

## Reform of the House of Lords

*Continuing the Travesty*

Comments on  
*Completing the Reform* White Paper  
January 2002

**The Centre for Citizenship**

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The Centre for Citizenship is an independent pressure group that 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.



## **Preamble**

This submission is made despite two fears that the flaws in British democracy cause. Those fears are:

- (1) That that the Executive is consulting on its proposals with a firm intention of proceeding with the substance whatever criticisms may be made.
- (2) That the democratic branch of the legislature lacks the will that would permit it to effectively defy the wishes of the Executive. <sup>1</sup>

## **Our Perspective**

The Centre for Citizenship is committed to the principal of government of the people, for the people and by the people. That belief has guided our consideration of the proposals and informs our comments.

## **The Context**

The House of Lords is a feudal creation. The existence of a legislative chamber of its character in the twenty first century is emblematic of the endurance of feudal values in Britain. It reflects a belief, widespread throughout the political spectrum, that it is best if the people are governed from above rather than allowed to govern themselves.

While the rule of so-called Lords is now too blatant an affront to democratic principles to be tolerated, the rule of parties and “the great and the good” continues. It is to be reinforced by the proposals in this White Paper.

The unequal powers of the other legislative chamber and the Executive provide another important part of the context. An Executive that is able to keep one chamber of the legislature in reins, will not tolerate a second chamber that it cannot direct

A piecemeal approach to constitutional reform makes satisfactory reform particularly difficult in such circumstances, though necessary nonetheless.

## **Where We Agree**

We agree with the Prime Minister’s declaration in his foreword to the White Paper that “A credible and effective second chamber is vital to the health of Britain’s democracy.” And that a constitution “fit for the 21<sup>st</sup> century” is required.

The proposals set out in the White Paper fail to meet those criteria.

## **“Completing the Reform”**

We urge the Executive to reconsider in the first place because if the recommendations made in the White Paper are implemented that will not be the end of the matter, albeit that is the declared wish of the Executive. The wide opposition of members of parliament and in the press to the proposals, as well as the opposition of groups such as the Centre for Citizenship must put that beyond doubt. The legislators in the reformed House of Lords will be widely considered to lack democratic legitimacy. They will therefore be unable to claim the respect to which democratic representatives are entitled. Some of the modifications that they make to legislation will be resented and not accepted. Those who desire the best of democracies will not be appeased.

### Pre-eminence of the House of Commons

The White Paper asserts that few would wish to change the present constitutional framework, particularly the pre-eminence of the Commons. It bases its argument against a fully elected second chamber on this. In this connection it refers to the “line of authority and accountability that flows between the people and those they directly elect to form the Government and act as their individual representatives.”

This is to gloss over reality. The existing constitutional framework is widely considered to be unsatisfactory. In particular the House of Commons routinely surrenders its rights to the Executive.

It is not the universal experience of the people of Britain that their representatives in the Commons are willing even to listen to them, and certainly not to give their opinions parity with those of their party or government.<sup>1</sup>

The “line of accountability” between Executive, MPs and people seems to be so continually broken that an “elected dictatorship” is frequently spoken of.

It seems to us that the Executive resists an elected second chamber primarily because the “settled principles of our democracy” that it says it wishes to uphold are such as to enhance the power of the Executive at the expense of Members of Parliament and the people.

A second chamber with democratic legitimacy might better fulfil its responsibilities to the people. For such a chamber might have the will as well as the authority to hold the Executive to account as the Commons, with its party loyalties, ambitions for office, and lack of regard for the rights of the people, fails to do

## The Composition of the Reformed Chamber

The composition of the reformed chamber is crucial. If the chamber does not have democratic legitimacy all else will be irrelevant. We will, therefore, concentrate on that issue.

We firmly believe that a legislative chamber that is not accountable to the people is without legitimacy. The respect that the members of a legislative chamber might expect is therefore forfeited. Such legislators must expect to be viewed in some quarters with opprobrium, as arrogant usurpers of rights that belong to the people.

