

Advocated Sortition

and Second Chamber Reform

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Introduction

This paper argues that the House of Lords is a crucial component in the system of checks and balances that protect the liberty of British citizens against arbitrary government. However, to do so, it must have democratic legitimacy, be independent of the primary chamber and be pluralistic and so be able to offer a wide range of perspectives in the scrutiny of public policy and, consequently, the chamber must be reformed.

The paper's first section describes the current House and briefly outlines some arguments of those seeking reform. It argues that the House is an essential part of a mixed constitution. It considers proposals to replace it with an elected or appointed assembly, the most commonly cited options and rehearses some arguments for and against those ideas. It introduces sortition as a potential third option. It argues that sortition is the only way the upper chamber can be democratic, have the independence required to fulfil its primary task and offer a pluralistic solution to deliberation. It presents some of the benefits of this approach, the challenges it raises and possible strategies to overcome them.

In the second part, the paper proposes one possible implementation: Advocated Sortition. Advocated Sortition has its roots in the jury system, which has long been used in law courts and is well-trusted in society. Like a jury, members of the House are chosen by lot from the population. They form committees to examine a specific topic, such as a bill or policy area. The jury is presented evidence by advocates who call expert witnesses both for and against the measure. Unlike a law court, the jury may interrogate the advocates and the witnesses. Then, in private, the jury debates the evidence and reaches collective decisions that can be acted upon.

The new chamber would be directly democratic, pluralistic, and representative of the citizen body as a whole in the best traditions of a mixed constitution with a bicameral legislature. The document also describes how online meeting technology, currently used in commerce, might make citizen participation a practical reality nationwide.

The Case for Sortition

A Brief Description of the House of Lords

The primary purposes of the House of Lords, the upper chamber of the British Parliament, are to examine legislation, question government actions, and investigate public policy. It consists of a large chamber where members assemble to hold debates, ask questions, and vote. There are also committee rooms where detailed investigations of issues occur. Members take part in various committees of the House as well as joint committees with members of the House of Commons.

Given its name, many people assume that the House of Lords is wholly or partly hereditary. It is not. Of the 781¹ seats at the time of writing, only 92 are hereditary peers. Ninety of those are elected by their fellow hereditary peers, and two are appointed *ex officio*.² Legislation introduced in 2024 awaiting royal assent will remove the remaining 92 hereditary peers.³ Of the remaining members, up to twenty-six are bishops, known as the *Lords Spiritual*, representing the established church, and the rest (663 members) are ‘life peers’, i.e., non-hereditary appointments. The members who do not represent the established church are known as the *Lords Temporal*.

Having a second chamber based on appointment is very common. At the time of writing, The Inter-Parliamentary Union (IPU) online database⁴ lists 198 countries with parliaments, of which 80 are bicameral. Of those, only 28 have directly elected second chambers.⁵ The rest use the ‘indirect election’ method (i.e., an elected body selects the second chamber members) and

¹ The total number of members is not fixed. Each year new life peers are created to replace those no longer serving the House.

² The Earl Marshal and the Lord Great Chamberlain have seats as peers in order to carry out state ceremonial and administrative functions.

³ House of Lords (Hereditary Peers) Bill, 2024

⁴ The Inter-Parliamentary Union online database. <http://archive.ipu.org/parline-e/parlinesearch.asp>

⁵ 10 are indirectly elected, 11 are appointed, and 49 a mixture.

other kinds of appointment.⁶ Frequently, nations employ a mixture of mechanisms. In some cases, the appointments are *ex officio*. In Britain, about ten of the appointed members are former judges. In others, such as Ireland, there is an attempt to draw membership based on vocation.⁷ In some nations, especially federal ones, the membership is managed to ensure a regional or territorial representation, often through appointment or election.

The notion of ‘life peers’ has existed since the Life Peerages Act 1958.⁸ An essential benefit of the Act was to pave the way for women to take their place in the House of Lords. The monarch creates life peers under the advice of the Prime Minister.⁹ According to a parliamentary briefing,¹⁰ of the 1517 new life peers created since 1958, 502 (33%) were former MPs elevated by leaders of the major parties through political appointment. In addition, peerages have been awarded to people with senior party roles, political associates, and advisers. Some peers are appointed to boost the strength of political parties. These are known as ‘working peers’ and are expected to attend regularly. Peerages are also commonly awarded to senior civil servants, the heads of public institutions, and so on. In addition, an ‘increasing number’ of people have been given peerages for service to the community, such as charitable work and those who excel in culture and sport. They are considered crossbenchers because

⁶ Sometimes mechanisms are specific to the nation in question. So, for instance, the Senate of Lesotho has 22 places for hereditary tribal chiefs, while the Colombian Senate reserves two places for indigenous communities.

⁷ There are five vocational panels with specialist knowledge of or experience in public administration, agriculture/fisheries, culture/education, industry/commerce and labour. However, in practice, the actual appointments are usually party-political.

⁸ The idea of Life Peerages was suggested by Bagehot as a means of extending the diversity of the chamber and to eliminate widespread apathy that was reducing the value of its debates.

⁹ When we say the monarch is ‘advised’, the sovereign is expected to accept the advice given in accord with the precepts of constitutional monarchy.

¹⁰ Taylor, Russell, *Life Peerages: Creations since 1958* (House of Lords Library, 2021) <https://researchbriefings.files.parliament.uk/documents/LLN-2021-0002/LLN-2021-0002.pdf>

they sit separately from the government or opposition benches. HOLAC vets all nominations.¹¹

In terms of age, the vast majority of members of the House of Lords, about 85%, are over 60. There is no formal retirement age, though members may choose to retire at any time. In 2022, a bill was proposed to set a retirement age of 75, but it fell at the end of the 2021-2022 session. It is not unusual for a member to serve for decades. Most other countries have fixed terms that are often longer than the usual term for a member of the primary chamber.

The process for removing a member of the House of Lords is complex. The monarch grants a life peerage with Letters Patent, but the Crown has no mechanism to remove a peerage once created. It requires an Act of Parliament. The most recent example of such an Act is the Titles Deprivation Act 1917,¹² enacted to remove peerages from those who had ‘during the present war, borne arms against His Majesty or His Allies, or who have adhered to His Majesty’s enemies’. Other legislation has been enacted to remove peers from serving in the House of Lords. For instance, the House of Lords Reform Act 2014 allows members to be removed when convicted of serious offences. The House of Lords (Expulsion and Suspension) Act allows the upper chamber to expel or suspend members by resolution of the House. Peers can relinquish their titles under The Peerage Act 1963, which Tony Benn used to relinquish his title in 1963.

The House of Lords is not particularly representative of society at large. Only 27% of peers are women.¹³ A research briefing from 2019¹⁴ stated that about 6% of members of the House of Lords come from minority ethnic communities, significantly

¹¹ HOLAC (The House of Lords Appointments Commission) propose non-political appointments to the House of Lords and are responsible for vetting political appointments made by the Prime Minister.

¹² Titles Deprivation Act 1917, <https://www.legislation.gov.uk/ukpga/Geo5/7-8/47>

¹³ UK Parliament, *Lords Membership*, 2023
<https://members.parliament.uk/parties/Lords>

¹⁴ Purvis, Matthew *Ethnic and Religious Diversity in the House of Lords* (House of Lords Library, 2019)
<https://researchbriefings.files.parliament.uk/documents/LLN-2019-0150/LLN-2019-0150.pdf>

lower than in the population at large (18% according to the 2021 census). There are twenty-six openly gay or lesbian members (about 3.6%), similar to the ONS estimate of 2.7% in the population aged 16 or over. No equivalent figures indicate religious diversity apart from the *Lords Spiritual*. However, the briefing suggests that the Lord's membership is increasingly multi-faith, including those of no faith. HOLAC is asked by the prime minister to have 'regard to diversity, including ethnicity, religion, gender and geographic, as well as professional expertise'. The long period of tenure means that only a few new appointments are possible each year. Consequently, the House does not generally keep pace with changes in society at large.¹⁵

The House typically sits for between 150 and 220 days per year.¹⁶ The pattern of stop (rise) and start (return) is more similar to a school year than a workplace. There is usually a break (recess) of two or three weeks at Christmas/New Year, about a week at Easter, and a week at Whitsun. The Summer recess typically runs from late July to early October. The House is sometimes recalled during recess for a debate if a critical issue arises. The House usually sits for about seven hours a day, beginning around lunchtime. Debates can go late into the evening (or sometimes much later).

The organisation of the Chamber is modelled on that of the Commons, with a Lord Speaker who chairs debates and leaders who speak for the government and opposition and are members of their respective party cabinets. Party whips seek to ensure their supporters vote on party lines. Members of the House receive reports, ask questions of government members, make speeches in favour or against bills, propose amendments and cast votes on those amendments.

¹⁵ Apart from age, these figures are comparable to the House of Commons with 32% women, 8% ethnic minority, 6% LGB quoted in Taylor & Garcia 'Commons people: How diverse are MPs - and do they reflect the UK?' Sky News 12 Nov 2019 <https://news.sky.com/story/commons-people-how-diverse-are-mps-and-do-they-reflect-the-uk-11829868>

¹⁶ Many members engage in activities that require additional attendance and often have other commitments that support their membership.

In addition to the chamber, various select committees consider issues, gather evidence, and generate reports on behalf of the House as a whole, to which the government responds. Sometimes, these focus on specific concerns and sometimes on more general issues.

The House of Lords is the world's largest parliamentary chamber in a multi-party democracy. There is a widespread belief that the number of members is too large to be an efficient body. For comparison, the US Senate has 100 seats. However, the number of attendees in the Lords is somewhat less than the overall membership. Many members only attend those debates where they feel they can contribute. In the last few years, the average attendance has declined from just under 500 between 2010 and 2019 to 367 in 2021-2.

Bills may be initiated in the Commons or the Lords. Government bills are often initiated in the Lords because otherwise, there is little for the Lords to do until new legislation has completed its readings in the Commons. In 2019-2021, 141 bills were presented to the House of Lords for debate. Of those, 45 (38 government bills and seven private members' bills) were initiated in the House of Commons, and 96 (10 government bills and 86 private members' bills) were started in the Lords. None of the Lords private members' bills went on to receive Royal Assent.¹⁷ Of the 55 bills debated in the Lords, the Lords amended 26 and all but one¹⁸ would become Acts of Parliament. During their deliberation, 3971 amendments were tabled, of which 754 were passed, including 83 government defeats. In addition, many amendments would have been tabled and withdrawn before being called for debate. There were 153 divisions (votes). In addition to bills, the chamber is used to make announcements, receive committee reports, table questions of the government, and general management of the House's business.

¹⁷ Most were not proceeded with after First Reading. It is frequently the case, that Private Members Bills are introduced in the Lords in order to have a debate on an issue and then withdrawn at the end of the debate.

¹⁸ Non-domestic rating (Lists) Bill was dropped after second reading.

Demands for Reform

While many people appreciate the hard work undertaken by members of the House to improve legislation and question government and public policy, they are not comfortable with its structure or composition. There is a feeling that it is not democratic or representative of the population. Eliminating heredity and the established church¹⁹ might increase the democratic credentials of the House but would only scratch the surface of the problems that need to be addressed.

Some people believe that the House should be abolished. They argue that it is anti-democratic for an unelected chamber to overturn or delay legislation by the elected legislature. Moreover, they say an elected second chamber would add nothing over and above the primary one.

In opposition to abolitionists, some people believe that the Lords performs a valuable role but should be reformed to be more democratic. The debate has generally focused on whether the Lords should be appointed or elected. A project by UCL that commenced in 2021 sought to understand how people across Britain want the country's democracy to work.²⁰ The project asked YouGov to take polls to collect evidence. One area of polling considered reform of the House of Lords.²¹ The survey asked whether people preferred an elected or an appointed chamber. The result was evenly balanced, 29% elected and 28% appointed. As a matter of interest, part of the project involved a citizens' assembly chosen by sortition, but this option does not appear to have been polled.

¹⁹ In the 2021 census, less than half the people describe themselves as 'Christian'. In a NatCen BSA survey in 2009, less than 20% of those are 'Church of England'. <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion>

²⁰ UCL Constitution Unit 'Democracy in the UK after Brexit' <https://www.ucl.ac.uk/constitution-unit> (2023) <https://www.ucl.ac.uk/constitution-unit/research-areas/deliberative-democracy/democracy-uk-after-brexit>

²¹ Renwick, Alan, Lauderdale, Ben, Russell, Meg, & Cleaver, James, Public Preferences for Integrity and Accountability in Politics, 2021 (UCL, 2023) https://www.ucl.ac.uk/constitution-unit/sites/constitution_unit/files/ucl_cu_report3_digital_final.pdf

Those who think the Lords should be a wholly or partially elected House argue that without elections, the body has no democratic legitimacy. Others are happy to continue with an appointed assembly but want to place the power to appoint members in the hands of an 'independent body' rather than the Prime Minister, who they see as manipulating the membership of the Lords for party political ends. Proposals to limit the Prime Minister's power of patronage are more often heard from the opposition benches than those of the government. Those who favour abolition or election think an appointed chamber has no democratic legitimacy, even if the independent body that appoints it is democratically elected.

Despite its apparent shortcomings, some think the existing chamber is a practical compromise better than all the proposed alternatives. They argue that it is a locus of expertise and value its ability to question public policy and deliberate on legislation brought by the Commons.

The most recent significant reforms to the Lords under the Blair and Brown administrations were prompted by a desire to create an assembly with more democratic legitimacy. However, for some, the House of Lords was a better institution before those reforms took place because it was more independent. There was a belief, often held across party lines, that it performed its role with honesty and integrity with little deference to political factions. This is not to say there weren't factions. The old House of Lords had a built-in Conservative bias. However, many believed the members made decisions according to conscience or even *noblesse oblige* rather than their political allegiance. They were, at least, honest and, therefore, trustworthy, even when they came to the wrong conclusions. Lords elevated by inheritance have little to lose by going against party diktat. In removing the hereditary principle to make it more representative of the citizen body, we created an increasingly politicised second chamber based on patronage constructed on party lines.²² For some, the rise in political appointments under prime ministerial patronage has led to increased corrupt practices and a

²² Osborne, Peter, *The Triumph of the Political Class*, 2008

consequent lack of trust. The House's prestige has accordingly declined, leading to demands to reform or abolish it.

In 2020, the Labour Party established a policy body rather grandly named 'Commission on the UK's Future' under former Prime Minister Gordon Brown to consider the reform of the nation's governance. It published its plans in 2023.²³ The sections on House of Lords reform are strongly critical of the current assembly,²⁴ but the plans for reform are vague. The commission proposed to remove hereditary members, reduce its size, and remove the prime minister's power of patronage. These positions are uncontroversial. Some of these issues were exacerbated as part of reforms under the Blair and Brown administrations. However, it also proposes replacing the Lords with an elected chamber that represents the 'nations and regions' but leaves 'the precise composition and method of election matters for consultation'. The plans seek to devolve the government further, placing greater powers in the hands of regional councils with the leading role of the courts in arbitrating decision-making powers. New councils would replace Ministerial Committees, and a new Council would drive regional cooperation. There would also be:

a 'solidarity clause', a legal obligation of cooperation between different levels of government and institutions across the UK.

It is unclear how the last would work.

Many see a danger that politics is increasingly overseen by the law courts, which seems to undermine the sovereignty and democratic independence of Parliament, potentially replacing it with lawfare. It is a fundamental constitutional principle that a Parliament cannot bind future parliaments. Can they do so through law? In what respects is a court a democratic body? Political debate is increasingly one of process rather than substance. It seems to fly in the face of the Bill of Rights 1689, a founding constitutional document, that 'prosecutions in the

²³ Labour Party, *The A New Britain: Report of the Commission on the UK's Future*, 2023

²⁴ Brown was a leading figure in the administration that put in place the current assembly in 1999.

Court of King's Bench for matters and causes cognizable only in Parliament' were 'utterly directly contrary to the knowne Lawes and Statutes and Freedome of this Realme'.

It does not seem that the idea of an upper chamber based on regional elections would be hugely popular. A Sortition Foundation Poll in 2023, carried out by YouGov, asked:

Currently, UK Parliament has two chambers, the House of Commons (1st chamber) and the House of Lords (2nd chamber). The House of Lords is made up of hereditary peers (those who inherit a seat in the House of Lords), bishops, and other 'life peers' chosen by Prime Ministers to have a seat in the Lords until they die. The Lords have the power to delay and suggest amendments to legislation passed by MPs in the House of Commons. In which of the following ways, if any, would you most like to see the House of Lords reformed?

The results²⁵ shown in Figure 1 indicate a broad spread of opinion, with no option achieving more than 25% of those polled.²⁶ However, only 6% favoured a "house of regions". It suggests that public opinion may not align well with Labour's plans. Such a body might be hamstrung from the outset, with many questioning its legitimacy. It would make no sense for such a significant change in the British Constitution to be made on the back of a general election victory, especially a win based on a very low popular vote for a measure buried in a slew of other manifesto commitments. Significant constitutional change requires a national referendum. Such a referendum must allow the people to select from various alternatives.

²⁵ In the figure, the blue bars indicate the results of the survey, and the orange bars exclude 'Don't Knows' (i.e. the results from those who express an opinion). 2005 British adults were surveyed by YouGov with fieldwork undertaken 18th-19th April 2023.

²⁶ Sortition Foundation, *House of Citizens tops public poll to replace the House of Lords*, https://www.sortitionfoundation.org/house_of_citizens_tops_public_poll_to_replace_the_house_of_lords

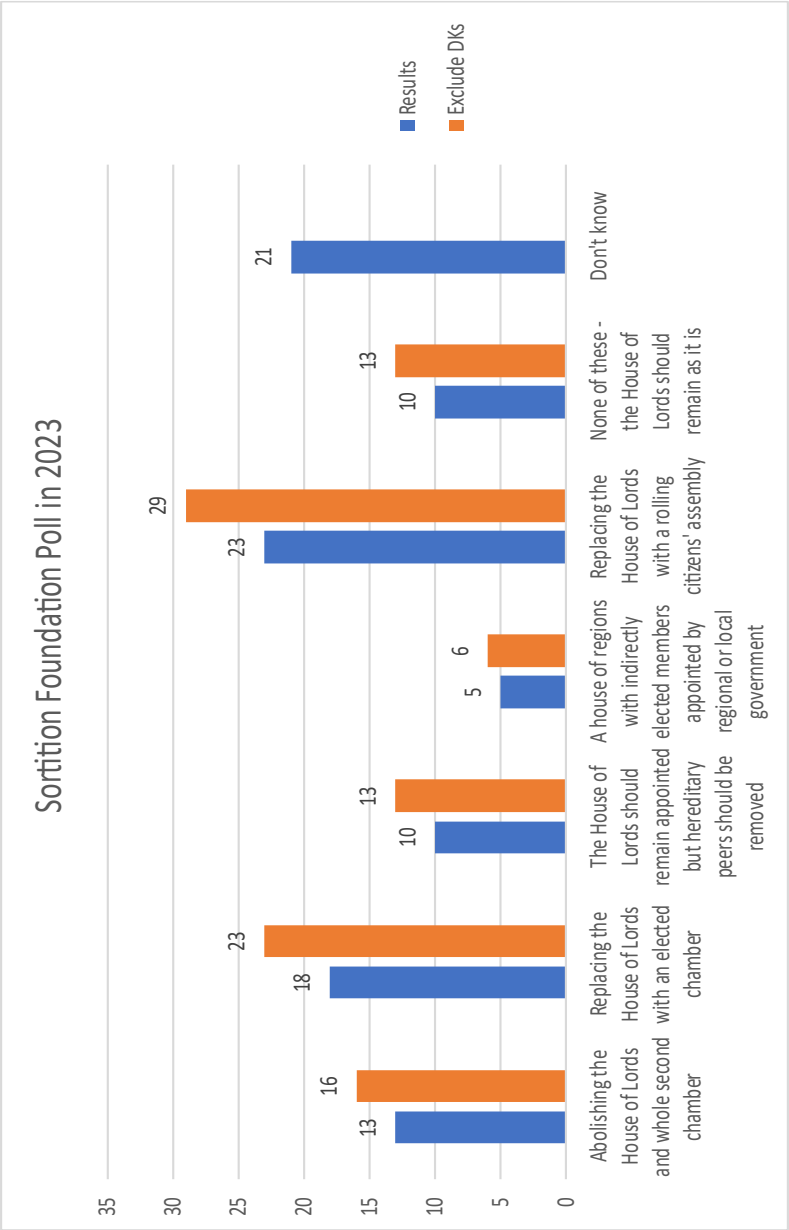


Figure 1 Sortition Foundation Poll, April 2023

Should There Be a Second Chamber?

As indicated, the IPU Online Database states that of 198 parliaments worldwide, only 80 are bicameral.²⁷ The majority do not have a second chamber at all. An untitled briefing from the UCL Constitution Unit analysed the data in 1996.²⁸ It showed that many of those that don't have a second chamber tend to be unitary states with smaller populations. At that time, Portugal was the largest democratic country without a second chamber, with a population of ten million. Britain is a comparatively large state in terms of population, with geographically distinct regions with some form of devolved administration.²⁹ Such nations typically have a second chamber.

Second chambers have developed in different ways depending on the nation. In some countries, such as Britain, the second chamber was adapted from governmental structures formed as far back as the medieval period. Two crucial principles would govern the development of the English medieval parliament: firstly, everyone is subject to the law, including the king, as shown by successive monarchs reissuing Magna Carta, a legal document with constitutional significance. The Case of Proclamations 1610 reiterated this principle and established that law could only be made through parliament, a principle repeated in the Bill of Rights 1689.³⁰ Secondly, resources sought by the monarch in the form of taxation would require the consent of parliament. The king would have to negotiate with parliament for funds. There was no tax exemption for the first and second estates as in France, where the third estate carried the tax burden. So, a parliament voting for tax increases to fund the monarch would be voting to tax themselves.

²⁷ The Inter-Parliamentary Union online database. <http://archive.ipu.org/parline-e/parlinesearch.asp>

²⁸ UCL Constitution Unit, 1996, p.2. <https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/40.pdf>

²⁹ The countries of the union have their own devolved assemblies with different powers depending on the country. We also have city administrations with powerful elected mayors along with multilayer administration under borough, district and regional councils elected using a range of systems.

³⁰ <https://www.bailii.org/ew/cases/EWHC/KB/1610/I22.html>

The transformation of Parliament from a medieval to a modern institution occurred in the seventeenth century due to a series of political upheavals (the Civil Wars, the Interregnum, the Restoration, the Exclusion Crisis and the Glorious Revolution). Around the time of the civil wars, there was intense political debate among the leading lights of the English Enlightenment, such as James Harrington, Algernon Sidney, William Petyt, and, later, John Locke, about how to create a form of government that was both stable and protected individual freedom against the power of the state. It was a central question for those who had experienced an absolutist King and Cromwell's Protectorate.

Many thinkers sought inspiration from classical sources, drawing on the ideas of Aristotle and Polybius. Aristotle wrote that three kinds of government were commonly used in Ancient Greece in the fourth century BCE: monarchy, aristocracy, and polity.³¹ The relative merits of each depend on the qualities of the individuals in government. For instance, a king who dedicates himself to the welfare of the realm and its people will create a stable, happy state. However, if the king acts in a self-interested manner, he becomes a tyrant, the people are unhappy, and the state becomes unstable. Like monarchy, aristocracy and polity have similar deviant forms, oligarchy and 'democracy', which occur when the government places its interests before those of the realm.

In his ideal state, Aristotle thought that every citizen would have a shared conception of the well-being of the state and its people and would have a share in government according to their roles. He suggests that the government should act according to the welfare of the people and that it should avoid alienating any portion of the population but instead try to bring everybody to the table. This approach might suggest a mixture of different forms of government, each with a separate role. By doing so, he thought the people would be happier, and the state would be much more stable.³²

³¹ Aristotle uses the term 'polity' to mean a balanced combination of an empowered middle-class supported by direct democracy.

³² Aristotle, *Politics* 1279a-1296b

Polybius drew on and developed the ideas of Aristotle. He praised the reforms attributed to Lycurgus in Ancient Sparta. Sparta was governed by a mixed constitution consisting of a dual monarchy, a council of elders elected for life called the *Gerousia* and a limited direct democracy through the *Ekklesia*. The kings were overseen by the *Ephoroi*, an elected body of magistrates. Voting in Sparta was by acclamation.³³ However, Polybius argued that the Roman Republic was the perfect mixed constitution consisting of the consuls, the senate and the popular assemblies, such as the *Comitia Centuriata*.³⁴ His writings influenced Cicero³⁵ and would be echoed by Thomas Aquinas in *On Kingship*.³⁶

During the Enlightenment, radical Whig thinkers combined classical ideas with English parliamentary traditions. They stressed that England had enjoyed a mixed government based on law immemorial and the antiquity of Parliament. They claimed that, under such a system, the monarch's power was not absolute and that sovereign authority was shared. Sidney, Petyt and others argued that Parliament could legally restrain the crown's rule, especially where the monarch acted as a tyrant. Harrington, drawing on Polybian republicanism, thought that good government is always a blend of monarchy (King), aristocracy (Lords) and democracy (Commons), each acting as a check on the others. He argued that this blend would produce a 'balanced sovereignty' provided no one part achieved absolute or hegemonic power.³⁷

Burke would take a similar view a century later. In *Thoughts on the Cause of the Present Discontents* in 1770, Burke argued that a

³³ Candidates would take turns walking into an assembly area and would be cheered by the people. In a separate closed room, judges would choose the winners by the volume of the cheers.

³⁴ Polybius *Histories* 6.11.11-13

³⁵ Cicero *De Res Publica* 1.42, 45

³⁶ Aquinas, *On Kingship*, 2.12

³⁷ Harrington, James *A System of Politics* [1661] in *The Commonwealth of Oceana and A System of Politics* ed. J.G.A Pocock (Cambridge: Cambridge University Press, 1992), Ch. X.

mixed constitution with a bicameral legislature is required to ensure that the monarch is subject to the law:

One great end undoubtedly of a mixed government like ours, composed of monarchy, and of controls, on the part of the higher people and the lower, is that the prince shall not be able to violate the laws. This is useful indeed and fundamental.³⁸

The Theory of Mixed Government became an established part of the Whig canon. Such ideas would lead to the creation of a constitutional monarchy, where the monarch can only exercise powers within prescribed legal limits, a fundamental principle in the British Constitution to the present day.³⁹

The Whigs would dominate British politics during the first half of the eighteenth century. William Blackstone later wrote:

And herein indeed consists the true excellence of the English government, that all parts of it form a mutual check upon each other. In the legislature, the people are a check upon the nobility, and the nobility a check upon the people; by the mutual privilege of rejecting what the other has resolved: while the king is a check upon both, which preserves the executive power from any encroachments. And this very executive power is again checked and kept within due bounds by the two houses, through the privileges they have of enquiring into, impeaching and punishing the conduct (not indeed of the king, which would destroy his constitutional independence; but, which is more beneficial to the public) of his evil and pernicious counsellors. Thus every branch of our civil polity supports and is supported, regulates and is regulated by the rest: for the two houses naturally drawing in two directions of opposite interest, and the prerogative in another still different from the both, they mutually keep each other from exceeding their proper limits; while the whole is prevented from separation, and artificially kept together by the mixed nature of the crown which is part of the legislative, and the sole executive magistrate. Like three distinct powers in mechanics, they jointly impel the machine of government in a different direction from what either, acting by itself, would have done; but at the same time in a direction

³⁸ Burke, Edmund 'Thoughts on the Cause of the Present Discontents [1770]' in *Complete Works of Edmund Burke* (Delphi Classics, 2016), p.827

³⁹ Similar controls were placed on the monarchy in Scottish law after the civil wars.

partaking of each, and formed out of all; a direction which constitutes the true line of the liberty and happiness of the community.⁴⁰

In the modern day, although the monarch still has executive power, that power is under government control. The monarch reigns but does not rule. The monarch's function is mainly ceremonial apart from 'orders-in-council' where, under advice from the Privy Council,⁴¹ the monarch can exercise specific statutory, prerogative, and judicial powers. The monarch appoints ministers, including the Prime Minister, according to well-defined procedures, opens and prorogues parliament and gives Royal Assent to bills passed by parliament, but they do not play an active part in its proceedings. Power is exercised on the monarch's behalf. So, for instance, when laws are given Royal Assent, they are enacted by the monarch, who holds executive power but can only exercise it by the authority of Parliament. Consequently, the statutes are headed as follows:

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Monarchs are advised by the government (and the Privy Council). While they can privately express concern about particular legislation or policy, they must follow that advice.

In other countries, such as the United States or France, bicameralism resulted from the establishment of a new constitution. Revolutions in response to overbearing government brought the need for post-revolutionary constitutions to control how the state is governed. The design of these constitutions drew on similar considerations to those of the English Enlightenment through the ideas of leading political thinkers of the day, such as

⁴⁰ From William Blackstone's *Commentaries on the Laws of England* quoted in Dickinson, H.T. *Liberty and Property: Political Ideology in Eighteenth-Century Britain* (London: Weidenfeld & Nicolson, 1977), p.145

⁴¹ A council of senior politicians from parliament, the devolved administrations, and some Commonwealth countries along with judges, clergy, and civil servants. A few members meet once per month to advise the monarch (as king-in-council) on important issues of the day and for the king to execute orders-in-council. The members who meet depend on the issues being discussed.

Montesquieu, Adams and Madison. In *De l'Esprit des Loix*,⁴² Montesquieu considered various ways to distribute power between the executive, the judiciary and the legislature. His tripartite system became increasingly important in political thinking in the eighteenth and nineteenth centuries.

