

Our House: Reflections on Representation and Reform in the House of Lords

Edited by Caroline Julian



 *ResPublica*

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Foreword

Professor John Milbank and Professor Simon Lee, Trustees, The ResPublica Trust

On behalf of the Board of Trustees of the ResPublica Trust, we would like to thank the contributors to this excellent collection of short essays. They concern the crucial role of the House of Lords in reflecting and promoting all aspects of British society, and the importance of extending, not restricting that function in the future.

In the light of the continuing debate surrounding the Coalition Government's draft House of Lords Reform Bill, such advocacy could not be more timely. Moreover, the reader of this collection will soon discover that the topic of the future role of the Upper House is no marginal or esoteric matter. Rather, it tends to bring together many of the crucial themes that are being considered in ResPublica's British Civic Life workstream, which seeks to explore and unearth civic association in helping to cultivate an engaged and connected British society.

Central to the new 'post-liberal' politics which ResPublica exists to promote, is the question of how to prevent civil society, in its complex plurality, from being swamped by the impersonalism, atomisation and collectivism increasingly imposed by both state and market. A rich and diverse civil society typically involves, in every locality, a creative interaction between the inspiring and virtuous example of a few people and the unformalised democratic participation of the many. One can argue that it is this process which most of all guarantees the genuine, rather than the theoretical, growth of freedom and equitable justice.

But paradoxically, as Adrian Pabst indicates, it is only possible to secure this dispersed operation of power if its idiom also has a manifestation at the centre, complementing the role of formally representative democracy. Thus the House of Lords, seen as the apex of civil society, should uniquely be able to combine the functions of wise guidance by non-professional politicians with the representation of multiple groups, professional associations, cultural vocations, faiths and localities that make up the fabric of the country.

Here then the interaction of virtue with assent crucial to 'the Big Society' or 'the Good Society', can be centrally secured in such a way that specific legitimate rights are not lost to a spirit of abstracting resentment unable to see that the same thing is not appropriate for all. This spirit, while supposedly promoting the identical rights of 'every' individual, tends in reality to leave increasingly isolated, socially detached individuals powerless in the face of impersonal technocratic processes.

Roger Scruton rightly suggests that the 'unwritten' British constitution has tended to guard against such a tendency, through a mode of mixed government (as further explicated by Pabst) that would be undermined in the direction at once of administrative deadlock and of disputed

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authority, if it were confused with the American notion of the 'division of powers'. New Labour regrettably introduced just this confusion (against the truly 'liberal' constitutional spirit of Bagehot) and Frank Field acutely notes that the situation has been rendered worse by a virtual outlawing of MP's ability to represent sectional interests, as opposed to being illegitimately biased in favour of those interests.

In the same vein, were the House of Lords to operate merely as a parallel House of Commons (thereby threatening the latter's authority) this would extend the power in general of a self-serving political class over the freedom of the British people. By contrast, an alternative reform would involve a simultaneous extension of the Lords' representation of both diverse modes of individual excellence and diverse corporate bodies. Of course the details need refining and, as Phillip Blond has suggested, this move might be combined with the non-political representation of localities and some party nominees, in order to ensure a certain fluidity of transition between the business of the Lower and the Upper House.

It is because the House of Lords already has many expert members from diverse spheres who that it is able to perform a valuable role in scrutinising and improving draft legislation, especially with a view to the protection of minority rights against the possible tyranny of the majority. Even this year, the government has been defeated in the Lords by people who knew what they were talking about in both debating high principle and in exchanging detailed comments on the impact of government changes to social benefits. It is for this reason that not even democracy, never mind the constitution, to allude to Burke, is a matter of 'mere arithmetic'. Already the House of Lords is in some ways more representative of civil society and its promoters than is the House of Commons. It is perceived by such stalwarts of the 'big' or the 'good' society as the Liberty organisation to be battling the more centralising and privatising tendencies of the current government. As Liberty observed last year, "The past few months have seen a remarkable series of debates in the House of Lords as principled opposition to the Public Bodies Bill united members of all political denominations and none. Over the course of several debates, powerful arguments have been made against the approach taken in the Bill. This process demonstrates the very point that those opposing the Bill sought to make, namely the importance of informed and detailed parliamentary scrutiny in keeping a check on Executive excesses."

Thus the constitutional feature specific to the Lords (which would be augmented by our alternative reform proposal) is the fusion of a variegated wisdom with group representation. This helps not only to ensure the growth of a more flexible and substantive democracy, but also to provide a source for the constant issue of 'proposals' that are more than the work of populist manoeuvring, or the expression of sectional and ideological prejudices. For it is important to remember that a healthy democracy requires educated choices and the wise framing of suggestions to guide those choices, even though these functions cannot themselves be voted upon. But the advantage of an institution like the House of Lords, especially in a proposed extended form, is that it can combine the business of shaping vision and policy with constant discussion and feedback reaching into the heart of our cities and shires.

Today, if people are increasingly rediscovering locality, they nonetheless live much of their lives within associations not mainly defined by geographical boundaries. It is therefore more imperative than ever to represent vocational and other groups, as well as individuals and constituencies. This is one reason why the alternative reform proposal is radical and relevant as well as continuous with tradition. It is also why some of the contributors to this volume are definitely on the left, although others are definitely on the right – despite an overwhelming convergence of perspective.

Indeed at ResPublica, we believe that to be surprised at this paradoxical combination is already to remain stuck in the previous, supposedly 'modernising' century, whose one-sided 'progressivism' tended to engender an often brutal uprooting for most people, combined with a diminution of their participatory influence. By contrast, we believe that a 21st Century Lords standing for virtue and vocation would be a true house of the people, existing for the people and their further flourishing. And we believe that this can happen.

1. Introduction

Caroline Julian,
The ResPublica Trust



‘Outdated’, ‘unrepresentative’ and ‘undemocratic’: these are all words frequently used to describe our Second Chamber. At best, a curious but harmless anomaly; at worst, a mockery of the very principles of representative democracy. Does such an institution have a place in modern British life?

While much of the recent debate surrounding the reform of the House of Lords has focussed on its historic flaws, little attention has been paid to its original purpose and constitutional value. As this compendium and its conclusions reveal, without proper reflection on its underlying principles, we risk distancing ourselves from exactly that which we seek to gain: a more representative, accountable and democratic Upper House.



For this reason, we invited contributors to reflect on the following questions: What is the nature and value of representation in the Upper House? How can the House of Lords best embody the diversity of British society? And how can associations and communities come to have a 'stake' in the Second Chamber?

Our authors approach such questions from a range of different backgrounds, experiences, professions and sympathies, both from within and outside of the House. We invited representatives from a number of different sectors in order to capture the central theme of the compendium from an array of different angles. We also approached experts and commentators in order to further unpack the above questions and explore the broader themes and underlying principles in some depth. Though individual conclusions vary between the contributors, a clear common theme emerges throughout: the opportunity and desirability for a more 'associative' House of Lords.

Following the Government's statement, presented by Mark Harper MP, the Minister for Political and Constitutional Reform, the essays are roughly divided into three sections. The first makes the case for a representative and associative Upper House; the second draws together a number of leaders in our society; and the third focuses on the terms of engagement between the people and the peers, and the role of the Lords as representatives above and beyond party politics. Conclusions and recommendations are put forward by ResPublica's Director, Phillip Blond, and Research Associate Rafal-Heydel Mankoo, who offer proposals for an alternative way in which reforms to the House could proceed.

A central theme running throughout the compendium is the need to first carefully consider the primary purpose and representative function of the House of Lords before pushing forward proposals for its reform. To shape and promote an Upper House that is truly democratic, we need to first ask what 'democracy' means.

Frank Field MP argues that previous ministers and governments have invested much time in reforming our constitution, but have never before set out in their proposals the principals which underpin British democracy, and how such reform would strengthen our democratic institutions. What is meant by the term 'democratic' is often only assumed rather than demonstrated.

An emerging consensus amongst the chapters to follow is that in order to understand democracy, we need to understand representation. Adrian Pabst argues that "Britain has seen a shift towards an 'individualistic' form of representation that is paradoxically compatible with the growing power of the central state", and that it has commonly become understood as concerning individuals or a majority of voters rather than communities, groups or associations. Instead, he calls for an 'associative' form of representation that strengthens civic participation.

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Setting the international scene through a survey of upper houses abroad, Rafal Heydel-Mankoo puts forward the case that “the increasingly diverse House of Lords is more representative of British society than the elected House of Commons, is better suited to serve the wider public interest and, in common with many upper houses, it performs a role as democratically vital as the lower house, through its championing of the constitution and human rights, its legislative review and executive scrutiny, and its defence of political minorities and opposition.” Upper houses internationally often play a vital role in giving a voice to many under-represented communities, set apart from political interests and offering a democratic function that is complementary to rather than competitive with the lower house.

Professor Roger Scruton argues that the function of the Second Chamber “is to represent those interests of the nation that are not interests of its political class”, and cites Bagehot who recognised that the House of Lords, as the ‘dignified’ part of the constitution, was there “to slow things down, to remind everyone that the national interest is more important than the interests of party or faction”. The House is not another forum for party conflict, but a representative of the long-term interests and affections of the nation.

Whereas the House of Commons is constituted of representatives by constituency, the House of Lords reaches beyond regional boundaries to an increasingly diverse and dispersed society. Peers are often embedded in cultures and communities whilst also playing a representative role at the ‘top’, offering people a ‘stake’ in constitutional processes and the formation of legislation that will ultimately come to affect them.

Lord Wei draws our attention to his representative role on behalf of the British Chinese, who are not concentrated enough in one area of the country to support an elected member in the Commons. As part of the episcopate, Bishop Tim Stevens finds a crucial role in diocesan representation, with bishops often communicating views and concerns on behalf of far more than simply ‘the established Church’. Lord Adebowale describes his role as head of a social enterprise, amongst those at the margins of society and in touch with the real issues faced by real people, not those of a ‘privileged elite’: “When there is a relevant debate in the House,” he writes, “my priority is to ensure that the views of those without a voice are represented and heard.”

Many of the contributors call for a House of Lords that can justifiably claim to reflect British society, in both number and expertise: from representatives of smaller civic groups and communities, to those belonging to larger institutions that effectively encompass the interests and channel the voices of many across the nation.

To encourage a type of democracy that might be called ‘associative’ or ‘group’ representation, Frank Field calls for the introduction of a Reform Commission, “with the duty to begin mapping out which group interests should gain representation, and at what strength.” Lord Low calls for the formation of electoral colleges based on ‘constituencies of expertise’, whereby sectors and groups of society can each elect their representative. Groups, associations and professions to be represented may include the arts, the law, medicine, sport, education, the armed services, business, trades unions, faith groups, the third sector and so forth.

Bishop Tim Stevens presents the case for the representational value of the bishops in the House of Lords: "The Lords Spiritual bring to their contribution a network of connections into local communities which no other institution can begin to match, a regional perspective often lacking from the Upper House, and a framework of values which (while claiming no moral superiority over other's values) contributes to the political debate about what constitutes the common good..." With the place of religion and the Church-state relationship in mind, he also warns that, "[w]hilst the removal of the Lords Spiritual would not spell the immediate end of the establishment of the Church of England, it would seriously undermine it, undoubtedly calling into question the future of the established relationship and sending a strong negative signal about the place of Christianity – and religion more generally – in British public life."

By achieving such representation, as a number of contributors argue, a more participative and associative model might begin to be achieved.

The contribution of the wealth of expertise and diversity of experiences that many peers bring to bear on revised legislation emerges throughout as a central characteristic that must be maintained within a reformed House of Lords. Sir Stephen Bubb comments on the much needed expertise and commitment of peers with a third-sector background who continue to promote the voluntary and charitable sector throughout the passage of new and revised legislation, such as the recent Localism Bill. Some clauses within the Bill, he argues, were opposed by vested interests, but "a number of committed and well-informed peers were able to make an unanswerable case for freeing local charities to become more involved in local life, and the key clauses survived unscathed."

John Longworth similarly describes the business expertise often required in the passing of legislation, also citing the Localism Act 2011 as a bill that "could have benefitted from a greater understanding of the role business plays in local communities, and the potential for firms to be more involved, to great effect, at a local level." Throughout this compendium, contributors call for a more reciprocal, participative and indeed, a 'co-operative', House of Lords. Lord Wei, for instance, argues that "peers play a valuable role, not just in representing voices that might not otherwise be heard, but also in helping to advise, facilitate, and support effective direct democracy", and draws upon an emerging appetite for a reciprocal relationship between people and peers which is being achieved through collective, direct action. New technology and the development of the internet as a democratic platform has enabled the direct appeal of people to peers, but also offers the opportunity for the peers themselves to appeal to the people. Direct action can go both ways.

It has now been over one hundred years since the 1911 Parliament Act, and yet reforms to the Second Chamber continue. But can we now stretch further back into our British tradition whilst also reaching forward into modern society to re-imagine a House of Lords that is truly democratic and representative but also, crucially, fit for purpose? The conclusions within this compendium draw all of the above thoughts and ideas together, and offer an alternative proposal for a reformed House of Lords that proceeds from its underlying principles. The authors argue for a Second Chamber that is comprised of one third elected, one third nominated and one third appointed members – a proposal that strives to deliver representation to all.

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It is only through a reflection on representation and civic value that we can begin to establish the House of Lords' relevance for modern society, and shape a House that is truly 'ours'.

This compendium emerges from the British Civic Life workstream, one of the three core workstreams of The ResPublica Trust. It marks the first in a series of projects on the British constitution, which endeavour to explore the role and value of our national institutions in promoting a civic, associative and participative democracy, and in cultivating virtue and character amongst representatives and within communities. Constitutional matters will become an increasingly important feature within our upcoming work, extending to the role and value of faith and the monarchy for British society and public life, and to wider debates concerning the constitutional relationships both within and beyond the United Kingdom. We envisage that this will interface with corresponding workstream activity on enhancing civic participation and citizenship across society.

Warm thanks are due to all who contributed to this compendium, and those who have supported its central thesis. I would like to thank the ResPublica team for their support during this project, in particular our research assistants, Emma Baron and Beatrice Ferguson; and Professor Simon Lee and Professor John Milbank, trustees of The ResPublica Trust.

2. A Statement from the Government

Mark Harper MP



The Government believes that people have a right to choose those who make the law. That is the most basic feature of a modern democracy.

The House of Lords does a good job in scrutinising legislation but is undermined by the fact it lacks democratic authority as it is not directly elected by the British people.

We sometimes hear the argument that the House of Lords is an irreplaceable repository of expertise, where people from all manner of professional backgrounds come together to check and revise legislation from the Commons. However, analysis in 2010 by Meg Russell and Meghan Benton showed that the most common former career of peers is in representative politics. Moreover, around two-thirds of peers already take a party whip. Elections will not make the House of Lords party political where it was not before.

The Government published proposals on House of Lords reform on 17 May 2011, as a draft Bill and accompanying White Paper. Consistent with the Government's Programme for Government, the proposals provide for a wholly or a mainly elected Second Chamber, with elections using a system of proportional representation.



We have embarked on the next stage of a debate which has been ongoing for over a hundred years. Pre-legislative scrutiny will allow those inside and outside of Parliament to continue to debate all the issues. The Joint Committee on the draft House of Lords Reform Bill is due to report this March. The Government will continue to listen and act as far as possible on the basis of consensus. We made clear we are open to views on our proposals. However, the Government remains determined to act and to introduce a Government Bill as soon as possible, with a view to the first elections taking place in 2015.

