

# Elected or Selected? The Continuing Constitutional Conundrum of House of Lords Reform

PETER DOREY

## Abstract

The 1911 Parliament Act decreed that Lords reform was ‘an urgent question which brooks no delay’, yet the subsequent 112 years have witnessed only sporadic and inchoate reforms. The issue has invariably suffered both from interparty disagreement between the Conservatives and Labour and, more importantly, intraparty disagreements owing to the divergent views and irreconcilable disagreements among Labour MPs over ‘what is to be done?’, and recognition that any reform which enhanced the legitimacy of the second chamber would threaten the pre-eminence of the House of Commons and a Labour government therein.

A similar fate is likely to befall the Labour Party’s latest proposal for replacing the current House of Lords with an elected second chamber. Meanwhile, the Conservative peer, Lord Norton, is seeking to place the House of Lords Appointments Commission (HOLAC) on a statutory basis and impose stricter criteria on prime ministerial nominations for peerages. Yet, this would still leave any Prime Minister with considerable powers of patronage in appointing members of the second chamber. This article therefore suggests that a Prime Minister should only be permitted to nominate 20 per cent of the membership, with the rest appointed via HOLAC itself, thereby depoliticising the process as far as practicably possible, and imbuing it with greater public trust.

**Keywords:** experience, expertise, HOLAC, nominations/nominated, prime ministerial patronage, transparent criteria

No-one in his right mind could ever have invented the House of Lords, with its archbishops and bishops ... hereditary peerages marshalled into hierarchical grades of dukes, marquesses, earls, viscounts and barons, its life peers nominated by the executive, its truncated powers ... The case for reform seems unanswerable.<sup>1</sup>

DURING THE LATTER half of 2022 and into 2023, House of Lords reform moved back onto Britain’s political agenda, with senior parliamentarians from Britain’s two largest political parties mooted policies either to replace it with a new second chamber, or to strengthen it through internal reform. The former policy was advocated by the Labour Party, with its leader, Sir Keir Starmer, pledging that the next Labour government would abolish the current unelected House of Lords and replace it with

an elected second chamber, albeit one enshrining strong regional representation. The latter option, to strengthen the House of Lords via internal and procedural reforms, entailed different proposals from two Conservative parliamentarians, one from each house. Lord (Professor Philip) Norton introduced a Private Members’ Bill, seeking to strengthen the House of Lords Appointments Commission (HOLAC) and *inter alia* place more robust checks and balances on prime ministerial patronage. Meanwhile, Conservative Prime Minister, Rishi Sunak, reportedly wanted to reduce the size of the second chamber, while simultaneously addressing the unresolved issue of the ninety-two hereditary peers, who had been permitted to remain on a ‘temporary’ basis in lieu of the Blair government’s proposed ‘stage two’ of House of Lords reform—which was never completed. Each of these three proposals warrant further discussion and evaluation before I

<sup>1</sup>Lord Hailsham, *On the Constitution*, London, Harper Collins, 1992, p. 48.

suggest a fourth, more novel and arguably radical, policy option.

## Labour's (latest) abolition proposal

The Labour Party has a long history of ambiguity and equivocation over House of Lords reform, with different options being proposed by different ministers at different junctures. The plethora of proposals include outright abolition and the adoption of unicameralism, a directly elected second chamber, an upper house based on regional representation, a second chamber whose role would be to protect constitutional and human rights or civil liberties, a House of Lords in which hereditary peers could partake in debates but not vote in divisions, a second chamber which comprised a blend of elected and appointed peers, and a wholly appointed House of Lords.<sup>2</sup>

The last of these is effectively what exists today—with the exception of the ninety-two hereditaries and the twenty-five Lords Spiritual—as a consequence of the Blair government's failure to complete 'stage two' of its professed programme of House of Lords reform; Labour MPs either could not agree on how the membership of the second chamber should be determined or (s)elected, or were simply not interested in an issue which they haughtily assumed was only of interest to *Guardianistas* and/or the chattering classes tucking into organic nut-roast, washed down with fair trade Merlot, at an Islington or Hampstead dinner party. Meanwhile, having secured the removal of the majority of (mostly Conservative) hereditary peers, Tony Blair's purported interest in House of Lords reform immediately dissipated, thus depriving the issue of sustained momentum and—apart

