

Consider both Houses of Parliament as two separate and distinct football teams where the overall purpose of the Houses is to advance the football (bills) into the goal (Royal Assent). The difference comes in the formations and strategies that the Houses use to achieve their objective(s).

The overarching issue is whether changing the formation and strategies of one House (or team) without, at the same time, changing the formation and strategies of the other House would bring about more detriments than benefits to the overall purpose of the change?

In deciding whether or not parliamentary reform is best done in “One Grand Constitutional Reform Project” the author suggests subjecting the proposed change(s) to Parliament to the following three pronged test:

- i) Independent Expertise: Whether the proposed change(s) will impede the level of independent expertise that the House of Lords contributes to scrutinizing legislation or bills; if the level of independent expertise will not be impeded by the change(s), or the change(s) in and of themselves can be justified as more beneficial to the grand scheme of the parliamentary role, then the independent expertise prong will be satisfied.
- ii) Accountability: examine the mechanisms of accountability and ensure they will not be impeded by any reforms to the House of Lords and the House of Commons.
- iii) Degree of change: (with reference to Lord Falconer’s quote pg.7) in terms of whether the change will impact the role and function of the House(s)?

- a) If so, then it may be necessary to address such change(s) simultaneously with the changes that impact the other House.
- b) If not, then in order to preserve the differences between both Houses it may be best to leave the other House alone as it may interfere with the symbiotic relationship.

Of course this process may inevitably be expensive and time consuming, but to that it is submitted it is better to spend the time and resources now, where you can alter, amend and delete, than to implement it and find the practical removal of which becomes impossible (i.e. devolution, Commonwealth nations that have received their independence, etc.).

Independent expertise:

Lord Bingham and Dan Oliver argue “...on the basis that an appointed House of experts is preferable to one composed of elected whipped politicians.”¹ It is important to consider that whatever reform one is thinking of making to parliament it is imperative that the reform not shatter the independent expertise of the upper chamber. It is widely acknowledged in academic circles that the House of Lords acts in its modern capacity as a ‘complement’ to that of the Commons. King further asserts:

*“... appears to be universal agreement that much of the legislation that emanates from the House of Commons is a mess--ill considered, badly drafted and (to use the cliché of the day) not fit for purpose--and that a second-thoughts chamber is needed, if not to eliminate the mess totally, then at least to reduce its extent”*²

¹ <http://www.parliament.uk/documents/LLN%202010-014%20PossImplicationsHOLReformFP.pdf> p.17

² King, A. (2007) *The British Constitution* (Oxford: 2007), p.310. as cited by Lord Bingham of Cornhill (2010) “The House of Lords: Its Future?” Public Law 261

The House of Lords is not impeded by the confines of whips, allegiances to party platforms, political manifestos and the fear of not being re-elected. Lord Bingham of Cornhill affirms: “(is)...free to form their own judgment on any issue which arises and to speak and vote as their judgment or conscience may dictate.”³ Lord Bingham is making reference to independent guardians in the House of Lords who are fewer in number than their conservative or labour peers. He credits them with being able to “swing the balance and may have an influence out of proportion to their numbers.”⁴ The House of Lords is able to maintain a fairly significant, independent view point while scrutinizing legislation, in contrast to the House of Commons. A consequence of democracy is a biased political will in that its concern becomes primarily focused on getting re-elected and secondarily on scrutinizing legislation. The House of Lords’ primary role is to scrutinize legislation without fear of losing their positions.

The House of Lords is far less political than the House of Commons which is primarily political. It is true that the House of Lords is part of the legislature and therefore contains a significant inevitable political element. The House of Lords as a political body is not subject to the electorate political games, which are ripe in the House of Commons. This distinction is the reason why any change affecting one House be dealt with independently and separately of the other House. This will ensure that the House of Lords maintains its level of independent expertise and that the changes in the House of Commons can in no way hinder their role. Of grave concern is the more aggregated these houses become (i.e. One Grand Constitutional Reform Project) and the more simultaneous changes made to both Houses, there will be less

³ Ibid.

