

Reform of the House of Lords.

Evidence to the Royal Commission.
April 1999.

The Centre for Citizenship.

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The Centre for Citizenship.

The Centre for Citizenship is an independent pressure group which is dedicated to the advancement of democracy in Britain. It is our conviction that the only good government and the only legitimate government is that which is derived from free citizens. To borrow a phrase from the United States of America, we believe that the best government is government of the people, by the people, for the people.

We approach the reform of our legislature not as constitutional experts, nor with a party interest. Rather we attempt to advance the point of view of the citizen who believes that the people should govern through instruments of their choosing.



To Safeguard and Advance Democracy.

Democracy is never secure, never complete, never without flaws. In Britain at present the efficacy of our democracy is often doubted. In the words of the Labour Party's "Lord" Richard: " We inherited a legacy of a loss of public confidence and trust in our system of government."

The state is widely felt to be independent of the people and not their instrument. Most pay lip service to democracy. But what is required for it to flourish and what limits it must accept are not widely understood.

Because a new government has not immediately legislated to remove an affront to one interest group or another, some will claim that "democracy has failed". And this is as likely to be used as an excuse for resorting to undemocratic methods as it is to be felt as a spur to make the democratic system work.

The right to free expression and to protest is widely understood to permit obstruction of others in their lawful pursuits if the protesters feel that their beliefs have moral heft.

It is not widely understood that democratic government does not grant the majority the right always to impose its preferences on a minority. On the other hand, many British people are content with processes that deny the majority their wishes because they belong to minorities that benefit.

The critics of our democratic system are sometimes right and sometimes wrong. Some of this lack of trust is justified. And it is certainly true that if the institutions and processes of government lack credibility, strength is given to the arguments of those who prefer to bypass them.

Improved education in democracy will help somewhat. But the best education will come from daily witnessing of good democratic practice. We therefore need institutions and processes of government that are representative of the people and that are clearly seen to be so.

The Centre for Citizenship wishes to see institutions of government that are democratically legitimate, open to all, and accountable to the electorate. We need legislators who are put into office by the people and who are accountable to them. The institutions should be ones which inspire respect and admiration, rather than awe. They should not seem as distant from the lives lived by the majority. Tradition and ceremony should not appear to have as much importance as effectiveness.

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The House of Lords: Not An Abode of Democracy.

We approach the reform of the second chamber of Parliament from the above perspective. The House of Lords as it has been and as it is now is an affront to democratic practice. It is the Achilles' heel of the defenders of British democracy. When we read of a "President-for-Life" in a distant country most of us take quiet satisfaction in our democratic superiority. Yet

in Britain we have still “legislators-for-life” in our Parliament. At present the majority have inherited their seats in the legislature through a quite incomprehensible survival of feudalism. And even when the hereditary peers have been disqualified, those remaining will almost all be legislators-for-life. What is worse, none of them have been elected by the people of Britain, and the people are not able to remove them from office.



Principles for Reform.

The principles which have guided our evidence are that the reformed second chamber should be

1. Completely legitimate as a democratic institution, with the authority that flows from that.
2. Clearly seen to meet the highest democratic standards and thus inspire admiration at home and internationally, rather than scorn.
3. Vital and capable of making a strong contribution to the government Britain.
4. Able to effectively check executive power.
5. Inclusive and reflective of a socially and regionally diverse nation.
6. Able to reflect the emerging devolution of power to the regions while holding those regions together in one nation.
7. Elected in a way that allows for a different perspective to that of the other chamber.

We welcome the vote of the “lower” chamber to end the legislative rights of Peers. This is a reform that is long overdue. It will remove a shameful blot from our democracy.

However, if the wishes of the government, as outlined in the White Paper, are met the reformed chamber will still lack democratic legitimacy. This submission will make with special force the case for a chamber with full democratic legitimacy.

We ask the commission to recognise that attitudes have changed during the last few months. The Government put its proposals forward with some caution. The removal of the hereditary peers from the House of Lords was bound to be seen by many as a most radical step. To calm the fears of those who saw the matter that way the Government was keen to stress that it did not wish to take its changes too far and that it wished to preserve much that was to be found in the “upper” chamber. However, when it became clear that the first reform was inevitable the basis of the debate changed and the more thorough-going proposals came in part from those who had opposed reform. For they saw that if the “upper” chamber was to be a democratic institution, the more democratic it was the better it would be. And that is right. The emphasis should no longer be on preserving what may be preserved of an ancient institution in order to make change palatable. Change now being inevitable, it should be change that will make that institution best serve our democracy.