At the last General Election, each major party committed to a more democratically elected second chamber. After the election, the Deputy Prime Minister established and chaired a cross-party Committee which met from June to December 2010. This Committee considered all the issues in relation to reform of the House of Lords. The Joint Committee has continued that process of cross-party consideration.

The Government intends that the House of Lords would maintain its current role. It would continue to be a revising chamber, scrutinising legislation and holding the Government to account.

The draft Bill sets out how a chamber which is 80% elected and 20% appointed would work, as this is the more complicated of the options. The accompanying White Paper does not however rule out a wholly elected House of Lords if there is a consensus for that at the end of the scrutiny process.

We propose that the members of the reformed House would be elected or appointed in thirds at the time of elections to the House of Commons. If there was an election to the House of Commons less than two years after the previous election to the House of Lords, there would not be an election to the House of Lords. In line with many second chambers around the world, it would be smaller than the first chamber. The Government proposes a reformed House of Lords of 300 members who would be expected to attend the House of Lords on a full-time basis when it is sitting. We believe a House of this size would be able to carry out the same range of work as the existing House. Currently many of its members have outside commitments or do not attend regularly. We have made clear however that we are open to alternative views on the size of the chamber.

Members would sit for a single non-renewable term of three Parliaments. Single non-renewable terms would enhance the independence of members of the reformed House of Lords. They would be able to take a long-term view without constantly considering the implications of their actions on their prospects for re-election. MPs would continue to be accountable to the electorate – a factor which helps maintain the primacy of the House of Commons.

The Government is committed to a system of proportional representation for elections to the reformed House of Lords. Proportional representation systems are based on multi-member constituencies. They allow the number of seats gained by each party to closely correspond to the number of votes cast for that party at an election. The Government believes that a proportional system will help the reformed House of Lords perform the same role as at present, but with more legitimacy. It will also differentiate

the reformed second chamber from the House of Commons in two ways. First, electing members to the reformed House of Lords by a proportional system makes it likely that, as now, no single party will have a majority, enhancing the scrutiny function. Second, the Electoral Districts proposed for the reformed House of Lords will be different from the constituencies which MPs are elected to represent. If 80 members were elected at each election, that would mean roughly 570,000 voters to each member, compared to the approximately 75,000 voters represented by each MP. Differences like these would ensure that the mandate for members of the House of Lords is complementary to the important work carried out by MPs and their link with their constituents.

The Bill and White Paper set out how a single transferable vote (STV) electoral system would work. STV is a form of proportional representation in which electors may vote for individual candidates using numbered preferences. Votes for one candidate can transfer to other candidates where they can no longer influence the result, either because they are held by a candidate who already has enough votes to be elected, or because they are held by a candidate who, at a certain point, has too few votes to compete with other candidates.

STV offers a clear link between voters and individual candidates as candidates are elected solely on the basis of the votes they themselves achieve. The Government considers that STV can therefore help to preserve the independence of thought that is one of the best things about the existing House of Lords. However, the White Paper acknowledges that a list-based system would also fulfil the Coalition Agreement commitment to a proportional electoral system, and is open to views on whether such a system should be used.

The Government proposes that the multi-member Electoral Districts would be recommended by a panel of independent experts. The district boundaries would be permanent with the number of seats reallocated every 15 years according to electorate.

If the House of Lords were to be 80% elected, a statutory Appointments Commission would handle nominations of the 20% appointed members, who would be expected to be non-party political.

If the House were not wholly elected, there would be a continuing role for some Church of England Bishops, eventually reducing to a maximum of 12 in number. They would not count towards the 20% appointed members, but would be supernumerary. There would be no other specific religious representation.

Members would receive a salary and pension, to be set by the Independent Parliamentary Standards Authority. The draft Bill includes provisions for resignation, expulsion and disqualification. The tax-deeming rules which already apply would continue. The link with the peerage would be broken; this would revert to being just an honour. There would be no re-election or re-appointment for those who had served a full term. There would be a cooling-off period of four years during which former members of the Lords would be ineligible to stand for election to the House of Commons.

The Government proposes a long period of transition over three elections during which existing peers would remain as transitional members. The draft Bill sets out one option – one third of the existing members of the House would leave at the time of the first election, and a further third at the time of the

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second election, with the remaining peers going at the time of the third election. The draft Bill does not spell out how the members would be chosen; it is left for the House of Lords and the parties to decide. The White Paper includes two other options – reducing the House to its final size of 300 immediately, or allowing all existing members to remain until the third group of elected members arrive.

Much of the debate following the publication of the draft Bill and White Paper has focused on the powers of the House of Lords and its relationship with the House of Commons.

Many Parliamentarians have claimed that a House of Lords which is wholly or mainly elected would challenge the primacy of the House of Commons. However, the primacy of the House of Commons is not solely based on the fact that it is elected and the House of Lords is not. The Parliament Acts of 1911 and 1949 provide the basis of the relationship between the two Houses, but this relationship is also governed by convention. Primacy also rests in the fact that the Prime Minister and most of the Government are drawn from the House of Commons.

The Government does not plan to make any changes to the formal powers of the House of Lords. The Parliament Acts will remain in place. The draft Bill includes a provision which states that nothing in the Bill will affect the respective powers of the two Houses and the relationship between them and that the House of Commons would remain the primary House of Parliament. The Government believes this is the best way of ensuring that the powers of the House of Lords and the way they are exercised should not be extended.

Other features of the reformed House of Lords – its size, electoral cycle, voting system, and the terms of its members – would keep it distinct from the House of Commons.

The Government believes that the package of proposals it has put forward will give the House of Lords more democratic legitimacy, but enable it to preserve the best features of the present House, while maintaining a clear distinction between the composition of the House of Lords and the House of Commons so that they remain complementary.

3. A Truly Representative Lords

Frank Field MP



Much of the previous government's time was spent on reforming our constitution. In none of the background papers, nor in the subsequent debate, did any Minister set out the principals which underpin British democracy and how the proposed reforms would strengthen our democratic institutions.

Much of our constitution has over the past decade been remodelled out of all recognition. But reforms have been undertaken absent mindedly with respect to how they have affected the democratic principles that form the political culture of this country. Reforming the House of Lords offers what might be the last opportunity to reform part of our constitution by principal rather than by mere fashion.

Representative and Responsible Government by A. H. Birch is, in my view, the best study to date to have set out the constitutional principles that underpin our democracy. Here I wish to concentrate on how the term 'representative' has become one of the two pillars of our constitution and how this idea ought to be the guiding principal for reforming the House of Lords.



Representation has four meanings in our constitution. First, the term is used of someone who has been freely elected on the universal franchise and is dependent on his or her constituents for re-election. Second, the term 'representative' can be viewed as an agent or delegate. The origins of democracy within the trade union movement were focused within the local branch meetings, which mandated delegates to represent the decision of the branch at higher meetings of the union. It was once common to see Labour MPs acting as representatives in this sense of the term. Third, the term 'representative' signifies that a person is typical of the group that has elected them. MPs are seen to be representative if they mirror not so much the main characteristics, but the views of the group that elects them.

There is a fourth meaning given to the term 'representative'. From earliest times, membership of the Commons was based on the idea of group representation, i.e. the individual in the Commons represented the whole of their area, and not just the very small number of people who had the vote. Indeed, the first squires called to Parliament were chosen on the basis that they would be able to speak for their whole area and, because of this, be able to enforce locally any taxation Parliament agreed. Members of the House of Commons were not therefore representing individual interests, in theory at least, nor simply the interest of the majority of voters. The representation of a whole area is still effective when a constituency is engulfed in crisis. The local MP in such circumstances is expected to defend his or her patch, even if it means defying their government.

The representation of groups in our constitution is almost as old as the representation of particular areas. And the idea of group representation continued to play one of the effective representative roles in our constitution right up to the sleaze crisis that engulfed John Major's government. Individuals were then found to have taken money to represent outside interests in the Commons. Following the goading by the Nolan Report, the Commons, instead of expelling the offending Members, barred the professional representation of interests within its walls. This move was a violent assault on the richness that has been attached to the meaning of representation in our democracy. It was an absurd position to adopt but that is where the debate rests for the moment.

The work of the Commons over the centuries had been deeply enriched by the group knowledge that has been brought to its proceedings, be they specialisms from doctors, trade unionists, teachers, lawyers, nurses and so on. All individuals who belong to such groups are now careful to the point of inaction not to represent their group interests. Not so in the House of Lords where such specialist knowledge is treasured. Given that the Commons has stripped out this form of representation from its proceedings, might not we strengthen it in our Parliamentary system? Might not this idea of representation be the starting point for Lords reforms rather than trying to impose a form of election on the Lords which is most appropriate to the Commons?

A radical Lords reform could be based on seeking the representation of all the major legitimate interest groups in our society and of using the idea of the 'Big Society' as a means of strengthening how representation works in our democracy. There would be a need, of course, to establish a Reform Commission with the duty to begin mapping out which group interests should gain representation, and at what strength. So, for example, the Commission would put forward proposals on which groups would have seats to represent local authorities and voluntary interests, to represent women's organisations and interests, the interest of trade unions, employers, industrialists and businesses, the cultural interest of writers, composers as well as the interests of the professions including those involved in health and learning. The representation specifically of local authority associations would ensure that the different regions of the country have voices in the Upper Chamber. And so the list would go on with the seats for Anglican bishops shared between other denominations and faiths.

The Commission's second task would be to approve the means by which each group elects or selects its own representatives. The Commission should be encouraged to approve a diversity of forms of election, rather than simply enforcing that which has been accepted by the Commons. Some groups already elect their group representatives. Other groups might wish to adopt a form of indirect election.

Reform of the House of Lords along these lines offers this Parliament a last chance to rebuild within our system one of the key meanings that has until recently been given to the term 'representative'. It would be a reform that resulted in giving legislative power to the 'Big Society', which has sought to act as a bulwark against a too powerful state. It would be a reform that strengthened our democracy without setting the Commons and Lords into a state of near permanent political warfare. And it would be a reform that might, for the first time, enthuse the electorate with the politics of constitutional change.

4. Association and Civic Participation

Dr Adrian Pabst



What do we mean by 'democracy' and 'representation'? And what institutions and practices make our polity genuinely more democratic and more representative? It is commonly supposed that 'democracy' is synonymous with 'election' and that 'representation' concerns individuals or a majority of voters rather than communities, groups or associations. For some time now, Britain has seen a shift towards an 'individualistic' form of representation that is paradoxically compatible with the growing power of the central state. The only real alternative is to move towards an 'associative' form of representation that strengthens civic participation. This essay will argue that the associative model is more democratic and more representative because it reflects and fosters the bonds that bind us together as members of communities and associations across the land.



Representation in Crisis

Political representation is in crisis. The principle of representative democracy is not in question, but evidence abounds that a growing number of Britons are sceptical about the main institutions and practices, notably the state of political parties and elections. Among the numerous indicators are, first of all, a decline of trust in government and parties. According to the 2012 Edelman Trust Barometer, general trust in government in the UK has fallen to 41%,¹ which represents an all-time low and reflects a long-term downward trend. Second, membership in political parties has collapsed, with both the Conservatives and Labour seeing the number of their members plummet from several million in the 1950s to just over a million in the 1990s to barely more than 100,000 in 2011. The proportion of voters who are party members and/or activists has dropped from about 20% in the 1970s to less than 1% today.

Third, British general elections have seen a historic fall in voter turnout since 1945 from an average of nearly 80% in the 1950s and 1960s to 59.4% in 2001. Connected with this is a series of related trends such as growing abstention and increasing levels of alienation from formal politics. Fourth, there is a widespread sense of popular powerlessness and the inability of ordinary citizens to shape their daily lives – a sentiment that is shared by an overwhelming majority of young people. Taken together, these developments point to a hollowing out of democratic representation – an evolution that can only be described as a process of de-democratisation and the rise of a post-democratic polity: the formal institutions of representative democracy remain in place but actual practices weaken and power is concentrated in the hands of ‘old elites’ and ‘new classes’.²

Political representation in the UK is further undermined by a growing centralisation of power and an increasing concentration of wealth. While devolution has transferred some powers to lower levels, Britain still has the highest ratio of electors to elected officials of all Western European countries – a massive 2,605 voters per representative, compared with a ratio of merely 116:1 in France³. A mainly or even wholly elected upper chamber will do nothing to address this chronic problem.

The distance between the representatives and the represented, allied to rising income and asset inequality, has produced a disconnect between the governing elites and the people that is unknown since 1945. Little wonder that there is growing popular anger and outrage, as evinced by the August 2011 riots and the Occupy movement outside St. Paul’s Cathedral. Both locally and globally, there is an implicit, inchoate awareness that big government and big business are colluding at the expense of society.⁴

There are other reasons to be wary of more elective representation at the expense of alternative forms of democracy. First of all, it is assumed that parliament should represent the will of the whole nation or at least the preference of the majority while respecting the rights of the minority. Paradoxically, the

1 Edelman Trust Barometer (2012). Global Result [online] <http://trust.edelman.com/trust-download/global-results/>

2 Crouch, C. (2004). *Post-Democracy*. Cambridge: Polity; Pabst, A. (2010). *The Crisis of Capitalist Democracy*, Telos 152, pp. 44-67.

3 Jenkins, S. (2004). *Big Bang Localism*. A plan to rescue British democracy, Policy Exchange [online] http://www.policyexchange.org.uk/assets/big_bang_localism.pdf, p. 13.

4 Pabst, A. (2011) *The Resurgence of the Civic*, Social Sciences Research Council [online] <http://blogs.ssrc.org/tif/2011/11/29/the-resurgence-of-the-civic/>

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need to balance the views and interests of both majorities and minorities leads modern representative democracy to abstract from both in favour of an artificial 'general will' that represents neither. Disconnected from ordinary citizens, elected officials represent their own preferences and priorities rather than those who are supposedly 'represented'. Moreover, the division of the people into either isolated individuals or a monolithic collectivity – or indeed both at once – ignores the more natural, organic bonds that bind us together in families, communities, associations and corporate bodies. It is precisely this plurality of interlocking groups and the shared discernment of the common good that the House of Lords has traditionally sought to represent.

Second, the modern focus on the 'general will' shifts the emphasis not just from the citizenry to the single sovereign centre but also from parliament to the executive. In a representative democracy, elected officials have to be licensed to decide, as they cannot constantly consult their constituents. Without the participation of other bodies in the decision-making process, however, representatives will pursue their own interests disguised as the 'general will'. Or else they will delegate yet more power to the government that becomes an interested party of its own. Under the guise of representative democracy, executive power endlessly increases at the expense of sovereign parliament, as John Milbank has suggested:⁵ An elected Upper Chamber would merely reinforce the control of the governing party (or coalition) over the nominally independent, separate legislature.

Third, democratic representation has served to empower both the central state and the 'free' market to the detriment of society. The collusive complicity of big government and big business has produced a 'market-state' that ties local economies and national politics into the world economy and a transnational system of power. In that process, political sovereignty and private commerce converge and are gradually abstracted from the social relations and civic bonds in which they were traditionally embedded.⁶ By contrast, with the global 'market-state' and the self-corruption of representative democracy, a properly configured House of Lords can serve as a kind of 'meta-guild' or a 'corporation of corporations' wherein cities, regions, professions and religious communities are given a voice in the governance of the realm (as the next section will set out in greater detail).

Thus democracy is not limited to the will of the individual or the will of the collective but extends to the needs and interests of communities, groups and associations – Edmund Burke's "little platoons", Alexis de Tocqueville's town-halls and G.D.H. Cole's guilds. As such, a genuinely democratic politics is as much about continuous civic participation in the public realm as it is about the regular election of representatives by the represented in a free, fair and competitive contest.

