

**COMPLEMENTING THE COMMONS**

***THE CASE FOR AN APPOINTED SECOND CHAMBER***

1. We advance three basic propositions.

- *First*, the case for a second chamber is compelling. The House of Commons by itself could not cope with the present volume of public business coming before Parliament for scrutiny and approval.
- *Second*, the case against a largely or wholly elected second chamber is equally compelling. An elected chamber would threaten fundamentally the accountability of the first chamber to electors, an accountability that is at the heart of the political system. That challenge occurs not only to the House of Commons at a collective level but also to MPs at an individual level.
- *Third*, the present second chamber adds value to the political process through complementing, rather than challenging or duplicating, the work of the elected chamber. The present House delivers benefits that the alternatives on offer cannot.

We believe that the focus should be on ways of improving what we presently have and not on ways of destroying it.

## *The case for a second chamber*

2. The case for a second chamber is widely accepted. No large, western democracy exists without one. The case for bicameralism is compelling in the United Kingdom. The House of Commons is one of the busiest legislative chambers in the world. The demands made on the House are such that now only a proportion of the amendments tabled to Bills are selected for debate. The timetable imposed on Bills in recent years – and the sheer volume of some measures (some published in two volumes) – means that there is not time to discuss all parts of a Bill. MPs are pressured not only in terms of fulfilling the collective role of scrutinising legislation and the actions of the executive, but also in fulfilling their individual roles as constituency Members and in contributing to the wider work of the House. The constituency work of the MP necessarily takes precedence over other commitments and it has been remarkable for its growth. The number of hours devoted each week to constituency casework, and to time spent in the constituency, has increased decade by decade.<sup>1</sup> The constituency work undertaken by a member today is almost unrecognisable to one elected thirty or more years ago. The increasing demand made of Members is reflected in the sheer volume of correspondence that flows into the Palace of Westminster, several million items now being delivered to MPs each year.
  
3. The claims of unicameralists that abolishing the second chamber would force the House of Commons to reform in order to shoulder the burden effectively are not sustainable. The existing second chamber – the House of Lords – is itself one of the busiest legislative chambers in the world. The task of MPs in fulfilling their collective *and* individual roles would become intolerable. The burden would be lessened but not alleviated by a massive increase in resources, but a corollary of an increase in staff numbers is a distancing of the Member from constituents. One of the great strengths of the parliamentary system is the link between MP and constituent.

Surveys show that, after contact with an MP, constituents have a more positive evaluation. Twice as many constituents consistently rate the ‘local MP’ as doing a good job as those rating them as doing a poor job. We believe it vital that this link be maintained.

*The case for a complementary second chamber*

4. The case for a second chamber is compelling. So too is the case for an appointed chamber. It is compelling on grounds of principle and practice. The retention of an appointed second chamber strengthens democracy. It complements the work of the House of Commons and serves to relieve the burden on the elected chamber.
5. Proponents of an elected senate contend that election is the ‘democratic’ option. Some have claimed that the starting point of considering the role of a second chamber should not be the functions it is expected to fulfil. Rather, they argue, the essential point is that ‘a legislative chamber in a modern democracy, whether primary or secondary, should derive its legitimacy from election’.<sup>2</sup> This not only condemns a number of Western liberal democracies which lack directly elected second chambers – including a large proportion of the G7 countries – but also misunderstands the concepts of legitimacy and democracy.
6. Legitimacy does not necessarily derive from election. Judges in some states of the USA are elected. Do they enjoy a greater legitimacy than the members of the US Supreme Court, who are not elected? Legitimacy derives from recognition that people are properly qualified to fulfil a particular task and that the method by which they are selected to fulfil it is appropriate. In some contexts, that method of selection is election. In other cases, it is not.

7. Given the size of the country, it is impossible for people to gather together to discuss and decide an issue. Instead, they choose representatives to ensure that their views are expressed and pursued. Political parties serve to aggregate opinions. They are an intrinsic part of a modern democracy. In the UK, parties seek election on the basis of a particular platform of policies. Once elected, they seek to implement them. Government is chosen through elections to the House of Commons and is answerable to electors through the House of Commons. A general election, in Karl Popper's words, is judgement day. Electors can sweep the government out of office. We thus have a system of representative democracy that is characterised by the core characteristic of such a democracy: accountability.
  
