THE KEY TO DEMOCRATIC REFORM OF THE HOUSE OF LORDS IS SIMPLICITY, VIABILITY AND LEGITIMACY

"Following consultation, the government will introduce legislation to implement the second phase of the House of Lords reform."

With this single sentence in the 2001 Queen's Speech, the Labour government gave notice that it was intent on fulfilling it's historic commitment to reform the House of Lords. The choice between a democratic second chamber or one which remains predominantly a house of patronage will have to be resolved.

Whilst those in favour of the democratic option push for an elected house, supporters of an appointed chamber counter that it would not be sensible for the Commons to legislate so that the House of Lords became a rival chamber. Thus the debate becomes polarised. This pamphlet sets out the case for a viable democratic second chamber that does not challenge the primacy of the House of Commons.

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A Genuine Expression of the Will of the People:
a viable method of democratic Lords reform

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The Democratic Case for Stage Two of the House of Lords Reform

It is clear from the commitment given in the Queen's Speech, that stage two of Labour's reform of the House of Lords will be considered during this parliament. Whilst not as important as improving public services, nor as high profile as the issue of European integration, there is a danger that these historic constitutional changes will be decided without broad public debate.

The House of Lords as presently constituted does not hold a place in the hearts of the British electorate. They do not feel that it belongs to them. A public debate on the future of the upper house might help to engage those who, for whatever reason, have become disillusioned with the way in which our democracy responds to their concerns.

Could a reformed upper house be more accessible to the electorate? If members were elected would they better reflect the society in which we live? Does appointment have any place in a modern legislature? Is it possible to have a democratic second chamber without undermining the pre-eminence of the Commons? And what is the point of reforming the House of Lords if not to make it more democratic? These are all issues that would benefit from a wider airing, yet so far most of the discussion has been conducted within Westminster circles and the resulting proposals have failed to live up to expectations.

Many within the House of Lords support the retention of some form of appointment for the reformed second chamber. However, once the hereditary peers have been removed, the appointees will become the problem and charges of cronyism will surface whenever a new batch of peers is created. If we leave this debate to those who have an insatiable appetite for titles and preference, then the likely outcome will be business as usual.

The issue is not one of privilege but democratic principle. Yet proponents of direct election have seen their argument dismissed out of hand by those who fear an elected second chamber would challenge the pre-eminence of the Commons. Used by its opponents as an excuse to retain appointment, direct election no longer appears to be a viable option for reform.

The secondary mandate system, as outlined in this pamphlet, offers a method of composition for the second chamber that befits the unique position it has in our constitution. It is a viable method, because it does not directly challenge the primacy of the Commons. It has legitimacy, because it is a democratic expression of the will of the people and it is simple to implement as it does not require further elections.

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Historical Perspective

Democratic reform of the House of Lords is long overdue. The Levellers, radical agitators who emerged during the English Civil War, held that authority could only come from the people, not from kingly patronage. In 1646, their leader, John Lilburne, accused of insulting the Earl of Manchester, told the Lords that the people of England had given them no authority to judge him. In 1791, Thomas Paine, wrote in "The Rights of Man" that the idea of hereditary legislators is as absurd as that of hereditary mathematicians.

The Chartists took on the power of House of Lords in 1837, demanding a more representative and democratic parliament. Resolutions condemning the hereditary right to a seat in the legislature were debated in 1886 and 1888, although neither was carried. An elected upper house was recommended to parliament by the Roseberry Report in 1907. A bill proposing indirect election was introduced in 1911. Election was again recommended in 1918 and the King's Speeches of 1920, 1921 and 1922 referred to reform. Three private member's Bills were introduced in 1929, 1933 and 1935 but none was taken up by the government.

The Labour government of 1945 convened talks between party leaders over both the composition and powers of a reformed upper house when trying to pass the 1949 Parliament Act. Talks broke down over the period of delay the Lords could impose on Commons Bills. The 1966 Labour Government also intended reform. The Queens Speech for 1967-68 spoke of eliminating the hereditary basis of the Lords "thereby enabling it to develop within the framework of a modern Parliamentary system".