Montesquieu favoured a system that avoided the centralisation of power to ensure that no single branch of the state could seize complete control. He argued that in a mixed constitution, the legislative power should be committed to an upper and lower chamber,

each having their assemblies and deliberations apart, each their separate views and interests.⁴³

He went on to explain the purpose of his approach:

The legislative body being composed of two parts, they check one another by the mutual privilege of rejecting. They are both restrained by the executive power, as the executive is by the legislative."⁴⁴

Similarly, John Adams highlighted the need for a mixed constitution as part of the system of checks and balances against dictatorial government. He argued:

no simple form of Government [a monarchy, or an aristocracy, or a simple democracy – any government with one lawmaking institution], can possibly secure Men against Violences of Power.⁴⁵

Like Montesquieu, Adams believed that to be effective, a mixed constitution needed to segregate the branches of the legislature:

The rich, the well-born, and the able, acquire an influence among the people that will soon be too much for simple honesty and plain sense, in a house of representatives. The most illustrious of them must, there be separated from the mass and placed by themselves in a senate; that is, to all honest and useful intents, an ostracism.⁴⁶

⁴² Montesquieu *De l'Esprit des Loix [The Spirit of Laws] [1748]* (Batoche Books, 2001)

⁴³ Montesquieu *De l'Esprit des Loix [The Spirit of Laws] [1748]* (Batoche Books, 2001) Book XI, Chap 6.

⁴⁴ Ibid.

⁴⁵ Adams, John *The Papers of John Adams Series III, General Correspondence and Other Papers of the Adams Statesmen*, ed. Robert Taylor, (Harvard University Press, 1979) 1.83

⁴⁶ Adams, John *The Works of John Adams*, ed. C. F. Adams, 4:290

James Madison, who drafted the Virginia Plan to amend the US Constitution to create a federal government with three branches: the executive, the judiciary and a bicameral legislature, also emphasised the importance of the last. In *The Federalist* No. 63, he argues that one role of the Senate is to serve as a check on the House of Representatives.⁴⁷ A school of modern American thought suggests that SCOTUS⁴⁸ has taken over the Senate's role in defending the people's liberties against overarching political power. Maybe the Senate is not sufficiently independent of the representatives to perform its function, and an appointed upper chamber is more effective at limiting abuse of power in the primary legislature.

The French *Sénat* (Senate) was established in 1795 as part of the *Constitution de l'an III*⁴⁹ to moderate the *Conseil des Cinq-Cents*, the primary assembly of the French First Republic and forerunner of the *Assemblée Nationale*.⁵⁰ Although it has a much smaller role than the primary assembly, the *Sénat* sees itself as the guardian of liberty and the protector of French institutions. The chamber is elected by the *grands électeurs*, who primarily consist of regional councillors. The nature of its election has led to it being dominated by right-of-centre senators, leading to frequent calls from the left for its disbandment.⁵¹

Some countries with a federal system have second chambers designed to represent territories within their federation. One purpose of these second chambers is to moderate centralised federal power. For instance, delegates in the *Bundesrat*, in Germany, are sent by the governing party in each state legislature. Some argue that the EU can be described as having a

⁴⁷ Madison, James, 'The Federalist No 63 The Senate Continued [1788]' in *Federalist Papers: Primary Documents in American History* (Library of Congress)

⁴⁸ The Supreme Court of the United States

⁴⁹ The constitution was largely written by the political theorist and Girondin, Pierre Danou.

⁵⁰ It was originally known as the *Conseil des Anciens* (Council of the Elders).

⁵¹ Bourgeois, Blanche 'Présidentielle : faut-il supprimer le Sénat?' *La Gazette des Communes* 18th April 2017

<https://www.lagazettedescommunes.com/500878/presidentielle-faut-il-supprimer-le-senat/>

mixed constitution with the commission president (monarchy), the commission (aristocracy) and the parliament (democracy). In this case, the primary legislative body is the commission led by its president. The parliament is a weaker, deliberative body with limited powers.⁵² Australia also has a federal system, and its elected Senate is apportioned, with twelve members for each State and two for the territories. The US Senate is similar, with two senators for each state regardless of size or population. Such apportionment can be used to benefit smaller, less powerful states. A strong separation between the powers and responsibilities of federal and state government is characteristic of the US system.

Some non-federal countries also elect the upper chamber on a regional rather than a national basis, such as Italy's *Senato della Repubblica*. Others, such as Spain's *Senado de España*, are constituted using a mixture of election and appointment from regional legislatures. Having a second chamber whose membership is based on representation from regions can help where there is a strong association by the electorate with the region to which they belong or where there are considerable differences in size, population or needs between those regions. Although Canada is a federal state, its Senate is appointed, similar to Britain. New Zealand, having a somewhat smaller territory and population, has a unicameral parliament.

At the time of the UCL briefing, its writers indicated no 'clear trend worldwide either towards or away from two-chamber parliaments'. At that time, nearly thirty years ago, there were 178 parliaments, 58 of which were bicameral – a similar proportion to the current figures.

In all these cases, there is a common theme – the protection of individual freedom against the power of the state. The role of the second chamber is to provide essential checks and balances to control the overarching power of government and the primary

⁵² Telò, Mario *Three European constitutionalisms and their respective legitimacy requirements: Explaining the long durée stability of the EU Polity in Debating Political Identity and Legitimacy in the European Union* ed. Sonia Lucarelli, Furio Cerutti, Vivien Ann Schmidt (Routledge, 2010), p.107

legislature. The principle of checks and balances argues that each branch of state should have the power to limit (or check) the other branches and maintain the state in balance. In Britain, the upper chamber is critical because of the nature of the constitution and its electoral system.

Since the time of Harrington, the increasing importance of the lower chamber has led to a diminution of the monarch's political power. Generally, the monarch is advised, but their power is limited to privately expressing concern about particular policies. Although executive power is still in the hands of the monarch, those powers are exercised on the advice of the government under the prime minister. The monarch is no longer an independent political force. They reign but do not rule, leading to a decline in the separation of powers. As the monarchy's power declines, one of the principal braces of the 'balanced sovereignty' is removed. The government, which controls executive power, dominates the primary chamber of the legislature through its majority against a weakened opposition. The upper chamber provides the only challenge to that power.

Another important consideration is the lack of a codified constitution - a document with special legal status upheld by the courts that cannot be changed except through some exceptionally demanding process, such as a referendum. This is not to say that Britain has no constitution but rather that it is not codified into a single set of documents. The British constitution is specified by a mixture of statute law, conventions, common law and works of authority, such as Bagehot, Dicey and Erskine May. Britain has no clear distinction between constitutional law and laws passed for other purposes.⁵³ For instance, a government with a sufficiently large majority could bring a bill that undermines the independence of the Lords and, if necessary, stack the upper chamber with peers to push the legislation through without recourse to the people. It seems optimistic to rely on elected politicians to defend a chamber whose primary task is to hold

⁵³ The UK Supreme Court recognises certain laws and other documents, such as the Bill of Rights, Act of Settlement, Acts of Union and the Parliament Acts as having special constitutional significance.

them to account. Consequently, the protections it guarantees are weakened. Although several laws have been passed in the last thirty years that have constitutional significance, few have required a referendum, and none have sought to strengthen the independence of the upper chamber.⁵⁴ Nor does there seem to be any intention to do so.

To make matters worse, the electoral system amplifies the power of the executive. In Britain, the people elect the primary chamber of the legislature using First Past the Post (FPTP). FPTP artificially promotes larger parties with strong regional support at the expense of smaller, less geographically focused ones. By boosting large parties, FPTP makes it difficult for small parties, especially those with widely dispersed support, to be represented. One consequence is that extreme parties, whether right or left, find it difficult to gain power. They tend to be smaller and more widely diffused in society⁵⁵. However, it also means that emergent parties are under-represented for the same reasons. For instance, in the 2015 General Election, UKIP achieved 12.6% of the popular vote, replacing the Liberal Democrats as the third most popular party, but only won a single seat.⁵⁶ This shortcoming has led to frequent calls to reform the electoral system to some form of PR. However, when a referendum was held in 2011, a large majority rejected the proposed change to Alternative Voting⁵⁷.

The electoral system tends to result in high levels of political stability, which is characteristic of the British political system, but at the cost of placing enormous power in the hands of the government through an amplified majority. Consequently,

⁵⁴ Such as The Human Rights Act 1998, The House of Lords Act 1999, various Devolution Acts, House of Lords Reform Act 2014, Fixed Term Parliament Act 2012, various Political Parties and Elections Acts, Constitutional Reform Act 2005.

⁵⁵ For instance, the BNP, a far-right party of the 1980s, never won a single parliamentary seat despite winning two seats in the European Parliament under proportional representation.

⁵⁶ The Liberal Democrats won eight seats with only 7.9% of the vote.

⁵⁷ While not being a proportional system, Alternative Voting (AV) was widely seen as a stepping stone toward it. It tended to be favoured by minority parties, but not the majority, reflecting the interests of those parties.

mechanisms are necessary to provide checks and balances that control government power, protecting the people from arbitrary government. The second chamber is an integral part of that process. It seeks to improve legislation through scrutiny and revision, offering amendments to the primary chamber for consideration. Of course, this only works if the second chamber is substantively different from the primary one. Harrington's 'balanced sovereignty', produced by a mixed government, is only maintained if the parts differ and are independent of each other, as argued by Montesquieu and Adams. If, for instance, the upper chamber was to come under the control of the government or was created by a similar mechanism, its power to balance the primary chamber would be significantly diminished.

The second chamber sometimes uses its power as a 'brake' on legislation. These delays might be seen as a means to enforce periods of reflection in the legislative process, or they may be seen as defying the actions of democratically elected governments. This difference of opinion is frequently discussed, even within the Lords itself. The Safety of Rwanda (Asylum and Immigration) Bill 2024 was a contentious government bill with multiple debates in the Lords. In essence, many members of the Lords rejected the government's approach to illegal immigration. The bill passed backwards and forwards between the two houses, seeking consensus, where there was a fundamental difference of opinion, which caused frustration in both chambers. In the Lords, Lord Lipsey (Labour) asked whether it was always right that the elected House must prevail:

My Lords, the phrase "the elected House must prevail" is a meme around this place. We have certainly heard it from both the Government and the Opposition, and we heard it again from the noble Lord, Lord Coaker, this afternoon. Most of the time, it is completely right that we bow to the will of the House of Commons. But is it always right?⁵⁸

Baroness Fox of Buckley (Non-Affiliated) responded:

My Lords, I am not a fan of the Bill, but I think it is time for it to pass.

⁵⁸ Hansard, Volume 837, 20 March 2024, Column 215.

I want to respond to the noble Lord, Lord Lipsey, who asked if it is always right that the elected House must prevail. The truth is that the elected House must prevail and that, yes, that is always right. We are an unelected House. We have a job to do, but at some point, it has to be the elected House that decides in a democratic society.⁵⁹

Dicey considers this point:

The general rule that the House of Lords must in matters of legislation give way to the House of Commons is one of the best established maxims of modern constitutional ethics.⁶⁰

Even if members of the Lords disapprove of a bill, they must recognise the primacy of the elected chamber. Failure to do so brings the second chamber into disrepute, and its role is undermined. The second chamber does not govern – it has no mandate. It is not accountable to the people. Despite these interjections, the amendments were made, and the bill was returned to the Commons, where they were, once again, overturned. After several more rounds, the Lords finally backed down. The law was repealed a few months later with a change of government.

As Dicey points out, in reality, the Commons always has the upper hand through its ability to create new peers or, at an even more fundamental level, revise the rules by which the Lords sit:

On any matter on which the electors are firmly resolved, a Premier, who is in effect the representative of the House of Commons, has the means of coercion, namely by the creation of peers. In a country like England, things are rarely carried to this extreme length. The knowledge that a power can be exercised constantly prevents its being actually put in force.⁶¹

The rule of law is an essential British constitutional principle. In a political system that relies on a strong separation of the legislative and judicial processes, the law must be well-framed and unambiguous. It must be defined in terms that the public

⁵⁹ Ibid., Column 216.

⁶⁰ Dicey, A.V. *Introduction to the Study of the Law of the Constitution* [1915] (Liberty Fund Inc, 1982), p.305

⁶¹ Dicey, *ibid.* p.306.

understands and must precisely indicate the legislators' intent. As Daniel Greenberg wrote:

“For many courts, the concept of the search for the intention of the legislature is based on a search into the mind of, if not the actual Minister tasked with taking the Bill through Parliament, nevertheless an “objective Minister”. That is based on an illusion that Ministers have actually turned their minds to the phrasing of each clause in the Bill. Although courts have become increasingly ready to assume that the drafter of the Bill has made a mistake, they also need to become increasingly aware that very often the choice of words has been not only entirely that of the drafter, but also made by him or her more or less at random and without any particular political or legal consideration.”⁶²

In law, as in everything else, words matter. One function of the second chamber is to refine and improve the law to meet these high standards. Without a second chamber, the responsibility for interpreting the meaning of the law falls to the judicial process, increasing the risk of unintended consequences.

Generally, Britain only has a mixed government at the national level. Assemblies in devolved administrations in the countries in the union and the regions are unicameral, and there is no strong separation of powers. As a result, those assemblies can be used as a yardstick for what would happen if the upper chamber were abolished.

During the Scottish devolution process, it was decided that Holyrood did not need a second chamber. In Scotland, deliberation is performed by committees of MSPs appointed according to party support. The architects seem to have thought no single party would hold a majority.⁶³ This is not necessarily the case. In the event of formal or informal coalitions, most members of those committees are MSPs representing the government or its supporters. The decision not to have an independent second chamber makes it possible for the Scottish

⁶² Greenberg, Daniel *Laying Down the Law* (Sweet & Maxwell, 2011), ch.6 Ministers

⁶³ This failure is odd. There is nothing about the electoral system, a regionalised version of MMP, that would guarantee this. It is almost as if the architects saw the administration of Scotland as a kind of enhanced regional government and completely ignored the need for appropriate checks and balances.

government to railroad legislation through Holyrood through its control of committee structures. One only has to think about the GRR Bill, where a minority party, the Scottish Greens, in an informal coalition with the SNP government, sought backing for particular legislation as a condition of their support. The committee that considered the legislation barely listened to alternative viewpoints. It had no interest in doing so. Several political commentators from all sides of the political spectrum have suggested that some problems in Scottish politics might be resolved by having an independent second chamber and strengthening the separation of judiciary and legislature to avoid corruption.

Like Holyrood, most local governments have no separate deliberative functions. Many of those councils have a large majority who, in many cases, have held office for decades. As a result, the opposition is weak, officials are both appointed by and political supporters of the council, local newspapers tend to support the status quo, and policy positions have little public consideration. Often, consultative documents are issued, but many believe they are used to justify decisions already taken by the council and its officials rather than as input to them. Town councils, especially those run on a cabinet basis, centralise decision-making to a small group of ruling party members, reducing pluralism and encouraging the creation of ideological regimes and a potential source of local government corruption. Worse, in some cases, the leaders or deputies of those parties are in a position, as Police and Crime Commissioners, to influence the local police forces. There is a tendency to give additional roles to those already in power where it would make more sense to put that role in the hands of someone who can hold local leaders to account. Local government in Britain might be significantly enhanced by introducing checks and balances, possibly through some form of citizen forum, that counter the overarching power of councils and their cabinets.

Constitutional design requires due consideration of mechanisms that avoid stasis⁶⁴ while providing proper deliberation and sufficient checks and balances to protect the citizens from arbitrary government. Without those mechanisms, the government becomes weaker because it is not subject to adequate critique from dissenting parties. It is increasingly seen as a partisan body that only reflects the interests of a small part of the population, damaging its claims to lead the nation. To do so, it must represent the population with all its diversity of opinion. As Clement Attlee said:

Democracy means government by discussion, but it is only effective if you can stop people talking.⁶⁵

Attlee recognised that there is a balance to be made between individual freedom of speech and collective action. Debate is the essence of democracy. It allows citizens to express opinions, voice concerns, and contribute to the decision-making process. There is often a temptation to restrict discussion to the cabinet, the parliamentary party, party focus groups or conference, but that places boundaries on relevant experience, leading to poor decision-making. Pluralistic debate allows diverse perspectives to be heard and considered, leading to more informed governance. But, as Attlee points out, at some point, those discussions must be channelled into collective actions – to make concrete the conclusions that arise from those discussions and, as far as possible, to ensure that the opinions and concerns of citizens inform those decisions.

How Should It Be Constituted?

There are, in essence, three possible democratic ways to determine the membership of the second chamber. The chamber could be elected, use some form of appointment with a democratic basis, or be allocated by lot. Each mechanism has

⁶⁴ The term ‘stasis’ is being used here in the sense of ‘lack of change’ rather than the Aristotelian sense of civil conflict. Stasis occurs when governments cannot command sufficient support to enact their program to achieve change.

⁶⁵ Attlee, Clement *Speech at the Oxford Law Society* June 1957 quoted in Thomas-Symonds, Nick *Attlee: A Life in Politics* (Bloomsbury Academic, 2023)

benefits and costs. Several variations can be applied within each, which would change the character of the House. So, for instance, for an elected assembly, we might choose to vary who the electorate should be, the electoral system, how the constituencies should be organised and so on. For an appointed assembly, we might choose who makes the appointments and on what democratic basis. With sortition, there are many options concerning who might be selected and how those selections might be arranged.

We could choose to use some mixture of those options. If we were to do so, we might decide that members of each group have different rights and responsibilities. We might, for instance, create a chamber composed through a mix of election and sortition but use appointments in non-voting functions that support that chamber.

Reform of the House of Lords might result in changes to the roles and responsibilities of other bodies, such as the Commons or the Monarchy, due to powers being transferred to or away from the new chamber. However, we should avoid considering a wholesale redesign of our political system because that can obfuscate and undermine our prime aim, reforming the House of Lords. Most of the processes and procedures of the Commons are outside the scope of this document. They may be reformed as part of some other set of recommendations. Neither do these proposals suggest changes to the monarch's role in the political process.

Another Elected Assembly?

At first glance, the obvious solution to enhancing the democratic credentials of the second chamber would be to make it an elected one. Such a chamber would undoubtedly be more democratic than the existing mix of lords, bishops, judges and appointees chosen by incumbent governments. In its written evidence to the 2015 House of Lords Enquiry, the Electoral Reform Society, a strong proponent of an elected second chamber, noted:

A parliament in which the second chamber is populated exclusively by members appointed through political patronage, and religious or

hereditary elites, has no place in our democratic present or in its future.⁶⁶

However, as the history of attempts at reform has shown,⁶⁷ an elected chamber presents a range of new problems. Moreover, it does not resolve some issues at the heart of public trust in our political institutions and the politicians that inhabit them. Replacing the House of Lords with an elected chamber would, in effect, replace a chamber largely populated by politicians with a chamber entirely populated by politicians.

In the *Trust in Government Survey* in 2023, the ONS compared public trust in our institutions and charted the responses shown

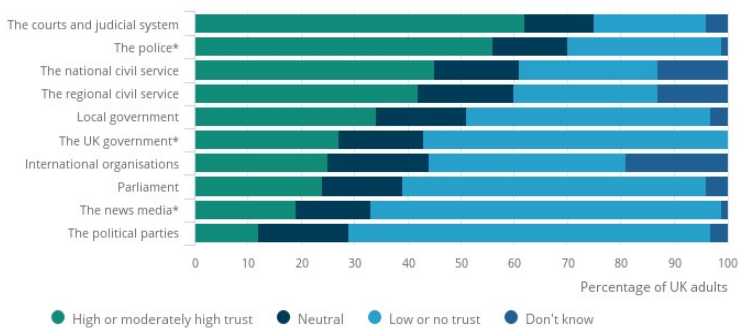


Figure 2 Levels of Trust in Public Institutions, 2023

in Figure 2:⁶⁸ The survey found that the courts and judicial system were the most trusted. However, it is worth noting that

⁶⁶ Electoral Reform Society, *Written Evidence to the 2015 House of Lords Enquiry (HOL 17)* (House of Lords Library, January 2017). URL: <https://committees.parliament.uk/writtenevidence/76442/html/>

⁶⁷ See Appendix A: Previous Attempts at Reform

⁶⁸ *ONS Trust in Government Survey, 2023*. Levels of trust were reported on a 0 to 10 scale, where 0 is 'not at all' and 10 is 'completely'. The 'high or moderately high trust' category represents scores of 6 to 10, 'neutral' represents scores of 5 and 'low or no trust' represents scores of 0 to 4. For institutions marked with an *, the category 'Do not know' is based on a sample size of less than 30 and should be treated with caution. A total of 4,135 adults (aged 18 years or over) living in the UK were sampled but they were selected from those who had completed the Labour Force survey and so may not be representative. URL: <https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/bulletins/trustinggovernmentuk/2023#trust-in-government-and-institutions>

they only commanded the trust of two-thirds of the population. Political organisations showed much lower levels of trust, with confidence waning as those organisations became more remote. However, at the bottom were Parliament, the news media and the political parties, which could only garner the trust of 12% of the respondents.

It is not just the political institutions that command low levels of trust. Public confidence in politicians is not high. To be fair, it never was. However, in an increasingly polarised society, there seems to be a belief that political opponents are not just wrong but wicked. Even MPs are abusive, such as the Deputy Leader of the Labour Party describing her opponents as “Tory scum”, a claim she would later retract. Such invective damages trust across the political divide.

The lack of faith in MPs among the electorate may seem unfair. There are many excellent MPs who are dedicated to public service. They put considerable effort into representing their constituencies and dealing with constituency matters. Like most groups, the majority are probably tarred with the same brush as those few who receive more extensive publicity due to their misdemeanours. Repeated scandals from all sides of the House have eroded trust, whether it be fraudulent expense claims, cash for questions, cash for honours, use of select committees for political purposes, the pursuit of foreign policy objectives on unpublished evidence or abuse of parliamentary privilege to make personal attacks and defamatory claims. Even Speakers, whose role is supposed to be politically neutral, are not immune. Both John Bercow (in his handling of Brexit) and Lindsay Hoyle (on demands for an immediate ceasefire in Gaza) have been accused of partisan behaviour.

An IPPR survey in 2021⁶⁹ showed that over half the respondents thought that MPs were ‘out for themselves’. From the time of election to retiring from the House, politicians are seen as corrupt

⁶⁹ IPPR, *Revealed: Trust in Politicians at Lowest Level on Record*, 2021
<https://www.ippr.org/media-office/revealed-trust-in-politicians-at-lowest-level-on-record>

or corruptible. Repeated failures to meet manifesto commitments have resulted in those manifestos being viewed with extreme scepticism and the politicians that promote them as self-serving and mendacious. When large-scale private donations are made to politicians and their parties, electors wonder what those donations buy. On retiring, many are provided well-paid sinecures. Some wonder if they know, figuratively speaking, where the bodies are buried.

In line with the IPPR report, the regular IPSOS-MORI 'Veracity' poll in 2020⁷⁰ showed that politicians are one of the least trusted professions, with only about 15% saying they trusted them to tell the truth, well below trust in professional footballers (30%), journalists (23%) and even estate agents (27%)⁷¹. A Full Fact report based on various surveys, including the Veracity poll, compares trust for individuals and institutions, noting that while implicit trust in government may be greater than trust for politicians in general, the difference is negligible.⁷²

A British Election Study showed that trust increased for a local MP from 24% to 37%, but it is still a minority. That should be unsurprising since many MPs are elected with fewer than half of the constituency vote. Still, it would indicate widespread polarisation of political opinion, which might be unhealthy in a liberal democracy. As far as possible, the representative must be trusted to represent everyone, irrespective of how their votes were cast. Our consent depends on it. The British Attitudes Survey⁷³ has shown a declining proportion of people believing

⁷⁰ IPSOS MORI Veracity Index 2020, <https://www.ipsos.com/en-uk/ipsos-veracity-index-2020-trust-in-professions>

⁷¹ Professional footballers have a reputation for bending the rules of the game for their own ends. There is widespread mistrust of journalists who are no longer perceived as independent voices, but to have hidden agendas or purveyors of fake news. Estate agents are widely mistrusted despite the introduction of largely voluntary industry standards and codes of conduct. This is, therefore, a damning indictment of politicians.

⁷² Sippett, Amy *Political Trust in the UK*, Full Fact Report <https://fullfact.org/media/uploads/political-trust-in-the-uk.pdf>

⁷³ An annual survey published by The National Centre for Social Research.

that governments 'place the nation's needs above the interests of their own political party'.⁷⁴

The IPPR report indicates that trust seems to fall away as one travels further from Westminster, suggesting that the mechanisms of government are seen as London-centric and less representative of the regions. Many people have suggested that Parliament tends to work for the benefit of London. However, London's needs are not typical of the nation as a whole. There are vast disparities of wealth between London and the regions. Moving the low-level workforce to the regions might help with regional unemployment but has little impact on whether those organisations are London-centric. There is a perception that the leaders of the relevant organisations, who are still in London, make policy in the capital's interest. Moreover, some people in the regions imagine politicians prefer living in London and only returning to the constituency once every five years for an election – a feeling exacerbated by the party's central office promoting representatives with little or no connection with the constituency.

In some cases, trust in politicians has been undermined by the abuse of parliament's internal processes, such as the inappropriate use of privileges. Many believe that the Commons' own Standards Committee has been used for party political purposes or to promote factional interests within parties and has been diminished. From December 2019 to January 2024, there were twenty byelections, of which twelve were caused by the misconduct of MPs, such as sexual misconduct, bullying, corruption, and lockdown rule-breaking. To some degree, that is the consequence of tighter rules and an increased desire to investigate infractions. Maybe it also reflects Lord Acton's statement that 'power tends to corrupt'.⁷⁵ Either way, the reputation of MPs has declined.

⁷⁴ Phillips, Miranda & Simpson, Ian *Politics Disengaged and Disconnected*, https://bsa.natcen.ac.uk/media/38978/bsa32_politics.pdf

⁷⁵ Acton wrote, in a letter to Bishop Mandell Creighton dated April 5, 1887: 'Power tends to corrupt, and absolute power corrupts absolutely.' A transcript of, published in *Historical Essays and Studies*, edited by J. N. Figgis and R. V. Laurence (London: Macmillan, 1907).

At its most elemental level, it may be that people are asking whether those in power represent them – are they people like me, my family, or my friends? Many conclude that they are not and that an elected chamber might not meet the standard voiced by John Adams to have an assembly that:

should be an exact portrait, in miniature, of the people at large. It should think, feel, reason and act like them.⁷⁶

It is hard to see how public distrust of politicians might be resolved by creating a second chamber composed of more politicians. Instead, we should try to foster a system that promotes diversity of opinion both in the primary and secondary chambers, which reflects the views of the citizen body but is constituted in a way that avoids competition between them. To that end, maintaining a contrast between the selection methods in the legislative chamber and the deliberative one is crucial.

Even assuming there was a general trust in politicians, there are many other significant problems with creating an elected second chamber, some voiced by politicians in light of the Wakeham Report.

An elected second chamber could become a locus of alternative political legitimacy, especially if elected on a different electoral system to the main chamber.⁷⁷ Moreover, given an alternating schedule of elections, the chamber would cause an increase in the emphasis on the polarisation of politics of the two Houses, leading to periods of legislative deadlock, as we have seen in countries such as the US. Alternatively, a second chamber election might produce a result favouring the incumbent government and become a means to rubber-stamp legislation. In truth, we require neither blind support nor intransigent

⁷⁶ Adams, John, *Thoughts on Government* [1776] (University of Chicago Library, 1994) <https://books.google.co.uk/books?id=srtLAQAAMAAJ&pg=PA195>

⁷⁷ The same problem occurs if we were to choose to replace our hereditary Head of State to an elected one. Clement Attlee makes the case for retaining our existing method of appointing the Head of State as a ‘symbol of unity’ in *Great Contemporaries*, chap. 11.

opposition but for members to improve legislation by carefully considering evidence and seeking the best outcomes.

John Stuart Mill made this point in the section 'Of the Second Chamber' in his *Considerations on Representative Government*. He doubted the value of bicameralism:

I am inclined to think that if all other constitutional questions are rightly decided, it is but of a secondary importance whether Parliament consists of Two Chambers, or only of one.⁷⁸

Mill pointed out that a second chamber created through a similar mechanism to the primary one (i.e. an elected chamber) would produce little of extra value. Mill argued that balancing the forces within the primary chamber would be better. Bagehot made a similar point a few years later. He wrote:

'with a perfect Lower House, it is certain that an Upper House would scarcely be of any value'.⁷⁹

However, Bagehot recognised that the Commons was and can never be perfect, concluding that an upper chamber is valuable.

An elected system would give considerable power to the parties. Currently, only a third of existing members are not affiliated with a political party.⁸⁰ An elected chamber would mean that almost none would be. And the affiliation to a party becomes a means through which members can be required to vote on party lines. In such a circumstance, it is easy to see how the debates that shape legislation might be increasingly carried out in the whip's office and not subject to public scrutiny.

Harrington's notion of 'balanced sovereignty' under a mixed constitution is fatally undermined if the upper chamber is not independent of the lower one. The choice to populate the upper chamber with politicians following the diktats of party politics

⁷⁸ Mill, John Stuart *Considerations on Representative Government* [1861] in *On Liberty, Utilitarianism and Other Essays* 2nd. Edition Mark Philip & Frederick Rosen (Oxford World Classics, 2015), ch.VIII 'Of a Second Chamber', p.335

⁷⁹ Bagehot, Walter *The English Constitution* [1867] (Oxford World Classics, 2001) p.84

⁸⁰ 246 members consisting of 183 crossbenchers, 37 non-affiliated members and 26 bishops.

has, in many people's view, undermined its role in balancing the primary chamber. Both Adams and Madison insisted that the branches of government must be independent to be effective. An elected second chamber would further politicise the upper chamber and make its membership even more subject to party politics and to party leaders. In an interview with the Observer, Keir Starmer, leader of the Labour Party, promised to replace the House of Lords with an elected chamber to 'restore trust in politics'.⁸¹ His argument seems to be that the powers of appointment by successive Prime Ministers have been abused and that the solution should involve placing the upper house in the hands of more politicians and the parties they represent.

Another Appointed Assembly?

