A second chamber could usefully contribute to the representation of the constituent parts of Britain at Westminster, allow voices from outside the main parties to be heard, and develop its role in scrutinising European Union legislation.

The paper then examines the status quo - what the Lords does well, what it does badly. It concludes that the House of Lords is not only undemocratic, but also inefficient. The two points are of course connected: the role of the Upper House cannot be significantly enhanced without fundamental reform of its composition.

Alternative options are then evaluated. An appointed second chamber would not be an effective check on the Executive. Nor would it expand democratic representation. An indirectly elected chamber has more to recommend it. But the German system, in which the Lander governments send representatives to the Bundesrat, appears unworkable in the absence of a federal Britain. The French Senate, chosen by an electoral college made up of local politicians, lacks a direct mandate and so has little legitimacy or independence. Direct election, with its obvious strengths in terms of legitimacy and representation, should therefore be the basis of the new Senate.

The paper goes on to consider the electoral system most likely to deliver the outcome recommended: a chamber in which party loyalty is weaker than in the Commons but territorial loyalty is strong, and where there is room for independents and minority voices. The paper concludes that either regional lists or STV on the basis of county constituencies would be the best option. I do not accept the argument that the second chamber has to be elected on the same basis as the first. On the contrary, since the two chambers have different functions, there are advantages to having different electoral systems.

On the question of enacting the Reform Bill, Labour has proposed that the Lords should be reformed in stages. The paper concludes that it should not - a single-staged reform would be less time consuming in the long run, and also more likely to pass through Parliament than a Bill to remove the voting rights of hereditary peers.

Finally the question of timing is considered. The Labour Government has so far played the issue cleverly, saying little and so keeping the Lords guessing. However, at some stage, the House of Lords will begin to stand up for what they have called the national interest, which the greater public might justifiably see as the privileges of the land-owning classes. Sweeping away the anachronistic House of Lords may therefore need to be brought forward. To say that a check on the Executive is necessary is not to argue for this particular check. It is essential that Labour uses its current dominance to break the remaining power of the aristocracy and complete the democratisation of Britain, a process which has proceeded with painful slowness since the Magna Carta.

Labour should introduce a Reform Bill no later than its third Queen's Speech, thus ensuring that the Lords could not block it until beyond the next election. It should hold in reserve the option of an earlier Bill, if the Lords choose to block government legislation or a Private Member's Bill which has public opinion on its side.

1. Do we need a second chamber?

Less than a third of national parliaments have second chambers. Admirers of uni-cameralism argue that it is a more streamlined and effective system, with less scope for conflict or gridlock. If a government wants to make radical changes, it can do so without unnecessary delay. This argument appealed to the Labour Left in the 1960s.

Unicameralists also point out that upper houses often simply correct deficiencies in the lower house, an objective which could be achieved more efficiently by reforming the lower house. As Bagehot wrote in The English Constitution in 1867 "If we had an ideal House of Commons...it is certain we should not need a higher chamber". The House of Commons has improved since Bagehot's day; it is at least now elected by universal suffrage. But it is far from ideal. It needs to be reformed to make it more representative and less dominated by party discipline. If this were done, would a second chamber still be needed? The experience of New Zealand in the 1980s - when radical reform of the welfare system was forced through with inadequate consideration of the consequences - hardly seems a good advertisement for unicameralism. But New Zealand had at the time a first-past-the-post electoral system which delivered majorities to a single party. Its experience is an argument against unicameralism combined with a majoritarian electoral system, not against unicameralism *per se*. If the Commons were to be elected by PR, it could be argued that a strong second chamber would then represent an excessive check on executive power, tipping the scales too far away from radical action and towards gridlock.

Nevertheless, unicameralism is not appropriate for the UK, and for these reasons. Second chambers can add value, not just make up for the inadequacies of the first. Most unicameral countries are small: the biggest in Europe is Sweden, with about 8.5 million people. They therefore have a low ratio of Members of Parliament to their constituents. Unicameral countries also tend to have little ethnic or linguistic variation. Great Britain has a disparate collection of peoples and social make-up. The second chamber offers the advantages not only of making the lower house think again, but of representing under-represented segments of society. The tensions of uniting different nations within a single state mean that unicameralism is not suitable for the UK.

The argument that a majority in the Commons is essential in producing a strong government that can see its policies through - that elective dictatorship is acceptable as it allows radical governments to achieve radical results - is no longer widely accepted. General elections do not produce perfect representations of people's will, and John Stuart Mill's strictures about the tyranny of the majority are as valid today as they were a century ago. Even Tony Benn, formerly a strong supporter of unicameralism, now argues for a "House of the People" to sit alongside the Commons.