8. An elected second chamber, far from delivering democracy, has the potential to undermine it. If both chambers are elected and are unable to agree or, as is more likely, do deals at the behest of parties or special interests (as happens in the USA), who can electors hold accountable for the outcomes? The outcomes may bear little relationship to what was placed before the electorate at the preceding election; there is no clear mechanism by which electors can hold those responsible to account. To assert blithely that election is the 'democratic' option is to misunderstand the very nature of a representative democracy.
  
9. An appointed second chamber has a dual advantage. It maintains the fundamental accountability of the elected chamber. Electors choose government through elections to the House of Commons, thus delivering the accountability that is at the heart of our political system. The House of Lords does not seek to challenge the electoral supremacy of the House of Commons. That supremacy is embodied both in statute and in convention. The Parliament Acts enable the Commons ultimately to get its way. The Salisbury convention prevents the House from voting on the second reading of a bill that is in the Government's programme. The House does not

challenge the principle of a measure, but rather devotes its energies to the detail and seeing in what way it can be improved. The House thus complements the elected chamber by fulfilling tasks that add value to the political process. It complements the elected chamber by sharing the burden imposed on a legislature, and does so without challenging the accountability at the heart of the political system. It is a dual advantage that few other systems can emulate. It is one worth fighting for. An elected chamber would destroy both the accountability and, we believe, the capacity to add value to the political process. The House of Lords is not only a complementary chamber but also a highly effective one.

### *Adding value*

10. The House of Lords adds value to the political process through fulfilling functions that the House of Commons does not have time or resources to fulfil. The Commons has a range of tasks to carry out over and above those of legislative scrutiny. The House is the arena for the clash of ideologies, for MPs on the government side to support the party in office and for others to subject it to critical debate. MPs are heavily committed to constituency work. A large proportion of MPs on the government side are themselves ministers, thus limiting the number of Members available to serve on committees. All this limits the time to devote to legislative scrutiny. Many Bills leave the House with large sections never considered at all. These characteristics are largely absent from the House of Lords. The House is, pre-eminently, a chamber of legislative revision, scrutiny, and debate. It has the membership and the time to ensure that these functions are fulfilled effectively.
11. The House of Lords devotes about sixty per cent of its time to legislative scrutiny. Each session, between two- and three-thousand amendments, and sometimes more, are secured to Government Bills. In the 1999-2000 session, the figure was 4,761.

The House proceeds largely by way of agreement. Ministers variously move amendments that have their origins in earlier amendments moved by opposition or cross-bench peers. There are far fewer votes than in the House of Commons and less than 0.5 per cent of amendments are achieved through a Government defeat in the division lobbies.<sup>3</sup> Amendments made by the House are usually accepted by the Commons. The result is a significant improvement to the statute book.

12. The Lords also engages in significant scrutiny of public policy, again complementing the work of the Commons. The Commons focuses especially on departments through the departmental select committees. The Lords increasingly uses committees to address cross-cutting issues. It now has committees on Science & Technology, Economic Affairs, the Constitution, and Communications, with *ad hoc* committees being appointed to investigate particular issues. Its EU Committee complements the work of that in the Commons, the Commons going for breadth (examining every document) and the Lords going for depth (looking at particular documents in detail). The EU Committee works through seven sub-committees, resulting in about ten per cent of the membership of the House being engaged in scrutiny of European legislation. The House has also developed a specialised capacity to examine delegated legislation. Its Delegated Powers and Regulatory Reform Committee has been supplemented by a Select Committee on the Merits of Statutory Instruments. The former considers delegated powers included in Bills and the latter considers statutory instruments laid before Parliament. The House thus covers the input and output side of delegated legislation.
13. The Lords also extends the debating capacity of the legislature by the use of debates. The House complements the work of the Commons through considering issues that it may not have the time to consider and which may fall outside the normal ambit of party conflict. The fact that members are not elected enables peers to raise topics that

are not politically attractive – indeed, may be notably unpopular – but which deserve an airing. The House may, on occasion, serve a useful role as an agenda-setting body, bringing an issue forward that later is taken up by MPs or by Government.