The Government is right to see a dilemma, however. It recognises the need for greater democratic legitimacy for the second chamber. Yet it wishes to resist the claim to greater power that such legitimacy will bring, and the restraint that it will impose on the executive. The White Paper suggests that it is willing to compromise that legitimacy in order to limit the effectiveness of the second chamber. We ask the commission to resist that.

The commission stresses in its consultation paper that it seeks a reform that is conducive to a stable overall constitutional settlement and that it should complement the other chamber. That seems to us to be the right approach. We therefore ask the commission to recognise the ending of the privilege of hereditary succession to legislative office as a turning point in the gradual transfer of power from elites to the people. An enduring reform will be one that recognises this. A reformed chamber that embodies a new permanent elite, privilege for individuals or for groups, or that lacks accountability or that cannot be controlled, will sooner or later require a new commission and new reforms.



Summary of Recommendations.

We ask the commission to recommend a Senate composed of 100 legislators elected from the nations and regions by proportional representation for terms of 6 years. Each region or nation should have one seat by right. The remainder of the seats would be allocated in proportion to population. One-third of the seats would be subject to election every two years. Senators would not be eligible to hold office as ministers of state. The Senate would have power to initiate legislation, to revise or reject bills, to scrutinise and to advise and consent on principal public appointments.



Two Houses Better Than One.

There is something to be said for the relative efficiency of government that a unicameral Parliament would provide. A relatively minor objection is that the workload would be large. However, we firmly believe that the interests of the people are best served by two chambers. For the second chamber should have as a primary role the checking of any tendency by the other, or by the government that is derived from it, to abuse the power given to it by the people. To do so legitimately, we reiterate, the second chamber must also have equal democratic legitimacy. Its members must, moreover, be free of the temptations of ministerial office that might make them the more amenable to the executive. It is not only the second chamber that checks the first, of course. So should the judiciary, the press and the other organs of civil society. But the second chamber should be able to do so more immediately and more certainly.

A reformed second chamber should also be able to bring a different emphasis to the legislature. Under our proposal Senators would represent their nation or region, as the Americans put it, "at large." It would be their constituency and they would be inclined to give a greater emphasis to its interests than to ideology. The weighting of seats that we propose would go some way towards ameliorating the disadvantages that size inflicts on the less populous regions.



Democratic Names for Democratic Institutions.

The name of this chamber will be of great significance. The second chamber would be as representative of the people as the first chamber.

The second chamber should no longer be called the House of Lords. The division of Parliament into “upper” and “lower” chambers and into “Commons” and “Lords” are vestiges of a pre-democratic order. The names of both chambers should no longer give currency to a view of a Britain as a nation that celebrates intense social stratification and the ossification of permanent elites.

The title of “Lord” is also a feudal vestige. It suggests an essential superiority. It calls for what one British writer has recently described quite aptly as a “verbal bow.” Many Britons are affronted by the title, which they strongly believe to be contrary to the democratic spirit. The title is unfit for the honour that is associated with having been chosen by the people to be their servant. The title of such a person should derive solely from the office and express the dignity of the office. It should be understood to apply only while the legislator holds office. “Senator” is a title that meets these criteria, is familiar from usage elsewhere and is widely understood. “Senate” meets the same criteria as a name for the reformed second chamber. For convenience we use both terms throughout this evidence.

If our objections to the use of “Commons” and “Lords” are accepted the chamber now known as the House of Commons will require a new description. National Assembly and House of Representatives are worthy of consideration.



A Reformed Chamber: The Senate.

Duties and Powers of the Senate.

A chamber that was little more than a “talking shop,” or which merely advised or aided the executive and the other chamber, would win little respect, would attract less able and energetic Senators and would hardly warrant the expense of its existence.

A popularly elected Senate would be distinguished from the other chamber not by degree of legitimacy but by role. It would be entitled to a fair share of power. The majority party in the other chamber would continue to form the Government. The ability of that chamber to act as a check on executive power would, therefore, continue to be compromised. Acting as such a check would be a key role for the Senate. Only a chamber with democratic legitimacy would be entitled to do so.

