A Proposal for Simultaneous Reform of the House of Commons and House of Lords

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Abstract

The disproportional electoral system of the House of Commons is increasingly contested, while the undemocratic composition of the House of Lords has been criticised for a century. I first argue that simultaneous reform of both chambers creates the opportunity for far more optimal outcomes than possible under attempts to reform just one chamber. I then argue that bicameralism should continue so that the UK can be represented in two, currently convoluted, ways: as a singular polity in partisan terms *and* as both an aggregate of constituencies and union of nations, in geographic terms. The former would best take place in a reformed House of Commons, responsible for government formation, and composed of around 300 MPs elected by 'pure' proportional representation. The latter would best take place in a reformed House of Lords of around 300 peers, elected by plurality voting from single-member constituencies. Together, these reforms would improve governance, representation, legitimacy, accountability and the robustness of the union, while retaining celebrated facets of the status quo such as simplicity and the direct constituency link.

Keywords: electoral reform, House of Commons, House of Lords, proportional representation, first past the post, bicameralism

THE ELECTORAL system of the House of Commons and the composition of the House of Lords are increasingly criticised, as is the British constitution moreover. The electoral system of the House of Commons—plurality voting in single-member constituencies, commonly known as first past the post—has been criticised, above all, for producing seat shares that fail to represent accurately the national vote shares of parties.[1] This disproportionality has increased over time, so that in recent elections, larger parties have won absolute majorities with little more than a third of the votes, while other parties receive millions of votes and are rewarded with no more than one or two of the 650 seats, if any. This disproportionality also results in geographically concentrated parties being highly rewarded, with little theoretical justification, and resulting in the overrepresentation of parties unlikely ever to take part in national governance, arguably reducing legitimacy and leading to disunion. Furthermore, the vast majority of voters reside in 'safe seats' that receive less campaigning and are,

arguably, more poorly represented in Westminster. Even outside safe seats, many people are forced to vote tactically for whomever is perceived as having the best chance of beating their least preferred candidate, adding further disproportionality to the outcome. Moreover, the high barriers to entry for small parties and the institutional rewards for established parties are likely to reduce further political competitiveness and accountability resulting from this electoral system. This is particularly problematic for representation if the political views or sociodemographic characteristics of the memberships of established parties become highly incongruent with those of the electorate. Finally, the electoral system has been argued to result in an increasing tendency for MPs to concentrate on constituency matters—many of which they have little power over, yet for electoral reasons have to be seen to be involved in, often making them akin to 'glorified social workers'—rather than contributing to national politics. This constituency role is also one reason for the

large number of MPs: 650, one of the largest legislatures in the world and far more than necessary to represent the UK, form an effective government and opposition, and provide additional MPs for committees.

In response, defenders of the current system have pointed to its simplicity and its tendency to produce strong single-party governments without the need to appease far smaller parties that hold the balance of power—itself disproportionate—as well as its stabilising effects on the party system. However, given the recent coalition and minority governments, these arguments look increasingly out of date. A second defence of the first past the post system is that it holds the individual legislator as the fundamental unit of the legislature, rather than parties, thus leading to more personal and, arguably, better, accountability for the actions of the MP, who may be directly removed by citizens—unlike in some proportional representation (PR) systems in which the MP owes ultimate loyalty not to his or her constituents but to the patronage of a party. In reality, however, the patronage of an established party is necessary for almost all MPs for election to the House of Commons. Defenders of first past the post also point to the constituency link (and resultant constituency-focussed work of MPs) as a positive contribution to Parliament's representative function, which, in aggregate, represent the national interests. Similarly, it has been argued that the geographical representation made possible by first past the post—whereby every part of the UK has their unique and equal representative—is another positive feature that some kinds of electoral reform would remove.

The composition of the House of Lords has also been widely criticised. The number of members fluctuates though there are currently 793 members or 'peers', 661 of whom are appointments by the government for life, as well as a capped ninety-two hereditary peers and twenty-six Lords spiritual, representing the Church of England. The current composition has long been, and continues to be, widely criticised—above all, for being undemocratic, most obviously in terms of the lack of electoral accountability. As such, there have been repeated attempts at reform over the last century with changes short of democratisation being successful. The Lords is also criticised for being far too large, dominated by former politicians (many of whom owe their peerage to losing an election to the House of Commons) and for having a very low attendance. Defenders of the current system argue that an undemocratic upper house has the advantage of avoiding legislative gridlock by allowing for the supremacy of the elected lower house—particularly on budgetary and manifesto issues—while providing less partisan oversight on other issues than in the House of Commons.[2]

The stated position of most parties and, according to some polls, the preference of a large majority of the public, is transitioning to a more democratic House of Lords, as is partially reflected in the many manifesto commitments and actual attempts at House of Lords reform over the past century.[3] The two main issues standing in the way of such reform have been agreeing on a new system and the destabilising effects of reform on the relationship between the two chambers, which likely would be affected by democratisation. Until recently, there was far less appetite for reforming the House of Commons than the House of Lords, meaning that proposals for Lords' reform necessarily were limited in scope in order to maintain the current equilibrium of power between the two chambers—in essence precluding democratisation, ironically not least because of the shortcomings of the Commons itself.