The current House of Lords is primarily an appointed assembly. A critical issue with appointed assemblies is, of course, who makes the appointments. In the past, the monarch seeking resources would assemble leading men, the clergy and nobles and later the third estate, in a Parliament and bargain with them for those resources. Generally, Parliament consisted of those that could generate revenues, mainly through land tenure. With the development of constitutional monarchy, power increasingly resides in Parliament, especially the elected Commons. With the reforms of the upper chamber, particularly those of the Blair government, the right of appointment has been placed in the hands of the Prime Minister with a thin veneer of oversight provided by HOLAC. Rather than give land and titles to persons for personal or military service, members of the Lords are often appointed for political service. They are expected to continue to serve their political masters in the upper chamber.

If members are primarily chosen from the political class under the same party influence as the primary chamber, then an appointed chamber is not immune to the same criticisms as an

⁸¹ Savage, Michael 'Keir Starmer: I will abolish House of Lords to 'restore trust in politics'' The Observer (19 Nov 2022)
<https://www.theguardian.com/politics/2022/nov/19/keir-starmer-i-will-abolish-house-of-lords-to-restore-trust-in-politics>

elected one. We may call them peers and remove the need for the tawdry process of the electoral cycle and the need to appeal to the masses, but they are, in essence, just politicians dressed in ermine. Indeed, some politicians who are given seats in the Lords are those who have failed to be re-elected, which seems a strange qualification. Occasionally, former politicians are ennobled to justify their inclusion in cabinet or senior positions in government whilst not being accountable to their constituents, which flies in the face of a democratic system. Adding some non-affiliated members by giving a small number of peerages to the “great and the good” from society at large might improve the diversity of the assembly, but, in the end, it has become dominated by “working peers”. It is still subject to many of the same problems as an elected chamber. It is easy to understand why some perceive House of Lords reforms in the 1990s as regressive. Hereditary peers may have been “upper-class toffs”, but in some respects, they may also have had a more comprehensive range of experiences than many of our appointed peers and considerably more independence from government and political parties.

Having stated that he doubted the value of an elected second chamber, John Stuart Mill considered alternatives based on appointment. He rejected any appointed house, including an aristocratic one, if its decisions could not command popular support. He argued that a chamber’s ability to act as a check on the primary chamber:

wholly depends on the social support that it can command outside the House. An assembly which does not rest on the basis of some great power in the country, is ineffectual against one that does. ... I cannot believe that, in a really democratic state of society, the House of Lords would be of any practical value as a moderator of democracy.⁸²

However, he approved of a Senate ‘composed of living public men who have passed through important political offices and employments’ such as justices, experienced cabinet ministers, military leaders, diplomats, colonial governors, and senior civil servants. Though Mill’s Senate would have expertise in various

⁸² Mill, John Stuart, *ibid.* p.339

public functions, it is hard to see how it might meet the need to command support outside the House. Indeed, he demanded a chamber which is exempt from the class interests and prejudices of the public:

The best constitution of a Second Chamber, is that which embodies the greatest number of elements exempt from the class interests and prejudices of the majority, but having in themselves nothing offensive to democratic feeling.⁸³

The idea of having a second chamber of 'experts' is commonplace. Lord Runciman proposed a 'House of Experts' during the Wakeham Commission. Jacques Arnold, MP for Gravesham, suggested a 'Senate of Interests' similar to the Irish upper chamber. It was thought that the Life Peerages Act 1958 would allow a more comprehensive range of interests and expertise into the House. As a result, women took their place in the House of Lords. The Wakeham Commission argued that:

The House of Lords should contain a substantial proportion of people who are not professional politicians, who have continuing experience in a range of different walks of life and who can bring a broad range of expertise to bear on issues of public concern.⁸⁴

This concern was reflected in the government's public statements under Tony Blair, leading, among other things, to the notion of the People's Peers.

However, distinguishing between the purposes of expertise and sound judgment in the deliberative process is essential. Expertise has enormous value in providing evidence for deliberation. However, no chamber could be created with expertise across all disciplines. So, in the absence of specific knowledge, which is the norm, committees seek evidence from outside sources for consideration by the House. Committee members are not experts in all domains, yet they can make judgments based on the evidence they are given. Decisions should be made in the round according to the evidence of a range of relevant experts across disciplines, not by them, because expertise is domain-specific,

⁸³ Mill, John Stuart, *ibid.* p.341

⁸⁴ "A House for the Future; Royal Commission on the Reform of the House of Lords". (The Stationery Office. January 2000)

and they will favour the requirements of their domain. The upper chamber should not be populated by experts but rather by people who can weigh the evidence provided by experts. In some respects, having a chamber of experts is unlikely to be helpful.

During the COVID pandemic, a committee of experts, SAGE, the Scientific Advisory Group for Emergencies, was asked to advise the government on its response. Questions were raised in the House about its transparency and potential political interference. However, there was also a perception among some political commentators that the committee was directing government policy rather than advising. For instance, the government implemented the committee's advice to implement lockdowns on health grounds. Many believed that the damage caused by those lockdowns would outweigh the benefits they produced. Particularly cited were socio-economic costs, costs in mental health damage, especially among children, increased domestic violence, as well as damage to freedom of assembly. Some of these areas were outside the expertise of SAGE, and so received too little attention. Policy should be developed in the round, carefully balancing evidence drawn from a variety of disciplines.

One problem of an appointed assembly is that it can be perceived to be acting according to the interests of its members rather than representing the wishes of the people. Inevitably, there is a balancing act. During the May government, there was a perception that Parliament in both Houses, but especially the Lords, were using their power to overturn or limit the consequences of the Brexit referendum, a public plebiscite. This seemed particularly outrageous when the assembly in question was appointed and not accountable to the public. It was a period of highly charged public political debate. Some saw it as a positive that the chamber could remain independent of the result. They saw it as putting the nation's interest before that of the people. Others thought it was a case of a minority using privilege to overturn a public decision. The idea that people are not cognisant of their own interests or the interests of their nation seems patronising at best. The debate could be reframed as the

political class of one or both chambers acting against the electorate's express intent. The Rwanda debate in 2024 may have been a similar situation. A poll by YouGov in 2022⁸⁵ showed that over half of those who expressed a preference supported the Rwanda bill. It had to be forced through by the Commons.

The second chamber is part of the system of checks and balances that limit the abuse of power by the government. To succeed in that role, it should be as independent as possible from the government and the mechanisms that put it in place. Bagehot recognises the importance of this independence:

“It [the House of Lords] would not be powerful, it would not be possible, unless it were known to be independent. The Lords are in several respects more independent than the Commons; their judgment may not be so good a judgment, but it is emphatically their own judgment. As a body, the House of Lords, is accessible to no social bribe. And, in this day, is no light matter.”⁸⁶

The purpose of the second chamber is to scrutinise government actions, its policies and the bills it produces to improve them. It should not be a rubberstamp to the government, nor should it simply resist the government on ideological grounds. To do so would be precisely the kind of abuse of power it was set up to avoid. The primary chamber should consider legitimate issues raised by the second chamber and seek to accommodate them where possible, but, in the end, the elected chamber must prevail.

As we have said, the power to appoint members resides in the hands of the prime minister. Prime ministerial patronage is at the heart of many existing problems in our political system. Patronage allows the prime minister of the day to reward their cronies and to appoint those who favour them or, at least, think like them. Prime ministers can use the power of patronage to apply pressure on those they appoint and control the organisations they lead. It can also be a source of financial impropriety. The prime minister can use patronage to influence

⁸⁵ <https://yougov.co.uk/topics/politics/survey-results/daily/2022/06/13/c8bf1/1>

⁸⁶ Bagehot, Walter *The English Constitution* [1867] (Oxford World Classics, 2001), p.87

the membership of the second chamber, the civil service, various commissions, and even the media, such as the BBC. If our second chamber is to be a tool of oversight, placing the power of appointment in the hands of the leader of the government would seem counterproductive. Patronage is an issue to which we shall return.

However, the abuse of prime ministerial patronage is simply a specific case of the more general problem with appointed chambers. Who should appoint the members? Who guards the guards? The power could be placed in the hands of another elected body, such as Parliament itself or a body specifically elected to make these appointments. In essence, any elected body will be party-political and subject to influence by the body it is attempting to scrutinise.

Tenure is also a problem in appointed assemblies. The fifth question of Tony Benn's five questions to ask a person in power⁸⁷ seems particularly apposite regarding appointed assemblies. Currently, peers are assumed to serve the second chamber for life. This has the benefit of seeking to retain political diversity across administrations, but it also makes it challenging to hold members of the Lords accountable. As we have seen, removing a member of the House of Lords is complex. There have been many proposals to limit tenure for members of the second chamber. Some have argued for a fixed retirement age, and others for fixed terms of office. In its written evidence, ERS suggested limiting the term to fifteen years as a stepping stone to an elected chamber.⁸⁸ But, the more the term of office is aligned with the elected chamber, the more likely the chamber will reflect the dominant political positions of the day and become a rubber-stamping body.

⁸⁷ Over the course of a long career, Tony Benn developed his five questions to ask of a person in power. In one of the last debates he took part in, he asks "What power have you got? Where did you get it from? In whose interests do you exercise it? To whom are you accountable? And how can we get rid of you?". Hansard, *Election of Speaker by Secret Ballot*, Hansard, vol. 365, col. 510 (22 Mar 2001)

⁸⁸ Electoral Reform Society, *ibid.*

Social Diversity

A commonly heard criticism of politics is that it makes no difference who you vote for; that ‘they are all the same’. An IPPR poll in 2022 reported that many people, particularly the young or the less affluent, think political parties are remote and do not reflect their opinions.⁸⁹ It may be that the policies promoted by parties seem similar because they are so unlike those of the voters. Two objects seen at a distance in the night sky may appear close to one another even when far apart.

Alternatively, there may be a genuine narrowing of political policies, such as we saw in the 1950s with the rise of ‘One-Nation Toryism’ or during the premiership of Gordon Brown when it was a common complaint that the economic policies of the leading parties were much the same.⁹⁰ In a 2008 article in the Financial Times, George Parker and Jim Pickard highlighted the problem:

Labour and the opposition Conservatives have become bogged down on the centre ground, their policy ideas increasingly interchangeable. On occasions the two parties have raced to be first to announce near-identical policies, be it cutting death duties or tackling illegal immigrants or knife-wielding drug dealers.⁹¹

Similar statements about the Conservatives and opposition Labour have been made under Cameron and Milliband or Sunak and Starmer. While political parties seek to differentiate themselves to create a USP, they must always seek to appeal to the other’s supporters. Hence, the desire to occupy the centre ground is inevitable.

⁸⁹ Patel, Parth & Quilter-Pinn, Harry *Road to Renewal: Elections, Parties and the Case for Renewing Democracy* (IPPR, 2022) <https://www.ippr.org/files/2022-04/road-to-renewal-april22.pdf>

⁹⁰ Blair’s abolishment of clause IV and the commitment to unilateral nuclear disarmament had brought the party close to the centre. Their economic policies were based on a promise of better economic management, costing plans and keeping inflation and tax down. Electoral success for Labour led the Tories to drift Left, adopting economic and social policies that closely aligned with those of Labour.

⁹¹ Parker, George & Pickard, Jim *Centre prize: why UK political parties look more and more the same* Financial Times March 4, 2008. <https://archive.ph/Wmc4A>

However, the problem with our existing government institutions may be far more profound than a drift toward the centre by the major parties. *Elitist Britain 2019*, a report from the Social Mobility Commission, argued that Britain is increasingly divided between our ‘elites’ and the rest.⁹² The researchers investigated various areas, such as politics, business, media, Whitehall and public bodies, and public servants. It particularly highlighted politics, civil service and the media as:

a triumvirate of sectors at the top of the socially exclusive list, with all three largely centred in London.

The report emphasises the critical role of education in selecting candidates for these areas. The report argues that senior positions in those fields tended to be filled by people educated in key institutions, such as private schools and Oxbridge. Separate research has suggested that the educational formation of British cabinet ministers has been dominated by a limited number of exclusive institutions at both post-primary⁹³ and higher academic levels.⁹⁴

In the written evidence of the ERS referred to earlier, the society also recognised the lack of diversity in the chamber.

Apart from size, there are issues with the representativeness of the upper house that are not addressed by the reforms discussed in this inquiry. The House of Lords, despite some modest progress in recent years, fails to represent the British public in a number of ways. Research by the ERS in mid-2015 showed that over a third of Lords (34%) previously worked in politics, compared to just 1% who come from manual backgrounds. This substantially limits the Lords’ expertise and experience on key sectors of the economy and swathes of the British public. Similarly, 44% of Lords list their main addresses in

⁹² Sutton Trust, *Elitist Britain 2019: The educational backgrounds of Britain’s leading people* Social Mobility Commission (2019), URL: <https://www.suttontrust.com/our-research/elitist-britain-2019/>

⁹³ O’Rourke, Brendan K.; Hogan, John; Donnelly, Paul F. (2015). ‘Developing an Elite Formation Index for Comparative Elite Studies: The Case of the Schooling of Irish and UK Cabinet Ministers’. *Politics*. 35 (1): 3–18

⁹⁴ Feeney, Sharon; Hogan, John; O’Rourke, Brendan K. (2017-05-04). ‘Elite formation in the higher education systems of Ireland and the UK: Measuring, comparing and decomposing longitudinal patterns of cabinet members’. *British Educational Research Journal*. 43 (4): 720–742.

London and the South East, while 54% are 70 or older. For the Lords to continue as an effective sense-check to parliament it must move with the times and include amongst its members those from a diversity of backgrounds and opinion.⁹⁵

Promoting diversity of experience and the opinions and values that arise from it is as essential as promoting diversity across protected characteristics. While it is an ongoing work in progress, we have been moderately successful in ensuring that groups with different personal traits are represented in our political institutions and across society. We have been much less successful in ensuring that we are represented by people from all walks of life, as pointed out in *Elite Britain 2019*. As we have seen, this may speak directly to the issue of whether we trust our representatives. Are they people like us?

The Brexit referendum provides us with an insight into this divide. Many believed that the promise of an EU referendum in the Conservative Manifesto of 2015 was a tool the Conservative leadership could use to hide internal divisions in their party and that the leadership could avoid holding it by negotiating a better deal for Britain. However, by 2016, it was clear they couldn't, so they had to go ahead with the referendum as a manifesto commitment.

The Tory leadership sought to use the campaign to silence EU sceptics "once and for all". The vast majority of politicians of all parties supported the Remain Campaign⁹⁶ along with leading civil servants, such as the Governor of the Bank of England and the head of the OBR, as well as journalists and political commentators.⁹⁷ They argued for the status quo (though some

⁹⁵ Electoral Reform Society, *ibid*.

⁹⁶ The International Business Times UK compiled a list of Remain supporting MPs that revealed that about 477 of the 650 MPs (73%) had declared their support for it. <https://www.ibtimes.co.uk/full-list-remain-mps-who-could-block-brexit-by-voting-article-50-down-1589766>. Others may have supported Remain, but chose not to declare against the will of their constituents.

⁹⁷ There were similarly high levels of support from academics (90% support from university staff – THES), leaders of industry, such as SMMT and business organisations, such as the CBI. Denigration of Leave supporters was common on media entertainment programs.

preferred closer integration). They emphasised the economic benefits of membership of the Single Market. They argued that Britain could exercise more influence within the block. They represented the establishment.

On the other hand, Leave tended to be supported by many disparate groups, on both the left and the right, with various reasons for their position. Some felt that the contributions made to the EU would be better spent on public services. Others argued that the EU was dominated by international corporate interests that were against the people's interests. Others thought the economic benefits were overstated. Some placed great value on the nation-state and national sovereignty. Others saw a neoliberal, globalist EU encouraging low-wage mass immigration and feared the consequences for their income and job security. Others valued their political and cultural traditions and rejected multiculturalism, believing newcomers should assimilate. They quickly became the anti-establishment group.

Each side promoted its position and, too frequently, demonised its opponents. The campaign became increasingly acrimonious with widespread accusations of nefarious, or even criminal, behaviour. In the campaign and subsequent fallout, supporting Remain was increasingly characterised by the elite as morally virtuous, whilst Leavers were presented as anti-European,⁹⁸ racist, xenophobic, and ignorant, that they were members of the 'basket of deplorables'.⁹⁹ Remainers and their supporters in the news media derided Brexit supporters as populists, and, as is often the case, some Leavers responded by appropriating the label and wearing it with pride. The abusiveness of the campaign led many Leavers to choose not to speak about it, even in their private circles or maybe especially so.

The campaign exposed deep-seated divisions in our society, especially the rift between the elite and many ordinary people. If people in senior political roles genuinely represented the general

⁹⁸ As opposed to anti-EU.

⁹⁹ A description used by Hillary Clinton in a 2016 US presidential election campaign speech and was later redeployed in the Brexit debate.

population, one would expect the referendum to return a large majority for Remain. However, Remain was rejected by over half of those who voted. The leaders of the Conservative Party had to step down. Sow the wind, reap the whirlwind.

Several reasons for the result have been suggested, and the solution is probably multi-faceted. However, it may be that the Leave campaign to 'Take Back Control' increasingly became as much about taking back control from the establishment as it was taking it back from the EU. This was particularly evident during the post-Brexit fallout when both sides became even more polarised. Much of the subsequent debate revolved around the establishment challenging the outcome,¹⁰⁰ seeking a second bite of the cherry¹⁰¹ or proposing policies that sought to undermine the result,¹⁰² causing widespread anger among Leavers. The split between the establishment and the people became more visible, leading to increasing distrust of our political institutions.

Brexit is far from an isolated case. Much has been made of the rise of 'populism' in recent years, particularly in the liberal West. The Brexit referendum, the election of Donald Trump, and the rise of anti-establishment parties across Europe are frequently cited examples.^{103 104} These cases have common elements as well as unique ones.

¹⁰⁰ A common theme was that Leavers did not know what they were voting for, that they had been duped by malign politicians, 'the rich' or foreign influence with little or no evidence.

¹⁰¹ Some Remainers argued that since parliament cannot bind itself or future parliaments, the outcome could be ignored. Some suggested that a supermajority should have been required. Others demanded a second 'confirmatory' referendum campaign. This was seen by Leavers as proof that the EU and its supporters cared little for democracy. They argued that the EU's record of encouraging governments to repeat referendums where the result did not go in their favour was further evidence of this.

¹⁰² Known as BRINO or Brexit-In-Name-Only.

¹⁰³ Eatwell, Roger & Goodwin, Matt *National Populism: The Revolt Against Liberal Democracy* (Pelican Books, 2019)

¹⁰⁴ Kaufmann, Eric *Whiteshift: Populism, Immigration and the Future of White Majorities* (Penguin Books, 2019)

Traditionally, populism emphasises the disconnection between the political and economic elites and the demos. Populists tend to be anti-establishment. For instance, the People's Party in nineteenth-century America promoted the idea that the 'people' (small independent farmers) were being oppressed by the 'elites' (bankers and politicians). Populism often crosses the left-right divide. Frequently, members of the elite demonise populists as anti-democratic. However, although some populist leaders, such as Victor Orban, advocate 'illiberal democracy', most national populist voters want more, not less, democracy and seek a political class who are dedicated to giving power to the people rather than to economic and political elites. In *National Populism*, Eatwell and Goodwin show that most populists do not seek to tear down our political institutions but are concerned that these institutions are not representative of society as a whole. Just after the Brexit referendum, nearly one in two of Britain's workers felt that 'people like them' no longer had a voice in the national conversation.¹⁰⁵

The lack of genuine diversity of experience and opinion in the centres of power exacerbates this problem. It facilitates populism because the elites, whether elected or not, have a limited understanding of ordinary life and promote policies alien to everyday concerns. So, they become perceived as "the other". In such cases, people become frustrated and seek solutions within the democratic process to overturn that establishment. They aim to disrupt the system to effect change. For instance, they lend votes to parties they might not have previously supported or to new parties created for the purpose. The rejection of an overweening, self-serving establishment is as much an expression of democracy as attacks on tyrants, monarchs, aristocrats, oligarchs, timocrats and technocrats.

¹⁰⁵ Data from the British Social Attitudes Survey, 2016.

This lack of diversity in the centres of power can be illustrated by considering our politicians. Politics is increasingly becoming a graduate-entry profession. Many enter university as a stepping stone to a political

Politics	20%
History	13%
Law	12%
Economics	10%
Philosophy	6%

Figure 3 Most Common Subjects Studied by MPs at University

career and choose courses to match. In 2019, over 80% of MPs had graduated.¹⁰⁶ Among Labour MPs, that figure rises to 90%.¹⁰⁷ The leading subjects studied are shown in Figure 3. Of the 541 graduate MPs in the 2015-7 Parliament, only 93 (17%) held degrees in STEM subjects compared to 46% of all students in 2019.

After graduating, many take positions in public bodies, charities and non-profits, as researchers in policy think tanks, or, in some cases, roles supporting MPs while aiming to become candidates in a suitable constituency. In 1979, 15.8% of MPs had formerly worked as blue-collar workers. By 2019, the figure had declined to 3%.¹⁰⁸ Conversely, in 1979, only 3.4% of MPs formerly worked as political organisers or in similar roles. By 2019, that figure had increased to 17.1%.¹⁰⁹ Cambell and Hudson break down the statistics by considering the roles undertaken by MPs in different occupational areas. In 2019, over half of the MPs elected for the main parties held ‘instrumental’, or narrowly political, positions, whether in local government, trades unions, policy research, journalism, lobbyists, or similar, before being elected. A further

¹⁰⁶ Studee Research Briefing, *MPs and their degrees: here’s where and what our UK politicians studied*, 2019 <https://studee.com/media/mps-and-their-degrees-media/>

¹⁰⁷ Cracknell, Richard & Tuncliffe, Richard, *Social background of MPs 1979-2019*, 2022 <https://researchbriefings.files.parliament.uk/documents/CBP-7483/CBP-7483.pdf>

¹⁰⁸ Interestingly, an analysis by Oliver Heath in 2013 (‘Policy Representation, Social Representation and Class Voting in Britain’) suggests that working-class participation in elections has declined with the decline in numbers of working-class MPs.

¹⁰⁹ Cracknell & Tuncliffe, *Ibid.*

2.3% worked in education.¹¹⁰ Many MPs have little or no world experience outside of politics and academia. Roger Scruton wrote that the political class consists of:

people who have made a career in political and administrative institutions, but who have not had any experience of the ordinary workplace.¹¹¹

Parachuting candidates into constituencies, which has become commonplace across the parties, has exacerbated the narrowing of diversity. Rather than promoting local people with a good understanding of the needs and aspirations of the constituents and who can relate to the area's culture and traditions, candidates are often nominated centrally with no associations with the target constituency.¹¹² For instance, Chris Leslie was parachuted into Nottingham East after leading Gordon Brown's candidacy to be party leader, presumably as a reward for success. He would later lose a vote of no confidence in his constituency. Or Tristram Hunt, a Cambridge graduate and grandson of a diplomat privately educated in Hampstead, was parachuted into Stoke-on-Trent in 2010. None of the potential candidates on the shortlist proposed by the NEC were local to Stoke. Or Peter Mandelson into Hartlepool.¹¹³ Similar examples exist among the Tories, such as the candidacy of Enoch Powell in South Down or Boris Johnson in Henley. In 2024, spads and political advisors under Rishi Sunak, such as Aphra Brandreth and Will Tanner, were handed supposedly safe seats for the

¹¹⁰ Cambell, Rosie & Hudson, Jennifer 'Political Recruitment Under Pressure (Again): MPs and Candidates in the 2019 General Election' in *The British General Election of 2019* (Palgrave Macmillan, 2021). p.412

¹¹¹ Scruton, Roger *The Palgrave Macmillan Dictionary of Political Thought*, 2007

¹¹² They are sometimes referred to as carpetbaggers.

¹¹³ It was said that when he saw some mushy peas in a shop window in Hartlepool, he thought it was guacamole.

election.¹¹⁴ Presumably, parties believe that voters will vote for anyone provided they wear the right colour rosette.¹¹⁵

As we have seen, as a result of the Blair/Brown, the House of Lords is increasingly dominated by political appointments. The relatively large proportion of life peers who were formerly MPs or other political positions has the effect that members of the upper chamber are increasingly drawn from the same background as those in the Commons.

However, this lack of diversity is not restricted to our political class. Our politicians are just one part of an established dominant group in politics, academia, culture and media.¹¹⁶ They tend to be middle-class, well-to-do people.¹¹⁷ They usually live in urban or suburban environments. Consequently, we will refer to them as the Metropolitan Elite. They are often from socio-economic groups A, B or C1. Most graduated from Oxbridge and Russell Group universities, often with professional degrees. Frequently, they are the children of people from the same group. Nearly a quarter of MPs attended fee-paying schools; many send their children to those schools. As they grow up, their social circles tend to be dominated by people with the same educational background, who have attended the same universities, or who have established senior positions in politics, academia, culture, and media through which younger members of the group might seek employment or promotion.

Some have argued that the rise of the metropolitan elite has been exacerbated by the desire to extend graduate entry to a broader range of occupations, resulting in the expansion of university

¹¹⁴ Aphra Brandreth is the daughter of former Tory MP Giles Brandreth, Will Tanner was Rishi Sunak's Deputy Chief of Staff having previously worked under Theresa May and in two political think tanks.

¹¹⁵ Boris Johnson's main rival for the parliamentary seat of Henley in the 2001 election was Liberal Democrat Catherine Bearder. She said: 'In Henley, you can put a blue rosette on a donkey and it will get elected. And that's what happened in 2001.'

¹¹⁶ Goodwin, Matt, *Values, Voice and Virtue: The New British Politics*, 2023

¹¹⁷ Although we can associate generalised traits with members of this group, we should be aware that such characterisations are loose, and there are many exceptions.

education. It should not be said that there is anything intrinsically wrong with increasing participation in continuing education in all its forms, though whether higher education is appropriate to all occupations could be disputed.¹¹⁸

It seems that the elites still dominate participation in university education. Figures from UCAS in 2018 showed that:

Students from the most advantaged areas were still at least twice as likely to enter most UK universities as their peers from disadvantaged neighbourhoods.¹¹⁹

The cost of these places, including the subsidy of student loans, is borne by all taxpayers, including those whose children are unlikely to attend. This situation reinforces the concerns the Social Mobility Commission raised in the report referenced earlier.¹²⁰ Despite being funded by the state, many university courses have little economic value, leading to the unedifying spectacle of taxpayers subsidising the hobbies and interests of their wealthier fellow citizens. One might as well award public positions based on a candidate's ability to extemporise poetry as used in China under the Tang and early Song dynasties. Graduate entry perpetuates the dominance of the elite in positions in public service. There must always be a route into senior public roles for non-graduates with a broader range of experience beyond the halls of academe. Our focus should be on building a highly socially mobile society where position is based on merit.

Placing increasing numbers of young adults in a closed bubble where political indoctrination is commonplace may not be the

¹¹⁸ To be fair, the government's research and development roadmap prioritises STEM (Science, Technology, Engineering and Mathematics) over SHAPE ((Social Sciences, Humanities and the Arts for People and the Economy) subjects in areas such as immigration, tuition fees and so on.

<https://www.gov.uk/government/publications/uk-research-and-development-roadmap>

¹¹⁹ Baker, Simon 'Most privileged outnumber least advantaged 2:1 at most UK HEIs' The Times Higher Education Supplement January 2018. URL: <https://www.timeshighereducation.com/news/most-privileged-outnumber-least-advantaged-21-most-uk-heis>

¹²⁰ Sutton Trust, *Elitist Britain* 2019, Ibid.

best strategy to create a stable state. It may be more suitable to increase investment in educational bodies that offer part-time and vocational courses and apprenticeships that allow young people to continue their education within employment, i.e., within wider society with its more comprehensive range of experiences and opinions.

An essential part of continuing education should be to expose students to a wide range of ideas, new and old. However, students must be provided with the critical tools required to dissect and analyse these ideas in a framework of liberal values, such as egalitarianism, the need for freedom of speech and of conscience, the need for tolerance of others, and social cohesion. Hence, controls need to be put in place to ensure that education does not become indoctrination. Such teaching should form a fundamental part of secondary education, and to do so, we need to create a new generation of schoolteachers capable of doing so in a politically neutral way.

There has always been a left-leaning bias in academic institutions, but the extent of that bias has become extreme in recent years. A survey by THES in 2015 showed that 70% of professors and lecturers supported left-leaning views compared to 11% on the right.¹²¹ Increased university attendance may be one factor that has led to the drift of the Overton window toward the left. Many people who formerly considered themselves moderates are now characterised as right-wing. Accusations of being 'far-right' or fascist have become ubiquitous to the point where it has become commonplace even in mainstream media. As George Orwell wrote in 1946:

The word fascism has now no meaning except in so far as it signifies 'something not desirable.'¹²²

Over the last thirty years, Britain's universities have become increasingly dominated by socially progressive philosophical

¹²¹ For comparison, in 1990, about 44% supported left-leaning parties compared to 18% on the right. Carl, Noah *Lackademia: Why do academics lean left?* March 2017 <https://www.adamsmith.org/research/lackademia-why-do-academics-lean-left>

¹²² Orwell, George 'Politics and the English Language 1946' in *Horizon*, vol 13 no.76, p.257

positions, such as ‘applied postmodernism’,¹²³ critical theory and queer theory.¹²⁴

Many of these ideas are often illiberal and authoritarian. For instance, in critical theory, language is seen as the central medium through which the world, with its hierarchies and power relations, is constructed. Proponents believe, often with the best intent,¹²⁵ that those who argue alternative positions are attempting to build a different reality, which is, at best, offensive and, at worst, harmful.¹²⁶ It is often presented as analogous to committing a kind of ‘violence’ from which society should be protected. To that end, they seek to silence alternative positions within the academic institution and deplatform visiting speakers they perceive as dangerous. This has the effect of stifling free speech, creating an ideologically homogenous environment. Students and their professors are shunned and stigmatised for holding beliefs that do not conform, even when those beliefs are based on the evidence of their senses or are well-founded in science. Conformity is a powerful force amongst the young, especially when future employment is uncertain. Alternative points of view are discouraged, and it becomes increasingly challenging for both students and alumni to distinguish objective facts from subjective beliefs.