In any case, it is far from certain that Britain will adopt any form of PR for the House of Commons. Labour's manifesto reiterated the promise of a referendum on the issue, but made no comment on the line the Government would take (a suspension of collective responsibility, as for the 1975 Europe referendum, is the most likely option). Tony Blair is "not persuaded", and many of his Cabinet colleagues are known to be hostile to change. Only a couple of years ago electoral reformers were

speaking approvingly of the smooth transition in New Zealand, via a referendum, from first past the post to PR. Since then that country has demonstrated all that is wrong with PR. A minority party switched allegiance after the election, resulting in a weak government and complaints from the majority of voters wishing that they had stuck with the old system. This combined with the Labour Party's 1997 landslide have somewhat weakened the momentum of electoral reformers. And if first past the post remains, the case for a second chamber to stand up to governments with inflated majorities is unanswerable.

What should a second chamber do?

Second chambers perform, in the words of the Constitution Unit's 1996 report on the House of Lords, "a classic constitutional role of providing checks and balances within the political system". The Bryce Conference in 1918 identified the four functions which a Second Chamber should carry out :

- the revision of public legislation
- the initiation of non-controversial legislation to lighten the legislative load on the first chamber
- the imposing of so much delay as is necessary to take public soundings
- the discussion of important questions, particularly when the Lower House is busy

To this list five further activities can be added:

- the provision of representation for minority interests and independent viewpoints, breaking the oligopoly of the major parties.
- the representation of the constituent regions and localities of a country
- the protection of civil and political rights.
- the scrutiny of the activities of supranational bodies such as the EU.
- the scrutiny of non-departmental parts of the executive - quangos and agencies.

How does the House of Lords compare to this ideal? Before 1911 the House of Commons and the House of Lords were roughly equal partners in the governance of Britain. The Parliament Act of that year, the most significant democratic advance since the 1832 Reform Act, ended the Lords' power of veto. The 1911 settlement enabled the upper house to delay a Bill for two years; in 1949 this was reduced to a year. A Bill which has been passed by the Commons in two successive sessions must be presented for Royal Assent, even if it is then rejected for the second time. So a Bill to which the Lords are opposed may have to wait for up to thirteen months from the original second reading in the Commons, but it will eventually be enacted, unless a General Election intervenes.

The power to amend is widely defined, with one major exemption. The Commons enjoys financial privilege, which means that the Lords cannot amend Finance Bills or the parts of legislation relating to finance. The power of the Lords over financial matters is limited to one month's delay. On other matters the Lords can amend bills and the Commons can then choose to accept or overturn the amendment. There may be a certain amount of delay if the Lords tries to insist, by passing the same amendment more than once, but if the Commons is determined, its will always prevails.

The House of Lords uses these powers of amendment to scrutinise and revise legislation brought from the House of Commons, including both public and private Bills. Government Bills take up about 50% of the Lord's timetable. They are often substantially rewritten in the Lords, mostly by the Government, due to inefficient draftmanship. This alone would take up a lot of time in the Commons if there were no Second Chamber.

There are numerous examples of the in-depth work that the Lords does to mend faulty legislation. No-one who has seen the Lords in action would deny that the attention to detail is admirable, certainly when compared to the Commons. There is immense frustration in the Commons because of the strong whipping system, which means that talented backbenchers feel that they have little chance to influence the political system. In the Lords, by contrast, individuals can often get things done.

Many organisations see the Lords as the only place in which to secure legislative changes, and devote considerable time and resources to lobbying in the Lords. Indeed lobbyists confirm that the Lords front-bench teams come higher in their lobbying hierarchy than front-bench teams in the Commons. (Back-bench opposition MPs are at the bottom of the heap.) This is because there are no guillotines during discussion of legislation in the Lords, and a far weaker whipping system operates, so that an individual peer who is respected, particularly on the cross-benches, can actually sway House opinion in a way virtually unknown in the stylised combat of the Commons. These procedural differences have created a real if comparatively new tradition of rigorous scrutiny of legislation.

The number of successful challenges to Conservative Government Bills between 1979 and 1997 was surprising, given that the Conservatives had a permanent majority in the Lords. Successive Conservative administrations were defeated over 200 times, on issues as diverse as the definition of unlawful discrimination against disabled people, the rights of former spouses to a share of the earner's pension, and the proposal to allow national sports events to be broadcast on subscription TV channels. There are increasing numbers of divisions as peers have become more confident of their role as a bulwark against "elective dictatorship".

The Government is often forced to compromise when faced with difficulties, so the number of defeats actually underestimates the effectiveness of the Lords. For example, during the passage of the Police and Magistrates' Court Act (1994), furious opposition in the Lords to the proposal to replace elected councillors with appointees on police committees led to Michael Howard dropping the proposal. Now that different parties control the two chambers, amendments and Government defeats on specific issues are likely to escalate further - the Government defeat over the date of the referendum in Wales will be the first of many.