⁴ Ibid.

deference and respect for the independent expertise the House of Lords contributes to the scrutiny of legislation. “Absolute master plans often end up with disastrous outcomes.”⁵

The House of Lords in comparison with the House of Commons: “It offers considerable real life experience to counter the myopia of professional politicians. But it also brings free-thinking and independence of mind which do not characterise the whipped party political process.”⁶ It is necessary to enshrine the workings of independent expertise and experience against “whipped party political process”⁷ and to be wary of any obstacles that may hinder that process. It is submitted that by lumping the two houses together in one grand constitutional reform project, would be to expose the independent expertise and mingle it with the “whipped party political process”⁸ and inevitably and unintentionally damage the independent expertise in the Lords.

Accountability:

One of the issues raised above is that the House of Lords has no fear in terms of losing their respective positions come election time, whereas the Commons always has this perceived threat.

The question is:

Whether the mechanisms of ensuring accountability would be impeded by reforming both Houses of Parliament together in one project?

⁵ Lord Irvine “Government’s Program of Constitutional Reform” A Constitutional Unit Lecture December 8, 1998

⁶ “Possible Implications For House of Lords Reform” <http://www.parliament.uk/documents/LLN%202010-014%20PossImplicationsHOLReformFP.pdf> p. 13-14

⁷ Ibid.

⁸ Ibid.

The Hansard Society report summarizes seven principles for reform. The following four are significant to this essay:

“Parliament should be at the apex of the system of scrutiny of the executive; Parliament must develop a culture of scrutiny, the chamber should remain central to accountability; the House of Lords should complement the Commons; and...”⁹
(emphasis added).

The most appropriate mechanism, it is submitted, to ensure accountability is that of the

Appointments Commission itself:

“the main issues on which it will be examined are its ability to keep the size of the chamber in check, and its success in achieving balance between the parties and in terms of expertise in the chamber, region, gender, ethnicity and other criteria. On these matters it should be expected to submit an annual report and budget for scrutiny and approval by parliament, and a five year future plan, as does the Electoral Commission. Reporting on these matters to members of the House of Lords would be valuable, as upper house members will be aware of how the House is functioning and of any obvious gaps, particularly in its expertise.”¹⁰

If the Appointments Commission is able to ensure that it can maintain the size of the Lords, balance between parties and also provide a diverse range of expertise in the upper chamber, then it may be more efficient for the Appointments Commission to report to parliament in a manner similar to the Electoral Commission which “reports to a special committee of the House of Commons chaired by the Speaker, whose members in turn report to the House.”¹¹ If the Appointments Commission reports to a Special Committee of the Lords chaired by the Leader of the House and then, in turn, its members would report to the House, this may result in a symbiotic balance of accountability to that of the Commons, that does not mirror or resemble it to the extent that it creates problems of supremacy between the Houses.

⁹ Dawn Oliver (2001) “The Challenge for Parliament” Public Law 66*

¹⁰ M. Russell et. al “Next Steps in Lords Reform: Response to the September 2003 White Paper” The Constitutional Unit November 2003

¹¹ Ibid.

In order to allow the upper chamber to continue to complement the House of Commons, it must be held accountable through mechanisms that are similar but more geared toward the distinct role and structure of the Lords. The mechanisms must be distinct to the House, because the closer the resemblance of accountability mechanisms, the more likely the Houses will end up in a rivalry competing for dominance. In order to preserve the different mechanisms of accountability in accordance with the distinct role and structure of the Houses, one must consider the impact of any proposed change. If the change will adversely affect these mechanisms, and possibly dissolve their distinct nature, it is submitted it may be best to make the change(s) to one House alone, and ensure that both Houses are held responsible in their own distinct way.

Conversely; it is argued that if there are to be wider reforms to the House of Lords then it must take into account “possible changes to the electoral system for the Commons.”¹² ‘The Lords is a complement to the Commons, if one were to add an elected element to the Lords, it must be in a different way.’¹³ “It makes no sense to decide on the franchise for an elected Lords until it has been decided whether the electoral system for the Commons is to change.”¹⁴

Accordingly, it would seem redundant to make changes to the House of Lords, which may consist of some electorate format, and then to rework the electorate in the Commons, to find that the House of Lords and the House of Commons now resemble each other to such a degree that there will be inevitable conflict between the supremacy of the houses. Any changes to the composition of the Lords should be considered in light of changes made to the Commons as opposed to changing the structure of parliament side-by-side, which may impede the independent expertise of the Lords and mechanisms of accountability. It is fundamental that the House of Lords complement the House of Commons.

