



## Chapter 6 – Giving a voice to the nations and regions

**6.1** Deciding what relationship the reformed second chamber should have with the devolved institutions has been one of the most interesting and important aspects of our work.

**6.2** One widely canvassed possibility is that the devolved institutions should be directly represented in the reformed second chamber. This would provide a degree of indirect electoral authority for the second chamber. It might also enable the second chamber to become a unifying force within the United Kingdom at a time when devolution and pressures for greater decentralisation within England could create centrifugal tensions.

**6.3** In its White Paper *Modernising Parliament: Reforming the House of Lords*, the Government posed the question “whether the second chamber should have some overt role as the representative of the regions, or of the regional bodies”. It commented that, “Using the second chamber in this way would give it a role distinct from that of the House of Commons, where the local links will continue to be the much more immediate one of the MP and his or her constituents. The second chamber could provide a forum where diversity could find expression and dialogue, and where such an expression could work towards strengthening the Union”.<sup>1</sup> Many respondents to our consultation paper agreed that regional representation as a feature of the reformed second chamber could act as a kind of ‘constitutional glue’. The Rt Hon Lord Richard QC and Damien Welfare<sup>2</sup> echo the views set out in a number of submissions that “representation in the second chamber offers a route to a shared identity which is political but which does not directly affect the control of the government of the country... a reformed second chamber could be the missing piece of the constitutional jigsaw, serving as the pinnacle of the structure and a focus of unity”.

**6.4** Our terms of reference require us to take particular account of the present nature of the constitutional settlement, “including the newly devolved institutions”. We felt it was right to interpret the point broadly and to take account of the imminent establishment of the Greater London Authority (and the new office of Mayor for London) and the emerging political identities of the English regions. We were also conscious that devolution is a very recent and novel development. We cannot be sure how it will work out in practice, what problems and tensions may arise and what the political consequences will be. It has been suggested that “devolution is a process, not an event”.<sup>3</sup> It would certainly be rash to base decisions on an assumption that the nature or extent of devolved powers will not alter over time. Powers have so far only been devolved to Scotland, Wales and Northern Ireland and certain powers will be transferred to the Mayor for London and the Greater London Authority when they take up office in July 2000. There is, however, no clear view on how further decentralisation of power within England might be achieved. The emerging Regional Chambers could play a co-ordinating and advisory role and influence the Regional Development Agencies, but there is no consistent pressure for them to develop into elected Regional Assemblies. Such developments will

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<sup>1</sup> Cm 4183, Chapter 7, paragraph 9.

<sup>2</sup> I. Richard and D. Welfare, *Unfinished Business – Reforming the House of Lords*. Vintage UK. 1999.

<sup>3</sup> The Rt Hon Ron Davies MP, MWA former Secretary of State for Wales.

probably occur, if at all, on an asymmetric basis and over a considerable period of time. Meanwhile, there are other pressures in favour of elected mayors for the major conurbations on the model of the Mayor for London. It is not clear how far any such developments would be compatible with any transfer of power to *regional* institutions.

**6.5** The present situation is fluid and the future unclear. The reformed second chamber should therefore be so constructed that it could play a valuable role in relation to the nations and regions of the United Kingdom whatever pattern of devolution and decentralisation may emerge in future. An overseas lesson may be relevant here. The pace of devolution to the autonomous communities in Spain seems not to have been anticipated by those who designed the post-Franco constitution, with the result that the Spanish Senado is still struggling to find a means of expressing its ‘regional’ role.

**Recommendation 25:** The reformed second chamber should be so constructed that it could play a valuable role in relation to the nations and regions of the United Kingdom whatever pattern of devolution and decentralisation may emerge in future.

## Basis of representation

**6.6** Many second chambers around the world (see Chapter 3), in unitary as well as in federal states, are constituted on a territorial principle, providing a voice for the distinct interests of different states or regions. This principle may provide a democratic basis for the second chamber which is less directly linked to population than that of the lower chamber, thus reducing any threat to the latter’s political pre-eminence. In federations in particular, the second chamber is usually designed to represent the states, frequently on an equal or at least graduated basis, while the lower chamber is constituted on a population basis.