There is another reason for a powerful Senate, however. By providing for the direct representation of those nations and regions in Parliament. the Senate would be particularly able to counter the alienation from the centre that many citizens of the nations and regions feel.

The Senate should have these duties:

- Initiating legislation that was not primarily financial in nature.
- Scrutinising, revising and approving legislation initiated by the other chamber, including subsidiary legislation.
- Scrutinising European legislation and monitoring British relations with the European Union.
- Advising on and consenting to public appointments within the domain of the executive.
- Investigating the conduct of the executive and questioning government ministers.

There is no reason for imposing any change in the way in which the second chamber organises its committees but as an autonomous body it should have the freedom to change its approach if it wishes.

The power to initiate legislation is essential. It would ensure that the programme of the executive did not monopolise the legislative agenda of Parliament and that the legislative needs of the regions were not neglected. It would guarantee the status of Senator and attract more able candidates.

To enable that chamber to be effective as a check on the executive all legislation should require the assent of the Senate. However, recognising the crucial importance of the government's role in the national finances, only the Commons should have the power to initiate finance bills. Both chambers should be able to initiate other bills.

It is also vital that the Senate have the right to block the passage of legislation introduced in the Commons, for only thus may executive excesses be prevented. The Commons may not be relied upon to do so. We believe that in a mature democracy like Britain this would make for consensus rather than conflict or instability. For there would need to be co-operation between both chambers and the executive in order for any of these elements to achieve their objectives. A procedure similar to the "conferences" of House and Senate representative in the American Congress would be required for the resolution of differences on proposed legislation between the two chambers. The compromises that would be required would protect against extreme measures.

In order that the independence of the Senate be not compromised and in order that it retain its distinctive character, the Prime Minister should be able to appoint as ministers only members of the House of Commons. These benefits override the dis-benefit of the narrowing of the field from which ministers may be drawn. This restriction would end the unsavoury practice of appointment to a seat in the legislature as a device to allow one who has not been elected to Parliament to serve in the government.

We recognise that such a Senate would meet only two of the criteria set out in the White Paper by the government. We would point out, however, that although the commission may be bound by those criteria, Parliament will not be similarly restricted when it legislates on these matters.

Our proposals would protect the pre-eminence of the Commons that chamber would keep its peculiar responsibility for forming and removing the government. And its exclusive right to initiate finance bills.

The Senate as proposed would complement the other chamber. However, it is wrong to suggest that it should never challenge. We hope fervently that the commission will not succumb to the apparent desire of the government that the reformed chamber should function as a acquiescent helpmate rather than as an equal partner. Democracy and majoritarianism are not the same. Neither chamber should have the right to exert its will without restraint, or to trample on the rights of minority groups, on the grounds that it has the support of the majority of the electorate. At times the Senate will have a duty to challenge and only thus could it act as a constitutional watchdog.

The role of constitutional watchdog is not one that a Senate alone could fully undertake. It would have a duty, of course, to monitor its own actions for their constitutional compliance. And it would also act as a check on any constitutional improprieties of the other chamber and the executive. However, as an equal partner in the legislative process it would be capable of itself misusing the constitution. It should fall, therefore, to another branch, as happens in the United States, to rule on whether legislative or executive acts are unconstitutional. A separate supreme court should carry out that task.

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Terms of Office.

Legislators-for-life have no place in democratic government. In a democracy the people must be able to remove their legislators from office as well as put them in there. Lack of accountability is an overriding objection to the continuation of the practice of appointing legislators-for-life.

Moreover, the difficulties in the way of adjusting the composition of a chamber composed in full or in part of legislators-for-life, as our nation changes seem insuperable.

If a Senate of legislators-for-life were to have any pretence of reflecting the people there would need to be a continual increase in the number of members as the balance was regularly adjusted in order to prevent a long-term bias prevailing. Work by the Constitution Unit has demonstrated the unwieldiness that such increases would bring.

(Constitution Unit, Rebalancing the Lords: the numbers, Jan 1998)

We recommend election for six years as a good balance between democratic accountability and stability. It is not so long as to make Senators heedless of the will of their electors. But it is long enough to provide stability and a greater degree of independence from party machines.

