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**A Second Chamber for a Modern Democracy:  
A Comparative Study**

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Submission for a PhD by Published Works  
Middlesex University  
2003



## Abstract

The focus of this work is on second chambers of parliament: their composition, functions, powers and effectiveness, and their reform. The work is comparative and considers different second chamber models within a context of the planned reform of the UK's House of Lords.

The research began in 1998, with a project that sought to draw lessons for House of Lords reform from seven other second chambers: in Australia, Canada, France, Germany, Ireland, Italy and Spain. These represent a mix of second chamber models (directly elected, indirectly elected, appointed, and of varying powers) in advanced democracies of both federal and unitary structure. Extensive desk research was carried out, coupled with study visits where interviews were completed with academics, current and ex-parliamentarians, parliamentary staff and other practitioners.

The main output of this project was a book published by Oxford University Press (publication 1). This is organised in three parts, amounting to around 120,000 words. Part 1 sets the context, looking at the House of Lords and the history and practice of bicameralism. The second, and longest, part analyses the seven overseas institutions thematically, covering issues such as history, composition, legislative work, relations with government, constitutional roles, public perceptions and calls for reform. The third part draws out general lessons and considers conclusions for the composition and functions of a reformed House of Lords. It is the only modern book which analyses second chambers in this thematic and comparative way.

The early results of the research (including publication 2) fed directly into the public debate on House of Lord reform during the time that the Royal Commission on Reform of the House of Lords was sitting in 1999-2000. After the Royal Commission reported, the work developed, including pieces which analysed their conclusions and recommendations in a comparative context (publications 3, 4 and 5).

The analysis developed through the later publications to draw more generic conclusions about modern second chambers. In publication 6 I set out to answer the fundamental question 'what are second chambers for?' by looking at classically defined functions, actuality, and what contributes to effectiveness. In publication 7 I examined the extent to which second chambers fulfil one of their classic functions – of representing territorial units within the state – and which factors contribute to their success. In publication 8 I consider why, when second chambers are so often criticised, they remain so little reformed. Finally, publication 9 looked at some of the most recent developments in House of Lords reform in the light of overseas lessons. It asked whether – despite concerns about reform having been frustrated – the most important reform might prove to be the removal of the hereditary peers in 1999, which had already taken place.

This PhD submission comprises the nine publications (summarised in the appendix) and a covering context statement, which explains how they fit together, what are their main conclusions, and what original contribution is provided by the publications taken together. It claims that the work represents a significant contribution to the theory of bicameralism and the role of second chambers in modern democracies. The conclusions of the work include new points about the role of political parties in second chambers, the influence of such chambers' particular relations with executives, and the importance of perceived legitimacy to second chamber powers. After summarising these findings the context statement concludes by summarising the methodology employed, by examining some of the limitations of the work, and proposing some ideas for future research.

# Context Statement

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## Introduction

This document provides a context for the nine publications that make up the bulk of the PhD submission. The context statement sets out to explain the purpose of the work, its key findings, and how the individual works relate to each other. It also aims to demonstrate how the collected works are equivalent to a PhD by the conventional thesis route.

The document begins by outlining the research question which the work was setting out to answer. It also briefly reviews both the policy context, in terms of parliamentary reform debates in the UK, and then the theoretical context contained in the current academic literature. The longest section of the document describes the key research findings, relating these back to the practical and theoretical context, and stating which publications in particular address each of the key points. I then summarise the impact of the work, both in terms of the academic literature and the UK reform debate. The closing sections review the methodology employed, the limitations of the research, and my personal development as a researcher during the five years in which the work was carried out.

## The Research Question

The starting point for this research was the stated ambition of the 1997 Labour government to succeed where other governments throughout the 20<sup>th</sup> century had failed, by reforming the House of Lords to create a modern second chamber. The Labour Party's 1997 election manifesto stated:

*The House of Lords must be reformed. As an initial, self-contained reform, not dependent on further reform in the future, the right of hereditary peers to sit and vote in the House of Lords will be ended by statute. This will be the first stage in a process of reform to make the House of Lords more democratic and representative. The legislative powers of the House of Lords will remain unaltered.*

*The system of appointment of life peers to the House of Lords will be reviewed. Our objective will be to ensure that over time party appointees as life peers more accurately reflect the proportion of votes cast at the previous general election. We are committed to maintaining an independent crossbench presence of life peers. No one political party should seek a majority in the House of Lords.*

*A committee of both Houses of Parliament will be appointed to undertake a wide-ranging review of possible further change and then to bring forward proposals for reform.*

The programme of research began with a major study, funded by the Leverhulme Trust, to draw lessons from bicameral parliaments overseas for the reform of the House of Lords. The project was conceived and carried out at the Constitution Unit, a research centre at University College London with a focus on practical reform.<sup>1</sup> The work began in July 1998, before any action had yet been announced with respect to implementing the government's manifesto commitment.

The initial research question was thus what form of second chamber would be most appropriate for modern Britain. This is a many-faceted question. In considering potential second chamber forms one must consider the various powers and functions which such a chamber might adopt, as well as the various modes of composition which might be

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<sup>1</sup> For details of the Constitution Unit and its work see <http://www.ucl.ac.uk/constitution-unit>.

employed – themselves both questions with a multitude of potential answers. And there is a necessary interaction between the two, in that the chamber's composition will impact on its ability to carry out particular functions, and will also influence how powerful it is in practice. In addition there are many more secondary issues, for example relating to the administration of the chamber and the pay and conditions which its members should enjoy.

In considering a second chamber for modern Britain, it is also necessary to consider the characteristics of modern Britain, and how its needs might differ from those of the past. This is a pertinent question when considering reform of a parliamentary chamber dating back at least 700 years (albeit having been subjected to various piecemeal reforms). But this aspect is made significantly more complex by the major programme of constitutional reform embarked upon by the 1997 government and still in its early stages when the research began. Probably most important was the devolution of power in Scotland and Wales (for which legislation was passed in 1998, with the Parliament and Assembly established in May 1999) and the promise of further such developments in England. This was set to change the territorial politics of the UK, as well as the powers of the Westminster parliament. Other significant issues included the adoption of the Human Rights Act 1998 and the proposals (as yet still unrealised) to hold a referendum on the electoral system for the House of Commons. All these reforms had a potentially important impact on the appropriate role for the House of Lords.

The changing constitutional context, as well as the complexity of the options for the form of the second chamber itself, made this research question an ideal candidate for comparative study. Not only could other Western democracies offer examples of different models of second chambers; with detailed study they could also offer some indication of how different models fitted within diverse constitutional contexts, themselves reflecting the different directions in which Britain might develop. As with all comparative work, such a study also offered the chance to gain a more objective perspective on the current form of the House of Lords. As Dogan and Pelassy suggest, comparative work allows us to 'reconsider accepted generalisations', demonstrating which features are unusual and which are widely shared: 'the observer who studies just one country could interpret as normal what in fact appears to the comparativist as abnormal', or indeed vice versa (1990: 6, 8). Developing a more objective perspective might point the way to future reforms, as well as shedding light on how some of the House of Lords' more valued features could be retained.

The research started some six months before the publication of the House of Lords Bill, which sought to implement 'stage one' reform by removing the rights of hereditary peers to sit in the chamber. At the same time the government published a White Paper (Cabinet Office 1999), setting out its longer term intentions and announcing the creation of a Royal Commission on the Reform of the House of Lords – charged with considering the appropriate way forward for 'stage two'. The Royal Commission sat from early 1999 and thus pursued the central research question in parallel with this work. In doing so it drew upon some of the early results of this research. Its report (Royal Commission 2000) was published in January 2000, just a week after the book which forms the most significant publication within this package.

The eviction of the hereditaries was largely achieved with the passage of the Bill in November 1999.<sup>2</sup> In terms of the debate on the second stage of reform, the Royal Commission's report proved to be only the beginning. The report was generally not well

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<sup>2</sup> The government accepted an amendment to the House of Lords Bill which allowed 92 hereditary peers (out of the total 746) to remain in the chamber, pending further reform. This is discussed in publications 1 and 5.

received. Amongst its more controversial recommendations was the proposal that the composition of the chamber would continue to be largely appointed, with a relatively small number of elected members. Debate continued, with the political parties and other groups setting out their response to the Royal Commission report. The Labour Party's manifesto for the 2001 election restated its commitment to completing reform and to achieving a 'more representative and democratic' upper house. After the election the government issued a second White Paper (Lord Chancellor's Department 2001), for public consultation. There were around 1,000 responses, including a detailed report from a House of Commons Select Committee (PASC 2002). After this a joint parliamentary committee was established to consider the way forward, and issued an options report (JCHLR 2002), which was voted on in both Houses of Parliament in February 2003.<sup>3</sup>

The question of the future of the UK's second chamber has thus had a thorough airing during the period in which this research was carried out, and at various points the publications included here have fed directly into that debate (see 'Impact of the Work', below). There remains no agreed answer to the central research question among the politicians, and beyond the removal of the majority of hereditary peers, little further reform has yet been achieved. As discussed in the section that follows, the UK started the period with a second chamber that conformed to a model long abandoned in most other advanced democracies. The hereditary model having finally been discarded, the debate moved rapidly to demands for an elected second chamber that reflected more closely the model adopted in most comparable democracies. However, such a quantum leap would not be consistent with the gradualist approach to constitutional reform traditionally taken in the UK. It is thus perhaps not surprising that it has, so far, failed to be realised.

Although initially and primarily focussed on the dilemma for the UK, the work also went on to address the broader research question of the appropriate role for a second chamber in a modern parliamentary democracy. There is a relatively limited literature on this question, given its significance. This literature (discussed in the two sections below) provided a starting point for the work on the UK and has also to some extent been augmented by it. More specifically my work has sought to answer generic questions about, for example, the potential territorial role of a modern second chamber, and the obstacles to second chamber reform. But even where generic questions are addressed by the work, this is informed very much by a UK perspective, thus distinguishing it from much other comparative work on such questions.

## **The Rationale for Bicameralism**

There is surprisingly little written about modern rationales for bicameralism. In one of the few book-length studies of second chambers (albeit an edited collection), Patterson and Mughan suggest that 'It is a tribute to the hidden power of tradition and inertia in the governing affairs of human beings that fundamentals of institutional design are rarely laid open to full appraisal. Institutions tend to be accepted at face value. Whether the legislature has one house or two is taken for granted by practitioners, observers, and citizens' (1999: 8).

On the relatively rare occasions where the rationale for bicameralism is discussed, this generally starts with an account of historical views, and often goes no further. As many of the traditional arguments still apply, and because – especially with respect to Britain – historical developments provide an important context, I too will begin here. However, in this

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<sup>3</sup> For a fuller account of these developments see Norton (2003). For a discussion of the outcome of the votes see Maclean, Spirling and Russell (2003).

and the next section I also expand to include a summary of modern accounts, insofar as these exist.