### The Essential Flaw

The key flaw in the Executive's proposals is that they would not make the reformed chamber a fully, or even majority, elected one. This it seeks to justify by what amounts to an assertion that the House is not a legislative chamber and therefore is not subject to the democratic principle that legislators should be elected by, be accountable to and removable by the people. Rather, the House is depicted as little more than an advisory body. The Executive would have us believe that, therefore, it will be immune from the requirement of the European Convention on Human Rights that there be

**“free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”**

This depiction of the reformed chamber is false. The reformed chamber will have a status and grandeur that accrues from its name, “The House of Lords,” the traditions it will inherit and its historic meeting place. It will not, like the committee of experts the Executive would have us believe it is to be, meet in a nondescript office block, built of breezeblocks, lit by fluorescent tubes. Its procedures will be those of a legislative chamber. Although its powers will be limited it will have real power. The legislators will debate, they will contest, they will combine, they will make alternative proposals, they will brief the press, they will try to embarrass the government, and they will delay. The power to delay and the ability to embarrass are effectively powers, in some cases, to change. For governments on occasion will write or re-write legislative proposals so as to avoid embarrassment and delay. This is a legislative power that may legitimately be held only by representatives of the people.

The House of Lords will appear as and will act as a legislative chamber. It will be seen as such. But the Executive insists, by its rejection of the requirements of the European Human Rights Convention, that it will not be such.

A contradiction between the proposals and the justification that is made for their undemocratic nature highlights the dishonesty of the Executive's position.

The chamber is to have a majority appointed by the major political parties and a party political weighting that mirrors that of the House of Commons. There is no good reason that an advisory body, supposedly not a "clone" of the Commons, but valued for its expertise, experience and independence, should require this strong party element.

We believe that this hybrid creature is a work of an Executive caught between a formal commitment to democracy and a deep-rooted fear of the same.

The members of this House will be legislators, no matter what the restraints on their powers. There is no justification for persons who have not been elected by the people and who are not accountable to the people having the power to amend or delay legislation.

### Parliamentary Oaths Act

The Executive wishes, if we are to believe the White Paper, that the second chamber's members should be more representative of Britain. Yet it has not proposed that one form of blatant discrimination that is now practised should be ended.

No matter what form the House of Lords takes there should be no discrimination in eligibility for membership on the basis of democratic political opinion. It is essential therefore that the Parliamentary Oaths Acts 1866<sup>2</sup> be repealed or amended. This Act bars legislators of republican beliefs from the legislature by requiring that all legislators swear or affirm their loyalty to the monarch<sup>3</sup> and members of her family. Such a declaration of loyalty to an individual and family, originating in a pre-democratic stage of our nation's development and now befitting only a tribal society, is repugnant to republicans. An exclusionary law such as this is a stain on our democracy. The Executive should propose and parliament should agree that legislators need declare their loyalty only to the people and to democratic enactments and processes.

### The Elected Element

The White Paper proposes that "To ensure that every part of the United Kingdom is properly represented there should be a minority elected element" in the second chamber.

We do not understand the Executive's thinking here. A minority of 120 will be able to ensure very little. There seems to us also to be a contradiction between this explanation for elected members and the Executive's refusal to contemplate this for the majority of the members. Specifically, the White Paper proposes that the 120 "independent" members to be selected by committee will reflect the "cultural and racial" composition of Britain. We think it would be easier for this committee to make a selection that would reflect the geographic demographics

than to select on a nebulous basis of “culture.” The provision for election of a minority of the chamber seems, therefore, to be a sop. A sop given because the Executive knows that what it proposes in the whole is expedient and without a basis in principle.

All members should be chosen by the people, be accountable to the people and be removable by the people. Nothing less will be democratic. Nothing less will be legitimate.

#### Appointment of Ministers to the House of Lords

The Executive must be accountable for its actions. This accountability must ultimately be to the people. Since an executive that has not been elected by the people cannot be directly accountable to the people it must be accountable to the representative of the people. It not acceptable therefore that some ministers should sit in a House of Lords of the design proposed and thereby escape accountability to the people’s representatives.

