



# The Lords and the Senate

**Paul Fairclough**

Paul Fairclough reviews the similarities and differences between the UK and US second chambers.

**T**hough some smaller liberal democracies, such as Sweden, and many other states, such as China, have unicameral legislatures, most larger liberal democracies remain committed to bicameralism. In presidential democracies, such as the USA, the second chamber normally retains a power comparable to that of their lower chamber. Under federal systems second chambers have often consisted of delegates sent by the individual states that constitute the union. This remains true of Germany, with its *Bundesrat*, and was also the case in the USA until 1913, when the seventeenth amendment introduced direct elections to the Senate. In a unitary parliamentary

## Exam context

This article is essential reading for A2 students and will be useful for AS students.

### A2

#### Edexcel

Unit 5C Congress

Unit 6C Comparing assemblies

#### AQA

Module 4 Comparison of Congress and Parliament

#### OCR

Module 2694 Congress

Module 2698 Comparing legislatures

### AS

#### Edexcel

Unit 2 What is the role and significance of Parliament?

#### AQA

Module 3 Main characteristics, functions, roles and effectiveness of Parliament

#### OCR

Module 2597 The UK Parliament — second chamber.

democracy such as the UK's, by way of contrast, the second chamber plays a more advisory role.

Direct comparison of a number of aspects of the UK and US second chambers is possible. However, the unique judicial function of the House of Lords will not be examined, in view of the proposals for a UK supreme court and the formal abolition of the post of Lord Chancellor.

## Composition

### Size and 'constituencies'

The US Senate consists of 100 members (senators), two per state. In a nation where state populations vary from Alaska's 650,000 to California's 35 million, this method of apportionment has often been criticised, but it must be remembered that it was part of the historic 'Connecticut Compromise', considered necessary to win the smaller states' approval for the constitutional settlement. Each senator represents the entire state for which he or she is elected (despite there being two senators per

*Senators taking an oath in the US Senate chamber.*

tate); senators do not have their own separate districts within their state, as is the case in the House [of Representatives], although they are elected at different times (see below).

The House of Lords consisted of 714 peers in July 2004 (including the 11 on leave of absence): 567 life peers; 92 remaining hereditary peers (see below); 6 bishops; and 29 current and former Law Lords. Peers have no constituencies: the titles they choose upon joining the chamber may refer to a particular location (e.g. Baroness Thatcher of Kesteven) but they are merely ceremonial epithets and do not reflect any intent or obligation on the part of the member to represent the area named. Lords are, therefore, free from constituency pressure.

### **Re-election and term of office**

All senators are elected for a term of four years. This is said to allow the US second chamber a greater freedom to act without the constant pressure for re-election present in the House. Since the ratification of the Constitution, however, the Senate has been divided into three cohorts with one third of the Senate being elected every 2 years. This is part of the system of staggered elections put in place to enhance the constitutional separation of powers.

The House of Lords, in contrast, remains a largely appointed chamber. The 1999 House of Lords Act removed the right of all but 92 of the 700 or so hereditary peers to sit and vote in the Lords. Under the Weatherill Amendment these 92 were allowed to stay on in a transitional House prior to the completion of the 'hereditary peers' reform. Seventy-five of the 92 were elected by fellow hereditary peers, and the Earl Marshal, the Lord Great Chamberlain and 15 deputy speakers retained their positions.

The process by which life peers are appointed, dating from the 1958 Life

Peerages Act, is criticised by many as being no better a method for selecting legislators than the hereditary principle it was designed to replace. Technically, it is the monarch who confers life peerages — but the prime minister has virtual free rein. Although the prime minister is bound by convention to invite nominations from opposition parties and the finished lists are considered by the House of Lords Appointments Commission, neither of these hurdles presents much of an obstacle. The prime minister may, therefore, use this power as a means of bringing people into cabinet without waiting for a Commons by-election (e.g. Gus MacDonald), as a device for getting rid of potentially troublesome Commons backbenchers (e.g. former leaders such as Margaret Thatcher), or as an apparent reward for political service (e.g. Blair's private pollster Philip Gould in 2004).

An effort to address accusations of 'cronyism', the much heralded 'people's peers' initiative, saw 3,166 members of the public taking up the open invitation to apply to become peers between September and November 2000. The initiative ended in farce, however, when the 15 successful candidates were drawn almost entirely from the ranks of 'the great and the good'. According to the *Guardian* newspaper, they included seven knights, one lady, three professors, one think-tank head, two charity chief executives and one businessman — exactly the kinds of people who might have been appointed in due course without this initiative. Although the prime minister relaunched the scheme in July 2003, the Appointments Commission had received only 28 applications by November of that year.

