

CHAPTER SIX

THE COMPOSITION OF PARLIAMENT

Constitutional and Administrative Law

THE COMPOSITION OF PARLIAMENT

Introduction

We are concerned here with the composition of the organs of government and the rules regarding the interrelationships between the Houses of Commons and Lords and the inter-relationship between the British Parliament and the European Community.

HOW TO APPROACH ISSUES REGARDING COMPOSITION

A common problem met in dealing with this topic is how to deal with the large amount of factual material in the textbooks. It is helpful to be aware of the background material on the regulation and procedures of the House of Commons and the House of Lords before approaching this topic.* It is important to develop the ability to criticise and analyse the issues raised and to use this background material to provide examples. Learning and reproducing a large amount of information without generating an underlying thesis is not sufficient. A useful approach is to ask

- **What is the constitutional purpose of the topic?**
- **Does it achieve this purpose?**
- **If not, why not?**
- **How potentially serious are the defects?**
- **Are there any safeguards?**
- **What alternatives exist?**
- **What are the relative advantages and disadvantages of these alternatives?**

* The British Government and the Constitutions, Cases & Materials, by Colin Turpin, Law in Context is helpful since it provides extracts of material from a wide range of sources on representative government.

These are central to current affairs. The present Labour Government, under the leadership of Mr Blair, has over the last seven years been committed to reforms in each of these areas to achieve '*A Constitution fit to lead the U.K. into the 21st Century.*' Much reform has already taken place, though whether or not the reforms have thus far fulfilled the stated objectives, is another matter altogether.

The role of Westminster will have to be redefined in the light of the Scottish Parliament and the Welsh Assembly. The role, function and composition of the House of Lords is currently stalled at a half way stage in the reform process, under the auspices of Lord Irvine, the Lord Chancellor. Electoral reform has been instituted for European Parliament elections, which have had a knock on effect for regional elections to the Scottish Parliament and Welsh Assembly and could ultimately affect Westminster elections and local government elections. The rules governing elections to the Scottish Parliament and the Welsh Assembly are now in place and contain a mixture of first past the post and proportional representation based on a list system. Current Affairs programs and documentaries on the TV and leading articles in the newspapers and Journals provide the valuable sources of information on these topics as they continue to evolve.

The European Community itself is evolving. There are fresh proposals for a more Federal approach with greater powers being accorded to the European Parliament. The voting systems that will be adopted by the new members joining in 2004 are not yet determined. The voting and veto systems for the European Commission are currently changing. There is a likelihood that there will be two new Presidents within the European Union in the near future, both elected by different mechanisms.

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Introducing some of the Principal Constitutional Offices in the United Kingdom¹

There is no Minister of Justice in the U.K. However four Ministers of the Crown provide a link between the judicial system and the legislative and executive functions of Parliament.

The Lord Chancellor. He is the speaker of the House of Lords, in charge of the procedure and discipline of the House. He is the official head of the Judiciary and is responsible for the administration of the courts. He advises the crown on appointments of judges and magistrates. It is a political appointment and as a member of the Cabinet he must resign if the government is defeated. Lord Mackaye, Lord Chancellor under the Conservative Government was replaced by Lord Irvine under the current Labour Administration. Mackaye started off a major reform of the legal system aimed at reducing costs and speeding up the legal process and this has been continued by Lord Irvine. The Woolfe Reforms have been central to this process with substantial changes being brought about first through the introduction of the new Civil Procedure Rules in 1998 and with the current review of criminal procedure in an advanced stage of development. Both Lord Chancellors have championed higher levels of jurisdiction for the minor courts, increased access for solicitors and promoted alternative forms of dispute resolution such as the introduction of Adjudicators to the Construction Industry in 1998 and Employment Arbitrations in 1998 and the new Arbitration Act itself also in 1996. The legal aid budget is constantly under review and this in turn will force those not entitled to legal aid to seek cheaper faster non legal forms of dispute resolution. As discussed above the judicial role of the Lord Chancellor may be removed as a result of a ruling of the European Court of Human Rights. Lord Charlie Falconer, the current Lord Chancellor is also the Minister of Constitutional Affairs in the Department of Constitutional Affairs. It is proposed that the Lord Chancellor will lose a number of his current roles. For the moment however, the Lord Chancellor is a member of the House of Lords, appointed by the Crown on the advice of the Prime Minister. He is a member of cabinet and also

- i). Head of the judiciary
- ii). Head of the Chancery Division of the High Court.
- iii). He is responsible for advising the Crown on the appointment of High Court (Puisne) Judges.
- iv). He is responsible for the work of the Law Commission The Land Registry The Public Trustee & Public Record Office.
- v). He acts as general legal advisor to the government and as its spokesman in the House of Lords.

The Attorney General and the Solicitor General. They are known as the Law Officers of the Crown. They are political appointments though they are not usually in the cabinet. The Attorney General is a barrister and an M.P. and has a number of roles - he represents the Crown in civil matters, prosecutes in important criminal matters and is the head of the English Bar. He rules on points of professional etiquette that are referred to him. He advises government departments on legal matters. They sometimes make legal pronouncements. The Attorney General's opinion is merely advisory/ and may as with a pronouncement on the legality of road blocks during the Miner's Strike prove to be wrong. The pronouncements are politically significant but they are in no way binding and have no legal status. The Solicitor General is subordinate to the Attorney General and despite his title is usually a barrister though not necessarily a Member of Parliament, though he may be. While in their posts they are not allowed to practice privately.

The Attorney General (A.G.) is appointed by the Crown on the advice of the Prime Minister and is the senior law officer of the Crown and head of the English Bar. He appoints and supervises the Director of Public Prosecutions.

The Solicitor General is a barrister and deputy to the Attorney General. By the **Law Officers Act 1944**, any functions authorised or required to be discharged by the Attorney General may unless expressly excluded may be discharged by the Solicitor General.

The Director of Public Prosecutions. Created by the **Prosecution of Offences Act 1897**. The D.P.P. is not a political appointment in the sense that he is not a member of the government and does not have to resign on the fall of a government. He is appointed by the Home Office. He operates under the supervision of the Attorney General. Today prosecutions are carried out by the Crown Prosecution Service. Prosecution of

¹ The roles of these Offices is discussed further in relation to the Doctrine of the Separation of Powers.

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certain types of crimes requires the consent and approval of the D.P.P. eg. **s8 Sexual Offences Act 1967**. The D.P.P. must be a barrister or solicitor of at least 10 years standing. His role concerns the administration of criminal justice and this duty is to institute proceedings

- 1 When the offence is punishable by death.
- 2 When a case is referred to him by a government department.
- 3 In other cases where he considers that his intervention is needed.
- 4 The Crown Prosecution Service carries out most criminal prosecutions.

The Home Secretary is a Member of the House of Commons and the Cabinet. His responsibilities include

- i). The prison and probation services.
- ii). The police.
- iii) The administration of the Metropolitan Courts.
- iv). Advice to the government on the treatment of offenders and on the prerogative of pardon.

British Prime Ministers, 1721-2001

1721-1742 Robert Walpole (Whig)	1868 Benjamin Disraeli (Con)
1742-1743 Earl of Wilmington (Whig)	1868-1874 William Ewart Gladstone (Lib)
1743-1754 Henry Pelham (Whig)	1874-1880 Benjamin Disraeli (Con)
1754-1756 Duke of Newcastle (Whig)	1880-1885 William Ewart Gladstone (Lib)
1756-1757 Duke of Devonshire (Whig)	1885-1886 Marquess of Salisbury (Con)
1757-1762 Duke of Newcastle (Whig)	1886 William Ewart Gladstone (Lib)
1762-1763 Earl of Bute (Tory)	1886-1892 Marquess of Salisbury (Con)
1763-1765 George Grenville (Whig)	1892-1894 William Ewart Gladstone (Lib)
1765-1766 Marquess of Rockingham (Whig)	1894-1895 Earl of Roseberry (Lib)
1766-1770 Duke of Grafton (Whig)	1895-1902 Marquess of Salisbury (Con)
1770-1782 Lord North (Tory)	1902-1905 Arthur James Balfour (Con)
1782 Marquess of Rockingham (Whig)	1905-1908 Henry Cambell-Bannerman (Lib)
1782-1783 Earl of Shelburne (Whig)	1908-1915 Herbert Henry Asquith (Lib)
1783 Duke of Portland (Coalition)	1915-1916 Herbert Henry Asquith (Coalition)
1783-1801 William Pitt (Tory)	1916-1922 David Lloyd George (Coalition)
1801-1804 Henry Addington (Tory)	1922-1923 Andrew Bonar Law (Con)
1804-1806 William Pitt (Tory)	1923-1924 Stanley Baldwin (Con)
1806-1807 Lord Grenville (Whig)	1924 James Ramsey MacDonald (Lab)
1807-1809 Duke of Portland (Tory)	1924-1929 Stanley Baldwin (Con)
1809-1812 Spencer Perceval (Tory)	1929-1931 James Ramsey MacDonald (Lab)
1812-1827 Earl of Liverpool (Tory)	1931-1935 James R. MacDonald (National coalition)
1827 George Canning (Tory)	1935-1937 Stanley Baldwin (National coalition)
1827-1828 Viscount Goderich (Tory)	1937-1940 A.Neville Chamberlain (National coalition)
1828-1830 Duke of Wellington (Tory)	1940-1945 Winston Churchill (Coalition)
1830-1834 Earl Grey (Whig)	1945-1951 Clement Attlee (Lab)
1834 Viscount Melbourne (Whig)	1951-1955 Winston Churchill (Con)
1834-1835 Robert Peel (Con)	1955-1957 Anthony Eden (Con)
1835-1841 Viscount Melbourne (Whig)	1957-1963 Harold Macmillan (Con)
1841-1846 Robert Peel (Con)	1963-1964 Alec Douglas-Home (Con)
1846-1852 Lord John Russell (Lib)	1964-1970 Harold Wilson (Lab)
1852 Earl of Derby (Con)	1970-1974 Edward Heath (Con)
1852-1855 Lord Aberdeen (Peelite)	1974-1976 Harold Wilson (Lab)
1855-1858 Viscount Palmerston (Lib)	1976-1979 James Callaghan (Lab)
1858-1859 Earl of Derby (Con)	1979-1990 Margaret Thatcher (Con)
1859-1865 Viscount Palmerston (Lib)	1990-1997 John Major (Con)
1865-1866 Lord John Russell (Lib)	1997- Tony Blair (Lab)
1866-1868 Earl of Derby (Con)	

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Westminster Governments and Prime Ministers from 1968 to the present.

Party Which Formed Government at Westminster	Prime Minister (PM)
Labour Party (1964 - Jun 1970)	Harold Wilson (PM) (1964 - Jun 1970)
Conservative Party (18 Jun 1970 - Feb 1974)	Edward Heath (PM) (Jun 1970 - Feb 1974)
Labour Party (Feb 1974 - May 1979) Election 28 Feb 1974 and Election 10 Oct 1974	Harold Wilson (PM) (Feb 1974 - 1976) James Callaghan (PM) (1976 - May 1979)
Conservative Party (3 May 1979 - Jun 1983)	Margaret Thatcher (PM) (May 1979 - Nov 1990)
Conservative Party (9 Jun 1983 - Jun 1987)	Margaret Thatcher (PM) (May 1979 - Nov 1990)
Conservative Party (Jun 1987 - Apr 1992) Election 11 Jun 1987	Margaret Thatcher (PM) (May 1979 - Nov 1990) John Major (PM) (Nov 1990 - May 1997)
Conservative Party (9 April 1992 - May 1997)	John Major (PM) (Apr 1992 - May 1997)
Labour Party (1 May 1997 - Jun 2001)	Tony Blair (PM) (May 1997 - Jun 2001)
Labour Party (7 Jun 2001 -)	Tony Blair (PM) (Jun 2001 -)

THE ELECTORAL SYSTEM

Introduction

In relation to the concept of "one man one vote" and equality and fairness in the U.K. Parliamentary electoral system, it is useful to be aware of the rules relating to the right to vote and the delimitation of constituencies.²

Similarly a brief outline of the legal disqualifications for membership of the House of Commons is helpful since these rules limit those whom the electorate can legally choose to represent them. Equally the method of selecting parliamentary candidates needs to be known since it affects who, from a practical standpoint, one is able to vote for. In relation to so-called "safe seats" it is possible to argue that the most influential body involved in determining who the representative of such a constituency will be, is not the electorate at all, but the selection body. Once selected, the outcome is a foregone conclusion and the electorate merely acts as a rubber stamp.