#### Independence of Legislators

The proposals commend the “independence” that some legislators will have when its proposals are implemented. We say that the independence of legislators is not a virtue in a democracy. If there is to be government by the people legislators should represent the people.

#### Expertise and Experience

The White Paper states that the members of the second chamber should bring “expertise and experience.” There are, however, better ways in which such qualities may be better made available to both houses. Expert evidence to scrutiny committees would be more focused, more up to date and more verifiable than that provided by un-elected legislators who may not be relied upon to have the expertise or experience that is the most useful.

#### The Law Lords

As we stated in our evidence to the Wakeham Commission the conflating of the legislative and judicial functions is very much to be regretted. Those who make laws should not judge compliance with those laws. No judge should sit in the legislature.

#### Bishops

The right of a religious group to seats in the legislature is inconsistent with democracy and is an infringement of the civil rights of those of other beliefs. It would be so whether the privileged organisation represented a majority of the population or, as is the case with the Anglican Church, a minority.

To those who are not Anglicans it can seem that they have one representative in the legislature while Anglicans have many. This proposal is rooted in a feudal past and has no merit in modern Britain. It falls far short of the Prime Minister's wish for a "credible" second chamber or one "fit for the 21<sup>st</sup> century." If Parliament accepts it it will be encouraging animosity against the Church of England, if not the hatred incitement to which the government recently sought to outlaw.

The statement that the "moral, philosophical and theological" considerations of the business of the second chamber justify seats by right for bishops of the Church of England is offensive. Moral and philosophical concerns are not the preserve of the religious, still less of the Anglicans. Theological considerations have very little place in democratic government and certainly not sufficient to justify the continued seating of bishop-legislators. The White Paper provides elsewhere for those with religious faith to have a privileged place in the chamber. Those seats would be open to clerics of all denominations.

The proposal amounts to an unprincipled and indefensible perpetuation of privilege for the Church of England. We are certain that the Executive knows that. It is incompatible with democratic government and undermines confidence in democracy.

#### Appointments Commission

The widespread scorn with which the first appointments by the existing appointments committee were met must cause great doubt that the proposal in the White Paper will result in the appointment of legislators who are "broadly representative of British society." In any case, in a democracy it is the people who have the right to decide who should represent them. It is not a right that belongs to a committee. Only those chosen by the people have legitimacy. If there is a gender or ethnic imbalance in the Commons there is no short cut to a remedy. The second chamber may be given the balance that the Commons lacks but the second chamber will lack the legitimacy that the Commons has.

The corruption that has characterised the appointment of some legislators to the House of Lords will not be remedied by these proposals. It will continue to be open to the wealthy to buy a nomination to the second chamber by generous contributions to the party of her or his choice. The major parties would continue to have the power to appoint their friends as legislators. As long as the nominee is not known to be of bad character the appointments commission will not be able to decline the nomination.

#### Party Lists

We are opposed to the party list system that serves to increase the power of parties and to weaken that of voters. An expansion of the use of this system would, therefore, further undermine confidence in the democratic system.

#### The Name of the House



The Executive proposes that the second chamber continue to be known as the House of Lords. It does so despite its quite proper proposal that the members of the chamber not be Lords and that Lords have no right to sit in the chamber. If this proposal is implemented the members of the House of Lords will not be Lords and most Lords will not be members of the House of Lords. That would be absurd. Absurdity does nothing for the health of democracy. What is more, the use of the title of Lord is held in contempt by many who long for a democratic society as well as democratic institutions. We urge therefore that a democratic second chamber have a new name. We would prefer "Senate" as it has the advantage of familiarity and is consistent with democratic principles.

### Legislators-for-Life

The White Paper proposes that the existing life peers should keep their seats in the legislature until they die. This is undemocratic. No one should become a legislator unless elected by the people. Every legislator should be removable by the people.