Moreover, universities increasingly lack genuine diversity among their staff. Due to ‘elite overproduction’, more and more students become full-time academics, first taking on higher degrees and then with little option but to take lecturing and administrative roles in the universities. Staff and students become cocooned in their ivory towers with little or no experience of the world that finances them. Over time, college administrations have become dominated by people educated in

¹²³ Pluckrose, Helen & Lindsay, James, *Cynical Theories*, 2021, pp.45-66. The authors show how postmodernism changed from being a philosophical position to become an applied practice based on critical theory.

¹²⁴ Doyle, Andrew, *The New Puritans*, 2022, chap. 5 Genesis, pp 73-97

¹²⁵ “To do evil a human being must first of all believe that what he’s doing is good.” Solzhenitsyn, Alexandr *The Gulag Archipelago 1918-1956* (Perennial Classics, 1985) p.77

¹²⁶ Fox, Claire *I Find That Offensive* (Biteback Publishing, 2018)

this environment. The college authorities, staff and student organisations are increasingly illiberal and often seek to delegitimise and sanction free speech.¹²⁷ In an interview in 2022, Eric Kaufmann, a Professor of Politics, said:

As former head of the politics department at London's Birkbeck College, in recent years I had repeatedly criticised the illiberal excesses of self-appointed defenders of 'identity groups' such as racial minorities and trans people. This had angered some staff and students.

It seemed inevitable that my research — which included, for example, investigating whether academics make hiring decisions based on a candidate's support for Brexit — would eventually raise the hackles of the 'Ethics Committee'. This body is now standard in most Western universities, but its decisions are coming to echo the warnings of dystopian writers such as George Orwell and Franz Kafka. At Birkbeck, the committee had the power to censor my research or even put it on indefinite hold.

This experience has become increasingly common. Attempts have been made to deplatform political commentators, such as Jenni Murray, Germaine Greer and Julie Bindel. In many cases, speech has been characterised as 'hateful' and speakers as 'far-right extremists', in almost all instances absurdly so.

Organisations, such as *Hope Not Hate*,¹²⁸ have promoted de-platforming and cancel culture, banning social media accounts and organising public demonstrations against events on- and off-campus.¹²⁹ By seeking to oppose "far right" intolerance, they have increasingly promoted left-wing intolerance. Students have increasingly become left-wing political activists. A survey by KCL asked two thousand students about their views on free

¹²⁷ Lewis, Joe *Free speech in universities: What are the issues?* House of Commons Library 2021 <https://commonslibrary.parliament.uk/free-speech-in-universities-what-are-the-issues/>

¹²⁸ In the riots of 2024, HopeNotHate leader, Nick Lowles MBE, promoted a tweet reporting an acid attack of a muslim women which brought armed muslims onto the streets of Middlesbrough. The report was disinformation. A later tweet reporting Far Right protests brought protesters on the street. It was also disinformation.

¹²⁹ Mulhall, Joe 'Deplatforming Works: Lets Get On With It' <https://hopenothate.org.uk/2019/10/04/deplatforming-works-lets-get-on-with-it/>

speech on campus. 59% of conservative-supporting students said they believe people who support their point of view are reluctant to express themselves at university.¹³⁰ According to Trevor Phillips, former chairman of the Equality and Human Rights Commission, the NUS was using its 'no-platforming' policy, which he introduced as president in the 1970s, in an authoritarian way.¹³¹ Recently, the government stepped in to require higher education institutions to support free speech with a risk of funding sanctions and possible prosecution. The Act was delayed pending repeal by the incoming Labour Government of 2024 and may be the subject of judicial review. However, the practice of using accusations of hate to silence opponents continues, even in the House of Commons.¹³²

The expansion of university education has created a generation of young people led by those who conform to the dominant ideas of the academic environment. Moreover, increasing numbers of roles in society that require graduate entry means these ideas quickly find their way into all levels of our political institutions. This outcome was predicted by Rudi Dutschke in the 1960s. Dutschke argued that revolutionary change in society could be achieved by a gradual, non-violent change of critical institutions, including universities, the existing parliamentary system and its party-political apparatus.¹³³ He called this the *long march through the institutions*. Dutschke was influenced by the cultural socialism of the Frankfurt School and the New Left, especially Herbert Marcuse. In *Taboo: How Making Race Sacred Produced a Cultural*

¹³⁰ Duffey, Bobby *The State of Free Speech in UK Universities* (Kings College London, 2022) <https://www.kcl.ac.uk/policy-institute/assets/the-state-of-free-speech-in-uk-universities.pdf>

¹³¹ Universities are allowing free speech to be curtailed in favour of 'rule of the mob', former equalities chief warns, *The Telegraph* 2 February 2019 [Universities are allowing free speech to be curtailed in favour of 'rule of the mob', former equalities chief warns](#)

¹³² For instance, in a debate on the Scottish Gender Recognition Reform bill, Lloyd Russell-Moyle MP accused the government of 'fanning the flames of fear and hatred' and Miriam Cates MP of using 'transphobic' language when the former expressed concerns based on beliefs that are protected under law. (Hansard, Gender Recognition Reform (Scotland) Bill: Section 35 Power, 17 Jan 2023)

¹³³ Pluckrose, Helen & Lindsay, James, *Cynical Theories*, 2021

Revolution,¹³⁴ Eric Kaufmann offers an alternative analysis that focuses on innate characteristics of left-liberalism in Western Culture that adopted these ideas. He argues that these ideologies emerge as a result of sacralising minorities based on emotional narratives that infiltrate the schools, universities and bureaucracy.

Universities enormously impact society, especially where many organisations demand that graduates fill senior positions. Senior members of academia often serve in independent policy groups and think tanks and take roles in public bodies and civil service committees. Much of the detailed research and analysis into major political issues of the day come from those organisations.

Even indirectly, their influence can be felt. For instance, since teaching is now a degree profession, we increasingly find politics permeating schools. It is as if, despite legislation barring political indoctrination,¹³⁵ some teachers are so convinced of the absolute certainty of their personal moral and political convictions that they promote them as uncontested fact.¹³⁶ When the Sunak government issued draft guidelines for teaching gender-questioning children, some headmasters and teachers, with the support of lobbying organisations, indicated that they would ignore the guidance even though much of it was mandated by pre-existing legislation. When Labour took office, the guidelines were dropped. Similarly, socially progressive policies have

¹³⁴ Kaufmann, Eric *Taboo: How Making Race Sacred Produced a Cultural Revolution* (Forum, 2024)

¹³⁵ Education Act, 1996, section 406

¹³⁶ It is hard to understand how someone can leave university without realising that there are many beliefs and opinions on a given subject that are a consequence of experience and are worthy of respect in a democratic society, one of the Grainger criteria used to evaluate protected beliefs under the Equality Act 2010. Tolerance for the beliefs of others and an acceptance of social pluralism should be ingrained in young people as children long before they attend higher education and be a requirement in those we expect to teach.

increasingly been adopted in other public bodies, such as the NHS¹³⁷, the College of Policing, the BBC, etc.

As we have said, *Elitist Britain 2019*¹³⁸ suggested that the lack of social mobility partly results from our educational system. They argued that those who hold senior positions in Elite Britain tend to come from the most privileged backgrounds and attend the leading schools and universities. Their view was that:

the country's most successful educational institutions need to open their doors to those beyond a privileged few.¹³⁹

However, it seems that university lecturers and their charges have become increasingly politically homogenous across educational institutions. It may be that the social divisions are not so much about the choice of university to attend but rather between those who attend higher education and those who don't.

It is often argued that many politicians engage in 'student union politics'. That would be unsurprising, given that many have little experience outside that environment. Their ideas are not only formulated in an environment with limited intellectual diversity, but they lack knowledge of a wide range of everyday social situations. The ideas are not tested for robustness by exposure to different critiques. Consequently, they tend to adopt an over-confident certainty in their position, expressing absolute moral conviction and often belittle those who take a different point of view as being on the 'wrong side of history'. This approach seems increasingly common among members of the same group working in the media, academia or public service. The consequences of this can be seen in the quality of political debate and the legislation produced by our parliamentary system. Political debate has become increasingly performative rather than substantive, not only in the great set pieces of the floor of

¹³⁷ For example, the NHS Confederation issued Healthcare Guidance based on gender ideology that sought to deny female patients same sex care. The Observer June 2023. <https://www.theguardian.com/commentisfree/2023/jun/11/new-nhs-guidance-could-prevent-same-sex-care-for-women>

¹³⁸ Sutton Trust, 2019, *ibid*.

¹³⁹ *Ibid*.

the house, such as PMQs, but also in the committee debates. Frequently, governments seem to measure their success in the quantity of laws passed rather than their quality and fail to adequately measure the impact of those laws, which leads to frequent revisions as laws have to be adjusted to meet the changing realities of modern life. In addition, our political leaders seem to spend increasing amounts of time attempting to slay the ever-smaller dragons of liberalism while ignoring more significant issues in our society.¹⁴⁰

The lack of ideological diversity seems to extend beyond parliament to Whitehall. As with MPs, many civil servants perform their tasks with skill and dedication and act appropriately. They seek to serve each administration to the best of their ability, respecting the political choices of the electorate, even where policies conflict with their point of view. Traditionally, civil servants are meant to be anonymous functionaries. However, senior civil servants appear to be increasingly drawn from the same elite. In a way, the requirement for graduate entry almost guarantees it.

In principle, the civil service should be impartial, acting according to the Civil Service Code. In practice, it is increasingly political. A small but significant portion of the civil service see themselves as having an independent position from the government they serve. Many come to the civil service from external lobbying organisations and see their role as a continuation of their activism on behalf of their former employers. Many have no idea that they are doing this. They believe that their positions are the only morally acceptable ones.

Consequently, activism is increasingly present within the civil service organisation. Internal staff networks, such as the 'Civil Service LGBT+ Network', work with external lobbyists and promote contested political ideas and very partisan interpretations of the meaning of the law. The 'Civil Service Muslim Network' has held many Webinars seeking to influence

¹⁴⁰ See Minogue's allegory of St. George in Retirement in Minogue, Kenneth A *Liberal Mind* (Liberty Fund Inc, 1963)

policy on the Israel-Gaza conflict, leading to calls for its suspension over the spreading of antisemitic tropes.¹⁴¹ Recently, an anonymous whistle-blower in the Home Office reported that, in contravention of the Civil Service Code, employees reduce priorities for government policies they disagree with.¹⁴² Similarly, it is no surprise that a senior civil servant who had a leading role in an investigation into Prime Ministerial behaviour took a political post in the opposition party shortly after, inevitably leading to questions over her impartiality.¹⁴³ Equally, questions arise due to appointing party political activists and donors to senior civil service positions rather than as special advisors.¹⁴⁴

Increasingly, we find civil servants giving evidence at parliamentary committees or giving public presentations to justify political decisions. It leaves an impression that ministers are either unwilling or incapable of answering detailed questions about the impact of policy. Holding ministers to account is an essential part of the democratic process. As Daniel Greenberg points out:

The anonymity of the civil service has already been eroded to a significant extent by the greater willingness of Ministers to seek to evade personal responsibility through the identification of individual officials responsible for particular decisions. When Ministers attend Select Committees of either House of Parliament they are routinely attended by officials who speak directly in answering questions put to

¹⁴¹ Dathan, Matt 'Jewish lobby has insidious influence in UK politics civil servants told', The Times, 14th Mar 2024, <https://www.thetimes.co.uk/article/jewish-lobby-has-insidious-influence-in-uk-politics-civil-servants-told-9c2xwmggz>

¹⁴² Anonymous *Why my Civil Service colleagues are celebrating the Rwanda ruling* <https://www.telegraph.co.uk/politics/2023/11/15/home-office-rwanda-ruling-braverman-civil-service>, 2023

¹⁴³ BBC, 'Sue Gray broke civil service rules over Labour job, government says' <https://www.bbc.co.uk/news/uk-politics-66086668>

¹⁴⁴ 'Cabinet Office hire prompts more questions over civil service appointments' (Civil Service World, 21 Aug 2024) <https://www.civilserviceworld.com/professions/article/jess-sargeant-civil-service-appointment-labour-faces-questions-cronyism-row> Apart from Jess Sargeant, Ian Corfield and Emily Middleton (former of Public Digital) are similar examples.

them; and civil servants routinely attend Select Committees and answer questions even when not attended by Ministers.¹⁴⁵

Many MPs and civil servants who are removed from office or retire go on to senior positions in public bodies, chartered organisations, charitable organisations and lobby groups and continue to exercise influence in the halls of power. It seems that members of the metropolitan elite find it relatively easy to find well-paid sinecures. It is not a surprise when a retired diplomat is given a senior position at a university or for a senior executive at the BBC to be elevated to the board of trustees of the English National Opera or the Tate. MPs, senior political advisors and party officials may join the upper chamber or be given an executive position in a government quango, a charity or a non-profit. We are not surprised when ministers and treasury officials are coopted onto the boards of large corporations, such as merchant banks and investment companies.¹⁴⁶ Individuals often move between leading roles in widely divergent organisations, suggesting that membership of the 'right group with the right background and correct opinions' is more important than domain knowledge.

Some of these positions appear to be appointed through cronyism, sometimes by government ministers using patronage to reinforce political power. Patronage entrenches the dominance of the metropolitan elite. To a degree, it is inevitable that people holding senior positions seek to promote those they trust and

¹⁴⁵ Greenberg, Daniel *Laying Down the Law* (Sweet & Maxwell, 2011), ch. 4

¹⁴⁶ When the former chancellor, George Osborne, left politics, he became the editor of the Evening Standard and the chair of the Northern Powerhouse Partnership. He also took an advisory role at fund manager Black Rock for one day a week for which he was paid £650k pa. He later became a partner at Robey Warshaw [Former chancellor George Osborne to become full-time banker](#). Nick Clegg, the former Deputy Prime Minister and leader of the LibDems, was a journalist before entering politics. He would later join Facebook as VP of global affairs and communications. ['Insufficient and very defensive': how Nick Clegg became the fall guy for Facebook's failures](#) After leaving office, former chancellor, Gordon Brown, became a UN special envoy in education chairing an international commission on the area, and later became an advisor to PIMCO, a US-based investment management firm. [Former UK PM Gordon Brown to join Pimco as adviser](#)

that they will be prejudiced by their relationships with people they come into contact with. But, if we want to live in an egalitarian society where promotion depends on merit, we must recognise that favouritism is a form of discrimination. Diversity of thought and experience requires those in positions of power to make hard decisions in which favourites are passed over in favour of equality of opportunity for all.

Even the heads of media organisations, who often set the political agenda of their reportage, belong to the same group. Mainstream media inevitably promotes particular political positions on current affairs through control of the agenda, choice of interviewees or audience members, time given to specific views and so on. Often, stories which expose flaws in the dominant narrative are passed over. However, the partiality is becoming increasingly visible and is rarely sanctioned by the regulatory bodies. Being shown images of violent street demonstrations and being told they are ‘mostly peaceful’ creates a lack of trust, as does the expression of catastrophist opinions, referring to someone who is obviously a biological male as ‘she’ or the failure to call proscribed organisations, such as Hamas, ‘terrorist’. It does not chime with the experience of ordinary people or even with the evidence of their senses.

Consequently, there is an increasing widespread distrust of the mainstream media, including public service broadcasting. Many people now consume news and current affairs from “unregulated” counter-cultural sources, such as the internet and social media, where they can hear voices and values they feel are in accord with their own – who ask the questions they would ask. Mainstream media and the podcasts they spun up reject counter-cultural positions and continue to spin the “approved narrative”, refusing to have any meaningful, serious, cross-cutting debate about possible alternatives and, consequently, are increasingly being left behind.

We also see the propensity to socially liberal political positions in bodies not directly controlled by the government. For instance, the Home Office released a Statutory Code of Practice for police officers and staff, asking for a proportional approach to

recording non-crime hate incidents.¹⁴⁷ However, many police forces nationwide continue to do so even in trivial cases. The recording of NCHI is increasingly seen as a mechanism to control free speech along the same lines as de-platforming and cancel culture. The arrest of individuals and seizure of phones and computers, followed by subsequent release often at inconvenient times, seems, at best, to be trying to ‘make the process the punishment’ where no crime has been committed and, at worst, has the character of an authoritarian police state.

Public behaviour of the police at various festivals and demonstrations has been the subject of criticism and even ridicule by many members of the public. At multiple events, the police seem to favour those promoting socially progressive positions, such as trans activists or those supporting the Palestinian cause. This partiality inevitably leads to accusations of two-tier policing. ‘Policing by consent’ has been a long-standing principle since the time of Robert Peel.¹⁴⁸ Consent is given because we believe that, provided the police act ‘without fear or favour’, policing is in our interests. Partiality in policing breaks that contract. Without public consent, the police can no longer do their job effectively.

Similarly, the Equal Treatment Bench Book,¹⁴⁹ published by the Judiciary, provides guidelines for those involved in justice in England and Wales. In the 2023 version, it indicates that courts should refer to a defendant according to their desired pronouns, whether transitioned or not, even in the case of rape, which in British law can only be committed by a biological male. To a claimant in a rape trial, the court referring to the defendant as a

¹⁴⁷ College of Policing, 2 June 2023 New Code and Guidance for Non-Crime Hate Incidents <https://www.college.police.uk/article/new-code-and-guidance-non-crime-hate-incidents>

¹⁴⁸ The ‘General Instructions’ issued to every new police officer from 1829 is underpinned by the notion that officers can only do their job only with the consent of the public. <https://www.gov.uk/government/publications/policing-by-consent/definition-of-policing-by-consent>

¹⁴⁹ Courts and Tribunals Judiciary, Equal Treatment Bench Book, 2023, <https://www.judiciary.uk/wp-content/uploads/2023/06/Equal-Treatment-Bench-Book-April-2023-revision.pdf>

woman must seem to strike at the heart of the impartiality of the court as well as being deeply offensive.

The elite tend to be far more socially progressive than the population. For instance, at the time of writing, polls indicate that nearly 60% of those who expressed an opinion believe there should be a reduction in immigration,¹⁵⁰ and 77% believe that trans-identified males should be excluded from female sports.¹⁵¹ These opinions seem to be in the minority among MPs, who often react to those expressing these opinions in a condescending manner¹⁵² and sometimes with outright hostility. There appears to be a belief that people must be ruled by their betters for their own good. As Tony Benn once said:

It would be the end of democratic politics as we know it in Britain if the Labour Party embraced an aristocratic view of its function as Members of Parliament, believing itself to be cleverer or wiser or more knowledgeable than those it was sent here to serve.¹⁵³

The same could be said for any MP.

The built-in bias toward socially progressive causes also makes the elite susceptible to the influence of lobbying organisations that share those positions. Lobbyists use privileged access to those with power and influence to change society, often out of line with the views of the population. They seek to do this through the legislative process and through departmental regulations and guidance where there may be limited political

¹⁵⁰ Migration Observatory, Kantor, April 2023, excluding don't-knows <https://migrationobservatory.ox.ac.uk/resources/briefings/uk-public-opinion-toward-immigration-overall-attitudes-and-level-of-concern/>

¹⁵¹ YouGov, May 2022, excluding don't-knows <https://yougov.co.uk/society/articles/43194-where-does-british-public-stand-transgender-rights>

¹⁵² This is reminiscent of Gordon Brown's encounter with Gillian Duffy in the 2010 UK Election Campaign. Duffy was complaining about mass migration. Brown was overheard describing Duffy as 'just a sort of bigoted woman'. An IPSOS poll in 2011 showed that 64% of the population thought there were too many immigrants.

¹⁵³ Benn, Tony 'United Kingdom And European Communities Debate, 22 July 1971' Hansard, volume 821, col. 1819. [United Kingdom And European Communities - Hansard - UK Parliament](#)

oversight.¹⁵⁴ The lobbyists can access considerable resources from commercial sponsors and wealthy individuals to campaign for their causes. They host meetings, working lunches and other events with MPs and civil servants, providing them with briefing notes and internally funded 'research' that supports their cause, along with the usual array of badges, flags and slogans to signal support. Often, when ministers are asked in the House what they are doing about a particular issue, they respond by using public funds to contribute to a relevant external lobbyist on behalf of the government and, by doing so, answer the question and polish their party's public image at minimal cost to themselves.¹⁵⁵

Moreover, the elite tends to promote concerns that the social commentator Rob Henderson has described as 'luxury beliefs' to display their social status. These beliefs often impose unacceptable costs on less privileged communities. For instance, it is, in general, the residents of deprived housing estates, rather than those in leafy suburbs, that are most likely to suffer from the idea that street gangs are victims who need support rather than punishment. The positions held on Brexit are another example. EU Freedom of Movement led to an influx of Eastern European workers, particularly in low-paid areas such as building, cleaning, and healthcare. It was unlikely to affect the elites in our society. Indeed, they were most likely to gain from it. But it could be a considerable cost to the lower paid as incoming workers competed for their jobs. Moaning about the cost of an *au pair*, cleaners, or the price of takeout coffee is unlikely to elicit much sympathy among ordinary people who fear for their communities.

The spread of the elite has extended far beyond politics and civil society into more general cultural activity. In 2023, the ONS reported that the proportion of working-class actors, musicians

¹⁵⁴ For instance, in the Spectator, James Kirkup's explores the how a small group of activists were able to achieve major influence over public bodies, politicians and officials to advance transgender rights – a minority position among the electorate. <https://www.spectator.co.uk/article/the-document-that-reveals-the-remarkable-tactics-of-trans-lobbyists/>

¹⁵⁵ 'Kemi Badenoch on her Conservative Leadership Bid' Planet Normal Podcast with Liam Halligan (Daily Telegraph, 2nd August 2024)

and writers has shrunk by half since the 1970s. Analysis of the data showed that 16.4% of creative workers born between 1953 and 1962 had a working-class background, but that had fallen to just 7.9% for those born four decades later. Why does that matter? Because young people often closely mimic those they perceive as role models, many of whom are leaders in the arts and sports, to the degree of adopting their ideas and opinions. Increasingly, cultural events such as music festivals, exhibitions, drama, and the media promote political views that conform to socially progressive norms. A PEC report quoting the Labour Force Survey reported that just five per cent of those from working-class origins based outside of London and the South East work in a creative occupation, compared to 15% of those from privileged backgrounds living in these regions.¹⁵⁶

While the elite strives to meet official diversity requirements regarding protected characteristics, they often lack diversity of opinion, which is just as important in a society that seeks inclusiveness. Those in the group tend to reinforce a narrow set of political positions. This is not to say that everyone from this group holds the same opinions but that certain political beliefs tend to become normative, and the group wields enormous collective power. The professor of political theory, Anne Phillips, made a similar point in her 1998 book, *The Politics of Presence*.¹⁵⁷ In a blog of 2017, she noted that:

Fair representation is not only about ensuring that the distribution of the parties in parliament roughly corresponds to the distribution of votes between the different parties. It is also about achieving a rough correspondence between the range of experiences, perspectives, and concerns in the electorate, and the range among those who act and

¹⁵⁶ McAndrew Siobhan, O'Brien, Dave, Taylor, Mark, Wang, Ruoxi *UK Arts, Culture, and Heritage Audiences and Workforce* (Creative Industries Policy and Evidence Centre, May 2024), 1-78 <https://pec.ac.uk/wp-content/uploads/2024/05/Arts-Culture-and-Heritage-Audiences-and-Workforce-Creative-PEC-State-of-the-Nation-report-May-2024.pdf>

¹⁵⁷ Phillips, Anne *The Politics of Presence* (Oxford University Press, 1998)

speak on our behalf. In the UK, as in many other countries, we still fall woefully short on both these measures.¹⁵⁸

A reformed House of Lords should be populated by members who represent the full range of communities within our society irrespective of sex, sexual orientation, race, religion, disability, socioeconomic status, academic history and location, but it should also represent the wide range of ‘experiences, perspectives and concerns’ of the public at large.

Political Patronage and Public Appointments

Political patronage is a necessary tool of government. Generally, powers of patronage are held by political leaders who have control over their party in parliament. For instance, they choose ministers who serve in their cabinets. One would assume the leaders appoint the best people available to fill these roles.¹⁵⁹ The party leaders may also have control of appointments in the party hierarchy and the power to suspend or expel members, including MPs, from the party. Such powers can be used to promote party discipline by putting pressure on MPs to support party policy in pursuance of their manifesto commitments. In party matters, party leaders are answerable to their parties. In addition, the prime minister is responsible for organising government departments and appointing ministers to control them. Often, the ministers have assistance from junior ministers (MPs appointed by the PM with a specific portfolio) and special advisors or spads. Ministers and their advisors set departmental policy, bringing forward legislation that aligns with cabinet decisions. This proposal does not seek to undermine the use of political patronage in appointments to positions cognizable as political.

¹⁵⁸ Phillips, Anne ‘The Politics of Presence: Do politicians represent us?’ (LSE Government, 2017) <https://blogs.lse.ac.uk/government/2017/09/06/the-politics-of-presence-do-politicians-represent-us/>

¹⁵⁹ Within the cabinet, the prime minister’s position was traditionally seen as *primus inter pares*, but many modern scholars have pointed to the trend of the prime minister becoming increasingly presidential though the exercise of personal power. Removing some powers of patronage might help reverse that trend and reinforce the collegial responsibility of cabinet government.

However, one of this proposal's primary intentions is to consider how a second chamber might be used to strengthen the system of checks and balances that seeks to limit and control political power and, by doing so, act as a bulwark against corruption. Patronage is an area with a vast potential for corrupt practices, such as bribery and cronyism. One has only to consider the 'Lavender List' in the 1970s¹⁶⁰, the 'Cash for Honours' scandal in 2006¹⁶¹ or the furore surrounding the ennoblement of Evgeny Lebedev in 2020. It is essential to distinguish the legitimate use of political patronage within the sphere of government, the primary chamber and political parties and the use of patronage outside those areas.

In some areas, the PM has less control than often thought. For instance, as the Minister of the Civil Service, the PM is responsible for senior civil service appointments, at least in principle. In practice, the service handles most appointments at or below the deputy director level. The Civil Service Commission usually handles the top three grades through a panel consisting primarily of civil servants. Senior roles in the Civil Service are not political appointments or well-paid sinecures provided for the disposal of the prime minister at whim.¹⁶² Ministers have the power to influence the process, helping to construct the job description, the description of suitable candidates and who should form the panel. They also may interview shortlisted candidates, but the panel decides who to appoint. This process is

¹⁶⁰ Wilson's 1976 Resignation Honours List included some controversial businessmen who had helped fund the prime minister's office.

¹⁶¹ Several people who had loaned large amounts of money to the governing party had been awarded peerages.

¹⁶² The recent appointments of Emily Middleton and Ian Corfield raises uncomfortable questions for the Labour government. Should people who have made significant financial contributions to the government party be given well-paid senior positions in the civil service, Can they be trusted to display proper impartiality as required by the Civil Service Code?

<https://www.instituteforgovernment.org.uk/comment/more-transparency-civil-service-appointments>

intended to promote individuals based on merit in conformance with the best traditions of the civil service.¹⁶³

The need for political impartiality is a central requirement of civil servants as they must serve governments of different hues in a professional and impartial manner. It is important to note that the service is not a political player in its own right. It does not have or make policy. It has no mandate. Consequently, there should be no need to recruit or promote candidates based on personal political or religious beliefs. Holding a personal political opinion, either to the right or the left, on a particular issue does not infer moral or intellectual superiority. Often, political choices are a matter of priorities and emphasis. Nor should their background, the educational establishments they attended, or their associates or family be an important factor in appointment or promotion. The Civil Service should not engage in cronyism, nepotism, or any other preference other than merit. Internal networks of civil servants seeking to promote particular political, religious or philosophical ideas should be banned. Civil servants may hold these ideas in their private lives, but professionally, they must work for the public through their elected government, not to promote personal causes or those of lobbying groups or other bodies.

We have a right to expect high standards of behaviour from our civil servants and need mechanisms to ensure those standards are met. The service is governed through the use of codes of behaviour, such as the Civil Service Code or the Civil Service Management Code, which emphasise the need for political impartiality¹⁶⁴. If senior civil servants undermine or resist government policy, they should be investigated and, if proven, removed from the service.

Similarly, although public service unions have an essential role to play in protecting the professional interests of their members

¹⁶³ Thomas, Alex, *Appointed on merit: the value of an impartial civil service*, 2023 URL: <https://www.instituteforgovernment.org.uk/publication/civil-service-impartiality>

¹⁶⁴ The Civil Service Code was brought in under the Constitutional Reform and Governance Act 2010. URL: <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>

in the execution of their duties, they have no role in formulating or implementing public policy. They may choose to engage in campaigns, including political ones, but they should not expect civil servants to support those campaigns in their workplace or professional capacity. Such campaigns should not affect their behaviour in executing their duties. Equally, ministers should not involve civil servants in their political activities. Ministers should not require civil servants to attend parliamentary committees to explain government policy.¹⁶⁵ Such explanations are the responsibility of the minister and their advisors.

Civil servants who refuse to execute their responsibilities with sufficient impartiality should be subject to disciplinary processes. If a civil servant has a moral or religious objection to a policy that prevents them from performing their role impartially, they should seek a transfer to an alternative position or, if unavailable, resign. They have no right to neglect or resist the policy. Oversight of senior civil service appointments should be a matter for Parliament, not the government, prime minister or departmental minister.

These principles should be observed in all public bodies, including arms-length bodies, quangos, commissions and public corporations. The government regulates public bodies and guides their activities. Moreover, they allocate public money to those bodies to execute their duties in a politically impartial manner. However, it can be a tricky balance. We expect leaders of bodies to represent the interests of those bodies and to argue on their behalf, but such arguments should always be in the framework laid down in guidance by their political masters. Appointments and promotions should be made based on domain expertise and merit. If these bodies engage in political activity, those in charge of the organisation should be held responsible. Promoting particular political, religious or philosophical beliefs would be a disciplinary offence.