The most controversial issue however is the system of voting and whether it should be retained or replaced by an alternative system. It is essential to know how these alternative systems operate and the effect that their adoption might have on the democratic nature of the constitution. Allied issues include possible changes that could or should be made to the size of constituencies to ensure that everyone's vote carries the same voting power and the mechanisms for selecting candidates.

In the light of **Article 138(3) Treaty of Rome**, which ultimately envisages a uniform procedure in all member states for direct universal suffrage, it would appear that in time the whole of Europe may well operate the same voting system. Various types of Proportional Representation systems (P.R.) are used in Europe rather than the "first past the post - relative majority" system used in the U.K. at present, so it is the U.K. which will most likely have to change its system to put itself in line with Europe.

An irony to be considered in relation to the E.C. and **Article 138 T.E.U.** is that at no point does the Treaty of Rome and its succeeding Treaties espouse the notion of democratic government as a basis of the E.C. itself, though the European Parliament is to be elected by universal suffrage. Neither the European Commission, The Council of Ministers nor The President are currently elected though this is likely to change in the near future, at least as far as the presidency is concerned.

² see further **R v Boundary Commission for England ex parte Foot** [1983].

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Functions of Parliament

The role of the U.K. Parliament and the Commons in general comprises three main functions related to control of the executive :

- 1) **Law making by the legislature.**
- 2) **Control and scrutiny of National Expenditure and Taxation.**
- 3) **Criticism and scrutiny of the Government.**

Why does the U.K. Parliament constitutionally have these functions?

From one point of view all ruling bodies need to be able to make law and to manage their finances in order to carry out their primary function of government. Wherever the ruling body is divided into a larger body with a smaller power cell at the centre the larger body will wish to be seen as being able to discuss the actions of the smaller body and may aspire to advise or even control it to some degree. In a democracy, theoretically at least; the larger body will seek to carry out these functions with the aim of ensuring that the wishes of and the interests of the electorate are taken into consideration and protected. The smaller body by contrast will claim to have the legitimising authority of the electorate behind it and to have a democratic duty to carry out its electoral mandate.

- Does the present electoral system and the present composition of Parliament protect the interests of the electorate?
- Are these functions carried out well?
- Does the system select a representative government?
- Are there better ways of achieving these aims?

Law making.

To a very large extent law making is a function of the government, which in generates legislative proposals at Westminster. Thus for example, in 1970/71 and 1971/72 sessions the government introduced and passed 76 and 59 bills respectively. 67 and 82 private members bills were introduced respectively in the same years but only 13 and 17 respectively were passed. The government does not always achieve a 100% pass record. In 1968/69, a Bill to reform the House of Lords was abandoned by the Government.

Generally speaking, if a Private Members Bill is to survive it needs assistance from the Government at the drafting stage and needs to be given Government support. A current example is long running and repeated attempts at introducing Private Member's Bills to end fox hunting. Without government time such Bills are unlikely despite majority support in the House of Commons, to reach the statute book. Both the opposition and the House of Lords continually table amendments in a war of attrition against such Bills. Thus such a Bill needs to be given a considerable amount of debating time in order to succeed. The Government Constitutional Reform program has needed a great deal of time. The Government made it clear that the Abolition of Fox Hunting Bill would not be given additional time. The amendments to the sittings of the House of Commons and changes to procedures have not provided more time for legislation but have simply shifted sitting times in an effort to make them more family friendly.

Would it be desirable for the legislature to be able to completely control law making?

The government will claim to have a mandate to carry out certain policies. If the legislature could prevent enabling and facilitating legislation, the policies of the government could be defeated. This effect can be seen in the USA and in France when the President and the executive are from a different political party to the legislature in the House of Representatives and the Senate in the USA and in the French Parliament. This phenomenon can occur because the President and the legislature are elected at different times.

National Expenditure and Taxation.

The government and the treasury play the dominant role. If the root of all power is money then the ability to raise revenue is central to the survival of the democratically chosen administration. It would

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again perhaps be undesirable if the broad body of Parliament could control the raising of revenue and thus defeat the electorate's choice of administration. Thus De Smith advises that one should not think of Parliament and the Commons as collective entities. They consist of groups, factions and individuals. The government's control over taxation and the control of finance is gradually weakening. The Labour Government handed over control of interest rates to the Bank of England. The scope for adjusting taxation levels could be restricted by the practical implications of membership of the E.C. Whilst member states retain sovereignty over taxation levels at present time, harmonisation of V.A.T. may be necessary once restrictions on the movement of goods between member states are completely removed. Regional variations in income tax can also be viewed as a form of unfair competition and could result in labour moving to low tax regions.

Criticism and scrutiny of the Government.

The backbenchers in the Commons and the Lords achieve this by expressing grievances and airing views on issues. By putting their concerns into the public domain, public awareness can then bring about a change in government policy. In extreme situations the government may lose the confidence of the House of Commons or have legislation delayed or even defeated in the House of Lords.

General Propositions on Parliament

It is through the Commons that the government has a legitimate foundation based on the electorate. The Prime Minister has to be that person who can command a majority of the Commons, though consider the 1970's Lib/Lab pact under Callaghan. John Major had considerable difficulty commanding the obedience of his own party. Only after various threats did he secure support for the Maastricht Treaty. He made annual pleas for party unity and underwent an extra-ordinary resignation and reappointment process in 1995, yet still failed in the run up to the 1997 election to unite pro and anti European factions in his party. By contrast, the control of the Labour Party machine in government appears to be almost total, though it should be noted that at the time of writing, Tony Blair appeared to be out of step with the broader Labour Party over the invasion of Iraq.

Government ministers must be members of the Commons or the Lords. In the 1960's Gordon Walker was a member of the government, but lost his seat in the election and failed to regain a seat in a by-election, and had to be dismissed even though the government would have liked to keep him in the government. Members of Parliament cannot also be members of the House of Lords. This has resulted in a number of Peers renouncing their titles so that they could stand as a candidate in an election to the Commons.

The role of the government is to implement policy. Whilst this may sometimes be carried out using existing legislation the government will usually need to secure the passage of new legislation to give it the authority and power to carry out new policies.

One of the main roles of the opposition is to present itself as the alternative government. This is usually a realistic proposition, though it is harder to achieve when a major party is in apparent decline as with the Labour Party in the early 1980's and the current Conservative Party. The opposition function is not simply to oppose, since there is agreement on many issues. The opposition uses the media, question time and debates to fulfil its function. Opposition can inform the public and generate a public groundswell of opposition to the government enabling the opposition to win the next election. Opposition seldom amounts to actually preventing the government carrying out its policies.

Only four governments survived three elections, two of which were relatively artificial in the 20th Century. Churchill may have won the war – but Labour won the peace in the 1945 election.

- 1906-10-11, Liberals
- 1936-45, the war period (coalition period during the war)
- 1951-55-59 Conservatives (ending 1962 with Harold Wilson Labour victory), and
- 1979-83-87-92, the last Conservative government, though a change of leadership appeared to be necessary to win the 4th term of office. (Thatcher/Major – ending 1997)

Harold Wilson came to power in 1962, won the 1967 election but lost power for a short period to Heath before returning to power. He subsequently handed over to Callaghan who lost to Thatcher.

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The parties are broad based. In many ways there is little significant difference between the policies of the main parties. This is reinforced by allegations that Mr Blair has stolen all the main Tory policies. It may well be that the major difference between the parties in the near future could be the image and charisma (if any) of their leaders. Alternatively, and especially in the light of proposed constitutional changes, the party system may be about to undergo radical change. The European Question could result in the formation of new parties born out of splits in the established parties. The parties themselves could develop autonomous regional groups. Thus the Scottish Conservative Party is moving away from the ideals embraced by Conservative Central Office at Westminster.

Government change may reflect the theory of "*change for changes sake*" which asserts that the country gets bored with long standing governments, has a very short memory and forgets the failings of earlier governments, reinforced by the fact that a substantial number of voters are too young to remember. The longevity of the last Conservative government may have had more to do with the unpopularity of challengers in the recent past than with the popularity of the government. There is a large floating vote except in Northern Ireland, which is unpredictable. Despite a perception that Labour is increasingly unpopular in the country, if the polls are to be believed, the current Conservative opposition under I.D. Smith is no more popular than the apparently unelectable Kinnock led Labour opposition of 1992, despite a rise in Local Councillors in the May 2003 Elections.

Other functions of Parliament.

It provides an opportunity for other views to be expressed, through debates, amendments to Bills, P.M.'s question time, writing letters, representations to ministers via the Ombudsman etc. De Smith states that the link between parliament and the general public is through the national political parties, Private Members Bills etc and various other inter-communications networks such as pressure groups etc. He suggests that publicity of parliamentary affairs enhances the interest in public affairs and educates and informs the general public as to a wide range of facts, arguments and statements of policy. However; few people actually read Hansard. Only three daily papers carry reports on the House and these are not popular. Televising debates may have improved accessibility. The general public's knowledge and understanding of current political affairs is low. Few are able to name government and opposition members let alone of state what principles and policies they stand for.

Elections and the House of Commons.

Who can vote ? To be a voter one must

- be on the electoral register and
- be only on one register at a time, and over eighteen,³
- be a British subject or citizen of the Republic of Ireland and
- live in the constituency at the time of the yearly compilation of the register.⁴ Since this also serves as a basis for the listing of housing taxes, being listed may be seen as a disadvantage.

There are special rules for the Armed Services. One must not be disqualified for electoral malpractices.

- Convicted criminals in prison cannot vote.
- The mentally ill are not allowed to vote, though it would appear that many hospitals treat voting day as a day out for the inmates.
- Peers of the Realm may not vote, though Irish Peers can, since they do not sit in the House of Lords.

The Boundaries Commission

The Boundaries Commission has determined the size of the boundaries of the constituencies since 1944. The ideal situation is where each constituency is equal to the others. In practice the country areas have less people in them. Wade describes this as giving votes to sheep and moors.

There are four boundary commissioners for England, Ireland, Wales and Scotland. They make

³ See the Representation of the Peoples Act 1983

⁴ On residence see **Fox v Stirk** [1970] 2 Q.B. 463.

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recommendations every ten to fifteen years. The speaker and the registrars then give their opinion on their findings. The Home Secretary forwards his amendments and then they are put to the Commons and Parliament for approval. If constituencies are of unequal size this can result in an exaggeration of the disparity between the number of votes cast for a party and the number of seats it wins. At present 658 M.P.s are returned to Parliament.

In 1948, the Boundaries Commission deviated from the rules to give the country areas, predominantly Tory, an advantage. To redress the balance the Labour government created 17 extra urban seats (though 8 of them subsequently voted Tory) in 1950. There have been a number of instances where recommendations, which would have altered the voting pattern, were initially resisted by the governments of the day.

Democratic Government

Democratic Government is the modern Western Ideal and indeed the only system for the putting government in place recognised by the United Nations. The concept is of "government of the people, by the people, for the people" on the basis of representation of the views and wishes of the people by those individuals selected by the people to act as their spokespersons in government.

TACKLING REPRESENTATIVE GOVERNMENT ISSUES

The central issue is whether or not the electoral systems used for the selection and appointment of government fulfil the democratic credentials of ensuring government of the people, by the people for the people and if it does whether that is a good thing i.e. is a dictatorship of the majority fair?

- Do the systems produce effective government ?
- Do the systems fairly reflect the choice of the people ?
- Do the systems ensure that every voter's choice is of equal value ?
- Do the systems afford sufficient representation for minorities ?
- Do the systems empower the people ?
- Do the systems produce accountability at the ballot box ?

Examine also electoral rules and regulations regarding access to media, funding and information which can distort the process, as can opinion polls. What is a fair open election ?