<sup>2</sup>On the history of the Labour Party's sundry debates, proposals and policies on House of Lords reform, see P. Dorey, *The Labour Party and Constitutional Reform: A History of Constitutional Conservatism*, Basingstoke, Palgrave Macmillan, 2008, ch. 3; P. Dorey, '1949, 1969, 1999: The Labour Party and House of Lords reform', *Parliamentary Affairs*, vol. 59, no. 4, 2006, pp. 599–620; P. Dorey and A. Kelso, *House of Lords Reform since 1911: Must the Lords Go?*, Basingstoke, Palgrave Macmillan, 2011, ch. 2, 5, 6.

from the efforts of Robin Cook—a lack of leadership.<sup>3</sup>

On this last point, Philip Norton has noted that parliamentary reform usually requires a 'champion' to promote a policy and if formally adopted, pilot it through the House of Commons.<sup>4</sup> Such 'change champions' are often a senior minister without portfolio (usually the Leader of the House of Commons), such as Richard Crossman in 1966–68, Norman St John-Stevas in 1979 and Robin Cook during 2001–2003, or a prominent and widely-respected backbencher, such as Tony Wright in 2009–2010.<sup>5</sup>

Prior to the (1997–2001) Blair government's removal of most of the hereditary peers, the Labour's Party's most notable policies pertaining to House of Lords had been the 1949 Parliament Act, which reduced the second chamber's veto power from two years to one, and the 1969 Parliament (No.2) Bill, which had (among a range of measures) sought to bar hereditary peers from voting in divisions, but was then abandoned owing to lack of agreement and insufficient support among Labour MPs. Under the influence of the Bennite left in the early 1980s, Labour's policy was to 'abolish the indefensible House of Lords' altogether, and thus rid Britain of this 'feudal power'.<sup>6</sup> Subsequently, under Neil Kinnock's 1983–92 leadership, during which time the abolitionist left was steadily

<sup>3</sup>P. Dorey, 'Stumbling through "stage two": New Labour and House of Lords reform', *British Politics*, vol. 3, no. 1, 2008, pp. 22–44.

<sup>4</sup>P. Norton, *Parliament in British Politics*, 2<sup>nd</sup> edn., Basingstoke, Palgrave Macmillan, 2013, p. 293.

<sup>5</sup>P. Dorey and V. Honeyman, 'Ahead of his time: Richard Crossman and House of Commons reform in the 1960s', *British Politics*, vol. 5, no. 2, 2010, pp. 149–178; T. Dalyell, *Dick Crossman: A Portrait*, London, Weidenfeld & Nicolson, 1989, ch. 14; N. St John-Stevas, *The Two Cities*, London, Faber, 1984, pp. 54–58 & 104–107; R. Cook, *The Point of Departure*, London, Simon & Schuster, 2003.

<sup>6</sup>T. Benn, *Arguments for Socialism*, Harmondsworth, Penguin, 1980, p. 133; The Labour Party, *Labour's Programme 1982*, London, The Labour Party, 1982, pp. 206–207; *The Labour Party, New Hope for Britain*, Election Manifesto, London, The Labour Party, 1983, p. 32; J. Silkin, 'Parliament, government and socialism', in G. Kaufman, ed., *Renewal: Labour's Britain in the 1980s*, Harmondsworth, Penguin, 1983, p. 185.

marginalised, the Labour Party crafted a new policy on the House of Lords, whereby its role would be to uphold constitutional rights and individual/civil liberties, a particularly pertinent issue at a time when the Thatcher governments were becoming increasingly authoritarian, buoyed by their large parliamentary majorities. To this end, Labour's 1992 manifesto pledged that the second chamber would be empowered to delay, for the lifetime of a Parliament [up to five years], 'legislation reducing individual or constitutional rights'.<sup>7</sup>

With regard to the composition of the second chamber, Kinnock's Labour Party was more equivocal, simultaneously denouncing the hereditary principle whilst insisting that although the upper house should be democratised, this should entail a different mode of election and representation to the House of Commons, albeit one which much more closely represented 'the interests and aspirations of the regions and nations of Britain'. The evident ambiguity about the second chamber's membership meant that: 'The form of election ... will be a matter of further consideration'.<sup>8</sup>

The Labour Party's latest proposal for the House of Lords is to replace the overwhelmingly appointed second chamber with a directly elected body, in which the component geographic areas of the United Kingdom would be guaranteed representation. Indeed, Labour is currently proposing that the new second chamber, to comprise just 200 members, would be called the Assembly of the Nations and Regions, and would be tasked with protecting the constitution, although the new body would also (like the current House of Lords) conduct legislative scrutiny more generally, including the tabling of amendments to bills. Ultimately, though, the supremacy (or pre-eminence) of the House of Commons would be maintained, with the new second chamber complementing, *not* rivalling, the lower house via parity of power.