After the Conservative gained power in 1979, reform of the Lords was discarded. Instead Margaret Thatcher used her powers of patronage to create the first hereditary peers since 1964. In his John Smith Memorial lecture in February 1996, Tony Blair advocated a two stage approach to reform, the first being the immediate removal of hereditary peers from the House of Lords and the second, a comprehensive reform of both composition and powers. It is to his credit that he was able to deliver on stage one, where so many had failed before him.

After centuries of aristocratic rule, the power of the hereditary peers dissolved overnight in November 1999. Labour implemented stage one of Lords reform and their numbers were cut from 758 to 92. A 'transitional house' was created wherein the remaining few could await their fate as decreed by stage two of the reforms.

The Royal Commission

To this end, the Labour Government set up a Royal Commission, chaired by Lord Wakeham, a former Conservative minister. The terms of reference as set out in the Government White Paper were:

Having regard to the need to maintain the position of the House of Commons as the pre-eminent chamber of Parliament and taking particular account of the present nature of the constitutional settlement, including newly devolved institutions, the impact of the Human Rights Act and developing relations with the European Union;

to consider and make recommendations on the role and functions of a second chamber;

to make recommendations on the method or combination of methods of composition required to constitute a second chamber fit for that role and those functions.

The two chamber, or bi-cameral, system of parliament that exists in Britain works on the principle that one house has primacy over the other. Whilst both houses can initiate legislation, our second chamber, presently called the House of Lords, must eventually accept the will of the primary chamber, the House of Commons.

Traditionally, the two houses were divided along class lines, the Lords representing the landed aristocracy and the Commons representing those considered to be below them in the social order. As universal adult suffrage was achieved in the first decades of the 20th century, the nature of the bi-cameral system was changed.

Democracy proffered a legitimacy on the Commons that the Lords could not compete with, as they were only there by accident of birth. The introduction of life peers in 1958 brought in a semblance of modernity - women were allowed in for the first time - but the spectacle of the prime

the bi-cameral system

minister of the day 'creating' Lords and Ladies to sit in the legislature only served to further undermine their legitimacy.

In the 50s, when deference to ones betters was still the social norm in Britain, peers were created on a wink and a nod. In the present climate of media scrutiny, elevation to the Lords is a potent source of cynicism. The term "Tony's Cronies", levelled at those friends of the Prime Minister who have been ennobled, has been used to great effect by newspaper commentators looking for weak spots in the Labour administration.

Despite several attempts to make the Lords more attractive to the public, legitimacy has leached away

from the upper house - a state of affairs which has inevitably had a corrosive effect on our parliamentary system. Because it is not seen as a legitimate chamber in the eyes of the electorate, the House of Lords has been unable to properly fulfil its constitutional function.

This sorry state of affairs has been tolerated by successive prime ministers who have felt able to ignore the advice of the Lords to such an extent that we now have a de facto unicameral system - whoever wins the general election wins everything. No matter that they may not even have won a majority of the votes cast, the party that triumphs can take power knowing that there is no real prospect of them being held to account by parliament for their policies - a state of affairs that has been referred to as an "elective dictatorship".

It was Lord Hailsham who first coined this term in 1976 to describe the then Labour administration. The phrase was ruefully recalled by Labour during the long years of Tory rule, **"elective dictatorship"** when the Lords were unable to offer protection against the worse excesses of Margaret Thatcher's government. The root cause of the Lords failure to function as an integral part of our parliamentary system has been their reliance on patronage. Thus the issue of composition is the key to the whole programme of reform, which is why the Government made a point of stressing its importance in the White Paper - from composition comes legitimacy and from legitimacy flows power.