The Westminster Parliament, first past the post, ballot system

The method of voting is by ballot, by individuals. The system employed is "first past the post" or "relative majority plurality" for a single representative of a constituency. The winner takes all however large or small the margin of victory and irrespective of the percentage of the vote or the number of candidates. The system works perfectly well in a two party election but less well otherwise. It can produce a wide range of anomalies under a three (or more) party system. Where a party's support is concentrated in a limited number of constituencies the party can do well, but is unlikely to do so if its vote is widely spread but is not sufficient strong to gain critical mass. This is clearly seen in the chart below of the 2001 election.

Westminster General Election 7th June 2001

Lab: 412, Con: 166, LD: 52, UUP: 6, SNP: 5, DUP: 5, PC: 4, SF: 4, SDLP: 3, Ind: 1, Speaker: 1

	Party	Won	Gained	Lost	Held	Share of vote %	Swing %
■	Labour	412	2	9	410	41	-1
■	Conservative	166	9	7	157	32	1
■	Liberal Democrat	52	7	2	45	18	1
■	Other	29	10	8	19	10	2

Since the **Representation of the People Act 1969** the party of the candidate can be marked on the ballot

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even though the individual is supposed to be of the essence. This change was brought about because of the problems encountered in a Welsh constituency where four candidates, all called Jones stood for the same seat, resulting in considerable confusion for the voters.

OVERVIEW OF WESTMINSTER ELECTION RESULTS 1945-2001

Principal Election	Party Seats 1945-2001				Party Votes 1945-2001		
	Con.	Lab.	Lib.	Majority	Con.	Lab.	Lib.
1945	189	396	25	Lab 146	9,988,306	11,995,152	2,248,226
1950	298	315	9	Lab 8	12,502,567	13,266,592	2,621,548
1951	320	296	6	Con 16	13,717,538	13,948,605	730,556
1955	344	277	6	Con 59	13,286,569	12,404,970	722,405
1959	365	258	6	Con 100	13,749,830	12,215,538	1,638,571
1964	303	317	9	Lab 5	12,001,396	12,205,814	3,092,878
1966	253	363	12	Lab 99	11,418,413	13,056,659	2,327,470
1970	330	287	6	Con 31	13,145,123	12,179,341	2,117,035
1974 (Feb)	296	301	14	None	11,868,906	11,639,243	6,063,470
1974 (Oct)	276	319	13	Lab 5	10,464,675	11,456,597	5,346,800
1979	339	268	11	Con 43	13,697,753	11,506,741	4,305,324
1983	397	209	23	Con 144	13,012,602	8,457,124	7,780,587
1987	376	229	22	Con 102	13,760,525	10,029,944	7,341,152
1992	336	270	20	Con 21	14,048,283	11,559,735	5,999,384
1997	165	418	46	Lab 165	9,591,082	13,517,911	5,243,440
2001	166	412	52	Lab 164	8,357,622	10,724,895	4,812,833

Correlation between votes cast and seats won.

In the 1951 election Labour had 200,000 more votes than the Tories but 26 less seats. In the 1964 election the minority parties polled 1.3% of the vote but had no M.P.s. It is noticeable that whilst at local council level many minority candidates are elected, this does not translate into M.P.s in general elections. Thus, in Somerset & Bath the Labour Party polled 116,000 votes but didn't win any seats, whilst the Tory Party polled 162,000 votes and won 7 seats. In Durham the Labour party polled 492,000 votes and won 18 seats whilst the Tories polled 274,000 votes but didn't win any seats. Similar statistics can be produced regarding the Liberal Party, the Social Democrats, Plaid Cymry, the S.N.P. and the Alliance.

In October 1974 the Liberals took 18.3% of the national vote but only secured 2 seats i.e. 2%. The argument is that other potential Liberal voters were dissuaded from voting Liberal on the wasted vote principle, because people thought that there was little chance of them forming a government.

In 1983 the Conservatives polled 13m votes (42.4%) and won 397 seats. Labour polled 8.45m votes (27.6%) and won 209 seats. The Alliance polled 7.8m votes (25.4%), only marginally less than Labour but secured a mere 23 seats. Similarly, In 1987 the Conservatives polled 13.75m votes (42.3%) and won 376 seats. Labour polled 10m votes (30.8%) and won 229 seats. The Alliance polled 7.3m (22.6%) and won 22 seats. The S.N.P. polled 0.4m votes (1.3%) and won 3 seats. Plaid Cymry polled 0.12m votes (0.4%) and won 3 seats. The Greens won no seats, despite polling 0.3% of the votes.

Alternative systems of voting

There are a number of alternative voting systems, eg Proportional Representation, Single Transferable Vote and party lists. There are apparently 26 different alternative voting systems. The Australians use AVS for elections to the Australian House of Representatives. Voters mark candidates in order, 1,2,3, etc. If no majority the votes of the candidate with the least votes has the second choices on his returns allocated to the respective alternative candidates till a candidate has 50% or more. Each of these systems reduces the significance of the critical mass problem demonstrated below.

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General Election Results 1979-92⁵

Date.	Party	No of votes (m)	%	No of seats	%
1979	Conservative	13.7	43.9	339	53.4
	Labour	11.5	36.9	268	42.2
	Liberal	4.3	13.8	11	1.7
	Others	1.7	5.5	17	2.7
1983	Conservative	13.0	42.4	397	61.1
	Labour	8.5	27.6	209	32.2
	Liberal	7.8	25.4	23	3.5
	Others	1.4	4.6	21	3.2
1987	Conservative	13.7	42.2	376	57.8
	Labour	10.0	30.8	229	35.2
	Liberal	7.3	22.6	22	3.4
	Others	1.4	4.4	23	3.5
1992	Conservative	14.1	42.3	336	51.6
	Labour	11.5	34.8	271	41.6
	Liberal	6.0	18.1	20	3.1
	Others	1.9	1.9	24	3.7
1997	Conservative	9.6	30.7	165	25.0
	Labour	13.5	43.2	418	64.0
	Liberal	5.2	16.8	46	7.0
	Others			29	4.0
2001	Conservative	8.4	31.7	166	25.0
	Labour	10.7	40.7	412	62.6
	Liberal	4.8	18.3	52	9.0
	Others			28	3.4

In 1983 and 1987 the Conservatives polled 42% of the vote and secured massive majorities in the House but would have only secured a maximum of 276 seats out of 650 under P.R. and could not have formed a majority government. The most seriously penalized party was the Alliance. The obvious conclusion is that plurality discriminates against minorities and exaggerates the majority of the winning party. A proportional voting system would have permitted a Lib / Lab alliance to take power in each of the elections from 1979-1992 presuming the pattern of voting remained the same under a P.R. system. A stark comparison can be made especially with the percentage of seats won by the Nationalist members eg Plaid Cymry, Irish MPs and the SNP where safe seats and concentrations of votes in single constituencies have resulted in far more seats for these parties than they would have received if the seats had been based on national averages or on larger constituencies returning a number of MPs. Reform therefore could well be damaging to such parties.

Proportional Representation :

The single transferable vote is used in Ireland, Malta and for the Australian senate. It involves multi member constituencies. Voters mark their preferences in order as 1,2,3,4,5, etc. Once a member is accepted the second preferences on his ticket are redistributed until all the seats are filled.

The French have a system whereby in the Presidential Elections the field is narrowed down to the two leading candidates who contest the following week in a second round unless 50% is gained by a candidate in the first round of the election. The system is not used for the legislature though it could be used on a constituency basis for Members of Parliament.

The party list system where each party produces a national list of candidates in order of ranking. Voters vote for parties and the seats are accordingly distributed as a percentage of the national vote or as a percentage of a multi member constituency. Germany has a mixed system of first past the post supplemented by a party list top up.

⁵ Thompson p135

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In 1996 five Labour Euro M.P.s were suspended from their party for speaking out against proposals to introduce a multi-member constituency list system in the U.K. for elections to the European Parliament. Under the new system the U.K. has been divided into nine regions. The complaint is that the political parties control the position of candidates on the list. This gives the party considerable control over party members who could be placed at the bottom of the list if they do or say anything that displeases central office. The suspended Euro M.P.s adhered to old labour social policies and did not support all the policies of New Labour.

One result of some versions of proportional representation is a tendency towards coalitions and minority governments. This is borne out by the Italian record. Italy has recently overhauled its constitution and now has a first past the post system, the first instance of the system being adopted by a modern state. Regarding the tendency towards coalitions one should compare Italy's record with that of the relative stability achieved in Germany. However, to what extent is the outcome of any election due to the political stability of the state in any case? President Kohl achieved the narrowest of victories in late 1994. The merger of East and West Germany has resulted in coalition governments in Germany.

New Zealand introduced P.R. and promptly elected its first coalition government. Canada interestingly saw a landslide victory by anti-conservative voters under its newly introduced P.R. system. French successionists split the vote so badly that the conservative government lost 150 seats and ended up with only two members of parliament. However, they subsequently returned to power at the next election.

Israel, like Canada, has been plagued by weak coalition governments. If however, a first past the post system prevented the extreme left and right from participating in government it is highly likely that without a political voice these people might resort to violence and every effort needs to be made to keep them within the political process, however disruptive that may be. Jordan has currently suspended its Parliament and election, following the jihad in Palestine because it fears that elections would return an Islamic Majority opposed to the King and would lead to the demise of the secular state and the instigation of an Islamic State.

In conclusion, "first past the post" may work where there are two main parties and no significant minorities that will be deprived of power. Are the Scots, the Irish and the Welsh significant minorities deprived of power in the U.K.? Plaid Cymry and the S.N.P. appear to think so.

Coalitions result in continuity of policies. The see-saw effect of first past the post is avoided. It reduces pluralisation. However, it also removes the personality element.⁶

- Is there really any significant difference between the major parties in the U.K.?
- Do governments undo the work of their predecessors or are changes cosmetic window dressing?
- Is the real seat of power vested with an un-elected bureaucracy, which has a vested interest in a continuation of major policy without upheaval?
- Do the mandarins or the people rule?

Regarding "first past the post," "relative majority plurality," the "Royal Commission on Electoral Systems" stated that our elections are practically a referendum on the question of which of two governments shall be returned to power. One could go further and suggest that elections are a referendum on the question of which leader shall become Prime Minister. However, people do not vote solely for the individual. The party factor may well be the predominant factor in General Elections where the vote is to choose the next government and the next Prime Minister. Nonetheless some see it as a Prime Ministerial competition.

Alternative voting systems tend to produce minority and coalition governments, which tend to be weak especially in peace-time. They are alleged to be unstable and indecisive. Such governments are always vulnerable to votes of confidence, which tend to occur regularly. This is the exact opposite of the Westminster experience, dramatically portrayed below from 1992-2001.

⁶ See Professor Finer regarding the concept of Adversary Politics and Electoral Reform.

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COMPARISON OF SEATS TO VOTES AT WESTMINSTER 1992-2001

Party	1992		1997		2001	
	Seats	Vote %	Seats	Vote %	Seats	Vote %
Conservative	336	41.93	165	30.69	166	31.70
Labour	271	34.39	418	43.19	412	40.69
Liberal Democrat	20	17.84	46	16.76	52	18.21
Ulster Unionist	9	0.80	10	0.82	6	0.82
SDLP	4	0.54	6	1.97	6	0.64
Plaid Cymru	4	0.45	3	0.61	4	0.74
Scottish Nationalist Party	3	1.87	4	0.51	5	1.76
DUP	3	0.30	2	0.40	5	0.69
UPU	1	0.05	2	0.34	2	0.34
UK U			1	0.04		
Independent			1	0.10	1	0.10
Speaker			1	0.07	1	0.06
Sin Fein					4	0.66

Vociferous minorities should not be able to hold the majority to ransom. On the other-hand, an inability to achieve change peacefully through the ballot box has in the past provided excluded movements from using it as an excuse for violence. Northern Ireland highlights the danger of a minority being deprived of an effective role in government. The vacuum, created by excluding power to a significant minority, has been filled by the I.R.A. and by its political mouthpiece, Sinn Fein. The peace process currently taking place involves government talking to representatives of the two non-elected paramilitary organisations. Perhaps if P.R. had been introduced 50 years ago the problems in Northern Ireland could have been avoided.

