

Written evidence from Dr Richard Johnson¹ (MHL17)

Public Administration and Constitutional Affairs Committee Membership of the House of Lords inquiry

I. Advantages of the current arrangement

The value of the House of Lords cannot be understood separately from its relationship to the House of Commons. In the past century, the British constitution has evolved effectively into a unicameral system. That is to say that as a revising chamber, the Lords does not exercise decisive veto power against the will of the Commons, which can always prevail except in a limited set of circumstances. Instead, the Lords plays a constructive and distinctive supportive role to the lower chamber and government. This is welcome for several reasons.

- A. First, having chambers with members of quite different characters (full-time politicians versus those engaged in other activities) is complimentary rather than redundant. Members of the House of Commons and the House of Lords bring different insights; they have different things to say. This enriches the quality of legislation by minimising the risks of echo chambers and group think.
- B. Second, members of the chambers face different kinds of public pressure. While MPs have the benefit of their constituents' insights and the pressure of their party memberships, peers benefit from being able to take a longer-range view while also knowing that their views must ultimately be subservient to the popular will. Sometimes, immediate popular pressures can diminish members' willingness to take unpopular or obscure stands, which might nonetheless be usefully aired. In addition, the insulation of the Lords from elections provides space for these legislators to champion 'friendless' causes that might not have particularly large or electorally important constituencies and are, therefore, more likely to be neglected by MPs.
- C. Third, the House of Lords ensures that individuals who are not professional politicians can, nonetheless, contribute directly to debate and amendment of laws.

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I have written extensively on constitutional matters for academic and media outlets. I was the co-editor of the recent book [Sceptical Perspectives on the Changing Constitution of the United Kingdom](#) (published by Bloomsbury's law imprint Hart), which contained contributions on the House of Lords and public appointments. I have published peer-reviewed research on the [policy biases of territorial representation in the US Senate](#) (with Professor Lisa Miller, Rutgers University, New Jersey), as well as research on [federalism and the judiciary](#). In the media, I have written on the primacy of the House of Commons ('Don't Hobble the House', *The Critic*, July 2023) and appeared on television to discuss the case for [expanding the size of the House of Lords](#). I also contributed to Policy Exchange's *Government by Proclamation* report in which I explored the idea of ['elective dictatorship'](#).

Given that the time for debate in the House of Commons has been diminished thanks to reforms begun in the 1990s to produce more 'family friendly' hours, this deliberative function of the Lords assumes an even greater level of importance.

- D. Fourth, the House of Lords acts as something of a pressure valve on the House of Commons. The United Kingdom suffers far less from the 'gerontocracy' that plagues the United States where full-time legislators stay in office sometimes well into their 80s or even 90s. There is an understandable impulse from senior politicians to resist being 'put out to pasture' and ignored after a lifetime of public service and experience. The House of Lords enables a kind of halfway house for these experienced politicians. They can remain part of the legislature, but participate in a less intensive way, ensuring that the public are not deprived of their expertise and insights but allowing newer generations to seek elected office and represent their constituents on a full-time basis.

II. Size of the chamber: increase, don't decrease

The case for decreasing the size of the House of Lords is both underwhelming and fundamentally misunderstands the role of the upper chamber as it has evolved in the British constitutional system.

The House of Lords is not strictly speaking a 'professional' legislative chamber. Its members do not take a salary. There is no expectation of full-time participation. There is little sanction for dormant membership. There is limited provision for staff or even office space. These are features, rather than flaws, of the current arrangement. They are worth protecting.

Many legislatures around the world are semi-professional or even amateur. In Britain, of course, local councils are not professional legislatures. Only a modest allowance is provided to members who otherwise carry on with full-time professional obligations. Switzerland's Parliament is semi-professional. Its members are not paid a full-time salary, and most pursue other professional activities. Many US state legislatures are semi-professional. For example, the legislature of Texas (population: 29.5 million) is semi-professional. Members are given a small monthly payment, which equates to less than £5,000 per annum, as well as a daily attendance top-up (about £150), as is the case in the House of Lords.

There can be certain advantages to this arrangement. The primary advantage is recruitment. Semi-professional legislatures attract different types of individuals than those who would serve as a full-time legislator. This can result in a legislature with more 'independent-minded' members. Because their livelihoods do not depend on membership, some of the pressures to 'toe the line' are alleviated. Semi-professional legislatures are also more likely to include individuals who do not regard themselves as 'politicians', but nonetheless have important insights to provide, often by virtue of the fact that they are semi-detached from full-time political activity.

The semi-professional nature of the House of Lords ensures that it includes members who remain active in a wide array of other activities from academia and medicine to law and

business. It also is a place where more senior (i.e., retired) individuals can remain involved without the strenuous pressures of daily attendance.

The House of Lords, thus, contains members who remain active in professional life, as well as members who seek some level of retirement but not total obscurity. They enrich rather than detract from the legislature and provide two categories of legislator (the professionally engaged and the elder statesperson) which is distinctive from the House of Commons. Many of the members of the House of Lords would simply not be legislators if required to participate in a full-time basis. This would be a great loss to the legislative process, removing professional and intellectual diversity from the upper chamber.