Traditionally, Britain's model of mixed government has always combined the rule of the 'one', the 'few' and the 'many' – the Sovereign monarch, the Lords and the Commons. Going back to Anglo-Saxon England in the 7th century and Magna Carta, the rule of the 'few' consisted in providing guidance of the wise. Indeed, the best example is the assembly of the Witenagemot or "meeting of wise men", which over many centuries developed into the upper chamber of the British Parliament.⁷ This, coupled with the rule of the 'many', progressively limited the power of the 'one' and avoided the kind of monarchical-clerical absolutism that elsewhere in the West gave rise to violent revolutions.

5 Milbank, J. (2012) *Blue Labour, The Return of the Social and the Role of Religion*, In: I. Geary, ed. (2012) *What is Blue Labour?* London.

6 "The 'sovereignty' of modern government is just as abstractly equivalent to the voices of all, as the operation of money and capital in the marketplace is abstractly equivalent to each person's silent choices. And just as the owners of capital claim to 'represent' the multifarious decision of private actors, so also elected 'representatives' claim to speak and act in the name of the people". *Ibid.* p.18.

7 Liebermann, F. (1961) *The National Assembly in the Anglo-Saxon Period*, reprinted (New York: B. Franklin).

A parliamentary democracy based on elections represents the will of the people, defending the interests of the majority while safeguarding the rights of the minority. Yet at the same time, democratic representation can lead to an “elective dictatorship” (Lord Hailsham) if it shifts power from the dispersed citizenry to the sovereign centre and from parliament to the executive – empowering both the state and the market at the expense of society. A U.S. – or French-style absolute separation of power produces either political paralysis and institutional stalemate or else a super-presidential system that is incompatible with the British tradition of mixed government. If, broadly speaking, it is the case that the Sovereign monarch embodies the rule of the ‘one’ and the House of Commons constitutes the rule of the ‘many’, then it follows that the House of Lords marks the rule of the ‘few’. The latter involves an associative model of representation that complements representative democracy.

Democracy and Association

At its best, the House of Lords promotes a politics of wise council and virtue that can correct political party interest and excessive executive power. In its current configuration however, the Lords falls well short of this ideal. Its composition reflects the ruling business elites and governmental classes more than it does the people and society at large. To restore a greater measure of virtue and ‘guidance of the wise’, the political traditions of pluralism and associative democracy provide a better resource for genuine reform than the formalism of majoritarian, electoral representation. The modern emphasis on the individual and the collective neglects the importance of autonomous, democratically self-governing groups and associations that mediate between the citizen, the state and the market. A properly functioning democracy and market economy requires the active participation of such groups and associations. They are governed by social bonds and civic virtues such as trust that provide the glue for society and are necessary for both constitutional-legal rights and economic-contractual ties. Thus, one can develop a vision for the House of Lords that can pluralise power and moralise markets.

Key to this is the recognition that the representative democracy of the Commons needs to be counter-balanced and supplemented by the associative democracy of the Lords. Historically, it is true that the central state progressively subordinated the complex network of intermediary institutions. As G.D.H. Cole writes,

“There was a time, away back in the Middle Ages, when the State was only one of a number of social institutions and associations, all of which exercised, within their more or less clearly defined spheres of operation, a recognized social power and authority. During the period which followed the close of the Middle Ages, these other bodies were for the most part either swept aside or reduce to impotence; but the effect of their disappearance was not, except to a limited extent for a time in the sixteenth and seventeenth centuries, the assumption of their powers by the State, but the passing of the social purposes which they had regulated outside the sphere of communal regulation altogether. Thus the ground was cleared for the unguided operation of the Industrial Revolution in the eighteenth and nineteenth centuries, and the vast structure of modern industrialism grew up without any attempt by Society, as an organized system, to direct it to the common advantage.”⁸

Compared with the ‘market-state’, the pluralist alternative is to eschew both capitalist markets and collectivist states in favour of voluntary and democratically self-governing associations. They cut across the false liberal divide between the purely private and the exclusively public sector by cooperating with

8 Cole, G.D.H. (1920) *Guild Socialism. A Plan for Economic Democracy* (New York: Frederick A. Stockes Co.), pp. 22-23.

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state authorities and market actors in the delivery of services such as health, education or welfare. As Paul Hirst suggests, this approach “aims to strengthen government in and through civil society; thus civil society takes on many of the attributes of the public sphere”. The House of Lords is in some sense the natural, organic place for the representation and participation of civil society in the public, political sphere.⁹

Political authority is more effective, efficient and democratic if it is decentralised in line with the principle of subsidiarity, i.e. devolving power to the most appropriate level that promotes democratic participation and protects the dignity of citizens. By contrast, with centralisation and growing executive power, pluralism shifts the emphasis to an association of agencies that share power through cooperative links according to necessity and contingency. Paradoxically, a more devolved system needs to be guaranteed at the centre. Therefore a reformed Upper Chamber could uphold the primacy of civil society against the usurping of the state and the market.

The economy is not run according to the logic of ‘free-market’ competition or bureaucratic state planning but instead along more mutualist lines where firms are governed jointly by investors, managers and workers and financial investment includes a social purpose. Here the work of Karl Polanyi can extend Paul Hirst’s idea of ‘associative democracy’ by democratising the market and mutualising the economy. Maurice Glasman puts this well:

“The paradoxical idea here is that the greater the diversity of democratic institutions that entangle capitalism in relationships based on knowledge and mutuality, the better the chances of releasing the energies of the workforce and generating growth. The more workers have power, the more efficient it is; the more that local communities engage in banking, the more sustainable the returns. This is about breaking the logic of short-term returns, which undermines long-term development”.¹⁰

By representing cities, regions, professions and faiths, a properly configured House of Lords would help pluralise power and moralise markets by re-embedding politics and the economy in social bonds and civic virtues of the intermediary institutions of civil society.

An ‘Associative’ House of Lords

In principle and to some extent in practice, the House of Lords embodies the rule of the ‘few’ as ‘guidance of the wise’. As such, it is uniquely positioned to uphold and strengthen the mediating role of localities, communities, professions and faiths. A wholly or mainly elected Upper Chamber would largely destroy this distinctive character and transformative potential. Instead of extending the vices of representative democracy, a proper reform would draw on the virtues of participatory democracy to create an associative Lords.

Specially, the Second Chamber would encompass a much wider variety of members than at present and a greater balance that is genuinely reflective of society. It could be part elected, part appointed and part nominated. Crucially, an associative Lords would not just enhance the legitimacy and authority of the Upper Chamber at the centre of British politics. It would also have the potential to transform the polity as a whole. In virtue of representing society in all its diversity, an associative Lords could play a crucial role in fostering civic participation across the land. Not unlike a cooperative, an associative Upper Chamber would give the citizenry a voice and a stake in the governance of their country. The presence

9 Hirst, P. (1997) *From Statism to Pluralism. Democracy, civil society and global politics* (London: Routledge), p. 32.

10 Maurice Glasman (2011) How to combine Hirst and Polanyi to create a strong argument for an embedded and democratic economy, in Andrea Westall (ed.) (2011), *Revisiting Associative Democracy: how to get more co-operation, co-ordination and collaboration into our economy, our democracy, our public services, and our lives* (London: Lawrence & Wishart), pp. 64-70, quote at p. 69.

of religious leaders would ensure that in matters of public importance the voice of faith is heard. No vibrant democracy can exist without a commitment to universal standards of truth, even if these are never fully known and always deeply contested. Similarly, the membership of representatives from cities and counties would provide an impetus for greater devolution and more local democracy. That is indispensable to the survival and flourishing of the Union, which was never meant to be a unitary state but has become one of the most centralistic entities in the Western world.

By recognising the contribution of professions to the common good, an associative Lords would also help promote the self-organisation of workers, employees and managers – starting with a reform of trade unions and employers' associations that are dominated by their bosses to the detriment of their ordinary members. Moreover, an associative Upper Chamber could serve as a 'meta-guild' or a 'corporation of corporations', as I have already indicated. In practice, this means that the Lords would defend the autonomy of guilds and associations. Historically, guilds were a key pillar of the polity. They mediated between families, households, communities and the state: according to Otto Gierke (who was a major influence on the British historian F.W. Maitland and the theorist John Neville Figgis), they "embraced the whole man" and represented "for its members a miniature commonwealth (Gemeinwesen in Kleinen)". In some measure, the Lords could uphold this ideal at the national level.

Likewise, guilds sought to develop and protect standards of excellence and honourable practices. For Gierke, they "made the colleagues have, in relation to one another, an earnest brotherly love for duty", if necessary by means of punishment and exclusion based on an ethos that combined extensive rights with strict duties and moral codes. Frequently organised as confraternities, craft-guilds participated in the life of the polity based on their own distinct 'legal personality'. An associative Lords could encourage the introduction of a constitutional status for professional and other associations. By analogy with a cooperative or a mutualised business, an associate House of Lords would help democratise decision-making, pluralise politics and moralise markets.

Finally, an associative House of Lords would support the Commonwealth at home and abroad by providing a sense of organic unity and concrete forms of cooperation. Indeed, the wider body politic of Britain and most members of the Commonwealth are neither a unitary state nor a glorified free-trade zone but instead an interlocking union of nations independently of the ultimate sanction of a single sovereign centre. Ultimately, this peculiarly non-modern legacy goes back to Greco-Roman and Germanic law and the unique fusion with Anglo-Saxon common law on the British isles. The Commonwealth brings together the rule of the 'one', the 'few' and the 'many' by building on the associative ties of society and offering a union of nations in all their diversity. As such, an associative House of Lord can in part embody the variety of bonds that bind together citizens across the Commonwealth.

By favouring the collusion of big business and big government, representative market democracy has undermined the associative ties binding together citizens and communities within and across localities, regions and the whole nation. The alternative to the post-democratic 'market-state' is a moral economy and a civil state. This alternative consists in pluralising power, moralising markets and building a civil covenant that blends proper political representation with greater civic participation. Against the global 'market-state' and the self-corruption of representative democracy, an associative House of Lords can serve as a kind of meta-guild – a 'corporation of corporations' wherein cities, regions, professions and faiths are given a voice in the governance of the realm.

5. Bicameralism & Representative Democracy: An International Perspective

Rafal Heydel-Mankoo



The House of Lords has long suffered at the satirist's hand and is routinely portrayed as an out-of-touch, undemocratic and anachronistic private club. These hackneyed stereotypes, now indelibly embedded in popular culture, have spurred many of the calls for Lords reform; yet they obscure a plain reality: the increasingly diverse House of Lords is more representative of British society than the elected House of Commons, is better suited to serve the wider public interest and, in common with many upper houses, it performs a role as democratically vital as the lower house, through its championing of the constitution and human rights, its legislative review and executive scrutiny, and its defence of political minorities and opposition



Since the end of the Second World, with two exceptions (in 1974 and 2010 no party was able to win a majority of seats), each UK General Election has resulted in a majority government in which the winning party secured less than 50% of the electoral vote. In the 2005 General Election, for example, the Labour Party won a majority government of 355 seats with a 35.2% share of the vote, whilst the Conservative Party secured 198 seats with 32.4% of the vote and the Liberal Democrats won 62 seats with 22% of the vote. So it is, that in our parliamentary system, a government that represents the will of approximately one third of the nation can secure a Commons majority and enact, perhaps deeply divisive, legislation based upon a manifesto that was rejected by the majority of the electorate. A crude majoritarian might consider such a result inherently undemocratic.

Fortunately, liberal democracy is far more sophisticated and complex; it balances the interests of the electoral majority against other important values, such as the protection of human rights, the promotion of social justice and equality, and respect for political dissent, opposition and the representation of minority opinions. In advanced democracies, these fundamental values, essentially moral in nature, enjoy protection beyond the reach of the majority's will. Upper houses such as the House of Lords, comparatively free from party control and endowed with a long-term perspective untrammelled by the lower houses' short-termism, tend to be far better guardians of these basic values – often functioning as defenders of the constitution and fundamental rights.

In an effort to bring a different perspective to the political process, improve the quality of legislation and check the potential for unfettered legislative populism, many states have created upper houses with a membership that differs significantly from that of their lower houses – in some cases specifically admitting, by appointment or quota, learned experts or individuals from historically under-represented communities. This enables some second chambers, including the House of Lords, to perform a democratic role and be representative of society in a manner that is unachievable in a popularly elected lower house. In countries such as at the UK, this representative role in no way challenges the supremacy of the lower house – the Lords' relationship with the Commons is complementary rather than competitive.

Statistical analysis of the legislative process in overseas states suggests that bicameralism improves legislation and results in more predictable public policy that better reflects voter concerns, especially in countries where the policy originates in overtly partisan lower chambers.¹¹ This research also demonstrates that legislation enacted by a bicameral legislature comprising two chambers composed of different majorities and reflecting different interests, is likely to be more democratic and more representative of society's interests than legislation emanating from a unicameral state or a bicameral state with two chambers of similar composition.¹² This is logical: to secure a bill's passage, a government will need to ensure that it appeals to a wider range of interests than might initially have been intended. Bills that successfully pass both chambers can be deemed to have attained the ultimate democratic accolade: a "supermajority".

11 See Roger D. Congleton (2002) *On The Merits of Bicameral Legislatures: Policy Stability within Partisan Politics*, in: Manfred J. Holler et al. (eds.), *European Governance (Jahrbuch für Neue Politische Ökonomie 22)*, Tübingen: Mohr Siebeck, pp. 29-49.

12 *Ibid.*

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A lack of cameral consensus can also be democratic. The House of Lords is arguably most effective and representative of society when it is opposed to a government majority. Parliamentary conflicts generate increased interest from the media and the wider world, motivating concerned elements within society to engage with the issue at hand and make their views known (be it through public debate, community activism, signed petitions, or direct representation to a legislative member). Indeed, as I write this essay, the House of Lords has embarrassed the Government by defeating it three times over proposed welfare reforms. The democratic “will of the people” is clearly more effectively served when the critical review of the Upper House, and the public reaction arising from it, has the potential to cause the government to reconsider its position.

The arguments for bicameralism are compelling. Nevertheless, although the number of bicameral states is increasing (from 45 in the 1970s to nearly 80 today), unicameralism remains the majority legislative system in the world – accounting for approximately 60% of national legislatures.¹³ The predominance of bicameralism in the majority of the national legislatures of the English-speaking world (most of which are modelled on the Westminster System), in 16 of the member states of the G20, and in the majority of the world’s 25 most-developed countries might perhaps explain why it appears much less of an anomaly than it is in reality.¹⁴

Bicameral legislatures arose (and disappeared)¹⁵ in different countries for reasons that are largely dependent upon each state’s political and constitutional evolution. At their most basic representative level, however, bicameral legislatures share one common historic characteristic: the two chambers served different polities – lower houses existed to advance the interests of voters whilst upper houses represented specific (viz. established) elements in society. A more expansive, all-encompassing contemporary definition is impossible – myriad forms of bicameralism exist today, each with a different composition and division of power. Some upper houses are composed of elected members representing regional interests, others contain appointed members representing sectional interests, and some have a mixed membership. Some upper houses have an absolute veto over legislation whilst others, the majority, may delay a bill but lack the ability to formally block the lower house. Of the world’s 78 bicameral legislatures, 69 have upper chambers composed of less than 200 members and none, other than the UK, has a membership over 400.¹⁶ According to the Inter-Parliamentary Union, approximately 60% of upper houses have direct elections, with the remaining 40% primarily comprising appointed or indirectly elected members.¹⁷ Further upper house variations are caused by the influence of political parties, the method of appointment or election of members, and their term of office – a majority of these chambers have terms that last 4 – 5 years, whilst less than 18% have terms in excess of 7 years.¹⁸

The ability of bicameral legislatures to more fairly reflect the interests of disparate elements of the nation accounts for their overwhelming predominance in federal states – as the United Kingdom now displays “quasi-federal” characteristics this is of particular relevance. Federal democracy is partly based on the principle that, to be truly representative of society, the state must balance the will of the majority against

13 Parliaments At a Glance: Structure [online] <http://www.ipu.org/parline-e/ParliamentsStructure.asp?REGION=All&LANG=ENG>
14 UN Human Development Index (2011).