14. As a second chamber, the House of Lords is hardworking, effective, and efficient.

The House sits for longer than ever before and, like the House of Commons, is one of the busiest legislative chambers in the world. It is also highly cost-efficient. The cost of the House of Lords in 2008-09 was just over £100m (roughly a quarter of the cost of the Commons), at an estimated cost to each taxpayer of just over £3.<sup>4</sup> The House represents notable value for money.

*Why it is able to do what it does*

15. The House is effective in fulfilling its functions because of the composition and tenure of its membership, and because of its rules and procedures.

16. Members of the House of Lords do not have constituency obligations. What they are able to bring to public life is not their capacity to speak for constituents but their particular experience and expertise. They are able to complement that available in the elected chamber. Many offer their expertise free of the dictates of party; just over twenty-five per cent of the membership sits on the cross-benches. Others have a party background: a number have served in the Commons, typically having been Cabinet ministers; some have held offices such as EU Commissioner or Secretary-General of NATO. The House of Lords draws on members who have backgrounds in virtually all sectors of public policy. Peers are able to come in when their area of interest or expertise is under discussion. A particular strength of the Lords is that it is a full-time House of part-time members. Most of the participants in a debate usually have some demonstrable experience or expertise relevant to the subject.<sup>5</sup> A debate on

medical ethics, for example, brings in peers at the forefront of the subject. Peers are appointed to committees on the basis of their particular qualifications.

17. The experience that is routinely brought to bear was made in a telling example offered by Lord Howe of Aberavon. He noted that, in one session, debate on four bills affecting the courts attracted contributions from 23 peers who had served as ministers (including two as Home Secretary and one as Lord Chancellor), the Lord Chief Justice, six former law lords (one of them a former Chief Justice of New Zealand), two former Bar Council chairmen, fifteen other QCs, five JPs, four solicitors, two former Police Authority chairmen, a former Commissioner of the Metropolitan Police, two who had served as chairmen of the Parole Board, five professors, a former EU commissioner, as well as an array of peers with other related experience.<sup>6</sup> It is an impressive line-up, which only a foolhardy minister would seek to ignore, and which we believe is unlikely to be matched by any other second chamber – and certainly not by any of the alternatives on offer in the United Kingdom.

18. The background of peers can complement the Commons in sectors where the elected House may not have many Members with experience or expertise in that sector. As the Public Administration Committee in the Commons noted in its 2010 report on *Goats and Tsars*, the decentralised nature of candidate selection may mean that the governing party may have few people with experience in a particular field. ‘For example, following the 2005 General Election, the Parliamentary Labour Party contained only one doctor, whilst the Conservative Party had no one who had been a lecturer in Further or Higher Education.’<sup>7</sup> The process of appointments to the Lords can enable specialists in particular fields to be part of the deliberative process.

19. Tenure is as important as background. Peers are beholden to no paymaster (members receive no salary) and are largely lacking in ambition for government office, having either already held it or having no interest in taking what, for many, would be an unattractive alternative to their existing careers. (Most senior ministers necessarily sit in the Commons, so there are few senior posts on offer in the Lords.) The House is also self-regulating and its rules and practices ensure that all amendments are discussed and that all members who wish to speak are able to do so. The complementary nature of the House, the experienced membership (coupled with a large number of peers with no political affiliation), and rules governing speaking in the House ensure that the House is far less partisan in debate than the Commons. Debates are noted for being well informed and constructive.
20. The absence of a majority for any single party, coupled with the diversity of membership, encourages a dialogue between ministers and members. Ministers have to assume that the peers most knowledgeable on the subject under debate will be in attendance – as Lord Howe’s example illustrates. No party enjoys the support of thirty per cent of the membership. Ministers cannot take outcomes for granted and have to work to carry the House. They have to do so in the context of a House that they cannot get rid of<sup>8</sup> and on which the government does not depend for its continuance in office. This serves to focus the minds of ministers, it encourages them to anticipate reaction in the House, and it facilitates a degree of objectivity on the part of the House that can override party rhetoric.
21. The House of Lords is thus qualitatively distinctive. It neither replicates the House of Commons nor is it a challenge to its ultimate supremacy. Although it may challenge the Commons (on occasion inviting it to think again, sometimes more than once) convention usually leads to compromise and, if not, the supremacy of the House of Commons is maintained by the Parliament Acts. In many respects, the Lords