It is also apparent from the Royal Commission's terms of reference that the Government believes that the bi-cameral system, although faulty, is not broken beyond

repair. Lord Wakeham's task was to find a way to restore the balance between the two Houses. Yet no matter what powers he recommended for the reformed second chamber, unless it has sufficient legitimacy to retain public support, it will struggle to function effectively.

MPs jealously guard their relationship with the electorate. Voters may be voting for their party of choice or for a certain policy, but the vote they cast is for a specific candidate. Direct election is the **primarily a** greatest source of political **revising chamber** legitimacy for legislators from the House of Commons down to the humblest parish council. It should follow that, in order to ensure the reformed second chamber was legitimate, it too should be directly elected. However, the second chamber plays a unique role in our constitution. It is primarily a revising chamber, scrutinising Bills sent to it by the primary chamber, the House of Commons. In order that these Bills be made into law, the second chamber must eventually submit to the pre-eminence of the Commons. This principle underpins our bi-cameral system and it is direct election - the personal vote - that guarantees the MPs their pre-eminent role.

If the reformed second chamber were to be directly elected, members could rightly make a claim for their own pre-eminence, challenging the supremacy of the Commons and creating legislative gridlock by exercising powers not appropriate to the role of a revising chamber.

The central conundrum therefore, to the whole programme of Lords reform, is how to make the second chamber legitimate enough to earn public

support but not so legitimate as to challenge the primacy of the Commons.

The Royal Commission's report, A House for the Future, was published in January 2000. It recommended a

A House for the Future?

house of 550 members, the majority of whom would be appointed by an independent commission. It also recommended the inclusion of a democratic 'element' in the form of regional representatives. It offered three possible models of selection for these elected members:
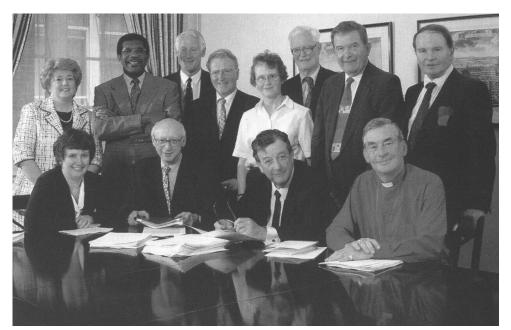
Model A - The regional members should be selected on the same day as a general election, using a system which we have called 'complementary' voting. Under this system the votes cast for the parties' general election candidates would be accumulated at regional level and the parties would secure a number of regional members for each region proportional to their share of the vote in that region.

There would be 65 regional members who would be selected on a staggered basis, with the 'complementary' voting system being applied in one-third of the nations and regions at each general election.

Model B - There should be a total of 87 regional members, elected by thirds at the same time as each European Parliamentary election (with one-third of the nations and regions voting for regional members at each European election). The system of election should be the same as that used for electing United Kingdom MEPs, although a majority of those supporting this model would prefer the 'partially open' list system of proportional representation (PR).

The Royal Commission on Reform of the House of Lords
Baroness Dean, Anne Benyon, Bill Morris, Gerald Kaufman MP, Lord Butler, Kenneth Munro, Prof Dawn Oliver, Lord Wakeham, Lord Hurd, Professor Anthony King, Sir Michael Wheeler-Booth, Richard Harries, Bishop of Oxford

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Model C - The regional members should be directly elected on a regional basis, using a form of 'partially open' list PR. Sixty-five regional members would be elected at the same time as each European Parliament election and serve for three terms, giving a total of 195 regional members in the reformed second chamber.

The headlines that followed publication of the report expressed overwhelming disappointment at the prospect of a mainly appointed upper house. The Independent noted that, "Wakeham stayed well clear of democracy and showed an insider's dismal caution". The Guardian's front page headline expressed "Dismay at Lords plan", while The Scotsman condemned Wakeham's plans as "self serving elitism". The Times editorial was entitled "the Eunuchs' House", and even The Telegraph was forced to admit that Wakeham had, "failed to find a solution".