15 Denmark (1953), Sweden (1970), New Zealand (1954), and Peru (1993) abolished their upper houses to become unicameral states.

16 With over 800 members, the House of Lords is the world’s second largest Parliamentary chamber – only the Chinese National Party Congress is larger. Inter-Parliamentary Union (2012) Parliaments At a Glance: Seats [online] http://www.ipu.org/parline-e/NumberOfSeats.asp?LANG=ENG®ION_SUB_REGION=All&typesearch=5&Submit1=Launch+query

17 Inter-Parliamentary Union (2012) Parliaments At a Glance: Electoral systems [online] http://www.ipu.org/parline-e/ElectoralSystem.asp?LANG=ENG®ION_SUB_REGION=All&typesearch=5&Submit1=Launch+query

18 Inter-Parliamentary Union (2012) Parliaments At a Glance: Term [online] http://www.ipu.org/parline-e/TermofParliament.asp?LANG=ENG®ION_SUB_REGION=All&typesearch=5&Submit1=Launch+query

regional minority interests. To enable this, many federations, most of which cover large geographic areas, allocate a disproportionate number of upper house seats to less-populated regions (the United States and Australia accord all states equal representation in their senates, despite huge variations in the size of state populations). One could argue that this violates the basic principle of majoritarian democracy, yet it is an essential characteristic of federalism, providing a political forum for the advocacy of issues (i.e. agriculture, fisheries, natural resources, etc.) that may be of vital importance to less-populated, largely rural, regions of the country but which would not be accorded due attention in the population-based lower house, which might have a stronger inclination to reflect urban/industrial concerns. Without this counter-balanced democratic representation, many federations would cease to exist.

Aside from regional interests, a number of states, both federal and unitary, have established strict quotas to guarantee upper house representation for specific segments of society, including those that have been historically under-represented (most notably, women). These quotas may be established via constitutional entrenchment (such as in Afghanistan and Senegal), by the enactment of electoral legislation (such as in Bolivia and France) or by the voluntary agreement of political parties (as in the United Kingdom and Poland).

Among states with guaranteed female representation in the upper house, the percentage of seats allocated varies considerably: party electoral lists for the Argentinian and Brazilian senates require that women comprise 30% of candidates, whereas in Mexico and Spain this figure rises to 40% – Belgium requires gender parity.

Strong regional concentrations of minorities will often yield upper house representation from different ethnic, linguistic and religious communities; nevertheless, a growing number of bicameral countries are utilising their upper houses to more fairly reflect national diversity. For example, to match the approximate ratio of Dutch-speakers to French-speakers, 25 of Belgium's 40 directly elected Senators (out of a total of 71) are elected by the Dutch electoral college and 15 are elected by the French electoral college; Malaysia's head of state is constitutionally empowered to appoint representatives from racial minority groups; and Ethiopia's constitution guarantees that each of its historic "nations, nationalities and peoples" shall be represented in the upper house by at least one member and by one additional representative for each one million of its population. In 2010, Pakistan, which already has reserved seats for technocrats and women, announced plans to enact an amendment to its constitution that would reserve four seats in the upper house for non-Muslims.¹⁹ Prior to this, guaranteed religious representation was limited to Muslim scholars.

Several states also allocate upper house seats to eminent leaders from specific fields of endeavour; the justification for their appointment is predicated on the belief that their professional expertise will aid in the creation of better laws and policies. Representatives of civic society and experts in fields such as medicine, agriculture, education, business, industry, and arts and culture, add value to the legislative process by providing invaluable insights into their sectors – their presence enhances the ability of the upper house to be broadly representative not only of society, but also of many of its constituent parts.

In India's upper house, 12 of its 250 representatives are selected by the head of state for their expertise in arts and literature, science, or social services. In Italy, 315 elected senators are complemented by a further seven who are appointed for life, these include those appointed for outstanding contributions to society, science, the arts or literature. Of Malaysia's 70 senators, the elected king appoints 44, of whom 40 must have "rendered distinguishable public service or have achieved distinction in the professions, commerce, industry, agriculture, culture or social service" or, as mentioned supra, are representative of racial minorities.

¹⁹This amendment will take effect from the senate elections of March 2012.

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The selection processes for the upper houses of Ireland and Thailand are particularly noteworthy for the incorporation of elements of civil society. In the 1930s, the creators of Ireland's current constitution were greatly inspired by a contemporary Roman Catholic philosophy of social stability and integration that stressed the importance of inter-vocational cooperation. 43 of the 60 senators in Ireland's upper house are therefore elected (via electoral college) from a pool of candidates whose professional experience has made them eligible for nomination to one of five specialised "Vocational Panels": Administrative (public administration, social services and the voluntary sector), Agricultural (includes fisheries), Cultural and Educational, Industrial and Commercial, and Labour.²⁰ Similarly, approximately half of Thailand's 150 senators are appointed from a group of candidates nominated by various sectors, including the public, private, professional and academic. In its consideration of nominees, and whilst aiming for a fair balance of seats per sector, the selection committee assesses candidates' on their sector-specific skills and experience, as well as their interdisciplinary capabilities and the overall value that they can add to the legislative process.

Typically, given their more reflective and sober nature and their representation of established long-term societal interests, one of the critical roles of an upper house has been to guard the constitution against a potentially impulsive and populist lower house. Through their written constitutions, upper houses and supreme courts, the majority of the world's bicameral states have entrenched safeguards to protect the constitution and fundamental human rights. The French Senate is amongst those upper houses that are empowered to veto constitutional legislation (but not ordinary legislation). A number of advanced democracies require a 2/3 or 3/5 majority vote in both chambers in order to enact a constitutional amendment. Some states also require a national referendum before effecting constitutional change – and federal countries can additionally require the approval of a certain number of state legislatures within the federation.

The United Kingdom is the only advanced democracy in which constitutional reform legislation and ordinary legislation are enacted in precisely the same manner. The safeguards that exist in other countries are not present here. From the start of the 21st century, the United Kingdom has undergone profound constitutional change, transforming it into a quasi-federal state with a constitution considerably more codified than previously. The threat of terrorism and extremism has also occasionally led to attempts to restrict certain long-established civil rights and liberties. Parliamentary sovereignty, the executive dominance of the lower house, political distrust of judicial review and the absence of a written constitution can potentially enable a strong-minded majority government to wreak constitutional havoc. The House of Lords is not a powerless constitutional guardian – and yet, ultimately, when faced with dangerously ill-considered legislation that it opposes, it can do little more than voice its disapproval and urge the Commons to reconsider.

Britain can no longer remain the global democratic anomaly. Given the complexity of Britain's fast-evolving and increasingly codified constitutional make-up, the reform of the House of Lords provides the ideal opportunity to strengthen its role as the guardian of the constitution and civil liberties.

Consequently, in addition to its existing veto over attempts to extend the life of Parliament, any reformed House of Lords should have a veto over constitutional reform legislation as well as legislation affecting fundamental human rights (habeas corpus, etc.) – convention should establish the veto as a reserve power to be used only in the most exceptional of circumstances.

²⁰ In practice, these members are elected on a party-political basis.

Whilst considering its position, the House of Lords should have the ability to refer issues relating to the constitution and/or human rights to the law lords at the new Supreme Court. Many upper houses, including those in Germany, Poland and Spain, possess this power.

Should the House of Lords choose to exercise its veto, and should the House of Commons refuse to back down, political deadlock would ensue and a mechanism would need to be established to reach a solution or compromise. Bicameral states around the world utilise a number of different mechanisms to resolve deadlock between the houses. These include double dissolution, lower house 2/3 majority override of the upper house, suspensory veto, joint sittings and joint committees. To preserve the principle of the supremacy of the House of Commons, a 2/3 majority Commons vote would be a suitable means of breaking the deadlock. Another possibility for resolution might be the creation of a joint committee. Outside of the heated atmosphere of the parliamentary chambers it is likely that more meaningful and productive negotiations can be entered into between both Houses until, hopefully, a satisfactory compromise can be reached.

Reform of the House of Lords affords the perfect opportunity to position the upper house as a powerful guardian of the constitution and democracy, human rights and the rule of law. This role is of such profound importance that it should merit as much attention as the process by which members are selected to sit in the chamber.

As the global evidence suggests, bicameralism adds immense value to the legislative process and to national governance. Two chambers representing different polities create legislation and public policy that is more democratic and more reflective of public concerns. The various appointments systems have helped to create upper houses that, to varying degrees, can represent society, or provide a voice for specific elements within society, in ways that would be virtually impossible in wholly elected chambers. Elections do not favour minorities.

This is no less true in the United Kingdom – and it is very likely that a wholly or mainly elected House of Lords would be considerably more impenetrable to minority groups than it is currently. Elections would certainly deprive Parliament of many of its most learned and respected members. The majority of the eminent scholars, doctors, scientists, social workers, educators, economists, businessmen, musicians and writers who have been elevated to the Lords – transforming the institution into a pantheon of British excellence – would be unlikely to stand for election. This priceless pool of talent and experience, drawn from so many sectors of society and so critically important to the work of the upper house, would be lost. To maintain a diverse and representative chamber in a reformed House of Lords it is clear that a significant appointed element must be retained.

Global analysis also reveals the remarkable vulnerability of our constitution and fundamental rights compared with all other advanced democracies. No attempt at reforming the House of Lords should fail to consider the opportunity of strengthening its role as a guardian of the constitution and the rule of law.

The House of Lords clearly performs a democratic function and fills a democratic void that an elected House of Commons cannot. There can be little doubt that, if successful, the proposal to institute elections to “democratise” the House of Lords and make it more “representative” would transform it into a much more homogenous and far less representative institution than it is today. The quality of governance would decline and parliamentary democracy would be weakened. In the history of constitutional reform, there are few proposals whose results would be more ironic.

6. Representation Beyond Party Politics

Professor Roger Scruton



Ever since Bagehot identified the House of Lords as belonging to the 'dignified' part of our constitution, it has been common to believe that the function of our Second Chamber is largely ornamental. The House adds a florid signature to the documents pushed before it by the Commons, and is allowed the occasional outing of its own, when the matter under consideration is not of the first importance, but otherwise maintains a merely ceremonial presence in Parliament. It is precisely this image that enabled the Labour Party to believe that getting rid of the hereditary peers while freely appointing anyone who had ingratiated himself with the party would have no real impact on legislation. In the event, Tony Blair set the precedent for an appointed Second Chamber in which party politics dominates the discussion, so that what seems to me to be the principal function of the Second Chamber is no longer fulfilled. This function is to represent those interests of the nation that are not interests of its political class.



Bagehot recognised that the extension of the suffrage would inevitably produce a new class of professional politicians, whose interests would be bound up with their own careers. The dignified part of the constitution was there to slow things down, to remind everyone that the national interest is more important than the interests of party or faction, and to allow an audience to those who represent vital social functions that have no immediate voice in the Commons. We have moved on since Bagehot's day. But it is worth reminding ourselves of some of the ways in which the House of Lords, in the days before the New Labour reforms, helped to supplement the workings of the lower house, and to provide a voice for interests that are vital to our identity and fulfilment as a nation.

First, let it be remembered that, even today, a peerage is an honour. Like it or not, the title 'Lord' is coveted by ambitious people, whatever their political affiliation, and coveted because of its historical association with the aristocratic way of life. Changing the title of members of the Second Chamber would be more of a shock to the system than any change in the procedure of recruitment. For it would immediately kill off the principal motive that anyone has for wishing to belong to the place. Why take on all that work for no remuneration and at the behest of party hacks, just to be called Mr Senator Smith?

Every country needs some way of rewarding ambitious people. Frustrated ambition is dangerous, and when the only rewards of life are monetary, patriotism can no longer be assumed as a given among a country's ruling class. Just look at Russia today. A 'dignified' part to the constitutions of the post-communist countries would have helped to contain the mafias who now control them. For it would have offered another reward than power, and one bound up with public service and patriotic sentiment. I had to do some hard swallowing when Mrs Thatcher conferred peerages one after another on successful businessmen, and had to swallow even harder when Tony Blair did the same. But the philosophical side of me says, no, that's as it should be. Reward these people with a title and a ceremonial function and you will have bought them for the nation, and not only (maybe not even) for the party. Leave them with nothing save their money, and they will use it to draw attention to themselves in far more destructive ways.

Secondly, we should remember the function of the House of Lords in the law. The law lords represented the peak of the judicial career, and one that every barrister aspired to. The problem is that, for a talented barrister to become a judge, he or she must accept an enormous drop in income, and serious restrictions on personal life. Why should a person do this? The answer is simple: because doing so is a public service, which will be rewarded in the normal case with an honorific title – a knighthood for a high court judge, and a peerage as the ultimate prize. Moreover, the presence of the best judges in the land in the Second Chamber of the legislature, able to advise and comment as they see fit, must surely be valued as a contribution to legislative sense. For what greater interest exists in our nation than the interest that we all have in the law? Of course, Labour's invention of the Supreme Court has deprived

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our superior judges of peerages: but it has left them with the honorific title of 'Lord', and this goes some way to ensure that our best legal talent will still want to accept low earnings for high office.

Thirdly, I think we must recognise that, while the hereditary nature of the old Second Chamber was difficult to justify to a democratic age, it had the valuable consequence that the Upper House was filled by people who were not members of the political class, and who spoke without the prompting of political ambition. This great advantage was to some extent preserved under the life-peerage system by the procedure of scrutiny, which supposedly ensured that those appointed to the Second Chamber would have qualities other than political ambition to justify their presence there. Perhaps nothing has done more to bring the Second Chamber into disrepute than public awareness that the scrutiny procedures can be over-ridden by party leaders, and that there are few if any safeguards now against an Upper House staffed by cronies, political has-beens and city slickers. But that is a new development, and one that we all deplore. Even in an appointed chamber it is possible to recreate some of the distance and freedom from party subservience that the nation requires.

Fourthly, it has been customary for the Upper House to contain representatives of interests that could not be represented in the Commons without compromising them. The historical right whereby bishops sit in the House can surely be justified, at least on the assumption that Britain is a country still shaped by Christian feelings. For you cannot live the life of a priest and also that of a politician; hence, only by membership of the House of Lords can our religious leaders expect to have a voice in the legislature. It has become normal to appoint the Chief Rabbi to the Upper House, and surely the day will come when this honour will also extend to agreed-upon Muslim and Hindu representatives. Meanwhile, I can see no reason for excluding the Cardinal Archbishop and other members of the Roman Catholic hierarchy.

Equally important has been the presence in the Upper House of top-ranking military officers. Again, it is surely both impossible and undesirable that someone should combine a military career with politics. Yet the voice of national defence is vital to the legislative process and the dignity of the Upper House is surely only enhanced by the presence of those who have devoted their lives to our country's defence. Other walks of life judged vital to the nation's well-being ought to be represented too: the arts, education and sport, to name but three.