In formal terms, then, the Upper House can impose a maximum of a year's delay on legislation and can amend everything except finance bills, though with the possibility of amendments being overturned by the Commons. This is about the right level of power for a second and subordinate chamber, providing a degree of scrutiny and deliberation without threatening the gridlock common in, for example, the United States. The powers of the second chamber do not need to be fundamentally reformed, though there may be a case for piecemeal change, as suggested below.

The Lords also conducts debates on matters of public interest. In some areas, such as education, foreign affairs and legal issues, the Lords' debates are of an extremely high standard. With education and justice, this is often because the speakers are still active in the field. Some commentators suggest that the quality of Lords' debate is due to the number of independent peers - a point returned to below. The quality of discussion is even higher away from the floor of the House, particularly in the Delegated Powers Scrutiny Committee; the universally respected (if little reported) European Communities Committee; the Science and Technology Committee; and in *ad hoc* Select Committees set up for specific investigations.[1]

Many individual peers work extremely hard. A greater number attend regularly today than at any other time since the Lords' role was weakened in 1911. There are some - but not many - who turn up only for the daily Lords Question Time, which enables them to collect their allowance. Almost as common are peers who forfeit their allowance if they cannot come to Question Time or a debate, but attend at some point in the day for a committee or similar function.

What's wrong with the Lords

The good work which goes on in the Lords does not, however, add up to a properly functioning second chamber. The House of Lords is an indefensible institution, even more out of touch than the House of Commons because of the lack of electoral accountability. This lack of democratic legitimacy means that it is far too weak for the job it sets itself.

Bernard Crick writes in his seminal work *The Reform of Parliament* that: "The Lords [see] themselves as the interpreters of the will of the people".[2] This is true. It is also totally unwarranted. There can be few legislatures anywhere in the world less in touch with the will of the people: peers have no constituents, never have to face an electorate and never have to retire. One of the most striking illustrations of this was legislation on the retirement age of judges being introduced by peers in their nineties.

Apologists for "the hereditaries" argue that the system is in some sense fair because it is based on a lottery of birth, bringing in individuals who are not professional politicians. Lord Cranborne, former Leader of the Lords, summed up this attitude when he claimed that the hereditary element was "well on the way to becoming...a cross section of society chosen by lot". But this notion is not borne out by facts. Many hereditary peers historically gained peerages through giving sums of money to the then ruling party, or by appropriating large parts of the country. The Lords over-represents the comfortably-off, property-owning and land-owning classes. Over 50% of hereditary peers are landowners or farmers compared with the percentage in the general population of less than 2.5%.[3] This does at least prove the point that representation is power, as the previous Government listened to the Lords on rural and landowner issues as on little else.

Some Lords are also wont to claim a special role in defending Britain's unwritten constitution. But the fact that the House of Lords has been part of the constitution for so long does not mean that it either

makes or speaks constitutional sense. The claim that the Lords guarantees smooth constitutional continuity can be destroyed with one word: Ireland. Though it was the Commons that rejected Gladstone's first Home Rule Bill in 1886, it was the House of Lords which defeated his second Bill (by 419 votes to 41) in 1893, and the Lords again which blocked the third Home Rule Bill (this time by 326 votes to 69) in 1912. The Upper House must bear part of the responsibility for what has happened since. At the very least peers should remember this while preparing their speeches and amendments to the Bills on Scottish and Welsh devolution.

Defence of the hereditary principle (except for the monarchy, of course) is now a somewhat quixotic activity, confined to the narrow reaches of the Conservative Party. Support for life peerages is more widespread. Defenders of appointment argue that this brings experts and in some cases independents to the Chamber. Debates in the Lords are less partisan than in the Commons, though they can also be long-winded as only convention prevents peers from exceeding time limits on their speeches. But the degree of specialisation is often overstated. Retired grandees have not always kept up with recent thinking in their professions, and often either do not know who to ask or do not wish to ask for any briefing. Few people would entrust their financial or medical affairs to "specialists" who had not practised the relevant disciplines for years or even decades. Yet this is deemed perfectly acceptable for our national affairs.

Cross-benchers do sometimes play a valuable role, but their contribution is not as useful as people think. On disability issues in particular a few talented and committed cross-benchers stand out and one cross-bencher has waged a brave and mostly solo battle to uncover the possible dangers of organo-phosphates. But on most issues the amendments tabled are generally cross-party amendments, often inspired by lobbyists, where the independent's name is put first, for obvious reasons. Often, then, the cross-bencher acts as a kind of front-man for the opposition and for lobbyists.

In any case, most appointed peers are not cross-benchers; they are party placemen and women. The fact that they owe their elevation - and their title - to political patronage undermines their independence and means that the introduction of life peers has done relatively little to enhance the legitimacy of the Lords.