More than any other second chamber, the House of Lords serves as a reminder of the original conception of bicameralism. Although significantly changed from its original composition (most notably by the Life Peerages Act 1958, and to a lesser extent the Appellate Jurisdiction Act 1876 and Peerages Act 1963) the presence of hereditary peers and bishops in the chamber can be traced back to the very origins of the English parliament, many hundreds of years ago.

The earliest examples of multi-chamber arrangements can be traced to the ancient world. The body that gave its name to most second chambers existent today is the Roman Senate. The Roman system of government combined monarchy (the Consuls), aristocracy and oligarchy (the Senate) and popular government (the Tribunes and the Plebian Council) - with the Senate being in practice the main governing body (Lakoff 1996). This type of 'mixed government', with different interest groups represented, was contrasted by scholars with the system of pure democracy, as practised in ancient Athens, and about whose potential instability and innate dangers many were concerned. Plato, for example, believed that rule by the people encouraged political leaders to pander to populism and that by treating all men as equal, democracy 'marginalises the wise' (Held 1996: 30). Aristotle likewise expressed concerns about such a system, believing that each pure form of government (rule by the one - monarchy, the few - aristocracy, or the many - polity) could develop into a corrupt form (tyranny, oligarchy or democracy respectively) where the ruling group sought to serve its own ends rather than the common good. He thus concluded that a system which mixed elements of oligarchy and democracy was, in creating balance between different interests, preferable to either pure form (1995 [c. 330 BC]). Consequently a republic came to be understood as a system of 'mixed or divided government combining monarchy, aristocracy and popular government', which was seen to result in more stable politics than rule by a single class (Lakoff 1996: 65).

The development of bicameralism in England thus effectively saw adoption of an already familiar model of government. It was in the 13<sup>th</sup> century that knights and burgesses (representing shires and boroughs respectively) were added to the existing body of barons, earls and bishops that met in the English parliament to advise the king and agree taxation. These groups came to meet separately in a parliament that was still formally unicameral. The elite chamber, the House of Lords, was formally recognised as a separate body in the time of Henry VIII (Haskins 1948). Drawing inspiration from Plato and Aristotle, English thinkers came to advocate the mixed model, a 'blending of the simple forms of government - monarchy, aristocracy and democracy' (Weston 1965: 10).

Later writers such as Machiavelli and Montesquieu also argued for this approach. Montesquieu modelled his ideal state on the English constitution, and supported the bicameral approach, stating that 'The legislative body being composed of two parts, one checks the other, by the mutual privilege of refusing. They are both checked by the executive power, as the executive is by the legislative' (1977 [1748]: 211). His explicit support for the elite model was influential both in reinforcing belief in England in the moderating and stabilising influence of the nobility in the House of Lords (on both the monarchy and the people), and in spreading such ideas overseas. He suggested that:

*In a state there are always persons distinguished by their birth, riches or honours, but were they confounded with the common people and to have only the weight of a single vote like the rest, the common liberty would be their slavery and they would have no interest in supporting it, as most of the popular resolutions would be against them. The*



*share they have therefore in the legislature ought to be proportioned to the other advantages they have in the state, which happens only when they form a body that has a right to put a stop to the enterprises of the people, as the people have the right to oppose any encroachment of theirs (1977 [1748]: 205).*

In all of these analyses bicameralism was thus synonymous with mixed government and the need to represent different interests, with one interest group being able to check the other and prevent those in government from serving only their own ends. This was of particular relevance in protecting the interests of the educated and/or wealthy minority, in the face of pressures towards democracy. These different interests were each assured representation through their own separate chamber. In its elite representation the House of Lords was joined over time by many other similar chambers throughout Europe, although little even of the vestiges these other chambers' original forms now remain.

In the foundation of the American constitution in the later 18<sup>th</sup> century similar concerns were expressed but a new solution was devised. The framers of the federal constitution were easily drawn to support a bicameral legislature, given tradition first in Britain and then in the independent states. Bicameralism could also help deal with their concerns about unchecked majority rule. James Madison believed a second chamber was necessary because of 'the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions' (1987 [1788]: 366). Speaking at the convention at which the constitution was agreed he said that there were two purposes for a second chamber: 'first, to protect the people against their rulers, secondly, to protect the people against the transient impressions into which they themselves might be led' (quoted in Patterson and Mughan 1999: 14). But whilst some delegates (including Hamilton) favoured a chamber on the elite model (Marriott 1910), the answer arrived at also provided a solution to the difficult problem of balancing state and federal powers in the new constitution. This established a new model for second chamber composition, where each state was given an equal number of representatives, to be elected by the state legislature. Unlike the elite model this did not protect minority interests in a class sense, but did so in a territorial sense – meaning that the large states, dominant in the population-based House of Representatives, could not trample on the interests of small states. Federal legislation required the support of both chambers: thus representatives of half of the states, as well as representatives of half the population.

This was not the only way in which territorial second chamber models developed. In some other federations, such as Germany, a popularly elected chamber was added to a territorial body that would ultimately become the second chamber (Tsebelis and Money 1997). But the US model was influential both in its territorial basis and its principle of equal state representation. In both cases these new territorial models effectively created an alternative form of 'mixed' government to that based on elite representation, offering many of the same benefits.

In the nineteenth century De Tocqueville's concerns about the 'tyranny of the majority' reflected the familiar theme, and were taken up by John Stuart Mill. His *On Liberty* emphasised the need to defend liberty not just against single oppressive rulers, or against ruling classes, but also against democracy (1998 [1859]). Mill declared himself against bicameralism, but nonetheless believed that 'A majority in a single assembly, when it has assumed a permanent character – when composed of the same persons habitually acting together, and always assured of victory in their own House – easily becomes despotic and overweening, if released from the necessity of considering whether its acts will be concurred in by another constituted authority'. He also acknowledged the role that a second chamber can play: 'One of the most indispensable requisites in the practical conduct of politics,

especially in the management of free institutions, is conciliation: a readiness to compromise; a willingness to concede something to opponents, and to shape good measures so as to be as little offensive as possible to persons of opposite views; and of this salutary habit, the mutual give and take (as it has been called) between two Houses is a perpetual school' (1998 [1861]: 385). These sentiments echoed those of earlier thinkers that bicameralism provided both an opportunity for second thought, and for building support for policy beyond the bare numerical majority.

Modern expositions of the second chamber role draw out these same themes. Patterson and Mughan propose that the two broad functions of second chambers are 'representation' and 'redundancy' (1999: 10-16). Money and Tsebelis (1992) propose a threefold justification of bicameralism, on the basis of representation of different interests, stability, and quality assurance. This seems consistent with Patterson and Mughan's analysis, as stability might reasonably be considered an outcome, dependent on the representation and redundancy functions.

The 'representation' function depends on the composition of the second chamber being different to that of the first. This enables different and competing perspectives to be taken into account in the formation of policy. Arend Lijphart (1984, 1999) gives particular emphasis to the continued role of second chambers as a check on potentially tyrannous majorities (particularly in diverse societies) by making bicameralism one of the eight features of his 'consensus' as opposed to 'majoritarian' democracy. As he puts it:

*In plural societies . . . majority rule spells majority dictatorship and civil strife rather than democracy. What these societies need is a democratic regime that emphasizes consensus instead of opposition, that includes rather than excludes, and that tries to maximize the size of the ruling majority instead of being satisfied with a bare majority: consensus democracy (1984: 23).*

In support of such systems he echoes the sentiments of Bernard Crick who, in his classic *In Defence of Politics*, suggested: 'The democratic doctrine of the sovereignty of the people threatens . . . the essential perception that all known advanced societies are inherently pluralistic and diverse, which is the seed and the root of politics' (2000: 62).

As suggested, there have been two traditional institutional forms which have been used to achieve wider representation via the second chamber: the elite and the territorial models. In modern parliaments the elite model has largely fallen out of use, although some vestiges remain (beyond the House of Lords these include, for example, the higher property qualification for the Canadian Senate, and the appointed representatives of the 'great and the good' in the Italian and Indian Senates). As first chambers in modern states are directly elected on the basis of population (using varying electoral systems), the 'representative' function will only be fulfilled if the second chamber has some other basis of composition. To achieve this the territorial model – initially contrived to suit the needs of federal states but today also common in unitary states – has become dominant. The distinguishing features of this model are that members represent territorial units, such as provinces or states, which are the basis of some kind of sub-national administration; and that the smaller or less populous units are often over-represented.

The term 'redundancy' refers to the duplication, or 'second thought' which is inherent in a bicameral arrangement. Legislation is looked at not once, but twice, which has potential advantages for 'quality control' (Tsebelis and Money 1997: 40). Patterson and Mughan (1999) suggest that there are two primary arguments for the redundancy function. First, that a revising role allows for the straightforward ironing out of errors and the introduction of 'a

second opinion' (Wheare 1967: 140), based upon the different perspective of the upper house. Second, that the process of delay introduced by a second round of legislative consideration allows issues to be aired more widely – in modern democracies, including through the media – and gives an opportunity for the public to reach a fixed view, thus avoiding hasty decisions.

Finally, there have also been a series of recent considerations of the justification of bicameralism from a social choice perspective. These tend to be mechanistic and ahistoric in their approach, and have focussed in large part on the relative merits of bicameralism and supermajoritarianism as a means of checking a potentially tyrannous majority. Levmore (1992) and Riker (1992) have both supported bicameralism, for broadly similar reasons. One advantage they cite is that a bicameral system may reduce the dangers of voting cycles and the 'paradox of voting' whereby a series of majority supported options exist, but the most popular is not chosen due to the order in which votes are taken. By rerunning the decision in two different chambers with different agendas, this is less likely to occur. Second, in comparison to supermajoritarianism, bicameralism is not subject to the 'power of minority coalitions to block truly majoritarian and desirable legislation' (Levmore 1992: 157). By requiring policy to be passed by two different and parallel chambers, bicameralism 'allows for simple majority rule when politics is one-dimensional . . . yet discourages decision when politics is two-dimensional' (Riker 1992: 101). Bicameralism also helps deal with the problem that the majority in the first chamber (particularly under a non-proportional voting system) may not correspond to a majority amongst the electorate. As Riker points out, 'in a unicameral system there is no test of whether or not an apparent (that is, parliamentary) majority is in fact a real (that is, electoral or society) majority', whereas with bicameralism 'delay prevents parliamentary action until a societal majority exists.' (1992: 115). Hence bicameralism may not only protect *minority* interests, but sometimes *majority* interests as well.

Not all such analyses come to the same conclusion, however. Mueller (1996) points out that there is in fact no guarantee that the second chamber does represent a different dimension of policy preferences (thus emphasising the importance for effective bicameralism of a distinct upper house membership). But further, he points out, there is no guarantee that there are only two such dimensions – on certain issues it might be necessary to have three, or four, chambers to represent all the dimensions of opinion. This is a shortcoming which Mueller concludes recommends supermajoritarianism, but which for others might simply illustrate the great challenge of effective bicameral design.