### **Partisanship**

US political parties are a good deal less cohesive than their UK counterparts. Only 67% of Senate votes in 2003 were 'party votes' (where the majority of

## **Key terms**

**Unicameral:** having one chamber.

**Bicameral:** having two chambers.

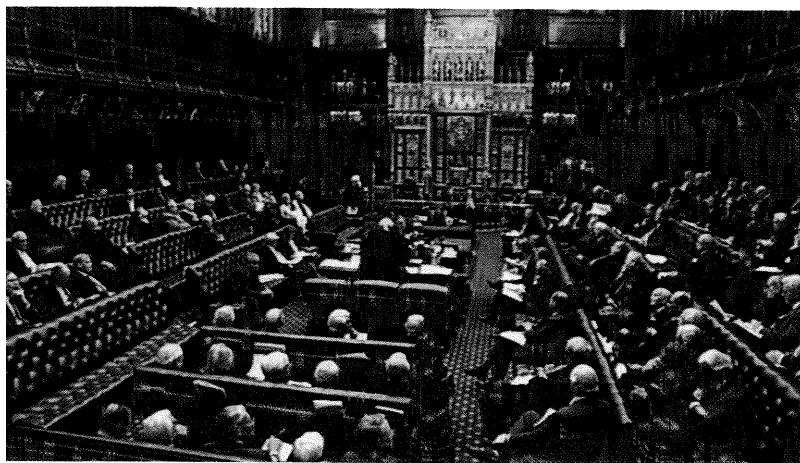
**Presidential democracy:** a system where the executive and legislative branches are elected independently of one another.

**Parliamentary democracy:** a system where the survival of the executive rests upon the confidence of the legislature.

Democrats voted one way while the majority of Republicans voted the other). Party loyalty in the Senate is not helped by members' long terms and by the absence of any obvious carrots or sticks in the whips' armoury. The separation of powers and the relatively low status of most US cabinet positions render the offer of promotion to the executive unappealing because it would mean giving up a Senate seat for something far less prestigious. Even at moments of apparently strong party cohesion, therefore, senators can prove incredibly independent. In 1995, for example, Republican senator Mark Hatfield's decision to vote against the balanced budget constitutional amendment proposal — a key element of the 1994 Republican 'Contract with America' platform — meant that the measure failed to achieve the required two-thirds majority by a single vote.

At the time Labour came to power in 1997 the Conservatives had 476 peers to Labour's 120. This 'inbuilt Tory majority', as it was commonly referred to, consisted largely of Conservative hereditary peers. Critics argued that many of these hereditary peers — the 'backwoodsmen' — only ever attended in order to thwart radical legislation. The removal of the hereditary peers in 1999 and the subsequent appointment of a large number of Labour life peers (dubbed 'Tony's cronies' by critics) has changed the make-up of the Chamber significantly. In July 2004, the Lords comprised 206 Conservatives, 191 Labour, 66 LibDems and 214 cross-benchers/others. In reality, however, even those peers who identify themselves as supporting one party or another have far more freedom of movement than their fellow party members in the Commons. The worst sanction that they could face would be the removal of the party whip and this would be a hollow gesture, given peers' freedom from election and their security of tenure.

**House of Lords debate.**



## Roles

### Representation

Under the resemblance theory of representation it is said that legislators should be typical of the communities that they serve; so that they can fully reflect their communities' collective values and beliefs. Neither the Senate nor the Lords meets this requirement. Members of both chambers still tend to be white, middle-aged, highly educated, wealthy men. In 2004, for example, only 14% of US senators and 17% of UK peers were women. Women were not even admitted into the Lords until the 1958 Life Peerages Act, and female hereditary peers were not allowed to take up their seats until the Act of 1963. Equally, though senators need only to have attained the age of 30 and have met the citizenship and residency requirement in order to be elected, only two are under 40 and the average age of those in the chamber is nearer 60. There is a similar story in the Lords, where the average age of 68 is more than three times the minimum age for appointment to the chamber (21).

Senators are insulated from their constituents by the length of the terms and by the sheer impossibility of their engaging with voters on an individual level, because of the great size of many of the states. In this sense, senators conform more to the trustee model of representation than to the delegate model. They are often fiercely loyal to their states and many work hard to support measures that will bring benefits to the state as a whole.