### The number of legislators

The undemocratic nature of the proposals makes the number of legislators of little account except in terms of cost to the taxpayers and manageability. The proposed number of legislators is unnecessarily high for a democratic chamber.

### Faith communities

The White Paper refers often to how those with religious beliefs might benefit from the changes proposed. Nowhere does it mention those who do not have such beliefs. That silence says much. The privileging of the religious is indicative of a refusal to recognise that the separation of church and state is essential in a mature democracy. Until it is recognised in Britain that religion is a private matter, that government must be inclusive, and therefore that government must not involve itself in religious affairs (other than protect freedom of belief and speech), Britain will be unable to consider itself fully democratic.

### Peerage

We welcome the proposal to separate membership of the House from the peerage. The people should not be asked to bow to their legislators. Indeed, we should not be asked to bow to anyone. And although this may not be the place to say so, we will say that Britain will be a healthier society if the peerage is abolished sooner rather than later.

## **Conclusion**

The proposals in the White Paper will, if implemented, continue the denial to the people of this nation of a basic democratic right. The reformed chamber and the members of that chamber will continue to lack democratic legitimacy.

Belief in the democratic government will be undermined at home. Abroad respect for this country will be undermined.

The argument will continue. There will in due course be another enquiry, another White Paper and another bill.

Only when there is government by the people will the reform be complete

## **Summary of Recommendations**

- The House of Lords will continue to be a legislative chamber. Its members should all, therefore, be elected by the people.
- The Parliamentary Oaths Act must be repealed or amended to allow republicans to sit in the House.
- Ministers must be accountable to legislators who have been elected by the people.
- Holders of Church office should not be entitled to a seat in the second chamber by virtue of that office.
- Judges should not sit in the second chamber.
- Any expertise and experience required during the legislative process should be by means of expert evidence to committees and should be available to both chambers.
- The party list system of election, which limits the choices open to the voter, should not be used for election to the second chamber.
- The second chamber should be called The Senate.
- Members of the second chamber should not become members of the peerage by virtue of their seat in parliament.
- Existing legislators-for-life (life peers) should no longer be permitted to sit in the second chamber unless elected to it.

## Notes

1. An associate of the Centre for Citizenship corresponded in early 2000 with the M.P. for his constituency about a legislative proposal that was to be made by the Executive. The M.P. is also a minister of the government. The proposal was not ideological in nature. The M.P. referred the first letter from her constituent to the Minister responsible for the proposed legislation and forwarded his reply to her constituent. When the constituent wrote to her again stating that the minister's letter was unsatisfactory and did not answer his concerns about the new law, the M.P. informed him that she could be of no more help because "this is a matter about which I do not have responsibility." She had, it seems, failed to grasp the principle that all legislative proposals, on which they will be called to vote, are within the area of responsibility of legislators! The wider problem is that many M.Ps have a primary loyalty to their party and/or government, not to the people of their constituency.
2. Extract from The Parliamentary Oaths Act. "3. The oath hereby appointed shall in every Parliament be solemnly and publicly made and subscribed by every member of the House of Peers at the table in the middle of the said House before he takes his place in the said House and whilst a full House of Peers is there with their Speaker in his place, and by every member of the House of Commons at the table in the middle of the said House, and whilst a full House of Commons is there duly sitting, with their Speaker in his chair, at such hours and according to such regulations as each House may by its standing orders direct.  
  
"5. If any member of the House of Peers votes by himself or his proxy in the House of Peers, or sits as a peer during any debate in the said House without having made and subscribed the oath hereby appointed he shall for every such offence be subject to a penalty of five hundred pounds, to be recovered by action in the High Court and if any member of the House of Commons votes as such in the said House, or sits during debate after the Speaker has been chosen, without having made and subscribed the oath hereby appointed, he shall be subject to a like penalty for every such offence, and in addition to such penalty his seat shall be vacated in the same manner as if he were dead."
3. The Oath of Loyalty to the Windsors. "I swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and her successors, according to law, so help me God."

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