With respect to the research question these analyses help provide some answers, but also open up new areas of enquiry. As Britain rejects the elite model in the case of the hereditary peers, what alternative model of representation would be appropriate? In a state undergoing a process of devolution, would the territorial model be more appropriate? How can the two chambers be sufficiently distinct, but both have a composition which can command respect? And with regard to the redundancy function, how much power should a second chamber have to impose delay? What is the relationship between these two major questions of composition and powers?

## **Modern Theories of Bicameral Function**

The rationale for bicameralism provides an essential context. However, in considering potential forms for a reformed House of Lords, it is necessary to go much further. This work sought to investigate how different models of bicameralism function in practice, and what factors are associated with the success of different systems. The literature on this question is more limited still than that on the merits of bicameralism.

The most detailed analysis, albeit brief, is provided by Lijphart (1984, 1999). This is centred on a proposed classification of the 'strength' of bicameralism, and provided a starting point for my work. Lijphart's system is based on two principle variables. The first refers to whether the two chambers are 'symmetrical' or 'asymmetrical' in terms of their powers. Lijphart notes that few second chambers have formal powers fully equal to those of their respective first chambers, as reduced powers over legislation (eg. to delay rather than veto indefinitely) are common. He also notes that 'the actual political importance of second chambers depends not only on their formal powers but also on their method of selection' and that 'second chambers that are not directly elected lack the democratic legitimacy, and hence the real political influence, that popular election confers. Conversely, the direct election of a second chamber may compensate to some extent for its limited power' (1999: 206). In his 1984 work Lijphart proposes a threefold classification of 'symmetrical', 'moderately asymmetrical' and 'extremely asymmetrical' bicameralism (the first two of which for practical purposes are treated together); in the 1999 version the classification is adapted to simply 'symmetrical' or 'asymmetrical'. In order for a bicameral parliament to be in the first category the second chamber must possess some combination of strong formal powers and democratic legitimacy.

The second variable on which Lijphart bases bicameral strength is 'congruence' or 'incongruence' in terms of the composition of the two chambers, reflecting the traditional emphasis on chambers representing different interests. As he notes, 'second chambers may be elected by different methods or designed so as to represent different minorities. If this is the case, the two chambers differ in their composition and may be called *incongruent*' (1999: 207). As examples he gives the House of Lords, where the nobility was (at time of writing) the over-represented minority, and the French Senate where small communes are over-represented. But his primary focus is on the design of territorial chambers, where certain less populous states or regions may have disproportionate numbers of seats.

The overall strength of a bicameral system is determined, in Lijphart's analysis, by a combination of these variables. In both editions he proposes three categories of strength: in 1984 'strong', 'weak' and 'insignificant' bicameralism, which in 1999 are renamed 'strong', 'medium-strength' and 'weak'.<sup>4</sup> A system belongs in the first category if it is both symmetrical and incongruent (ie. the chambers have similar powers and differing memberships), to the second category if it possesses one of these attributes, and to the third category if it has neither.

George Tsebelis, in his work on 'veto players' (1995, 2002), has also given some consideration to the role of second chambers and introduces a variable not explicit in Lijphart's analysis. His aim is to devise a generic classification which allows comparison between political systems of varying formal structure – particularly between presidential and parliamentary systems – and to assess their degree of 'policy stability'. In doing so he parallels Lijphart's analysis to some extent, with a 'veto player' defined as 'an individual or collective actor whose agreement (by majority rule for collective actors) is required for a change in policy' (1995: 300): thus including parliamentary chambers, presidents, and political parties in coalition governments. One might therefore expect that Lijphart's consensus democracies would be found to have high numbers of veto players in comparison to majoritarian ones. But the analysis of Tsebelis is sensitive to modern realities, in that he gives primary importance to the partisan control of different veto players and asserts that where two

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<sup>4</sup> In the change to his system of classification Lijphart acknowledges the arguments of Tsebelis and Money (1997) that all second chambers are likely to have some influence and that the term 'insignificant' is thus overly dismissive.

players are controlled by the same political party one may be effectively 'absorbed' by the other. This results in changes in the effective numbers of veto players in a system over time, as partisan control changes. In order to qualify as a veto player a second chamber must thus have both a different partisan majority to the first chamber and government, and have a veto power. This is consistent with Lijphart's concentration on powers and distinct composition, but gives prominence to partisan control rather than institutional structure of the chamber. Although somewhat crude in potentially discounting the many systems where the second chamber does not have a veto power, this analysis also introduces the subtlety that a bicameral system may differ in strength over time as partisan control of the chambers changes.

Sartori (1994) similarly cites two variables to be considered when classifying bicameral arrangements: equal or unequal powers and similar or dissimilar composition. With respect to the latter he makes clear that party balance will be crucial. Due to fears about gridlock he suggests that it is not desirable for a chamber to have both strong powers and dissimilar composition to the first chamber. On the other hand if the composition of the two chambers is similar, the second is liable to add little. He therefore effectively rejects systems achieving either Lijphart's strongest or weakest classification, and appears to support only the middle option, where the two chambers are distinct, but the second does not have the absolute power to overturn the decisions of the first.

Money and Tsebelis (1992) and Tsebelis and Money (1997) also ascribe more value to weaker second chambers than does either Lijphart or Tsebelis's veto player analysis. They suggest that there have traditionally been two proposed roles for bicameralism: 'political'/'strong' (a powerful blocking chamber, more often found in federal systems) or 'efficient'/'useful' (a weaker or more congruent chamber which fulfils a redundancy role, more often found in unitary states). They suggest that these two alternative roles have traditionally been seen as in conflict, but that a chamber without strong formal powers may in fact also be influential. Government and the first chamber may choose to compromise over policy rather than face the delay (albeit perhaps short) which would result from second chamber opposition.

## **Key Research Findings**

This section seeks to outline the most significant findings of the research. It does not seek to be an exhaustive listing of the issues covered: obviously it cannot be other than a very brief summary of what is contained in roughly 450 pages of published text. One of the practical functions performed by the publications was to pull together and make readily available some basic information about second chambers overseas. Another was to draw conclusions about particular chambers, or particular activities within chambers. Here I concentrate only on some of the more important general points. This is done with reference to the relevant literature and the prevailing political environment.

The section is broken into two main subsections, relating to the two defining features of second chambers: their powers and their composition. The reform process is considered in a separate short subsection. The section closes with some conclusions, which pull together the main findings in summary form.

### ***The Power and Influence of the Chamber***

The most important findings of the research are probably those that can be grouped within the broad topic of second chambers' influence and powers. These findings both extend the theoretical debate and feed directly into the reform debate in the UK. Under this broad heading the key issues for consideration are the nature and importance of second chamber

legitimacy, the chamber's powers over the executive (and their effect), and the strength and influence of second chambers.

The Legitimacy of Second Chambers

Approaching the literature on bicameralism from a UK perspective, one of the striking features is the extent to which discussion of second chamber legitimacy is overlooked or oversimplified. Within the UK debate over reform, the desirability of increasing the House of Lords' legitimacy – and by how much – is constantly under discussion.

The lack of perceived legitimacy of the House of Lords has been one of the key factors preventing it being a powerful check on government. The hereditary basis of the upper house – target of reformers since before the 1911 Parliament Act – created an impediment to its making full use of its considerable formal powers. Where the upper house has sought to intervene in policy, government ministers and MPs have been quick to point out its shaky justification in challenging the decision of an elected House of Commons. This clearly had resonance with the public, 58% of whom in 1998 believed that the right of hereditary peers to sit and vote in the chamber should be ended.<sup>5</sup>

The decline in perceptions of House of Lords legitimacy, and thus influence, had been a long one. Bagheot noted in the 1860s that the influence of the chamber was declining as a result of the Reform Act and the increased democratisation of the House of Commons. He suggested that 'As the picturesqueness, the featureliness of society diminishes, aristocracy loses the single instrument of its peculiar power' and that 'It is idle to expect a second chamber – a chamber of notables – ever to resist a popular chamber' (2001 [1867]: 73, 76). John Stuart Mill also noted the need for two chambers to be different in composition, and the dilemma that that would create for legitimacy: 'One being supposed democratic, the other will naturally be constituted with a view to its being some restraint upon the democracy. But its efficacy in this respect, wholly depends on the social support which it can command outside the House. An assembly which does not rest on the basis of some great power in the country, is ineffectual against one which does. An aristocratic House is only powerful in an aristocratic state of society.' (1998 [1861]: 386).

For a classification of parliamentary influence which makes explicit the need for public support, the best source is perhaps the classic book by Mezey (1979). This relates to parliaments generally rather than second chambers in particular.<sup>6</sup> Mezey provides a two-dimensional classification to indicate the source of parliaments' effectiveness, where one dimension is 'support' – by both the public and elites. Mezey says that 'By "support" I mean a set of attitudes that look to the legislature as a valued and popular political institution' (1979: 27). His classification is as follows:

	<u>Level of support</u>	
	Less supported	More supported
<u>Policy making power</u>		
Strong	Vulnerable legislatures	Active legislatures
Modest	Marginal legislatures	Reactive legislatures
Little or none		Minimal legislatures

<sup>5</sup> *The Guardian*, December 1998. Only around a quarter of the public opposed such a reform.

<sup>6</sup> Indeed Mezey would not actually classify the House of Lords as a parliament, as his definition explicitly excludes legislative chambers which are not elected.

Such a classification enables us to explain the relative lack of influence of the hereditary House of Lords, for whilst its powers might be described as modest, for at least a century it would be hard to class it as 'a valued and popular political institution'. This resulted in its being of, at best, marginal effectiveness.

As noted above, Lijphart (1984, 1999) takes some account of legitimacy of second chambers in devising his classification of bicameral strength – although this factor is subsumed within the 'symmetry' variable as a dimension of *de facto* powers. Sartori (1994) also notes the correlation between second chambers' legitimacy and powers, though only to observe that chambers which are not elected tend to have been *given less formal power*. Mastias and Grangé (1987) give significant prominence to the concept of legitimacy, but likewise treat it as determined by whether or not a chamber is directly elected. In contrast to these approaches I have suggested that not only should legitimacy be explicit in the classification of second chambers' effectiveness, but also that this needs to reflect *perceived* legitimacy rather than some hard measure based purely on their mode of composition (there may be a strong correlation between direct election and perceived legitimacy, but the two do not amount to the same thing). In both of these respects my approach is closer to that of Mezey.