These latest Labour proposals for House of Lords reform are part of a more general

programme of economic and political reform, entailing the democratisation of sundry institutions and concomitant decentralisation of power, included in a 155-page policy document titled *A New Britain: Renewing Our Democracy and Rebuilding Our Economy*, which emanated from the party's Commission on the UK's Future, chaired by Labour's last Prime Minister, Gordon Brown.<sup>9</sup>

Yet, while Labour's latest proposals on the second chamber would effectively complete the unfinished business of the Blair government's purported two-stage programme of House of Lords reform, ambiguities remain, not least over the timing and method of elections, for while it is asserted that the new assembly should be 'chosen on a different electoral cycle', it is acknowledged that 'the precise composition and method of election [are] matters for consultation'.<sup>10</sup> While the promise of consultation is ostensibly attractive and commendably inclusive, it also means that the next Labour government might cite this as a reason for further, potentially indefinite or infinite, delay, either because of a lengthy consultation process, or because the recommendations and preferences emanating from extensive consultations are subsequently deemed to warrant further intraparty consideration and/or all-party discussions owing to their constitutional importance.

Not only might such talks consume considerable time while examining sundry options and seeking a consensus, they might also reveal a serious lack of agreement over how, or even whether, the new second chamber should be elected. Such disagreement is to be expected between the main parties, owing to the Conservatives' traditional antipathy to a directly elected second chamber, but past experience strongly suggests that many Labour MPs would also oppose an elected second chamber, usually owing to fears that it would enjoy enhanced legitimacy and thus rival the House of Commons (regardless of emphatic assurances about the constitutional pre-eminence of the latter). Consequently, if

<sup>7</sup>The Labour Party, *It's Time to get Britain Working Again* [Labour's Election Manifesto], London, The Labour Party, 1992, p. 20.

<sup>8</sup>The Labour Party, *Meet the Challenge, Make the Change: Final Report of Labour's Policy Review for the 1990s*, London, The Labour Party, 1989, p. 55.

<sup>9</sup>The Labour Party, *A New Britain: Renewing our Democracy and Rebuilding our Economy*, Report of the Commission on the UK's Future, 2002. See pp. 17 and 138–39 for proposals for creating a new Assembly of the Nations and Regions.

<sup>10</sup>*Ibid.*, p. 17.

Prime Minister Starmer did seek to create a democratic upper house, he would almost certainly encounter strong opposition from many Labour MPs, which would threaten to derail the parliamentary passage of relevant legislation.

Nor would Labour's likely opponents of an elected second chamber necessarily be agreed on an alternative; some Labour MPs have traditionally favoured a wholly or mostly appointed upper house (as Tony Blair apparently did), while some MPs on the Labour left have preferred outright abolition of a second chamber altogether and thus unicameralism. To complicate matters further, some Labour MPs have evinced no interest in constitutional affairs such as parliamentary reform, believing it to be a self-indulgent distraction from the bread and butter issues of most interest and relevance to ordinary working people. Certainly, Starmer has already been warned by Labour peers not to expend valuable political capital on pursuing reform of the House of Lords.<sup>11</sup>

However, while Labour's leadership acknowledges that its current proposal to establish a new elected second chamber requires further consideration and clarification, the party is likely to be confronted with three particular problems pertaining to democratisation which will prove very difficult to resolve. The first concerns which voting system to adopt: simple plurality (first past the post) or some variant of proportional representation (PR)? The former would merely create a second chamber elected on a very similar basis as the House of Commons, whereas opting for a form of PR would almost inevitably raise questions about why this could not similarly be adopted for ordinary general elections; why should the upper house be elected by an arguably fairer or more representative electoral system?