That last point can be generalised. As things stand, the authority of the Upper House depends upon its dignity. It cannot bully the House of Commons, nor can it give laws to the nation directly. But it can raise the tone, and place before the Commons the spectacle of interests which the politicians would rather ignore. It can do this because it represents authority, rather than power. And this means that its members ought only exceptionally to be appointed because they have served one of the parties or paid a chunk of money to the party funds. Its membership should include a large number of men and women who have 'deserved well of the nation', whose distinction in their fields is also a sign of representing a serious interest that the rest of us benefit from, and whose standing in society would serve to enhance the standing of the Second Chamber.

Among those who have deserved well of the nation we must give pride of place to those whose virtues have contributed, in however inconspicuous a way, to the public good. Virtue is not the same as celebrity, and is indeed in many ways opposed to it. But the advice of virtuous people is in every area

to be sought, and in no area more evidently than politics. How to find those people is of course a task for us all, and not only governments. But they too should have a role in a reconstituted House of Lords, which stands in Parliament not as another forum for party conflict, but as a representative of the long-term interests and affections of the nation.

Such a House of Lords cannot be achieved by 'democratising' the Second Chamber, a reform which would simply turn the Lords into the image of the Commons. Democratic elections would enhance the power of the Second Chamber, but undermine its very special authority. It would lead to constant conflicts of a kind with which we in Britain are unfamiliar. And it would marginalise further those interests of a civic, military, religious and cultural kind that have already found too little protection in the House of Commons. My own view is that we should retain the appointed Second Chamber with its dignities and honours, but do more to emancipate it from the political class, and from the party conflicts that are fought out in the House of Commons. I believe that Party leaders should have a right to recommend people for peerages, but not to force their acceptance on the Queen. I think the Queen should continue to appoint people to the Upper House, but on the recommendation of committees and interest groups that represent the real interests of civil society. Of course, the composition of those committees will be the subject of controversy, and vulnerable to the perennial and unanswerable question: *quis custodiet ipsos custodes?* [Who will guard the guards themselves?] But that lies in the nature of things.

Here we should remember the ways in which our not having a written constitution has proved, over the centuries, to be a huge advantage. Matters that are elsewhere made explicit, so as to become the source of resentment, are with us concealed within the workings of government. We safeguard rights not by declaring them but by concealing them so that nobody takes it into his head to confiscate them. We broker interests through institutions and associations which have no clear legal standing and which issue their verdicts as 'recommendations' rather than laws. We muddle along in ways that produce grumbles but rarely violence. And I don't see why the appointments to the House of Lords could not be made in the same spirit. The important thing is to free the Upper Chamber once again from the stifling grip of the party machines, and to allow civic interests rather than political ambition to govern the conversation there.

7. Representing the Spiritual

The Rt Revd Tim Stevens



"The presence of the Church of England in the House of Lords entrenches a privileged position for one particular branch of one particular religion that cannot be justified in today's society, which is not only multi-faith but increasingly non-religious. It is at odds with the aspiration of a more legitimate and representative second chamber and with recognition of a plural society. Moreover, by virtue of their position as Bishops of the Church of England, the proposals effectively reserve seats in the House of Lords for heterosexual men, or celibate gay men, of the same denomination. This unabashed discrimination has no place in a modern Parliament."



So reads the charge sheet, as drawn up by the British Humanist Association. Some might claim, as the BHA do, that the case is unanswerable and that I, along with my fellow Lords Spiritual, should collect up our coats and mitres and file out quietly via the Peers' car park. After all, what possible reasons could there be to continue with ex-officio parliamentary representation for Anglican bishops in the 21st century? As always with questions of Church and State, when looking forwards it pays to look backwards first.

At a time of great social and economic upheaval when the principled foundations of the British social security system risk being shifted irrevocably, much attention has been paid to the actions and motivations of those founding welfare fathers of the 30's and 40's. The energy, vision and sheer output of the immediate post-war Government is astonishing to modern eyes, and is rightfully looked on as a high watermark in the recent past history of British governance. At that time the British people had experienced the shock of war and had grown to accept command and control governance as a military and economic necessity. Without denigrating the achievements of that Government, far-reaching reform was an easier task; indeed the need for it was a given.

Minutes held in the National Archives show that in January 1948, the question of Lords reform, and the place of bishops, was also occupying Attlee and his cabinet colleagues. But the record reveals even these great reformers running into difficulty, and grappling with many of the same problems facing ministers today – no consensus in the Cabinet, party or country over reform, a House of increasing size, the need to consider function before form, the primacy of the elected Commons, the competing demands of other priorities, balancing interests with claims to representation. This was the first Cabinet, as the Home Secretary James Chuter-Ede observed, not to have a majority of Church of England adherents as members, but ultimately Attlee came down in favour of a reform that would clip the wings of the Lords, whilst leaving the bishops as they were. Why? Because, as the record notes Attlee's deadpan observation of the bishops: "many are now Labour."

The history of Lords reform, indeed of British parliamentary and constitutional reform more generally, has been one of evolution and adaptation, of incremental change instead of big bangs. Attlee told his Cabinet colleagues: "your logical Second Chamber would depart from British tradition. Our method is to build on [the] past, adapting it."

Understanding our current place in the context of this tradition is crucial to understanding why the wider question of reform is a matter to be approached with humility and caution. It is why in their response to the Draft House of Lords Reform Bill, the Archbishops of Canterbury and York reject the case for an elected House; saying that fundamentally "the test of Lords reform is whether it will enable Parliament as a whole to serve the people better."

It is also why the specific question of the place of bishops in the Upper House is not as cut and dried as some might think.

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The reason why spiritual representation, in the form of the Lords Spiritual, has endured in parliament for many hundreds of years certainly owes much to cultural, religious and political tradition. But, unlike the issue of the hereditary peers, whose removal from the legislature was settled on principle by parliament over a decade ago, there is no equivalent consensus on the place of bishops. Successive Government white papers on reform have affirmed the place and role of bishops in Parliament, and even Nick Clegg's Draft Bill acknowledges that in a House that is not wholly elected there should be places for bishops of the established church.

The 'e' word is one that causes some difficulty for Government, and parliamentarians of all shades. Since the summer I have been serving on the Joint Parliamentary Committee that is scrutinising the Draft Bill on Lords reform. Sifting through the written evidence, such as that I quoted earlier from the BHA, and listening to the parade of experts, there is little to warm the heart of a parliamentary prelate who might be looking for words of affirmation. Our continued place appears to be, in the mouths of so many expert witnesses, on the wrong side of that logic that Attlee succinctly described. But some might still argue for consistency here. We have an established church but a pluralist and multi-faith society. We are soon to legislate to enable those in line to the throne to marry anyone of any faith he or she chooses, but will continue not to allow anyone to succeed to the throne if they practice a faith that prevents them being in communion with the Church of England, of which they will be Supreme Governor. I make no complaints here. My purpose is to highlight both our ability to marry tradition with modernity for the sake of constitutional continuity, and our ease in holding together potentially contradictory principles in the interests of adjusting to gradual change.

If constitutions reflect the particular histories, cultures and circumstances of each nation, the fact that ours has evolved over a particularly long period is not an argument against further significant evolution. But it does seem to create a presumption in favour of adaptation and specific reforms to address manifest problems rather than far-reaching changes which sweep away all the familiar landmarks.

And if, as successive governments have accepted, there is a continuing benefit to this country in having an established Church, it is undoubtedly the case that the presence of the Lords Spiritual in the House of Lords is one of the most important manifestations of that special relationship between Church and State.

An understanding of establishment and the history of Spiritual representation also helps answer the question as to why only Church of England and not bishops of the Scottish, Northern Irish or Welsh churches have places. Whilst the established nature of the Church of Scotland, ratified and confirmed by the Church of Scotland Act 1921, consists of an almost complete absence of a relationship with the State, meaning that bishops of that Church have never sat in the legislature, Welsh and Irish bishops did sit in the House of Lords until their respective disestablishments in the 19th and early 20th centuries. Putting the milk back in the bottle is not therefore an option – especially if a large portion was never there to begin with.

Whilst the removal of the Lords Spiritual would not spell the immediate end of the establishment of the Church of England, it would seriously undermine it, undoubtedly calling into question the future of the established relationship and sending a strong negative signal about the place of Christianity – and religion more generally – in British public life.

When looking to compile reasons for the retention of the bishops, there are plenty that line up on the negative side; what one might describe as the 'hide in a corner' arguments – summarised in four brief words: they do no harm. Bishops do not act as a voting bloc. They are not whipped and never all attend at the same time (the highest turnout for a vote by bishops in recent times was when 14 of the 26 voted against Lord Joffe's 'Assisted Dying for the Terminally Ill' Bill in 2006. Even then, the bishops' vote was not decisive as the Bill was defeated by a margin of 48). Bishops do not align themselves to political parties or use their position to launch partisan political attacks. They do not parade or promote a triumphal vision of Anglicanism over and above other traditions or faiths and do not use their position to lobby for unjustified and unnecessary privileges for Anglicans, or indeed, Christians. Their presence in the Lords does not lead them to neglect the spiritual or practical needs of their dioceses, and whilst they are not slavish followers of General Synod resolutions, they are also not so independently minded as to ignore the sensitivities and opinions of their local church networks or other faith traditions.

When I found myself debating the place and role of the Lords Spiritual with a group of Humanists last year, I set out the positive sides of the argument in the following way: "The Lords Spiritual bring to their contribution a network of connections into local communities which no other institution can begin to match, a regional perspective often lacking from the Upper House, and a framework of values which (while claiming no moral superiority over other's values) contributes to the political debate about what constitutes the common good..." And on that last point:

"What constitutes the common good in any particular situation is what politics is or ought to be about. For the Christian, the common good arises partly from the imperative to love God with all one's heart and to love one's neighbour as oneself. From a Christian perspective, if God's purpose for humanity is a common purpose, we have a duty to ask how the organising of society makes this purpose harder or easier, more or less attainable...The Church's responsibility is to offer a series of searching questions about what Government can make possible for people and about what barriers to creative communal life it needs to take away. A healthy relationship between the Church and Government is one in which Government accepts that it needs to be challenged constantly in order to enable a morally serious project for our common life to be taken forward, and one in which the Church examines itself relentlessly as to whether it is being faithful to a vision of human flourishing. I believe the Bishops in the Lords have served both these purposes with distinction and that their contribution to the Upper House of Parliament is not just desirable but vital!"

It is the nature of the Church's understanding of its established status and role that underpins its belief in its continued place in the Lords, and guides the work its bishops carry out there. Their presence in the House is not a celebration of historically won privilege, but a national expression of the Church's local ministry to serve all people in all communities in England, and a furtherance of their commitment to a concern for the common good. Bishops retain a personal, moral and intellectual authority which derives from positions of public leadership in regions in which there is a living presence and network into every neighbourhood, town and village in England through the parish system. This enables bishops to speak from personal experience and connection into faith communities, disadvantaged neighbourhoods, universities, schools, hospitals and prisons, etc.

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Much is made of church attendance figures, yet it is worth noting that over 1 million people per week attend Anglican services, which is a weekly attendance unmatched by any political party, voluntary association, public institution or trade union.

Other faiths – certainly those in my diocese of Leicester – do not believe it would serve the best interests of parliament or society to legislate the Lords Spiritual out of existence. The world's faiths see the place of faith as being firmly in the public square, whether it's the village square, town square, or Parliament Square. In this, pluralism and the benefits of an established church travel hand in hand. The Chief Rabbi, Lord Sacks, in his own submission to the Wakeham Commission, put it like this: "disestablishment would be a significant retreat from the notion that we share any values and beliefs at all. And that would be a path to more, not fewer, tensions. Establishment secures a central place for spirituality in the public square. This benefits all faiths, not just Christianity."

Many other denominations and faiths of course have views about whether the bishops should be the only members whose place in the Lords is determined by their faith affiliation. And in their own submission to the Draft Bill Committee the Archbishops of Canterbury and York set out the view, consistent with Church of England submissions on the issue for several decades that we would welcome representatives from the other denominations and faiths. How that 'representativeness' is determined – and by who – is of course an acknowledged problem; yet we have pledged to work with an Appointments Commission on how to resolve it. We do not believe, however, that the lack of a ready solution should be reason for Parliament to serve the bishops with an eviction notice.

Secularists and Humanist campaigners are often keen to point to public polls showing opposition to bishops in the Lords, though closer examination tends to reveal a public either indifferent or largely uninformed. The February 2007 YouGov survey is a case in point. To the statement 'the Church of England is the Established Church with the Queen as its head and some of its Bishops sit in the House of Lords', by far the largest number – 48% – described it as 'a matter of indifference to me', whilst more respondents who actually had a view called it a good thing rather than a bad thing. In July 2007, a BBC poll on bishops in the Lords found that 48% agreed that Anglican bishops should retain the right to sit in the House of Lords (43% disagreed). The same poll also revealed that 65% agreed with the statement: "if Church of England bishops are allowed to sit in the House of Lords then religious leaders from other faiths should also be given that automatic right", which is broadly in line with the Church's own position.

Peers themselves overwhelmingly advocate retention of the Bishops' Bench. ComRes polling in late 2008 tested a representative sample of over 100 Peers. 45% said they favoured no change to the Bench of Bishops, while another 34% said they should be allowed to stay if other denominations and faiths had seats too (the Church's own position). That amounts to a welcome 79% vote of confidence for the bishops from fellow members of the House.

The active opposition to bishops is driven therefore largely by campaigning organisations and individuals for whom this is a matter of fundamental and often obsessive principle. I doubt that their campaigning zeal is shared by the population at large (the BHA states its combined national members and supporters amount to 28,000), though it is concerning to see the efficacy of their access to public platforms and the ease with which those in positions of legislative authority, who increasingly lack

confidence in their comprehension of establishment or religious issues, can be persuaded that it best serves the interests of equality to equate the opinions of such organisations with the interests and institutional requirements of deeply embedded church and faith communities.

The Church in response continues to make the case to Parliament and public that, across a whole range of public policy areas, equality does not necessarily equal uniformity. Those who are most keen to stress that bishops should only be allowed to remain in the Lords if other faith leaders are brought in, are those who adhere most closely to the application of the equality / uniformity principle. It seeks to make the continuation of bishops of the established Church in Parliament wholly contingent on there being a satisfactory resolution to the question of other denominations' and faiths' formal 'representation' which, as has been previously observed, is not an easy task. Whilst the campaigners may believe that such an approach may bring them nearer to their goal of secularised political institutions from which the remaining vestiges of religious interference are removed, they might do well to recall that every attempt to create such secular political spaces in this country has failed. A look across to the United States, where Republicans are currently embroiled in debates over who has the personal qualities to challenge President Obama in 2012 (with faith being front and centre), should also provide a salutary reminder that there is by no means any logical connection between a secular constitution and a secular political environment.

8. Representing Civil Society

Sir Stephen Bubb



Let's give civil society a bigger voice in the Lords – and make it a permanent feature of the system.

The parliamentary wrangling over how to reform the House of Lords has been going on for at least a hundred years. In 1911, the Liberal government of Herbert Asquith introduced the Parliament Act, which set out the goal of replacing the Lords with “a Second Chamber constituted on a popular instead of hereditary basis.”