Sri-Lanka suffered a similar problem when the Tamils were effectively deprived of a role in government by the electoral system. The government introduced draconian measures, which discriminated heavily against the Tamils. Whether or not the Tamils had previously been too favoured by the prior regime is a moot political point. However, the result of the measures has been a devastating civil war with atrocities committed on both sides. The civil war is only now drawing to a close with the assistance of the Indian army as the Tamil Tiger 'terrorists' or 'Freedom Fighters' appear to be on the verge of defeat. Again P.R. may have prevented this tragedy.

Changes to the voting system are often supported by parties that wish to participate in government but are unable to do so under the first past the post system. However, there is always the possibility that if the Social Democrats were to win under the first past the post system they would change their minds about changing the system. The choices of electoral systems for the Welsh Assembly and the Scottish Parliament have been engineered to benefit the Labour Party. This may well have backfired as far as Scotland is concerned. Suggestions that Labour could lose control of Scotland to a Liberal / SNP coalition in the May 2003 elections have however proved unfounded.

Criticisms of Alternative Voting Systems

It has been claimed that alternative systems are too complex and that the British voters are not mature enough to cope. Are the British really so stupid that they couldn't cope with such a system?

It has been asserted that alternative systems produce weak governments which is the last thing Britain needs to compete with the demands placed on it by the E.C. and to deal with the weak economic situation that we find ourselves in. Perhaps however, it is a supposedly strong government that has put us in this predicament. Alternatively, some claim that to be unrepresentative is not necessarily to be undemocratic and that it is preferable since it represents the lesser of two evils.

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Does dictatorship by minority parties, who hold the balance of powers amount to representative government and is this democratic? It may result in compromise policies that no one has voted for.

Is the point of an election to produce representative government or simply to produce a strong government? Do the people actually want strong government - or do they simply vote for things that they are promised such as less tax, better health & education - environmentally friendly projects - the abolition of nuclear energy / weapons etc or to avoid things they don't like such as poll tax?

Why did the two Davids fail to capture the centre ground and win the 1987 election? Was it because

- no one knew what they stood for;
- because people don't like the idea of a split leadership;
- they were not seen as representing a viable government;
- they were seen as a pair of wallies;
- insufficient people agreed with their policies;
- political inertia caused the majority of people to revert to their traditional voting habits;
- tactical voting to keep other candidates out?

The present system permits people to vote for local personalities irrespective of political beliefs. Through local surgeries M.P.s can represent their constituents and establish a special relationship with them. To varying degrees P.R. and the list system would weaken the constituency link.

- Do local personalities necessarily make for good or strong government?
- Do people care about fairness in elections?
- Is "first past the post" easier for the British to understand and accept?
- Are we a society that prefers clear winners?
- Does the so called see-saw principle produce radical changes in government policy or is the difference between the policies of the 2 main parties merely cosmetic?
- What influence do such changes actually have on International Relations?
- Does the U.S. really have a better relationship with Conservative Governments than it does with Labour Governments? It appears that Blair and Clinton were very like minded but that has not prevented Blair forging strong relationships with President Bush.
- Is the special relationship a reality? In the light of Desert Storm etc perhaps but regarding the GATT talks and our link to the EC, maybe it is now redundant.
- Does P.R. result in better turn-outs at elections, or can this only be achieved by making voting compulsory? Should people be allowed to abstain? If so, should this be done by non-attendance or should the choice be recorded on the ballot form? What would happen if Mickey Mouse or Ned Kelly were to win?
- If the first past the post system produces a strong majority, how come the Lib/Lab pact came about? How come we get minority governments from time to time?

Is First Past the post democratic or not?

There are two basic views to the voting system currently used for elections to Westminster.

- A). The system is by and large alright and needs no or at most a little reform.
- B). The system is fundamentally wrong and needs total replacement.

The Reform Acts in the 19th century, which continued right up to 1969, have resulted in virtually universal suffrage and some might argue it has even gone too far. There are very strict rules at elections, which prevent misdeeds and abuses. But, compare Watergate and the 1980's scandals over trade union elections, and accusations of gerrymandering in Westminster with the sale of houses, all of which were likely to affect the voting patterns.

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Trends in voting: 1974-2001: United Kingdom

	1974 Feb	1974 Oct	1979	1983	1987	1992	1997	2001
Votes by party (millions)								
Conservative	11.9	10.5	13.7	13.0	13.8	14.1	9.6	8.4
Labour	11.6	11.5	11.5	8.5	10.0	11.6	13.5	10.7
Liberal Democrat ^(a)	6.1	5.3	4.3	7.8	7.3	6.0	5.2	4.8
PC/SNP	0.8	1.2	0.6	0.5	0.5	0.8	0.8	0.7
Other	1.0	0.7	1.0	1.0	0.9	1.2	2.1	1.8
Total	31.3	29.2	31.2	30.7	32.5	33.6	31.3	26.4
Share of votes (per cent)								
Conservative	37.9%	35.8%	43.9%	42.4%	42.3%	41.9%	30.7%	31.7%
Labour	37.2%	39.3%	36.9%	27.6%	30.8%	34.4%	43.2%	40.7%
Liberal Democrat ^(a)	19.3%	18.3%	13.8%	25.4%	22.6%	17.8%	16.8%	18.3%
PC/SNP	2.6%	4.1%	2.0%	1.5%	1.7%	2.3%	2.5%	2.5%
Other	3.1%	2.4%	3.3%	3.1%	2.6%	3.5%	6.8%	6.9%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Seats won								
Conservative	297	277	339	397	376	336	165	166
Labour	301	319	269	209	229	271	418	412
Liberal Democrat ^(a)	14	13	11	23	22	20	46	52
PC/SNP	9	14	4	4	6	7	10	9
Other	14	12	12	17	17	17	20	20
Total	635	635	635	650	650	651	659	659

Election result 1997 : Lab: 418, Con: 165, LD: 46, UUP: 10, SNP: 6, PC: 4, SDLP: 3, DUP: 2, SF: 2, UKU: 1, Ind: 1, Speaker: 1 Labour polled less in 1997 than the Conservatives in 1992 but achieved a 168 seat majority. Whether this was due to apathy or intentional abstention by traditional conservative supporters is not clear, but the downward trend in voter participation was confirmed in 2001 with only 26 million bothering to vote. This falling trend of is demonstrated in the chart below from 1945 – 2001.

Turnout at UK General Elections as % of electorate: 1945-2001 (Valid votes only)

	England	Wales	Scotland	Northern Ireland	UK
1945	75.9%	74.0%	71.5%	86.1%	75.5%
1950	84.0%	84.8%	80.9%	64.9%	83.6%
1951	83.1%	84.4%	81.2%	53.1%	84.0%
1955	76.9%	79.6%	75.1%	74.1%	76.8%
1959	78.9%	82.6%	78.1%	65.9%	78.7%
1964	77.0%	80.1%	77.6%	71.7%	77.1%
1966	75.9%	79.0%	76.0%	66.1%	75.8%
1970	71.4%	77.4%	74.1%	76.6%	72.0%
1974 Feb	79.0%	80.0%	79.0%	69.9%	80.9%
1974 Oct	72.6%	76.6%	74.8%	67.7%	72.8%
1979	75.9%	79.4%	76.8%	67.7%	77.9%
1983	72.5%	76.1%	72.7%	72.9%	72.7%
1987	75.4%	78.9%	75.1%	67.0%	75.3%
1992	78.0%	79.7%	75.5%	69.8%	77.7%
1997	71.4%	73.5%	71.3%	67.1%	71.4%
2001	59.2%	61.6%	58.2%	68.0%	59.4%

Should voting be optional or compulsory? In Australia there is compulsory voting. If however the voter does not support any of the candidates compulsory voting prevents abstentions. If a panel is made available for abstentions and the majority abstain the result would be a strong vote of no confidence in the newly elected government. Would such a result be either useful or desirable?

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Selection of candidates and de-selection

One of the most important decisions is who will be the candidate, especially in safe seats. Where the result is a foregone conclusion, the decision as to who is to be the candidate and thus the M.P. is taken by the local constituency party.

In the 1980's the Labour party had considerable problems regarding the Militant Tendency controlling local constituency parties and local area selection committees. Attendance is time consuming and is attractive to the dedicated splinter activists, but not to the rank and file.

Neil Kinnock took it upon himself to ensure that such members are not members of other organisations and was prepared to refuse to adopt certain chosen candidates as the Labour Party official candidate. De-selection committees had previously forced M.P.s such as Preston out of the Labour Party.

In the U.S. there is a system of primaries where the constituencies vote to select their candidates. However, in the U.S. a large percentage of the population are card carrying members of political parties, which is not the case in the U.K.

Zimbabwe neatly solved this problem by having a one party state. A number of persons from the same party put themselves up for election in a constituency. The electorate votes for the winner. The only drawback is that there is no government opposition. A western view would not see such a system as being democratic or having any merit. However, national unity, especially in large countries with poor standards of living and education may need very strong leadership and the system may be so fragile that it cannot tolerate dissent. China is an example where the release of democratic forces onto an unsuspecting populace might result in tragic civil war. None the less the one party state model would not be suitable for most western societies at the present time. The transition to democracy from one party state has not been an easy one for the Soviet Union and its satellites. Even P.R. failed to produce a stable government in the former Yugoslavia.

Other problems with the selection of candidates concern the extent to which parties should have ethnic representatives and whether or not the Labour party in particular should have a separate Black Faction.

Are enough women elected to parliament and if not why not? Labour has toyed with the idea of positive discrimination and setting a quota of "female candidate only" constituencies but has been forced to drop the idea. It is possibly illegal as a sexually discriminatory practice. Equally are gays and other minority social groupings disadvantaged by the present system? Are 'The Greens' a political movement or merely a reflection of social attitudes? There is no established Anti-European Party.

Are the people we vote for intelligent enough to carry out the job? Should all candidates have to pass an exam before being allowed to stand? Semble the voters.

Whose mandate is to be enforced ?

The Labour Party claims to generate its policies through its annual conferences. Smith altered the constitution of the Labour Party reducing the power of the Union Block Vote for the generation of policy. Blair further reduced the block vote of the Unions to prevent them dictating Labour Party policy. Can the Labour Party act as a free agent in disregard of the wishes of the Unions who are its main provider of party funds? Apart from calls for the restoration of Union power there is a distinct lack of clear-cut policies. This was evident in the degree of backing given by Labour to the 1994 RMT rail strike. Labour in power has made it clear that it will block outrageous union pay demands, which could fuel an inflationary wage cycle, yet still wishes to retain union support. If political parties received block financial support from the State and private funding were to be outlawed, political parties would then be completely free from outside influence.

The Conservative party likewise discusses policy at its annual conferences but does not regard itself as bound by Conference decisions. It is more a platform for seeking party unity and control by the party leader. The greatest financial influence is asserted by the C.B.I. No clear policy apart from Unity

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has emerged in recent times. Hague's attempt to unite the party against the single currency did not work but IDS appears to be marginally more successful. Whilst the Conservative Party is funded mainly by private companies and is traditionally expected to be pro-business a significant number of major firms have stopped financing the Conservatives and have donated money to the Labour Party.

The Liberals, under P.Ashdown, returned to national policy making at its conferences but whether they will ever be put to the test is not known and whether the Liberal Democrats would once in power feel bound by these policies is uncertain. In 1974 the Liberals achieved 18.3% of the vote and 13 seats but in 2001, under Charles Kennedy, when they also achieved 18.3% of the vote, they returned 52 seats indicating that they have been successful in concentrating their support in certain constituencies. It appears that they have taken votes off the Tories. It is possible that if this trend continues and Labour support eventually falls away that by splitting the vote more evenly between the Liberals and the Tories, Labour could nonetheless remain in Office. The prospect of a future Lib/Lab Pact is not out of the question. How much influence would they have over policy? The outgoing Welsh Assembly experience was not an overly successful experiment.

Elections and information

Several issues can be discussed under this heading such as opinion polls, publicity, the finance of elections and access to information.

Opinion polls. One must balance the view that opinion polls influence elections with the competing claim that the public has a right to such information. Is the influence such opinion polls have detrimental to democracy? Inaccurate polls could deter voters from supporting an apparently doomed preference, presuming tactical voting is a reality and not just a theory.