Longer terms might deter some candidates. They would certainly contribute to frustration with the democratic process insofar as the electorate would feel that its power to remove unsatisfactory representatives would be diminished.

Biennial elections for one-third of the seats would ensure that the membership changed as public feelings changed, thereby reducing the justice of the charge sometimes made that we have an elective dictatorship. This would also act as a reminder to the members of the other chamber to pay heed to public opinion. Moreover, such an election schedule would

prevent dramatic changes of membership and thereby bring more continuity to the work of the Senate than would be the case if all seats were subject to election in one year.

Senators should be eligible for re-election. The issue of an age limit, which the institution of legislators-for-life gives rise to, should not be an issue. Whether a candidate is unfit through age or any other factor should be a matter for the electors to decide. In any case, the varying ways in which ageing is manifest in each individual would make any age limit unfair to some. Capacity, not age, is the only consideration.

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Other Matters.

The government of Britain is a task of high seriousness. Only full-time, salaried legislators, provided with adequate facilities and staff, can bring to this responsibility the devotion that is required. If Senators are not salaried we can expect that membership of the this chamber will weighted more than might otherwise be the case towards those who are economically privileged or retired from other employment.

Full advantage should be taken of information technology in order that Senators are able to be as well informed and effective as may be and to reduce administrative costs. Democratic accountability requires that the most advanced means of publishing its business should be used. A record of proceedings should be posted on the Internet. Proceedings should be broadcast.

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The Senators.

Popular Election.

The composition of the Senate is crucial for its legitimacy, authority and respect. At present we have a legislature that reflects a past feudalism. The division into Lords and Commoners signifies a divided society and a nation in which the majority have a second class status.

The establishment of a democratic second chamber will have a powerful symbolic importance. If our democracy is to win the allegiance of those who are now disaffected from its institutions and to maintain the allegiance of others it is vital that this chamber be capable of a new and effective inclusiveness.

The commission's consultative paper asks whether there are groups other than ethnic minorities, women and young people who are under-represented in the House of Lords! That is an extraordinary question. Is not every group other than the peerage under-represented? Any claim by this peerage to represent a broad range of British society is so absurd as to hardly require rebuttal. No examination of their incomes, occupations, gender or ethnic origins would support that idea.

The consultation papers asks whether members of this chamber should have a duty to take part in its business. That question suggests some of the dangers that are lurking in the notion of random, indirectly elected or ex-officio etc. members. For the responsibilities of governing Britain demand the highest degree of commitment.

If the commission is tempted to resort to gimmicks it should resist. In a healthy democracy the electorate take responsibility for their own government. The way in which we select our representatives should be such as to encourage the acceptance of that responsibility. Leaving it to others is not taking responsibility.

We ask the commission to recommend, in the words of the 1911 Parliament Act, “a second chamber constituted on a popular ... basis.”

We proposed that the Senate should be composed of Senators who have been elected for six year terms of office. Only representatives chosen by, accountable to and removable by the people, meet the needs of a democracy in which the people have ready influence and ultimate control.

In response to the argument made by the government in the White Paper that having some popularly elected Senators in a chamber that was not wholly elected by the people would give that chamber democratic legitimacy, we must say that a body that is not wholly legitimate is not legitimate at all.

The provision for each region or nation to have one seat regardless of population, with additional seats allocated according to population, would go some way towards countering the bias towards the nation’s centre and towards correcting the sense that regional interests are neglected.

All Senators should be directly elected. Any mixture of Senators some of whom who were directly elected and others not, would hold the danger that those not directly elected might frustrate the will of those who were. That would undermine confidence in democracy.

If we wish to strengthen confidence in British democracy the office of Senator must be open to all. The means by which one may win or lose a seat in the legislature must be clear, direct, certain and fair to all, not at all haphazard or doubtful. There should be a clear cause and effect.

Any mix of methods by which a seat in the Senate may be filled is likely to cause confusion and doubt. To one who asks how a seat in the second chamber is achieved we should be able to say that one puts oneself forward and the electorate will choose between the candidates. If instead the answer had to be that there were a number of options depending on where you go in life; that perhaps if you become a lawyer the Law Society may nominate you through one process; or if you join a union and eventually come to the attention of the TUC it may choose you for its seat; or that you may impress an appointments commission as a person of “distinction” at some stage in your life; or if you are lucky your name may be drawn in a lottery, is not satisfactory. It would give substance to the belief that government is not subject to influence or control but rather is the reserve of an elite or the lucky and that the average person may have an insignificant influence on our governance.

