

Is a British Senate any closer now? Or will the House of Lords still go on and on?

By Democratic Audit UK

*Labour enters the 2015 election pledged to make creating a British Senate a key part of a new Constitutional Convention. The SNP surge in Scotland gives much greater urgency to the idea, since a new upper House could be one of the most important components for re-binding together a fully federal UK. **Richard Reid** and **Patrick Dunleavy** read the runes on a century-old area of constitutional controversy, which just might get resolved soon.*



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In November last year Ed Miliband announced his preference for the establishment of a Senate in the UK, to replace the (still) wholly unelected House of Lords. Miliband's proposal was for a completely new House based on the regions, to address the disproportionate overrepresentation of London-based peers in the House of Lords ([BBC, 2014](#)). Since then little further detail has emerged to flesh out this announcement, and [the Labour manifesto](#) is rather gnomish about it as well, saying only:

'Labour is committed to replacing the House of Lords with an elected Senate of the Nations and Regions, to represent every part of the United Kingdom, and to improve the democratic legitimacy of the second chamber. It is also time to consider how English MPs can have a greater role in the scrutiny of legislation that only affects England. This includes the option put forward by Sir William McKay, of a committee stage made up of English-only MPs. These ideas must now be considered as part of the Constitutional Convention process.'

This does at least point to a possible close connection between a Senate and the 'federal' issue in the UK. Creating a Senate and the EVEL (English Votes for English Laws) issue are clearly going to have to be solved together in the Convention. And this time Labour is also not alone in promising reform and favouring a Convention to get to it.

The SNP look certain to be the third largest party after the election, and they also favour scrapping the Lords and creating a new elected second chamber. SNP leader Nicola Sturgeon has several times floated the idea that

Scotland's assent should from now on be a *sine qua non* of constitutional change in the UK – e.g. preventing the UK leaving the European Union unless Scotland (and other UK countries) all vote to do so. A new Senate could be the SNP's best way of getting the 'hard veto' she has outlined.

A new Senate might also be a route for solving the EVEL problem, with hard-wiring concessions to Scotland to give them protection against constitutional change, being linked to the English senators having a veto over the final passage of laws relating only to England. For instance, such bills might go through the normal legislative process of proposal and amendment in the Commons, then go to the Senate for smaller changes, but still be subject to a final Yes/No acceptance of the final legislation by England-only senators

The Liberal Democrats look certain to run fourth in terms of MPs, and so they are likely to far less salient in how decisions get made than in 2010. [Their slender manifesto](#) also gives remarkably little information to voters, focusing on complaining instead that: 'It hasn't been easy: Labour and the Conservatives ganged up to block our attempts to reform the House of Lords'. However, they also vaguely pledge to 'Reform the House of Lords with a proper democratic mandate'.

[UKIP's manifesto](#) says nothing at all about the Lords, but is forthright on the need for voting reform: 'In an age of multi-party politics, our current first past the post Parliamentary election system is unfair and no longer fit for purpose.... UKIP will campaign for a new, proportional voting system that delivers a Parliament truly reflective of the number of votes cast, while retaining a constituency link, so every vote really does count.

So only [the Conservatives](#) are clearly going to defend keeping the Lords into the last ditch. They declare (somewhat duplicitously?) that 'while we still see a strong case for introducing an elected element into our second chamber, this is not a priority in the next Parliament'. They are more explicit on FPTP: 'We will respect the will of the British people, as expressed in the 2011 referendum, and keep First Past the Post for elections to the House of Commons'.

What kind of Senate?

In constitutional terms all previous efforts at Lords reform have been wrecked on the rock of trying to make the current second chamber work afresh, while yet keeping historical continuity with its past. The last botched Liberal Democratic effort in 2012 (ably made utterly unworkable by dissident Tories) was clearly '[heading for the dustbin of history](#)' by the time it came out of a joint Commons/Lords committee. An [earlier, more feasible Con/Lib Dem government plan](#) might have survived an inevitable referendum test, and one estimate suggested it was [80% there](#). But the final joint committee version was a complete mish-mash, impossible to explain to anyone at all but veteran Westminster insiders.