¹⁶⁵ While calling senior civil servants to answer questions about the processes and procedures of the service is legitimate asking them to give evidence on political policy should be frowned upon. Civil servants cannot be asked to evaluate political decisions without undermining their own position.

Protection should be provided for whistleblowers exposing any unacceptable behaviour in public bodies. Many public organisations have a culture of silence that should be actively suppressed. Whistleblowers should be encouraged, and their allegations should be investigated appropriately. Our democracy is underpinned by open access to information. Nefarious activities should be exposed to the cleaning power of transparency. As US Supreme Court Judge Louis Brandeis opined:

Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman. ¹⁶⁶

Those overseeing appointments should have due regard for the need not only to avoid discrimination on protected characteristics and beliefs, such as sex, race or religion, but also to actively seek diversity of background and experience of the candidates. Public service should be devolved to allow candidates with a broader range of experience to be recruited. We need to bring in the best available candidates across the length and breadth of the nation to maximise diversity in recruitment, appointment and promotion at all levels of public service. However, we must always ensure that promotion is based on expertise and merit through fair assessment. To that end, we must collect and publish anonymised data for all public service positions from both chambers of the House, civil service departments, and public bodies at all levels.

Direct Democracy – A Useful Digression

When considering upper chamber reform, there is a general belief that ‘democracy means an elected second chamber’.¹⁶⁷ As David van Reybrouk suggests, we have a way of sacralising elections to the degree that their use is mandated in the Universal

¹⁶⁶ Brandeis, Louis D. *What Publicity Can Do* Harper’s Weekly Volume 58, Number 2974 (McClure Publications, New York, 1913), p.10

¹⁶⁷ Benn, Tony, *Democracy means an elected second chamber*, Socialist Campaign Group News, December 1999 no.149

Declaration of Human Rights.¹⁶⁸ However, democracy does not require elections.

As early as the 4th century BCE, Aristotle reported that elections were considered to be an oligarchic form of government:

I mean, for example, that it is thought to be democratic for the offices to be assigned by lot, for them to be elected is oligarchic.¹⁶⁹

Aristotle argued that elections lead to an oligarchy because influential individuals would unduly sway the *demos*. In the modern context, Manin makes a similar point. He says that:

election is an aristocratic or oligarchic process in that it reserves public office for eminent individuals who their citizens deem superior to others.

Election, he says, inevitably selects elites.¹⁷⁰

This process is reflected in our political class. The widening of the electoral base in Britain since the 1880s from a system based on property qualification toward democratic universal suffrage has made much less of a difference to those who act as our representatives. Though we have many more women and members of the working classes, our Parliament and, to a degree, civil service are still dominated by affluent men. In recent times, given the rise of the metropolitan elite, genuine diversity may have become even more limited, and their dominance could be said to be increasingly oligarchic.

In reality, the radical democracy of Ancient Athens was a mixture of sortition and direct democracy. The system was designed to check the power of wealthy individuals and balance disparate interests, avoiding regional factionalism and clan rivalries. Urban areas, villages or settlements were assigned to one of ten tribes or *phylai*. Each tribe would consist of people from different regions and backgrounds. The tribe was the basic

¹⁶⁸ Van Reybrouck, David 'Why Elections are Bad for Democracy' *The Guardian* (29 June 2016), 1-8

¹⁶⁹ Aristotle, *Politics*, 4.1294b

¹⁷⁰ Manin, Bernard *The Principles of Representative Government* (Cambridge: Cambridge University Press, 2010), p.238

unit of military, judicial, governmental and administrative offices. They were largely self-governing.

Each tribe would annually select fifty people by lot from among their number to serve on the council or *boule*. The five hundred council members would rotate to keep numbers manageable and to ensure that all tribes took a leading role. The council would perform some oversight of magistrates, take charge of administrative issues, and receive foreign diplomats. The *boule* would also propose laws, such as making treaties, declaring war, or awarding public honours. These would be debated in the *ekklesia* or assembly, which all citizens¹⁷¹ could attend, make speeches and vote. The leading figures in the *ekklesia* tended to be skilled in oratory and sought to persuade other members. They would have followers, forming loose political factions in much the same way as today. There were no elections. Even juries (6000 participants each year) were chosen by lot by the *phylai*. Carefully balancing disparate interests created a stable government that lasted nearly three hundred years apart from a couple of brief periods during time of war.

Direct democracy is still used in Switzerland, along with some state and sub-state measures in the United States and elsewhere. In Switzerland and the US, direct democracy is an adjunct to representative assemblies. For instance, in Switzerland, citizens have the right to submit a federal initiative for a referendum that can overturn decisions by parliament, provided they can collect a petition with 50000 signatories within 100 days. For some states, a combination of representative and direct democracy has proved useful. However, in Britain, it is unusual to use referendums (direct democracy) because of the long-standing principle of parliamentary sovereignty. Generally, they have only been used to decide on critical constitutional issues and only under an Act of Parliament.¹⁷² The divisions exposed by the

¹⁷¹ Only men could attend. Apart from women, metics and enslaved people were also excluded.

¹⁷² The British government has, so far, held ten national or regional referendums on devolution, sovereignty, independence and proportional representation. In

Brexit Referendum campaign have led many to suggest that future governments might be loath to repeat the experience.

When considering the relationship between the individual and the State, Locke saw no difference between direct and representative democracy. He argued that governments require the consent of individuals, 'giving it either by themselves, or their representatives chosen by them.'¹⁷³ Locke reasoned that our liberties are best protected by the collective because only the collective is strong enough to defend those liberties against foreign invasion or social disorder. In our democratic society, consent arises from accepting the protections of the collective and participating in its decision-making process.

Most modern democratic nations choose to be governed by representative assemblies as a pragmatic solution based on the division of labour. Leading citizens in ancient civilisations could afford to participate in direct democracy because they had servants and enslaved people to work on their behalf. In general, we choose our representatives by election rather than sortition. Rousseau had reservations about representative government. He believed a vast gulf existed between people creating laws for themselves and electing representatives to make laws for them.¹⁷⁴ He thought it would be genuinely democratic to have the whole electorate voting directly on each issue of the day.

While direct democracy is impractical in the modern world, it illustrates an essential point that the only way to guarantee that an assembly meets John Adams' test that the body should 'think, feel, reason and act' like the 'people at large' or Anne Phillips

each case, the proposal was framed as a simple Yes/No question. As Burnheim points out: 'It would be possible to provide everybody with the means of listening to debates on any topic and recording a vote on every issue without their leaving their armchairs. But people would be reduced to accepting or rejecting proposals. There is no way in which any significant proportion could participate in framing them. Aristotle and other ancient critics of democracy agreed that it inevitably degenerated into rule by orators and ultimately into tyranny. The bigger and more passive the audience the more likely that is to happen'. Burnheim, John *Is Democracy Possible?* (Sydney, 2006), p.2

¹⁷³ Locke, John, *Second Treatise of Government* [1690], (Oxford World Classics, 2016)

¹⁷⁴ Rousseau, Jean-Jacques, *The Social Contract* [1762], 1998, Book 4. Chap.3

desire for a body that represents ‘the range of experiences, perspectives, and concerns in the electorate’ is for that assembly to be the people at large. Elections are a poor substitute for that.

A Third Way – Deliberation by Jury

Pluralism is an essential requirement for successful deliberation. We need people with different experiences and values to scrutinise public policy and legislation. We have found that the upper chamber is a necessary part of the checks and balances required to protect individual liberty from the state and that, to do so, it must be independent of the primary chamber. As a result, we must avoid the influence of party politics in selecting members for the upper chamber, whether through elections or by appointment. However, our political institutions must be constituted so that power is acquired through the democratic process because, without that, the decisions of those holding power have no legitimacy.

The philosopher and humourist Douglas Adams considered the problem of choosing those who should govern:

The major problem—one of the major problems, for there are several—one of the many major problems with governing people is that of whom you get to do it; or rather of who manages to get people to let them do it to them.

To summarize: it is a well-known fact that those people who must want to rule people are, ipso facto, those least suited to do it.¹⁷⁵

Unlike election and appointment, which selects candidates who seek political power, sortition¹⁷⁶ places power in the hands of people who do not seek to govern. Maybe sortition solves the problem of choosing representatives in the upper chamber by being genuinely independent and democratic. Using sortition, we can create a proxy for the citizen body. We could consider using two different selection methods: election in the primary chamber and sortition in the upper chamber to ensure their

¹⁷⁵ Adams, Douglas *The Restaurant at the End of the Universe* (Pan, 1980)

¹⁷⁶ Sortition is the selection of public officials using a random representative sample.

independence, just as the Athenians used direct democracy in the *ekklesia* and sortition in the *boule*.

As we have seen, using lots to select representatives has a long history. Apart from Ancient Athens, it was employed in other Grecian poleis such as Corinth, Megara and Syracuse. Ancient Rome also used it under both the Republic and the Principate.¹⁷⁷ These systems were in use, for the most part, for many centuries. However, much of Western European knowledge of the Ancient World was lost after the fall of the Roman Empire and had little impact on the initial development of modern European political systems.

Early medieval governance was centred on the ruler or monarch and a council of magnates, who exercised power through the feudal system. Usually, monarchs seeking military and financial resources would assemble (or compel) leading men of the realm, nobles and clergy, to a gathering or parliament and bargain with them in return for rewards and immunities. As the system developed, the monarch increasingly called members of the third estate, who became essential political stakeholders.¹⁷⁸ In England, parliament was separated into two Houses, the Lords and the Commons, in the 14th century. Many modern political systems have roots in the parliamentary model.¹⁷⁹

The idea of using lots was not entirely lost during the medieval and early modern periods. Elements of sortition continued to be

¹⁷⁷ Hall, Ursula 'Voting Procedure in Roman Assemblies' *Historia* (Jul. 1964), pp. 267-306

¹⁷⁸ Bishops and archbishops (first estate), lay magnates (second estate), and knights and burgesses selected to represent the counties, their cities and boroughs (third estate). See, Maitland, Frederick William *Constitutional History of England [1909]* (Cambridge: Cambridge University Press, 2008), p.174

¹⁷⁹ During the 15th century and the Wars of the Roses, the importance of nobles declined, their power being taken by the monarch. As a consequence of the Civil Wars in the 16th century, the third estate defeated (and executed) the monarch taking their sovereign power leading to the interregnum. Subsequently, the idea of a constitutional monarchy was developed in which the monarch would be directed by a sovereign parliament that would become increasingly democratic.

used in some medieval and early modern republics, such as those in Florence and Venice.¹⁸⁰

As we have said, after the political upheavals of the seventeenth century, and as a consequence, leading British thinkers focused on the defence of individual rights against a powerful state, as important then as it is today. One approach was the development of grassroots politics, such as the radical movements of the 1640s, including those of Lilburne and Winstanley. Others focused on mixed government, the rights and responsibilities of citizens, and so on. The spread of knowledge about Ancient Greek ideas in the Enlightenment led some philosophers to reconsider sortition as a basis for government. So, for instance, in 1656, Harrington recommended sortition in his ideal republic, *Oceana*.¹⁸¹

In the early eighteenth century, sortition began to be used to select juries. Trial or petty juries¹⁸² were already used in some criminal cases as early as the twelfth century as an alternative to trial by ordeal. Generally, the sheriff or under-sheriff picked juries for the circuit courts. Trial by jury became the norm in the early thirteenth century. The church banned participation in trial by ordeal, a process overseen by priests, because they became uncomfortable with a process that demanded the presence of God.

Over time, juries gained a reputation as a body that would defend the rights of citizens. For instance, in 1670, the Quakers, William Penn and William Meade, were charged with unlawful assembly for holding a non-conformist religious meeting. The jury acquitted them, so the Judge imprisoned the jury,

¹⁸⁰ Wolfson, Arthur M., *The Ballot and Other Forms of Voting in the Italian Communes*, 1899

¹⁸¹ Harrington, James *The Commonwealth of Oceana* [1656] in *The Commonwealth of Oceana and A System of Politics* ed. J.G.A Pocock (Cambridge: Cambridge University Press, 1992)

¹⁸² Petty or trial juries are different from grand juries. A grand jury investigates potential crimes and renders indictments against suspects. Such an indictment might result in a trial. Grand Juries were, typically, twelve knights selected for the purpose and is the jury referred to in *Magna Carta*. Grand juries are no longer used in Britain. A petty or petit jury is a sworn body of people (jurors) convened in a trial to hear evidence, make findings of fact, and render a verdict.

demanding a guilty verdict. When they refused, the Judge returned them to prison. At this point, the Lord Chief Justice intervened. Meade and Penn were sent to jail (on the lesser charge of not removing their hats in court). One of the jurors, Edward Bushel, took a writ to free the prisoners. The trial, referred to as 'Bushel's Case', established beyond question the independence of the jury in the English legal system.

In 1730, Parliament passed 'Bill for Better Regulation of Juries' (later known as the Juries Act 1730).¹⁸³ The act required that, in each locality, those who could serve on a jury¹⁸⁴ were posted on a list and that juries would be selected from the list by lot. The intention was to avoid bribery of officials in jury selection. Later legislation would protect juries from other kinds of corruption, such as jury tampering. Juries would increasingly become a trusted institution, being an impartial group of peers, i.e., 'people like me'. They were seen as bodies that might defend the liberties of the individual against powerful vested interests or the state. William Blackstone made the point in 1769 that judgment by magistrates was inferior because they could be partial. He preferred an impartial jury selected by lot as the defender of public justice against power:

But in settling and adjusting a question of fact, when entrusted to any single magistrate, partiality and injustice had an ample field to range in: either by asserting that to be proved which is not so, or by more artfully suppressing some circumstances, stretching and varying others, and distinguishing away the remainder. Here, therefore, a competent number of sensible and upright jurymen, chose by lot from among the middle rank, will be found the best investigators of truth, and the surest guardians of public justice. For the most powerful individuals in the state will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression may be examined and decided by twelve indifferent men, not appointed until the hour of the trial; and that, when once the fact is ascertained, the law must redress it. This, therefore, preserved in the hands of the people that share which they ought to have in the

¹⁸³ Dowlen, Oliver. *Sorted : civic lotteries and the future of public participation*. (MASS LBP 2008). p. 38

¹⁸⁴ At this time, there was a property qualification that would later be relaxed until any citizen could qualify for Jury Service.

administration of general justice, and prevents the encroachments of the powerful and wealthy citizens.¹⁸⁵

The random selection of juries would become linked to the idea that jurors were interchangeable sources of common sense. It is interesting to note the comparison of parliament as a place to achieve ends and the courtroom as a place to exercise fair judgment.

In France, Montesquieu argued that sortition is natural to democracy just as elections are to aristocracy.¹⁸⁶ Rousseau also considered sortition,¹⁸⁷ as did Burke.¹⁸⁸ Rousseau thought that a mixture of sortition and election provided a healthier path for democracy than one or the other. Burke, ever the politician, worried that those randomly selected to serve would be less effective and productive than self-selected politicians.

Since the nineteenth century, leading academics of political theory have continued to study sortition and considered both the advantages and disadvantages of its use.¹⁸⁹ David van Reybrouck has argued that the first detailed academic examination of Athenian democracy was not until 1891 with Headlam's *Election by Lot at Athens*.¹⁹⁰ H.L. Mencken advocated using lots in 'A Purge of Legislatures'.¹⁹¹ In his seminal work on representative democracy, Bernard Manin claims to be astonished that sortition is so little considered.¹⁹² In response, David van Reybrouck suggested this may result from elites seeking to retain political power in the transfer from hereditary aristocracy to elected

¹⁸⁵ From William Blackstone's *Commentaries on the Laws of England* quoted in Levy, Leonard W. *The Palladium of Justice: Origins of Trial By Jury* (Chicago : I.R. Dee, 1999), p.62

¹⁸⁶ Montesquieu *De l'Esprit des Loix [The Spirit of Laws]* [1748], Translated by Thomas Nugent (Batoche Books, 2001).

¹⁸⁷ Rousseau, Jean-Jacques, *The Social Contract* [1762]. Chap 4.3

¹⁸⁸ Burke, Edmund, *Reflections on the Revolution in France* [1790].

¹⁸⁹ Sortition and Public Policy, <http://www.imprint-academic.com/sortition>

¹⁹⁰ Headlam, James Wycliffe *Election by Lot at Athens* (Cambridge: Cambridge University Press, 1891)

¹⁹¹ Mencken, H.L., *A Purge for Legislatures* [1926], 1982

¹⁹² Manin, Bernard *The Principles of Representative Government* (Cambridge, 1997)

aristocracy.¹⁹³ The American political theorist John P. McCormick proposed a modern version of the Roman Plebeian Tribune, a committee of 51 individuals drawn by lot from the people (excluding the wealthiest 10 per cent).¹⁹⁴ This committee would propose legislation, initiate referendums, and impeach public officials.

Sortition has recently been revived as a political practice, forming a basis for political deliberations worldwide, as documented by the Sortition Foundation.¹⁹⁵ Assemblies have been constituted using sortition to deliberate on various issues such as public policy on nutrition and food in Germany, new energy infrastructure in Wales and Queensland and tobacco use in public housing in Victoria. In some areas, such as Mornington Peninsula Shire in Australia and Newham, London, standing citizens' panels have deliberated on public policy and advised local governments.

There is no reason to believe ordinary people would be any less capable than those chosen by HOLAC unless we believe that the population at large cannot make reasoned decisions based on evidence - an argument occasionally suggested by the elites but not reflected in the courtroom. All the same, there is considerable research that shows that this is not the case.^{196 197 198} Currently, members of the House include people who excelled at sports or were well-known TV personalities. Neither are careers particularly associated with increased intellectual capacity.

¹⁹³ Reybrouck, David van, *Against Elections: the Case for Democracy*. Translated by Liz Waters. (London: The Bodley Head, 2016) p. 85.

¹⁹⁴ McCormick JP. *Machiavellian Democracy*. (Cambridge: Cambridge University Press; 2011)

¹⁹⁵ The Sortition Foundation, <http://www.sortitionfoundation.org>

¹⁹⁶ Abrahams, Marc, *Improbable research: Why Random Selection of MPs May Be Best*, 2012 <https://www.theguardian.com/education/2012/apr/16/improbable-research-politicians-random-selection>

¹⁹⁷ Davids, Joshua, *How Selecting Voters Randomly Can Lead to Better Elections*, 2012 <https://www.wired.com/2012/05/st-essay-voting/>

¹⁹⁸ Landemore, Hélène, *DRAFT: Deliberation, Representation, and the Epistemic Function of Parliamentary Assemblies*, 2010 <http://www.jstor.org/stable/41931805>

Using sortition, we avoid some of the worst aspects of electoral politics. Sortition avoids factionalism both within parties and between parties. Politicians frequently use incentives and threats to make deals to see a policy passed or resisted. It is the primary purpose of the whip's office. Often, these deals have some *quid pro quo* in which the party will offer its support in some other unrelated measure. Moreover, this horse-trading is usually done behind closed doors. Under Sortition, there is no room for horse-trading policies.

Moreover, sortition increases the strength of the upper chamber, reinforcing the checks and balances that control executive power by removing the use of patronage to overcome its resistance. Using the threat of creating new peers to push through a measure would no longer be possible. Of course, the primacy of the Commons must still be enforced as it is the democratically elected chamber with a mandate to effect policy. A reformed chamber would continue to be subject to the Parliament Acts and the Salisbury Convention.

This is not to say that we would randomly select people from the whole population. Considerable effort has been expended on the process of sortition. For instance, mathematicians have considered issues such as how many people it would require to be representative of a given population.¹⁹⁹ Social and political scientists have considered whether lots can or should be apportioned.²⁰⁰ We might reasonably eliminate some groups based on age, citizenship, criminal record, mental capability, and so on and then choose people from the remaining people by lot. This process is very similar to how we select juries.²⁰¹ Similar grounds for excusal would ensure that an individual is not repeatedly called for service, making it too onerous. If as many as a few thousand people were required to serve each year, it is unlikely that most would serve more than once in a lifetime. Given a suitable selection mechanism, the chosen persons will

¹⁹⁹ Pluchino, Alessandro et al, *Accidental Politicians*, 2011

²⁰⁰ For instance, should we have one random lottery across all people or two, one for men and one for women?

²⁰¹ See the Juries Act 1974 <https://www.legislation.gov.uk/ukpga/1974/23/contents>

automatically represent the sorted people over time because the selection is random. Sortition is the most democratic method of choice possible because it is a proxy for direct democracy.

Seeking to include as much of the population as possible has important implications. The chamber needs people representing all communities from all corners of our nation. In the past, our government has been over-represented by members from urban locations, especially London, and overlooked the needs of those in our industrial towns and rural villages, the coastal areas and inland communities, the highlands and the lowlands. People in those areas should be able to take their place in the nation's governance. The advent and rollout of new technology has created a unique opportunity to spread political representation throughout Britain rather than locating it in a few small places. We should use technology to devolve governance to people within their communities rather than require them to attend centralised institutions. This would reduce the cost of accommodation and make service more practicable for those with social and other commitments. It would allow them to serve on an equal footing with those in less far-flung places.²⁰²

Of course, many politicians in both Houses are likely to reject these ideas not because they have no value but because they strike at the power many politicians hold most dear: their own. Politicians want to "make a difference". They want to put their vision of a brave new world in place: to build a new Jerusalem. To do so, they ask the public to support their vision and once elected, they cleave to power. However, to know the truth of a matter, one has to test it against contradictory opinions. As John

²⁰² During the rollout of the new system, new infrastructure will be created to support engagement even in the remotest locations. In the interim, as the new trunk is developed, this may require that people attend local centres with appropriate accommodation as needed. This should be a temporary measure. It is an important part of this proposal that irrespective of location all people can be fully part of our political system.

Stuart Mill once wrote, truth emerges from the clash of adverse ideas.²⁰³

As already stated, The Sortition Foundation, which advocates for sortition as a transformative political mechanism, commissioned a YouGov poll in April 2023²⁰⁴ that revealed that the most popular alternative for House of Lords reform amongst the public is not an elected second chamber as described in many proposals, or even a chamber either elected or appointed on a regional basis, such as intimated by the Labour Party. Instead, the survey showed that nearly a quarter of the population would favour replacing the House of Lords with a citizens' assembly composed of people from all walks of life, a body the Foundation calls 'a House of Citizens'. Given the level of support for citizens' assemblies as a replacement for the House of Lords, it would be reasonable for those calling for reform to consider this alternative seriously. Such consideration was missing under the Royal Commission under Lord Wakeham in 1999.

Democracy in Decline

In the increasingly polarised politics of the twenty-first century, many people have little or no faith that governments of any hue will defend their interests, and consent is being withdrawn. Many people feel that no party represents them and describe themselves as 'politically homeless'. It is little surprise that turnout is declining in national elections.²⁰⁵

²⁰³ Mill, John Stuart *On Liberty* [1859] in *On Liberty, Utilitarianism and Other Essays* 2nd. Edition ed. Mark Philip & Frederick Rosen (Oxford World Classics, 2015). p.98

"Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions, that the remainder of the truth has any chance of being supplied."

²⁰⁴ Sortition Foundation, *House of Citizens tops public poll to replace the House of Lords*, *ibid* See Figure 1 Sortition Foundation Poll, April 2023

²⁰⁵ Turnout for general elections in the 20th century was 71.1-83.9%. In the 21st century, that figure has dropped to 59.4-68.8%. The higher figure was during the

Several groups have sought to explain this process. Freedom House, the US left-wing research centre, puts it down to a rise in populism in general and Trump in particular. Yet, its research shows US democratic ratings have declined from 94 in 2020 to 83 in 2024 under Biden. The British-Polish journalist Ola Cichowlas has suggested that the decline may be partly a consequence of economic uncertainty. In a report for The Henry Jackson Society in 2015, she comments:

"The aftermath of the global financial crisis saw a rollback on democracy in the heart of Europe. In parts of the former Eastern Bloc, today's political elite prioritise business interests over commitments to human rights, and political stability over freedom and liberty."²⁰⁶

The decline is not unique to Western Liberal countries. In the late twentieth century, there was a rise in the number of countries with democratic governments, but this seems to have reversed in recent years.²⁰⁷ In its annual report, the Stockholm-based International Institute for Democracy and Electoral Assistance (IDEA) reported that democratic institutions were being undermined by issues ranging from restrictions on freedom of expression to increasing distrust in the legitimacy of elections. In its 2022 study, IDEA wrote:

"The world faces a multitude of crises, from the cost of living to risks of nuclear confrontation and the acceleration of the climate crisis. At the same time, we see global democracy in decline. It is a toxic mix."²⁰⁸

post-Brexit fall-out. Some argue that this was when a significant part of the electorate tried to wrest control from their politicians. If so, the attempt failed. In 2024, turnout was 60%. In essence, the government won a landslide on the votes of 20% of the electorate.

²⁰⁶ Cichowlas, Ola & Foxall, Dr Andrew *The State of Democracy After 25 Years: Lessons from Central and Eastern Europe* HJS, 2015

<https://henryjacksonsociety.org/publications/the-state-of-democracy-after-25-years-lessons-from-central-and-eastern-europe/>

²⁰⁷ Herre, Bastian *The world has recently become less democratic* (Our World in Data, 2024) <https://ourworldindata.org/less-democratic>

²⁰⁸ Reuters, 'Half of world's democracies in decline, intergovernmental watchdog says' November 30, 2022 <http://www.reuters.com/world/half-worlds-democracies-decline-intergovernmental-watchdog-2022-11-30/>

In Britain, an increasing number of people, especially the young, are beginning to reject representative democracy²⁰⁹ in favour of direct activism to achieve their political ends, leading to protests, such as those surrounding Black Lives Matter or climate activism. David Bailey, a senior lecturer in Politics at Birmingham University, has documented political protests from 1985 to 2019. He noted the rise in political dissent among a broad mix of society on various issues. He argues:

“The 2010s have been a decade of austerity, acrimony, and growing frustration at a lack of democratic accountability. As we have seen, this has also been reflected in the rising trend of protest politics, as frustrations translate into growing attempts to find new and alternative ways to influence public policy.”²¹⁰

His prediction that this will likely continue into the 2020s has been borne out, with increasing protests under both Conservative and Labour governments of the 2020s, in some cases leading to violence.

Many increasingly see Britain as a post-democratic state where citizens join campaigns run by networks of corporations, private donors and their foundations and where political engagement, if it is to happen at all, must bypass political institutions and take to the streets. People are engaged in politics but not our political institutions. The increase in university attendance may have led to elite overproduction,²¹¹ causing increased social instability due to the lack of suitable roles for graduates in the existing institutions.

²⁰⁹ Patel, Parth & Quilter-Pinn, Harry, *ibid.* The survey claimed that ‘young UK adults (18-24) are least likely to say democracy serves them well (just 19% say it operates well against 55% who say badly)’. <https://www.theguardian.com/politics/2022/apr/10/young-adults-loss-of-faith-in-uk-democracy-survey>

²¹⁰ Bailey, David ‘Decade of dissent: how protest is shaking the UK and why it’s likely to continue’ *The Conversation* Jan 2020. <https://theconversation.com/decade-of-dissent-how-protest-is-shaking-the-uk-and-why-its-likely-to-continue-125843>

²¹¹ The concept of *elite overproduction* was developed by cliodynamicist Peter Turchin to describe the condition where society produces too many potentially elite members leading to social instability.

We are at or nearing a critical juncture in Western political development. We see increasing distrust of our political institutions and the politicians that occupy them. It seems unlikely that those problems can be resolved by proposing solutions extending the existing elite's powers with more politicians, their appointees and party factions. Our systems of governance would continue to fail to meet John Adam's essential requirement that the body should 'think, feel, reason and act' like the 'people at large'. We become a people enfranchised but mostly unrepresented. Such a situation might lead to a return to the scale of social unrest unseen since the early part of the nineteenth century, with more and more people seeking political expression through street protests and the consequent loss of social cohesion.

Democracy is the most radical political idea to emerge in the last five hundred years. Yet, many people across the spectrum of political opinion are rejecting it or seeking to overthrow the institutions we have created to effect it because they believe it no longer acts in their interests or the interests of the nation as a whole. We may be allowing our most valuable asset to rust and ruin. The solution is not to overthrow democracy but to refresh and reinvigorate it. We must defend it and constantly improve it because, unlike the public protests and demonstrations of direct activism, democracy gives the quiet voices, the minorities, a platform to express their hopes and aspirations and have a say in the running of our nation. All too often, voices of reason are drowned out by more passionate, more vociferous compatriots. Fairness demands that we listen to both. Protests are an adjunct to democracy, allowing the free expression of alternative ideas which we may collectively choose to reject, but they are not a replacement for it.

Modern systems of political representation are often based on the aristocratic idea of 'government by the best',²¹² the idea that the

²¹² The word aristocracy comes from the Greek meaning power of the best. ἄριστος (áristos) was a term given to men who were considered the best in terms of their qualification to lead. It carries an additional meaning of being morally the

best persons are chosen through a competitive call for candidates. We choose the person we believe to be the best to represent us. But, if candidates are put forward according to an identical set of measures, who come from the same limited part of the population and promote policies perceived to be almost identical, the candidates will be very similar to each other and present little choice to the voter. Moreover, they become increasingly similar to those elected in other constituencies.

Government by 'the best' becomes an oligarchy. It is one thing to choose an assembly of the 'great and the good', but it might be more representative to select ordinary people to exercise sound judgment from a wide range of social and economic groups who have experience of living on limited means, of using government and private services in education, health, transport, and so on, of being employed in the private or public sector, of being self-employed or unemployed, of living with a disability, of being part of a minority community, of having varied beliefs, of living in remote rural or coastal locations or otherwise. We need to ensure that the values and interests of ordinary people up and down the country are represented and that their voices are heard. In a democratic society, the 'Government of the people, by the people, for the people'²¹³ should seek to include *all* the people.

best and was often associated with the Gods. The rise of hereditary as a means of selecting leaders was considered a degenerate form of aristocracy, i.e. an oligarchy.