This lack of legitimacy matters. Under the arcane and ill-defined "Salisbury doctrine", the Lords does not vote against the principle of Bills enacting clear manifesto commitments. It does seek to amend such Bills, but not in a way which will alter the fundamental aim. Even where Bills are not manifesto commitments, the Lords hardly ever uses its delaying powers. In fact the War Crimes Act 1991 is the only occasion on which it has been used since the 1949 Parliament Act became law. The House of Lords has the formal powers to stand up to the Government, but feels unable to do so because of its composition.

This point has been well expressed, paradoxically, by the hereditary peer and current Leader of the Conservative Party in the Lords, Lord Cranborne. On the subject of the Government's Referendum Bill, he said in July 1997: "A really powerful House of Lords could use its existing powers to say to people 'this is a rigged referendum, and is being put forward in a hurry, accompanied by plans which

have not been thought through'. A self-confident Lords would have shown up the absurdities of the Bill. We can't do that." Whether or not one agrees with him about merits of the Referendum Bill, it is hard to disagree with his conclusion that the Lords is prevented by its lack of legitimacy and thus self confidence from standing up to the Executive.

The core of the case for reform comes from the perspective of the governed. A more confident and effective second chamber is necessary. Opponents of reform argue that a second chamber with greater legitimacy would constrain the freedom of action of the Commons. That is exactly the point. We have in Britain a particularly strong Executive, and the Commons has proved itself, until now, incapable of reining it in. The Lower House is by its nature full of career politicians who would miss out on preferment if they challenged the dispensers of ministerial patronage. Whilst we retain a Parliamentary system, with ministers drawn from Members of Parliament, there is no way to overcome this inherent weakness of the Commons. A strong second chamber is therefore essential.

The role of a reformed chamber

The Commons should remain the supreme law making body. The powers of the Upper House should remain ones of delay rather than veto. The Senate should basically do the work currently done by the House of Lords, but do it better. The powers of the Upper House do not need to be greatly extended. To give it powers of veto over all legislation would place it on an equal footing to the Commons, and could well lead to gridlock - a recipe for small government which benefits only the Right. (It is no coincidence that the United States, the country which defines a separation of powers most clearly in its constitution, lacks a welfare state.) An upper house with unrestricted powers of veto would tip the scales too far against radical activist government.

However, there may be merit in giving the second chamber some powers of veto. The Liberal Democrats have proposed that an upper house should be able to veto bills affecting the constitution. An alternative would be to give the Upper House the power of veto over Bills affecting the devolution settlement and the organisation, function and finance of local government. Others have suggested a veto over matters effecting human rights. In general, though, it would be enough to create an upper house which was prepared to use its current powers to full effect. The House of Commons should remain pre-eminent.

The new Upper House should expand its role as scrutineer. With greater legitimacy, it could play a role in holding quangos and executive agencies to account. (Despite Labour's commitment to dismantling the quango state, it is clear that many of these bodies will continue to exist and spend public money.) For example, it could have the power to confirm or revoke appointments, as the American Senate does. An independent-minded chamber could perform this function better than could the Party-dominated Commons Select Committees.

A number of countries use their second chamber to increase regional representation within central institutions. The new Government is keen to devolve power to the regions, and one way of strengthening the role of regions would be to make them the basis of the second chamber. The second

chamber could also help overcome some of the difficulties of Scottish and Welsh representation at UK level following devolution. Alternatively, since regions are not well-defined in the UK, the second chamber could be used to represent counties - which are an important focus of sub-national loyalty - in central government.

The Senate could also be designed to increase representation for minority groups and viewpoints, with a highly proportionate electoral system, since the second chamber does not need to be majoritarian in order to provide a strong Executive

While members of the second chamber should not get involved in constituency case-work, they could receive political representation and protests from individuals in their region or county who are not satisfied with the representation they are receiving from their local MP. Many constituents feel that they cannot lobby their MP on political matters (for example asylum and immigration, or homosexual rights) if their MP is of the opposite party, and the upper house could offer a complementary role in representing those views.

2 . The case for a directly-elected Senate

If it is agreed that a reformed second chamber is needed, why does that Chamber need to be elected? Could the voting rights of hereditary peers not simply be removed, creating an appointed upper house?

The main attraction of an appointed house (for the public, that is; the attraction for those making the appointments are obvious) is that it could be non-political and non-party. It appeals to the "end of history" school of thought which believes that the big issues are all decided, leaving only a series of minor, managerial decisions to be taken. It also appeals to the fashionable contempt for politicians, the view that an assortment of sensible individuals motivated by common sense will make better decisions than a group of vote-hungry party loyalists.

There is some truth in the assertion that an unelected chamber, where individuals are nominated for life and so do not have to worry about re-appointment, will not be over-constrained by party loyalty, (though members may be constrained by personal loyalty to the prime minister who appointed them) and so will provide effective scrutiny. But this needs to be set against the serious disadvantages of an appointed chamber.