¹² R. Hazell et al. “Reforming the Lords: A step by step guide” The Constitutional Unit January 1998

¹³ Ibid.

¹⁴ Ibid.

Degree of Change – The ‘Necessity’ prong:

*Lord Falconer of Thoroton: My Lords, I agree that the two Houses are complementary. I think there is widespread agreement about the role of this House but, although we may agree on the role, the question is: does it get changed in practice if you change its composition? If it does, inevitably there will be changes in the relationship between the two Houses.*¹⁵

In light of Lord Falconer’s statement, before an assessment is made as to whether or not it is best to address changes to the Houses simultaneously, it is necessary to determine if the proposed change will affect the role of the House. If the change does not affect the role of the House, then the change itself may be suitable to that House alone to preserve its distinct nature. It is when the change impacts the role of the House that it may become necessary to assess how this change will affect the relationship between the two houses. Consequently the change(s) may need to be addressed simultaneously with changes to the other House, to preserve the complementary relationship.

In conclusion, applying the three pronged test has demonstrated the potential adverse consequences of implementing reform via one grand constitutional reform project. Until the three pronged test can be fully satisfied, the best approach to reform Parliament may be through step-wise implementation, one House at a time.

*“We are not, however, hunting the chimera of constitutional master plans, nor ultimate outcomes. Too easily these can map out well intentioned routes to disaster. We prefer the empirical political genius of our nation: to go, pragmatically, step by step, for change through continuing consent. Principled steps, not absolutist master plans, are the winning route to constitutional renewal in unity and in peace.”*¹⁶

¹⁵ http://www.publications.parliament.uk/pa/ld200506/ldhansrd/vo060517/text/60517-02.htm#60517-02_head0

¹⁶ Opcit. N.5

Bibliography:

Hazell, R. et. al. (1998). "Reforming the Lords: A step by step guide", The Constitutional Unit. January, 1998

Lord Bingham of Cornhill, (2010). "The House of Lords: Its Future?" with reference to King, A., (2007). *The British Constitution*, p.310. Oxford, 2007. Public Law 261

Lords Hansard. "House of Commons: Reform". Available from http://www.publications.parliament.uk/pa/ld200506/ldhansrd/vo060517/text/60517-02.htm#60517-02_head0 [accessed on 10 Jan 2011]

Lord Irvine, (1998). "Government's Program of Constitutional Reform", A Constitutional Unit Lecture. December 8, 1998

Oliver, D. (2001). "The Challenge for Parliament", Public Law 66

"Possible Implications of House of Lords Reform", LLN 2010/014, 25 June 2010. Available from <http://www.parliament.uk/documents/LLN%202010-014%20PossImplicationsHOLReformFP.pdf> p.13-14 and p.17 [accessed on 10 Jan 2011]

Russell, M. et. Al., (2003). "Next Steps in Lords Reform: Response to the September 2003 White Paper", The Constitutional Unit. November, 2003

Bibliography:

“Possible Implications of House of Lords Reform”, LLN 2010/014, 25 June 2010. Available from <http://www.parliament.uk/documents/LLN%202010-014%20PossImplicationsHOLReformFP.pdf> p.13-14 and p.17 [accessed on 10 Jan 2011]

Lord Bingham of Cornhill, (2010). “The House of Lords: Its Future?” with reference to King, A., (2007). *The British Constitution*, p.310. Oxford, 2007. Public Law 261

Lord Irvine, (1998). “Government’s Program of Constitutional Reform”, A Constitutional Unit Lecture. December 8, 1998

Oliver, D. (2001). “The Challenge for Parliament”, Public Law 66

Russell, M. et al (2003). “Next Steps in Lords Reform: Response to the September 2003 White Paper”, The Constitutional Unit. November, 2003

Hazell, R. et al (1998). “Reforming the Lords: A step by step guide”, The Constitutional Unit. January, 1998

Lords Hansard. “House of Commons: Reform”. Available from http://www.publications.parliament.uk/pa/ld200506/ldhansrd/vo060517/text/60517-02.htm#60517-02_head0 [accessed on 10 Jan 2011]