"The Eunuch's House"

The Commission's reasons for rejecting election in favour of appointment were clearly expressed in the report. The following declaration appeared on page 106: "A wholly directly elected chamber could not be broadly representative of the complex strands of British society."[1] It was followed on page 108 by this assertion: "[w]e see no reason to believe that indirectly elected members of the second chamber would be broadly representative of British society, be likely to have the requisite range of expertise and experience or possess the other specific characteristics which members of the second chamber should have."[2]

Although these characteristics were not clearly defined by Wakeham, the commissioners came to the conclusion that there was only one way to provide them: " A genuinely independent appointments system,

with appropriate terms of reference, ought to be able to ensure that the members of a reformed second chamber were broadly representative of British society."[3]

An Appointments Commission, deemed to be capable of performing a task which, according to Wakeham, had eluded all of our major political parties, was duly set up. Its first list of newly appointed members for the Lords was a group that included seven knights, the wife of a Lord, three professors and the former chief commissioner of the Metropolitan Police. Far from broadly representing British society, they were just the sort of people you would expect to see elevated to the House of Lords. At a time when Lords reform is on the agenda, the choices were condemned as arrogant and insensitive. It is hard to imagine a major political party scoring such a massive own goal.

The chair of the Appointments Commission, Lord Stevenson, compounded the air of elitism by making disparaging remarks about hairdressers: "You haven't got your hairdresser on this list, but if you go back to our criteria, one of them is that a human being will be comfortable operating in the House of Lords."[4] Those criteria were supplied to Lord Stevenson by Lord Wakeham.

The Appointments Commission

The whole tone of the Wakeham report was focused on one deeply held concern: the maintenance of a certain kind of ambience that surrounds the House of Lords and the possibility of becoming an elevated member. Tony Benn described it as the "penumbra of patronage" and the Wakeham report turned the fundamental principles of democratic legitimacy upside down in order to preserve it.

The Royal Commission itself was made up of people who were already within the "penumbra" - four peers, a knight, a Rt. Hon. , a bishop, two professors, a captain of industry, a trade union leader and a former diplomat. The Appointments Commission, little more than a membership committee for their exclusive club, consisted of more of the same, to the extent that two members of the Royal Commission are also appointments commissioners.

Yet Wakeham seemed to subconsciously recognise that the notion of an appointed legislature is at odds with a modern, democratic society. What else can explain the commissioners inability to offer a unanimous recommendation of composition to the Prime Minister. The report states that, of the three models suggested, "each model has the support of different members of the Commission."[5] Like a group of naughty children unable to get their excuses right, did they feel so guilty in plumping for an appointed chamber that they could not determine the minimum amount of democracy that they might get away with?

minimum amount of democracy

For all their attempts at justification, it is difficult not to come to the conclusion that they were quite content with the status quo. As Sir Robin Day wrote in the Daily Telegraph in September 1999, "The case for an all appointed house is that the options are infinitely less ideal and are simply not on".

Much of Wakeham's justification for recommending appointment was focused on preserving the role of the cross benchers - peers who claim no affiliation to any particular political party. Wakeham referred to them

grandly as "independents" without pointing out that the majority of them are classed as independent because they find that their reactionary views are no longer reflected in the modern Conservative Party.

Writing during John Major's premiership, Andrew Adonis noted that "despite their name and self image, crossbench peers are collectively neither a pivotal nor independent force in the Lords. In only two of the thirteen divisions (in a study of two Bills in 1990/91) did more crossbenchers vote against than for the government; in most of the rest, they sided with the Conservatives by a ratio of three-to-one. Moreover, for all their numerical weight, only a tiny number of crossbenchers voted at all. The biggest crossbench turnout was twenty eight. In ten of the thirteen divisions, more Liberal Democrats than crossbenchers voted, though there are nearly five times more crossbenchers than Liberal members."[6] It is also worth noting that during the Labour administration of 1997-2001, not a single vote in the upper house was won solely on the votes of cross benchers.