It follows that MEPs, law lords, bishops would have no place unless elected in their own right, in which case they would sit as representatives of the people.



“Independence.”

In the course of the public discourse on reform much has been made of the “independence” of the unreformed House of Lords, or at least of its cross-benchers. And the Government has made much of its wish to preserve a strong “independent” element in the reformed chamber.

The case for “independent” members of the Senate and for randomly selected members seems to be based, at least in part, on the belief that this would counter a wide disillusion with party politics. But if the concern is that party politicians do not do what the electors want, it is far from clear how independents, who would be able to do whatever they liked, would provide a remedy. For government is not democratic when control is taken out of the hands of the people. If the chosen system fails to give control to the people, the sensible response is to look for ways of increasing control. Discarding what control there is would be no remedy at all. It is likely to lead to more frustration and greater resort to non-democratic means. Since party allegiances will continue to have a key place in the governance of Britain any disillusionment there may be will have to be tackled directly in any case and not avoided by the spurious device of “independence.”

A system that guaranteed a place for some “independent” cross-benchers would also be without justification. If the will of the majority, as expressed through elected Senators, were to be frustrated by “independents,” confidence in democracy would be weakened.

Although independence is not necessarily a virtue in a legislature, one may readily understand why the independent element of the Lords come to be seen as such. For with a legislative chamber that has no merit as representative of the people, and which has for long periods had a majority sympathetic to the minority party in the Commons, a degree of independence may have seemed to be a saving grace. And a government that can whip its supporters in the Commons when they are reluctant in their support, may prefer an “independent” second chamber to a representative one that it may not be able to coerce or seduce.

Therefore, one should ask crucially what or whom the independence is from.

The record of the unreformed chamber makes clear that “independence” from party does not guarantee that there is not a partisan imbalance. Nor did it prevent the frustration of the will of the British people as expressed through the ballot. This confirms for us that “independence” is not always a virtue.

We believe that independence may be a virtue, however, if it means independence of a party machine, rather than independence from the will of the electorate. Our proposal for Senators who would not be enticed by the offer of ministerial advancement or intimidated by the threat of withholding of such advancement, and who would serve six year terms, would make for Senators with less inclination than the Members of the other chamber to prefer the

party line to that desired by their constituents. They would have greater incentives to uphold what their constituents saw as their interests.

It follows from this that political parties would have a role in the Senate. And there should be no objection to the members of one party holding the majority of seats, if that is a reflection of the will of the people. The power of the whips would be reduced however by the inability of the party machine to offer the reward of ministerial office.

It would be the electorate who would determine whether the party of government would have a majority in the Senate. However, the provision for one-third of Senators to retire every second year would make it likely that at times the majority in the Senate would differ from that in the other chamber.

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Peers.

We have remarked earlier in this evidence on what we see as the pernicious effect of feudal titles. The peerage is a component of a highly stratified society that denies merit the supremacy it should have. The hereditary peerage gives a reward for the circumstances of a person's birth. Life peerages at best reward just some of those who have achieved real success in one field with a catchpenny distinction. A more democratic legislature should discard this title of pre-democracy.

Life peers should not have places in the chamber unless elected as Senators. Nor should there be a *transitional* place for hereditary peers. This shameful affront to democratic decency should no longer be tolerated.

It follows that we do not believe that peers should be ex-officio Senators, nor that Senators should be peers. To require that those elected to this chamber were peers would exclude those who because of sensibility or conscience would not feel able to accept a peerage.

There is no place in a democracy for legislators-for-life. Nor for legislators-until-retirement-age. The right of the people to remove a legislator is an essential component of democratic government. It is absurd that there are legislators who are able to follow their whims, neglect their duty or display incompetence who nonetheless are free to remain in office. Such an arrangement brings democratic government into disrepute and shames our nation before the world.

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Law Lords.

The presence of senior judges in the legislature is inappropriate, whether or not they have a judicial role there.

The White Paper reminds us that by convention these Lords do not involve themselves in matters that are politically contentious. However, since the legislative function is and should

be politically contentious, this convention emphasises the inappropriateness of the most senior judges sitting in the legislature.