The greatest of these is that an appointed house would lack the confidence to challenge the Government; that it would continue to function under a version of the Salisbury rules. The Constitution Unit suggests that "there is every likelihood that a reformed House of would feel that it had sufficient credibility to oppose the Government" even if it was not elected. (Constitution Unit, 1996). However, in the long run it seems more likely that the lack of legitimacy would mean that the second chamber would remain quiescent. This has certainly been the experience in Canada, which has an appointed Senate. It rarely challenges the lower house, and has come under fierce attack because it is seen as being too dependent on political patronage. According to the Constitution Unit, it has been the object of contempt and ridicule for about 100 years.[4]

British ministers currently have many thousand appointments in their gift. It is hard to defend the argument that these powers of patronage should be extended, especially for so important a role as legislators. And the value of non-political experts is, as we have seen, overstated. To increase the expertise it would be better to make more use of expert witnesses and advisers, as is done in the German Bundestag. Experts who leave their professions to become legislators will soon cease to be experts. Yet the role envisaged here for the Upper House demands that the members be full time; there is no place in modern government for a Punch caricature - gentlemen drifting in from a morning in the City for a glass of port and a spot of legislating.

In any case, politics is not a dirty word, even if it is often a dirty business. It was Bernard Crick who provides the best "Defence of Politics" in his book of that name.[5] A democratic society needs to reconcile competing claims, set priorities, decide what is acceptable and unacceptable. This cannot be left to "experts". The mechanisms of politics are essential, and we decry them at our peril.

A wholly-appointed chamber would be a slight improvement over the status quo. It could continue with its current, modest revising role, and would have removed the hereditary element. But such a reform would be a lost opportunity to strengthen democratic life by creating a proper second chamber.

An indirectly elected second chamber

So the upper house should be elected. But does it need to be directly elected, or can it be based on units of sub-central government? The main argument for an indirectly elected second chamber is that it is desirable for the second chamber to represent territorial interests, and this can be achieved by tying representation to regional government. The most obvious analogy here would be with the German Bundesrat, where the members sit as representatives of the Lander. The Bundesrat has stronger powers than many other second chambers in Europe, and these powers are not only formal. As the guardian of Land interests, the Bundesrat feels no lack of legitimacy and regularly challenges the lower house.

This system could only be applied to the UK if an elected regional government structure was in place. In an earlier report for IPPR, Stephen Tindale recommended that regional government should in the first instance be indirectly elected, with regions moving to an elected council only after a referendum showing popular support.[6] A similar approach has also been adopted by the Labour Party. It will be several years, at the least, until all parts of the country move to elected regional government, and it would not be desirable for central government to be in a position of needing to persuade unenthusiastic regions to go further than they want to. House of Lords reform cannot wait until the UK has acquired a fully-fledged system of regional government.

An indirectly elected upper house in Britain could be based instead on local government. Indeed this might be a way of contributing to the revitalisation of local government and increasing public interest in it. But there are two difficulties. First, under both Tindale's and the Labour Party proposals, local government will be responsible for indirectly electing regional government, at least in some regions. It would not be appropriate to have it electing the upper house of the national parliament as well. Secondly, in the absence of respect for local government, indirect election might not confer on a new upper house enough legitimacy to challenge the Commons.

To ensure that it is able to carry out the role envisaged here, the basis for the new second chamber should therefore be direct election. There might be a role for an element of indirect election within this. For example, as the role of the upper house will include scrutinising the activities of the European Union, MEPs could be made *ex officio* members. They should certainly have the right to attend and speak in debates, even if they do not have voting rights.

A previous IPPR report by Davies and ???[7] proposed the retention of a nominated element. However, this would weaken the legitimacy of the new chamber, and the advantages, in terms of expertise or independence from political parties, can be achieved through wider use of outside witnesses to give evidence and by choosing the right electoral system. There may be a role in execution of policy for appointed managers and experts - this is why some quangos are a useful innovation. But when it comes to the composition of the legislature, the principle of democracy must prevail.

How to elect the Senate

To recap, the Upper House should have the confidence and legitimacy to act as a brake on the "elective dictatorship" of the Executive, and should provide a better territorial and party representation than the Commons. It should be directly elected. And to ensure that it can act as a scrutineer, party control should not be too strong. Which electoral system would best meet these objectives?

There is no case for electing an upper house on the basis of the misnamed First-Past-the-Post system (misnamed because there is no "post" which needs to be passed - it should really be called the "one more vote than anyone else" system). The Upper House will not function as an electoral college for sustaining a government, so there is no need for a majoritarian system, even if one considers that such a system is needed for the Commons.