**6.7** The United Kingdom, however, is not a federal state. The present arrangements have been described as “creating a form of asymmetric quasi-federalism”.<sup>4</sup> The reality is that the contrasts between the different components of the United Kingdom are at present very significant. Scotland and Northern Ireland have extensive legislative devolution. The National Assembly for Wales is able to exercise discretion in respect of secondary legislation within the framework of primary legislation passed at Westminster. Legislation and policy for England are settled at Westminster and in Whitehall although the Government Offices for the Regions have begun to ensure that implementation reflects regional circumstances. The Mayor for London, the Greater London Authority and the various English regional structures may



<sup>4</sup> V. Bogdanor, *Devolution in the United Kingdom*. Oxford University Press. 1999.

exert an increasing influence. These differences may militate against certain forms of regional representation in the second chamber. The reformed second chamber, however, will be part of the national legislature. It is therefore self-evident that it should be, and be seen to be, a chamber which serves the interests of the whole of the United Kingdom.

**Recommendation 26:** The reformed second chamber should be, and be seen to be, a chamber which serves the interests of the whole of the United Kingdom.

**6.8** The second chamber must therefore contain people from all parts of the United Kingdom and at least a proportion of the members should provide a direct voice for the various nations and regions of the United Kingdom. Regional members<sup>5</sup> would:



The Scottish Parliament, Edinburgh

- underline the fact that, in broad terms, the second chamber should be representative of the whole of the United Kingdom;
- contribute to cohesion;
- help resolve concerns about the protection of Scottish interests in the second chamber arising from the removal of the Scottish hereditary peers;<sup>6</sup>
- provide a resource which might assist the second chamber to play a role in relation to the devolution settlement;
- build on the emerging political identity of the nations and regions of the United Kingdom; and
- leave options open for the future if the United Kingdom were to move to a more explicitly federal structure.

**Recommendation 27:** At least a proportion of the members of the second chamber should provide a direct voice for the various nations and regions of the United Kingdom.

<sup>5</sup> Throughout this report, 'regional members' should be taken to refer to members from the nations and regions.

<sup>6</sup> Raised in particular by Lord Gray during the debates on the House of Lords Bill 1999.

## Role and function

**6.9** Before looking at *how* such regional members might best be secured, it is necessary to reflect on what *role* or *function* the second chamber might play in respect of the nations and regions of the United Kingdom.

### Federal parliament

**6.10** Several submissions argued that the House of Commons should become an ‘English Parliament’ and the reformed second chamber a kind of ‘federal legislature’, supporting a ‘federal’ government. Such a structure would represent a version of ‘devolution all round’ and potentially resolve the West Lothian question.<sup>7</sup> However, it would immediately run up against a whole range of fundamental difficulties, quite apart from being a radical departure from the present nature of the constitutional settlement and arguably outside our terms of reference. Among the fundamental difficulties we envisage are:

- it would be even more difficult to disentangle ‘reserved’ from ‘transferred’ matters in respect of England than it was in respect of Scotland and Wales;
- in practice, the House of Commons would be more appropriate than the second chamber to become the ‘federal’ chamber. The whole of the United Kingdom is already represented there directly, and the Government and MPs might prefer to retain the ‘reserved’ powers in their present location;
- wherever the ‘federal’ chamber was located, it would still be necessary to have a second chamber; and
- the ‘English Parliament’ and English members of the federal chamber would be so dominant as to make the system effectively unworkable.

All in all, such proposals raise more problems than they solve. There may well be a separate case for Parliament as a whole to reflect on how business which can be identified as exclusively ‘English’ should be handled in the future, but that is not a matter for this Commission.

**Recommendation 28:** The second chamber should not become a ‘federal legislature’, supporting a ‘federal’ government.

### Inter-governmental forum

**6.11** An alternative potential function for the second chamber would be to provide a focus for *inter-governmental* contact and co-operation. This is the model suggested by the Bundesrat in Germany. The Bundesrat brings together delegations from the administrations in the German Länder. It ensures that their interests are brought to bear on the development of federal policy and legislation, particularly those aspects which the Länder will be responsible for implementing.

<sup>7</sup> The West Lothian question was posed in the 1970s by Tam Dalyell, MP for West Lothian. He asked why, after devolution to Scotland, it should be possible for Scottish MPs to vote on domestic matters, such as health and education, in England, when English MPs would no longer be able to vote on these matters in Scotland.