Lords, as we have seen, have neither constituency concerns nor elections to trouble them. That is not to say that they do not seek to represent the interests of society as a whole or specific groups within it. Many life peers have been appointed in recognition of their service in a particular field or to a particular cause (e.g. Lord Bragg of Wigton, for his contribution to the arts). They bring these experiences and concerns to bear in their work within the chamber. Many peers are, of course, experienced and well-regarded former MPs. We should not, therefore, see the Lords as a chamber that simply serves a particular elite. In recent years the Lords has often looked to moderate and limit the public impact of radical Commons proposals (e.g. its amendments to the 1988 Education Act).

### Legislation: theory

The Senate and House of Representatives are co-equal in terms of their legislative power. This sense of equality is reflected

## Box 1 Some limitations on the Lords

### The Parliament Acts of 1911 and 1949

The 1911 Parliament Act replaced the Lords' right to veto legislation with the power to delay bills for 2 years. At the same time, the Lords were effectively prevented from vetoing, amending or delaying money bills. The Parliament Act of 1949 reduced the power of delay to one parliamentary session.

### The Salisbury Doctrine

Dating from 1945, the Salisbury Doctrine put in place the principle that the Lords — as an unelected chamber — should not oppose government bills at second reading, where the government had established a clear electoral mandate to act by including a measure in its manifesto.

in the fact that most bills are discussed concurrently by both chambers. No bill can pass into law without Senate approval (simple majority), and overrides of presidential vetoes and proposals for constitutional amendments require Senate super-majorities of two thirds to match those in the House. The only respect in which the Senate can be considered inferior to the House in terms of legislation is with regard to money bills, where the House (like the UK Commons) initiates all such bills under its financial privilege.

The Lords is considered nowadays more a chamber of advice and review than a legislative powerhouse. The passage of the Parliament Acts and the establishment of the Salisbury Doctrine (see Box 1) have served to reinforce the idea that the elected Commons, under the government, should not see its legislative agenda scuppered by the unelected Lords.

### Legislation: effectiveness

Senators' sense of independence — perhaps fostered by their status, weak partisanship and long terms of office — has often seen the Senate prove obstinate even where the House has acquiesced, particularly in the face of radical measures. In the case of amendments to the US Constitution, for example, we have already seen how the Senate rejected the Balanced Budget Amendment in 1995. The Senate rejected an amendment banning desecration of the US flag in 1995 and 2000, despite the

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House having passed the measure with the required two-thirds majority on three occasions over the same period. The Senate can prove a major obstacle to regular legislation. Clinton, for example, achieved only a 65% success rate in the Senate in 2000. Though this might be attributed to the fact that Republican-controlled the chamber, we should note that Clinton achieved only an 85% success rate in 1993 — as a freshly inaugurated president, with high public approval ratings and a clear Democratic majority in both House and Senate.

Regardless of what the chamber does as a whole, individual senators can certainly flex their muscle to good effect. The filibuster (see Box 2) allows a member to talk a proposal out of time, though it is a weapon of last resort. More significantly perhaps, senators — due to their small number — are more likely to hold a position of responsibility within the chamber (e.g. committee chair) than members of the House. These positions often allow them to pigeonhole a given bill or place it low on the committee's agenda — effectively killing it. This is an altogether more efficient and less provocative blocking method than the filibuster.

Though one would expect the Lords to be a less effective block on the Commons, due to the limitations on its powers outlined above, the UK second chamber has, in fact, proved a major obstacle to government legislation over the last 25 years. The various Conservative administrations were defeated in Lords' votes on 241 occasions between 1979 and 1997; 155 of these defeats took place during Margaret Thatcher's time in office and the remaining 86 under John Major. In this era of large Conservative Commons majorities, many came to regard the Lords as the 'real opposition' within Parliament — all of this at a time

## Box 2 The filibuster

The filibuster arises from the right of senators to speak freely. Through this practice of talking at length on virtually any subject, a single-minded minority — indeed, one — can succeed in 'talking a bill' out of time and therefore out of existence. The late Senator Strom Thurmond of South Carolina, for example, spoke for 24 hours and 18 minutes against the 1957 Civil Rights Act. A filibuster can be ended by a cloture motion, requiring the support of three fifths of the entire Senate.



Strom Thurmond.

when the Conservatives were said to have an inbuilt majority of around 350 peers over Labour.

Labour's decision to remove the hereditary peers following their election victory in 1997 was, in part at least, a reaction to their fears of the style of 'Lords' obstructionism that had frustrated earlier Labour governments. Even so, Labour has still faced significant Lords' opposition since the 1999 Reform Act, over issues as diverse as fox hunting, university top-up fees and the abolition of the post of Lord Chancellor. The 2003/04 session alone saw 46 Lords defeats for the government up to 22 July 2004. Faced with such opposition, governments may choose to offer the Lords compromise (e.g. over post 9/11 anti-terrorist legislation) or invoke the Parliament Act, forcing the original proposal through unchanged. The latter is, however, an altogether slower option and has been used on only three occasions; over the War Crimes Act (1991), the European Parliamentary Elections Act (1999) and the Sexual Offences (Amendment) Act (2000).