There is a curious argument which suggests that First-Past-the-Post is the best system for the Commons, but that an upper house cannot be elected on any other basis because it will then be able to claim that it is "more legitimate" than the Commons. This is nonsensical. Either First-Past-the-Post is the best system for the Commons or it is not. If it is the best system, it is also the most legitimate. Electoral systems are not moral abstractions, some of which are more virtuous than others. Systems are instruments, and should be judged in the context of the objectives to be achieved. It is quite possible - indeed very sensible - to suggest that the objectives of the lower and upper houses should be different, and that they should therefore be elected under different systems. This argument was spelt out admirably in the Plant Report published by the Labour Party in 1991 and sadly neglected since.

The danger of a First-Past-the-Post Commons feeling less legitimate than the upper house is further reduced by the proposal to hold a referendum on PR for the Commons. If the people have decided to keep the current system, who are the second chamber to say that they were wrong?

Regional lists

Many people have argued that an upper house should be used to represent regional interests. One way to do this would be to elect the upper house by regional lists. A regional list system would have two advantages: it would tie representation in the upper house closely to territorial entities, and it would make it possible for minority viewpoints to be represented - the Green Party would almost certainly be represented under a list system, for example.

Lists are generally seen as reinforcing party control and making it very difficult to retain any sort of role for independent-minded members. However, this could be counteracted by ensuring that several parties were represented in the upper house, and by requiring that the list be drawn up by party members via election rather than by party headquarters.

The disadvantage of lists is that they might open the way for the representation of extremists like the British National Party. This could be avoided by setting a high threshold - say 10% - before any

representation is gained. A credible, mainstream Green Party could probably surmount this, but the BNP could not, unless a serious deterioration in race relations had occurred.

Single Transferable Vote

An alternative approach would be to divide the country into large multi-member constituencies and elect the Upper House on the basis of STV. This would be the most likely method by which to elect independents - for example some hereditary peers who have made a name for themselves and wish to continue in public life but without joining a party. STV is less advantageous for minority parties (and therefore less likely to let in the extremists), but has the great advantage, in this context, of weakening party discipline by allowing voters to choose between different individuals from the same party.

The Liberal Democrats favour STV for all elections. For the second chamber, their policy is to divide England into 12 regions, which would have 15 senators each, as would Scotland, Wales and Northern Ireland. Five senators would be elected from each region every two years, and each would serve a six-year term. (They have also approved a provision for a further 60 non-voting members to be selected by a committee of the Senate for a six year term.) The two yearly cycle of elections is needed to ensure that no more than five are elected on each occasion - an STV election with fifteen senators being elected would be unworkable. This would mean very regular national elections, with the consequent danger of even more short termism in politics.

A more substantial objection is that regions are not necessarily the right unit on which to base the upper house. Britain is not made up of regions. It is made up of one large nation and three smaller ones, all divided into historic counties. In some parts of the country, such as the North East, regional identity is strong, but in others it is not. In some areas, notably Cornwall, there is hostility to regionalism, but in most areas there is indifference. Regional government may emerge, and with it regional consciousness, but the process is uncertain and, as recent events in northern Italy show, regionalism is not necessarily a desirable development. Central government's role should be enabling, but not necessarily encouraging.

IPPR has proposed, in *Devolution on Demand*, that where they are in doubt regional boundaries should be decided by plebiscite within counties. This would make it possible to base election to the upper house on agreed regions, though they might not be of similar sizes, and some counties might opt out of regions altogether. A better approach might be to base the upper house explicitly on the counties. In electing the new chamber the larger counties could stand alone as multi-member STV constituencies, smaller ones would be banded together. It is better to work with existing building blocks where possible, and counties are an important focus of sub-national loyalty.

The number of the members of the Upper House should be reduced to sharpen its role as a chamber of scrutiny. The USA has only 100 senators, and Germany only 68 members of its Bundesrat. The desire for proportionality and a role for independents suggests more than this - perhaps one member per 250,000 people, around 225 in total.

The operation of the Senate

A different electoral system would help weaken party discipline. But there are two other measures would could further contribute to this. First, there should be no government ministers drawn from the Senate. This would mean that the Government had no powers of patronage with which to influence its members. Ministers from the Commons should attend sessions of the Senate to present their legislation, answer questions and make statements as necessary.

Secondly, members of the Senate should sit in territorial blocs rather than on party benches. This would mean that there was a less partisan, confrontational atmosphere. The House of Commons may pride itself on the sense of theatre, and at times this is genuinely impressive and an important "dignified" (in Bagehot's sense at least) part of the Constitution. But there is no need to reproduce the adversarial contest in the upper house. The Senate should add a new dimension to British politics, not just give us more of the same.

3. Getting there - the process of reform

What, then, is the best way of enacting reform, given these objectives? There is a great deal of unwarranted pessimism on this score. It should be remembered that no party has ever brought forward plans for an elected second chamber. There is no evidence that such plans would automatically be rejected. In any case, the Lords cannot prevent reform; they can only delay it for a year. This in itself is not a cause for particular concern - the British people have waited seven hundred and seventy years since the Magna Carta for a fully democratic parliament, so another year's delay will not be insufferable.