The functions of law writing and of interpretation of law should not be conflated. Doing so must cause some confusion and will cause more as the role of judiciary expands. Those whose duty it is to put aside their own interests when interpreting the law have an additional difficulty when they have been concerned in the writing of that law. What is more, although bias may be absent, it will not be clear that it is so. The recent case in which Justice Hoffman failed to declare his interest in the *Amnesty* organisation is illustrative of one associated problem. It is utterly right for a legislator to hold and express strong opinions on matters of policy and of fact. It is equally right for legislators to give their support to public causes. A legislator who was inhibited from doing so because it might bring into question her or his impartiality in a case that might come before the supreme court is not able to meet the expectations of legislative office to the full.

The location of senior judges in parliament would also be a cause for concern also in the event of a reform of the supreme court that required parliamentary scrutiny of nominees to that bench.

To continue the requirement that judges of the highest court be members of Parliament could also exclude from the highest judicial offices those who do not wish to sit in the legislature. The practice of conferring a peerage on the most senior judges also excludes those who object in principle to the honours system. The highest judicial positions should be open, in equity and in the interests of the highest standards of justice, to those who may not wish to sit in the legislature or carry the title of "Lord."

Some technical expertise might be missing from the floor of a Senate from which the senior judges were absent. There can be little doubt, however, that there would be Senators who were lawyers. The Senate should also be able to employ the legal experts necessary for its work. When necessary it could take evidence from other practising and retired lawyers and from academics.

We propose that the legislative and judicial systems be clearly separated by the creation of a distinct supreme court at the apex of the judicial system.

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Ex-officio members.

There can be no justification for one office to entitle the holder to a seat in the legislature. One who serves well in a particular office is not necessarily the best person to sit in the legislature, nor may she or he wish to have the responsibilities of a legislator. Such legislators might be "independent" of party and electorate or might be subject to pressures arising from the office that gave rise to their seat in the legislature. In neither case would they have any democratic legitimacy.

In the case of law lords, as we argue elsewhere, the one office is incompatible with the other.

The case against holders of clerical office sitting in the legislature by virtue of that office is yet stronger, for there is no case for one section of our nation having a privileged position in the legislative process. Despite the place that some have in the nation's history, the churches are interest groups which are no more entitled to a privileged place in the legislature than have other interest groups.

Democratic legitimacy comes not from the past but from the wishes of the people today. To grant the Church of England seats as of right is to discriminate against those of our people who are not of that Church.

If some members of other faiths approve of the current privilege granted to the Anglicans, as the consultation papers states, there are others who oppose it. Those non-anglicans who do support the privilege may be suspected of doing so because it may seem to privilege by association all those with a religious belief over those who do not so believe. It may also seem to hold out the hope that they too will one day be given a similar privilege.

Retention or expansion of by-right religious representation in the Senate would discriminate against those who do not hold religious beliefs. The diversity of beliefs in this country, many of which have few adherents in Britain, would also make it impracticable for all religions to be represented.

The recent history of the Church of England suggests that the proponents of religious privilege may, in any case, be acting perversely, in respect to their religion if not to the status of their Churches. The privileged place of the Church of England in the legislature has not prevented a sharp decline in its active membership. Indeed the contrast between Britain, where the Church is privileged, and the United States, the constitution of which separate church and state, is instructive. In the USA church attendance is high and the churches flourish. Those who hold strong religious views are able to promote them through the democratic process if they wish. Can it really be maintained, therefore, that in that democracy the place of religion in society is any less secure because it is not directly represented in the legislature?

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Nomination, indirect election and lottery.

We urge the commission to avoid any recommendation that would give merit to the term, coined in readiness for the reformed chamber, "super-quango."

We have made the case for direct popular earlier in this document. None of the alternative options that we now consider provide for the accountability that popular election entails. And other objections may be added.

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Nomination.

It is possible that nomination of members might allow the hand-crafting of a chamber that in one sense might be more representative of Britain than an elected chamber. The

membership could be in proportion to the numbers of women, men, black, white etc. people in the population. But so complex is the mix of affiliations, loyalties, origins, interests, occupations, skills and so on, that it is certain that such a “bean counting” exercise would produce nothing more than a comic book reflection of reality. It is certain also that great dissatisfaction would be felt by those who believed that although there were persons representing their “interest” they were not doing so in the way they would like. But expression of that dissatisfaction through the democratic processes would not be possible. Frustration with and alienation from our democratic institutions would not be lessened.