Moreover, if Labour did decide to recommend that the new Assembly of the Nations and Regions should be elected by a variant of PR, this would almost certainly precipitate potentially protracted arguments about

precisely which version to adopt, given there is a range of electoral systems which provide varying degrees of proportionality between votes received and seats won. To compound this potential problem, pro-electoral reform Labour MPs have historically favoured different variants of PR, thus exacerbating the likelihood of intraparty divisions and disagreements.<sup>12</sup>

The second problem which a Starmer-led Labour government is almost certain to encounter if it perseveres with the proposal for an elected second chamber concerns the timing of elections, regardless of the method adopted. Although Labour is proposing that elections to the second chamber would be conducted on a 'different cycle' to elections to the House of Commons to reduce the likelihood of duplicating the result of a general election (if they were held simultaneously), holding elections to the new second chamber would pose a very different problem, namely the likelihood that a different party (from the government) might prove more popular and thus win more seats. Of course, under PR, the likelihood of any one party winning an outright majority is highly unlikely—especially given the proportion of Crossbenchers in the second chamber—but given the propensity for governments to suffer a mid-term loss of popularity, it is likely that the incumbent governing party (in the House of Commons) might be pushed into second or third place in a PR-based mid-term election to the second chamber, whereupon the largest party/parties would now claim to be more reflective or representative of public opinion than the party which won the general election perhaps two and a half years ago. Whilst the House of Commons would remain constitutionally supreme, the governing party's political authority might well be weakened if mid-term elections to the second chamber revealed a wider and substantial shift in public opinion, possibly presaging more clashes between the two houses over legislative amendments to public (governmental) bills.

<sup>11</sup>T. Helm, 'Keir Starmer warned by Labour peers not to waste political capital on Lords reform', *The Observer*, 4 December 2022; <https://www.theguardian.com/politics/2022/dec/04/keir-starmer-warned-by-labour-peers-not-to-waste-political-capital-on-lords-reform>

<sup>12</sup>P. Dorey, 'Between ambivalence and antipathy: the Labour Party and electoral reform', *Representation*, vol. 40, no. 1, 2003, pp. 23–24; P. Dorey, *The Labour Party and Constitutional Reform: A History of Constitutional Conservatism*, Basingstoke, Palgrave Macmillan, 2008, ch. 1.

The third problem which is likely to accrue from democratisation of the House of Lords—although neither Labour nor the Conservatives themselves might consider it to be problematic—is that the vast reservoir of expertise which the second chamber currently enshrines, via the life peers and their lived experience in various careers and professions prior to appointment, would almost certainly be lost, as candidates for election (whatever the method) would almost inevitably be adopted or selected for party political reasons.<sup>13</sup> Of course, the majority of life peers currently sit in party blocs, but apart from ex-ministers or MPs, many of them were originally appointed in recognition of their professional achievements or other major contribution to public life beyond politics; the life peers currently include architects, best-selling authors, charity leaders, eminent academics, engineers, scientists and senior medics. It is difficult to envisage how these esteemed and experienced members would survive if the current house was replaced by an elected second chamber; a democratic membership would probably be at the expense of quality in terms of expertise and experience outside politics.<sup>14</sup>

On this point, while the extant House of Lords is undeniably unrepresentative of the British population in terms of the life peers' often prestigious or often elite occupational or professional backgrounds and origins, it nonetheless incorporates a wider range of professional experience and expertise than the House of Commons.<sup>15</sup> In the latter, the majority of Conservative MPs emanate from careers in business, finance and law, while the single largest occupational category of Labour MPs is 'politics', as in local government, policy advisers, political researchers, think tanks, and

so on, prior to entering the House of Commons.<sup>16</sup> A switch to an elected second chamber, as Labour is proposing, would almost certainly herald the diminution of the House of Lords' current breadth and depth of expertise, and its often more informed and courteously-conducted debates. Instead, an elected upper house would almost inevitably be much more partisan and polemical, quite possibly replicating the worst traits of the House of Commons. This would do little to foster increased public faith in politics and restore trust in Britain's political institutions.