Pragmatically, however, the Act also noted that “such substitution cannot immediately be brought into operation.” In the history of Lords reform, this has become a familiar story. Since the removal of most hereditary peers from the House in 1999, a succession of consultations, reports and commissions have suggested various fundamental overhauls, ranging from the creation of a fully-elected House to a fully-appointed one, with many permutations in between. Yet the House of Lords has remained largely unaltered since 1999. A classic example of institutional inertia? Perhaps – or, alternatively, a reflection of the British tradition of ad hoc pragmatism that sometimes wins out over the notions of political ideologues, and a recognition of the many important qualities which the House of Lords brings to our system of parliamentary democracy, which should not lightly be discarded.

One of the strongest points made in favour of a (mostly) appointed House of Lords is that it enables the Second Chamber to include representatives of key sectors of British society, and to benefit from the knowledge and experience that they bring. As a supporter and advocate of the third sector, I have often had cause to be thankful for the wisdom and expertise of its representatives in the House. Peers such as Lord Adebowale (Chief Executive of Turning Point), Baroness Scott (Tomorrow’s People), Baroness Pitkeathley (formerly of the Carers National Association), Baroness Greengross (formerly Age Concern) and many more ensure that civil society has a strong and much-needed voice in the legislative process. Peers with a third-sector background can be found on the benches of all three parties as well as among the crossbenchers. While their political standpoints are diverse, they all share a passion for and understanding of charitable work which benefits not only the third sector itself but, as I firmly believe, the country as a whole.

In recent years our leaders and lawmakers have shown an increasing appreciation of the vital role played by voluntary organisations in the life of the nation. The coalition government’s theme of the ‘Big Society’ is a laudable, if somewhat vague attempt to articulate the economic and social value of engagement with civil society; at the same time, the government’s programme of public service reform envisages a shift away from monopolistic public-sector provision to a more diverse and competitive delivery landscape, in which voluntary and community organisations will play a crucial role. Key areas of government policy, including reforms to health and social care, welfare-to-work initiatives and offender rehabilitation programmes are dependent on a strong and active third sector, capable of shouldering responsibility for the delivery of vital services on a large scale.

So it is more important than ever that the concerns of the third sector are given a voice within parliament. The passage of the Localism Bill was a case in point. The Bill contained a number of provisions aimed at empowering local voluntary and community groups to play a larger role in the life of their local area, such as the Right to Challenge provision (which enables community groups to bid to operate public services) and the Assets of Community Value provision (allowing community groups to bid for local assets, such as pubs or playing fields, in order to preserve them). With monotonous predictability, these clauses were opposed by vested interests including some landowners’ associations

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and certain unenlightened local authorities, and the relevant clauses faced wrecking amendments in the Lords. Fortunately, a number of committed and well-informed peers were able to make an unanswerable case for freeing local charities to become more involved in local life, and the key clauses survived unscathed.

The recent debates on welfare reform have also demonstrated the real value of an independently-minded revising chamber. The Lords have given voice to concerns and problems that, frankly, have not been fully expressed elsewhere in the political process. In doing so, they have helped to ensure that the marginalised and voiceless can be heard. So often our political parties and their processes seem to ride roughshod over such concerns, the whips quietly steamrolling any dissent. Having civil society represented in the Lords means a group of peers who are unwrapped and irrepressible.

It is this combination of passion and expertise that makes the diversity of backgrounds and professional experience within the Lords so immensely valuable. Just as the House of Lords' medical professionals bring an unparalleled level of insight to debates on healthcare policy, so its third sector alumni provide unmatched understanding of the issues pertaining to the work of voluntary and community organisations. It is this contribution which, I fear, could well be lost in a fully-elected chamber. Ultimately, a fully-elected chamber would probably look much like the House of Commons: full of many excellent members, but lacking in the breadth and depth of experience currently found among many sitting in the House of Lords, and with a disproportionate number of members who spent their entire professional career within the Westminster bubble.

It is a myth to believe that legitimacy and accountability can only be achieved through the political parties. Many of our third sector organisations have a strong grounding in their communities and an unsurpassed understanding of the needs of their beneficiaries. Often more in touch with citizen and community concerns than constituency MPs, they are prepared to speak out for the excluded and vulnerable who are otherwise pushed to the margins of the political process.

So, let's opt for a House of Lords containing a mixture of elected and appointed peers. Approximately a third could be elected directly, a third appointed by political parties as they are now, and a third appointed from civil society by an independent commission charged with ensuring a wide cross section of civil society, community and third sector leaders are brought into the Lords. This would echo the 'people's peers' experiment of 2001, which, although sadly truncated, constituted a valuable attempt to bring into the Lords people of wisdom and experience. Reform along these lines would improve the democratic accountability of the House while retaining the best features of the current system. While it might not please everybody, it would help to address some of the criticisms of the Lords as currently constituted, as well as ensuring that civil society retains a strong and distinctive voice within our national legislature.

9. Representing Commerce, Representing the Nation

John Longworth



Let me begin with some House of Lords folklore. Once upon a time there were a bunch of thugs who, by virtue of intelligence, force or allegiance were able to take over the tribes of their lesser counterparts. One day the lesser thugs decided they should share power and forced their Chief Thug to sign a Charter. This was the House of Lords.

As the wealth of the lands grew, so did that of the new upper classes. Enjoying the good life, they discovered that they could exact economic rent from a new merchant class which began to emerge. However, the merchant class was smarter than they and the fixed rent was outgrown by the ability of the merchant class to grow wealth for themselves. The continued support of these merchants was assured by another forum of power, the House of Commons, which eventually became the centre of power.



In the meantime, the class dominating the House of Lords had come to conclude that life was much sweeter, safer and stable in a society in which they 'shared' a little and then a little more. This remained the status quo until very recently, when the House of Lords became a vessel for political appointees by the Commons, shifting power once again.

All storytelling aside where does that leave us?

It is my considered view that the House of Lords has four main roles – all of which are good and healthy for a democratic society. They represent and safeguard the rights of individuals and communities against the majority, or 'mob rule'. They scrutinise legislation in detail, having no constituency, which gives them the resources and time to do this work. Thirdly, the Lords safeguard the continuity of power, through a system which has withstood the tests of time and electoral change. Finally, peers inject the wisdom of age and experience gained in their respective fields.

Pre-reform, the House was performing these four functions well, whilst the new reformed Upper House has at best changed nothing and, at worst, undermined this work. The 1999 Act, it seems, left us with a halfway house (no pun intended).

The value of the Lords as a Second Chamber is in its wider representative function and expertise; any further reforms must therefore seek to build on this. Representation within the Lords should be comprised of people from a wide range of professions and backgrounds, including that of business. Businesses and their employees occupy a huge portion of British society. At the start of 2010, there were approximately 4.5 million private sector enterprises in the UK, which employed around 22.5 million people.²¹ Such numbers – and the diversity of business types and employees therein – must be represented at a national level.

The scrutiny role of the House of Lords would also benefit from a 'real-world' insight based on this representative function. All legislation could be improved by a commercial understanding.

There are many recent examples of bills where a better understanding of business may have resulted in improved legislation. The incredibly complex Pensions Act 2008 could have benefitted from a better understanding of the processes that small firms have to follow to recruit and manage their staff, and how few resources they have for internal Human Resources management. A more diverse representative House may have brought such issues to light, flagging instances where smaller firms would suffer from such complexity, and subsequently outlining various options as to how such barriers could be overcome.

The Localism Act 2011, too, could have benefitted from a greater understanding of the role business plays in local communities and the potential for firms to be more involved, to great effect, at a local level. Even (perhaps especially) bills and acts ostensibly purely about public services such as the provision of health and social care or education could benefit from scrutiny and the innovative instincts of experienced businesspeople.

21 BIS (24 May 2011), Increase in the number of businesses at the start of 2010 [online] <http://nds.coi.gov.uk/content/Detail.aspx?NewsAreaID=2&ReleaseID=419640>

Interestingly, this would give the Lords a good deal more 'legitimacy of output' in this area than the Commons 'legitimacy of input', where very few have worked in business and where we now increasingly have a political class where the career path to the Commons seems to start and end in an MP's office. The clause by clause scrutiny given to Bills in the Lords would safeguard against short-term, ideological politics favoured by career politicians in the Commons.

The key question, then, is how members are appointed.

I believe that there is no value in a directly elected Upper Chamber, which would simply undermine the democratic supremacy of the Commons and cause impasse. Business does not want to see important legislation held up because of wrangling and competitive behaviour between two elected Houses with competing electoral mandates, which would inevitably have consequences for stability and international markets.

The overriding objectives should be to retain a balance of experience from all walks of life and to be representative of the nation geographically (perhaps in approximate proportion to population). This should include a very significant proportion from business, since this constituency represents the bulk of the economy and a very significant proportion of the workforce.

In removing all hereditary peers from the House, aside from 90 (and two ex officio) who were voted by their colleagues to remain, the 1999 House of Lords Act left those peers who had gained their seat through birthright as the members of the House with the biggest claim to having gained a seat through democratic means. A reformed House of Lords would do well to retain its working group of hereditary peers, who would be converted to life peers, as they do a good job. Hereditary peers were, after all, traditionally individuals owning property against the state, and what is likely to be good for group of individuals is likely to benefit all property owners, including businesses and entrepreneurs.

An appointments college would be a suitable route for the self-appointment of hereditary peers, and also a good route for the rest, who should be life peers or serving for a fixed term of at least seven years.

A proportion of these Life Peers may be nominated by politicians, to keep the political connection, but probably should face an appointments college to assure fair representation of the political spectrum based on the proportion of the vote in prior years. Even political appointments should be at least seven years and possibly for life, retaining continuity with the past and maintaining a high level of political, commercial and life experience.

Whatever we do, let us avoid the deliberate nullification of government with the invention of an elected Senate in a similar vein to the eighteenth-century constitution in the USA, which arguably suffers an elected King, an elected Senate and an elected Commons. This has caused the neutering of Government at home and a leadership focussed on foreign affairs. We do not have a federal system to which this lends itself and we would consequently limit the ability of the Government to tend to the affairs of this country.

In conclusion, a fundamental aspect of the House of Lords is its capability to host a plethora of representatives from across the spectrum of commerce and a myriad of professions, providing a function not always present in the Commons. What began as a chamber of 'thugs' who nevertheless exerted a crucial balance on the power of the sovereign state is increasingly characterised by a high proportion of professional politicians with little experience of life outside the political bubble of Westminster. With an appointed chamber – whose legitimacy lies in the effective scrutiny that only experience can provide – we are given the opportunity to construct a Second Chamber capable of a much more sophisticated kind of representation that is reflective of British society as a whole.

10. Representing the People

Lord Adebawale



2001 was an important year for me. It was the year I became a member of the House of Lords and also when I started a new job as Chief Executive of Turning Point.

What I remember most are words from the book *Who Runs Britain* by Robert Peston, in which he refers to certain members of the House of Lords as 'exotic.' He uses the word to describe us as not from the usual backgrounds of the law, politics or business.

The sense I had was that the entire House of Lords was 'exotic,' not just some of its members.



The press appeared somewhat amused by the choice of the so-called 'People's Peers', the group of people of which I was now a member. All of us had applied for membership of the House of Lords, much like a job application, and were then appointed by an independent panel that made recommendations to the Prime Minister and Her Majesty the Queen.

Alastair Campbell coined the phrase 'People's Peer' and the press debated whether the new entrants (myself and about nine others) passed the ordinary people test. I think I just scraped through because I was seen to be a 'charity worker' as opposed to a businessman, black as opposed to white and seemingly unconnected to the establishment. This was as opposed to my fellow new entrants, some of whom were accused of being the usual suspects from the worlds of business and politics.

My experience was of entering a club that is a mystery to the outside world. It was a club whose image was presented by commentators and the press as at best exotic, and at worst, uselessly corrupt. As with any new job, I was excited at the challenges ahead, but also entertained some doubts on my decision and how it would impact on my reputation. In fact, I even commented half jokingly to one reporter who asked me what it was like to enter the House of Lords, that I had abandoned hope on entering here.

The public perception that I have come across most hasn't changed much since I entered the House. Among those who do not see themselves as 'political', the Lords is seen as an anachronism and undemocratic. By many on the inside of politics, it is seen as something of a nuisance to getting Government business done if you are the party in power, and just a nuisance if you are not.

Having given lectures to social policy students who don't know the difference between the House of Lords and the House of Commons, I am of the view that the role of the House of Lords is so little understood (on a par with the Maastricht Treaty for example), that the debates about its future role and even existence are pretty meaningless.

Yet my mailbox is often overflowing with e-mails from pressure groups and members of the public who see the House of Lords as the last resort in getting their voices heard, and legislation changed or amended, in order that such legislation might take into account the realities of life as opposed to the desires of politicians to implement party policy.

It has taken me a few years to understand that the House of Lords has a role within the British democratic process. However, this role is little understood outside the cognoscenti and those who discover that there is a place that might influence an area of their concern.

The image of the House as the very pinnacle of the establishment, lends itself to the idea that it isn't a credible place for influence over national policy, with its largely elderly members; the carpeted silence; scandals over expenses; its unelected appointment system; and the sense that it is the 'other place'.

Reflections on Representation

But now that I am a member, I see hereditary peers who are expert, hard-working, socially concerned and effective. I also see appointed peers who are exactly the opposite.

I understand that speaking in every debate is not the same as speaking rarely but being listened to.

The problem with being a peer is that the privileges of title are not really privileges anymore. They are labels that are not commonly understood and often sneered at. The institution is seen as undemocratic because democracy means we vote, when in fact democracy is a process not just an act. Voting is merely a tool of democracy.

The alternatives to the House of Lords as it now stands, such as voting people into the Second Chamber, seem strangely undemocratic when you know what it takes in money, influence and time to get elected.

Selecting peers through an electoral process will not make the House of Lords more representative of society at large. An inevitable danger of two elected chambers is political 'gridlock', where both assert their supreme authority. The US is a case in point: Government effectively closes down when neither Senate nor Congress will give way, because both claim the authority of being elected by the people.

Some would disagree, but I believe the House of Lords does need members who are experts in their respective fields such as the worlds of science and medicine, as well as economists and welfare reformers. These include pioneers such Sir Robert Winston, whose research has led to advances in reproductive medicine and has championed the cause of couples affected by infertility, and Baroness Tanni Grey-Thompson (Britain's most successful Paralympic athlete), who has fought to protect the rights of disabled people. This wisdom and experience could be lost if an appointed House was replaced with an elected one. The reality is that few would want to devote themselves to those internal party processes which are a necessary part of standing for election.

The dilemma is that an appointed Lords is hard to justify, but somehow it works. Despite being unelected, we can still be representatives of civil society. By 'civil' I mean a society where people work together to achieve change on a particular issue. The Lords can help to achieve change because they are not elected. Party allegiances still apply (unless you are a crossbencher like me), yet for those peers who fail to follow the party line, the wrath of the whips is not as keenly felt as in the Commons. Peers are less constrained by the particular dogma or ideology of a political party, and this gives them the freedom to express their individual views without fear of being sacked or losing their seat.

Now I am not suggesting for a moment that the House of Lords is some radical body and that all those who frequent its corridors are liberal-minded champions of the dispossessed. But this freedom, which I have mentioned can and does provide us with the opportunity to amend laws so that they reflect the needs of real people. Take the Welfare Reform Bill. Key coalition proposals such as cuts to employment support allowance have been met with stiff opposition in the Lords. For the Health and Social Care Bill also, dozens of amendments have been tabled by peers, including changes which reflect the needs of patients. Yes, the government in power nearly always achieves its ambitions in the end, but not without first making concessions which make for an inclusive society.