The more serious worry is that when faced with imminent reform the Lords will abandon the self-denying ordinance and oppose every Bill which a Labour government sends up to them. The prospect of the loss of voting rights might make hereditary peers in particular very oppositional. It is not the case that all hereditary peers will have nothing to lose: some might wish to be elected, and fear that the electorate would punish constitutional irresponsibility. But a great many more would not be in this position - the Reform Bill would be their swansong.

How likely is it that a Reform Bill will fail to pass the Lords, leaving a year of limbo in which an unreformed chamber can hold up other Government measures? This depends largely on the attitude of the Conservative Party, since they have a clear majority of peers (though peers taking the Tory whip are not as malleable as their Commons counterparts; even if the official Conservative line is to oppose the Bill, some will vote with Labour or abstain). The Tories fought the 1997 general election on a platform of strong opposition to reform, but there a some indications that a rethink may be underway - such as the comments quoted above from Lord Cranborne to the effect that reform would strengthen the Lords. It was a Conservative working group under Lord Home which first recommended election at least in part for the second chamber in 1977 (they said that they were really in favour of full election but did not think that it would get through). Some of the most influential Conservative peers, such as Lord Carrington and Lady Young, have been in favour of at least an elected element in the Lords in the past. So Conservative opposition is not inevitable. After all, defending the rights of hereditary peers does not sound like an attractive prospect for a party trying to modernise its appeal.

It should not be assumed either that independent hereditaries would automatically oppose a Bill. An upper house elected on the basis of STV might be acceptable to peers who would not want to stand for election as party representatives but have developed a strong local identity and might wish to represent an "independent voice". Some might even be persuaded by the strength of the argument that in a democratic society both houses of parliament should be elected. Indeed there are now some indications that some hereditary peers might even try their luck in the Commons after the necessary reforms.

The key to success is to maximise the number of Conservative and independent peers voting with Labour. In this context, Labour's proposal to implement reform in two stages looks odd, because it is far from clear that a Bill to remove the rights of hereditary peers would be easier to pass through the Lords than a more far-reaching Bill to create an elected upper house.

The greatest strength of House of Lords reformers is that they possess the moral high ground: they aim to democratise an archaic and democratically indefensible institution. By proposing a wholly-appointed chamber, reformers would relinquish this advantage. An appointed chamber would be an improvement on the status quo - it is unconscionable in a modern state which claims to be democratic to allow the continuation of the aristocratic principle of government. But an appointed chamber is not *clearly* superior - it is possible to oppose appointment with valid arguments, in a way it is not possible to oppose election. It would be quite a feat of political miscalculation to allow the defenders of the hereditary principle to pose as upholders of rectitude.

The lack of a clear timetable and agreement for the second stage of reform also makes it less likely that peers would support the measure. As the Constitution Unit points out, peers are more likely to feel able to vote against a Bill which abolishes the voting rights of hereditary peers, with the subsequent phases of reform being undefined and therefore not mandated. (Constitution Unit, 1996) The cross-bench report from four hereditary peers published last year seems to suggest that such as drawn-out process would gain little favour with an essential voting group: "The worst upshot would be if reform of the House of Lords were to lead to years of constitutional tinkering". Lord Campbell of Alloway made this point at length in the last full length debate on the future of the Lords in July 1996: "why should we, *as an interim measure with no certain end*, disown our heritage, disturb the patents, sever our bond of allegiance, rubbish the Writ of Summons, disband the ceremonial and the symbolism and dissipate the disciplines of convention and tradition?" (Emphasis added.) Such arguments would be undercut if the Lords was to be replaced immediately by an elected Senate.

Getting reform through the Commons

It should be remembered that the Lords were not responsible for the failure of the 1968 Bill: they recognised the inevitability of reform. The Bill was defeated by the House of Commons. After the Bill failed, Lord Carrington, then leader of the Conservative party in the Lords, pointed out that: "It is certainly not your Lordships' fault that you are unreformed."

What are the chances of a Lords Reform Bill being defeated by the current House of Commons? The 1968 Bill was defeated by what Harold Wilson called "a most improbable coalition" between Labour left-wingers, led by Michael Foot, and the Conservatives. Wilson's White Paper envisaged a two-tier House of Lords with about 230 appointed peers. Hereditary peers would lose the right to vote but would be able to attend and speak into debates. The Government would have a working majority but not an absolute majority when the cross-benchers were taken into consideration. These proposals are uncannily similar to those currently mooted by the current Government.

In 1968 the Labour Left objected to the concept of making the Lords more legitimate (as they saw it) and so enabling it to challenge the Commons. Today the Labour Left supports an elected second chamber, so the parallels are not exact. But the scope for another "improbable coalition" nevertheless exists if the proposal is to create a wholly-appointed upper House. It is not too difficult to imagine a scenario in which the Labour Left is less-than-enthusiastic about the activities of a Blair government and would relish the chance to block a measure on a matter of democratic principle. Other backbench

Labour MPs might object to the members of the Upper House being paid and gaining legitimacy when they did not have to face the processes of democratic accountability which MPs have to face. The Conservatives too will find it very tempting to oppose a Bill extending prime ministerial patronage. However, all these groups would find it more difficult to oppose a Bill creating an elected upper house.