Opinion polls have been criticised as being able to alter the result of an election, though this has never been proved. Some maintain that there should be no pre-election opinion polls. Thus France suppresses them for the week prior to an election. This conflicts with the notion of freedom of information. The problem, it is claimed, is that if the opinion polls indicate a clear victory for a party its supporters may feel the result they desire is guaranteed and that no harm will result from not bothering to vote. If the malaise is widespread the party may in fact lose, contrary to the poll's predictions. If a poll indicates a party has no chance, voters may vote for a second preference or even for someone they don't support simply to keep the party they most dislike out of power. All of these are theories, which have never been proved. One danger is that voters don't tell pollsters the truth and it is clear that the pollsters do not have a good track record. Both M.Thatcher and John Major won elections despite opinion polls that predicted a Labour win. The polls got the last two elections right.

Funding for Elections

A serious problem is the funding of elections in the UK. This is affecting all the parties whose funds are very low indeed. There are strict rules regarding the amount of money that each party is permitted to spend on elections. Some is provided out of public funds. Perhaps all publicity should be exclusively paid for on an equal or proportional basis by the government and TV coverage governed on the same basis. However, this raises the question as to which of the minority parties, if any, should receive funding and if so how much. One way of limiting non-serious minority participation in the UK is the lost deposit system.

There are controls on the amount of television screen time afforded to each political party. The fear is that any party which could monopolise the media could enhance its prospects at an election. Following Sachi & Sachi image has become almost as important to U.K. elections as it is in the U.S.A. The minority parties have considerable problems financing their election campaigns. David Owen's party was wound up for amongst other things, a lack of financial support.

A committee has been set up by the Labour government to investigate whether or not a cap should be placed not only on local constituency election campaigns but also on national spending. This is linked to allegations that private donations to political parties afford too much influence over government to the donors. This is highlighted by the Formula One Racing exemption from the ban on tobacco advertising.

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France has rigid controls on state funding of election expenditure and equality of advertising. By contrast, the US spends enormous amounts on elections. Without the ability to attract party funding it is not possible to even engage in elections in the US.

Access to information

The government, and hence the party standing for re-election has the best access to classified information and statistics which it can use to maximise the impact of its election campaign.

The Timing of Elections

Clearly, since there is a maximum lifespan to any Parliament, an election has to be called at the end of that time. Under **s7 Parliament Act 1911** the current limit is five years. However, if the government loses the confidence of the House of Commons and an alternative government cannot be formed from the existing members of the House, following a vote of confidence, an election has to be called.

An election can be called at anytime if the government so wishes, though this is unlikely if the government has a satisfactory majority in the House. A party in power which becomes a minority government may go to the polls to improve its position as did Harold Wilson following his minority victory in the early 70'ies. The Prime Minister chooses the date of the election, which some claim is unfair since it is possible to create a mini economic boom prior to an election to create a temporary advantage. However this has not prevented the government changing hands frequently and besides, if the governments are already incapable of managing the finances of the country, just how effectively can they engineer a mini financial boom?

The Standard of M.P.s.

It has been claimed in some quarters that the calibre of M.P.s today is not very high. It has been postulated that a higher wage would attract a better class of candidate. There are also arguments for both raising or lowering the age limit. Calls have been made to ensure that M.P.s are full timers, since at present Parliament's hours are arranged around court hours since so many M.P.s are lawyers. There is no list of academic type qualifications to be an M.P. However, you should consult Hood Phillips for a list of disqualifications.

Mandates and democracy

People talk of elections reflecting the wishes of the people but

- How do you reflect the wishes of the people?
- How does one determine the wishes of the people ?
- Why do people vote and what do they vote for?

A referendum clearly produces a majority mandate since there is a single issue at stake. Even then people have to vote for black or white. Shades of opinion are not catered for. Where political parties have members on the right and on the left of the party, which party does the electorate choose? The Conservatives have a Pro-European faction and an European sceptic faction. When Thatcher, an European sceptic was deposed she was replaced by Major, a Pro-European. The electorate had no choice in the matter. Currently there is no major party with a clear European sceptic platform for the electorate to choose from. Labour played down its commitment to the European Community and the extent of its commitment only started to emerge labour came to power.

- Does it really matter who you vote for if the seat of power is really occupied by the civil service who never stand for election and are always there carrying out their own policies whoever happens to be in power?
- Does it really matter who you vote for if the seat of power is really occupied by the European Commission and E.C. bureaucrats?
- Do elections actually produce a mandate for the successful party?
- Do the voters who supported that party all support it for the same reasons?
- If not does an election actually legitimise any course of action that that party might then pursue during its term of office?

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Democracy and the Civil Service.

The government bureaucracy is not democratically elected in the UK but wields enormous power and influence over successive governments. Should the administration stand and fail with the government as in the USA ? Note however that the increasingly high public profile of US administrators has meant in recent years that BUS presidents have found it difficult to fill senior administrative posts. Clinton found this particularly problematic and failed to fill 50% of the posts in his first year in office. Watergate, Irangate and the White Water scandals have exposed the administration to too many dangers from Senate Investigating committees to make the post attractive and the fortunes of a large number of administrators have been dashed in recent times. Administrator's pre-office lives also come under public scrutiny at Senate hearings, ensuring that anyone with skeletons in their cupboards cannot risk public service as evidenced by the White Water Scandal.

Devolution

Does Parliament act in the best interests of all the regions in the U.K. or does it favour the South of England? Labour concluded that it did not and following successful referenda campaigns introduced devolved government to Ireland, Scotland & Wales. English Assemblies are due to follow.

As part of the Northern Ireland Peace process devolved government was reintroduced to Northern Ireland, based at Stormont. A second level of government was also established for the cross border area to give a say in government to the cross border area to Eire. Currently, Stormont has been again suspended because of a dispute about the decommissioning of arms and the links between Sin Fein members and the I.R.A. Last minute attempts to broker an agreement failed in April 2003 and elections to Stormont have been delayed yet again, pending a clear statement by Sin Fein / IRA on a permanent cessation of violence that is acceptable to the Government.

The Labour party established a Scottish Parliament with tax and legislative powers. However, Scottish M.Ps continue to be returned to Westminster. Wales gained a Welsh Assembly. Whilst both developments have been legitimised by referenda, the majority in Wales was extremely thin.

Whilst the Conservatives opposed the creation of a Welsh Assembly and a Scottish Parliament they had already commenced the process of creating a Northern Ireland Assembly. What is the difference in principle or is it simply one of political pragmatism? Something needed to be done about the Irish Problem but the Conservatives did not consider there to be a major problem in Scotland or Wales.

What is the difference between Scotland and Wales that the Scottish Parliament has real power but the Welsh Assembly is only a talking shop? Will the fragmentation of power in the United Kingdom due to these constitutional changes weaken the United Kingdom's role in Europe? Already there are demands by the Scots to seek independence and separate from the United Kingdom as Eire did.

The Scottish Parliament and Welsh Assembly Systems : Comparison with Westminster.

These are both based on a first past the post constituency basis, supplemented by a top up vote on a system of Proportional Representation. There are 40 Welsh constituencies returning one member each. Five combined Welsh constituencies are involved in the top up vote to return an additional 20 members. The top up system has enabled the Conservatives to retain a small degree of representation in both Scotland and Wales. By contrast, despite being the second largest party in Wales at the General election in terms of voter support, the Conservatives returned no MPs in Wales at all and only 1 in Scotland even though only 1% behind the Liberal Democrats who returned 10 members. The Scottish Nationalists took far more votes than the Liberal Democrats but returned only 5 members.

FIRST WELSH ASSEMBLY ELECTIONS 1999

Party	Constituency Seats	Regional Seats	Total Seats	Swing
Labour	27	1	28	N/A
Plaid Cymru	9	8	17	N/A
Conservative	1	8	9	N/A
Liberal Democrats	3	3	6	N/A

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WELSH ASSEMBLY ELECTIONS 1st MAY 2003

Party	Constituency Seats	Regional Seats	Total Seats	Swing
Labour	30	0	30	+2
Plaid Cymru	5	7	12	-5
Conservative	1	10	11	+2
Liberal Democrats	3	3	6	0
Other (independent, etc)	1	0	1	+1

The percentage of voters participating was approximately 50% in Scotland but only 34% in Wales, indicating a very high degree of voter apathy.

Summary of voting in Wales 2001 General Election

Party	Votes Number	% share	Change in share	Candidates	MPs elected	Average share
Labour	666,776	48.6	-6.2	40	34	48.6%
Conservative	288,623	21.0	+1.5	40		20.4%
Plaid Cymru	195,892	14.3	+4.3	40	4	14.8%
Liberal Democrat	189,435	13.8	+1.5	40	2	13.8%
Others	31,598	3.1	+1.4	NA		12.2%
Total	1,372,324	100.0			40	

FIRST SCOTTISH PARLIAMENT ELECTIONS 1999

RESULT:	Constituency seats	Regional seats	TOTAL seats
Labour	53	3	56
SNP	7	28	35
Conservative	0	18	18
Liberal Democrat	12	5	17
Others	1	2	3

Summary of voting in Scotland 2001 General Election

Party	Votes Number	% share	Change in share	Candidates	MPs elected	Average share
Labour	1,001,173	43.2	-2.3	71	55	44.4%
Scottish National	464,305	20.1	-2.0	72	5	20.2%
Liberal Democrat	380,034	16.4	+3.4	71	10	16.3%
Conservative	360,658	15.6	-1.9	71	1	14.9%
Scottish Socialist Party	72,279	3.1		72		3.3%
Speaker	16,053	0.7		1	1	66.6%
Others	17,965	0.7	+0.4	4		
Total	2,315,703	100.0		407	72	

The European Community Electoral System

The European Community suffers from a democratic deficit. The European Parliament is elected but the community's power base lies elsewhere, in the European Commission and in the Council of Ministers.

- Do the Elections to the European Parliament produce a democratic and representative European Parliament?
- Is the franchise so large that the vote of each individual becomes superfluous ?
- Have the 81 U.K. M.E.P.'s got sufficient voting strength in the E.C. Parliament (567) to carry any weight at all and to represent the wishes of the people of the UK ?

Constitutional and Administrative Law

The U.K. Euro M.P.'s are drawn from all parties in the U.K. so they do not represent a cohesive national team? Whilst Labour can align itself to a broad based socialist grouping within the European Parliament and the Conservatives can do likewise the political groupings in Europe are quite different from those in the UK or indeed in any other individual member state.

- Is the real power of the E.C. controlled by Ministers from each of the domestic states in the Council of Ministers?
- Or, is the real power of the E.C. exercised by the European Commission and how democratic, if at all, is this institution?
- On what basis were Leon Britten and Neil Kinnock chosen as British representatives and what mechanism was used to choose the roles that they would fulfil?

Mr Kinnock's credentials to fulfil the post of Transport Commissioner were not apparent. Leon Britten wanted the prestigious job of dealing with foreign affairs but failed to secure it. Bonito, an Italian placed in charge of the fishing industry has done little to inspire confidence in developing a coherent environmental policy.

Should the government member states be allowed to negotiate between them who is to hold the post of President of the European Union? The process for installing Jaques Santer did little to inspire confidence in the system.

- How influential, if at all, is the President of the E.C.?
- Is the real power behind the E.C. an unholy alliance of the French President, the German Chancellor and the E.C. President?
- Do the people of the U.K. care enough about the E.C. Parliament and the elections?
- Do the people of the U.K. have sufficient information to know and understand who and what they are voting for?
- Would they care more if the European Parliament had real power at the head of a Federal European State?

European Election Results 1999

Great Britain

Party	Votes	Seats won	Change on 1994
Conservative	3,578,203	36	+18
Labour	2,803,820	29	-33
Liberal Democrat	1,266,549	10	+8
UKIP	696,055	3	+3
Green Party	625,378	2	+2
Scottish National Party	268,528	2	-
Plaid Cymru	185,235	2	+1
Pro-European Conservative Party	138,097	0	-
British National Party	102,644	0	-
Liberal Party	93,051	0	-
Socialist Labour Party	86,749	0	-
Scottish Socialist Party	39,720	0	-
Natural Law Party	20,329	0	-
Socialist Alliance	7,203	0	-
Humanist	2,586	0	-
Weekly Worker	1,724	0	-
Socialist Party of Great Britain	1,510	0	-
Others	84,872	0	-

Northern Ireland

Party	Votes	Seats won	Change on 1994
*Democratic Unionist Party	192,762	1	-
*SDLP	190,731	1	-
*Ulster Unionist Party	119,507	1	-
*Sinn Fein	117,643	0	-
*Popular Unionist Party	22,494	0	-
*UK Unionist Party	20,283	0	-
*Alliance	14,391	0	-
*Natural Law Party	998	0	-

Constitutional and Administrative Law

The UK European Electoral System, introduced in 1996, is based on 9 regional lists for the entire country, with members selected from the list in proportion to party votes registered. The party ranks its candidates. Despite the fact that the system increases the chance of minority parties securing seats, voter apathy in the UK is staggeringly high with less than 30% of the electorate participating. This problem is likely to be exacerbated as National membership of the Community increases.