**6.12** However, the whole structure of the German federal system is completely different from the political system in the United Kingdom. In the United Kingdom, as in Australia and Canada, executive liaison is more appropriately and effectively carried on outside Parliamentary institutions. Command Paper 4444<sup>8</sup> contains a Memorandum of Understanding and a series of concordats setting out the structure of Ministerial and official committees which will facilitate contact and co-operation between Whitehall Ministers, Scottish Ministers and the Cabinet of the National Assembly for Wales and describing the spirit in which they intend to work together. The Northern Ireland Executive Committee will be invited to enter into a similar set of understandings. Such contact and co-operation could not be facilitated further by giving Ministers from Scotland, Wales or Northern Ireland seats in the second chamber, especially as the territorial Secretaries of State, if they remain, would probably still be based in the House of Commons.

**Recommendation 29:** The reformed second chamber should not become a forum for inter-governmental liaison. Liaison between the Government and the executive authorities in Scotland, Wales and Northern Ireland is most appropriately and effectively carried on outside Parliamentary institutions.

### Seats for the devolved institutions

**6.13** There are other significant objections to giving seats in the second chamber to members of the devolved administrations, or to members of the Scottish Parliament and other devolved assemblies. These apply with even greater force to the idea that they might nominate representatives from outside their own ranks.

**6.14 Dual mandates.** People cannot be required to do two jobs at once. It was made abundantly clear to us while in Edinburgh and Cardiff that membership of the Scottish Parliament or National Assembly for Wales – still more membership of the Scottish and Welsh administrations – was a full-time job. It would leave no time for regular participation in the work of the second chamber (quite apart from the fact that having recently escaped from Westminster's 'apron strings' they have no desire to risk appearing to return). The same is no doubt true in Northern Ireland. We would not rule out some members of devolved legislatures having a place in the second chamber on a personal basis, as now; but it would be wrong to impose it as a requirement.

**6.15 The accountability gap.** It would be inappropriate to invite members of the Scottish Parliament (or the other devolved assemblies) to sit in a second chamber whose responsibilities cover everything *except* matters devolved to the Scottish Parliament (and the other devolved assemblies). It is not easy to see how, having been elected to do a job in the Scottish Parliament for example, they could reasonably be held accountable for their contribution in the second chamber. The line of accountability would be even more uncertain in the case of any representatives nominated by members of the devolved institutions.<sup>9</sup>

**6.16 An extreme form of the 'West Lothian question'.** English voters and MPs would be likely to react badly to a situation in which English MPs (and members of the second chamber) were unable to influence Scottish devolved matters while Scottish MPs could vote on equivalent English matters in the House of Commons *and* selected MSPs could vote on them in the second chamber. Such a position would be untenable.

<sup>8</sup> Published on 4 October 1999.

<sup>9</sup> See Richard and Welfare, *Unfinished Business*, pages 142–154.



**6.17 Delegation rather than representation.** Elected office holders are accountable to their electorate. MPs and local councillors traditionally operate on the basis that they are elected to represent their constituents' interests according to their own judgement. Where the electorate consists of a small group of politicians, there is a significant risk that the members of the second chamber selected in this way would be regarded as the delegates of the bodies that elected them, voting according to instructions rather than conscience. This would cut across the nature of Parliamentary representation as understood in this country.

**6.18 The English regional issue.** At least for the moment, inter-parliamentary representation could come only from Scotland, Wales and Northern Ireland. The English regions may or may not acquire elected Regional Assemblies in due course. It is not clear what status and powers these might have. Some alternative non-‘inter-parliamentary’ means of representing the English regions would need to be found.

**6.19** While it would clearly be desirable to promote the development of links between the various legislatures across the United Kingdom, dual membership of the various devolved assemblies and the second chamber is not the right way to achieve it. It is for the members of the various Parliaments and Assemblies to decide what links they should establish, perhaps building on the experience of the British-Irish Inter-Parliamentary Body.

**Recommendation 30:** While it would clearly be desirable to promote the development of links between the various legislatures across the United Kingdom, none of the members of the various devolved assemblies should be automatically entitled to sit in, or nominate others to join, the second chamber.