One of the reasons that the House of Lords contains this wide array of voices is due to its size. Because it has a large membership, individual pressures of participation are minimised. The House of Lords is best thought of as a pool of experts and experienced figures from public life. These individuals are not – and should not – be expected to intervene on every matter of policy. They can intervene judiciously according to their background, expertise, and insights. It, therefore, makes little sense from this vantage point to ‘shrink the pool’ by reducing the size of the chamber.

Indeed, it would make more sense to increase the number of peers in order to increase the range of peers who can intervene on their ‘special’ subject matters. The House of Lords used to be much larger than it is today. In the late 20th century, there were over 1,000 members.

[The Observer editorial](#) recently argued, ‘It is now a preposterously large chamber of 784, for whom there would not be room if they all turned up’. This is a flawed objection. There is no *presumption* (or, practically speaking, risk) that all members of the Lords would turn up. Equally, the space argument is rather specious, given the House of Commons is both a smaller physical chamber and contains a higher average attendance than the Lords.

There is no obvious reason to shrink the size of the Lords other than a perception that it is anomalous compared to other upper chambers, but this seems to me to be a rather cosmetic and superficial reason for change. Such a perspective also fails to take seriously the unique features of British constitutional evolution. The British constitution is something of an international outlier on a whole range of constitutional features. These are not in themselves flaws needing ‘correction’.

On the other hand, reducing the size of the House of Lords carries substantial downsides. It reduces the range of voices who can be included in the chamber on any given issue. It is a great strength of the House of Lords that former trade union officials, bishops, surgeons, playwrights, Nobel Prize winners, academics, prime ministers, and more can fill the red benches. Ejecting many of these members would serve no particular advantage. In addition, by shrinking the size of the House of Lords, the pressure on the remaining individuals to participate full-time would increase. This would further discourage the two types of legislator for which the House of Lords caters well but the House of Commons does not (the professionally engaged and the semi-retired elder statesperson). Yet, these types of legislators greatly enrich Parliament, debate, and the legislative process.

III. The case against popular elections to the upper chamber

Undoubtedly, one of the reasons why the House of Lords has its unique and valuable role in the British constitutional system is because its members are unelected. There are a variety of reasons why having an unelected upper chamber can deliver these unique contributions in a way that elected chambers simply cannot.

- A. First, members do not face continual electoral pressures. This enables members to take positions that are not contingent on the particular electoral cycle. Members can express more long-term thinking.
- B. Second, members do not need to seek nomination by party members in order to be chosen. While party members play an important function in our democracy, they are total gatekeepers to members of the lower chamber. Scholarship on party members has demonstrated that they are unrepresentative of the public and consequently skew the selection of elected politicians in ways which can sometimes be perverse.
- C. An unelected chamber attracts members who simply would not be legislators in an elected chamber for reasons of time, professional priorities, age, or personality.
- D. A completely unelected Lords ensures that the Commons retains political primacy. It also removes a potential veto player from the electoral process. Higher numbers of veto players have been shown to correspond with gridlock and the inability to legislate to tackle pressing questions.

IV. The case for retaining the hereditary peers

The hereditary peers are much discussed and are easy targets for reformers. On a theoretical level, we might bristle with the idea of people who owe their seats to family lineages, and this is quite understandable. Of course, the same thing can be said about the head of state, but the public clearly accept that sometimes the practical outcomes of constitutional arrangements (i.e. a head of state chosen by virtue of parentage) may be superior to theoretically 'superior' alternatives.

The same can be said for the hereditary peers who currently sit in the House of Lords. The retention of the hereditary peers has useful practical benefits. For one, unlike the life peers, the hereditaries do not owe their position to a political patron (or to a committee or a group of civil servants). They are, therefore, able to be different, more detached, and longer-term view than nearly any other member of the legislature. The system of a (relatively) small proportion (thanks to the large size of the chamber overall) of hereditaries ensures that their voices do not predominate, but they are still able to contribute. The system of hereditaries elected amongst themselves in the current by-election system strikes me as quite a good arrangement. It ensures that the 'best' are chosen from the eligible peerage, weeding out the mad, bad, and dangerous. The Scottish peerage used to function in a similar way after the Act of Union. Not only Scottish nobles were entitled to sit in the House of Lords. They would meet amongst themselves to choose the best of their lot to be sit in Westminster.

V. **Appointment**

I would advise against empowering an (at best) distantly accountable committee to make decisions about the membership of the upper chamber. While it is perfectly fine for the House of Lords Appointment Committee to give advice on the suitability of candidates, as well as to seek out candidates of good quality to recommend to government, it would be improper for such a body to have the 'final say'.

We have a political constitution, and the main check under our constitution should, therefore, be the public. If prime ministers make an excessive number of appointments or install peers of dubious quality, these tend to attract public outcry. We have seen recent evidence of how appointments to the House of Lords can make frontpage news. This is not a flaw. The correct 'check' against the prime minister is the political (and, ultimately, electoral) penalty that this behaviour will attract. Prime ministers must know that if they make bad appointments, they will attract public ire and diminish their reputation. There are only so many times a prime minister will want to pick that fight with the electorate.

The present system of appointing peers is the least worst option. The prime minister and the leaders of opposition parties should be able to make occasional appointments to the upper chamber in order to ensure that it continues to comprise preeminent public figures, experts, and experienced politicians.

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