Members of the European Parliament

5th term: 1999 - 2004

[4th parliamentary term 1994 - 1999](#)

by political group and country

															Total	
PPE-DE	5	1	53	9	28	20	5	35	2	9	7	9	5	7	37	232
PSE	5	2	35	9	24	18	1	16	2	6	7	12	3	6	29	175
ELDR	5	6			3	1	1	8	1	8			5	4	11	53
GUE/NGL		3	7	7	4	15		6		1		2	1	3		49
Verts/ALE	7		4		4	9	2	2	1	4	2		2	2	6	45
UEN		1				4	6	10				2				23
EDD		3				9				3					3	18
NI	3				1	11		10			5				1	31
Total	25	16	99	25	64	87	15	87	6	31	21	25	16	22	87	626

626 Members - situation as at 4 May 2003

Changes in the last 60 days

Outgoing Members:

SÁNCHEZ GARCÍA, Isidoro

19.03.2003

Incoming Members:

[MONSONÍS DOMINGO, Enrique](#)

26.03.2003

HAUTALA, Heidi Anneli

25.03.2003

[AALTONEN, Uma](#)

07.04.2003

(*) Political groups:

PPE-DE Group of the European People's Party (Christian Democrats) and European Democrats

PSE Group of the Party of European Socialists

ELDR Group of the European Liberal, Democrat and Reform Party

GUE/NGL Confederal Group of the European United Left/Nordic Green Left

Verts/ALE Group of the Greens/European Free Alliance

UEN Union for Europe of the Nations Group

EDD Group for a Europe of Democracies and Diversities

NI Non-attached

Whilst the UK Labour Party fits in reasonably well with the Party of European Socialists in the European Party (with the exception of Gordon Brown and his supporters), and the European Liberal, Democrat and

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Reform Party provides a very comfortable home for the Liberal Democrats, the European People's (Democratic) Party is way to the left of centre of the UK Conservative Party and far more euro-centrist than the average rank and file conservative (with the exception of Heseltine, Patten and Clark).

With elections pending for a proposed new President of the Community and for a Commission President, it will be interesting to see how, if at all, the nominations will coincide with the interests of political parties.

Government Statistics

Elections to the European Parliament were last held in the UK on 10 June 2004.

The first direct elections to the European Parliament took place in June 1979, when nine European nations went to the polls to elect the members of a single Parliament. Previously, members of the European Parliament had been delegates from national parliaments. Direct elections have taken place at five-yearly intervals since then in 1984, 1989, 1994, 1999 and 2004.

Table 14 details the number of UK MEPs by party since 1979. In 1994, the Liberal Democrats gained their first European Parliament seats - Cornwall & West Plymouth and Somerset & North Devon - and the SNP increased their number of MEPs from 1 to 2. The change in the electoral system in 1999 enabled the Liberal Democrats to increase their representation, from 2 to 10. The SNP remained with 2 MEPs, and other parties (Plaid Cymru, UKIP and the Green Party) gained their first UK MEPs.

In 2004 the number of UK MEPs was reduced from 87 to 78 as the number of EU members has risen to 25. The number of Labour MEPs fell as the Liberal Democrat Party and the UK Independence Party increased their representation in the EU Parliament.

Table 14 : UK MEPs by party - 1979 to 2004

	1979	1984	1989	1994	1999	2004
Great Britain						
Labour (Number)	17	32	45	62	29	19
(% of UK MEPs)	21%	40%	56%	73%	33%	24%
Conservative (Number)	60	45	32	18	36	27
(% of UK MEPs)	74%	56%	40%	21%	41%	35%
Liberal Democrat	...	...	...	2	10	12
Scottish National	1	1	1	2	2	2
Plaid Cymru	...	...	...	...	2	1
Green	...	...	...	...	2	2
UKIP					3	12
Total	78	78	78	82	84	75
Northern Ireland						
Democratic Unionist	1	1	1	1	1	1
Sinn Fein	1
SDLP	1	1	1	1	1	...
Ulster Unionist	1	1	1	1	1	1
Total	3	3	3	3	3	3
Total UK	81	81	81	85	87	78

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Table 15 shows the number of votes for each party at euro-elections in the UK since 1979. In Great Britain to 1994 these were on a first-past-the-post basis, with constituencies comprising a number of Westminster seats. In 1999 and 2004 elections were held under a regional list system. In Northern Ireland they have been on the basis of a system of single transferable vote - the table shows first preference votes only.

Table 15 : European Election Results: Votes by Party 1979 to 2004

Great Britain	Votes 1979	1984	1989	1994	1999	2004
Labour	4,253,207	4,865,261	6,153,661	6,753,881	3,578,203	3,718,683
Conservative	6,508,493	5,426,821	5,331,098	4,268,539	2,803,820	4,397,087
Liberal Democrat (a)	1,691,531	1,358,145 (c)	944,861	2,557,887	1,266,549	2,452,327
Scottish National	247,836	230,594	406,686	487,237	185,235	231,505
Plaid Cymru	83,399	103,031	115,062	162,478	268,528	159,888
Green (b)	17,953	70,853	2,292,718	494,561	625,378	1,028,283
SDP	...	1,233,490 (c)	75,886	...	...	...
UKIP	...	...	...	150,251	696,055	2,660,768
BNP	...	...	...	...	102,644	808,201
Respect	...	...	...	...	...	252,216
Others	71,433	24,678	41,295	417,888	475,841	749,645
Total	12, 873, 852	13,312, 873	15,361, 267	15,292,722	10,002, 253	16,458,603
Northern Ireland	First	Preference	Votes			
Democratic Unionist	170,688	230,251	160,110	163,246	192,762	175,761
SDLP	140,622	151,399	136,335	161,992	190,731	87,559
Ulster Unionist	125,169	147,169	118,785	133,459	119,507	91,164
Sinn Fein	...	91,476	48,914	55,215	117,643	144,541
Alliance	39,026	34,046	27,905	23,157	14,391	...
Green	...	...	...	...	...	4,810
Others	96,734	30,976	42,762	22,798	43,775	45,442
Total	572,239	685,317	534,811	559,867	678,809	549,277
Great Britain Votes	1979	1984	1989	1994	1999	2004
Labour	33%	37%	40%	44%	36%	23%
Conservative	51%	41%	35%	28%	28%	27%
Liberal Democrat (a)	13%	10%	6%	17%	13%	15%
Scottish National	2%	2%	3%	3%	2%	1%
Plaid Cymru	1%	1%	1%	1%	3%	1%
Green (b)	0%	1%	15%	3%	6%	6%
SDP	...	9%	0%
UKIP	1%	7%	16%
BNP	1%	5%

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Respect	2%
Other	1%	0%	0%	3%	5%	5%
Total	100%	100%	100%	100%	100%	100%
Northern Ireland	First	Preference	Votes			
Democratic Unionist	30%	34%	30%	29%	28%	32%
SDLP	25%	22%	25%	29%	28%	16%
Ulster Unionist	22%	21%	22%	24%	18%	17%
Sinn Fein	...	13%	9%	10%	17%	26%
Alliance	7%	5%	5%	4%	2%	...
Green	...	...	...	...	...	1
Others	17%	5%	8%	4%	6%	8%
Total	100%	100%	100%	100%	100%	100%

(a) SLD in 1989/Liberal SDP Alliance in 1984/Liberal Party in 1979 (b) Ecology Party in 1979 and 1984

(c) The Liberal/SDP Alliance total is 2,591,635 in 1984

Sources: Library Research Paper 04/50 Craig & Mackie Europe Votes 3

Home Office Statistical Bulletin 26/84 June 1984

Home Office European Assembly election expenses 1979

Northern Ireland Assembly

Table 18 shows the results of the elections to the Northern Ireland Assembly in 1998 and 2003. Voting in the election was by proportional representation using the Single Transferable Vote system.

Table 18 : Northern Ireland Assembly elections: 1998 and 2003

Party	First Preference Votes		% Votes			Seats		% Seats		
	1998	2003	1998	2003	change	1998	2003	1998	2003	change
SDLP	177,963	117,547	22.0%	17.0%	-5.0%	24	18	22.2%	16.7%	-5.6%
Ulster Unionist	172,225	156,931	21.3%	22.7%	+1.4%	28	27	25.9%	25.0%	-0.9%
Democratic Unionist	146,917	177,944	18.1%	25.7%	+7.6%	20	30	18.5%	27.8%	+9.3%
Sinn Fein	142,858	162,758	17.6%	23.5%	+5.9%	18	24	16.7%	22.2%	+5.6%
Alliance	52,636	25,372	6.5%	3.7%	-2.8%	6	6	5.6%	5.6%	+0.0%
United Kingdom Unionists	36,541	5,700	4.5%	0.8%	-3.7%	5	1	4.6%	0.9%	-3.7%
Progressive Unionist Party	20,634	8,032	2.5%	1.2%	-1.4%	2	1	1.9%	0.9%	-0.9%
NI Women's Coalition	13,019	5,785	1.6%	0.8%	-0.8%	2	0	1.9%	0.0%	-1.9%
Ulster Democratic Party	8,651	...	1.1%	...	...	0	...	0.0%	...	...
Others	38,801	31,959	4.8%	4.6%	-0.2%	3	1	2.8%	0.9%	-1.9%
Total	810,245	692,028	100%	100%	...	108	108	100%	100%	

Sources: British Electoral Facts: 1832-1999, Rallings and Thrasher CAIN web service (cain.ulstetc. uk)

- The Democratic Unionist Party won 30 of the 108 seats, 10 more than in 1998. The DUP won the highest share of the first preference votes.
- The Ulster Unionist Party won 27 seats, one fewer than in 1998 despite a higher share of the first preference votes.
- Sinn Fein, who secured more first preference votes than the UUP, won 24 seats.
- The Social Democratic and Labour Party won the fewest seats, and the lowest share of the vote, of the major parties.

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Turnout in 2003 was 63.1 percent of the electorate, compared to 68.8 percent at the 1998 Assembly elections and 68.0 percent in Northern Ireland at the 2001 General Election.

Elections were held to the Northern Ireland House of Commons (Stormont) from its creation in 1921 to its prorogation in 1972. Since 1972 there were also elections to other devolved bodies. The results are not detailed here, but can be found at the following weblinks: <http://www.cain.ulst.ac.uk/issues/politics/election/elect.htm> (all elections since 1968) and <http://www.election.demon.co.uk/stormont/> (Stormont elections 1921 to 1969). Membership of Stormont by party following each general election in Northern Ireland between 1921 and 1969 are also available in Butler's British Political Facts 1900-2000.

RESEARCH PAPER 04/61 : Greater London Assembly

The London Assembly has 25 Members. There are 14 constituency members topped-up by 11 London-wide members. Voters had two votes: one for a constituency member and another for a party or independent candidate that was used to determine the number of London-wide Assembly members.

In 2004, the Conservative Party won 9 GLA seats, the Labour Party 7, the Liberal Democrats 5 and the Green Party 2. The UK Independence Party gained its first 2 members in the Assembly. Turnout for the GLA election was 36%.

