The House of Lords is in many ways a unique institution. But bicameralism - that is, the structuring of a parliament into two distinct chambers - is relatively common. In judging the white paper it therefore makes sense to consider how the government’s proposals measure up against international (best) practice.

An excellent up-to-date source on parliamentary upper and lower chambers is the database maintained by the Inter-Parliamentary Union (IPU). This confirms that in June 2011 there were 189 countries with a national legislature, of which 77 were bicameral. Bicameral legislatures exist in particular in more populous countries, and are common in Europe, the Commonwealth and the Americas. Many of these are well established, although others are relatively new - for example in the younger democracies in Eastern Europe.

This paper reviews key aspects of the government’s proposals against bicameral practice in other countries. It is structured in three main parts. First, it considers the proposals for the composition of a reformed second chamber and the extent to which these have learnt from best

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1 www.ipu.org/parline-e/parlinesearch.asp
practice elsewhere. Second, it considers the powers of the second chamber (which the government proposes to leave unchanged) and how these compare with international experience. Third, it reflects briefly on what other bicameral countries can teach us about the process of reform. It ends with some brief conclusions. In short, the paper concludes that the government’s proposals for composition of the second chamber are quite carefully crafted to avoid various pitfalls encountered in other countries, but that the same degree of thought has not gone into the proposals regarding its powers. International experience - and British history - also suggest that reform is very difficult to achieve.

**The composition of the second chamber**

The white paper proposes to create a second chamber which is largely or wholly elected, with members chosen in thirds at each general election and serving 15 year terms. Elections would be held using a proportional system, probably the single transferable vote (STV), and members would be barred from standing for the House of Commons until four years after they had departed the second chamber. This section of the chapter reviews each of these elements of the proposals in turn.

**A wholly or largely elected chamber**

The House of Lords is now relatively unusual in including no elected members. The only other wholly unelected second chamber in a major democracy is the appointed senate of Canada. But that is not to say that the world’s remaining second chambers are all elected, as it is common for such chambers to include at least some members who are not elected, or who are elected ‘indirectly’.

Analysis of the IPU’s database in 2009 showed that only
21 of the 75 second chambers then existing were wholly directly elected. In addition, 15 were wholly indirectly elected: for example by members of regional parliaments or local councillors. In total 38 of the world’s second chambers - or just over half - were wholly elected in some way.\(^2\) This contrasted with 17 second chambers which included no elected members.

Mixed membership of second chambers is relatively common, and this often takes the form of a majority of elected members with a minority appointed element. Some examples of current practice include:

- The Italian senate, which has 315 directly elected members, but where each president of the republic may also appoint five senators, and additional ex officio seats are reserved for former presidents.

- The Irish senate, where 49 members are elected (by a complex system combining both direct and indirect elements), and 11 members are appointed by the prime minister.

- The Indian senate, where 233 members are elected by members of state legislatures, while the constitution provides for 12 ‘distinguished’ members to be appointed by the president from the fields of literature, art, science and social service.

In total, 31 of the 75 second chambers in existence in 2009 had mixed composition of some kind.

**Renewal in parts, and long terms of office**

The white paper proposes that members of the second chamber (both elected and appointed) be chosen in thirds

\(^2\) Including three chambers with a mixture of directly and indirectly elected members.
at each general election. Members would therefore serve relatively long terms, of probably around 15 years. Just as mixed membership is relatively common overseas, so are both of these features. Both have clear advantages.

Where second chamber members are elected, it is quite usual for these elections to be staggered, so that not all are chosen at once. For example in Australia, Japan and Chile half of the second chamber’s members are chosen at each election. Similarly in the US, France, India and Argentina members are elected in thirds. These are not the only such examples. When members are chosen by some kind of indirect election, it is also very common for them not to all enter the chamber at once. Thus in Germany, Austria and Russia, where members are chosen by sub-national legislatures, they are renewed following each renewal of their electing body. Since regional elections are not all held on the same day, this results in renewal in parts. The same pattern is also common for unelected second chamber members. In Canada (where the senate was modelled to some extent on the House of Lords), there is an overall cap of 301 members, and a retirement age of 75. Each time a member retires, a new vacancy is created.

The benefits of renewal in parts are twofold. First, and most obviously, it creates a greater continuity of membership in the second chamber. It does not face the disruption of all of its members being elected at once, and the proportion of new members after each election may be lower than occurs in the lower House. This helps promote longer-term thinking. Second, it often means that the executive - even if it has the power to dissolve the lower House - cannot dissolve the upper House. This is one of the characteristics of the House of Lords which is perhaps little noticed when compared to the Commons. Both of
these features may bolster the strength and authority of the second chamber.