## The Conservatives

Meanwhile, proposals for House of Lords reform have recently emanated from the Conservative Party, although traditionally, most Conservatives have been uninterested in this issue. Of course, this disinterest can be largely explicated in terms of a Burkean approach to defending long-established institutions, both as repositories of accumulated wisdom acquired and bequeathed from one generation to the next, and also as cherished components of an organic society in which stability is sustained through the interdependence and reciprocity between long-established social and political institutions, such as the family and Parliament. Or, as Sir Patrick Cormack MP once explained to the House of Commons: 'Our constitution is a finely balanced mechanism like a wonderful clock. If one part of the mechanism is removed, the whole thing stops and is thrown into disarray. We are playing dangerously with a constitution that has evolved over many centuries.'<sup>17</sup>

Consequently, Conservatives bitterly opposed the 1911 Parliament Act's introduction of a limit on the House of Lords' power to veto

<sup>13</sup>M. Russell, *The Contemporary House of Lords: Westminster Bicameralism Revived*, Oxford, Oxford University Press, 2013, p. 271.

<sup>14</sup>M. Russell, *Reforming the House of Lords: Lessons from Overseas*, Oxford, Oxford University Press, 2000, p. 306.

<sup>15</sup>P. Dorey and M. Purvis, 'Representation in the Lords', in C. Leston-Bandeira and L. Thompson, eds., *Exploring Parliament*, Oxford, Oxford University Press, 2018, pp. 244–254; D. Shell, *The House of Lords*, Manchester, Manchester University Press, 2007, pp. 65 & 113.

<sup>16</sup>R. Campbell and J. Hudson, 'Political recruitment under pressure: MPs and candidates', in P. Cowley and D. Kavanagh, eds., *The British General Election of 2017*, Basingstoke, Palgrave Macmillan, 2018, p. 401, table 15.6; C. Butler, R. Campbell and J. Hudson, 'Political recruitment under pressure, again: MPs and candidates in the 2019 general election', in R. Ford, T. Bale, W. Jennings and P. Surridge, eds., *The British General Election of 2019*, Basingstoke, Palgrave Macmillan, 2021, p. 411, table 11.7.

<sup>17</sup>House of Commons Debates, *Hansard*, 6th series, vol. 325, col 621, 5 February 1999.



legislation approved by the House of Commons and, decades later, the Labour government's 1969 Parliament (No.2) Bill, particularly its proposal to transform hereditary peers into non-voting members; this would effectively have eviscerated the Conservatives' majority in the second chamber at that time. Similarly, the Conservatives bitterly denounced the Blair government's proposal—branded as 'constitutional vandalism' by Sir Patrick Cormack—to remove the hereditary peers, as part of a purported programme to render the House of Lords much more representative of Britain as it entered the twenty-first century.<sup>18</sup> Subsequently, during the 2010–2015 coalition government led by David Cameron, the Conservative Party also opposed the Liberal Democrats' legislative proposal to create a second chamber in which 80 per cent of members were directly elected.<sup>19</sup>

The only substantive legislative reform of the House of Lords enacted by the Conservatives was the 1958 Life Peerages Act, which facilitated the creation of a new category of peers who would be appointed on the basis of ostensible achievements in, or valuable expertise acquired during, their professional lives and who would therefore imbue the second chamber with more extensive and relevant knowledge of the 'real world' than many hereditary peers might have possessed.<sup>20</sup> This would enable the House of Lords to play a more constructive and better-informed role in debating and scrutinising public policies and legislation, albeit in no way challenging the accepted supremacy of the elected House of Commons.

Although this was ostensibly a very unconservative reform of the House of Lords, because it created a new category of peers who would eventually outnumber and thus potentially supersede the hereditary peers, it had an underlying conservative objective,

namely to ensure the future survival of the unelected second chamber by imbuing it with much more expertise and thus enhanced legitimacy. Moreover, the new life peers would be appointed gradually, a few each year, thereby ensuring that the composition and character of the House of Lords changed incrementally and organically, and would thus not be destabilised by a sudden large influx of new peers.

This was a classic Burkean reform, in which change was introduced in order to conserve and strengthen an extant institution, thereby ensuring its long-term survival. Moreover, it was a practical and pragmatic reform to address an empirical problem, rather than change introduced on the basis of abstract theory, an ideological blueprint, or an intellectual framework. In effect, the life peers represented new wine being poured into an old bottle.