## Speaking for the nations and regions

**6.20** The role of the reformed second chamber in relation to the nations and regions of the United Kingdom should not be to provide a vehicle by which the devolved institutions themselves could be represented in Parliament. Rather, its primary role in this context should be to provide a voice in Parliament for all the nations and regions of the United Kingdom. All parts of the United Kingdom are already represented in the House of Commons, but the unit of representation there is the Parliamentary constituency. Although there are regional groupings of MPs, there is no member of either House of Parliament who can claim a mandate to speak in that House for the whole of any nation or region. In the circumstances of devolution and bearing in mind the possibility that the English regions may develop stronger institutions and political identities, it would be desirable to create a new category of people within Parliament who could speak for each of those units as a whole. The question of how such people might be selected is discussed in Chapters 11 and 12.

**Recommendation 31:** The role of the reformed second chamber in relation to the nations and regions of the United Kingdom should not be to provide a vehicle by which the devolved institutions themselves could be represented in Parliament. Its primary role in this context should be to provide a voice in Parliament for all the nations and regions of the United Kingdom.

**6.21** While such members' primary role should be to serve as a voice for the nations and regions of the United Kingdom in the national Parliament, they might bring other benefits. They should, for example, be well placed to make contacts and encourage dialogue across different levels of government. They would be speaking for units which have the same boundaries as European Parliament constituencies, the existing devolved institutions and the new structures being established in the English regions. They would share a regional perspective with MEPs, the members of the devolved institutions, those involved in the Regional Chambers and Regional Development Agencies and with the existing groupings of local authorities. That mutual interest might be exploited to encourage and facilitate greater contact across the different levels of government and a more effective regional voice, for example in Europe. It should also enable the people concerned to bring a valuable regional perspective to the deliberations of the second chamber, one which took full account of the inter-connections between those deliberations and the work of European, regional and local government institutions.



National Assembly for Wales, Cardiff

They would also be well placed to contribute to the consideration of any legislation which related specifically to their own regions. Currently, this last consideration is most likely to be relevant to Wales. There could well be circumstances in which the National Assembly for Wales would like to promote Westminster legislation on matters outside its competence. It might be helpful to have people in the second chamber who could speak in support of such a Bill.

## A 'Devolution' Committee

**6.22** This kind of regional perspective would enable the reformed second chamber to play a broader role in Parliament's consideration of the various issues raised by devolution. We do not, however, envisage the reformed second chamber playing a 'monitoring' role or acting as a 'second chamber for the devolved institutions'. Fears regarding such proposals were expressed to us in Edinburgh and Cardiff. We do not see any case for such a role.

**6.23** Nevertheless, there are a number of important questions raised by devolution which have yet to be resolved. Others may well emerge. The wider implications of any trend to greater decentralisation within England could also be very significant. Some of these issues might be classified as 'constitutional' matters, of the sort we have recommended should be kept under review by a Constitutional Committee. (It is most probable, for example, that any list of designated legislation that might be incorporated in the terms of reference of any Constitutional Committee would include the three Devolution Acts.)

There may also be an important interface between the operation of the devolved arrangements and of the Human Rights Act 1998, particularly as measures passed by the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales could be struck down directly by the courts. Other issues that Parliament as a whole may need to grapple with include:

- the implications and future handling of inter-regional transfers,<sup>10</sup> which are becoming more transparent;
- the overall operation of the Memorandum of Understanding and Concordats published on 4 October 1999 and of the other bilateral concordats which are being drawn up; and
- lessons that might be drawn from the actual operation of the devolution arrangements and how they might be adjusted to meet legitimate concerns.

**6.24** Having access to members with a regional perspective, the reformed second chamber would be well placed to play an important role in reflecting and reporting on these issues. It might be in a better position than the House of Commons to consider the implications of any points of friction which may arise. Since the Government might be one of the parties to a dispute with the devolved institutions, the House of Commons would not necessarily be seen as impartial.

**6.25** We recommend that the reformed second chamber should consider establishing a Committee to provide a focus for this work. Such a Committee could draw on the experiences and perspectives of those members of the second chamber who were providing a voice for the nations and regions but should not be composed exclusively of such members. Given the overlaps with the broader role we envisage for a Constitutional Committee and with the operation of the Human Rights Act, such a Committee might be constituted most conveniently as a further Sub-committee of any Constitutional Committee.