Yet time and time again, Wakeham held up the cross benchers as the sole guarantors of independence in the upper house. No thought seems to have been given to the notion of extending participation to allow smaller political parties a presence. A democratic second chamber could make it possible for parties such as the Greens or the United Kingdom Independence Party to benefit from the fact that they are capable of polling over 2% in the general election. Although this does not win them a seat in the Commons, it could, under proportional representation, give them a voice in the second

extending participation

chamber, thus breaking the stranglehold of the main political parties at Westminster. As their members would be likely to come from outside the "penumbra", they could provide an independent voice.

Rather than contemplate this, Wakeham chose to opt for protection of the cross benchers. In the name of improving the role and functions of the upper house, he recommended that 20% of the appointed members be cross benchers, without grasping that their very presence is a symptom of the failure of the House of Lords to fulfil its proper constitutional role.

If the votes in the upper house actually mattered, then the cross benchers would be crucial to the balance of

the casual nature of the House of Lords

power. The truth is that the casual nature of the Lords allows them the luxury of not having to turn up for votes. Furthermore, their voting record suggests that for all but the most conscientious, the cross bench label is little more than a flag of convenience which gives a spurious legitimacy to their semi-detached approach to parliament.

By recommending models of composition in which the elected element were in the minority, Wakeham places undue pressure on those who would have to face the electorate. Having been frustrated by overwhelming numbers of appointees, elected members would then be faced with the task of justifying their re-election. If debates are continually won by those who owe their place in the chamber to the powers that be, why bother turning out to cast a vote for a minority of elected scrutineers?

In proposing a mixed mandate chamber, Lord Wakeham built his reformed house on the shakiest of foundations.

The Labour Party addressed this problem when, during oral evidence to the Commission it said "The Labour Party believes...the method of composition should maintain the stability of our constitutional arrangements and ensure that all members of a reformed House have the same standing. In other words, ensure that some are not perceived to be more legitimate than others."[7]

Wakeham's commissioners were well aware of the problems that mixing mandates would cause. Their report stated "There would be a tendency for observers to attribute greater political weight to the views and votes of the elected members than those of the non-elected

mixing mandates

members."[8] Oddly, this argument was deployed as one of the reasons why a directly elected chamber could not be recommended. Odder still, having made the point, Wakeham went on to put the mixed mandate at the core of his three models of composition.

The logic of the Labour Party's argument would seem to be a recognition that the only chamber that stands a chance of succeeding is one in which all members have the same degree of legitimacy. That would rule out a mixed chamber and leave a choice between either moving to an all elected chamber or keeping with the present practice of appointment. As it would hardly do for a Royal Commission whose purpose was to reform the House of Lords to report in favour of the status quo, the case for some form of an elected chamber would seem to offer the most practical way forward. Lord Wakeham and his fellow commissioners failed to reach that conclusion.

Rather than recommend elections, they chose to turn the principles of legitimacy upside down and stick with

patronage as the main source of power in the reformed upper house. Almost as an afterthought, an element of election was included, but not so much to disturb ambiance in the reformed House of Lords.

Wakeham further recommended that elections for the reformed second chamber should take place one-third at a time, simultaneously with either the general or European elections. This would have the **stale and complacent** negative effect of entrenching voter intentions. Under such a proposal, this year we would only just have seen the back of members elected during the Thatcher landslide of 1987. Whilst there is nothing wrong in someone being in parliament for that length of time, a mandate unrenewed for 15 years would have become rather stale and complacent.

Staggered election would also have an effect on protest votes. In the general election of 1997, the Referendum Party won around 4% of the vote in the West Country, enough to give them a few seats, under this proposal, until around 2011. They would be preserved in aspic in the Lords whilst, in reality they are a spent force in the country.

It has been suggested elsewhere that elections for the reformed upper house could be conducted mid-term. Whilst this has the effect of keeping the mandate fresh in a primary legislative house, it undermines the principle of pre-eminence at the heart of our own bi-cameral system. If its members were elected in the middle of a government's term of office, and, as might be expected, the main opposition party did well, the temptation would be for the second chamber to claim that it is a contemporary reflection of current opinion

and therefore more legitimate than the Commons, leading to constitutional gridlock until the next general election.