²¹³ Lincoln, *Abraham Gettysburg Address* Nicolay, John (Manuscript, 1863)

Advocated Sortition

This paper proposes replacing the House of Lords with a new chamber whose members are chosen using sortition. The new chamber would continue to be a central part of our democratic system, a crucial element in the system of checks and balances that control executive power.

Sortition has unique benefits and challenges. The processes and procedures of the House would be modelled on the existing chamber but organised somewhat differently. Many of its existing powers would remain, but some would be reduced, some enhanced, and it would be given a new set of responsibilities, mainly in appointments and oversight.

Many proposals for a second chamber based on sortition seek to update the existing assembly with a like-for-like replacement, substituting appointment with sortition. It has the benefit of making the rollout much more straightforward. The ‘House of Citizens’ proposed by the Sortition Foundation²¹⁴ has a new chamber with 325 members, all selected by lot using a rotating selection system. Each member would serve for between one and two years. Barnett and Carty propose a series of alternatives in ‘The Athenian Option’ as a basis for debate.²¹⁵ In one, people chosen by lot would serve alongside existing members for one to four years in an assembly based on a hybrid of sortition and appointment. While these proposals might be successful, both involve a significant commitment by members of the public that may be too demanding. Consequently, members may be reluctant to serve as the requirements are too onerous, damaging the diversity of the assembly.

²¹⁴ The Sortition Foundation *The House of Citizens*, https://assets.nationbuilder.com/sortitionfoundation/pages/858/attachments/original/1682697384/UK_House_of_Citizens_Web_v1-0.pdf. In this proposal, selection would not be random. Candidates would make themselves available for selection and they would be categorised on socio-economic and demographic lines and then selected according to those categories to match the population as a whole.

²¹⁵ Barnett, A. & Carty, P., *The Athenian Option: Radical Reform for the House of Lords* (Sortition and Public Policy) 2008

Moreover, these proposals are based on a self-selecting group. Invitations are sent to a random selection of the population, and invitees register their interest in taking part. A participants list is selected by lot that matches some predetermined demographic criteria.²¹⁶ In essence, such assemblies depend on the idea that a small group of citizens randomly selected to reflect the age, gender makeup, education level, and wealth of the general population does indeed represent the public as a whole. There is good reason to believe it might not. Would those with domestic care commitments or disability have the time or the will to commit to such an assembly? Why are those particular demographic criteria chosen?

Much of our experience of using sortition in the political sphere comes from its use in citizens' assemblies, which are extra-political bodies organised to consider specific issues. Professor Will Jennings of Southampton University has participated in projects using citizens' assemblies to resolve Brexit and Devolution issues. He said:

We don't want it to be that it's just the usual suspects who take part in all the other aspects of the political process who turn up and have a very nice deliberative time.²¹⁷

However, it seems likely that such an assembly would always gravitate to the usual suspects by excluding those whose work/life commitments preclude them from taking part or, at least, make it difficult. In an article in *Politico*, James Snell wrote:

The British state regularly tries holding "consultations," which are entirely worthless and are monopolized by entrenched rent-seeking interests, as well as individuals with too much free time. Local political parties are often run by members who can — in some democracies — be numerous and proudly, profoundly ordinary. But what tends to

²¹⁶ McKee, Rebecca & Pannell, Jack *Citizens' assemblies What are citizens' assemblies and how do they work?* (Institute for Government, 27 Mar 2024) URL:

<https://www.instituteforgovernment.org.uk/explainer/citizens-assemblies>

²¹⁷ Harris, Naomi 'The Myth of the Citizens' Assembly' *Politico* (18 Jun 2019) URL:

<https://www.politico.eu/article/the-myth-of-the-citizens-assembly-democracy/>

happen in these circumstances? The extremes normally enjoy a prominence far greater than their numerical strength.²¹⁸

Moreover, random recruitment is not as straightforward as it might seem. The Irish Constitutional Convention, often cited as a relatively successful citizen's assembly, suffered recruitment issues that might lead some to question the outcome.

In practice, citizen's assemblies often suffer from low retention rates. The Irish Citizen's Assembly²¹⁹ expected unpaid participants to attend for 12 weekends over 18 months. By the end, only 61 of the original 99 were still attending, and only a quarter had participated in all the meetings. In addition, the process can be expensive in terms of travel, accommodation and so on.

Citizen's assemblies often operate outside the constraints of ordinary politics. For instance, an assembly to consider the future of social care unsurprisingly recommended that there be more funding for the care of the elderly and that care workers be better trained and better paid. Another assembly run by academics considered the aims of Brexit negotiations. They recommended a set of trade arrangements that were neither in the EU's or Britain's interests nor on the table.

Often, citizens' assemblies suffer from being set up as an adjunct to political power rather than embedded in the political process. As a result, it is easy for politicians to disregard conclusions that do not meet their expectations. Moreover, like Royal Commissions, they are often set up under the cloak of independence but with terms of reference reflecting the desired outcome. If we replace the upper chamber with a house based on sortition, it must be allowed to act independently of the Commons.

²¹⁸ Snell, James 'The West must choose representative democracy — not sortation' Politico (12 Dec 2022) URL: <https://www.politico.eu/article/west-choice-representative-democracy-sortation/>

²¹⁹ This deliberated on a number of issues such as abortion, fixed-term parliaments, referendums, population aging and climate change.

A Chamber Selected by Lot

This document considers an alternative that addresses some of these concerns. The new chamber would consist of committees populated by people chosen by sortition. Using sortition would improve diversity in our political process by being more representative of people from all walks of life. It would be unique among second chambers with an authority that would enhance its power and prestige.

The new chamber will be called the 'Citizens Chamber' or just the Citizens. The Citizens would have similar functions to those of the current Lords, in line with the customs and traditions of our parliamentary system. The Citizens would continue with its traditional role of scrutiny and revision of the law. It would be entirely independent of the Commons. Unlike the latter, its deliberation will not be allied with political affiliations. Opposition parties and backbench MPs undertake that role in the Commons. The purpose of the new chamber should be to widen examination to reflect the opinions of the public at large.

The new chamber would use a highly distributed committee structure that places pluralism at the heart of its design. The proposal draws inspiration from the jury system. Unlike politicians and their parties, juries are one of the most trusted institutions of modern Britain, and there is no reason to believe that would be changed by their use in the parliamentary process. Juries are perceived as fair and are naturally representative. After all, the juries are chosen from 'people like me'. They are also perceived as a fair means to exercise judgment.

The structure would consist of many discrete committees formed to consider specific topics (e.g. a bill or a policy area) using evidence presented by advocates. The role of the committee members is not to provide domain-specific expertise but rather to provide judgement based on the evidence presented. Some committees would be permanent, based on a rolling membership. However, most would be short-term committees created to consider a specific task. They would remain in place until the task is complete and then dissolve.

Superficially, each committee would be like a law court, where the members are the jury, with advocates (barristers) and a moderator (judge). The committee would consider a proposition in the form of a bill or policy area; they would listen to evidence given by advocates and any external experts they choose. Unlike a court, there would be opportunities for the jury to ask questions of witnesses. The jury would deliberate on the proposition and the evidence. They would propose amendments or request clarification of the primary chamber for bills. When considering a policy area, they would produce a report with the right to demand a government response. At dissolution, a committee may also create a Termination Report if significant issues have affected its operation. The moderator would oversee the assembly and provide advice to the jury.

This proposal is predicated on the random selection of candidates by lot, much as we do with juries. Membership is obligatory and is both the citizen's right and responsibility. In reality, only a limited number of members will be required. Some citizens will, at most, serve once, and most will not serve at all. This approach eliminates the need to form a microcosm of society, as described by Adams, by matching specific socio-economic or demographic criteria. Membership must, by definition, be as representative as possible and will automatically adapt to changes in society at large. All members will be required not to disclose the private deliberations of the committee or committees they serve. It would be an offence to disclose information about statements made intentionally, opinions expressed, arguments advanced, or votes cast by committee members during their deliberations or to solicit or obtain such information.

The new house exploits ubiquitous remote technologies and embeds them in the design to help resolve some issues associated with recruitment and cost whilst seeking to accommodate service within the demands of modern life. Committee members would interact using secure virtual meeting rooms to avoid travel and accommodation costs and make service less onerous.

In the current Lords, members meet at scheduled times for a limited duration to hear evidence, debate on issues and vote on them. Activities relating to a specific task, such as scrutinising a bill, are not carried out continuously but across multiple sessions. Peers choose to attend debates or not. Sometimes, they attend to listen to a particular speaker or during a specific period as their calendars allow. Sometimes, they attend just to vote, often on party lines. Although there are various committees, for the most part, the main chamber can only deal with one task at a time.

Unlike the Lords, the Citizens committees meet in parallel. There is never a vote across the whole House. In the Citizens, members are encouraged to attend all evidentiary and deliberative sessions. How can you exercise sound judgment without considering all the available evidence and the consideration of your fellow committee members? When scheduling a bill, House managers should push back against schedules that are so tight that entire parts of bills have to be pushed through “on the nod” due to time constraints. The work of a committee is assumed to allow breaks for members to consider the evidence and debate they have heard. Citizens meetings are organised to meet the needs of committee members. This approach is essential because the House must include members whose work/life commitments would normally preclude their involvement in the political process. The new chamber relies on the diversity of its members.

One of the primary purposes of this proposal is to limit potential corruption at the heart of our system of governance. The best disinfectant for corruption is transparency. The Open Government Partnership did a meta-analysis of 56 empirical studies in 2018 that showed that increased transparency, including measures such as FOI laws, had a significant impact on corruption, particularly in the areas of fiscal and e-transparency.²²⁰ All the committee evidence and outcomes must be available for public scrutiny, allowing independent bodies to

²²⁰ Chen, Can & Ganapat, Sukumar *A Meta-Analysis of the Effect of Transparency on Government Corruption*, 2018, <https://www.opengovpartnership.org/wp-content/uploads/2018/05/OGP-Transparency-Best-Disinfectant-20180524.pdf>

oversee the chamber. Freedom of Information is at the centre of this approach.

In some respects, sortition sidesteps many kinds of unscrupulous behaviour in elected or appointed chambers. In the new House of Citizens, the structure is highly distributed, and its members only have a time-limited engagement with political power before being replaced, so corrupt practices such as bribery would be much more challenging. To avoid jury tampering, the committee members would be anonymous as they are with Innominate Juries. It would be an offence to disclose information that might lead to revealing the identity of committee members or to obtain such information. This would also make it difficult for lobbyists to influence members of the committees. Members have no control over the selection of other members, so forming cliques and factions, such as parties, would be more difficult.

There would be appropriate mechanisms of oversight of the committees and their members. Two committees would oversee the House, one overseeing the operation of the committees and the other the behaviour of members of the House. These committees would oversee each other. Members of the House would be able to approach either if they believe that any committee or member is behaving inappropriately. If the accusation concerns something that potentially breaches criminal law, then the police would be asked to investigate, as usual, possibly leading to arrest and prosecution. If the infraction is procedural or regulatory, the committees can warn the members responsible and, ultimately, exclude them for repeated violations. In addition, a new joint committee of both Houses would be put in place to oversee the operation of the second chamber, with the ability, *in extremis*, to intercede and resolve issues.

It should be noted that the plan described here is intended as a starting point for public debate rather than a comprehensive blueprint. No first draft is ever fully honed. Ultimately, it should be viewed as a framework that might be useful as evidence to

those tasked with developing a plan for second chamber reform.²²¹

What Roles Should the Second Chamber Undertake?

By appointing the second chamber using sortition, the chamber is not chosen to implement a specific package of policies - it has no political mandate. Its purpose is not to effect societal change. Those things are the responsibility of the elected government and, through deliberation, the various opposition parties of the Commons. As noted, we elect politicians to achieve ends and select juries by lot to exercise fair judgment. The chamber is a proxy of the citizen body that can provide sound judgment, fairness and common sense.

The second chamber would continue to be primarily concerned with oversight of the public sphere, specifically in legislation and public policy. In addition, the House would be given broader functions in areas including public appointments and the supervision of public bodies, allowing the Commons to focus on the legislative programme and government scrutiny. That perspective helps us identify roles best suited to the reformed chamber. In essence, the Citizens would focus on:

- Scrutiny and revision of legislation
- Questioning government actions and investigating public policy
- Powers in the area of public appointments
- Oversight and examination of various parts of the public sphere.

Some roles of the Lords would be removed as inappropriate to the new chamber. The new chamber would not have a role in state ceremonial occasions, such as the State Opening of Parliament. There would no longer be Prayers or other religious activities reinforcing the idea that the state is neutral in matters

²²¹ Like Barnett and Carty, this plan is proposed as a basis for public deliberation, possibly through citizens' assemblies and public forums for political debate, such as the Battle of Ideas Festival or events run by those with experience in public deliberation, such as the Constitution Unit of UCL or the Sortition Foundation.

of religion and philosophical beliefs. More significantly, the Citizens would no longer be able to initiate legislation. A chamber chosen through sortition has no political mandate.²²² The initiation of legislation will become the sole right of members of the Commons.

The new Chamber will scrutinise, deliberate, and revise government legislation and private member's bills initiated in the Commons. The legislative process would be simplified by having a single route through parliament from the Commons to the Citizens and back. Unlike the current House, members of the second chamber would not have positions in government or opposition cabinets. Ministers should be promoted from the Commons as democratically accountable MPs whose actions are subject to the scrutiny of the primary chamber. Indeed, members of the primary chamber would be excluded from selection to join the new House.

If legislation is no longer introduced in the new chamber, there will be a hiatus in work undertaken by the second chamber at the start of the parliamentary session. However, this is a non-issue, given the nature of the new chamber. If there are no committees to attend, then no members will be called. Consequently, there is no problem with a hiatus at the beginning of the session. Indeed, the parallel working of the Citizens Committees makes it better able to accommodate pauses and periods of intense activity.

Scrutiny and Revision of Legislation

The primary task of the chamber would continue to be the scrutiny and revision of legislation. We rely on the second chamber to improve the quality of legislation in the round. As is currently the case, the Citizens would not be able to amend 'bills of aids and supplies', and the power of the second chamber to delay or overturn legislation would be limited as given in the Parliament Acts and the Salisbury Convention.

²²² This is not to say that assemblies chosen through sortition could not create public policy, but rather that this does not fit with the use of sortition in this proposal.

The function of the House is not to seek to overturn legislation proposed by the elected government, as they have no mandate to do so, but rather to scrutinise, deliberate and improve legislation by suggesting amendments and requesting clarifications. In doing so, they may impose a pause for reflection, but they must respect the primacy of the elected assembly.

Questioning Government Action and Public Policy

The chamber would have the same role in questioning public policy and government actions as the current assembly. The chamber would have the right to call on government representatives to account for their actions just as they can for other bodies. This does not require those government members to be members of the Citizens. Nor does it require that members of the Citizens be members of government. The chamber will continue to have committees to investigate specific policy areas, such as foreign or domestic affairs, the military, energy policy, trade, security, etc.

It should be emphasised that the relations of the primary and secondary chambers should be collaborative rather than combative. In some circumstances, the primary chamber should be able to request the help of the Citizens' chamber, if resources are available, to examine specific areas of governance and to report as input to the political decision-making process, enhancing the diversity of the primary chamber.

Political Patronage, Public Appointments and Honours

Prime ministers and party leaders would continue to exercise patronage in the political sphere, such as party appointments, cabinet positions, etc. However, appointments outside the political sphere should come under public scrutiny. For instance, prime ministers would still organise government departments and their various ministers and political advisors, but not civil service appointments to those departments.

Apart from senior civil servants, the new chamber would oversee other public appointments, including leaders of arms-length bodies, quangos, commissions and public corporations. This process would also be adopted for internal commissions and

other persons who support the operation of the Citizens' Chamber. Appointments would be made through open competition to ensure that opportunities in public service may be available on a free and fair basis and to give the chamber the best possible choice based on merit.

The new chamber would also control the award of public honours, where relevant, and take on additional roles in public appointments.

Oversight of Bodies in the Public Sphere

If the new chamber takes on a role in appointing leaders to public bodies, it seems sensible that the chamber may also have a role in overseeing those bodies to draw evidence from the consequences of their collective choices and to ensure that they are fulfilling their function following the principles of public service. Oversight would be achieved through public body oversight committees, which would scrutinise the performance of those in charge of public bodies. The committee would have the right of private or public censure for actions or behaviour deemed outside the proper functions of the public body. These committees would produce reports for government consideration and response.

However, this would not exclude the right of the Commons to question those responsible for them directly. Indeed, this is essential because one role of government, through Parliament, is to regulate public bodies, set public policy, and develop the framework in which they operate. This role is achieved through primary and secondary legislation and ministerial or departmental guidance. This role would continue to be the case and needs to be reinforced. For these bodies to be accountable to the public, they must accede to the demands of the relevant government ministers and be seen to do so. Failure to follow legislation and guidance laid down by the government would be a failure to meet one of the essential duties of these organisations, to serve the public, and should result in disciplinary action.

The new chamber would also host investigations into evidence raised by whistleblowers who reveal inappropriate behaviour by

public bodies and the individuals who lead them. Such investigations might be under the Appointments or Standards Committees or some committee created explicitly for the purpose.

Parliamentary Oversight

The Citizens should have a role in overseeing the processes that relate to Parliament as a whole. This might include committees which seek to oversee parliamentary privileges and standards and IPSA.²²³ Currently, these are committees of MPs (and, in one case, appointed laypersons) seeking to pass judgment on other MPs in a politically impartial way. Such committees should have the primary task of seeking to improve the reputation of parliament by investigating and punishing specific allegations of misconduct against individual members.

Such committees should not become a witch hunt against a particular member. Moreover, these committees are an investigation of the individual, not the party to which they belong. All party committees involved in oversight are particularly prone to the accusation of making party political points. Members of oversight committees should not infer that an individual's misconduct is, in some way, a consequence of their party affiliation unless that party explicitly approves of that behaviour. Otherwise, since all parties have miscreants, we should infer all members across the house should be tarred with the same brush as their colleagues. Such accusations harm public trust in Parliament as a whole, including the members who make them.

Such committees should base their deliberations on sound judgment, similar to the role of a jury in a court of law. Consequently, it would make sense if the Citizens, as part of the bicameral parliament, had a role in the deliberation of those committees or the specific cases they are investigating, possibly constituted as joint committees.

²²³ The Independent Parliamentary Standards Authority that regulates and administers MPs' business costs, pay and pensions.

There would, of course, be areas in which the Citizens would have no role. For instance, it would not act as a body of oversight in the internal processes and procedures of the Commons, nor would it participate in those processes. Ultimately, the only court of judgment for members of the House of Commons is the court of public opinion through an election.

The Citizens Chamber

Organisation

When we talk of the Citizens Chamber or House, we are not referring to a physical location or an assembly of people. At no time do all members of the Citizens come together to form a collective body. Nor do they travel to attend a specific place.²²⁴ Instead, the Chamber would consist of many independent but connected committees, each targeting a particular activity under the control of a small number of management Committees who, with the assistance of officials or Commissions, organise the business of the House.

Most committees in the House are concerned with scrutiny in different areas, including legislation, public policy, and oversight of public bodies. The overall size of each committee would be small to allow more interactions between members and to allow options for flexible working arrangements, such as avoiding the school run or dealing with the needs of elderly relatives. Reducing the size of committees would reduce the time an individual is engaged in active service, making the demands less onerous while increasing the numbers involved to widen pluralism. The aim should always be to employ enough people across all the committees to ensure the broadest possible

²²⁴ During initial technology implementation, connectivity may not be available to members within their usual location. One part of this proposal is to invest in this technology (see “Everywhere Connected – Everyone Connected”). As a stop gap measure, it may be that members are provided with wireless solutions to enable them to engage with the House or, at worst, there may be a requirement for members to travel to local centres such as libraries or community centres to take part. If this is necessary, a duty will be placed on those centres to make facilities available to those centres.

representation of people from different walks of life. Pluralism is a strength in deliberation.

The purpose of this proposal is not to seek to de-politicise the second chamber. Such an aim is both undesirable and unachievable. Inevitably, the individuals concerned would have their political convictions, but they would form part of the collective will of the assembly as a whole. The purpose is to diversify the chamber across a broader range of political, social and cultural experiences to create a more representative body. Tolerance for the free expression of alternative points of view lies at the heart of these proposals. Debate should be based on evidence, but the evidence will be considered in the light of different individual perspectives. One benefit of using sortition is to enhance pluralism in the constitutional system.

It is important to note that this proposal does not assume that the role can be performed by members of the public without help, although much of it can. As already stated, considerable evidence shows this is not the case.²²⁵ However, assistance will be provided through the fundamental concepts of commissions, advocates and moderators.

As we have said, each management committee will be assisted by a small board of officials called a Commission. Each Commission works for their relevant committee and is overseen by them. The commissions are the “glue” that unites the committees, other parts of Parliament, and the civil service. They have administrative and secretarial resources to fulfil their functions and those of their committees. Commission members do not take part in committees. The binding relationship between a Commission and the Committee they serve is a typical pattern in the organisation of the Citizens Chamber.

Members of committees are not expected to be experts on political or constitutional matters. Nor are they expected to have a keen knowledge of the domain under examination. They are expected to exercise judgment using witness evidence provided

²²⁵ See the work of Marc Abrahams, Joshua Davids and Hélène Landemore already cited.

directly or indirectly through non-voting advocates, hence 'Advocated Sortition'.²²⁶ Advocates have a central role in this proposal. Each committee has two or more advocates. They organise the presentation of evidence to the committee either directly or through witnesses.

In addition to advocates, each committee would have a non-voting moderator to oversee the committee's work, assist in procedural matters and, where necessary, explain relevant points of law. Advocates and moderators would be organised by the Citizens Advocates Commission, which, in turn, is overseen by a special permanent committee of the House, the Advocates Committee. Advocates would be allowed to adopt the legislative title Advocate of the House of Citizens (AdHC). Equally, moderators would style themselves as Moderator of the House of Citizens (MoHC). In addition to the advocates and moderator, each committee would have a chair and deputy, chosen by the committee, who would take on additional responsibilities.

Some argue that public policy is too important to be left to the public because they have limited experience in the legislative process. We already have that experience in the Commons and the civil service. We need pluralistic public policy deliberation by people whose expertise is not limited to the halls of power but can bring a broader experience of society. Public policy is too important to be left solely to the experts. Building this into the design of our system of governance ensures that pluralism is a cornerstone of our constitution.

In some cases, committees are expected to produce reports for government consideration. All reports are made available to the public. The committee, especially the chair and deputy, would work with the relevant Commission to write the report with the support of the civil service. The report would consist of a record of the meetings undertaken, the witnesses examined, a summary of the evidence received, and any committee recommendations for further action. The committee deliberates on and seeks amendments to the report, and once the committee accepts it, the

²²⁶ It may be more accurate to call it 'Advocated Assemblies chosen by Sortition'.

report is published. On receipt, the government should, if requested, respond to the reports and recommendations in a timely manner.

Virtual Committees

An essential part of this proposal is that the committees will be virtual. At no time do members of the House need to come together physically. Instead, the 'Chamber' consists of a series of distinct virtual committees, like the online meeting rooms commonly used in business, social media and dispersed family groups. In this case, geographically dispersed members of the committee, chosen by sortition, come together, sometimes supported by officials, to perform an allotted task. All committees would be a mixture of face-to-face virtual meetings between the members, both in-session and out-of-session. Various commissions of officials provide support to the House. They may choose to share offices or operate in the same manner as the committees.

The new system would use technology to maximise its reach into communities nationwide without bringing members into a central location. This devolution will create new opportunities for people who currently find it challenging to be involved in the political process based on locality, disability or other commitments. Technology can help to make our political processes more inclusive. Generally, members will 'attend' the meetings from their usual location.

Citizens' Calendar

The new chamber will have more conventional working patterns with shorter recess periods, observing bank holidays and the regular summer and winter breaks. Long breaks are required in the primary chamber because members sit full-time and need long breaks for reconnection with the constituency, party conferences and extended periods for reflection. However, the members of the new house have no such requirements. Committees would be formed with a sufficient membership to accommodate temporary absences for illness and vacations. Sessions would be recorded to allow absentees to catch up. So,

rather than sitting for 150 days per year, it would 'sit' every weekday apart from bank holidays and nation days²²⁷ (12 days), i.e., approximately 250 days. The dates would be predictable, allowing the House to be more easily managed and behave less like a public school and more like a place of work. Cover may be provided to meet unexpected needs, such as emergencies, where that is deemed helpful.

Serving on a committee would not be full-time, so long periods of constant attendance would not be required. Accordingly, while the house would sit for extended periods, individual members would only be required to attend a few sessions. Sometimes, the work could be scheduled using flexible working arrangements such as part-time and out-of-hours work to meet the needs of their members along with the requirements of officials and those giving evidence. Such flexibility may allow those with personal, family or professional commitments to participate actively in the political system. It may be that members seek breaks to consider the evidence offline. Such intervals would be reasonable, or even desirable, as long as the deliberative process meets the time constraints of the legislative program laid down by the business managers and the needs of other committee members.

Permanent and Transitory Committees

The committees would have two forms, differentiated by the committee's lifetime. Permanent committees would engage in enduring activities, such as House Standards or oversight of a public body. Transitory committees would perform specific one-off roles such as scrutinising and revising bills or as fact-finding committees to explore a particular issue.

Permanent Committees typically have 15-30 members who would serve the committee for a short period. Periodically, some proportion of the committee's members would be replaced. This process is known as a 'rolling committee'. Generally, the number

²²⁷ Four days chosen by the devolved administrations to celebrate national culture.

of committee members would be chosen to be conducive to its rotation.

The Steering Committee, which organises all the committees in the House, would decide the number of members for each committee and the minimum number to be quorate. For rolling committees, it would also specify the replacement period and what proportion would be replaced. For instance, there may be a

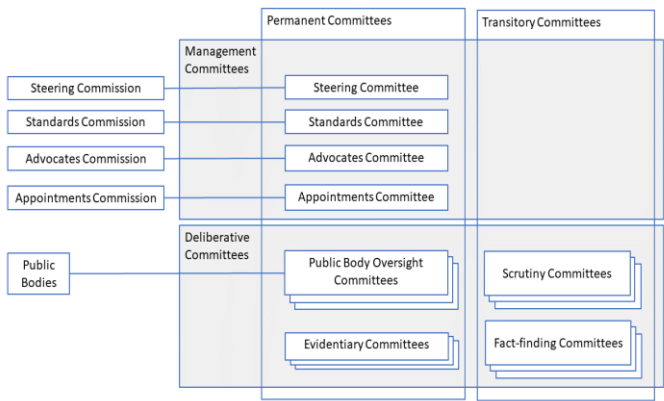


Figure 4 Citizen’s Chamber Committees

rolling committee of 21 members, seven of whom are replaced monthly. Thus, members of that committee will serve for a maximum of three months. This mechanism provides continuity without making service too onerous. Generally, committees are considered quorate when at least two-thirds of their members attend. The options for flexible working should mean that it is reasonable to expect >90% attendance at meetings. Failure to do so will be reported to the Standards Committee and can lead to prosecution. Although the Steering Committee can specify any parameters for a committee, the specifications would generally be determined by prior custom and practice.

Some permanent committees might only sit periodically. Some would be driven by calendar events, such as a public body oversight committee that might meet quarterly or annually. Others might meet to respond to specific situations, such as the resignation of an appointee. Sometimes, members may be

selected to serve and inducted into the House but do not need to attend any committees. This situation also happens with jury service, but unlike jury service, members do not need to attend while awaiting assignment to a committee.

The short-term Transitory Committees are primarily used to consider specific Bills or sections of a Bill that are particularly large or complex. They would be small (typically between 10 and 20 members) and have a fixed duration determined by the requirements of the legislative programme. They would serve for the entire lifetime of the legislation, allowing members to develop some familiarity in the areas of concern. The Steering Commission/Committee would work with business managers in the Commons to create Scrutiny Committees to meet the needs of the legislative programme. The Steering Committee might decide to make a limited number of transitory fact-finding committees during a session to explore and report on a specific issue.

In the current Parliament, it is not uncommon for debate on new legislation to be time-limited. Frequently, much of the law receives inadequate scrutiny in parliament.²²⁸ Often, that is a consequence of a heavy legislative programme and limited time in the House. Consequently, debates are guillotined, or business managers agree to allot a fixed time to each section, leaving parts of the legislation relatively unconsidered. In the new chamber, scrutiny would still be time-limited to meet the requirements of the government's legislative programme. However, unlike the current second chamber, each Scrutiny Committee acts independently, so deliberation can be carried out in parallel, allowing additional time to be given to each part and leaving less unconsidered.

Management and Deliberative Committees

Committees can also be categorised by their function. Some are Management Committees that manage the operation of the House, and others are Deliberative Committees that perform its primary activities.

²²⁸ Greenberg, Daniel, *Laying Down the Law*, 2022. Sect. 3, Parliament's Role

Generally, the management committees of the House would be permanent. These would include:

- The Steering Committee, which works with the Steering Commission to manage the business of the House and oversees the operation of House committees,
- The Standards Committee would work with the Standards Commission and be engaged with privileges, standards and related tasks, along with oversight of members of the House,
- and committees overseeing the Advocates and Appointments Commissions.

The Clerk of the Parliaments would head the various commissions. One function of the Commissions is collecting information about the cost of administering the system for reports to the relevant committees (so they can adjust their behaviour to minimise costs) and as input to other parliamentary processes. Another function of the Commissions is to act as a conduit for communication between the two parliamentary Houses and between the Citizens and the Civil Service.

It is important to note that some of these committees may have little to do in any given period. Sometimes, they may simply be passing on information and reviewing and passing back reports. In some cases, it may be that the committee co-opts members from the relevant Commission to simplify or streamline the process. They also act as a locus for receiving public and press inquiries and handling complaints about a Commission or a particular committee.