Study not only of the House of Lords but also of overseas parliaments demonstrates the centrality of perceived legitimacy to the effectiveness of second chambers. This was first explored in publication 1, with the concept developed particularly in publications 5, 6 and 9. The Australian Senate offers an interesting example of how legitimacy is contested, and not a simple matter of whether a chamber is elected. Here the Senate is directly elected on a proportional basis, unlike the House of Representatives which uses the majoritarian 'alternative vote'. The party balance in the Senate far more closely reflects the preferences of electors than does that in the lower house. Yet Senators were famously referred to by Prime Minister Keating as 'unrepresentative swill', and governments do their best to talk down the chamber's legitimacy. This is primarily on two bases; first, the fact that only half the Senate is renewed at each general election and hence its mandate can never be considered fresh<sup>7</sup>; second, the fact that all states have equal numbers of Senators and that the smaller states are significantly over-represented. In terms of Mezey's classification the support for the Senate from the elite is often uncertain, though its support from the public tends to be more reliable. This is discussed in particular in publication 5.

The issue of legitimacy is a live one with respect to most of the chambers in the study. For example the French Senate is perceived as illegitimate by many, given its over-representation of rural areas, resulting in a politically conservative bias. The Irish Senate is likewise perceived as rather illegitimate due to its peculiar electoral system and inbuilt government majority. The German Bundesrat, meanwhile – although not directly elected – is considered a legitimate body at the heart of the federal system. Legitimacy is a particular issue for the Canadian Senate given its appointed basis and the calls over many years for its members to be elected. Yet all of these chambers will – like the House of Lords – tend to win public support for intervening in legislation where the particular policy line they are pursuing is popular. Despite government protestations, a 1996 poll in Australia even found a majority backed the Senate's position in blocking a policy that had been in the governing party's manifesto.<sup>8</sup> One of the contributions of this work is to bring together analyses of these diverse settings and demonstrate the centrality of the concept of legitimacy to the study of second chambers.

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<sup>7</sup> Except in the unusual event of a double dissolution, when the entire Senate is elected at once.

<sup>8</sup> See paper 5, page 38.

These observations raise the difficult question of what influences perceived legitimacy and how it might be measured. This is a fertile area for future research. As Mezey says 'Assessing the level of support for the legislature by looking at attitudes toward the institution leads us to ask and attempt to answer the question of why people support a legislature. One possible source of supportive attitudes is policy satisfaction' (1979: 29). The relative importance of legitimacy and perceived legitimacy, and the impact on both of these variables of policy satisfaction, representativeness and institutions' democratic credentials has been hotly contested in recent years (see for example Barnard 2001, Barker 1990, Beetham 1991).

Not surprisingly given the historical context, legitimacy issues have been ever-present in the recent UK debates on reform, although not always explicitly. Margaret Jay when Leader of the House of Lords stated that the removal of the hereditary peers would make the chamber 'more legitimate'.<sup>9</sup> Such claims were seized on by the Conservatives in the House of Lords to justify a more interventionist attitude after stage 1 reform, with the Conservative Leader in the Lords declaring that certain conventions limiting the chamber's use of its powers should be considered dead. The Royal Commission expressed the desire to create a chamber with 'the necessary political weight to carry out the responsibilities we propose it should have . . . [so that] its decisions would be more widely seen as politically legitimate' (2000: 104). But the Commission also sought to protect the Commons' pre-eminence, and used this as a reason for not recommending a largely elected chamber. My work pointed out (publications 2 and 4) that in fact wholly or largely elected chambers are common overseas, and that the primacy of the lower house is generally ensured through limits on the chamber's formal powers rather than through attempting to limit its legitimacy. I suggested that on the basis of international experience it would be wise for a majority of second chamber members (rather than a minority as the Royal Commission proposed) to be elected, if the chamber's perceived legitimacy were to be secured. This was in part on the basis of polls suggesting that public opinion had moved rapidly on from rejecting the hereditary basis of the chamber to questioning the propriety of appointed members in a 21<sup>st</sup> century legislature.

The issue of legitimacy was revisited in the last of the publications (publication 9) after the House of Commons had rejected all the composition options put to it by the Joint Committee (JCHLR 2002; Maclean, Spirling and Russell 2003). Here I returned to the argument that perceived legitimacy is not a simple matter of election or appointment, but is also linked to factors such as the party balance in the chamber (where the appointed Lords more closely reflects general election votes than the elected Commons), and the popularity of the issues on which the chamber chooses to tackle the government. I suggested that now government has effectively rejected elections for the chamber, the House of Lords may enhance its perceived legitimacy sufficiently, through tackling the government on the right issues, to make better use of its powers than it could in the past.

### Second Chamber Powers over the Executive

Another issue that has received insufficient attention in the literature and is addressed in this work is the relationship between second chambers and executives. The general neglect of this point has led to some real-world misunderstandings in the House of Lords reform debate. Appreciating the centrality of the issue can both lead to a better understanding of second chamber culture and to a new way of viewing bicameralism itself. This topic is pursued particularly in publications 1 (chapter 9) and 6, but also touched on in publications 4 and 5.

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<sup>9</sup> Her exact words were: 'I have no hesitation in asserting that the transitional Chamber will be more legitimate than that we have today'. House of Lords Hansard, 14 October 1998, Col. 925.



All recent commentaries on bicameralism focus to some degree on second chamber powers. Lijphart (1984, 1999) and Sartori (1994) make powers one of the two key features of their assessment of second chambers' effectiveness. Tsebelis (1995, 2002) and others treat systems as essentially unicameral unless the second chamber has an indefinite power of veto. Yet in their descriptions of the defining elements of second chambers none of these authors cite the difference between first and second chambers with respect to power over executives. All focus instead on chambers' powers over legislation. Lijphart comes closest, by noting in passing that 'in parliamentary systems the cabinet may be responsible exclusively to the first chamber' (1984: 96). However the extent to which this feature is widespread, and its profound consequences, are not explored.

The parliaments within this study demonstrate both the commonality of second chambers' special relationships with executives and the practical consequences that follow. Of the seven second chambers discussed in publication 1 only one – the Italian Senate – has the power to remove government from office through a confidence vote. As all of these systems are parliamentary, by definition government depends on the confidence of the legislature. Yet, Italy aside, this power over government is vested in the lower chamber alone. It is easy to see how this situation developed in Britain given the increasingly anachronistic composition of the House of Lords, and in other countries such as Canada where the second chamber is based on the elite model. It is also intuitively clear that it should apply where the original territorial model – based on forms of indirect election as in the US and Germany – was used. But this tradition has now been handed down to virtually all second chambers, including the wholly or largely directly elected, such as those in Australia, Spain and Japan, and has become a defining second chamber characteristic.

The profound impact of this feature is illustrated by the case studies which form the core of the work. On the study trips, a common feature was for those familiar with the second chamber to cite how it was less partisan and had a more deliberative and independent ethos than the first chamber. These elements of second chamber culture are commonly attributed to other defining features that many such chambers share, such as smaller size, longer terms of office and more mature members.<sup>10</sup> These factors are undoubtedly important, but in general the most important of all will be the second chamber's particular relationship with the executive.

Such a result could reasonably be deduced from the wider literature on legislatures, making it particularly surprising that it does not feature in discussions of bicameralism. The different culture of legislatures in presidential and parliamentary systems is routinely noted in the literature on constitutional design - in particular the stricter party discipline in parliamentary chambers and the relatively more independent ethos of chambers in presidential systems is generally acknowledged. As Sartori says, 'Putting all in a nutshell, parliament-dependent government implies party-supported government; a support that in turn requires voting discipline along party lines' (1994: 193). By contrast Juan Linz notes that one of the characteristics of presidential systems is that 'parties are weak and lack discipline' (1994). The extent to which party discipline becomes pervasive under the parliamentary model is one of the main criticisms levelled against it (not least in the UK). The fear is that the iron discipline required by the risks of the confidence vote in effect hands control of parliament to the executive. As Olson suggests, 'Paradoxically, the very system intended to ensure parliament's control over the executive has led to exactly the opposite flow of control' (1994: 77).

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<sup>10</sup> All of these individual features are discussed in detail in chapter 2 of publication 1.

It is therefore natural that the lack of control a second chamber enjoys over government likewise encourages an independent ethos and less rigid party discipline. If government legislation is defeated in the first chamber this leads to serious questions about the stability of government itself. In certain instances a vote may be interpreted as a matter of confidence, or even explicitly be made so by the government. The lack of this facility in most upper houses gives greater freedom to members representing parties of government to exercise a protest vote. Members of upper and lower houses may even collude over government defeats, with lower house members from governing parties relying on upper house colleagues to challenge policy in ways they cannot be seen to do themselves.

The flip side of this executive-second chamber relationship also has important consequences. Where second chambers cannot remove executives from office this is generally reciprocated by the executive not being able to dissolve the second chamber (as it frequently can do with the first). In many cases the second chamber is in fact never dissolved as it is renewed in parts, either through appointment (as in the UK or Canada) or staggered elections (Australia, France, Japan), or because the terms of regional delegates are linked to differing regional timetables (Germany, Austria, Spain). This creates a continuity of membership which is potentially important for the culture of the chamber, again strengthening its independent ethos.

Thus in some ways, I have suggested, second chambers may enjoy relationships with executives closer to that of legislatures in presidential systems than to first chambers in parliamentary systems. Indeed, as in presidential systems, the lack of a confidence vote means that governments do not need to enjoy partisan majorities in second chambers as is the norm in first chambers. This is the case normally in Australia, since 1999 in the House of Lords, and from time to time in Canada and France depending which party is in government.<sup>11</sup> As suggested in publication 6, bicameralism may thus be seen as a compromise offering some of the benefits of both a presidential and parliamentary system of government. If, as Sartori suggests, 'both presidentialism and parliamentarism breed within themselves the defects of their merits' (1994: 170), a halfway house between the two may be desirable.<sup>12</sup>

The lack of understanding of this fundamental issue is clearly apparent in the recent House of Lords reform debate in the UK. In particular, I have suggested, it has led to fears that primacy of the House of Commons is threatened being overstated. The Royal Commission's terms of reference, for example, charged it with 'Having regard to the need to maintain the position of the House of Commons as the pre-eminent chamber of Parliament'. This resulted in the Commission concluding that 'increasing the powers of the second chamber over any particular category of legislation would be inconsistent with maintaining the position of the House of Commons as the pre-eminent chamber of Parliament' (2000: para. 5.7). This prevented the Royal Commission from proposing, for example, that the powers of the second chamber over constitutional Bills might be increased. I have consistently argued that this interpretation of primacy is too narrow and does not give sufficient prominence to the fundamental distinction between the two chambers (as well as to the House of Lords' limited powers over Bills) which will always leave the House of Commons dominant. In making such a point comparative examples are extremely useful, and there is some evidence that this understanding has filtered into more recent debates (see 'impact', below).

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<sup>11</sup> The consequences of this feature are discussed further in the representation section below.

<sup>12</sup> Sartori (1994b) has declared himself in favour of a different kind of halfway house: the French semi-presidential model.