Some reformers have also called for a second chamber devoid of party politics, where debates are conducted

a second chamber devoid of party politics?

purely on merit and every vote is a vote of conscience. This flies in the face of experience. In her book, Reforming The House of Lords, Meg Russell made a valuable contribution to the debate by looking at how second chambers function around the world, drawing lessons from upper houses in Canada, Australia, Ireland, Germany, France, Italy and Spain. Of the influence of political parties she wrote, "despite the different composition mechanisms employed in these upper houses, their voting behaviour is largely determined by party balance."[9]

A political party is a group of individuals who unite to formulate policy and organise to win the right to exercise power in pursuit of their common political aims. The unity of purpose that derives from working formally with others of a similar persuasion offers the best prospect of delivering change in our society. If members of the upper house were chosen by random selection, like jurors, experience suggests that they would eventually coagulate into party groupings, if only for the sake of expediency. To envisage a properly functioning revising chamber being anything other than party political would be to condemn it to the status of a refined talking shop. To create such a house in order to preserve the anomaly of cross bench "independence" would be a distortion of the fundamental principles of democratic legitimacy.

It is simply not possible to construct a method of composition that can guarantee a spirit of independence within a reformed second chamber. However, steps could be taken to encourage and nurture independence. Party whips exert pressure on MPs by threatening their career prospects. The Whips power in the upper house would be curtailed if the reformed second chamber was not seen as one step on the path of political preferment. Wakeham recognised this and recommended that "members of the reformed second chamber should not be eligible for election to the House of Commons until ten years after their term of membership ends, whether they serve out their full term or not."[10]

A further means of discouraging the careerists could be a rule stipulating that no member of the second chamber could serve as a government minister. Although some have suggested that this might distance members from the seat of power, this distance must be

no ministers in upper house

maintained if the reformed second chamber is to have the ability to hold the Executive to account. This role could be enhanced if, rather than providing ministers from its own ranks, the reformed second chamber had the power to summon ministers to be questioned by the House. It would also ensure that ministers are elected and therefore answerable to the Commons.

Seats in the reformed chamber should be within the grasp of parties which have genuine support in the country, yet are unable to win seats in the Commons. Wakeham recommended that the elected element in the reformed second chamber should represent the nations and regions of the United Kingdom. The report

contained a map which showed the regional constituencies currently used for the European elections. There are twelve in all: South West, South East, London, Eastern, East Midlands, West Midlands, Wales, North West, Yorkshire and Humber, North East, Scotland and Northern Ireland.

Under Wakeham's Model A method of composition, the regions would return 65 members, an average of 5 each. Under a proportional system,

proportionality

each successful party would need to attain at least 20% of the votes cast. Under Method B, there would be 87 regional members, an average of 7 per region. With proportionality, each party would need to poll 15% to win a single seat. Method C proposes 195 regional members or 16 per region. Each would need to win over 6% to gain a single seat.

These are hardly the kind of figures to inspire a revival in voter participation nor guarantee minority representation. From the examples given, it becomes clear that only parties that can currently win seats in the Commons could hope to gain representation in Wakeham's reformed second chamber.

However, if the principle of election was extended to all members of the reformed house, then the threshold for representation would fall dramatically. If the reformed second chamber were to have 600 members, each region would return 50 members, which leaves parties needing 2% of the votes cast in their region to win a seat. During the 2001 election both the Green Party and the United Kingdom Independence Party we able to reach the 2% threshold in certain regions. A second chamber reformed in this way would have seen UKIP

win one seat in the South West, South East, Eastern, West Midlands and Yorks and Humber. The Green Party would have secured a seat in the London region.