shoulders a burden that the elected House does not have time to carry. By being qualitatively distinctive, it adds value to the legislative process. We reiterate that the statute book has benefited enormously from the work that it does.

*Why it is better than the alternatives*

22. The alternatives on offer are an elected, or partly-elected, chamber. A largely or wholly elected second chamber has the potential to threaten the accountability at the heart of our political system. Once elected, it is likely to follow the experience of the European Parliament in demanding powers commensurate with its electoral legitimacy. It will thus be in a position to challenge the House of Commons. As we have noted, clashes between two elected chambers may lead to stalemate or to deals, but deals that bear little or no relationship to what the electors actually want. In the event of such outcomes, who then do electors hold to account? It is a classic case of the paradox of accountability: the more elected bodies there are, the less accountable each one becomes.
  
23. An elected House would generate challenges at the individual as well as the aggregate level: that is, MPs would find themselves challenged by members of the second chamber elected to serve the county or region within which their constituencies fell. The MP for Battersea, for example, would find herself competing with the Senator (or Member of the Second Chamber) for Greater London as the voice of the people in London, the MP for Leicester South competing with the Senator for Leicester or Leicestershire. Who, in such a situation, would have a claim to be the definitive representative? The Senator could claim a larger geographic constituency, a bigger vote and possibly even make the claim to a greater electoral legitimacy deriving from the method of election. The question is a very real one in the context of Scotland,

where MPs are challenged by Members of the Scottish Parliament (MSPs) for the claim to be the voice of electors.

24. The challenge to MPs may not only come at the constituency level. Proponents of reform have argued that ministers should not sit in the second chamber or only in limited numbers. Most ministers presently in the Lords are junior ministers; not all Departments have a minister in the House. It is not axiomatic that reform would result in ministers decanting the second chamber. The government may favour having several senior ministers in the second chamber and reform may be geared to facilitate that. The fact of election would give a Prime Minister a greater claim to appointing Cabinet ministers in the second chamber than exists with the House of Lords.

25. A part-elected second chamber also poses problems. Either appointed members are legitimate or they are not. How will equality of membership be maintained? Votes in the House will, in all likelihood, be pored over to see if the appointed members determined the outcome. The argument for partial rather than complete election is that it allows the House to retain the benefit of experienced and independent members. That is to recognise the strength of the existing House. Injecting an element of election, to replace a number of existing members, will remove some of the experience available to the House. It is also not clear how the legitimacy of the elected members will waft over and encompass the remaining appointed members.

26. What will be the incentive to stand for election to a House with limited powers?

Those keen to influence public policy will seek election to the House of Commons or the European Parliament. The former is the route to the executive office and the latter wields increasing power in the legislative process. Furthermore, election poses problems not only for candidates but also for electors. What will be the incentive to

vote? Electors are not choosing a government. Those advocating an elected chamber want the powers to remain as they are (or, somewhat bizarrely, to be reduced). What, precisely, will voters be voting *for*? Proposals for the election to coincide with parliamentary elections effectively concede the point that electors will not otherwise bother to vote.

27. The method of election also becomes a serious problem. If a list system, especially a closed list system, is introduced, it gives enormous power to the parties, usually particular parties at the centre, challenging the independence that is seen as a particular attribute of the existing membership of the House. A constituency-based system of election, such as the single transferable vote, not only introduces the potential for conflict with MPs, it also imposes a constituency role that will absorb the time of the members. In these circumstances, the burden of legislative revision will continue to fall predominantly on those members who do not have constituency obligations. The smaller the proportion of the House that is not elected, the greater the problem of maintaining existing levels of effective scrutiny.