Partly as a consequence of renewal in parts, second chamber members also tend to serve longer terms of office than those in their respective lower Houses. In the US, Australia, Japan and France senators serve six-year terms, whilst lower House members serve respectively two, three, four and five years. Members of the French senate used to serve nine-year terms, with the chamber renewed in thirds, but this was reformed in 2004 to six-year terms elected in halves. In Brazil senators serve eight-year terms, whilst lower House members serve only four. Amongst appointed members terms can be even longer. Canadian senators serve until aged 75, irrespective of their age at appointment (this was an adjustment made in 1965, before which their appointment was for life). In Italy appointed members remain life senators.

The proposals for 15 year terms in Britain may thus be seen as a compromise between the existing system of life peerages and the kind of elected terms seen overseas. A crucial element of the government’s proposals (referred to later) is that terms should be non-renewable. In this context, which does not commonly apply elsewhere, 15 year terms seem moderate to short.

**Electoral systems, and constituency work**

The white paper proposes that second chamber members should be elected via a proportional system, with the preferred system being the single transferable vote (STV). The choice of a proportional system is entirely consistent with one of the most important principles about the composition of second chambers: that they should not simply mirror the composition of the first chamber.
While the ‘first past the post’ system used for the House of Commons generally delivers single-party majorities, a proportional system (particularly when coupled with election in thirds) would make it unlikely that any party would gain a majority in the second chamber. This would ensure that the voices coming from the two chambers were distinct.

The government’s preferred system of STV places the focus on individual candidates, rather than parties, and allows voters maximum flexibility in picking candidates that they support rather than voting for a party slate. This is appropriate in order to encourage individuality amongst candidates, and independence from the party machines. But such a system does also have its drawbacks. Any system (including STV, but also ‘open’ lists) that enables candidates to be distinguished from their parties naturally encourages competition between candidates from the same party for votes. When translated into the behaviour of members of parliament once elected, this encourages a focus on constituency work.

Another less noted feature of the current House of Lords, as compared to the House of Commons, is the fact that its members spend little or no time on such work, since they are not elected. Their attention is therefore focused instead on detailed legislative scrutiny and committee work, which is widely seen as beneficial. It therefore seems very undesirable that members of the second chamber should start to engage in constituency work. This would also be seen by many MPs as negative intrusion on their ‘patch’.

One of the key countries using STV for parliamentary elections is Ireland, where MPs are famously constituency-focused to the point of being parochial, and the parliament is weak. In Australia a form of STV is used to elect the
senate, though in reality this functions as more of a party list system. Despite this variation, and despite the fact that senate constituencies are geographically vast (representing whole Australian states), senators openly engage in constituency work. Much the same has occurred in Scotland and Wales post-devolution regarding ‘list’ members, the parties encourage senators to set up offices in marginal lower House seats in order to build up an electoral profile.³

For several reasons it would be a negative development for such patterns to develop in a reformed House of Lords. This is the single strongest argument in favour of the government’s proposal that terms in the second chamber should be non-renewable. Clearly members are more likely to nurture constituency work if they are going to run for re-election. Preventing re-election cannot eliminate this problem, but it would reduce it.

**Inability to stand for the House of Commons**

A final important aspect of the government’s proposals is that second chamber members should be barred from standing for election to the House of Commons until at least four years after their term has ended (or they resign their seat). This would also have the effect of limiting the incentive to pursue constituency work in order to ‘nurse’ a Commons seat. In fact four years is a rather short period in this respect. Given that parties often select their candidates several years before a general election, it could be as little as

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a few months before a departing second chamber member who had nursed a seat was selected by a constituency party. Notably, the Royal Commission (‘Wakeham commission’) on Lords reform recommended a much longer ‘quarantine’ period of 10 years.⁴

This issue is important not only because of constituency work, but because of the potential effect on the type of members who stand for election to the second chamber, and therefore for its culture. In several overseas countries the second chamber is not (as conventionally applies) a senior and mature chamber, but risks degenerating into a launchpad for careers in the more prestigious lower House. This is the case in Ireland, where it is common for senators to run for election to the Dail. In 1997, for example, 16 senators out of 60 were elected as MPs. Similarly MPs who lose their seats often run for the senate, and sometimes return subsequently to the Dail.