The experience of the Scottish Parliament suggests that a mechanism which brings into the chamber those parties which have substantial support but are unable to win representation can have a cumulative effect. Tommy Sheridan of the Scottish Socialist Party was

a cumulative effect

elected to the Scottish Parliament from a party list. The profile which this accorded the SSP made it possible for them to stand candidates in every constituency in Scotland during the general election, which netted them over 7% of Scottish voters.

Using democracy to bring in independent voices from outside the Westminster circle is much more legitimate than attempting to engineer independence by appointment. Furthermore, it could have the effect of attracting voters who feel more inclined to turn out for parties which address issues that the major parties try to ignore.

It would seem then that the case for an elected chamber is watertight. Simply by extending the democratic principle recommended in any of Wakeham's models of composition, it should be possible to create a legitimate second chamber. However, the argument for direct election of the kind recommended in Models B and C flounders on the principle of pre-eminence. The personal vote that MPs receive is the foundation stone of their legitimacy. A reformed second chamber needs to be seen to be legitimate, but not so legitimate that it can challenge the primacy of the Commons.

Those who argue for a directly elected chamber recognise this problem and are prepared to come up with a variety of rules and regulations that would curb the ability of the second chamber to punch its weight. The beast that they would put in chains would be potentially as powerful as its primary sibling. It remains to be seen if members of the House of Commons would ever contemplate giving such substantial powers to a rival chamber.

Reformers who champion direct election claim that it is the only form of democratic legitimacy. However, other countries use indirect election for their second chambers. In Germany, the upper house is appointed by state governments from amongst their members. French senators are elected by an electoral college of local councillors and MPs from each *département*. In these cases, legitimacy flows from the people through their elected representatives to the members of the second chamber.

indirect election

Direct election is only one of a number of means by which to form a legitimate second chamber. Whichever model is chosen, the single most important criterion is that the method must be a genuine expression of the will of the people.

This principle is the basis for the mechanism at the heart of the Wakeham Commission's Model A recommendation: "Votes cast for party candidates in each constituency at the general election would be accumulated at regional level. The parties would secure the number of regional members for each region proportional to their shares of the vote in that region, drawing the names from a previously published list."[11]

Whilst members of the Commons continued to be elected by the first past the post method, members of the reformed chamber would, using the mechanism recommended in Wakeham A, receive a 'secondary mandate'. This method has three distinct benefits which are not found under direct election.

The first benefit is that every vote cast would have a value. For instance in the South West region, tens of

the 'secondary mandate'

thousands of Labour votes were cast in the recent general election in the knowledge that they would have no effect. This would end that anomaly. The same would be true under all of the systems of proportional representation. However, unlike direct PR, the secondary mandate method would not require you to list your candidates or parties in order preference. There would be no chance of your vote helping to elect your last but one choice, as can happen under direct PR. Using the secondary mandate, a vote for Labour could only result in a seat for Labour.

Direct PR, with its top-ups and multiple choice ballots does not, so far, seem to have had a decisive effect in increasing voter participation, particularly for elections that are perceived to have little effect on our day to day lives. Turn out for the most recent European parliament elections was an abysmal 26%, which does not bode well for the prospect of elections for members of a revising second chamber who have no direct control of the levers of power. The second benefit of Wakeham A's that it would rule out the need for further separate elections. Members would receive a secondary mandate from the general election, which, despite recent trends, remains the primary source of legitimacy in British politics.

The third benefit of the secondary mandate is that there is no ambiguity about the primacy of the Commons. MPs elected under the first past the post system would retain their pre-eminence due to the fact that they had been directly elected on a personal vote. Critics of the secondary mandate system have complained that it does not give the electorate a choice. They ask why voters should not be able to choose one party's candidate for the Commons whilst voting for another party in the second chamber? This would challenge the pre-eminence of the primary chamber, because the party vote would be a direct mandate, carrying as much weight as the Commons vote.