Previous proposals for reform of the Commons have usually attempted to combine and balance, within one chamber, the advantages of the current system—such as the constituency link—with a more proportional allocation of seats. Examples include multi-member constituencies selected via the single transferable vote (STV) or an alternative vote (AV) system, as rejected in a 2011 referendum. In so doing, they have drawn criticism. The STV system still tends to result in suboptimal proportionality and a weakened constituency link, while continuing to muddle MPs' personal mandate and that of their party, something highlighted when MPs switch parties.[4] The AV system was criticised by the victorious 'No' campaign in the 2011 referendum for being complicated, while still retaining many of the faults of the current system, such as safe seats, tactical voting, and MPs being elected without majorities.[5] Furthermore, any system

of ranking of preference has been shown to be unable to convert individual rankings to aggregate rankings while maintaining various reasonable criteria.[6] Other proposals have suggested creating more than one type of mandate for MPs, such as in the German *Bundestag*, where half are elected via first past the post and the other half by PR. This has been criticised for creating two unequal classes of MPs. In all of these cases, the individual mandate of MPs to represent their constituencies remains convoluted with the mandate of parties to govern. However, reforming *both* chambers simultaneously—now more of a possibility than ever—would allow for the consideration of more optimal outcomes for Parliament than have been possible previously, when the status quo of the opposite chamber has been presumed to be fixed.

When considering reform of the Houses of Parliament, the first question to be asked is: should there be two chambers? The most fundamental theoretical justification for a legislature to have two chambers is that the polity in question needs to be represented in more than one manner. In the cases of the United States and the European Union, for example, both polities are purported to be unions of multiple states *and* simultaneously of a single people. This is also the case of a number of other federal or confederal states, such as Australia, Canada, Germany and Switzerland. By contrast, the basis of bicameralism in the British Parliament owes its origins to pre-modern societal divisions between knights and burgesses in the lower house, and clergy and nobility in the upper house. Today, there is no clear-cut theoretical basis for bicameralism, though some reasonable *post hoc* justifications are given in practical terms. These include: the usefulness of the House of Lords to act as a check on the more powerful lower house, to provide additional scrutiny of the government, or to offer alternative input in the legislative process that is distinct from the adversarial House of Commons, albeit with questionable legitimacy. Furthermore, bicameralism has a central role in the complex ritualism of the British constitution.

Somewhat by chance, as disillusionment with the electoral system of the House of Commons and the composition of the House of Lords has grown, a separate trend has improved the justification for bicameralism: the transformation of the United Kingdom into a union of four nations. This trend has manifested itself in the creation of devolved legislatures for three of those four nations, with distinct party systems in each of the four nations; in the long-term increase in individuals identifying with their 'home' nationalities, as well as, or instead, of their British identity; and in the increased use of the four nations when symbolising or describing the UK. It has also been suggested that each of the home nations should hold a veto on issues of constitutional importance, such as the UK's relationship with the European Union. Currently, the four nations have little formal recognition in the make-up of the Houses of Parliament, with exceptions including some under-representation of the English population in the distribution of constituencies in the House of Commons and the move to 'English votes for English laws' (EVEL) in which MPs cannot vote on issues that are devolved in the home nation of their constituency.

Bicameralism, as elsewhere, holds the potential to represent the United Kingdom as a union of people and as a union of nations, which it has gradually de facto become. It also allows for an optimal apportionment of many of the advantages of the current system *and* additional advantages of more proportional systems that would be mutually incompatible in a single chamber. I now consider what this optimal apportionment might be.