The Government cannot necessarily count on the Liberal Democrats to get its interim Bill through the Commons. They support an elected upper house, but have in the past strongly opposed an appointed one, to the extent of seeing it as worse than the status quo. As Paddy Ashdown put it "I would rather rely on the serendipitous opinion of the illegitimate progeny of past kings' mistresses than the appointees of a modern Prime Minister". The pre-election deal on constitutional matters led to the Liberal Democrats signing up to a two-stage reform, but it is not impossible that this agreement will unravel, particularly if Labour fails to deliver PR for the House of Commons. In contrast, Liberal Democrat support for a Bill creating an upper house elected by PR would be assured.

On the arguments put so far, it appears that a single-stage "big bang" reform would be easier to get through both the Commons and the Lords than an interim measure to remove the voting rights of hereditary peers. Certainly if one takes into account the fact that a future (Labour) administration would have to return to the issue and push the second stage of reform through Parliament, the practical arguments in favour of big bang appear conclusive. Are there, then, any good reasons to go for a two-stage approach?

One argument advanced in favour is that a Bill to abolish the voting rights of hereditary peers would be shorter and less complex than a Bill to create an elected Senate. But short Bills can still be amended through the addition of new clauses, (a very popular sport in the second chamber!) so parliamentarians bent on ambush will not be seriously disadvantaged. In any case, this would simply store up the trouble of a full Bill for Labour's second term.

Some MPs may be worried about losing part of their already limited role to an elected Senate, and might feel more comfortable with an unelected and less legitimate upper house. But this is an argument against ever moving to an elected Senate, not an argument in favour of moving there gradually. If Labour is serious about an elected Upper House, it is simply postponing the need to reassure MPs on this point. In any case, reassurance would not be impossible, provided the role of the Senate is clearly defined and limited to current powers.

Labour talks in terms of a Commission to consider how to move to an elected second chamber following the first stage of reform. This might have made sense if the new Government had sought to disenfranchise hereditary peers as one of its first acts early in its term of office. It has not done so. There is therefore no reason why a Commission of Enquiry should not be set up immediately to consider what sort of elected second chamber is wanted.

Some might argue the merits of gradualism in support of a two-stage approach. But it cannot seriously be argued that to move at the end of the twentieth century to an elected second chamber would be

over-hasty. After all, the 1911 Act talks of that measure being a prelude to a move to an elected chamber, and nothing has happened in the intervening 86 years to move us towards that goal. The 1945 Labour Government could have created an elected second chamber without being accused of prematurity, so the 1997 one need have no worries on this score.

A Bill to remove hereditary voting rights makes sense only if an appointed house is the desired end point, rather than an interim stage. Is this what the Labour leadership really wants? There is no reason (yet) to believe that it is. Despite media scare stories about back-tracking on devolution, freedom of information and electoral reform, the Government has not done anything to suggest that it is retreating from its commitments on constitutional issues, the Government has in fact kept all its promises. The proposal to reform the Lords in stages might be a tactical error rather than anything more complicated.

The Government will be able to get a measure to create an elected Senate through Parliament more easily than a Bill to create an appointed upper house. Of course, with a majority of 179 the Government will not have serious problems whipping any Bill through. Nevertheless, it would be prudent to try to minimise opposition. The two-stage approach should be abandoned. Labour should have courage in its long-standing conviction that an elected upper house would play a valuable role in revitalising British democracy. On the strength of this, it should pass a single reform Bill to create a new Senate, before the end of its first term of office.

[1]The Lords has an additional and separate role as the Supreme Court of Appeal. A previous IPPR report (A Davies & J Mitchell; Reforming the Lords) recommended the judicial functions of the Lords should be removed and a separate Supreme Court established. As I agree with this proposal, the judicial role of the Lords is not considered further in this paper.

[2]Bernard Crick; The Reform of Parliament (Weidenfeld and Nicholson, 1968)

[3]Dr Nicholas Baldwin, Wroxton College (unpublished).

[4]The Constitution Unit; Reform of the House of Lords; 1996.

[5]Bernard Crick; In Defence of Politics (Middlesex; Penguin; 1983)

[6]Stephen Tindale; Devolution on Demand: options for the English regions & London. (IPPR, 1995)

[7]Anne Davies & Jeremy Mitchell; Reforming the Lords; (IPPR, 1993)

NETWORKING DEMOCRACY

Devolution and Reform of the House of Lords

JOHN OSMOND
Director, Institute of Welsh Affairs