For example, elections to the Scottish Parliament use a form of PR called the Additional Member system. Electors cast two votes, one for a candidate and one for a party. Candidates are elected on a first past the post basis and party seats are allocated proportionally from a

all members have equal legitimacy

list. The end result is that all members have equal legitimacy in the parliament because every vote cast has been the direct result of a conscious decision on the part of the voter to give a mandate to that person or party.

The secondary mandate system confers a different kind of legitimacy on the reformed second chamber. Because their composition is abstracted from direct votes cast for MPs, they are one step removed from the personal mandate that direct election brings. Yet this distance brings with it precisely the amount of legitimacy needed by a secondary chamber because the method of composition clearly results in an expression of the will of the people without challenging the pre-eminence of the Commons.

The argument against conferring a primary mandate on the reformed second chamber also applies to the manner in which the party lists are compiled. So-called 'open' lists are preferred by some reformers as they allow voters to alter the ranking of individual candidates on the list. As this also involves a conscious decision by the voter, it results in a primary mandate.

In order to function, the secondary mandate system relies on 'closed' lists, that is, lists provided by parties before the election. But how do you stop parties from fixing lists ask the critics? They complain that 'closed' lists increase party control. This point has to be conceded. Ensuring regional lists are compiled democratically by party members in each region should help to move the process away from central control. The stipulation that lists must alternate between male and female candidates would also open up the process of selection. However, the simple fact is that, as under any system of party nomination, candidates rely on their party to get elected. Any attempt to gloss over this reality leads us inexorably back towards an appointed second chamber.

'open' and 'closed' lists

The world in which enlightened crossbenchers could roam the upper chamber independent from party politics is passed, as is the notion of an informal chamber where members turn up and vote if they feel so inclined. If we are to have a second chamber that functions properly, should members be expected to be anything other than full time legislators? But where will these people be found cry the traditionalists? How will they adapt to the rarefied atmosphere on the red benches?

That atmosphere would change in a modern, democratically formed second chamber. There would be a period of transition during which regional parties may wish to place wise old heads from the former House of Lords on their lists for the sake of continuity. Others may choose young people or members of the ethnic minorities. The Tories could even nominate hereditary peers. All would be welcome, provided their presence represented an expression of the will of the people.

holding the executive to account

As no party has won over 50% of the vote in modern times, the secondary mandate system would also ensure that the government of the day would never be able to command a majority in both Houses of Parliament. This is crucial if the reformed second chamber is to carry out its most important function which is to hold the Executive to account.

By taking Lord Wakeham's Model A method of composition and extending it to all members of a 600 seat house, it is possible to create a second chamber which is both viable and legitimate; a chamber that responds to an electorate accustomed to going into the ballot box in the general election and voting for, or against, change; a chamber which has the courage to use its mandate without fear of destroying the constitutional balance.

Composition is the most difficult thing to get right when forming a legislative body, all the more so given the unique position of the second chamber in our constitution. Too much legitimacy gives power to opposition parties to cause conflict, too little undermines the role of the house in the eyes of the

electorate. This government has already come further down the road of Lords reform than any of its predecessors and their historic victory in removing the majority of hereditary peers from the upper house should not be underestimated. However, everyone, not least the Lords, recognise that the job is only half done.

Calls for reform will not end until such time as the second chamber is seen to be legitimate and effective. The secondary mandate system offers us the best opportunity to deliver lasting reform. The result would be an integrated bi-cameral system in which both Houses of Parliament would benefit from a renewed sense of civic participation at Westminster.

Sources:
1 A House for the Future - Royal Commission on the Reform of the House of Lords. Stationary Office 2000 para11.8
2 Ibid para 11.6
3 Ibid para 11.29
4 The Guardian 27 April 2001
5 A House for the Future para 12.24
6 Parliament Today (Second edition 1993) A Adonis p235
7 www.lords-reform.org.uk/1999/hearings/Labour-Party.htm evidence provided 28 July 1999
8 A House for the Future para 11.7
9 Reforming the House of Lords 2000 Meg Russell p301
10 A House for the Future para12.21
11 Ibid (box)