Many peers, including myself, marry the responsibilities of serving in the House of Lords with a day job. As the head of a social enterprise, I understand the concerns and problems facing those on the margins of society. Turning Point provides services for those with complex needs, including people affected by drug and alcohol misuse, mental health problems and those with a learning disability. As part of the social economy, Turning Point is a 'civil society' organisation which helps people to help themselves through innovative projects. Through our Connected Care model in Hartlepool for example, we have been empowering residents by involving them in the development of services. This way they are community-led and designed with the input of the people who use them to reflect their specific needs.

So, despite my 'grand-sounding' title, I believe that I am in touch with the 'real' issues faced by society, not those affecting the privileged elite.

When there is a relevant debate in the House, my priority is to ensure that the views of those without a voice are represented and heard. And when the government of the day publishes a new consultation document, I will make submissions if the proposals in that document have the potential to impact on the everyday lives of the communities and individuals that Turning Point supports. I never mistake access for influence, but if there is an opportunity to be part of the decision-making process then I will make the most of that opportunity on behalf of others.

As I have already highlighted, I am never short of requests from campaigners, charities and members of the public to assist them in getting their views heard and their needs met. That has to mean that people do believe that I represent civil society. As a peer, I may be last on the list for some given the limited influence that the Lords possess, but I am not regarded as irrelevant.

Nick Clegg has argued that the House of Lords is a 'potent symbol' of a closed society where power is held by just a few. The House certainly needs changing and much more light could indeed be shed on its process – making the Lords less of a club and more of an open forum might help to dispel the received mystique. But the titles that go with the job are tradition, and generally I have nothing against tradition. Instead, my enemies tend to be 'bigotry' and 'poverty', which are enemies shared by many in this country.

As much as I think we peers need to reflect society, the people will not let us become peers of our society because they see us as not 'one of them.' Perhaps we should use this perception to reflect the impact of legislation on individuals and communities. Even when the government of the day can bring out the votes when needed, sometimes we Peers can make tiny triumphs happen which benefit real people.

11. Elections in the House of Lords: A Better Way to Represent Society

Lord Low



I take it as a given for the purposes of this chapter that the principal function of the House of Lords is to act as a revising chamber. There are others as well, such as holding the Government to account and debating significant issues of the day. But revising legislation, which often arrives in an imperfect state from the House of Commons, is the principal *raison d'être* of the House of Lords. This chapter is therefore concerned with the question: how do we achieve a composition for the House of Lords which is most appropriate for a revising chamber? It is submitted that the relevant credentials for this are more those of expertise and experience, than that of democratic election, and that these are more likely to be secured by a system of election which reflects the major constituencies of civil society, than that employed for the House of Commons based on geographical constituencies. It is more like choosing the best person for the job - the person whose skills and experience best match those required - than electing someone to represent you at a regional level.



From this point of view, the present method which relies on appointment by political parties and an independent Appointments Commission, actually works reasonably well. When Baroness Vadera, winding up an economic debate on 3 November 2008, referred to the contributions of the three former Chancellors, six Treasury ministers, four economists and six leaders of business as “showcasing the wisdom” of the House, this was no isolated example. But it is argued that there is a problem of legitimacy. I think this may be more a matter of perception than reality. The bases of legitimacy mentioned in the last paragraph are not inherently better or worse than one another, they are just different. Whether they are better or worse depends on the purpose for which they are being employed. However, if it is desired to replace the present system of recruiting to the Second Chamber with a system of elections, it is my contention that a method which draws on the expertise and experience which resides in civil would be far more ‘fit for purpose’ if it is the members of a revising chamber you are seeking. This could be designed in such a way as to combine many of the attractions of a system of election with those of appointment, by formalising and greatly broadening the present system.

But first, the inappropriateness of the present system of election for Parliamentary elections using geographical constituencies, even if modified - perhaps especially if modified - to incorporate an element of proportional representation, cannot be emphasised too strongly. It would tend to throw up the same kind of career politicians who stand for the Commons, and not those with the kind of expertise and experience being sought for the Second Chamber. The Lords would soon become more politicised and lose some of the qualities for which it is currently particularly valued: no single party holds sway and, members are more independent-minded, leading debates which are, as Wakeham put it, “less adversarial, better tempered and better informed” as a result. If the same system were to be used as is used for electing the Commons, the Lords would tend to duplicate the Commons and thus not add value. There would for the first time be the possibility of “turf wars” at constituency level between MP’s and peers, and if a variant of the present system were used, especially if it involved an element of PR, the Lords could soon begin to rival the Commons’ primacy.

I would propose a system of electoral colleges covering the main branches of civil society - what might be termed “constituencies of expertise” – the law, medicine, the arts, sport, education, the armed services, business, trades unions, the third sector and so on. They could nominate direct to a reformed House of Lords or, as I understand happens in a number of other countries, they could submit their nominations to a statutory appointments commission which would make the final selection. The latter method would probably be preferable in order that nominees might be independently and impartially vetted to ensure that they are fit persons to be appointed. The commission would have the task of determining the constituencies of expertise, and which organisations should have nominating rights within them. They should also validate against the agreed criteria, and the procedure which nominating bodies would have employed for arriving at their nominations.

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The new system could be phased in, in much the same way as the Government proposes for its system based on elections. The constituencies of expertise would nominate a third of the candidates to which they were entitled every five years until they reached their total entitlement. They continue to nominate a third of their entitlement as a third retire every five years, in order to achieve a system of rotation or staggered terms. I have not here addressed questions such as the size of the House, and the number of constituencies. These would have to be determined, but it is generally agreed that the present House of Lords is too big, and that the 300 proposed by the draft House of Lords Reform Bill presently before Parliament is too small to be effective. I would suggest something smaller than the future slimmed down House of Commons - somewhere between 450 and 600.

When proposals along these lines have been made in the past, the most authoritative reactions have not been very encouraging: The Wakeham Commission was initially attracted, but gave up in view of what it regarded as insuperable practical difficulties. The Constitution Unit at University College London have been similarly dismissive. But I think there is more to be said for the proposal than these authorities allow. Sir John Major gave his support to the central idea behind constituencies of expertise when he spoke to crossbench peers a couple of years ago. When challenged on grounds of practicality by a member of the Wakeham Commission, he said he wasn't convinced. He said he did not think it could be beyond the wit of man to come up with a workable scheme, and neither do I. Take the question of determining the constituencies of expertise. The House of Lords Library has a classification of peers appointed between 1958 and 2008 in 19 categories (House of Lords Library Note "Peerage Creations, 1958-2008", LLN 2008/019) – finance, industry, media, land, academic, teaching, medical, military, civil service, legal, journalism, engineering, arts, voluntary, trade union, local government, other public sector, politics and other. We could do a lot worse than use this as a starting point. There would be a deal of negotiation over the precise list of constituencies and who could nominate within them. People would make their case, and the commission, or if necessary Parliament, would rule. It should be kept under review and could be modified over time if the case for change was made, as happens now with constituency boundaries.

There is more interest out there than it seems people are aware of. In 2008, Frank Field MP produced a pamphlet entitled "Back from Life Support: Remaking Representative and Responsible Government in Britain", which adumbrated a scheme which bears a striking resemblance to that advocated in this chapter. "A radical Lords reform" he said:

"would be based on seeking the representation of all the major legitimate interests in our society. There would be the need, of course, to establish a reform commission whose duty would be to begin mapping out which group interest should gain representation, and at what strength... The commission's second task should be to approve the means by which each group elects or selects its own representatives and would then have the duty to review the lists. The commission should be encouraged to approve a diversity of forms of election. Some groups may involve the whole of the membership in a selection process. Others might adopt a form of indirect election. The commission's task would be to ensure that, whatever method is proposed, it is one with which the overwhelming majority of the members are happy."

The organisation ResPublica has advanced proposals for a scheme which is a third elected, a third appointed from civil society, and a third nominated by political parties. This would have the disadvantage of a hybrid model in creating what would almost certainly be seen as two tiers of members, with implications for the legitimacy of close votes where the appointed members appear to determine the result. But I mention it to draw attention to the diversity of thinking which exists as an alternative to the Government's, which deserves to be taken into account.

I have also received a number of thoughtful submissions from members of the public urging an alternative to the traditional election in traditional constituencies. One of these is contained in an article in the Church Times of 13 May 2011 by the Rev. John Smith of Stamford, Lincs. which distils a longer submission made to the Wakeham Commission. His model advocates a system of specialist electoral colleges under the umbrella of an appointments commission much like mine. But it also contains two further colleges, twice the size of the others – a “Parliamentary College” to appoint politicians who have finished their time in the commons, so that we can continue to gain from their political experience; and a “General College” for people not belonging to a professional body or trades union, to ensure a voice for areas of society that might otherwise feel unrepresented.

I have deliberately spoken of “expertise and experience” as the qualities which qualify a person for membership of the Second Chamber. By “experience” I really mean experience of government, and this is important. There is some tendency for people to speak as if the ideal House of Lords would be a politician free zone. I do not take that view. I think the peers who come to the House after a career in politics, often at the highest level, contribute a vast amount to our debates and we would lose it at our peril. Mr Smith's Parliamentary College is just one of the many merits of his proposal.

Another proposal would have the different branches of civil society making the nominations, as in my model, but in an effort to ensure that election to the Second Chamber was based on universal suffrage, would have the final selection, or election, made by the public at large. People would choose which constituency of expertise they wished to vote in and, having received a booklet containing the CV's of those nominated in their constituency, would make their choice on polling day, rather as one votes for the committee of one's professional association or voluntary organisation. I think this would ask too much of voters and create another complex layer of administration, and so for these reasons, does verge on the impractical. We should not delude ourselves that a system of the kind I am suggesting makes universal suffrage in electing to the House of Lords possible. But in being much more broadly based and diversified than the present appointments process, it goes much further in the direction of popular involvement than anything we have known to date.

I hope the Joint Committee, which is currently considering the draft House of Lords Reform Bill, will give serious attention to the unsuitability of “traditional” electoral systems for populating the House of Lords, and to proposals for alternatives based on the “constituencies of expertise” idea that I have advanced in this chapter.

12. Direct Action, of People and Peers

Lord Wei



Over the past two decades, a worrying trend has become evident in aspects of public life: recent surveys reveal a growing mistrust of those in authority, of the establishment, and of elites. At least 60 per cent of the population have no trust in politicians, and recent scandals have tarnished the reputation of the media, the police and the City.²² In Parliament, this condition has manifested itself in a sense of alienation between politicians and those who they purport to represent.



The response, on the whole, has been to try to strengthen representative democracy, particularly in the House of Commons, through open primaries, special candidate lists, and in seeking to make constituency sizes more equal. There have also been signs of greater independence and focus on matters of local concern, as MPs increasingly feel the need to play to their local voters rather than to the party whip alone – a process which is aided by the remoteness of ministerial promotion in the age of coalition. Part of this response has been to seek to make the House of Lords more representative and accountable by introducing reforms that will bring about a wholly or mainly elected Second Chamber. Such a move is based on a misunderstanding of what is meant by ‘representation’, and may not ultimately satisfy the needs of citizens to feel more in control, to have a voice, and to be more connected with the world around them.

It seems to me that it is not necessarily more elected representatives that people desire (look at the low turnout, for example, for the European elections, and the hostility toward existing elected representatives even before the expenses scandals), but rather more representation of their niche concerns, and more ability to take direct action to address the challenges we all face. With reform of a different but still necessary nature, such challenges can begin to be addressed in a number of alternative and more fundamentally ‘representative’ ways.

I believe that appointed peers offer an opportunity for the fair representation of those who might not otherwise have a voice, and whose cohort has much diversity and wisdom to share. In my own areas of interest, this might increasingly include young people as our population ages, the less able physically or mentally, and ethnic groups such as the British Chinese who, despite being the third largest minority group within the UK, are widely distributed and therefore find it difficult to have representatives elected to the Lower House.

The Lords play an important role in revising legislation that may receive popular support in the short-term, but in the long-term adversely affect groups who are unable to influence popular decision-making. This is true across party lines as we have seen most recently with rebellions over the recent welfare benefit caps. It was true also when Labour was in power, such as in 2009 when the Lords passed a regret motion on the introduction of identity cards which, in the wake of the July 7th bombings and September 11th 2001, must have seemed in line with public opinion, but which turned out subsequently to be both expensive and intrusive. It was not long after the then Government was defeated that the policy was dropped.

To bridge the perceived gap between the public and those with power and resources, such as the Lords, it has become increasingly popular for certain groups to take direct action. Direct action can take extreme forms, from terrorism, to rioting, to community organising and social media-driven flashmob-style protests. It can also take a more benign but equally as effective form, such as through petitions, media campaigns, arbitration, legal action, and social action whether local or national. The online campaigning organisation ‘38 Degrees’, for example, launched a ‘Contact a Peer’ campaign for people across the UK who were concerned with the proposals for NHS reform. Lord Owen and Lord Hennessy,

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in part as a response to this campaign, had subsequently tabled amendments and called for greater scrutiny of the Bill. Those with a specific interest and stake in the NHS found representatives in the House of Lords that took 'representation' beyond constituency divides.

Here too peers play a valuable role, not just in representing voices that might not otherwise be heard, but also in helping to advise, facilitate, and support effective direct democracy. Peers of course support countless causes, harnessing the platform that a seat in the Lords provides, to lend weight, networks and expertise to the charities, social enterprises and campaigns that they work with. The work they do collectively provides multiple pressure valves, cultivates participatory democracy through countless institutions, and in turn builds their expertise, leading to better informed decision-makers and law-making in Parliament.

This work is often hugely time-consuming, certainly much more so than MPs are able to commit to due to their nearly full-time schedules in Westminster and crammed surgeries each week. Should peers become full-time professionals I fear their ability to go deep rather than wide may disappear, and we will lose much real-time experience and expertise. Many experts may also choose not to stand for election, often preferring to deepen their knowledge of the central issues they seek to represent rather than concerning themselves with becoming media-savvy and popular.

None of this is to say that the Lords does not need reform. It is too full, could be more reflective still of the different voices and expertise in British society, and could better communicate what it does both formally and informally. Rather than introducing an electoral process for members and creating a Senate-like House comprised of full-time powerful politicians, it would perhaps be better introduce the following changes: First, the size of the Chamber could be cut in half by finding ways to invite those who do not attend to voluntarily become non-executive peers. Second, more direct means of communication could be introduced to allow the public to communicate with peers, to enable groups to feed their ideas and concerns in to the legislative process, allowing lobbying to also be conducted by more organised and effective means.

And third, the House of Lords could constantly seek to showcase its members' engagement with civil society as experts, patrons, social entrepreneurs and business people to make more visible the 'behind the scenes' impact they often have. 'Direct action' can go both ways: not only as a direct appeal from the people, but also as the direct activity of the peers themselves. Such a showcase might also highlight where gaps in expertise or representation exist, helping to guide and inform the appointments process. The Lords Information Committee is already compiling such information to this end. 'They Work for You' also contains much information about the legislative productivity of parliamentarians; perhaps it could be adapted to capture the peers' other activities, to provide a forum for further engagement with communities across the UK.

Representation can often be understood only in terms of the election of people to whom we entrust power. But it can also be through championing the voices of the weak and little heard, and ensuring that what they have to say shapes our common life as well without undermining our elected representatives. Representation can also come about through the crowd itself, through many voices coming together and people taking collective, direct action. I believe democracy works best when you have all three, and a reformed Lords, together with a reformed Commons, would do well to continue to provide such tripartite representation. Otherwise, I fear as a country we will enter a period of indecision, conflict, and further alienation from power such as has been witnessed in recent times overseas. Reform of course we must, but let us reform with great care.