28. Critics point to experience elsewhere, but all they demonstrate is that some countries have elected second chambers. The fact that they exist proves only that they exist, not that they deliver benefits over and above those delivered by the second chamber in the United Kingdom. Indeed, experience elsewhere highlights some of the problems we have identified with election. In the USA, for example, there is a mismatch between what electors want and what Congress delivers<sup>9</sup> and the extent to which the system is democratic and accountable is now being questioned.<sup>10</sup> Of second chambers studied by Meg Russell, only the German Bundesrat – which is not directly elected – was found to enjoy popular confidence.<sup>11</sup> The evidence from her research suggests that electing a second chamber will not prevent it from being the subject of demands for reform. The essential question, we believe, is: how many

other second chambers add value to the political process to the extent that the House of Lords does? We know of no evidence that shows that many, if any, do. Unless and until there is such evidence that they will produce better value, then the case for replacing the existing House of Lords with a largely elected second chamber is unsustainable and, indeed, dangerous.

29. Proponents of reform have relied upon the claim that election of a second chamber is the democratic option and contented themselves in the belief that this is sufficient ground for change. They have rejected a discussion of functions as a prerequisite for considering the method of selection; election is put ahead of function. They have not deigned to think through consequences. The argument is based on the assumption that election is the be all and end all of reform and that other changes – to resources, structures and procedures (though, apparently, not powers) – will necessarily follow. We highlight the extent to which the argument has not been thought through – and the extent to which it is sustained by a number of myths – in the appendix to this paper. It demonstrates the extent to which the argument for election is built on flimsy foundations.

### *Constructive change*

30. None of this is to suggest that changes cannot be made to the existing House of Lords. Issues that can and should be addressed were identified by both the Royal Commission (the Wakeham Commission) and the Joint Committee on the Reform of the House of Lords. Proposals for change have been advanced by the Royal Commission and by the Labour Peers' Group on reform of the powers, procedures and conventions of the House,<sup>12</sup> and in spring 2010 by three informal working groups covering legislative scrutiny, non-legislative scrutiny, and the governance of the House. The House itself has variously introduced new committees and management

structure and has shown a willingness to address its own structures and procedures in order to enhance its capacity to fulfil its functions. In 2010 a Leader's Group was established to address the make recommendations on the working practices of the House.

31. Reform can enable the House to play to its strengths more effectively, including in the sphere of legislative scrutiny. The House has already made significant use of committees and has contributed to joint committees for pre-legislative scrutiny. The House is well placed to engage in post-legislative scrutiny, an area where Parliament has traditionally been demonstrably weak. It can serve to increase the input from different groups in society through following the Commons by utilising evidence-taking legislative committees for Bills originating in the House. There is also a need, as the Joint Committee recognised, to address how disputes between the two Houses are resolved.

32. We recognise also that there is a need to make changes to the method by which members of the second chamber are appointed. There is widespread support for a statutory independent appointments commission. There is a strong case for abolishing the by-election provision for replacing hereditary members and for addressing the position of those hereditary peers that remain. (Getting rid of the by-election provision would render them, de facto, life peers.) There is clearly scope, as recognised by the Royal Commission, for drawing in members from an even wider range of backgrounds and with a greater regional balance. Appointment means that change can be brought about quickly. That is already been seen in the diversity of the membership of the current House, not least in terms of gender, ethnic background and even religious affiliation. (Since the creation of the Lords Appointments Committee, about 40 per cent of those nominated for peerages have been women.) We also support the case for greater transparency in the process.

33. We believe that there is a sound case for moving forward on reform. It should, though, be to strengthen what is already an effective second chamber. What we oppose are moves to destroy a body that demonstrably benefits our political system and does so in a way that the alternatives on offer will not and cannot do.

## **THE CONSEQUENCES OF CHANGE**

The consequences of introducing an elected or part-elected second chamber have not been thought through. Once one begins to address consequences, it becomes apparent that election is likely to generate undesirable effects or problems not obviously amenable of resolution.