Starting with a completely fresh elected Senate cuts out all this clutter and makes clear that whatever proposal is chosen must be

- small and streamlined in membership terms (say 100 to 200 members, compared to the [current hugely bloated Lords](#),
- agreed or at least reluctantly accepted by almost all political parties
- and capable of being simply explained and justified in a referendum campaign.

Territorial representation is likely to be one the main concern of a new second chamber, with three aims clearly involved. One is increasing the representation of those from outside the South-East. A second strand might be fixing English votes for English laws – an issue made ever more salient with the increased powers expected to be granted to the Scottish parliament over Scottish laws. The third strand might be giving the nations of the UK hard-wired constitutional protections against being subject to changes for which there is only an English majority, an issue where even Conservative unionists might see virtue in a Senate all-nations requirement, as a device to keep the union secure for the future.

The new senators would be elected by some variant of regional proportional representation. recognised merit of the House of Lords is its multi-party character which encourages compromise. A PR electoral system would enable this character to continue. In addition, the use of PR would ensure that there was not duplication between the two

chambers, as does having only half of the senators elected at each general election. [Detailed plans for how to elect a Senate](#) were provided to the Wakeham Commission by Patrick Dunleavy and Helen Margetts in 1999, but completely rejected by that body at the time. They envisaged a 200 member Senate, with senators serving 10-year terms (now made a lot simpler to organize by the fixing of the Commons' term at five years, if this provision endures), with half the members for each of the English regions and Scotland, Wales and Northern Ireland being elected every five years. Staggering terms like this gives the Senate more continuity and prevents it tilting the same way as the Commons as a result of a single general election – but it does mean you need more like 200 senators than 100 in order to run effective PR elections.

In addition, terms of ten are a long time, and could be criticized for creating a lack of accountability of such terms. Extending the right to recall for the second chamber would seem inevitable, with a fairly large threshold to trigger a by-election to ensure that this mechanism was not manipulated by political opponents, but would need rather to represent a genuine groundswell of opinion against a member acting negligently in their duties to those by whom they were elected.

The Dunleavy/Margetts schema had population-proportional representation in multi-member seats, broadly on the same lines as MEPs are distributed at present across the UK. However, a brand new Senate might yet be constituted as part of a constitutional convention on a different basis. One solution might be to give every English region and the three other nations the same seat numbers, as happens with US and Australian states in their Senates. But these even seats arrangements were part of difficult compromises in the initial forming of federations between otherwise independent small and large colonies – a quite different situation from the case in the UK. It seems unlikely that flat representation across nations and regions would be acceptable in a mature constitutional resettlement.

Alternatively there might be two levels of nation/region, with Scotland and Wales making the top level, and Northern Ireland and smaller English regions only the lower level. Or a neat way of going for rough population proportionality while yet giving smaller regions a voice would be to follow the 'square root rule' beloved of political scientists, where nations and regions get seats in proportion to the square root of their population.

Conclusion

Every ambitious plan for reforming the House of Lords in the last 100 years has come to grief, often as a result of its members' obduracy and naked defence of their self-interests. So reframing the debate as creating a British Senate could be a move that breaks the logjam. The Labour government of Tony Blair wrought far-reaching constitutional changes by creating new institutions, largely driven by the pioneering consensus-building and rational debate of the late 1990s Scottish Constitutional Convention (which the SNP boycotted). A new Constitutional Convention, with strong SNP inputs this time, and even some Tories wanting a reform process to safeguard the union, may yet have a key role for a radically new institution.

The full, 72 page report by Patrick Dunleavy and Helen Margetts, 'Electing Members of the Lords (or Senate)' (London: LSE Public Policy Group, December 1999) is available for free download on LSE Research Online [here](#).

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