### *Strength and Influence of Second Chambers*

A further conclusion, which some other works on bicameral systems acknowledge, but which is often overlooked, is the potential influence of even those chambers that would generally be ranked unimportant – because of either a relative lack of formal powers, a membership congruent to that of the lower house, or lack of democratic legitimacy. As indicated above, such chambers are largely set aside by Tsebelis (1995, 2002), Sartori (1994) and Lijphart (1984, though less so in 1999) but assigned greater importance by Money and Tsebelis (1992) and Tsebelis and Money (1997). The case studies pursued in publication 1 – notably France, Ireland and Spain, and experience in the UK, reinforce the arguments of those who claim that a chamber which might be classified as ‘weak’ or even ‘insignificant’ (Lijphart 1984) can nonetheless at times be influential.

It is, of course, difficult to measure the power of a legislature. There is a temptation to focus on the more visible aspects of a chamber’s influence, such as defeats of government Bills or numbers of amendments. But as Mezey emphasises (1979), legislatures may be exercising their powers, even if no vetoes are used or amendments passed, since government will respond to the anticipated view of the legislature, and particularly to its own backbenchers. The pressure that results in policy change will not necessarily be that applied publicly on the floor of the chamber or in committee but will often be that behind the scenes. Blondel has suggested that ‘intervention by the legislature takes the form of influence and participation; there is no clear dichotomy between decision and non-decision. A whole variety of points of penetration of the legislature exists in the political system’ (1973: 15). Indeed, the anticipated response of the legislature may result in some policies never being publicly proposed at all.

One of second chambers’ informal powers is that of bringing public prominence to an issue simply by debating it, or by actively campaigning against it. Even the most (formally) powerless of the chambers in this study – the Irish Seanad – is said to have had a significant impact through a short delay to a Bill to amend the electoral system, which was consequently subjected to greater public debate and ultimately defeated.<sup>13</sup> Similar stories apply in other comparator countries, and the withdrawal of the Criminal Justice (Mode of Trial) Bill from the British parliament in 2000 following House of Lords’ opposition provides another example of the same phenomenon. It is of course impossible to say how many potential government schemes never see the light of day for fear of similar exposure during passage through an – albeit formally weak – upper house. Although this is not a new point, publication 1 adds to the literature by bringing together substantial evidence to support those scholars who claim that dismissal of second chambers without veto powers, or labelling such systems as tantamount to unicameral, is overly simplistic.

### *Issues of Representation and Composition*

The challenge for modern second chambers is to find distinct methods of representation to first chambers. Originally the distinct form of representation provided by second chambers was class based. However, as discussed above, this form of representation has lost legitimacy and thus chambers based upon it have, to large extents, lost their effectiveness.

In order for modern second chambers to be effective they need to be at once distinct in their composition, but also to command sufficient respect to operate effectively. Previous multi chamber arrangements (notably European class-based systems but also, for example, the race-based chambers of apartheid South Africa) used each different chamber to represent a different interest. Modern systems tend instead to emphasise the need for parliamentary

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<sup>13</sup> See publication 1, page 152.

chambers to be internally representative of whole populations across lines such as class, race and gender. If this is the aim, it becomes a significant challenge for second chambers to be both distinct from first chambers and to command respect. Mastias and Grangé (1987) have suggested that modern second chambers must exhibit a 'competing legitimacy' to that of the lower house. This clearly presents a difficult problem for institutional design. As this work has pointed out, a large majority of second chambers now base their representation primarily on some method of election, although elective methods vary widely.

In deciding the nature of our representative democracy, Judge suggests that we need to ask 'how are "the people" to be conceived – as individuals; or as collectivities organised around, for instance, geographical constituencies, workplace, functional interests, or social class?' (1999: 12). All of these models have been tested with respect to second chambers.

### The 'Territorial' Model

The dominant model for second chamber composition is now territorial. Representation takes various forms: directly elected (as in Australia or the US), indirectly elected (as in Germany, Austria or India) or appointed (as in Canada), with less populous areas often over-represented. With no tradition of territorial representation in the House of Lords, but a rapidly developing territorial politics, the UK potentially had a lot to learn from such second chambers about the effectiveness of different models. This matter is addressed in publication 1 (particularly chapters 10 and 14) and publication 7, and is also touched on in publications 3, 4, 5 and 6.

The extent to which second chambers really play a territorial role is much disputed. With the exception of Germany the territorial chambers within the initial study (ie. in Australia, Canada, Spain and France) were all subject to criticism for not properly representing territorial interests. Instinctively it might be thought that the extent to which a chamber fulfils a territorial function will be linked to its method of composition, so that indirectly elected representatives chosen by members of regional bodies would be more closely bound to regional politics than those directly elected by the people. However, evidence from the limited number of indirectly elected bodies included in the study did not appear to bear this hypothesis out. The German Bundesrat is a special case, with members necessarily representing a territorial interest as they are all members of state governments (and in practice are largely represented by substitutes who are state civil servants). But the indirectly elected members of the Spanish Senado did not appear to be any more closely linked to territorial politics than, for example, the directly elected members of the Australian Senate. In practice, this work suggested, the territorial link is likely to be created through building in territorial functions and formal reporting mechanisms, rather than through simple composition formulas.

The work did also suggest, however, that the territorial role may be more subtle than is often supposed. For example in Australia it was reported that Senators do represent territorial interests, but will tend to do this within the privacy of party caucus meetings rather than openly on the floor. In addition, whilst not formally linked to state bodies Senators will be well networked inside the state party and are thus likely to bring state concerns to the negotiating table. Proportional representation for the Senate ensures that both main parties have parliamentary representatives within each state, reducing the risk that either party will adopt a policy strongly disadvantageous to one state in particular. Territorial roles within a modern party-dominated chamber may thus be less visible, but nonetheless influential.

In the UK, Lords reform offers an opportunity to reflect within Westminster the new territorial politics promoted by devolution. The Royal Commission took up this challenge to

some extent, with their proposal that the minority group of elected members in a reformed chamber should represent the nations and regions, and that appointed members should be regionally balanced. In this work (particularly publication 4) I have suggested that this approach was too cautious, and particularly that if the majority of representatives for a region were appointed by the centre this would be unlikely to satisfy regional demands. For an example of such problems it is necessary to look no further than the much maligned Canadian Senate.

### Towards the 'Party' Model

This research has suggested that many previous scholars have tended to understate the pervasive influence of party politics in second chambers, which in modern democracies is essential to understanding their dynamics.

It has long been recognised that in Western democracies, parliaments have become the preserve of political parties. Early in the twentieth century Max Weber observed how 'the mass franchise fundamentally alters the dynamics of political life, placing the *party* at the centre of political business' (Held 1996: 169). In Britain these developments have led to a widely accepted belief that we have now moved from a system of 'parliamentary government' to a system of 'party government' (Judge 1999: 18).

I suggest, therefore, that party balance will in most cases now be the most important determinant of how two chambers in a bicameral system interact. Where two chambers share a similar party balance they are more likely to be able to reach agreement than where they have conflicting partisan majorities. Throughout the work I have emphasised that today a difference in party balance between the two chambers is likely to be the most important element of 'incongruency'.

This issue was explored in detail in publication 1. Chapter 4 set out the implications of the chamber's composition mechanism for its party balance. Chapter 6 presented evidence about the legislative impact of the chamber and concluded that this is largely driven by its partisan control. This is even the case in Germany's powerful federal Bundesrat, where coalition governments at state level make party composition more than a simple numbers game, but where negotiation by federal government becomes significantly more difficult as its party's influence at state level declines. I have suggested that second chambers controlled by governing parties will tend to 'collude' in the passage of legislation, whilst those controlled by the opposition will tend to behave in oppositionist ways, and threaten gridlock. The chambers with the greatest real influence are likely to be those controlled by neither government nor opposition, where genuine negotiation over policy may take place.

On this point my analysis differs from that of Lijphart, whose 'congruency' between the chambers is based first and foremost on their institutional structure. For example, Lijphart (1984, 1999) classifies the Australian Senate as 'incongruent' on the basis of equal representation of each state rather than – as I would suggest – on account of its lack of a government majority resulting from the use of a PR electoral system. Giving greater prominence to the importance of party balance – as does Sartori (1994) and particularly Tsebelis (1995, 2002) – also allows a classification of bicameral strength to reflect the modern reality that a second chamber's *de facto* power may fluctuate over time as the party in control of either chamber changes. The importance of this is illustrated by the way that the French Sénat and British House of Lords have traditionally presented more of a threat to governments of the left, and the Canadian Senate has bared its teeth on the rare occasions when its party balance falls out of synch with that of its House of Commons.

My research therefore suggests that we may be moving to a third phase of bicameral design – from the ‘elite’ model through the ‘territorial’ model to the ‘party’ model, where the most important element when designing in distinct representation for an upper house is the implication for party political balance. Given what I have said above, this also leads to the conclusion – proposed in publications 6 and 9 – that second chambers are likely to add more in states that base their first chamber on a majoritarian electoral system, particularly if the second chamber introduces a more proportional chamber with no overall party control. As with presidential and parliamentary models, bicameralism may once again offer an opportunity for compromise between competing approaches to constitutional design, including elements of both the majoritarian and consensus approach.

In recognition of the centrality of parties, there is now a literature on ‘divided government’ into which studies of bicameralism in such situations can be located. According to Elgie, ‘divided government refers to the absence of simultaneous same-party majorities in the executive and legislative branches of government’ (2001: 2). This approach, like the veto player analysis of Tsebelis (1995, 2002) potentially allows comparisons to be made across the divide between parliamentary and presidential systems, and to include both bicameral and unicameral legislatures. However, once again the subtleties of bicameral government can be overlooked. Elgie goes on to suggest that ‘in the case of parliamentary regimes [divided government] corresponds to minority governments’ (2001: 5). Only in a footnote does he acknowledge that it can also apply in bicameral systems where government doesn’t control the upper house. John Uhr (1999) has applied the concept of divided government to Australian bicameralism, where government will frequently have large majorities in the lower house but no majority in the Senate. I would suggest that – particularly given the lack of a confidence vote in upper houses – there is a significant difference between divided government resulting from a lack of majority in the lower or in the upper house. The latter offers a more gentle – and potentially more stable – alternative. This topic seems worthy of further study.

### Other Forms of Representation

Having said that political party representation is the reality in modern parliaments, and that this has therefore become central to the design of second chambers, there are of course those that express concerns about this approach. Signs of party ‘dealignment’ and falls in electoral turnout<sup>14</sup> lead some to propose different forms of representation. If the first chamber is dominated by political parties, they suggest the second chamber should complement this, with members instead representing a different dimension of interests apart from the parties: social, economic, vocational or other interest groups (eg. Sinclair 1999). The belief in such ‘corporate’ forms of representation can be traced back at least a century (Judge 1999) and was attempted in some countries in Europe in the 1930s, largely under dictatorial one party regimes.

The one second chamber to retain such a representational basis is the Irish Seanad, which was one of the subjects of this study. This uses a very impure corporate system, given that the electors are councillors and MPs, themselves necessarily partisan. Consequently candidates for Seanad elections are mostly aligned to political parties, and those that are not do not go on to be elected. Although nominated by interest groups, once in the chamber Senators form party groups and vote along party lines, with their official representative roles almost entirely invisible.