Table 19 : Greater London Assembly Elections: 4 May 2000 and 10 June 2004 Votes for Constituency Assembly Members - London totals

Party of candidates	Number 2000	of Votes 2004	% Share 2000	of Vote 2004	Seats won 2000 2004
Conservative Party	526,707	562,047	33.2%	31.2%	8 9
Labour Party	501,296	444,808	31.6%	24.7%	6 5
Liberal Democrats	299,998	332,237	18.9%	18.4%	0 0
Green Party	162,457	138,242	10.2%	7.7%	0 0
UK Independence Party	2,115	181,146	0.1%	10.0%	0 0
Respect	...	82,301	...	4.6%	... 0
Christian Peoples Alliance	...	43,322	...	2.4%	... 0
Other	93,497	19,064	5.9%	1.1%	0 0
Total	1,586,070	1,803,167	100%	100.0%	14 14

Change +1 -1

Votes for London-wide Assembly Members - London totals

Party	No of Votes 2000	No of Votes 2004	% Share 2000	of Vote 2004	Seats won 2000 2004	Change
Conservative Party	481,053	533,696	29.0%	28.5%	1 0	-1
Labour Party	502,874	468,247	30.3%	25.0%	3 2	-1
Liberal Democrats	245,555	316,218	14.8%	16.9%	4 5	+1
Green Party	183,910	160,445	11.1%	8.6%	3 2	-1
UK Independence Party	34,054	156,780	2.1%	8.4%	0 2	+2
British National Party	47,670	90,365	2.9%	4.8%	0 0	0
Respect	...	87,533	...	4.7%	... 0	0
Christian Peoples Alliance	55,192	54,914	3.3%	2.9%	0 0	0
Others	109,322	4,968	6.6%	0.3%	0 0	0
Total	1,659,630	1,873,166	100%	100.0%	11 11	

Composition of London Assembly	2000	2004	Change
Conservative Party	9	9	0
Labour Party	9	7	-2
Liberal Democrats	4	5	+1
Green Party	3	2	-1
UK Independence Party	0	2	+2
Total	25	25	

Constitutional and Administrative Law

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Constitutional and Administrative Law

THE HOUSE OF LORDS

Introduction

In the past the House of Lords afforded direct representation to the most powerful men in the land. As time passed the importance of the House of Lords diminished and the power of the House of Commons increased, for many reasons. The House of Commons could claim a more legitimate right to exercise political power since it is elected whereas the Lords is a mainly hereditary body. The **Parliamentary Reform Act 1832** and subsequent legislation produced virtually universal suffrage.

ANALYSIS OF COMPOSITION - 1 May 2003 *By Party Strength*

Party	Life Peers	Hereditary: Elected by party	Hereditary: Elected Office Holders	Hereditary: * Royal Office Holders	Bishops	Total
Conservative	163	41**	9			213
Labour	182	2	2			186
Liberal Democrat	60	3	2			65
Crossbench	146	29**	2	2		179
Archbishops and Bishops					25	25
Other***	7					7
TOTAL	558	75	15	2	25	675

NB Excludes 14 peers on leave of absence.

ANALYSIS OF COMPOSITION - 1 May 2003 *By Type*

Archbishops and bishops		25
Life Peers under the Appellate Jurisdiction Act 1876		27
Life Peers under the Life Peerages Act 1958	(109 women)	545
Peers under House of Lords Act 1999	(4 women)	92
TOTAL		689

* These are: the Duke of Norfolk, The Earl Marshal (Other) and the Marquess of Cholmondeley, The Lord Great Chamberlain (Crossbench).

**L. Brabazon of Tara was elected as a Conservative but, as the Chairman of Committees, he now sits on the Crossbenches.

***These are: L. Archer of Weston-super-Mare, *Non-affiliated*; L. Beaumont of Whitley, *Green Party*; L. Fitt, *Independent Socialist*; L. Grenfell *Non-affiliated*; L. McAlpine of West Green, *Independent Conservative*; D. Norfolk *Non-affiliated*; L. Stoddart of Swindon, *Independent Labour*; B. Young of Old Scone, *Non-affiliated*.

Membership of the Lords prior to the Labour Reforms

Lords Spiritual, Hereditary Peers, Lords of Appeal, Life Peers. See p158 Bradley & Ewing for statistics. Membership of the House of Lords is potentially over 1,000 and is made up as follows :

- 1). **Lords Spiritual.** 26 including Bishops & Archbishops etc. They remain members of the House of Lords whilst they hold office.
- 2). **Lords Temporal** - include
 - a). Hereditary Peers of England before 1707 & of G.B. 1707-1800 and of the U.K from 1801 to the present time. In 1992 there were 758 of the above & 18 of first creation. None were created between 1965 & 1982. The Peerages Act 1963 said that women could sit as hereditary peers.
 - b) Scottish Peers created before 1707.
- 3). **Life Peers.** Life Peerage became possible in 1958, including Life Peerages for women. In 1992 there were 382 Life Peers.
- 4). **Law Lords.** Lords of Appeal in Ordinary. Only 11 can be paid for the function. Since the House of Lords not only acts as the legislature, but is also the highest court in the land this topic is discussed further in Chapter 9, The Executive, under the heading "Separation of Powers".

Constitutional and Administrative Law

Some Hereditary Peers had been deemed to abstain or had been granted leave of absence under standing order 20 of June 1958. In effect they were discouraged from voting but could not be barred from entry if they chose to attend. Thus a back woodsman's revolt of non participants in times of specific importance is prevented. In 1992 leave of absence granted to 97 peers & 84 were not summoned. Average attendance was 329 in the 1987/88 session & is gradually rising since 1955. On important occasions such as the E.E.C. enabling legislation in 1971, the House of Lords voted 451 to 58 in favour of joining the E.E.C. About a third of the House regularly attends i.e. a minimum of a third of the sittings. Another third never sit at all.

Crick stated that 'A hard core of between 60 to 80 members do the vast majority of the work'. There is no salary, but there is an attendance allowance plus expenses for travel etc. £16 daily subsistence allowance - £40 if they have to stay overnight and up to £17 for secretarial assistance.

Disqualifications include aliens, infants (those under 21), bankrupts, those imprisoned for treason, those expelled from the House and members of the House of Commons. Some who have succeeded to hereditary peerages have never applied for a **Writ of summons** - the procedure by which in theory they could be called upon to attend. There were 97 in this category in 1983.

Political complexion

The political system is party based. There is direct conflict between the interests of the Conservative and Labour parties. (Previously, the Liberals were the other major party. The Lords, which is conservative in nature, lost power to the Commons which at the time was predominantly Labour and Liberal under the **Parliament Acts 1911** and **1949**. This was actual recognition of the limits on the powers of the Lords and consequently the Lords must bow to the Commons.

Conservatives out numbered Labour 3 to 1. However, the Conservative majority was not so pronounced if one considered only regular attenders subject to the party whip. Even cross benchers were not opposed to the majority of Conservative Government Bills. Independent Peers are an important factor in the working of the House. Hartley & Griffiths consider that such a body is clearly unsuitable to decide the great political issues of the day. However its greater independence from the parliamentary whips and the general *'HIGH QUALITY'* of its membership suggests that it might have a vital role to play in respect of the government, outside the pale of party political controversy.

Powers of the House of Lords

Until the Parliament Act 1911 every Bill, if it were to become an Act had to receive the assent of the House of Lords. The power of the House of Lords was equal to that of the Commons. The only exception was that all financial legislation had to be commenced in the Commons. The Lords still however had the power to reject it.

They used this power in 1909 and rejected a Finance Bill without which the Government could not continue to function. Up to then it had been a convention of many years standing that the Lords would bow down to the Commons.

The rejection of the Bill led to a general election, which the Liberals again won, proving that the Government had the support of the people. Thus the Lords gave way over the next Finance Bill.

This however, was not enough to satisfy the Commons. They wanted revenge. They therefore tried to abolish the House of Lord's power to veto legislation. The only way it could be done was with the assent of the House of Lords, since a statute was needed.

One solution Edward VII was prepared to resort to, if necessary, was to create enough Peers in the House prepared to pass the legislation. This is an example of the power of the monarch. However, before he could do so he died in 1910. His successor, King George V was also prepared to create the peers provided the Liberals stood for election on this platform. They did so and won. The House of Lords, realising the inevitability of the situation gave way and agreed to legislation to limit their power without the need to create new peers.

Under the **Parliament Act 1911** the power of veto was taken away from the House of Lords and replaced with a power to delay. The power of veto remains for Private Acts of Parliament and likewise for Bills to extend the life of Parliament.

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With respect to the power of delay, a distinction has to be drawn between Finance Bills and other Bills. There is no strict definition of Finance Bills but they involve taxation, government loans, expenditure etc. The speaker of the House of Commons has to certify a Bill as a Finance Bill. Frequently they do not even bother.

The Power of delay regarding Money Bills :

If a Money Bill passes the Commons and is sent up to the Lords at least one month before the end of the session, then the Lords may delay it for one month, after which, if they have not agreed to it, it can none the less be given the Royal Assent.

The Power of delay regarding all other Bills :

The possible delay is much longer. By the **Parliament Act 1911** a two year delay was specified. Under the **Parliament Act 1949** the delaying period is apparently 13 months, though there are views to the contrary regarding this interpretation of the Act.

Finance under the **1949 Parliament Act** : Procedure : The Bill must have passed through the Commons on two separate sittings and after one month the Lords, having been given time to consider it and having then rejected it, the Bill can be sent for the Royal Assent. ⁷

The text books deem any Bill with money attached to it to be certifiable and that the normal delays inherent in the House of Commons means that there is essentially no problem. However, it has been known for a Bill to be made law in a couple of hours. In this respect a month is a long time.

The powers of the Parliament Acts had only been used three times, for **The Welsh Church Act 1914** : **The Government of Ireland Act 1914** : **The Parliament Act 1949** before the **Hunting Act 2004** and the **Civil Contingencies Act 2004**.

Functions of the House of Lords

The 1968 White Paper on the House of Lords outlined seven functions.

1. *Appellate Role, as in the House of Lords as final court of appeal. Note this could be situated anywhere, so the fact that it is deemed part of the House of Lords is a historical accident only.*
2. *The Lords provides a forum for debate for matters of public interest.*
3. *The Lords revises and amends Bills sent from the House of Commons.*
4. *The House of Lords is a useful body where less controversial Bills can be initiated. Contrast between morally and politically controversial bills.*
5. *The House of Lords scrutinises Delegated Legislation.*
6. *The House of Lords scrutinises Private Legislation.*
7. *The House of Lords scrutinises the activities of the Executive.*
8. *E.C. Law scrutinizing & revision Committee.*

Hood Phillips propounds the view that the House of Lords acts as a constitutional protector and is a valuable safeguard in that the House of Lords has the ability both to review controversial issues of the day and to delay legislation on such issues, thus affording a cooling off period so that decisions are not reached too quickly in the heat of the moment.

Compare Hartley & Griffiths who saw the Lords as a largely aristocratic and non-representative body with un-elected members who do not represent any body of the constituency and speak for only a small section of the community. Compare the following views on the value and use of Life Peers. Life Peerages are a device to reward members of the House of Commons for their contribution to politics : Life Peerages are a device to remove members from the House of Commons who are no longer useful - or prove to be an embarrassment to the Government : Life Peerages are a method of providing the Lords with clever intelligent people with a wealth of experience in specialised fields.

The quality of the members and speeches is *HIGH*. This claim is not substantiated by the writers who make the claim. Those who are conferred with peerages have provided considerable service to politics or public service or industry or otherwise made their mark in society.

⁷ See Hartley & Griffiths.

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Today the House of Lords is remarkably liberal with regard to social and penal reform. Contrast this with the attitude in the 40's and 50's regarding abolition of the death sentence. The legislation dealing with the relaxation of legal penalties for homosexual acts in the **Sex Offences Act 1967** was initiated by the House of Lords. It is a common for matters of morality to be discussed in the Lords since it spells political suicide in the Commons. Morality cuts against and across party lines. There is seldom anything to be gained in politics and inevitably something to be lost.

The House of Lords can be regarded as a useful legislative chamber. Many less controversial bills can be introduced there, as with the **Courts Act 1971** and the **Merchant Shipping Act 1988** which, whilst uncontroversial during its passage, has since attained notoriety with the advent of **Factortame**.

- 1969. 15 out of the 24 Bills introduced in the Lords were successful.
- 1969. 48 out of the 77 Bills introduced in the Commons were successful.⁸

The existence of the House of Lords provides an opportunity for the review of legislation and for amendments to bills (often the amendments are proposed by the Government which proposed the bill, as afterthoughts).