It would be up to the Steering Committee working with the Commission to decide what is needed.²²⁹ The Steering Committee would establish the committees to meet those needs, set up the terms of reference, lay down the size and period of rotation,

²²⁹ In each session, there would be a maximum number of committees that could be formed dictated by the number of members coopted as part of the sortition process. This number would be set by the Steering Committee working with the Commission and taking into account the costs and benefits of the work undertaken.

oversee the work, and, in the end, manage its termination when no longer needed.²³⁰ There might also be transitory management committees if the Steering Committee perceives a need for a short-term committee to take a management role in a specific area. The Steering Committee would also work with officials to oversee training programmes for new committee members and other House functions.

In addition to management committees, there are also deliberative committees. Some of these are permanent, such as:

- The Public Body Oversight committees that oversee public institutions, quangos,²³¹ ALBs²³² or chartered bodies,
- The evidentiary committees that have an ongoing brief to gather evidence in specific areas, such as Human Rights or Constitutional Issues.

The public body oversight committees would receive regular reports about the functioning of the bodies they oversee, questioning the leaders of those bodies, looking at their accounts, scrutinising their policies and behaviour, taking witness evidence and producing reports accessible to the public.

The evidentiary committees would generate 'living documents' that are part of a library for use by other committees and the public and would work with the House of Citizens Library to that end. The other central deliberative committees are the transitory Scrutiny committees tasked with scrutinising and revising Bills. These are the most numerous of the committees and, possibly, the most important. There may also be several transitory evidential committees tasked with exploring and reporting on a specific issue.

The basic process of interaction between the primary and secondary chambers would continue as it currently does. When evidentiary committees generate a report, they can request a

²³⁰ Permanent Committees may be terminated when they no longer perform a useful function.

²³¹ Quasi-Autonomous Non-Government Organisations

²³² Arms-Length Bodies

response from the government. When scrutiny committees consider bills, the committee may choose to suggest amendments for the Commons' consideration. Alternatively, they may indicate that a particular clause is unclear and request that its wording be reconsidered or provide additional explanatory notes or exemplars for clarity.

All deliberative committees in the chamber use advocates to present evidence and a moderator to assist the committee. Advocates would have a leading role in Scrutiny Committees. They would present evidence for and against the bill, possibly paragraph by paragraph, using evidence gathered by the House, calling witnesses to give evidence (written or in person), with opportunities for cross-examination and rebuttal. Like the Evidentiary Committees, the witnesses could include persons representing the government, allowing the committee to question government actions and public policy.

Membership of all committees would be private, as they are for juries, to ensure no tampering with the jury. The only information a committee member can reveal is that they must serve the House. Anonymity would also ensure that members would not be subject to the influence of lobbyists or commercial interests unless called to present evidence. The committee's sessions, including the presentation of evidence, would be public to increase transparency. If such sessions are televised, committee members would be audible but not visible and anonymised in the public record.

Just as we do for juries, the members' deliberations would occur in out-of-session meetings *in camera*. Members would be required not to disclose any aspect of these private sessions or any information that might allow a member's identity (including themselves) to be known outside the committee. During these private sessions, the committee may call on the assistance of the Moderator. Advocates would not attend these sessions. Private meetings would be recorded, but those records would not be subject to public scrutiny. However, if necessary, they might be used as evidence in the event of misconduct.

Advocates and Moderators

The notion of advocates is an essential concept in this proposal. Like in a trial, each assembly would have advocates to argue for and against each item under consideration. Like barristers, advocates should not be activists. Their job is not to win at all costs but to ensure that the case they represent receives a fair hearing. The advocate's function in the chamber is to direct the presentation of evidence. They are not intended to have expertise in the area under examination. Indeed, some advocates might be excluded from specific committees if they are deemed to have a conflict of interest.

The first principle of advocacy is to seek the truth. The advocates have the right to call expert witnesses for evidentiary purposes. Witnesses may be called because they are involved in the creation of the legislation or because they are known to have particular expertise in the area. Equally, they may be respondents to a public call for witnesses. Expertise should inform political decisions, but it should not be the basis of membership in political institutions. Advocates would have the right to call anyone they perceive helpful to their case.

Advocates should publicise the witnesses they propose to call before testimony to help with cross-examination. Witnesses should be encouraged to create a deposition in which they provide details of their credentials as witnesses and provide evidence for their position. While in session, they would be required to provide a statement of their position and be subject to examination by the advocates and, if necessary, by committee members. The relations of the members and the advocates should be collaborative – to seek the best possible solution. Unlike a law court, the members can request additional sources of evidence from the advocates if they feel it would help in their deliberations. The members would discuss the evidence to seek agreement, and those deliberations would be private. Members may be required to cast votes on specific issues.

In addition to advocates, each committee would have a non-voting moderator to explain relevant points of law and procedure as necessary. They would preside over the committee

much as a trial judge presides in a court of law. One function of the moderator is to provide new members with an overview of the purpose of the committee, its context, and its current standing. The committee members can always seek the moderator's help in issues arising from their deliberations. The members can ask public questions or submit private questions through in-meeting messaging or mail.

These committees would work in harness with an Advocates Commission. This new non-political body supports the chamber, including appointing individual moderators and advocates. They would offer a common framework of process and procedure, providing help and information to the moderators in making their decisions. They would also document the system as it develops to standardise the advocacy system.

In the first instance, advocates are likely to be people with experience in advocacy, such as barristers.²³³ Moderators are likely to be experts in law and governance. The Commission would engage them through open advertising, based on merit and experience, either as employees of the House or through a contract for specific work. The cab-rank rule may be a reasonable starting point on which to operate. Note that the advocates and moderators are probably not civil servants. Separation from the service allows them to operate independently. A special Advocates Committee would oversee the Commission. The Commission should have due regard for diversity in the selection of advocates and moderators, especially in ensuring that they are drawn from across the nation.

Chairs and Deputies

Each committee would have a chair and a deputy chosen by the committee. They would lead the committee's activities and represent the committee to the advocates and the moderator. Either the chair or the deputy should be present for all meetings. When in a private session, the chair (or, if absent, the deputy) hosts the discussion, calls people to speak, arbitrates disputes,

²³³ Or Advocates in Scotland.

and, if necessary, arranges votes. Meetings must have two-thirds of members, including the chair or deputy present, to be quorate.

The chair and deputy would be chosen at inception and, where relevant, at each rotation. It would be expected that the chair and deputy of a permanent committee would be selected from the most experienced cohort. If the existing chair or deputy chooses to stand down, replacements will be nominated and selected by vote. Equally, if the committee decides to do so, the chair and deputy can be replaced.

During private deliberation, members will raise issues to be discussed. In some cases, this might include a proposed amendment, a request for clarity, or allowing the committee to resolve a dispute. Members would be encouraged to reach an agreement through negotiation. Any member may propose that an issue be put to the vote. All voting in Citizens' committees would be electronic and anonymous, and all votes should be made simultaneously, including the casting vote. Only members who are present may vote. Members may choose to vote For, Against or Abstain. The majority decides votes. The casting vote is only counted in the event of a tie. If the person holding the casting vote abstained, then the motion falls. The outcome of a vote is only valid if the number of members voting For or Against the motion is also quorate. If not, the motion falls. The results of all votes should be recorded.

A critical role of the chair and deputy (with the support of the moderator) should be to avoid committees becoming dominated by factions or individuals who interrupt and talk over other members. All members are expected to contribute but must allow others to make their case. Members should expect to spend much more of their time listening than speaking. Members will, in the course of their duties, meet others with very different backgrounds, with different experiences and ideas. Such differences are part of the tapestry of life. Basic standards of decency and courtesy should be demanded by all members of others and of themselves. Members should be polite and patient and treat others with due regard. They need to recognise that different people have different experiences and perceptions and

that differences of opinion are neither hateful nor offensive but worthy of respect. Abusive or bullying behaviour, either by members or officials, will not be tolerated. Failure to do so should be called out by the chair and deputy, and repeated failure should, if necessary, be reported to the moderator and become the subject of a complaint.

Operating Context

The operating context helps us understand how a system interacts with its environment, i.e. those bodies that are external to it. It allows us to consider which external bodies the system interacts with, how those interactions will be carried out, and how rights and responsibilities will be apportioned within or outside its boundaries. The most important external bodies under consideration are the civil service, the primary chamber and the public. However, similar patterns would be replicated for other bodies.

In this proposal, these interactions are managed through the Commissions. The Commissions will provide a locus where the system can accommodate external change without compromising its internal structures, making it more resilient. It can also accommodate internal change without impacting the external bodies, making the design more flexible.

Interactions with the Civil Service

In this proposal, a concerted attempt has been made to limit the role of existing public servants in general and the civil service in particular in the running of the new chamber, except as a resource upon which to draw expertise, such as the use of parliamentary counsel for the drafting of amendments or to provide clerical and documentary services to the chamber. Part of the reason for this approach is to avoid connecting the various bodies which underpin the new chamber with the structures that support the primary chamber. Leading roles in civil service departments are, in principle, appointments of the Prime Minister and may seek to exercise inappropriate political influence. We can enhance pluralism by separating these bodies and making our new chamber fully independent, making it

easier to bring different perspectives into our deliberation. The various Commissions of the new House and those who have an active role in its committees, including advocates and moderators and those tasked with the technical and organisational aspects of the committees, should be, as far as possible, separate from the existing civil service.

The amount of separation required is a function of costs compared to benefits produced. It makes sense to reuse existing structures as a resource to reduce costs as long as they cannot be used to undermine the independence of the new House. Under the Advocates Commission's direction, the civil service would assist the House daily, helping to write reports and providing clerical functions. Hansard will continue to record and document public committee sessions to create searchable indexes.

As far as possible, essential functions within the new chamber should be outsourced to external organisations and individuals and overseen by a small, dedicated full-time staff located across the length and breadth of the country using the same underlying infrastructure that underpins the House. Those internal bodies should be required to seek the most cost-effective means of providing the services the new house requires and should be overseen to ensure that they provide the best possible service to the taxpayer. The Commissions would communicate through nominated individuals in the Civil Service. The Commissions would provide detailed records, including performance metrics, to ensure that the civil service was responsive to the needs of the House and not seeking to influence its affairs.

Interactions with the Commons

As we have said, the new chamber would generally interact with the House of Commons through the Commissions, especially the Steering Commission. For instance, for each bill being introduced in the Commons, the business managers would work with the Steering Commission, which would, in turn, notify the Steering Committee of the need for a new scrutiny committee to work on the new bill. Mostly, this would be a simple hand-off where the committee instructs the Commission to put the new Committee in place, often based on a standard template. This process would

involve allocating administrative resources and requests to the Appointments Commission to select members and the Advocates Commission to make the advocates and a moderator available. The Steering Commission would then schedule an initial meeting. At that meeting, a timetable can be agreed between the parties involved. Reports would be issued via the Steering committee for review and passed to the Commission for publication.

Equally, when the new house prepares a report and requests consideration by the government, the report is passed to the relevant government department on behalf of the committee by the appropriate Commission.

In the Lords, some members are nominated to speak for the government to assist in scrutinising legislation and public policy. This would no longer be the case. Government representatives may be called by committees to give evidence and to account for government actions. If the government chooses to do so, it could appoint individuals to represent the government in deliberative committees, as they do now. They might be members of government in the Commons or persons specifically engaged to perform the role. The same can be said for the opposition. The number of such appointments would be strictly limited as a cost to the state. *In extremis*, committees might have the right to demand attendance by a minister responsible, provided such a demand is reasonable and proportionate.

The existing Joint Committees would be considered on a case-by-case basis. Sometimes, the Joint Committee would become a select committee of the Commons. In others, the Citizens would appoint members to serve on those committees using the usual rotation method. The Steering Committee would manage these appointments through the Appointments Commission.

Interactions with the Public

Pluralism is at the heart of this proposal. The public should be able to contact committees of the House of Citizens and make representations either by post or electronically and either as individuals or as organisations. To this end, the house will

publish a list of all active committees with contact details, and communications can be addressed to those committees.

In the first instance, such communication will be fielded by the Steering Commission as a first line of defence, which will filter the messages, passing those with abuse or other inappropriate content to the police, redirecting mail as appropriate, and, where possible, responding where the request is to provide information. The remaining communications are passed to the relevant committee to become part of the record of the committee's activities and accessible to its members for discussion. Committees may debate the issue internally or, through the Steering Committee, recommend the creation of a transient committee to consider a specific issue raised by the public. Alternatively, the committee may return an acknowledgement.

There may be many such communications and limited time to deal with them. Public petitions are a better means of raising topics for public debate. Petitions have been an essential part of English political culture since the reign of Edward I and were particularly common during the 17th-19th centuries. Petitions were delivered to the monarch and later to parliament to allow those without power to seek redress or advance a cause. For example, a notable petition was presented by Katherine Chidley seeking the release of the leveller, John Lilburne, in 1653. Chidley was a leveller who wrote tracts arguing for religious toleration and women's rights. She presented (and may have written) several petitions to parliament. The petition in 1653 was said to have over 6000 female signatories. Other historic petitions include the anti-Catholic Gordon petition of 1780 and the Chartist petitions of 1839, 1842 and 1848. With the advent of universal suffrage, there was a decline in their use in the 20th century. However, they have re-emerged in the form of e-petitions to the government to force debate on essential issues of the day, which may not receive sufficient parliamentary time.

The House will have an online petition system similar to that of the government to allow people to raise particular issues for public debate by the House. The Commission will filter requests for discussion. Requests should be on serious topics of UK-wide

interest. If the petition receives a set number of signatories, the House must respond to the petition. If a petition gains a large number of signatories, the petition must be debated by a committee either already in place or raised for the purpose. No single matter may be raised more than once in a parliamentary session. If an issue is not considered, the House will respond to the petition explaining the reasons for the adjudication.

Successful requests are passed to the relevant committee, which will consider the request and respond, possibly resulting in public online debates hosted by the committee under the relevant advocates and with invited speakers. Debates would have a short form, much like public online discussions. They would be made available to the general public.

Complaints about the activities of a committee will be considered and, where necessary, passed to the Steering Committee for discussion and potential further action.²³⁴

Specific Committees

Citizens Steering Committee – One Committee to Bind Them All

The primary function of the Citizens Steering Committee is to oversee the work of the House and its committees.

One function of the committee is to create other committees as necessary in conjunction with the Citizens Steering Commission. For instance, the Commission would work with the business managers of the other House. Early in the session, they would identify a need for a committee to scrutinise a particular proposed Bill. There would typically be a significant interval between the creation of a Bill and the need for scrutiny because the Bill has to pass through the House of Commons. The committee would notify any Evidentiary Committees interested in the subject area of the Bill. The evidentiary committee might choose to provide some background investigation if there are important issues which impact its work. However, they usually leave it to the scrutiny committee. The Steering Committee might

²³⁴ Complaints about the Steering Committee will be passed to the Standards Committee.

hand off the creation of the Scrutiny Committee to the relevant Commission(s). Doing this early in the process would allow time for the scrutiny committee to be created, advocates and a moderator assigned, and members selected to serve.

In some cases, action might be prompted by the Steering Committee as a response to requests by the other House or the public. For instance, it might make sense for the committee to create evidentiary committees to cover the significant government departments or to look at specific cross-department issues. It would communicate that to the Commission, making the relevant committees. One function of the current House of Lords is to host debates, sometimes initiated by a Private Members Bill that may be later withdrawn. The Steering Committee should be aware of current issues that may be a basis for debates by a transitory evidential committee.

This committee would receive brief reports on the status of all committees in the House, meetings held with dates and times, attendance, progress made, and any documents or other outcomes created. Production of these reports would be the responsibility of the chair and deputy of each committee. The reports would be passed to the Steering Commission for deposit in the library for public access.

The committee would process complaints about other committees of the House along with the bodies administering it. It would also process complaints from those parties about a committee. Any potential illegal activity would be passed to the police for further investigation. For all other complaints, it would seek to offer arbitration and conciliation. If that did not settle the dispute, the Steering body would seek the assistance of the joint committee overseeing the House itself or other bodies managing Parliament. Individual members violating the rules will be warned or excluded from the House for persistent infractions. Even entire committees can be reformed for widespread misconduct.

The Steering Committee would also work with other parts of Parliament to identify improvements that could be made to the Citizens. In this mode, the committee would act like an

evidentiary committee and arrange public meetings to get witness evidence, deliberate on shortcomings, and suggest improvements. At the end of each member's service, they would be asked to comment on their experiences and provide suggestions for improving the house. The committee would generate an annual report with the problems being solved, the changes proposed, a plan to roll them out, and mechanisms to test whether they achieved their targets. The outcome of those tests would be part of a subsequent report.

The balance between the committee's and the Commission's activities would develop over time.

Citizens Standards Committee – Parliamentary Oversight

One of the foundations of a healthy democracy is the right to free speech, to hold power to account and to expose wrongdoing. To that end, MPs enjoy various legal immunities that allow them to carry out their duties. These immunities include freedom of speech and freedom from arrest on civil matters. For instance, parliamentary privilege allows an MP to speak freely in the House without risking prosecution for defamation. However, this can be and has been abused by MPs seeking political ends. One privilege is the right of the House to regulate its affairs. This privilege is achieved using the Select Committee of Privileges, appointed by the House, which can be tasked with investigating specific complaints raised in parliament about the behaviour of an MP. MPs are expected to 'mark their own homework', creating an environment where its members' political partisanship inevitably tinges the oversight process. Moreover, MPs often use the process to extend the specific issue being investigated, and it becomes a fishing trip in which MPs seek to discover new areas of wrongdoing by their opponents. Moreover, publicity of an investigation's existence can impugn an MP's reputation, 'making the process the punishment'.

Additionally, a Parliamentary Commission for Standards is tasked with investigating complaints about the behaviour of an MP. The Commissioner maintains a register of interests and considers any matter in which an MP is alleged to have breached the Code of Conduct. The Commissioner is overseen by the

Committee on Standards, a committee of MPs and lay persons. Frequently, the allegations about the MP are vague, such as 'causing significant damage to the reputation of the House of Commons',²³⁵ with much room for interpretation and, consequently, an opportunity for abuse, creating a climate of fear and self-censorship. Again, MPs use the process to discover new areas of wrongdoing. A gag order may be imposed on the MP accused, where they are barred from discussing the allegations, defending themselves publicly, and clarifying the nature of the supposed offence. Again, the House is responsible for regulating itself, inevitably bringing into question its processes and the suggestion that the committee is politically partisan.

Representatives frequently use oversight processes (or attempts to resort to law or international treaties) to achieve political ends. We have increasingly seen this in both US and British politics. It is a worrying trend because it brings the need for adequate oversight into disrepute with accompanying accusations of holding 'kangaroo courts' or 'show trials' or even attempts to overturn the choice of electors concerning their representatives.

We should move away from the idea that members of the Commons are the only people capable of overseeing their processes and procedures. Parliament should be above corruption and be publicly seen to be so. That means we need to investigate and punish misconduct, but we also need trusted bodies to carry out investigations where malfeasance has occurred. However, as we have seen, politicians no longer command widespread trust from the public. A new Parliamentary Privileges and Standards Commission would be headed by an independent authority appointed by the second chamber through the Appointments Commission, along the same lines as IPSA. It would deal with all matters relating to the conduct of MPs and Citizen members and the abuse of parliamentary privileges or failures to meet codes of conduct. It would be headed by a commissioner reporting to a Parliamentary Privileges and Standards committee within the

²³⁵ House of Commons Code of Conduct together with The Guide to the Rules relating to the Conduct of Members

Citizens Chamber operating under the advocated system. Allegations against members should be made in public; they should be specific, and members should have the right to defend themselves. A new code of conduct should be created that regulates the personal and professional behaviour of members of the new chamber.

Citizens Advocates Committee – Advocates and Moderators

The purpose of the Advocates Committee is to oversee the relationships of the Advocates Commission and the House. Like the Steering Committee, it is mainly concerned with oversight, ensuring that the commission performs its functions and deals with complaints, which should be few and far between. This committee would have an active role in monitoring the performance advocates and moderators. A strict code of conduct would be put in place to regulate their professional and personal behaviour.

The committee also collects and publishes reports from the Commission concerning the processes and procedures of the House as a whole. These reports would be a helpful source of information for their delegates (advocates and moderators) and the public to understand how the House operates. The documents produced would be ‘living documents’ maintained up to date as the procedures are standardised and changed.

Members may be assigned to the committee and have no critical work to undertake apart from receiving and approving reports.

Citizens Evidentiary Committees

The evidentiary committees perform a similar function to the current Select Committees of the House of Lords. These committees are put in place by the Steering Committee to consider a policy area in detail. There are generally around 10 to 18 members of an evidentiary committee. The purpose of the committee is to create or revise reports. These documents form the current ‘position’ of the House on a given subject area.

Each evidentiary committee pursues an inquiry into specific areas within their remit as laid down by the Steering Committee.

These inquiries may be into a topic for which an existing report might need an update or a new one. The committee issues a 'call for evidence', which can be submitted in person²³⁶ or in writing.

They hold public meetings to hear from people in person. In those meetings, the Committee meets briefly in private to discuss what questions to ask and what issues to focus on at the public meeting when the 'witness' is present. The witnesses are allowed into the session (along with the media and the public). Each witness identifies themselves and may issue a brief opening statement on the subject under inquiry. The members can ask questions and follow up on witness responses. Once the Q&A is complete, the witness(es) leave, and the committee returns to a private session to consider the evidence. They can discuss the evidence, review their emerging conclusions, and consider their reports and recommendations.

Once evidence has been taken, the committee drafts and agrees on a report. The report is published, and the government must, if requested, respond to issues raised in it. The committee may follow up on the government's responses.

Citizens Scrutiny Committees

Citizens Scrutiny Committees would scrutinise and revise primary and secondary legislation. The process would be similar to the present.

For primary legislation, there would be a series of 'readings' of the Bill under scrutiny. Between each reading, there would be one or more private meetings where the committee members can discuss the Bill along with periods of reflection.

There would be a First Reading of the Bill, during which the committee would be established. The moderator would provide introductions, and the chair and deputy would be elected. The text of the Bill would be presented to members. The moderator would provide commentary to help the members understand the

²³⁶ In person means via an online presence.

intention of the Bill. At this stage, committee members can ask questions either publicly or privately.

After a short interval, there would be a Second Reading in which the advocates provide their opening statements explaining their position on the Bill, its costs and benefits and listing the key witnesses they will call for evidence. At this time, relevant reports from the Evidentiary Committees would be accepted.

The Bill would then enter the Committee Stage. Unlike the current system, the Committee Stage is never undertaken by the full House. Instead, it consists of one or more public meetings where the advocates introduce evidence directly or through

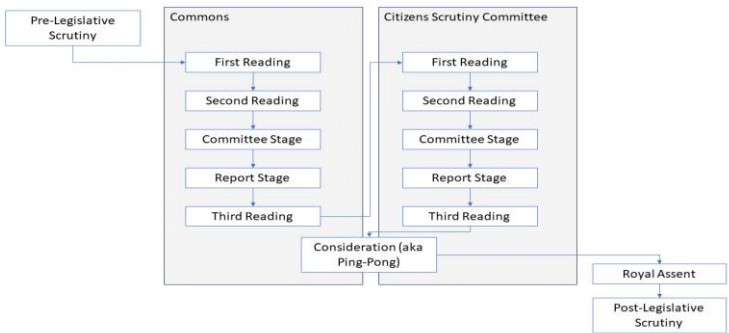


Figure 5 Passage of Bill Through Committee

invited witnesses. Committee members, including other advocates, would be allowed to cross-examine witnesses. Committee members could propose amendments to the Bill, but mainly, such amendments would be proposed by an advocate or their witnesses. Once the primary evidence is taken, the bill will be taken paragraph by paragraph, along with any amendments proposed. In each case, the advocates could present further evidence relevant to the section under consideration. At this time, the committee should consider whether there are constitutional implications, such as giving too much power to the executive and whether delegated powers in the Bill will be given sufficient scrutiny. We may choose to create a special permanent committee focused on issues surrounding the use of secondary legislation.

After another interval for reflection, there would be a Report Stage in which the members or advocates propose any remaining amendments. At this time, existing amendments that have already been tabled could be dropped. The committee votes on amendments to the Bill.

Finally, there would be a Third Reading in which the committee reflects on the Bill as amended by the committee. The purpose of the Third Reading is to allow members to verify that the Bill is effective and workable.

If there have been no amendments to the Bill, it is passed for Royal Assent. If there are amendments, the Bill with those amendments is returned to the Commons for consideration. If the Commons rejects or amends the committee's amendments, the committee will review any changes made in the Commons and consider further modifications or clarifications. The ping-pong process between the two Houses continues until both agree on the text of the Bill, or further action by the committee is no longer allowed by the parliamentary conventions. Once the process is complete, Royal Assent is sought, and the Act becomes law. At this time, the committee's work is finished, and the committee is dissolved. After a period, there may be Post-Legislative Scrutiny by Parliament, but the Citizens have no role in that process.

One function of the Scrutiny Committee might be to test the Bill to ensure that the language used is clear, precise, unambiguous and consistent. If people are to obey the law, they need to know in advance what the law demands of them, what the law grants to them and what sorts of behaviour they can expect from officials. The Scrutiny Committee may be particularly well placed to make that judgement. In their proposal for reform, Barnett & Carty make a great play about the importance of plain English. They suggest:

We need a second chamber that will read the law on behalf of the public to see if it is clear – with the power to demand clarification if it is obscure.²³⁷

²³⁷ Barnett & Carty, *ibid* p.32

In a perfect world, the law would be expressed in plain English that a layperson would easily understand. However, the text of the Bill that a Parliamentary Counsel produces is not primarily intended for consumption by the general public. It is designed to be consumed by legal professionals who are required to interpret its meaning in a legally precise way. Judges need to know what the law says, not what the legislators thought it said or intended it to say. Many of the terms used in legislation have specific legal meaning. For example, consider the word ‘person’. The general public might think this refers to a ‘human being’. In contrast, a legal expert might think it refers to something with a ‘legal personality’, but according to the Interpretations Act 1978, it might also include things without legal personality, such as unincorporated associations.²³⁸ This is not to say that lay people cannot understand what most law means. Most laws are as precise, unambiguous, and consistent as possible.

Frequently, explanatory notes accompany the Bill. They are not part of the law. Nor are they party political statements to explain the intended policy. They are designed to demonstrate the law’s effect, especially where it is not apparent. Legal professionals sometimes use such notes to interpret the law where there may be some dispute, just as they may also use other sources, such as Hansard.²³⁹

A Scrutiny Committee may agree that one or more amendments to the Bill are desired from their account or provided by an advocate or a witness who raises a specific concern. One role of the moderator in Scrutiny committees is to ensure that when one or more amendments are introduced, the overall effect is, at least apparently, internally consistent. The moderator also needs to consider whether amendments might raise issues of Relevance (Scope) and Hybridity²⁴⁰. Given the general public’s lack of the specialist skills required to draft legislation, the committee may

²³⁸ Greenberg, Daniel, *Laying Down the Law*, 2011, Chap. 24

²³⁹ Ibid. Chap 25

²⁴⁰ Whether the text of the amendments is relevant to (or within the scope of) the Bill it is amending, and whether it the amendment prejudices the private interests of particular individuals or businesses without recourse to representation.

describe the changes they propose to the moderator, who will seek the help of civil service lawyers and parliamentary counsels to draft those amendments.

The Scrutiny Committee may also request amended or additional 'Explanatory Notes' be added to the Bill if a section seems impenetrable. The committee might work with the moderator (and, if necessary, the relevant departmental officials) to suggest a proposed wording.

For secondary legislation, the committee would consider the legal drafting and policy content, taking witness representations and questioning the minister raising the instrument. The committee would produce a report and, optionally, table and vote on a 'motion of regret' to indicate disapproval of how the instrument was put into operation. In principle, there might be a motion to approve, as is currently the case. However, in practice, the Citizens would not be expected to reject secondary legislation.

Citizens Appointments Committee – Public Appointments and Honours

Currently, many appointments are made through the patronage of the Prime Minister and the leaders of political parties. Patronage is used to appoint members of the second chamber and, at least in principle, the leading positions in the civil service and various public bodies. Where these appointments are political, this is consistent with the need to promote or demote political figures based on merit.

However, many of these organisations should work independently or at arms-length from the government. The government decides what should be done, providing guidance, regulation, and resources overseen by Parliament. Public bodies are responsible for using those resources to perform their functions according to the guidance and regulations. Appointments to senior public positions should not be in the power of the executive to avoid potential corruption such as cronyism, preferential treatment, discrimination or bribery. Indeed, even the appearance of political partiality in public

bodies should be proscribed. Public bodies have a duty of service to the public and should be overseen by Parliament.

At its core, this proposal eliminates one major area of prime ministerial patronage by removing the appointment of members of the upper chamber. Membership of the upper chamber could no longer be used as a reward or in return for payment or party donations. Public honours would still exist but would play no part in our system of governance.

In the civil service, positions below the Deputy Director level would continue to be an internal matter for the civil service departments. They must ensure that appointments are made with due regard for diversity of opinion and experience. Appointments at or above the Deputy Director would be a matter for the Civil Service Commission, overseen by the upper chamber, who would have the right to examine and veto appointments. This process would be similar to the oversight functions of the US Senate concerning some federal positions. The Prime Minister would no longer be the Minister of the Civil Service and could no longer use influence to 'place' candidates in the Service. Internal networks and organisations that promote ideological, political, philosophical or religious belief would be banned, as would formal links to external lobby groups. In the workplace, civil servants work for the public, not for lobbyists, political organisations and other bodies.

Apart from senior civil servants, the new chamber would also oversee other public appointments, including leaders of arms-length bodies, quangos, commissions and public corporations, including those of the Commissions of the Citizens' Chamber.

In the first instance, as new appointments are required, a review would be undertaken by a joint parliamentary committee to check if that appointment should be placed in the hands of the new committee. By default, it should be assumed that it does. These are not political appointments. This process allows the gradual phasing in of the new regime.