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<sup>14</sup> For an overview of the literature in these areas and review of international trends see Norris (2002) and Dalton and Wattenberg (2000).

The Seanad, whilst being the only working example, thus offers a poor model from which to learn how a true corporate chamber might function. Proponents of this form of representation would argue that the design of the Seanad was misconceived and would certainly not be repeated. Whilst this is true, I have argued that there are two important lessons that can be learnt from the Irish case. First, in modern elections – even if organised on a wholly different representational basis – political parties are likely to pervade. Although nominations for the Seanad are made by Royal Societies and professional organisations, political party candidates still win these nominations. Second, although the Irish system is semi-vocational, few in Ireland have suggested reforming it to make its vocationalism effective – instead reformers tend to focus on moving to a more commonplace form of territorial representation. The general view is thus that the reality of political party rule needs to be accepted, and indeed that reforming the current system might lead to weakening of the nominating bodies through greater infiltration by political party interests.<sup>15</sup>

The Royal Commission rejected suggestions of any kind of formal corporate membership for a reformed House of Lords. However, they did propose that the appointments commission be required to balance membership in a number of dimensions (gender, ethnicity, region and area of expertise, as well as party) in order to better reflect society. The Commission's aspiration was that the reformed second chamber should be more representative in a 'descriptive' (Pitkin 1967) or 'microcosmic' (Judge 1999) sense than the House of Commons. They further concluded that this representativeness would best be achieved without elections, which would be likely to be dominated by the political parties. This approach raises interesting questions about perceived legitimacy, which the Royal Commission could not satisfactorily resolve. On the one hand there is a potential threat to the perceived legitimacy of the chamber if most of its members are appointed. The Commission argued against an elected house in part because it would acquire a new strength with respect to the House of Commons, thus acknowledging this link. However the Commission argued in parallel that an appointed chamber that was representative in a microcosmic sense would achieve greater legitimacy in modern Britain than one dominated by the political parties. Given that this is an institutional design without comparator, the Commission's thesis will remain untested unless such reform is carried out.

### *The Reform Process*

A final topic where this research makes a contribution fits neither within the topic of powers nor composition of second chambers, but relates to attitudes to the reform of these institutions and the determinants of whether such reform takes place. These questions, addressed in publication 1 (primarily chapter 11) and publication 8, are of immediate interest in the UK.

Mughan and Patterson have suggested that second chambers are 'essentially contested institutions' (1999: 338). It is in second chambers' very nature that this should be the case, given that the first chamber (at least in theory) represents the popular will, and the second chamber exists in large part to delay and question its actions. In addition, given the generally accepted legitimacy of first chambers' composition, second chambers based on a different representation principle are liable to be controversial. Yet second chambers which mirror the first chamber in their composition and attitudes will be of limited impact. It is not surprising, therefore, that many second chambers are subject to calls for reform.

Publication 8, in particular, considered why such reform is successful so rarely, concluding that there are a number of institutional and political factors. In countries where the second

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<sup>15</sup> See publication 1 chapters 3 and 11.

chamber is accused of weakness or illegitimacy perhaps the most important factor is the reluctance of government to encourage reform that might make agreement of its policies more difficult. We have seen this tension played out in recent UK debates. Publication 8 concluded that the outlook for reform was brighter in Britain than in many other states and that – in particular – the present moment provided a good opportunity. Publication 1 may however prove to have been more realistic, concluding that further major reform in the UK was, on balance, probably unlikely.

### ***Conclusions: The Second Chamber Role in a Modern Parliamentary Democracy***

In publication 6 I proposed four main roles for second chambers in modern democracies. Two of these were those proposed by Patterson and Mughan (1999): representation (of a different kind to that offered by the first chamber) and redundancy (allowing for duplication, delay and second thought). The other two were the performance of distinct parliamentary duties not adequately performed by the first chamber, and, in parliamentary systems, bringing independence (in terms of providing a chamber more free of the executive).

The first of these two additional roles has not been dwelt upon here. It is intended to illustrate the fact that second chambers do not simply offer redundancy – ie. repetition of duties already performed – but may bring other roles to parliament which would otherwise be neglected. This is frequently the case with respect to investigative committees, and the treatment of controversial issues which members of the first chamber may be nervous of approaching. But there can be other areas of specialism, complementing the specialisms of first chambers. For example whilst first chamber members may be constrained by the burdens of constituency work second chamber members frequently are not. This allows them to develop other parliamentary roles.

The independence role is more profound. It stems in part from the particular relationship to the executive (discussed above) which has traditionally been given little prominence in analysis of bicameral systems. I have suggested that this is a crucial defining feature of second chambers, which can help create a different culture to that which exists in first chambers, with a less rigid approach to party discipline. Elements of second chamber composition can also help foster independence: for example long terms, rolling membership, higher age qualifications and even the explicit inclusion of members who do not take a party whip. Independence is thus a result of both the powers and composition of second chambers, and is certainly important enough to be considered a variable in its own right.

In terms of the effectiveness of second chambers, I have proposed three factors which should be present for a chamber to be strong:

- sufficient *formal powers* over legislation for the second chamber to make government and the first chamber think again;
- a *distinct composition* to the first chamber: typically in terms of party balance, unless there is some other powerful representative basis that can override party interests;
- sufficient *perceived legitimacy* for the chamber to realistically threaten to use the powers that it has.

This classification differs in two important ways to that of Lijphart (1984, 1999). First, in the explicit prominence that it gives to legitimacy and also the definition of legitimacy as a subjective rather than objective variable: closer to the ‘support’ variable proposed by Mezey (1979). Second, in the importance given to partisan distinctiveness as opposed to distinctiveness resulting from, for example, over-representation of less populous areas. I have suggested that whether elite, territorial, or based on some other representative



principle, party balance in the second chamber is today likely to be the best determinant of its behaviour.

A classification based on three variables will give a greater number of potential outcomes than one based on Lijphart's two. But, put crudely, it might be suggested that a second chamber was strong if it meets all three of the criteria, 'medium strength' if it meets two (with three types of medium strength, likely to differ qualitatively from each other), 'weak' if it meets only one (again with three types) and 'minimal' if it cannot meet any of the criteria at all. I would emphasise that even a second chamber that is 'weak' or 'minimal' may have something important to contribute, at least occasionally.

This classification gives rather different outcomes to those proposed by Lijphart for some of the case study countries. We would agree that the German Bundesrat and Australian Senate are strong, but for slightly different reasons. We would also agree that Italy is 'medium', due to its formal powers and legitimacy but its inbuilt lack of distinctiveness; and that Ireland is 'insignificant' or 'minimal' as it fails to meet any of the criteria. However, Lijphart proposes that the Spanish Senado is 'medium', when I would classify it as weak, due to its permanent government majority. He also classifies France and Canada as medium, when I would – like Tsebelis (1995, 2002) – classify them differently depending on their party control. When they share a majority with the lower house they will be weak, but when they have a different partisan control they will be medium (or even strong, if they pick a popular issue). The recent change in composition to the House of Lords has moved it from a similar fluctuating position to a permanent place in the 'medium' category due to its lack of a majority for any party. It now enjoys relatively strong formal powers, and distinctiveness of the most important form. As I suggested in publication 9, careful manoeuvring to boost perceptions of its legitimacy may strengthen it further still.

Finally, I have suggested that in three respects bicameralism offers a kind of halfway house between accepted models of government structure. In bringing a chamber more independent of the executive to a parliamentary system, it may offer some of the benefits associated with legislatures under presidentialism. In allowing a chamber without a government majority, without directly threatening the existence of that government, it can result in 'divided government', but of a softer variety than that where the government is under constant threat. And in bringing a proportional chamber to an otherwise majoritarian parliament, as in Australia (and latterly in the UK), it can offer some of the benefits of consensus politics balanced with many of the advantages of 'strong government'. These new roles for bicameralism in party-dominated parliaments have been insufficiently explored and merit further study.

## **Impact of the work**

The impact of the work may be considered in two spheres: in terms of the academic debate and in terms of the reform debate that was live in the UK throughout the period covered by the submitted publications.

The work's potential additions to academic theory have been outlined in some detail above. Further evidence of its impact can be demonstrated by its reception by leading scholars, particularly through published reviews of the book (publication 1). For example, Professor Philip Norton has referred to this as 'authoritative'.<sup>16</sup> Nicholas Baldwin in the *Journal of Legislative Studies* concluded that 'Russell has written an analytical, practical, balanced book on a subject in which her depth of knowledge and understanding is apparent, as is her ability

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<sup>16</sup> 'Chambers of Secrets', *House Magazine*, January 27 2003: 22.

to convey that knowledge and understanding in an authoritative but highly readable manner'.<sup>17</sup> Donald Shell in a review for *Public Law* concluded that the book 'does a necessary job well'<sup>18</sup>, whilst in *Parliamentary Affairs* Brian Thompson refers to it as a 'splendid comparative work on second chambers', measuring the Royal Commission's report against the 'benchmarks' it set down<sup>19</sup>. In the *Times Literary Supplement* Professor Vernon Bogdanor reviewed the book alongside Patterson and Mughan's (in my view excellent) *Senates*, suggesting that its thematic comparative approach made it 'of much greater value'.<sup>20</sup>

The comparative nature of the work means that it was also subject to comment by overseas scholars and reviews in overseas journals. The distinguished Italian Professor Gianfranco Pasquino described it as 'excellent'<sup>21</sup>. In the *Australian Parliamentary Review* Gareth Griffith suggested that 'the earlier chapters of her book have set a new standard of scholarship in this neglected area of study'<sup>22</sup> and in the *Australian Journal of Political Science* Alan J. Ward concluded that 'the book is a unique piece of research that deserves a far wider readership than just the policy community in the United Kingdom'<sup>23</sup>.

The rationale behind the original project was to influence the UK debate, and ensure that this was well informed about international practice. It is of course difficult to quantify the influence of the work in this respect. It was inevitable that discussion in the UK would call on information about overseas parliaments, but this work certainly made such discussion far easier by providing timely and relevant information in a form usable by policy-makers. It therefore helped create a situation whereby some elements of international practice have now become accepted as desirable when constructing a reformed second chamber for the UK.

There were two direct links between this project and real-world politics. First, I was appointed as the primary consultant to the Royal Commission when the work was in its relatively early stages, demonstrating just how timely the conception of this project (by others at the Constitution Unit) had been. Five papers were commissioned about second chambers overseas.<sup>24</sup> Second, in part as a result of the work, I was appointed as full-time Special Adviser to Robin Cook in June 2001. He, as Leader of the House of Commons, had responsibility for Lords reform within that chamber. There were also various less formal ways in which the results of this research have been fed into the policy world: through Constitution Unit briefings, articles and events (including a conference sponsored by the Royal Commission) and through joint work with other pressure groups, academics and politicians.