I start with the assumption that it is best for the government to be, at least primarily, drawn from one chamber and that this should be the lower house as is currently the case. The government works on behalf of all citizens—'the British people'—and thus should be drawn from a chamber that is designed to represent the views of the citizenry. The current first past the post system does not do this well, at least in terms of party vote share. It seems safe to assume that this partisan representation is more important in the chamber from which the government is formed, because parties play the fundamental role in government formation and opposition, as well as producing manifestos and policy programmes. If the *only* function of democracy were effective

government formation and partisan representation—with the assumption of a single people—we might conclude that the best electoral arrangement would be PR from pan-UK closed party lists to a single chamber in which there are enough members to form a government and an opposition, as well as to form committees that can scrutinise the government. This arrangement would have multiple advantages over the current electoral system, such as removal of the dilution of accountability that comes from tactical voting, removing geographical concentration biases that tend to overly reward parties (which ironically have little interest in national governance or participation), and would end 'wasted votes'—the perception of which would be reduced in a proportional system. Crucially, once elected, members would be free to focus fully on issues of national governance and its scrutiny, rather than constituency issues. However, many of the advantages of the current system would also be lost, such as direct, individual, constituency-based accountability and geographical representation.

The advantages of first past the post could be retained—and I posit would be better apportioned—in a reformed House of Lords, the rationale for which would be geographic representation, including, but not limited to, representing the UK as a union of nations. Such representation in the House of Lords would be best delivered with simple plurality, single-member constituencies, that is, the current electoral system of the House of Commons. These could be weighted to ensure that smaller nations are over-represented, as is currently the case, to a limited extent, in the House of Commons—or, for example, via the use of the historic counties. Furthermore, with first past the post, the direct constituency link with voters and individual accountability would be retained and isolated from issues of government formation. Such a reformed House of Lords could still play a role in government scrutiny that is distinct from that of the reformed Commons. Without issues of governance, the whipping system, which is partially reliant on the ambitions of backbench MPs to hold government positions, would be weaker in a first past the post upper chamber than the current first past the post lower chamber, enhancing and isolating personal or individual, rather than partisan, accountability. The behaviour of peers elected in such a fashion would therefore likely be considerably less partisan than that of current MPs. Furthermore, a House of Lords charged with representing the 'home nations' could have additional rights regarding constitutional reform, in a similar manner to the German *Bundesrat*. Overall, a House of Lords elected in this way would retain within the British political system many of the advantages of the current electoral system of the House of Commons and, I argue, would be better apportioned to an upper chamber with a geographical rationale and a smaller role in national governance *anyway*.

Any proposal for a House of Commons elected by straightforward closed party list PR and a House of Lords elected by a single-member first past the post system is likely to be met with certain arguments that have been used against reform of either chamber in the past. First, it has been argued that any moves to democratisation of the House of Lords will result in yet more elected politicians. However, in this proposal, that need not be the case. Indeed, ideally the number of members of a House of Commons that has no constituency representation functions should only be as large as is necessary to provide a government, an opposition and various committees to provide scrutiny. There is no reason for this to be more than 300, around the size of many comparable lower houses in other countries. The House of Lords, under this reform and with no governance function, need not have more than 300 members either. As such, there would be in total fewer elected politicians in Westminster than the current 650 MPs and nearly 1000 peers, a dramatic improvement rather than worsening in efficiency. The resultant larger constituencies than currently exist in the House of Commons may require each peer to have a larger staff than those of current MPs, though even the number of staff in total for the Commons and Lords would likely be reduced.

Second, proposals to increase the democratic legitimacy of the House of Lords have often been countered with the argument that this would undermine the supremacy of the House of Commons, with the result being legislative gridlock. Even if we accept this

interpretation—rather than gridlock as a sometimes necessary manifestation of checks and balances against suboptimal legislation—there are at least two reasons why this proposal is likely to not result in the gridlock of pure bicameralism, as is sometimes criticised in the United States or Italy. First, the upper chamber in this case would be *less* proportional than the lower chamber, unlike in most previous proposals for Lords reform. As such, if the two chambers were elected simultaneously—something not implausible under the current constitutional set-up of parliamentary dissolution—the largest party in the House of Commons would usually have a plurality, or even majority, in the House of Lords. This would be even more likely in total for a governing coalition. Indeed, this would be a reward for the largest party in the lower chamber, retaining some aspects of the current advantage of the Commons of large majorities *and* paving the way for the largest party in the Commons to more easily form a government—similar to a precedent that exists in many democratic systems in which coalitions are common. Second, there could still be an argument for greater democratic legitimacy in the House of Commons if it were elected under pure PR and with the understanding amongst voters that their vote for the House of Commons is for government formation. This greater democratic legitimacy of the Commons would be even more strengthened if the apportionment of Lords seats disproportionately advantaged smaller 'home nations'. This would also justify the retention of the Salisbury Convention, whereby the House of Lords does not oppose the second or third reading of any government legislation promised in its election manifesto, or perhaps a coalition agreement, as well as keeping the Commons' exclusive powers over money and supply bills as stipulated in the Parliament Act 1911. Similarly, by either legislation or convention, as part of this reform, the policy competences of the Lords could be defined. These two factors combined mean that unacceptable gridlock resulting from an overly partisan Parliament is unlikely; instead, greater checks would exist that would likely be strong enough to avoid policy fiascos or injudicious constitutional reform.