### Oversight and scrutiny

The US Senate plays an important role in the oversight of the executive branch. On a simple level, as we have seen, the chamber has a key role in the legislative process. Senate standing committees, like those in the House of Representatives, are often regarded as the 'engine room' of government.

As well as scrutinising legislative proposals, the standing committees have a role in overseeing the work of Federal Departments, as do the various select committees that are set up from time to time to investigate particular issues. The Senate has its own select committees (e.g. the Senate CIA Committee) and forms joint special committees with the House at certain times (e.g. Iran-Contra, 9/11'). Unlike their UK counterparts, US committees are extremely well resourced and possess real powers (e.g. the power of subpoena).

The US Senate oversees the work of the executive in a number of other respects. Presidential appointments, for example, can be made only with the advice and consent' (majority) of the Senate, and the Senate's confirmation is not always forthcoming, particularly as regards more contentious nominations, such as those for the US Supreme Court. Ronald Reagan, for example, failed in his attempt to get Robert Bork onto the Court in 1987 (42:58), despite Bork's considerable legal experience. In one of the

bitterest nomination processes on record, the Democrat-controlled Senate appeared unwilling to confirm the appointment of ultra-conservative Bork in place of the departing Lewis Powell, who, though a conservative, had often been the crucial swing vote in the court on matters concerning civil rights.

The Senate has considerable influence in the field of foreign affairs, holding the power to declare war along with the House and having the sole power to ratify treaties negotiated by the president. Former presidents, such as Jimmy Carter — although they have often worked around this check through the use of executive agreements — have bemoaned the fact that two-thirds Senate approval is required for the ratification of treaties, arguing that the Senate should instead have to vote by two thirds to block the treaties negotiated by the chief executive. Carter himself struggled to secure Senate support for the Strategic Arms Limitation Treaty (SALT II) in 1979, though the Soviet invasion of Afghanistan meant that it never went to a formal vote. Woodrow Wilson famously failed in 1920 to gain Senate approval for the Versailles Treaty he had negotiated a year earlier.

The Lords have played an important role in scrutinising the work of the executive, aside from the obvious scrutiny inherent in their legislative function and through their consideration of delegated legislation. The House of Lords has traditionally spent around 30 minutes each day dealing with questions to ministers formally tabled by peers. Peers may request written answers of ministers in clarification of specific aspects of policy.

Though there is no Commons-style system of departmental select committees in the Lords, the chamber does set up committees from time to time in order to address specific issues or controversies, and it has the permanent Science and Technology Committee. The House of Lords, like the Senate, has had an input in foreign policy through the recommendations given to ministers by its select committee investigating European Commission proposals.

The greater time available in the House of Lords allows for the general debates on issues of public interest. These debates have traditionally taken place on Wednesdays and last around 5 hours. A parallel can be drawn here between the style of these debates and that of those in the US Senate, where members, as we have seen, retain the right to speak without interruption or limit (bar cloture).

### Conclusions

As an elected chamber, framed to offer something to the smaller states in the light of their limited representation in the House, the Senate rightly has co-equal legislative power as well as a range of other powers and responsibilities reflecting the greater age and, in many cases, experience of its members. The Lords, as an unelected chamber under a parliamentary democracy, has seen its power limited by statute and convention, in recognition of the fact that it lacks an electoral mandate. It remains simply to advise and revise. Though further reform may well have an impact on the composition and roles of the UK Lords, the rejection of all eight proposals tabled in 2003 has made it increasingly likely that the Lords will remain a wholly or at least a majority appointed chamber.

Each second chamber, therefore, reflects the system in which it operates, the historical realities unique to its establishment and the development in constitutional law and conventions that have taken place through time.

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### Exam focus

Using this article and other resources available to you, answer the following questions.

- (1) Distinguish between unicameral and bicameral legislatures.
- (2) Outline a key difference between a parliamentary and a presidential system of democracy.
- (3) How do the House of Lords and the US Senate differ in terms of their compositions?
- (4) How do the UK and US second chambers differ in terms of election and terms of office?
- (5) What were the criticisms of the 'people's peers' initiative?
- (6) Compare the US Senate and the House of Lords in terms of partisanship.
- (7) The US Senate is more effective in the legislative process than the House of Lords. How far do you agree with this assertion?
- (8) Compare the US Senate and the House of Lords in their oversight of the executive branch.