- **The *constitutional* consequences of an elected second chamber have not been thought through.**

*Who will electors be able to hold to account for public policy that is the result of compromise between the two Houses? Who will be responsible if stalemate results in no output? How will disputes between the two Houses be resolved? How will political stability be maintained if the second chamber is denied powers commensurate with its claim to electoral legitimacy?*

- **The *political* consequences of an elected second chamber have not been thought through.**

*Who will speak most authoritatively for a particular part of the country: the local MPs or the elected member of the second chamber? How will MPs cope with elected members of the second chamber claiming an equal, or (if elected by a different electoral system) even greater, electoral legitimacy? How will the party in government cope if the second chamber is dominated by **elected** members of opposition parties?*

- **The *functional* consequences of an elected second chamber have not been thought through.**

*How will value be added to the political process if the members of the second chamber essentially replicate those of the first chamber? How will the second chamber complement the work of the first if it lacks members who bring to bear skills different to those of members of the House of Commons?*

- **The *cost* of an elected second chamber has not been thought through.**

*There are major financial and resource costs involved in creating a new chamber. Elected members will expect to be salaried; it will be difficult to pay elected members but not appointed members in a hybrid House. There will be a new layer of paid politicians with expectations of support staff and office space, if not the same then at least not greatly dissimilar to those provided for MPs.*

*Where will an elected second chamber be located? Full-time elected members, with secretarial and research staff similar to that of MPs, will not be able to occupy the limited space used by the current second chamber (even if the membership is reduced in number). The new House will need to expand on a significant scale. It could not be contained within the existing estate without encroaching on the House of Commons.*

*What will be the cost of a new building? What will be the running costs of the new House? If it follows the pattern of the House of Commons in terms of the cost of running a Member's office, the costs will increase substantially. Even if the membership is only half that of the Commons, the cost will still be double that of the present House of Lords.*

<sup>1</sup> See P. Norton, *Parliament in British Politics* (London: Palgrave Macmillan, 2005), Chapter 9.

<sup>1</sup> P. Tyler, 'Light at last', *The House Magazine*, no. 1111, vol. 30, 13 December 2004, p. 19.

<sup>1</sup> In the 2008-09 session, for example, 1,824 amendments were agreed; only 21 were carried in a division against the Government. For data, see *The Work of the House of Lords 2008-09* (House of Lords Information Office, 2010).

<sup>1</sup> *The Work of the House of Lords 2008-09* (House of Lords Information Office, 2010), p. 36.

<sup>1</sup> For example, in the debates held on a Thursday – the day for general debates – a majority of those participating will usually have some obvious qualification, apparent from their entry in *Dod's Parliamentary Companion*, for participating.

<sup>1</sup> Lord Howe of Aberavon, 'Membership of the House of Commons and House of Lords: A Comparison and a Discussion', in N. D. J. Baldwin (ed), *Parliament in the 21st Century* (London: Politico's, 2005), pp. 138-9.

<sup>1</sup> *Goats and Tsars: Ministerial and other appointments from outside Parliament*, Eighth Report of the Public Administration Select Committee, House of Commons, Session 2009-10, HC 330, para. 34.

<sup>1</sup> When Parliament is dissolved, peers continue as members of Parliament. The courts have held that the provisions of the Parliament Acts cannot be used to abolish the Lords.

<sup>1</sup> Note the comments of John R. Hibbing and Elizabeth Theiss-Morse, *Congress as a Public Enemy* (Cambridge: Cambridge University Press, 1995), p. 161, that one would be 'hard-pressed to design a Congress that less accurately reflected the process preferences of the public than the one we see in the mid-1990s'.

<sup>1</sup> Robert A. Dahl, *How Democratic is the American Constitution?* 2<sup>nd</sup> edn. (New Haven: Yale University Press, 2003); see especially p. 115.

<sup>1</sup> Meg Russell, *Reforming the House of Lords: Lessons from Overseas* (Oxford: Oxford University Press, 2000), p. 241.

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