It is likely, moreover, that a nominated chamber would in practice be to a large extent self-selected. The government refers in the White Paper to “individuals of distinction” being suitable for seats in the Senate. “Merit” has also been suggested as a criterion for appointment. Of course any Senator would by definition become an individual of distinction. But the proposition that those who have already achieved distinction should have privileged access to the Senate is disturbing. “Merit” is, moreover, a rather subjective judgement. Relatively few people are likely to have the self-confidence or the freedom to make the commitment that would be required of them. Although perhaps rather more diverse than the House of Lords, such a chamber is likely to be composed to a large extent of persons who have already succeeded in other fields and have the time and inclination to serve in this way. Such persons are certainly not to be faulted for their willingness to serve and no doubt many would contribute ably to our governance. But it is not likely that the majority of the electorate would easily recognise them as actors on their behalf. That majority would certainly not be free to express any disappointment with these legislators in a democratic spirit.

Thus although debates in the Senate *might* benefit from a wider range of perspectives than election could guarantee, it is not certain that they would result in legislation that had the consent of the majority.

The filling of seats by nomination would leave control out of the hands of the majority of citizens. It would smack of some having two votes, while others had one. We should have learnt the dangers of that from the history of Northern Ireland.

Nomination by the executive would, of course, seriously undermine the role to the Senate as a check on executive abuses. And any system of nomination is likely to cause the suspicion of favouritism. If nominees were subject to independent vetting questions would nevertheless be asked as to how one person came to be nominated, or to be on the initial list of nominees, and not another.

To permit the appointment of members of the chamber by other bodies, or “functional constituencies,” such as professional associations or trade unions would be to discriminate against those who did not belong to any such group. One must ask why, for example, a property lawyer might be represented but not a licensed conveyancer? Why a trade union member and not a person who had retired or was unemployed? The example of Ireland, where graduates of the ancient universities are permitted a second vote which is denied to many others, is not at all helpful. Every group could not be represented and inequities would multiply. Some lucky citizens would find that more than one institution to which they were affiliated had a right of representation in the Senate. Others would be entirely without such

representation. Some citizens would feel that their interests were represented in both chambers. Others would possibly feel represented in neither, if the party they supported was in a minority in the Commons and they belonged to no interest group represented in the Senate. A bureaucratic regulatory regime might be required to ensure that such organisations chose their representatives in a fair manner.



Indirect election.

Indirect election by subsidiary bodies would allow a lesser exercise of power by citizens than would direct election. It is to be expected that it would produce something of a mirror of the institutions which elected the senators, rather than allowing an alternative expression of the will of the people. The inconsistencies in the ways in which regional bodies are constituted and in the powers that are devolved to them might also make for distinctions in the authority between Senators from different regions.

One must wonder who would fill the seats in the Senate if this approach were to be followed. If regional bodies elected the Senators it is doubtful that those serving on those bodies would also have the time or energy to sit also in the Senate. What alternative pool would they draw from and could they be relied upon to elect the most imaginative or thoughtful of their cohorts?

Unless the Senators were to be delegates of these bodies it is unclear why this approach should be preferred to popular election. The main disadvantage is that which applies to all the alternatives to popular election: the removal of power and responsibility from the people and the undermining of confidence in democracy that may follow from that.

Lottery.

Selection by lottery has a number of demerits. It is likely that few persons chosen at random would be free to take on the responsibilities or would want to. Those willing and able to do so are likely to be those with the strongest or most marginal views on political issues. The chief advantage that is advanced for this approach would thereby be lost: those taking office would not be a representative cross section of the nation.

We should expect responsibility, sustained commitment, and accountability in our legislators. A lottery would militate against those virtues.



Conclusion.

What we advocate may seem radical. It is not. It is a full expression of the popular sovereignty that has been practised elsewhere in the world for many years. Indeed, as long ago as 1911 the

British government indicated that it intended to replace the House of Lords with a chamber with a popular basis.

We therefore invite the commission now to recommend reforms that would make the legislature more truly the people's legislature, undercut those who would resort to undemocratic means and fulfil this country's boast that its Parliament is a model for the world.



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