13. A Hybrid House: Conclusions and Recommendations

Phillip Blond & Rafal Heydel-Mankoo



The British political system suffers from a persistent and longstanding misrepresentation. It stems perhaps from Montesquieu's bizarre judgement in 1748 that Britain exemplified a constitution based on the separation of powers, or to put this misdiagnosis in its contemporary form, that the problems of the current system of democratic representation require its further extension and the removal of the traditional bulwarks against its dominance and exclusive rule.

The true merit of the British constitution and the source of its remarkable stability and longevity is that it recognises that representational democracy needs something besides itself to be truly democratic. From the time of the Ancient Greeks it has been recognised that crude democracy risks a permanent tyranny of the majority, a capture of the polis by self-interest and a denial of objective transcendent or common goods in the name of sectional interest and political expediency.



As a matter of logic and a truth of history, democracy can and does (especially in times of crisis) collapse into a form of permanent rule for dominant elites, groups or races. If democracy and plurality are not necessarily synonymous, then any polity that manages to secure both is indeed virtuous and rare and worthy of global recognition, international repetition and domestic celebration.

And this is the British legacy – the United Kingdom survived the revolutions of the 19th century and the totalitarianisms of the 20th that destroyed, or seized, virtually every other European nation. And this is due in no small part to the foundational truth of the British legacy, that its mixed constitution secures the practice of democracy, by uniting it with the principle of plurality and ensuring that the democratic process is never wholly captured by one party, elite or faction. The mixed constitution blends the horizontal principle of democratic inclusion with the hierarchical or vertical principle of a common good beyond ideology or vested interest. The endemic flaw of merely democratic polities is that they cannot secure a general national good beyond the narrow interests of sectional politics, partisan interests or naked self-interest – witness Greece tearing itself apart, the paralysis of the United States, or the on-going tragedy of a Russia captured by a criminal governing class.

Britain succeeds where others fail because its system of representative democracy represents more than party or executive interest. In the House of Lords and in the Monarchy, and in numerous other ways, it gives power and presence to groups and associations who would otherwise be permanently excluded from politics and participation. In mixing what would otherwise never be added to a purely formal constitution, Britain secures a plural polity that far outstrips that achieved by representation alone, and that heterogeneity is perhaps best exemplified by the House of Lords.

When discussing reform of the Upper Chamber, we need to bear in mind the merits of our own tradition and introduce change in the light of our foundational principles, rather than against our first principles and the constitution that animates them. We agree that it is right to introduce an elected element to the House of Lords, but would argue that such election should foster plurality and increase the mix of our mixed constitution, rather than extend the writ of a form of democracy that in practice rather than in intention, will diminish the plurality of the Upper House by extending the dominance of the party system and the power of the executive.

The Status Quo

Because the Lords is for the most part composed through patronage and a poorly understood appointments process, the public impression is still that of a House founded upon an illegitimate hereditary principle that has produced further illegitimacies. As Lord Adebowale speculates, “Among those who do not see themselves as ‘political,’ the Lords is seen as an anachronism and undemocratic.” This impression is clearly shared by the wider legislature and has resulted in the numerous and varied

proposals for reform. In part, there has been no consensus on reform because there is no contemporary clarity about our own constitution and the place of the House of Lords in it. Drawing on Frank Field's argument, we need to review the primary principles of our democracy before fast forwarding further proposals for constitutional reform.

As this series of essays contends, we need to recover the traditional meaning of the Lords as upholding a politics of a wise and wider council, and of a virtue and excellence that is broader than those the current political powers exemplify. Just as rulers once needed judicious counsel, so the legislative output of the present executive needs sober reflection, reasoned debate and just amendment. The House of Commons may represent the people at one point in time, but the government of the day is beholden to the plurality of the entire electorate upon the permission and participation of whom its continued existence depends. As a country founded on and framed by a mixed constitution, we need to recover a different role for the Second Chamber, such that it can represent what a system wholly based on representative democracy would exclude: wider society itself.

Broadly put, we believe that the Commons represents the will of the people – but the Lords should represent society – and elections dominated by political parties will never deliver that. We need a 'Civil Society' Lords – that means a Second Chamber composed of all of us and our wider affiliations, sympathies and beliefs. "The important thing", writes Roger Scruton, "is to free the Upper Chamber once again from the stifling grip of the party machines, and to allow civic interests rather than political ambition to govern the conversation there."

The Government's Proposals

The idea that a wholly or mainly elected House of Lords makes our system more democratic appears a deeply problematic assumption. An elected House of Lords would soon destroy the complementary relationship that exists between the two Houses of Parliament, providing the Upper House with a competing mandate by which it could lay claim to an equal right to legitimacy and public representation – and arguably, a greater right if its members were elected more recently than those of the Lower House. Whether or not its composition was a direct duplicate of the Commons, the Lord's claim to representation of the electorate would inevitably diminish the role of the Lower House as the principal chamber of accountability, thereby weakening responsible government through creating the possibility of partisan conflict between both houses.

The damage that a mainly or wholly elected House could inflict goes further still, for the elected element would lead to the loss of most, if not all, of the independent crossbenchers, thereby reducing the Chamber's cherished independence. For there is little doubt that parties would in the end dominate the electoral process – a point tacitly acknowledged by the Government being open to the list system for any election to the Upper House. Moreover, elections imply accountability, and that would in all likelihood burden members with constituency duties, which, due to time constraints, would lead to a decline in the quality and depth of legislative revision and committee work.

In such a reformed House, most of the Chamber's eminent leaders from the professions including business, arts and other sectors of society would be unlikely to stand for election, which would severely

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limit its broad range of professional expertise. Plus, unless a strict and hitherto unprecedented quota system were implemented, we could expect to see a reduction in the number of ethnic minority members, as minorities are typically under-represented in elected chambers – needless to say, this would result in a decline in the diversity of opinion expressed and in the creation of a House less representative of the population than it is currently. Given this catalogue of negatives, all of which subtract value from the political process, it is difficult to ascertain precisely how or why a fully elected Upper House would improve the governance of Britain.

Most crucially, as mentioned throughout these essays, any wholly elected system will simply extend the dominance and control of the main political parties and extend the writ of the executive. The one thing an exclusively electoral approach will not do is deliver a Chamber more representative of society, and all the needs and interests found therein. Representative democracy in a mass society quite simply lacks the means to deliver anything but party dominance. On very rare occasions and in a particular locality, first past the post (and theoretically AV) can deliver the selection of a non-aligned individual – but it cannot deliver a Parliament of non-aligned independent individuals.

Unfortunately, proportional representation, the system favoured and proposed by the Government, mitigates most of all against the individual selection of the best person. It even further enshrines through proportionality and compounds through a list system, party and executive dominance. For in a list system (which the Government is open to), each party simply gives its list of candidates in order of party preference, and the higher the percentage vote, the more members on that list get elected. And this being the case, it is far from clear that the system reflects what the British public want or need from their Second Chamber.

Other Options for Reform

The manner in which a more democratic and representative system for the Upper House might be achieved is a matter for debate and study. Various models can be envisaged which would succeed in attaining a House that is truly representative of civil society, and that would add democratic value to the political process. We would welcome, and we surely need, a wider debate – on which options for reform should be considered, such as those proposed by Lord Low within this compendium. Neither the present status quo nor the Government's proposals for reform seem entirely defensible, and we ask that more and better approaches be given due weight and consideration. For us, reform must be guided by the fundamental principles of the organic and mixed polity, which is the particular British genius that has ensured our political stability, longevity and success. For our part, we believe that the best model for a reformed House of Lords is a hybrid house – composed a third each of appointment, election and nomination.

A Third by Appointment

We believe that those selected for the Lords by appointment should be from civil society and – all the professions, expertise and excellences found therein. Representatives would be selected by an appointments panel then as now,²³ but it would be statutory based and its express brief would be to

²³ With the exception of the bishops of the Church of England whose representation would continue unaltered, in recognition of the Church's status as the Established Church, and the important role that the bishops play in representing all faiths and communities across the country.

populate the Lords with the widest range and deepest experience of civil society. Through this route, the Upper House should select distinguished figures from an array of sectors and professions, including universities, trade unions, the civil service, the armed forces, the police, business, sports, third sector, the arts and the sciences. These Lords should be composed of doctors, nurses, teachers, managers, administrators, academics and all the varied types of labour and industry in our country. There should also be representatives of all major faiths in recognition of the contribution that religious communities make to community cohesion and the public common good. Our politics needs more than ever the wise counsel of those who are esteemed in their professions and expertise and not subject to any political whip or partisan concord. These are the crossbenchers of tomorrow.

Such a need is widely recognised, as demonstrated through Lord Low's proposals for electoral colleges based on "constituencies of expertise". With regards to appointment, Frank Field states within his essay that "there would be a need...to establish a reform commission with the duty to begin mapping out which group interests should gain representation, and at what strength." The current mode of determining membership is currently top-down, but consideration needs to be given into how we might place selection by appointment back into the hands of the groups and associations themselves. Decentralised selection by groups subject to the appointments panel is would certainly create a 'bottom up' nominations process for the Upper House.

The question as to how long civil Lords should serve is a good one – on balance we like the Government's three term principle, but again length of service should be discussed as if we want more mid- and early-career Lords and we do, some mitigation of their service might be desirable.

By providing a forum for the representation and consideration of a wide variety of views from a diverse range of groups, the House of Lords would be able to be democratically representative of society in a manner that is unachievable in the Commons and unattainable by direct election. Critically, and again guided by the principles outlined above, the essential characteristics of the House of Lords – best exemplified today by the crossbenchers – would be preserved: independence, expertise and the voicing of minority/sectional opinion. What we do not need is more politicians in thrall to the executive, but rather more 'civil Lords' loyal to society. To quote Stephen Bubb: "The recent debates on welfare reform have...demonstrated the real value of an independently-minded revising chamber. The Lords have given voice to concerns and problems that, frankly, have not been fully expressed elsewhere in the political process. In doing so, they have helped to ensure that the marginalised and voiceless can be heard. So often our political parties and their processes seem to ride roughshod over such concerns, the whips quietly steamrolling any dissent. Having civil society represented in the Lords means a group of peers who are unwrapped and irrepressible."

A Third by Election

In common with the advocates of many other reform proposals, we believe that to be truly representative of society, the Lords must also incorporate election. Concomitant with this is the frequent demand that the Upper House have some element of regional representation. Combining the two demands makes sense as election is the obvious means of selecting suitable regional representatives;

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however, to ensure a distinct voice and encourage voter re-engagement, it is imperative that the electoral system differ radically from the system used to elect members of the House of Commons. As Adrian Pabst rightly noted in his essay, "a growing number of Britons are sceptical about...political parties and the transformative impact of elections. Among the numerous indicators are...a decline of trust in government and parties...membership in the mainstream political parties has collapsed... The proportion of voters who are members and/or activists of the three main parties has tumbled from about 20% in the 1970s to less than 1% in 2000's..."

Success in the election of regional representatives is obviously dependent on offering the public a striking and popular alternative to the party system – i.e. candidates holding no official party affiliation. We therefore propose a form of non-partisan election, on a county and city basis, of representatives of the regions and conurbations, with an express remit to relate their areas to the common national good. In order to counter the loss of party support a small but appropriate budget should be available to candidates for election who amass enough signatures to qualify, though that should not preclude any citizen from standing. There is sufficient precedence for non-partisan democracy; for example, the American state of Nebraska, Guernsey, the Falkland Islands, the Isle of Man, two Canadian territories and major North American cities and counties elect representatives with no party affiliation.

As with the appointments system, the process of candidate selection and the precise allocation of seats would be examined by the reform commission. At the very least, candidates should be expected to be active community residents. We imagine that like the Commons these Lords should be subject to further elections, but the precise timings of their writing should be open to further consideration. By electing independents with a direct, demonstrable and dedicated connection to their local community we will truly and finally have 'people's peers', as well as balanced regional representation. The surest way to engage a public exhausted by traditional politics, and to revive their faith and confidence in elected representatives, is to provide them with independent representatives whom they can truly regard as one of their own.

A Third by Nomination

Public distrust of political parties notwithstanding, we cannot, and should not, avoid the political nature of the House of Lords. The House is political and a degree of party involvement is essential to its operation. The Upper House needs the experience and wisdom of politicians and, in some manner, the political work of both houses requires integration and continuity.

We propose that the final third of the House of Lords comprise members nominated by the political parties, perhaps on the basis of their share of the Commons vote. This system would also enable Britain's most accomplished politicians and statesmen to continue their productive involvement in public life, even after leaving the House of Commons, just as it would allow prospective politicians not in the Commons but involved in community or local politics to conceive of an alternative political career in the Lords. The leaders that the respective parties would nominate, and again, the time and length of service, would need to be considered – for this group it might make more sense to have the nominations tied in with the electoral cycle for the Commons, as one would not want a large majority in one election to create a permanent majority if the election swings violently the other way in subsequent national votes.

Conclusion – a Hybrid House

Some critics might argue that a hybrid house will endow the elected contingent with greater legitimacy than the un-elected. But around the world, and to varying degrees, a number of second chambers possess an uncontroversial mix of elected, appointed and nominated members, including distinguished and accomplished representatives from various fields of endeavour and distinct national communities. As these essays reveal, legitimacy is a concept as finely nuanced as democracy and may be derived from any number of sources, of which election is but one. Let us not forget that of the three elements of Parliament, only the Commons is elected. We have never voted for our Sovereign, and yet who would claim that the Crown is illegitimate? We have never voted for our judges, but the quality of the British judiciary is internationally esteemed and their legitimacy is beyond question. The legitimacy of peers may derive from their personal distinction, expertise, experience, suitability, ability and the process of selection as much as anything else.

The proposal we have here detailed, adheres to the fundamental principles of good Upper House reform and we believe it will help create a chamber that will add value to the political process and improve the governance of Britain. It preserves and expands the essential characteristics of the Lords, addressing the requirements of 21st century Britain. It will enable the House of Lords to function more effectively in the performance of its constitutional roles – duties all the more important given the increasing executive dominance of the Lower House. A House of Lords reformed along these lines could play a more important political role than it does currently, particularly as a powerful guardian of the constitution and democracy, civil liberties and the rule of law.

Ultimately, democracy needs powers other than itself – and the greatest power besides the will of the people are the people themselves, their longer interests and their deeper concerns. If the House of Lords is reformed, it should reflect the 'Civil Society' that is also the 'Good Society'. This would be a welcome modernisation of our mixed constitution, an opportunity to renew the public's political faith and a great good indeed.

British Civic Life

This publication is an output of ResPublica's British Civic Life workstream, one of the three core workstreams of The ResPublica Trust.

Within this workstream we will explore the use of community assets and cultural hubs for wider social and public good, the importance of the family and other social institutions in cultivating values and citizenship, and the social action and ethically instructive role of faith and other civic groups. Alongside this publication, our work on the British constitution will examine the value of the monarchy as an institution alongside others for citizens today.

The Queen's Diamond Jubilee and the Olympics in 2012 mark a monumental year for Britain, and complement our work on the social and cultural heritage of civil society. From grassroots groups to embedded institutions, civic association maintains a central role in cultivating an engaged and connected society. These projects all examine social capital as an engine of progress as much as economic capital, outline principles to empowering individuals and communities, and emphasise quality of life and human relationships as key to the progression of a social common good.

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