The committee should become responsible for senior appointments to lead public organisations such as:

- Commissions, such as the Electoral Commission, the Government Boundaries Commission, the Charities Commission, the Equality and Human Rights Commission and so on;
- Regulatory Authorities, such as Ofcom or Ofsted;
- ALBs such as PHE and the College of Policing;
- Ombudsmen;
- Chartered Organisations, such as the BBC;
- Various advisory councils and other bodies;
- Commissions and other appointments to the Citizens' Chamber.

The Appointments Commission would publish posts for each senior public appointment, seek potential candidates, and process applications. All applications would be confidential. The applicants may include persons in public service roles, such as civil servants operating in the departments that work with those public bodies. The Commission would interact with the security services and other public bodies to vet the candidates, including their public records. A shortlist of candidates would be created based on their experience and track record. The commission would be tasked to have due regard for diversity concerning protected characteristics to avoid discrimination under the Equality Act 2010 and the candidate's social background. The new chamber would have the right to cross-examine each candidate based on their record and, if necessary, veto the appointment. The committee would offer the post to the best candidate for the job, or if no candidate meets the requirements for the position, the process would repeat.

In this proposal, the new chamber would control the award of public honours.²⁴¹ The decision to honour an individual should not be a gift of government; it should be the gift of the people and awarded by the Head of State as a proxy for the citizen body. A chamber based on sortition would be representative of the

²⁴¹ Some honours such as the Garter, the Thistle, are the personal gift of the monarch. This would continue to be the case.

citizen body. The Commission would still accept public nominations for awards and provide a vetting process as it does today. However, it would pass its list for deliberation to the Appointments Committee, which would have the right to revise it and to advise the monarch. A limit would be imposed for the number of honours awarded each year according to the type of honour. Those honours that are in the personal control of the monarch as Head of State would continue separately. Awarding honours would no longer be a role of government or party leaders.

All public bodies, including the civil service, would be required to produce anonymised statistics relating to the demographics of persons, especially those in senior positions, to ensure they reflect the citizen body. The Appointments Commission would collate these anonymised statistics, and the Appointments Committee would formally examine them and publish reports. These reports would form part of the evidence for oversight committees relating to specific organisations and allow organisations to monitor potential discrimination.

The other key area of activity of the Appointments Commission would be the management of membership of the House. They would oversee the day-to-day running of the process, selecting members by lot and appointing them to roles. The role an individual member takes in the House will be random. If a member cannot perform the role, such as through a conflict of interest, the next candidate will be chosen, and the member will be appointed to a new task.

As with any Citizens' committee, it may be the case that members have no vital work to undertake within their tenure apart from receiving and approving reports. The Appointments Commission would be accountable to the Appointments Committee.

Citizens Public Body Oversight Committees

The Citizens Public Body Oversight Committees would work similarly to the Evidentiary Committees, but where the focus of their reports is a specific public body. They would be expected to

produce periodic reports on that body as set by the Steering Committee. Witness evidence would be taken from senior people within the body, along with external organisations from members of the public who have to interact with them.²⁴² In general, the committee's aim should be to enable the proper functioning of the organisation, and its touch should be light, seeking to allow senior figures scope for innovation.

The Public Body Oversight Committees would receive reports from the bodies they oversee. They may choose to question senior figures in those organisations. They would collect and publish reports, monitor performance and watch over these organisations. The relevant committees may decide to get advice from independent witnesses as part of their deliberation. They would also act as a locus for whistleblowers to report on infractions in the relevant organisation and, confidentially, investigate those reports. The committee would seek to resolve issues that arise from these reports amicably. However, evidence of criminal behaviour would be passed to the police for further investigation.

Selection of Citizens Members

While the assembly is chosen randomly, the selection is taken from a 'universe' pre-selected from the population as a whole. We will call people on this list eligible citizens. We should exclude as few citizens as possible so that the universe is as representative as possible.

Other proposals for using sortition allow individuals to decide whether to participate. In this proposal, service is obligatory in much the same way as jury service. Taking part in the Citizens is a citizen's right and responsibility. Mandatory service is required because choosing not to serve will undermine the chamber's ability to be a proxy for the citizen body. Many people, such as carers, seasonal workers, owners of small businesses, those on commission, or those with precarious incomes, might choose not to serve. Hence, state support is necessary to facilitate them. In

²⁴² The committee will not be able to discuss specific cases.

reality, few people would be called to serve, and those who serve will only be required to do so once. According to ONS, in mid-2023, there were over 41 million British citizens between the ages of 25 and 75.²⁴³ If only 50% were eligible (a very low estimate) and 2000 citizens were called each year, it would take over 10000 years before a person would need to serve a second time.

We would exclude those perceived as too young to serve. Since the position requires considerable experience, we might limit our choice to those above, say, twenty-five. We are not disenfranchising younger people, who would continue to exercise their political choices in elections. However, younger people embarking on careers may neither have the time nor inclination to serve. Moreover, their experience of the world is necessarily limited. Many may not have left full-time education until their early twenties. Similarly, we might exclude those over seventy-five as we do for juries. Again, as with juries, we might also want to exclude those with less than seven years of citizenship since the age of majority.

Members of the Commons would be excluded, as would those serving as advocates, moderators, or other official positions in the new chamber.

One might also disqualify people based on their personal circumstances. For instance, we might disqualify those currently serving custodial sentences, those who have served sentences for particular offences in the past, such as bribery and corruption, those with mental incapacity, those required to attend medical facilities full-time, those in terminal care, etc. In some cases, such as those providing familial care, the state would offer alternative facilities, where acceptable, to allow the candidate to serve. Carers and parents of young children should be represented like anyone else.

²⁴³ ONS Estimates of the population for the UK, England, Wales, Scotland, and Northern Ireland

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesforukenglandandwalesscotlandandnorthernireland>

Employers would be expected to accommodate employees in serving the new chamber as necessary. For the most part, this will include making time available for the candidate to serve. This may be difficult for small enterprises. We should consider whether service can be part-time or whether it is possible to subsidise the business or use *locum tenens*.

Apart from disqualification, there may also be temporary exclusions. For instance, a person may seek to be excused due to illness that makes them incapable of service due to their condition or because it requires full-time attendance at a medical facility. Many personal circumstances might affect exclusion, and the authorities must be given flexibility in excusing a candidate. Like jury service, candidates will only be excused if they meet specific required conditions.

During their duties, members of the new chamber must recuse themselves from any activity if they have a personal prejudice against any party involved or a significant personal interest in the outcome. If they fail to do so, it would be, potentially, a criminal offence. Other committee members must report such circumstances to the Appointments Commission if they become aware of it. It is vital to the prestige of the new chamber that it is not only actively seeking to eliminate misconduct but should be seen to be doing so.

During the selection process, detailed anonymised demographic statistics will be maintained as evidence that the selection process produces a citizens' chamber broadly representative of the nation in all its diversity. It would also provide a facility that allows citizens to comment on their experience of service and make complaints so that the system can better support them.

Those who serve in the new chamber would be compensated²⁴⁴ for their efforts at the same rate as ordinary members of the Commons.

²⁴⁴ Preferably, tax-free so it does not impact on their existing arrangements.

Programme of Education

An education programme would help people understand the new process and their new role in national governance. This programme would have a two-pronged approach. We would introduce modules to be taught in schools as part of general citizenship to prepare new generations to perform their role. We would create a series of popular programmes to promote the system and explain it to the older generation, along with instructional materials and other media.

Before taking their place in the chamber, parliament would ensure they have the necessary equipment to participate in the new assembly and successfully connect to the system. New members would then undertake a course in the form of a presentation explaining their role in the assembly and the available resources. At that time, they could seek answers to their questions.

The Standards Committee would oversee the Education Programme as part of an ongoing brief to improve the processes of the Citizens. It would also oversee the induction process. As new members are selected, they will attend an online induction course that will help them understand the role of the House in Parliament, the committee structure and their rights, duties and responsibilities as members of the House.

Virtual Meeting Rooms and Parliament Online

Conferencing Technologies, such as virtual or online meeting rooms, are commonly used in business to connect geographically dispersed groups working on shared projects in different offices, buildings, cities and countries. Companies might use over-the-counter desktop conferencing software, possibly customised to their needs, or choose bespoke solutions.²⁴⁵ The software allows team members to attend face-to-face meetings with listen-only or interactive access, whiteboarding sessions, private and public messaging, voting, and other features. The teams can be small (one or two) to quite large bodies (>100). Though it causes some

²⁴⁵ At the time of writing, suppliers of conferencing software include Zoom, Webex, Microsoft Teams, and a number of smaller vendors.

issues with timetabling, it would not be uncommon to hold regular meetings between people on the outskirts of Beijing, two offices in a building in Mumbai, the home of a team member on the Isle of Wight and two different buildings in St Louis, MO.²⁴⁶

Since these systems use increasingly ubiquitous Internet connectivity, the system works wherever an Internet connection is available with sufficient bandwidth to access the server(s) hosting the system. The client software may be installed at work or home (or even on the move with mobile versions).

The same technology was widely used domestically during the COVID lockdown to allow families and friends to communicate face-to-face with each other without breaking lockdown regulations.

These technologies have been used in various studies in politics. For example, the Stanford Deliberation Platform²⁴⁷ has been used to facilitate group discussions and to educate students on Deliberative Democracy. The platform provides a range of facilities to enable fair debate and the exchange of ideas, such as speaking queues and timed agendas. It has been used worldwide, from Mongolia to Chile, in diverse subject areas such as school design in Canada, constitutional reform in the US, job creation in Hungary and rising crime in Britain. There are several such platforms.

Parliament Online

In the long term, we may extend these technologies to our other political institutions. For instance, all chambers and committees of both Houses could be constituted as a mix of public and private online meetings, whether the entire chamber, committee meetings, *ad hoc* meetings and other events, such as presentations by lobby groups or even private party meetings, such as those of the 1922 committee. These meetings would allow delegates to

²⁴⁶ On a more informal note, various social media platforms provide collaborative technology, such as WhatsApp and X Spaces, allowing small and large groups to interact. This technology is becoming ubiquitous.

²⁴⁷ <https://deliberation.stanford.edu/tools-and-resources/online-deliberation-platform>

have listen-only or interactive capabilities, such as the ability to speak or vote, under the control of the speaker or chair. We do not just want to watch Parliament; we want to participate in the political process. We will refer to this concept as *Parliament Online*.

Parliament Online could allow representatives to perform their functions while remaining in their communities, reinforcing the relationship between the representative and the constituent and helping to break down the elitist political ‘bubble’ based on the capital. As a result, there would be no need to compensate representatives for the cost of multiple domiciles, and there would be much less travelling the length and breadth of the country, reducing carbon footprint. Those representatives with geographically dispersed constituencies might use the same technology to hold constituency meetings and surgeries.

Parliament Online could enable those with time-consuming life/work commitments to serve as delegates in the public body, along with groups less well represented in our current assemblies, such as women, minority groups, those with disabilities, etc. In the long term, this technology will become ubiquitous in the political system and other areas of everyday life.

Fortunately, we know this technology works. In the Spring of 2020, a UK citizens’ assembly was formed to deliberate on how NetZero emissions might be achieved before 2050. Over 100 people convened in Cambridge. The assembly was held over four weekends, and the final weekend was held online due to COVID-19. The members heard a balance of evidence, discussed the evidence and put forward proposals about what should be done to meet this target.²⁴⁸

The existing real estate in Westminster would continue to be used for various ceremonies, such as the State Opening and as an

²⁴⁸ Climate Assembly UK <https://www.climateassembly.uk/> The project was promoted by the House of Commons, Involve (<https://www.involve.org.uk/>), The Sortition Foundation (<https://www.sortitionfoundation.org/>) and MySociety (<https://www.mysociety.org/>)

attraction for tourists, but the real work would be undertaken online.

In the first instance, the technology would be applied to the new deliberative chamber. The committees would be constituted using online meeting rooms with facilities to connect, view and interact with them. Initially, this would be a mock-up allowing us to test and validate technologies and the processes and procedures for their use before any deployment. Once the technical issues have been ironed out, we can roll out the system piecemeal by running the Citizens in parallel with the Lords. Most or all of the permanent committees would begin as joint committees with existing peers serving alongside increasing numbers of Citizens. Some minor activities would be chosen, the Lords would perform their usual functions, and the Citizens would shadow them. As confidence increases in the new system and issues are ironed out, we will slowly increase the citizens' work and retire the existing House. This process might take some time.

Once the Citizens work satisfactorily, we could consider extending this technology to other parts of our political system.

Infrastructure – Everywhere Connected

Conferencing technology relies on high-speed Internet connectivity. Many parts of the country, especially urban areas, have this, but connectivity may be non-existent, have limited bandwidth, or be unreliable for many others. So, for some parts of the country, this would require additional investment to bring those areas to a minimal standard. It would be analogous to the development of the national grid. Such an infrastructure is increasingly considered a requirement for any modern nation-state.

Labour's 2019 manifesto argued that digital connectivity will underpin our future economy with a manifesto commitment to 'deliver free full-fibre broadband to all by 2030'. They argued that the plan would:

‘boost jobs, tackle regional inequality and improve quality of life as part of a mission to connect the country’.²⁴⁹

The Conservatives had a similar intention to ‘bring full fibre and gigabit capable broadband to every home and business across the UK by 2025’. They announced:

A raft of legislative changes to accelerate progress and £5 billion of new public funding to connect premises which are not commercially viable.²⁵⁰

Both parties’ plans would be funded through taxation. In government, the Conservatives put into place a program to provide Ultrafast Broadband Connectivity (up to 1Gbps) to 85% of the country, supported by companies such as Openreach, CityFibre and County Broadband.²⁵¹ The BT subsidiary Openreach is rolling out Gigabit broadband to 25 million homes and businesses by December 2026.²⁵² Similarly, the devolved administrations in Scotland, Northern Ireland, and Wales have plans to roll out gigabit connections in the coming years. Ofcom has already been considering its regulation.²⁵³

We would create a small body accountable to DCMS or Ofcom overseeing the communications infrastructure with budget and targets. It would work with existing and new network providers to extend the network to every part of the country.

The body would work with companies supplying Internet connectivity to identify areas with limited connectivity. Mostly, this will be because the ROI in those areas would not justify the cost (i.e., areas with particular geographical challenges or small

²⁴⁹ The Labour Party, *It's Time for Real Change*, 2019 <https://labour.org.uk/wp-content/uploads/2019/11/Real-Change-Labour-Manifesto-2019.pdf>

²⁵⁰ The Conservative Party, *Get Brexit Done*, 2019 <https://www.conservatives.com/our-plan/conservative-party-manifesto-2019>

²⁵¹ DCMS, ‘Next steps in Government’s £5 billion gigabit broadband plan’ <https://www.gov.uk/government/news/next-steps-in-governments-5-billion-gigabit-broadband-plan>

²⁵² Openreach, ‘Our Ultrafast Full Fibre Broadband Build Plans’, <https://www.openreach.com/fibre-broadband/where-when-building-ultrafast-full-fibre-broadband#accordion-9a5353362d-item-4ab4131165>

²⁵³ Ofcom, ‘Ramping up the rollout of full-fibre broadband, 2021’ <https://www.ofcom.org.uk/news-centre/2021/rollout-full-fibre-broadband>

numbers of consumers). The additional investment in technology would be achieved through public funding but would contract private companies to design and build the infrastructure through competitive tender with service delivery guarantees and contractual penalties. It is an area where Britain has world-leading expertise.

The body would manage a scheme where the government subsidises the cost of connectivity in areas where installing systems is not commercially viable. It would also ensure that public buildings and community providers such as schools, libraries, community and information centres, and GP and dental surgeries are connected.

The central idea is that everywhere should be connected.

In a perfect world, connectivity would be provided by multiple established technology providers operating in competition (to reduce costs) and in concert (to give a seamless choice of service with high levels of redundancy). The body would request tenders from the providers to bring all areas of the country to a minimum standard. It is crucial to ensure that opportunities exist for small, medium and large enterprises to have some involvement in the development and implementation of infrastructure. The infrastructure would be a national resource.

The technology deployed would cover the entire nation using various distribution technologies depending on local requirements. The system would have appropriate levels of redundancy and end-to-end security. Redundancy would ensure little or no outage. Our security services would monitor and maintain the entire system. They would provide the relevant security frameworks for building appropriate secure circuits to ensure privacy. The adoption of this approach would be phased in, allowing us to test the efficacy and physical implementation to ensure that a reliable and secure infrastructure is in place to support the new chamber.

There would have to be considerable investment in tail circuit technology. In many areas, especially urban locations, existing infrastructure would be used where available. In rural and

remote locations, new infrastructure will need to be installed either where connectivity is not present or to improve service provision. We have British companies and expertise in rolling out tail circuit technology, even in rural areas and across island chains. In the first instance, tail-circuits would be initially provided to libraries/information centres and community centres, but, ultimately, we would aim to extend them to every home in the land much as we do with the telephone network. We should see the technology infrastructure in the same terms as the rail and road networks as an essential shared resource available for all citizens.

Such a project would also be beneficial because it would help to reintegrate our nation without being focused on the needs of London and other urban centres. *Parliament Online* would be one of many service providers that would use the infrastructure. It would be funded by the national purse. Third parties like companies, charities, community organisations and individuals could use the same infrastructure. They would be charged, which might help recoup some of the cost. For instance, it could allow companies to be more flexible about location, such as using virtual offices closer to their customers or making it easier for companies to relocate away from expensive urban areas and promote employment in the regions.

Inclusivity - Everyone Connected

Promoting genuine diversity of ideas and knowledge, along with protected characteristics, lies at the centre of this proposal. Since sortition is based on random selection through lots, its choices will automatically be inclusive of all communities in proportion to the nation's demography.

For the most part, we would leverage the most common existing technologies already deployed in many households, including network infrastructure and desktop technology. However, we must also recognise that not all homes have appropriate technology. So, low-cost equipment would be provided at the public expense, much as we do with, say, medical equipment. Such equipment would be 'locked' for this specific use.

We must also ensure that appropriate technology is deployed if those chosen to participate have special requirements, such as visual impairment or hearing and speech disabilities. More ongoing investment in researching and developing specialised technologies would also be needed to support that. We need our political system to be more inclusive of those with different experiences, including those with various kinds of disability.

The aim should be to connect everyone, irrespective of their background, experiences, values or beliefs.

Planning to Succeed

In the words of US Federal Judge William H. Hastie Jr.:

Democracy is a process, not a static condition. It is becoming, rather than being. It can easily be lost, but never is fully won. Its essence is eternal struggle.²⁵⁴

In much the same way, reforming our institutions is a process never fully won. We continuously seek to refine and improve our political system as it meets new challenges.

Most people recognise the need for reform of the Lords. The purpose of this document is not to provide a fully functional blueprint but rather to suggest a way of thinking about the challenges of reform and provide a road sign for one particular direction we might choose to take. During the course of writing this paper, many issues were raised that require further consideration. For instance:

- a) Some proposed committees may be unnecessary, or their roles and responsibilities may be changed. Other committees may be needed.
- b) Should the chamber be part-time (i.e. able to be accommodated within usual working commitments)?
- c) The approach to evidence collection and decision-making may be found to be defective.
- d) Have we sufficiently considered how the new design might allow issues of public concern to be raised with the government through the House?
- e) Do we have appropriate checks and balances at every level?
- f) The mechanisms for regulating and overseeing the House, its committees and its members may be inadequate and need improvement or even redesign.
- g) Suppose we create a body designed to manage some aspects of the reformed chamber. How do we determine its membership, what oversight processes need to be implemented, and who should be responsible?

²⁵⁴ Hastie, William H., quoted in *The Great Quotations*, ed. George Seldes (New York: Pocket Books, 1967), p.265

- h) We must consider the consequences of the proposed changes on existing processes and legislation. For instance, if we decide to remove or change a particular role, do we have existing legislation that places duties on the holder? If so, do those duties need reassignment, and to whom?

There will be many others that have not even been considered. The development of a new branch of the legislature is not a straightforward task.

Most of the ideas presented here could be improved through debate and discussion with stakeholders, especially through citizens' assemblies. Reform is only possible if it results from a process the citizen body understands and trusts. It cannot be imposed by a single party or government or as a result of a process of self-examination by a Royal Commission.

We should organise preliminary citizen's assemblies to consider the options available. Those working assemblies should be delivered through online platforms to reach out to people from every walk of life in all four corners of the nation. Those meetings should scrutinise, deliberate and revise proposed solutions just as the chamber would. The outcome of those assemblies should be to create a working party to develop a fully-fledged plan based on those consultations that can, in turn, become the subject of scrutiny, deliberation and revision by further assemblies. People with a working knowledge of the existing system should be consulted, and their advice should be an additional input to the process.

As we have seen, neither chamber of the current parliament seems capable of agreeing on a decision that does not seek to prioritise its political interests. So, once we have built a blueprint with credible options, we must put that to a public referendum. The referendum should have choices that include what is proposed by the assemblies, along with options for a wholly elected, an appointed House or a mixture of different methods. The referendum cannot be binding, but the government must

commit to implementing its outcome.²⁵⁵ To that end, we need to start with a policy commitment to institute preliminary assemblies with the mandate to create a detailed plan of reform with key stages and a timetable.

If we choose sortition, the implementation must be gradual and phased; at every stage, it should be tested to ensure it meets delivery targets in time and costs. If the implementation requires external suppliers, they should be subject to competitive tender with service-level agreements and delivery penalties imposed in the event of failure. At each stage, we need to test the efficacy of the design and adjust the plan accordingly.

It might take many years to achieve the outcomes described in this document, and some plans will need to be reassessed in light of the experience of implementation along with the changing requirements of our political processes. Such is the nature of large-scale, time-consuming projects. Ultimately, it is part of a process, not an event.

²⁵⁵ In our constitutional system, parliament cannot bind itself or future parliaments.

Appendix A: Previous Attempts at Reform

England's parliament developed from the *Magnum Concilium* or Great Chamber, a medieval assembly composed mainly of nobles, church leaders, knights, and burgesses who advised the monarch. The Commons, or lower house consisting of the knights and burgesses who represented the counties and boroughs, had separated from the Great Chamber in 1341 under Edward III. Subsequently, the power of the monarch and the Commons increased at the expense of the Lords, which suffered a decline in the late medieval period partly due to the attritional Wars of the Roses. However, by the time of the Tudors, the Lords were still the more powerful of the two chambers.

The Civil Wars period brought Parliament and the King in direct conflict. The defeat of the Royalists and the execution of Charles I led to the creation of the Commonwealth. Just two days after the Abolition of the Monarchy, the Commons proposed a bill to abolish the 'House of Peers'. The bill stated:

The Commons of England assembled in Parliament, finding by too long experience, that the House of Lords is useless and dangerous to the People of England to be continued²⁵⁶

In doing this, the Commons sought to undermine support for the monarchy in Parliament. The Lords was abolished on 19th March 1649 and replaced with an assembly of around fifty members, hand-picked by Cromwell. In effect, the hereditary peers were replaced by appointed life peers as they are today.²⁵⁷ Whether Cromwell was a dictator or democrat is still widely disputed. Christopher Hill²⁵⁸ took the view that Cromwell was a 'reluctant dictator' driven by circumstance. It is clear that he brooked no

²⁵⁶ Firth, C.H. & Rait, R.S. *Acts and Ordinances of the Interregnum, 1642-1660* (HMSO, 1911) <https://www.british-history.ac.uk/no-series/acts-ordinances-interregnum/p24>

²⁵⁷ At this time, the Commons could not agree on a suitable name for the new assembly and so the Lords became known in the Commons as the 'Other House', a tradition continued to this day.

²⁵⁸ Hill, Christopher *God's Englishman: Oliver Cromwell and the English Revolution* (Penguin Books, 1990)

opposition, especially when it came to the defence of the republic against monarchy. He was no advocate of mixed government.

After Cromwell's death and the failure of his son to control Parliament or the army, the protectorate fell. With the restoration of the monarchy and the accession of Charles II in 1660, the Lords reassembled, where it has remained ever since.

In the course of the twentieth century, governments have attempted several changes to amend the rights and roles of the Lords, to ensure the primacy of the Commons to achieve some particular end. The Lords have resisted many of the changes. Usually, the government would drop the reforms in favour of some lesser change. For instance, in 1911, the Liberal government proposed reform but later dropped it in favour of an act that allowed the Commons to pass money and public bills without reference to the Lords. In this way, many of the Lord's former powers have gradually been overturned. The Parliament Act of 1911 was meant to be a temporary measure. The preamble states:

And whereas it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation:²⁵⁹

There have been several reports considering wholesale reform of the Lords. The Rosebery Report in 1907 and the Bryce Report in 1918 were dropped with no action taken, as were subsequent attempts announced in King's Speeches in the 1920s and successive Private Member's Bills. Two further attempts were made in the late 1960s but dropped. In 1978, a committee under Lord Home proposed a two-thirds elected chamber, but the proposal was dropped again. In 1997, the Labour government proposed the removal of hereditary peers as 'the first stage in a process of reform'. After much negotiation between the Houses, the House of Lords Act was passed in 1999, reducing the number of hereditary peers by about 600, leaving a rump of 92. The consequence was to place the Lords in the hands of political

²⁵⁹ Parliament Act 1911 Introductory Text URL:

<https://www.legislation.gov.uk/ukpga/Geo5/1-2/13/introduction>

appointees. In 1999, a Royal Commission under Lord Wakeham was asked to consider the House of Lords Reform as part of the same 'process'. In 2000, the Commission published a report called 'A House for the Future' that suggested some changes but explicitly rejected a wholly elected or appointed chamber. Only a few of its recommendations were adopted.²⁶⁰

In 2002, a joint committee of both Houses was appointed to reconsider reform. In 2007, the government published a White Paper proposing a combination of 50% elected and 50% appointed members. The House of Commons voted for an elected chamber and the House of Lords an appointed one. In 2012, a new joint committee proposed an 80% elected and 20% appointed chamber, and a bill was produced in June 2012. By August, it was dropped after its first reading. Another committee chaired by the Lord Speaker was formed in 2017 to consider the size of the House. In 2023, it published a fifth report proposing a few process changes.

Those who served on the various committees and commissions often sought to protect their positions and power. It is unsurprising that the House of Commons would vote for an elected chamber in 2007. That the House of Lords would prefer an appointed one is equally unsurprising. Moreover, the Lords

²⁶⁰ In 2000, the Labour government announced it would set up a Commission to select fifteen so-called 'people's peers' for life peerages. The idea was to bring additional diversity to the chamber. The Commission would accept applications from the public and choose fifteen for elevation to the house. It received more than 3000 applications, but when the choices were announced, all were people distinguished in their field, the same people who generally appear in Honour's Lists and none were 'ordinary people'. It seems the Commission had a fixed assumption about who was fit to govern. At the time, the crossbench peer, Lord Hannay, said: 'Being in the House of Lords is a public service. It is a job, not a reward.' Lord Hannay is not untypical of a member of the Lords. He is a former diplomat. He was educated in a fee-paying school and read Modern History at Oxford with a particular interest in diplomatic history. He joined the foreign office and served in several diplomatic positions. He is a Knight Grand Cross of the Order of St Michael and St George, a Companion of Honour, and a former pro-Chancellor of Birmingham University. He holds an Honorary Doctor of Letters from the same institution. Prime Minister Tony Blair appointed him to the House of Lords in 2001.

have a built-in bias toward the Conservative Party. So, reforms that remove that bias would be promoted by the other parties and resisted by the Conservatives. Despite advantages in terms of the ability to adapt to meet changing circumstances, an unwritten constitution, i.e. one framed in customs, usage, statute law and authoritative works that are controlled by parliament, is less effective when proposing radical reform to itself.

One consequence of the 1999 Wakeham Royal Commission was that alternative approaches to appointing members were proposed, including one for a chamber whose membership was chosen by lot, known as ‘The Athenian Option’.²⁶¹ Another proposal was a ‘House of Experts’ submitted by Lord Runciman. He argued that the House should be populated by experts in ‘revising and advising functions’. Jacques Arnold, MP for Gravesham, made a similar proposal to have a ‘Senate of Interests’ that would seek to recruit specialists in various fields to deliberate and vote on behalf of the electorate. This suggestion was somewhat similar to the Irish vocational panels designed to widen the vocational basis of its second chamber.

In 2024, the Labour government proposed a bill to exclude the hereditary peers from the House of Lords.²⁶² The remaining 92 hereditary peers would no longer serve the house.

While it is true that some members of the Lords only attend debates and vote in areas that align with their area of expertise, it is unclear why we would imagine that an expert in, say, healthcare would be able to apply that expertise in the regulation of banks. The second chamber should consult experts to provide evidence that leads to decisions rather than those decisions being placed in the hands of experts. Domain experts often consider their area of expertise in isolation, whereas the second chamber’s function is to consider evidence in the round. The critical skills of a member of the second chamber should be the ability to weigh

²⁶¹ Barnett, A. & Carty, P., *The Athenian Option: Radical Reform for the House of Lords (Sortition and Public Policy)*, 2008

²⁶² *The House of Lords (Hereditary Peers) Bill*

up the evidence and use good judgment, fairness and common sense to come to a decision.

The Wakeham Report was widely criticised at the time. The consideration of alternatives to election and appointment, such as sortition, indirect election and so on, were not adequately or seriously considered by the Commission. Presumably, they had limited support from those supporting an elected or appointed chamber. There was a concern that adding an elected element would increase the Lords' power and challenge the Commons' status. Others thought that removing some of the delaying powers of the Lords would undermine it. There was a belief that the failure to remove appointed members would allow the government to stack the Lords with new life peers (as previously suggested by leading Labour MP Tony Benn in 1980).²⁶³

²⁶³ This is not a new problem. For instance, the administration under Robert Harley, the Earl of Oxford, created twelve peers in one go in order to bolster the Tories in the House of Lords in the winter of 1711/2. Earl Grey took the same approach in 1832 with the Lord's rejection of the Great Reform Act.

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