A similar situation seems to now be developing in Canada, where senators are appointed by the prime minister. Two recent cases should appear so alarming to British readers that they are worth quoting in some detail. First, here is a description of the recent political career of Fabian Manning:

From 2006 to 2008 he was the Conservative Party of Canada Member of Parliament for the riding of Avalon. After his defeat in the 2008 federal election Manning was appointed to the Canadian senate on January 2, 2009. He resigned his senate seat on March 28, 2011, to run for election in his former riding of Avalon in the 2011 federal election, but was unsuccessful. Despite the loss,

prime minister Steven Harper announced his intention to re-appoint him to the senate.  

Similarly, Larry Smith:  

On December 18, 2010, he was summoned to the Canadian senate on the advice of prime minister Steven Harper and sat as a Conservative. Following his appointment to the senate, Smith announced his intention to seek the nomination to run as a Conservative candidate in... the [2011] federal election. ... Smith was defeated in his attempt to enter Parliament... and it was announced on May 18, 2011, he would be re-appointed to the senate. 

These examples should, I hope, be sufficient to demonstrate why a bar on immediately standing for the House of Commons is a very desirable element of any set of House of Lords reform proposals. The danger of omitting this feature (or setting a period of exclusion that is too short) is that a ‘revolving door syndrome’ develops between the first and second chambers. This would be completely contrary to the kind of long-term thinking and independence of spirit which is generally seen as desirable in second chambers, and which is currently associated with the Lords. 

**Powers of the second chamber**

As far as composition is concerned, we therefore see that the government’s proposals do much to avoid the kind of problems that have been counted overseas, and to build on good practice. The same degree of care does not however seem to have been applied when it comes to thinking through the powers of the reformed second chamber.

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There appears to be a degree of confusion within government about the likely effects of these reforms on the relationship between the two chambers of parliament. When introducing the proposals in the House of Commons Nick Clegg said:

My view is that the fact of greater election to another Chamber does not in and of itself mean the balance between the two Houses is seriously disturbed.\textsuperscript{7}

This is consistent with Clause 2 of the government’s draft bill, which states that:

Nothing in the provisions of this Act about the membership of the House of Lords, or in any other provision of this Act... affects the primacy of the House of Commons, or otherwise affects the powers, rights, privileges or jurisdiction of either House of Parliament, or the conventions governing the relationship between the two Houses.

These sentiments were however repeatedly contradicted by Lord Strathclyde when introducing the proposals in the House of Lords. For example his statements that:

There is a rationale for an elected House: it is... to make the powers of this House stronger and to make this House more assertive when it has that authority and the mandate of the people.

I fully expect the conventions and agreements between the two Houses to change... it would be very strange if they did not do so... it would mean a more assertive House with the authority of the people and an elected mandate.\textsuperscript{8}

\textsuperscript{7} House of Commons Hansard, 17 May 2011, column 164.

\textsuperscript{8} House of Lords Hansard, 17 May 2011, columns 1277 and 1279.
In defence of his position, Nick Clegg has claimed evidence from overseas. When appearing at the House of Lords Constitution Committee on 18 May he suggested that:

... there are a number of bicameral systems in democracies around the world that perfectly manage an asymmetry between one chamber and the next, even though both might, in many cases, be wholly elected.9

This may be true, but these other bicameral systems do not manage asymmetry in the same way as the UK. On this point it is important to note that the formal powers of the House of Lords are actually relatively great in comparative terms. Under the terms of the Parliament Acts the Lords has the power to delay most bills for around a year, and has a complete veto over bills starting their passage in the House of Lords (and over secondary legislation). The fact that the House of Lords is generally considered weak depends not on the powers set down in the Parliament Acts, but on how little these are used in practice. Most of the time the House of Lords is instead restrained by the conventions that operate between the two chambers. These in turn depend on allegations of its lack of legitimacy when it seeks to stand in the way of the elected House of Commons. Whilst a similar pattern is seen with respect to some other second chambers (notably the appointed Canadian senate) it is far more usual for these chambers to be restrained by their actual formal powers - rather than by conventions that these powers should not be used.

In parliamentary systems such as that in the UK (i.e. where the government is dependent on the confidence of

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9 Evidence to the House of Lords Constitution Committee, Question 217, 18 May 2011.
parliament), it is common for the powers of the second chamber to be much more limited than those of the House of Lords. This applies even where such chambers are wholly elected. For example:

- In Poland and the Czech Republic objections by the second chamber may be overridden immediately by an absolute majority in the lower House.