Some basic second chamber features common from overseas, and highlighted in my work, have successfully fed through into policy proposals in the UK. For example, the Royal Commission (2000), House of Commons Public Administration Committee (PASC 2002) and parliamentary Joint Committee (JCHLR 2002) have all recommended that members of the

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<sup>17</sup> Vol. 6 No. 3, Autumn 2000: 126.

<sup>18</sup> Summer 2000: 200.

<sup>19</sup> Vol. 54 No. 1, January 2001: 172, 173.

<sup>20</sup> 'Camera obscura', 4 February 2000: 13.

<sup>21</sup> 'The Italian Senate', *Journal of Legislative Studies*, vol. 8, no. 3, 2002, 67-78: 77.

<sup>22</sup> Vol. 16 No. 2, Spring 2001: 197.

<sup>23</sup> Vol. 36 No. 1, March 2001: 199.

<sup>24</sup> These works are not included within the current submission. They are listed in the bibliography to Royal Commission 2000. This can be found at [www.archive.official-documents.co.uk/document/cm45/4534/4534.htm](http://www.archive.official-documents.co.uk/document/cm45/4534/4534.htm).

upper house should serve for relatively long terms, and that the membership of the chamber should be renewed in parts. The Public Administration Committee, and MPs in debates, have emphasised the need for the second chamber to be smaller than the House of Commons. The Royal Commission suggested that consideration be given to creating a joint committee to resolve disputes between the chambers (as exists in France and Germany).<sup>25</sup> As debates have worn on it has increasingly been noted that second chambers in Western democracies are today largely based on election.

On more profound issues which this work has sought to emphasise there have also been significant points of agreement. All three of the bodies mentioned above have recognised the importance of legitimacy (though given the historic problems with the House of Lords this is hardly surprising). All three, and all the main political parties, have emphasised the need for the two chambers to be distinct and said that no party should have a majority in the second chamber. All three have proposed that the powers of the House of Lords (which I have described as 'moderate in international terms') should remain largely unchanged. In the most recent parliamentary debates on the issue Robin Cook repeatedly emphasised that the powers of the House of Commons would always be pre-eminent thanks to its exclusive power to sack the executive<sup>26</sup>, and stated that 'It is possible to keep a democratic second Chamber subordinate by law and convention; I do not believe that it is sustainable to keep a second Chamber subordinate by denying it legitimacy. That not only weakens the second Chamber, but undermines Parliament'.<sup>27</sup>

As with the academic literature there have also been a number of direct and positive references to the work in policy debates, including in the House of Commons<sup>28</sup> and the House of Lords<sup>29</sup>. The Public Administration Committee report (2002: 6-7) quoted in full the three factors proposed to ensure second chamber strength from page 254 of the book, citing these as coming from 'an authoritative commentator'. In addition I have fed directly into the debate through the media, for example being interviewed for Newsnight, Channel 4 News and Radio Five Live when the Royal Commission's report was published, and publishing articles in *The Guardian* and *The Scotsman*.<sup>30</sup> The book was also favourably mentioned by Peter Riddell in *The Times*<sup>31</sup>, Hugo Young in *The Guardian*<sup>32</sup> and Joshua Rozenberg in *The Lawyer*<sup>33</sup>. The *Glasgow Herald* featured it as 'book of the day' suggesting that 'The report of Wakeham's Royal Commission was boring and incomprehensible, missed many issues, and seems destined for the shelf. Ms Russell's thorough book goes straight to the heart of the hardest questions and gives a sober, efficient account of what is to be said on each side'.<sup>34</sup> The BBC website still includes a feature-length article on second chambers overseas dating back to 1999 and quoting extensively from this work.

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<sup>25</sup> This was the subject of one of the commissioned briefings, later published as Russell 1999. This issue is covered in chapter 6 of publication 1.

<sup>26</sup> For example House of Commons Hansard, 21 Jan 2003 : Column200; 4 Feb 2003: Column 160.

<sup>27</sup> House of Commons Hansard, 21 Jan 2003 : Column205.

<sup>28</sup> Norman Lamb MP, 10 Jan 2002 : Column 770.

<sup>29</sup> Lord Goodhart, 10 May 2000: Column 1643; The Earl of Listowel, 9 Jan 2002: Column 672; The Lord Bishop of Portsmouth, 10 Jan 2002: Column 714; Lord Hoyle, 21 Jan 2003: Column 670.

<sup>30</sup> 'Life After Heredity', *The Guardian*, 27 November 1998; 'A New Upper House to Represent the Nations and Regions?', *Scotsman*, 19 January 2000; 'Chamber Musing', *The Guardian*, 19 January 2000.

<sup>31</sup> 17 January 2000.

<sup>32</sup> 20 January 2000.

<sup>33</sup> 17 January 2000.

<sup>34</sup> 24 February 2000.

## Methodology

The initial objective of the work was to make practical recommendations about the future direction of second chamber reform in the UK. Given the relative paucity of detailed comparative information on second chambers – and the definite lack of such material framed from a UK perspective – a new comparative study seemed justified. In gathering fresh comparative information the potential existed for extending the theory, as well as drawing specific conclusions for application in the UK.

In all research difficult choices must be taken about method and design. In comparative research the biggest dilemma is how many and which countries to study. There is a trade-off between breadth and depth: as Sartori has put it, whether one wants to know 'less about more' or 'better about less' (1994a: 24). Given the desire to draw detailed conclusions about many aspects of second chamber work, a 'small-n' or 'comparable cases' approach was taken, with seven countries included in the initial study (Dogan and Pelassy 1990; King, Keohane and Verba 1994; Landman 2000; Lijphart 1975). This approach precludes making universal generalisations, but sacrifices this in favour of 'depth and thickness of understanding' (Sartori 1994a: 24).

The approach to the choice of countries combined elements of both the 'most similar systems' and 'most different systems' design (Dogan and Pelassy 1990; Landman 2000). As the specific objective was to draw lessons for the UK, rather than universal generalisations, all the comparators in the initial study were Western democracies with bicameral parliamentary systems. However, given the changing nature of the UK constitution a conscious decision was made to choose countries which reflected some of the different directions in which the UK might develop. Thus three of the comparators were federal (Canada, Australia and Germany) and four were unitary, with in the latter group Italy and Spain moving towards a more devolved arrangement. Four used a proportional electoral system for their lower house and three (Canada, Australia and France) a majoritarian one. Two were Commonwealth countries strongly influenced by the Westminster model and the remaining five were European. This mixed approach seems justified: as Dogan and Pelassy point out, no two countries are ever totally identical or totally different and whether countries studied are different or similar 'comparison will always be made at the point where the analogy cuts across the contrast' (1990: 144).

Another consideration in the choice of case studies was the desire to look at the operation of differently designed second chambers. In this respect the initial set of seven countries were also chosen to reflect diversity. One (Canada) had an appointed second chamber, three were wholly or largely directly elected (Australia, Italy and Spain), three were wholly or largely indirectly elected (Germany, Ireland, France). Three (Italy, Ireland, Spain) has a mixed composition. One (Ireland) bases representation primarily on a 'vocational' model. Their powers varied from complete veto (Australia, Canada) to a short delay (Ireland, Spain) over legislation.

The research used two primary methods: literature search and elite interviews. In all but one case (Canada) a study visit was made. In preparation for each visit a thorough literature review was carried out, and this was supplemented later with other materials gathered during the trip. Literature sources included parliamentary websites, the Inter-Parliamentary Union database and publications, official parliamentary publications, books, book chapters and journal articles. At a minimal level written information was gathered about 20 bicameral systems, to construct the tables in chapter 2 of publication 1. But most desk research related to the seven case study countries and included background research on, for example, the

constitution, parliamentary and party system, as well as on the second chamber's history and current operation.

The literature search created a starting point for the study trips, not only in terms of subject information but also by providing initial contacts, some of whom went on to become interview subjects or recommend other suitable subjects. In each country initial contact was made with academics who had written on parliament or the second chamber, and simultaneously with the parliamentary authorities, and ideas and practical help were sought with setting up an interview programme. Interviews were organised generally with a mix of academic experts, parliamentary staff and members. Members primarily comprised Senators, but in some cases lower house members also. As far as possible efforts were made to balance the interviewees in terms of background and party representation and, for example, between defenders and critics of the institution. A total of 64 subjects were interviewed: a full list is given in the Acknowledgements section of publication 1.

Before the study visits began a template of target information was drawn up, with largely identical information sought on each country, as the comparable cases approach implies (Dogan and Pelassy 1990; King, Keohane and Verba 1994). This template later went on to provide the initial structure for Part II of publication 1. A list of standard questions was devised to which answers would be sought in each country, organised within broad headings, with particular country-specific questions arising from the literature review added to this. The interviews themselves were semi-structured, based around the template and pre-prepared questions, but allowing the interviewee to introduce their own ideas and information (Fontana and Frey 2003; Svale 1996; Wengraf 2001). Due to the shortness of time for the study visits and individual interviews this was only made possible by careful study of all available written information beforehand. Wherever elements of the template could be completed from written sources in advance, this was done. At the start of each trip the remaining questions were distributed between scripts for separate interviews, according to the expertise and perspective of the particular interviewees. Hence the semi-completed template provided the starting point, ensuring that I entered the interviews as well prepared as possible, as is essential in successful elite interviewing (Rossman and Ellis 2003; Zucherman 1972). The interviews were used to elicit a mixture of facts, examples and opinions. As far as possible views expressed by one interview subject were tested on later subjects, and corroboration was sought for information provided by interviewees where there was any degree of doubt. Information from interviews was written up as soon as possible by being added to the evolving template.

## **Limitations and future research**

Although this was a successful programme of research, it inevitably had its limitations. There remains much work that could be done in this area to continue to close the gaps left open after this study.

By conscious design, all of the countries studied were Western parliamentary democracies, and the sample size was small. Any conclusions drawn from this sample therefore do not necessarily have universal application. The research has generated a number of hypotheses which appear to have firm foundation. It therefore provides a good starting point for further study, both amongst bicameral parliamentary democracies and more widely in the bicameral world.

The research was at times limited by the extent of written material available, and the degree of access given to the various parliaments. Clearly some parliaments are better documented

than others, and second chambers will tend to be less well documented than first chambers. The Irish parliament, in particular, collects little data and is relatively under studied – however, the project benefited from the prior work of John Coakley and Michael Laver for the recent constitutional review. Language barriers were perhaps greatest in France, where the culture of parliament is also not particularly open – however, there is a relatively good literature and the project benefited from the co-operation of Jean Mastias. In other countries difficulties were more limited, although in all cases the time was short to locate and absorb the literature and make contacts.