In 1968/69 48 Bills were sent to the Lords by the Commons. The Lords suggested amendments to 16 of them and the Commons accepted 10 of the amendments. In 1972 610 Lord's amendments were made to the controversial and complex **Local Government Bill** after it had been passed by the House of Commons. Most of the amendments were made at the suggestion of the government. See Crick regarding of the **Transport Bill 1947** at p113. With regard to amendments, the House of Lords will usually acquiesce to the will of the Commons, but sometimes the Lords can cause the Commons to significantly change their mind.

Foreign Compensation Act 1969 : When the Bill went through the Commons the government added an amendment to it as a result of a recent decision of the House of Lords in its capacity as an appellate court. The decision had received considerable criticism in legal circles. When the Bill went through the House of Lords, they themselves added yet another amendment to it. When it came to a vote in the Lords the government lost the vote. The government then reconsidered the position and added a third amendment. While informed public opinion probably influenced the government, none the less it was the Lords who acted as the vehicle to force change.

The Lords as controller of the Executive.

Parliamentary questions can be asked and there are many debates on government policy. Rather than a control, perhaps such questions are merely attempts at control. The House of Lords can debate social and cultural concerns : *'The existence of this second chamber allows discussion of a wider range of views than can be discussed in the commons.'*

Private Members Bills. (Bills proposed by Private Peers)

There are usually 2 - 3 uncontroversial Bills a session commenced in the Lords. 1969/70 session. 5 out of 13 successful. Commons. 1969/70 session. 10 out of 85 successful. This is not such a significant statistic as it would at first sight appear, since many members of the Commons will introduce a Bill simply to gain publicity, without pushing too hard for a positive result.

Private Members bills sent from the Commons to the Lords are often regarded as being treated kindly by the Lords, from the point of view that they can still be vetoed if the House so wishes. This is a convoluted attitude since they are likely to be non-contentious in the first place.

Private Legislation.

Private Acts of Parliament concerned large industrial projects and such as the development of the railways, Local Authority Acts such as the Cardiff Bay Barrage Bill and at one time "*prayers for divorce*". Half of all Private Acts were initiated in the Lords. Likewise, much of the scrutiny work of delegated legislation is done by the Lords, though the House of Commons also scrutinises such bills. The entire process of Private Acts was reformed in 1994

⁸ Note that this is not a typical year. A government with a large majority can command virtually 100% success.

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Various ideas about reform.

Prior to 1997 few changes had in fact materialised and these had not been fundamental - eg. Life Peers and the admission of women peers, which amounted to a 'patchwork' approach with small changes from time to time, mostly at times when the House had been at variance with the Commons.

Crick examined why the House of Lords had lasted for so long and why the changes had been so limited.

Ideas regarding its continued existence

1. The Lords is useful to the Commons - because under the present system the Commons suffers from organisational deficiencies eg regarding time.
2. Conservatives have a vested interest in retaining it. They are opposed to reform and to abolition.
3. The Labour Party are not sure exactly what objective they wish to achieve by reforming the House of Lords, If they merely abolish it there would be a vacuum.

If they reform it without introducing a democratic chamber then they might make it more useful and perhaps increase its power and influence.

A democratic Lords would be a direct challenge to the House of Commons since it is the un-representative nature of the Lords which is the main criticism of its legitimacy, but is there any need to duplicate the representative chamber? What function would it then perform that the House of Commons does not already do?

4. If the House of Lords does not get in the way of the Commons, there is no harm keeping it and if in fact it does something useful from time to time that is a bonus.
5. The left denigrates the Lords on account of its hereditary content.
6. The right elevates it as a British Institution. This may be regarded as daft. Similar logic dictates that if Peter Sutcliffe lasted long enough he also might become venerable. However, the lifetime of an institution and a person cannot genuinely be equated!
7. Crick adopts the sophisticated approach. The House of Lords should not be considered in isolation from the whole ambit of the legislative process i.e. it should be seen in the light of functions, powers and restrictions on those powers. The House of Lords is the final bastion for the protection of the Constitution and to prevent a dictatorship perpetuating itself indefinitely. It could ironically therefore be the hereditary protector of democracy.

Frequently reform of the House of Lords is debated at times of conflict, a bad time to make decisions about its future. If one is to look at the House of Lords in isolation then the starting point should be its functions i.e.

What does it do? or What should it do?

What powers does it need and what composition does it need to fulfil these functions?

Up to date it has only been authoritatively reviewed in relation to power and composition rather than in respect of functions.

1. It is possible to argue that some form of reviewing and scrutiny is desirable in respect of the bulk of law in existence, affording different people a chance to express a view. (Hartley & Griffiths)
2. It is arguably possible to improve the efficiency of the House of Commons so that there is no need of a second house and even to install a time gap provision. The number of Members of Parliament could be increased and the number of debates reduced.
3. Hereditary peers are not essential. If there is to be a second chamber it has to provide a complementary role to the commons. 'What sort of person would be suitable to this nitty gritty function?' If so, 'Should they not be recruited as opposed to being there by accident of birth?' There is rather a need for clerical / bureaucratic town hall types to scrutinise provisions. (See Crick).

It may be that the House of Lords has a better composition than the commons. Life Peers can be chosen on merit. There is no guarantee that the most useful and able persons are elected to the House of Commons. Is the political animal the most appropriate type of person to run the country?

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4. Why should the Lords need to challenge the great issues of the day ?
5. A second chamber should assist the House of Commons by doing work to save the House of Commons time and work. In this context why does the House of Lords need the power of delay or veto ? See Hartley & Griffiths.
6. The scrutinising function of the House of Lords does not demand a body with a dominant political complexion (at the moment conservative) since it is not a policy house.
7. If it is to act as a final protector of the constitution does it have sufficient power to do so ? Does it protect against a wide enough number of issues ?
8. As a final protector is its composition vulnerable to "packing" by a radical government with a massive majority committed to abolishing elections ? Should an upper limit be imposed on the voting numbers in the House - protected by a constitutional court ? Who should be in this court ? Would such a court make the House of Lords superfluous ?

Proposals for reform.

The 1948 All Party Conference on the House of Lords reached preliminary agreement on the following points :

- i. The Lords should complement and not duplicate the functions of the Commons.
- ii. No one party should be dominant.
- iii. Hereditary rights should be insufficient as a qualification to enter the House and should be replaced by people of distinction in public services.

Women should have equal rights as men to entry. Certain descendants of the Sovereign should be allowed.

Certain Lords Spiritual should be allowed. Law Lords should be allowed.

- iv. Assistance for those of limited financial means.
- v. All excluded Peers to be given the vote and allowed to stand for the Commons.
- vi. Any member who becomes unfit for their duty or incapable should be disqualified.

The following twenty years saw a few minor reforms such as the **Life Peerages Act 1958** and **The Peerages Act 1963** which provided the right to disclaim a peerage, and gave the right for females to enter the House.

The 1967 All Party Committee almost reached agreement spurred on by the rejection of an Order In council by the House of Lords. The government broke off the talks on reform and published their own White Paper on reform in 1968.

It is thought that it was substantially the same as the All Party Report. The Government proposals were debated and approved in both Houses. A Bill was introduced on a three line whip in December 1968. There was support even from the opposition front bench. There was still however opposition from those who thought it went too far, and those who thought it did not go far enough.

The second reading passed by 285 to 135. The government considered this not enough especially since they wished to push through an **Industrial Relations Bill**. As it happened the Bill was delayed until the 1969 session and never completed the course.

The proposals were based on the 1948 Conference but it had a few new ideas :

1. **Voting and non-voting peers.** The non-voting peers could attend speak and forward motions. These would consist of the hereditary peers who could attend in their lifetime but their heirs would not be allowed to enter. To be a voting peer one would have to attend at least on third of the sittings. If not, one would lose one's right to vote. Government ministers would not be liable to the restrictions. Retirement at 72 would be introduced, but would not take effect immediately. The Lord Spiritual would gradually be reduced from 26 to 16. Hereditary peers who wished to participate could be made Life Peers. Enough Peers would be created at the beginning of each Parliament to give a government a majority over the opposition, but not over the House. Questions then occur as to what one does in the instance of a coalition. Identifying the parties forming the opposition may be difficult if (as with the Labour party in the late 1980's) a party appears to be in decline and another in resurgence. Just who is the opposition ?

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2. **Powers of delay** to be reduced to six months from the rejection of a Bill. No power of delay for delegated legislation. This was probably introduced for no better reason than that the Lords had just rejected such a motion.
3. **Non-controversial Bills introduced** by the Lords and thoroughly dealt with could be given an accelerated route through the Commons, thus increasing productivity.
4. **Body to appoint new peers.** It has been suggested that the proposal of creating new peers would give the P.M. too much power of patronage. Therefore, it was proposed that a body could be introduced to deal with this task. The question is, Since in government circles the P.M. has virtually total power already, would this make much difference? When confronted with the task of appointing a new Lord Spiritual one P.M. is said to have remarked "Oh no, not another bloody Lord dead!", indicating that the P.M. quite possibly does not even want the 'extra power'. It would appear that John Major is opposed to the issuing of gongs and the class system which runs contrary to his notion of the 'classless society'.
5. **Joint committee on delegated legislation.** A joint committee of both houses to consider private and delegated legislation, since it is pointless two bodies looking consecutively at the same issues. This begs the question, if this is true then why have two houses at all?

The Current State of Reform of The House of Lords.

Under the guidance of Lord Irvine, the Labour Government launched into reform of the House of Lords, in 1997. The central focus of reform has concentrated on composition rather than functions or powers, with the express aim of removing the hereditary peers.

The first stage of a two-stage reform process was to reduce the hereditary peers to 75, chosen by an electoral college formed out of the existing hereditary peers. In essence the majority of hereditary peers were required to vote themselves out of a seat in the House. They were not given the choice of electing not to reform, so the election was a form of *Hobson's Choice*. This was intended to be an interim solution.

The second stage of the reform was not fully formulated when the interim plan was put into action, but its intention is to replace the hereditary peers completely. The problem is that the Labour Party has been unable to agree on what will replace the interim solution. Proposals range from elections by the people or by the main parties in the House of Commons, to appointment by the Prime Minister or by an Appointment Quango.

General Observations on The House of Lords.

Sir Walter Baghot declared in "*The English Constitution*" that '*the cure for admiring the House of Lords is to go and look at it at work*'. Peter Mirrorfield⁹ remarks that '*one might not be so impressed at the House of Commons either, if one were to go and look at it at work*'.

Both the House of Lords and the House of Commons have been televised for some time now. There have been no major public outcries for reform of either House based on the poor quality of work that either House does.

Both the House of Lords and the House of Commons have been televised for some time now. There had been no major public outcries for reform of either House based on the poor quality of work that either House did.

Perhaps the conclusion is that looking at either House in action is not in fact "a cure for admiring them". Whilst several of the newly fledged democracies have sent delegates to the U.K. to observe Parliament in action, with a view to emulating our Parliamentary system, sadly, the truth may be that the general public is simply seized of a great apathy and indifference towards political debate at the present time. Despite the fact that Parliamentary question time has even become cult viewing in the States, by contrast, viewing figures in the U.K. are apparently very low for both Houses. This indicates that, whilst the Labour Party and some sections of the press find reform an interesting moral issue, the general public does not appear to be concerned, or interested.

⁹ Peter Mirrorfield L.Q.R. Jan 1979: '*Can the House of Lords lawfully be abolished?*'

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- Are enough religious denominations represented in the House of Lords today ?
- Should the Lords be paid more so that more of them attend and give us the benefit of their valuable knowledge and experience ? Should M.P.s be paid more and prevented from doing private work so they dedicate more time to their public duties ? Then perhaps they would have sufficient time to do all the work, making the House of Lords superfluous.
- Should the timetable of both Houses of Parliament be reformed and the long breaks between sessions reduced so that more work can be accomplished ? If this was done to the Commons would the input of the Lords become superfluous ?
- Should the retirement limit of the House of Lords be reduced to stop it from being a retirement home for geriatric MPs and civil servants ?
- Should there be a minimum attendance level for Lords and anyone who fails to attend a certain percentage of sittings without good cause have their attendance and voting rights removed
- Should the party whips be removed from the Lords making it an entirely non-partisan body ?
- Should the work of the House of Lords be privatised and competitively tendered along with other administrative organisations for scrutinizing work

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