- In Spain the same applies, or if an absolute lower House majority is not obtained, the first chamber may override the second chamber by a simple majority after a two month delay.

- In Japan the second chamber may be overridden immediately by a two-thirds majority in the first chamber.

Each of these examples, and various others, gives a very significant advantage to the lower House when disputes occur between the two. Nonetheless, Japan has been subject to much instability in recent years at times when the government has been short of a two-thirds lower House majority, and reform of the second chamber has been much discussed.

There are many elected second chambers with roughly co-equal powers to their respective first chamber. Most of these, however, exist in presidential systems where the executive does not depend on the confidence of parliament. The obvious example is the US, but similar arrangements exist in countries such as Argentina and Brazil. Examples of powerful elected second chambers in parliamentary systems are more unusual. One such example is Italy, where the two chambers have identical powers. But they also have largely identical compositions, as they are elected by very similar systems. Because the party balance in the
two chambers is similar there is relatively little friction between them.

The most obvious comparator for the UK is Australia, where the lower House is elected by a majoritarian system (the Alternative Vote) and the second chamber by a proportional system which usually results in the balance of power being held by independents and small parties. Here the senate has an absolute veto over most legislation. It is a much more assertive chamber than the House of Lords, and not afraid to use its powers. One of the only restraints on the senate is the government’s ability to claim that it is ‘illegitimate’ because every Australian state - despite massively different populations - has an equal number of senators (as in the US). This raises some questions about whether it has the moral right to block government legislation.

Australian scholars talk of the ‘mandate wars’ between the two elected chambers. Given that one chamber has a more proportional membership, but the other represents population more closely, there is no obvious winner. In the UK the government’s proposals for 15 year non-renewable terms, election in thirds, and retention of a 20 per cent appointed element are designed in part to ensure that the second chamber does not have equivalent legitimacy to the House of Commons. But given that it would be elected by a proportional system, Australian-style arguments would probably develop here. The resulting more assertive second chamber might not be a bad thing, and

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11 For a more detailed discussion of this point see M Russell, ‘Lords reform: principles and prospects’, lecture given in the House of Lords at the invitation of the Leader of the House of Lords (13 November 2007) available at www.ucl.ac.uk/constitution-unit/research/parliament/House-of-lords
the Australian system generally functions well. But it is a change that we should go into with our eyes open.

**Second chamber reform**

In a review of lessons from other bicameral systems it is finally worth considering what these systems have to teach us about the process of reform. One notable feature is that second chambers - whether elected or appointed, or composed through some other means - are generally controversial. This derives from their role, which is fundamentally to question the decisions of the first chamber and political executive, who themselves are elected by the people. We should not assume that it is just the peculiar composition of our second chamber that makes it susceptible to criticism.

Calls for second chamber reform are widespread in other countries. For example in Canada there have been demands to reform the appointed senate for almost 150 years. In Italy there are calls to reform or abolish the second chamber, as it is essentially identical to the first. The Irish senate is attacked for being weak and ineffective, while its Australian equivalent is controversial (particularly in the eyes of government) for being too powerful. Nonetheless, despite these long-running reform debates in numerous countries, second chamber reform is relatively rare. In part this is because many countries have more ‘rigid’ constitutions than ours, which require some special mechanism to change. But in large part it is due to an inability to agree on what is the proper composition and role of these institutions. Powerful second chambers may be popular with voters, but they tend not to be popular with governments. And yet it is governments which must bring forward reform.
The ongoing debate in the UK about House of Lords reform is therefore not unusual. Throughout the 20th century the parties failed to agree on the appropriate composition and powers for a second chamber. In practice those reforms which succeeded were small and incremental: the reduction of Lords powers in 1911 and 1949, the creation of life peers in 1958 and the removal of (most) hereditary peers in 1999. Though difficult in itself, it may prove easier to reach agreement on the next small step towards Lords reform than on any major package.

Conclusions

This paper has argued that the government’s proposals for the composition of a reformed second chamber have been quite carefully thought through, and seek to build on the best, and avoid the worst, of practice in other bicameral systems. Discussions are far less developed, however, on what we might learn from other countries about the powers of a reformed second chamber, and indeed what it is appropriate for those powers to be. International experience also teaches us that second chamber reform is difficult, though other second chambers are often subject to calls for reform. The House of Lords is, as suggested at the start of this paper, indeed a somewhat unique institution - but perhaps not as much as we might think. In particular, Britain is very far from unique in being engaged in a long, and potentially unending, debate about the options for second chamber reform.

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