**Recommendation 32:** The reformed second chamber should consider establishing a Committee to provide a focus for its consideration of the issues raised by devolution, possibly as a further Sub-committee of the proposed Constitutional Committee.

**6.26** The work of such a Committee and the overall role of the second chamber in this area would become much more significant in future if there were a greater decentralisation of powers to the English regions. In those circumstances, the value of providing a regional perspective in the second chamber would become even more apparent. Our proposal is designed to provide the necessary flexibility to facilitate such developments but without pre-empting either their pace or their direction.

<sup>10</sup> It is becoming clearer, not only in relation to the devolved institutions, that some regions are net contributors to national finances while others are net beneficiaries.



## A peripatetic house

**6.27** A number of submissions argued that in the context of devolution and the emergence of new structures in the English regions, the second chamber should not only become a ‘Chamber of the Regions’ but should also meet outside London from time to time. We agree that the reformed second chamber should have a regional role but we do not believe that it should be an exclusively ‘regional’ chamber. That aspect of its role might well develop over time. Meanwhile, it would be difficult, in terms of logistics and cost, for the second chamber as a whole to meet outside London, even occasionally. However, it could be appropriate for Committees of the chamber, perhaps particularly any ‘Devolution’ Committee, to meet in the various regional centres from time to time. These issues will be matters for the second chamber itself to determine.

**Recommendation 33:** The reformed second chamber as a whole should not meet outside London but it should consider whether Committees, perhaps particularly any ‘Devolution’ Committee, should meet in the various regional centres from time to time.

## Overseas territories

**6.28** In its recent report on Gibraltar,<sup>11</sup> the Foreign Affairs Committee of the House of Commons noted that a number of witnesses had suggested that “in the new variable geometry of the United Kingdom, with different levels of self-government for Scotland, Wales, Northern Ireland, London and the English regions, Gibraltar could form another part of this picture. It might be that Gibraltar would have to give up some of its present powers which would be repatriated to London.” In its conclusions, the Committee recommended that the Royal Commission should consider whether Gibraltar should be represented in a reformed second chamber. In its response,<sup>12</sup> the Government noted that the issue had been referred to the Royal Commission for consideration.

**6.29** Gibraltar is one of relatively few remaining British Overseas Territories.<sup>13</sup> Our proposals envisage the reformed second chamber continuing to be part of the national Parliament of the United Kingdom. Its members would be drawn from throughout the country and some would provide a direct voice for the nations and regions. All the Overseas Territories have their own governments: none is represented in the House of Commons. Although Gibraltar is a part of the EU, it is not a part of the United Kingdom: its citizens are United Kingdom nationals for EU purposes only. We therefore see no case at present for any of the Overseas Territories to be formally represented or given a voice in the second chamber.

<sup>11</sup> Foreign Affairs Committee. Fourth Report. Gibraltar. Session 1998/99. June 1999. HC3.

<sup>12</sup> Fourth Report from the Foreign Affairs Committee. Session 1998/99. Gibraltar: Response of the Secretary of State for Foreign and Commonwealth Affairs. 28 October 1999. Cm 4470.

<sup>13</sup> Apart from Gibraltar, these comprise Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Montserrat, the Pitcairn Islands, St Helena and its dependencies Ascension and Tristan da Cunha, and the Turks and Caicos Islands. Including Gibraltar, these have a combined population of slightly less than 190,000 people.

**6.30** We note, however, that the Government has stated<sup>14</sup> that it intends to offer British citizenship – and so the right of abode – to those citizens of the Overseas Territories who do not already enjoy it, and who meet certain conditions. In the light of the closer ties between the Territories and the United Kingdom that this might encourage, there may be a case for individuals from the Territories to be offered membership of the second chamber on a personal basis.

**Recommendation 34:** The Overseas Territories should not be formally represented or given a voice in the second chamber; but individuals from the Territories might be offered membership on a personal basis in the light of the closer ties that may develop.

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<sup>14</sup> *Partnership for Progress and Prosperity. Britain and the Overseas Territories*. March 1999. Cm 4264.