In this article, I noted that the disproportional electoral system of the House of Commons is increasingly contested. Similarly, the undemocratic composition of the House of Lords has been criticised for a century. I overviewed these criticisms and their rejoinders before arguing that the current situation presents an opportunity for simultaneous reform of both chambers, which would be preferable to the historic attempts to reform one chamber that, ironically, have often been thwarted by the suboptimal characteristics of the other chamber. I argue that bicameralism should continue so that the UK can be represented both as a singular people in partisan terms, and as a union of nations and aggregate of constituencies in geographic terms. I argue that the former should take place in a lower house, the House of Commons, which would remain responsible for government formation and national matters and would see around 300 MPs elected by party list PR. I argue that, simultaneously, the House of Lords should be composed of around 300 peers elected by plurality voting in single-member constituencies, that is, first past the post, with weighting by 'home nation' and, perhaps, special competences for constitutional issues.

This outcome would improve the quality of governance, representation, legitimacy and accountability, but retain celebrated facets of the status quo such as the direct constituency link and individual accountability, which would happily be isolated from partisan accountability in the process of government formation. In this sense, it is a superior proposal for electoral reform over some previous proposals, particularly those that have sought to reform only one chamber while leaving the other chamber in its current state. I also argue that two of the major arguments against electoral reform—the lack of desire for more elected politicians and the desire to retain the supremacy of the lower house—are not necessarily relevant in this case, further strengthening the proposal.

However, there are strong arguments against electoral reform, not least the inevitability of unforeseen consequences, and that the two largest parties would in all likelihood reject such changes. This article should thus be seen as a proposal for an ideal electoral system for the United Kingdom. As such, a party looking for a genuine vision for British democracy could embrace

this proposal of a pure PR House of Commons and a first past the post House of Lords to improve the governance of Britain and place British democracy and the Union on a more secure footing, while securing and enhancing many of the best parts of the familiar status quo.

Notes

1 In the most recent June 2019 wave of the British Election Study's internet panel, when asked which was more important for them when thinking about the outcome of elections, more respondents chose 'That every party's percentage of seats in parliament is the same as their percentage of the vote' than 'That one party gets more than half the seats in Parliament so it can govern on its own', with the former option becoming increasingly popular during the panel. See E. Fieldhouse, J. Green, G. Evans, J. Mellon and C. Prosser, British Election Study Internet Panel Waves 1–16, 2019; https://doi.org/10.15127/1.293723.

2 For an overview, see M. Russell, *The Contemporary House of Lords: Westminster Bicameralism Revived*, Oxford, Oxford University Press, 2013.

3 Electoral Reform Society, 'Two thirds now want elected House of Lords, ahead of key report on reform', 2017; https://www.electoral-reform.org.uk/latest-news-and-research/media-centre/press-releases/two-thirds-now-want-elected-house-of-lords-ahead-of-key-report/. See also, Ipsos Mori, 'House of Lords Survey', 2007; https://www.ipsos.com/ipsos-mori/en-uk/house-lords-survey; YouGov, 'The public aren't furious about the Lords—they're apathetic', 2018; https://yougov.co.uk/topics/politics/articles-reports/2018/05/25/no-public-are-not-furious-house-lords (all accessed 11 December 2019).

4 For an overview, see S. Hix, R. Johnston and I. McClean, 'Choosing an electoral system', British Academy Policy Centre, 2010; http://personal.lse.ac.uk/hix/Working_Papers/Hix-Johnston-McLean-choosing-an-electoral-system.pdf (accessed 12 December 2019). See also, P. Norris, 'Choosing an electoral system: proportional, majoritarian and mixed systems', *International Political Science Review*, vol. 18, no. 3, 1997, pp. 297–312.

5 For example, T. C. Lundberg and M. Steven, 'Framing electoral reform in the 2011 UK alternative vote referendum campaign', *Australian Journal of Political Science*, vol. 48, no. 1, 2013, pp. 15–27.

6 K. J. Arrow, 'A difficulty in the concept of social welfare', *Journal of Political Economy*, vol. 58, no. 4, 1950, pp. 328–346.