The initial project was also limited by time constraints. The research began in summer 1998 and there were only nine months in which to complete the study trips. To deal with this a decision was taken early on not to visit Canada, as the combination of a large literature, no language differences and a time difference allowing daytime telephone calls made this the easiest country to research from the UK (I was also fortunate to meet with a delegation of Canadian Senators in London). However, the time for the remaining six trips was still short – in an ideal world one would have retained the option to extend or even repeat one or two of the trips. But in the event the outcome was good. The book was likewise written to a tight timescale (with the manuscript completed in four months), as we were keen for it to be published before the Royal Commission's report. Given more time the book might have been both shorter and more analytical. However, as the above reviews acknowledge, the product was good, and the later publications allowed space for my thoughts to develop.

Given more resources the research would have benefited from inclusion of one or two other indirectly elected chambers representing regional interests. Only the unique German Bundesrat was included in the initial seven cases, alongside the minority of indirectly elected members in the Spanish Senado. Indirectly elected chambers representing territorial interests are relatively common and so were under-represented. Though interest in this model in the UK has been slow to take off, the progress on devolution in England means that it is likely to grow. Future work examining the work of second chambers in, for example, Austria, India, the Netherlands, Russia or South Africa would be valuable, particularly as there is virtually no comparative literature on this subject.

It would also be very interesting to extend this study in other directions. It was designed as a study of parliamentary systems in Western democracies. It would be worthwhile to investigate to what extent the results can be generalised to newer or less developed democracies (for example in Eastern Europe and the Caribbean) and to presidential systems (most notably in Central and South America). I would be extremely interested to try to devise a more generalised study of bicameralism in parliamentary systems. And given my conclusion that an advantage of bicameralism in parliamentary systems is how it introduces an element of design akin to presidential legislatures, I would also like in future to consider to what extent bicameralism's merits translate into presidential systems.

Finally, the essential element of *perceived legitimacy*, which I have given prominence in my conclusions, demands further consideration as this has been little studied. The topic is of particular relevance to the changing status of the still-unelected House of Lords. It will be of great interest to observe over the coming years whether the House of Lords manages to achieve growing levels of public support for its actions, and thus to increase its *de facto* powers. A comparative study of public support for second chambers, and a study of support for the House of Lords over time, would be useful to increasing our understanding of modern bicameralism. As Money and Tsebelis have suggested, 'efforts to analyze, explain and make more concrete the concept of legitimacy will enable future research to produce a more comprehensive understanding of bicameral legislatures' (1992: 40).

## Personal Development

This work has significantly enhanced my understanding, not only of bicameralism and parliaments in general, but also of the discipline of political science and the nature of academic research.

My qualifications for being appointed to the initial project that started this work were twofold. First, I had a Masters degree in Political Economy and a background in research. Second, I had six years full-time experience of working in British politics, four of them spent working in the House of Commons and two of them for a political party. However, my first degree was in Mathematics and I had never formally studied either law or political science. I also had little knowledge of political systems overseas.

I therefore began with a good grasp of political organisations and an understanding of research methods, but no familiarity with the various literatures into which this study must be located. It was thus a rapid learning process. At the outset I was motivated by the desire to publish practical recommendations for the UK in a readable and accessible format, and relatively sceptical about the utility of political theory. The research for the book (publication 1) benefited from the general literature on bicameralism, and specific literatures with respect to the case study countries. However, it consciously did not take a principally theoretical approach, being largely based on empirical research. At a personal level the completion of this research was an extremely stimulating and fulfilling experience. It motivated me sufficiently in political science research to want to go on to generalise the lessons learnt from the case studies by returning to the original literature and seek to extend its conclusions. This was done gradually through the later work. This has enabled me to develop my thinking in a more abstract sense and extend my knowledge of the broader political science literature. It has also developed my communication skills in new and more academic directions.

The process has thus been an education in political science (and to a lesser degree, constitutional law) which has been both fascinating and immensely rewarding. Having begun it five years ago as a thoughtful political hack and writer of practical briefings, I end it as someone established in her field, working on her second book, and valuing the various facets of both the discipline and the profession that she has entered.

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## **Appendix: Summary of the Works**

- 1. *Reforming the House of Lords: Lessons from Overseas*, Oxford University Press, January 2000, ISBN 0198298315.**

This is the main publication included in the package: a book of approximately 120,000 words. It was the result of an intensive year long programme of research involving both desk work and study trips, funded by the Leverhulme Trust. The book presents a detailed thematic study of the history, composition, powers and functions of second chambers in seven comparator countries (Australia, Canada, France, Germany, Ireland, Italy and Spain) and seeks to draw lessons for the future reform of the House of Lords. The book is organised in three parts. The first sets the context by giving a brief overview of the House of Lords and its reform and considering the history and current incidence of bicameralism worldwide. The second, and longest, part provides information on the case study countries, covering factors such as their method of composition, their membership in practice, relationship to government, functions in terms of legislative and committee work, constitutional and territorial roles, their administration, how they are viewed by the public and what attempts (if any) there have been at reform. The third part, organised in three chapters, seeks to draw lessons from these comparators for the reform of the House of Lords. It starts with general principles, moves on to potential functions of a reformed chamber and ends with lessons for its composition. The book closes with a short epilogue considering the prospects for future reform.

- 2. 'Second Chambers Overseas', *The Political Quarterly*, vol. 70 no. 4, pp. 411-417, 1999.**

This paper was published relatively early in the research and offers a brief and simple overview of the nature of second chambers worldwide, including their method of composition and their powers. It is an abbreviated version of a paper prepared for members of the Royal Commission on Reform of the House of Lords (established early in 1999) who employed the author as a consultant to advise on comparative lessons for reform.

- 3. 'A "More Democratic and Representative" Upper House?: Some International Comparisons', *Representation*, vol. 37, no. 2, pp. 131-8, autumn 2000.**

This paper looks at the commitment in the government's 1997 manifesto to make the second chamber 'more democratic and representative' and considers how this might be done, in the light of international experience. The paper proposes that there are three key factors to consider to make a chamber effective: composition, powers/functions and legitimacy, and reviews these in turn. It notes that there are ways of designing a largely elected chamber which would complement the representative function of the House of Commons, whilst giving the chamber greater legitimacy. Published shortly after the report of the Royal Commission, the paper ends with a brief section on their findings and concludes that the Commission allowed itself to be overly constrained by its requirement to 'maintain the position of the House of Commons as the pre-eminent chamber of Parliament'.

- 4. 'The Royal Commission on Reform of the House of Lords: A House for the Future?', *Modern Law Review*, vol. 64, no. 1, pp.82-99, January 2001 (with Richard Cornes).**

The report of the Royal Commission was published very shortly after the book and its contents were not known in advance. This paper, which is a critical review of the report in the light of experience in nine other countries, was therefore the first major opportunity to

apply some of the lessons drawn out in earlier work to official proposals made for reform in the UK. The paper goes through the main elements of the Royal Commission's report, and concludes that it was generally timid and did not take sufficient account of the UK's new constitutional settlement. It extends the argument in paper 3 with respect to the legitimacy and *de facto* powers of the reformed chamber, as well as looking at constitutional and territorial roles and other matters. (The paper includes a section on the judicial role of the House of Lords drafted by Richard Cornes, but was otherwise drafted by myself.)

**5. 'Upper House Reform in the UK and Australia', *Australian Journal of Political Science*, vol. 36 no. 1, March 2001, pp. 27-44.**

This paper, aimed primarily at an Australian audience, made a comparison of reform debates in just two countries, Australia and the UK. It gives an account of developments in the UK to date, up to and including the Royal Commission's report. It then goes on to contrast the treatment of different key issues in the two reform debates – including powers and the question of 'mandate', legitimacy of the upper house, party balance and territorial roles. It outlines how in many ways both conceptions of how the upper house should operate, and its operation in practice, are coming together in the two countries – with both having moved to a situation where no party is in overall control of the chamber and consequently its *de facto* powers have been able to grow.

**6. 'What are Second Chambers for?', *Parliamentary Affairs*, vol. 54, no. 3, July 2001, pp. 442-458.**

Although published in a non-technical journal, this is one of the more abstract and general of the publications, seeking to consider the role of a second chamber in a modern democracy. Having had some time for reflection it allowed me to develop some of the ideas in the book further, drawing on some of the same case study countries but with a more general flavour. The paper gives a brief overview of previous analyses of the functions of second chambers, and goes on to identify fourfold contributions which second chambers may make: representing different interests to the first chamber, providing a political forum more independent of the executive, performing different parliamentary duties and acting as a veto player. The paper ends with a discussion about second chamber effectiveness.

**7. 'The Territorial Role of Second Chambers', *Journal of Legislative Studies*, vol. 7, no. 1, Spring 2001, pp. 105-118.**

This paper focuses on a particular function of second chambers, and investigates to what extent it is performed in practice in modern chambers. The paper proposes that the territorial roles that a second chamber can play may be broken into three categories: representing the territories at the national level, providing a forum for debate and agreement between them, and providing an institutional link between the national parliament and territorial assemblies or governments. Drawing on previous case studies and additional country information (notably on South Africa) the paper considers how much different chambers fulfil the territorial role. Expanding the arguments in chapter 10 of publication 1 it suggests that it is difficult for territoriality to be effectively designed in, and that it is important for second chamber representation to anticipate and respond to changes in territorial politics.

**8. 'Why are Second Chambers so Difficult to Reform?', *Journal of Legislative Studies*, vol. 8, no. 3, Autumn 2002, pp. 79-89 (with Mark Sandford).**

This is a short paper which offered the conclusion to a collection of articles on individual second chambers published in the *Journal of Legislative Studies*, and resulting from an

international seminar (organised by Mark Sandford) with speakers from Italy, Ireland, Canada and Australia. The purpose of the seminar was to look at an issue first explored in chapter 11 of the book – the extent to which second chambers are subject to calls for reform, which are largely unrealised. It sought to explore whether Britain can learn lessons about the reform *process* as well as its outcome, from overseas experience. The paper therefore looks at the history of reform attempts in these four countries and what common factors can explain how significant dissatisfaction with second chambers can be coupled with relative inaction in terms of reform. The paper concludes that although reform in the UK context presents a significant challenge, many of the obstacles present in these other countries do not apply.

**9. 'Is the House of Lords Already Reformed?', *Political Quarterly*, vol. 74, no. 2, July 2003, pp. 311-318.**

This last paper was written shortly after the House of Commons had rejected all the proposed models for composition of the Lords put forward by the parliamentary joint committee set up for the purpose. It suggests that the argument – which concerned the proportion of members of the second chamber that should be elected – largely boiled down to a disagreement between supporters of consensus and majoritarian democracy. Those supporters of the majoritarian model feared that a large elected element in the upper house would give it sufficient legitimacy to threaten the primacy of the House of Commons. However, in an extension of the argument made in paper 5, I suggest that perceptions of the legitimacy of the semi-reformed chamber (now in place for more than three years) may be increasing even without the addition of elected members. The lack of enthusiasm shown by the Government for introducing elections to the chamber will, I suggest, ironically tend to boost this further.