More generally, but more subtly, the 1958 Life Peerages Act also aimed to secure the long-term strength and survival of the House of Lords by negating the Labour Party's periodic threats to abolish the house owing to the unrepresentative and inherently undemocratic nature of the hereditary peers. As the number of life peers gradually increased, Labour's criticisms about the dominance and influence of the Conservative hereditary peers would carry less weight, thereby weakening the case for abolition. Furthermore, as many life peers chose to retain or adopt a party allegiance—the obvious exception being the Crossbenchers—the introduction of life peers would gradually increase Labour's representation in the House of Lords, perhaps to the extent of encouraging Labour to view the second chamber more favourably. One other modest reform of the House of Lords implemented by the Conservatives was the 1963 Peerages Act, which permitted hereditary peers to renounce their inherited title, usually in order to stand for election to the House of Commons.

In the latter half of 1970s, a few senior Conservatives (mainly associated with One Nation Toryism) briefly mooted the option of replacing the House of Lords with a 'House of Industry' or 'Industrial Parliament', which would be a second chamber based on functional representation, comprising leaders of major sectional interests and professional

<sup>18</sup>Ibid., cols 620–621.

<sup>19</sup>D. Laws, *Coalition: The Inside Story of the Conservative-Liberal Democrat Coalition Government*, London, Biteback, 2016, pp. 146–58; O. Letwin, *Hearts and Minds: The Battle for the Conservative Party from Thatcher to the Present*, London, Biteback, 2017, pp. 218–20.

<sup>20</sup>P. Dorey, 'Change in order to conserve: explaining the decision to introduce the 1958 Life Peerages Act', *Parliamentary History*, vol 28, no. 2, 2009, pp. 246–265.

associations.<sup>21</sup> Or, as Maurice Macmillan (son of Harold) suggested, ‘a bench of union barons to match the bench of bishops’.<sup>22</sup> This seemingly reflected and reinforced a more general perception at that time that Britain was ineluctably developing a mode of ‘liberal corporatism’, in which most economic and industrial policies were largely determined by elite-level partnership between government ministers and the leaders of key organised interests.<sup>23</sup> Needless to say, such ruminations came to nought, as Margaret Thatcher and her ideological acolytes evinced no interest in House of Lords reform or, indeed, other constitutional questions—unless one includes the evisceration of local government.

Such was this disinterest that, having expressed deep concern about Britain becoming an ‘elective dictatorship’ and, therefore, urgently needing a written constitution to enshrine civil liberties in law, Lord Hailsham seemed to lose all interest in this issue once the Conservatives were returned to power in May 1979, even though the increasing political centralisation and authoritarianism of the Thatcher governments clearly vindicated his earlier warnings about an ‘elective dictatorship’.<sup>24</sup>

It is only during the last couple of years that a few senior Conservatives have evinced any serious interest in House of Lords reform. In July 2021, Lord (Philip) Norton introduced a Private Members’ Bill which sought to strengthen the role and powers of the House of Lords Appointments Commission (HOLAC), but the bill failed to proceed beyond its first reading before the end of the parliamentary session. However, Lord Norton was more successful the following year, when he was thirteenth (out of twenty-five) in the ballot of peers to introduce a Private

Members’ Bill in the 2022–23 session. Thus did Lord Norton effectively reintroduce his House of Lords (Peerage Nominations) Bill in 2022.<sup>25</sup> Its main objectives were to:

- Place HOLAC on a statutory basis.
- Require a Prime Minister to refer the name(s) of any nominee(s) for a peerage to HOLAC, and wait for a decision before formally recommending them to the monarch.
- HOLAC to require the Prime Minister to adhere to three principles when submitting proposed life peers:
  - (a) At least 20 per cent of the House of Lords’ membership should *not* be members of a political party; these peers would sit as ‘independents’ or Crossbenchers.
  - (b) No political party to enjoy an overall majority of seats in the upper house.
  - (c) Membership of the House of Lords to be no larger than that of the House of Commons (the latter comprising 650 MPs).
- HOLAC would continue to make its own recommendations for the appointment of Crossbench peers, although members of the public could also submit proposals.
- Party leaders to inform HOLAC of the process and criteria they had adhered to in proposing any of their parliamentary colleagues for a life peerage.

When Lord Norton introduced the bill for its second reading in November 2022, he observed that: ‘Recent Prime Ministers have been rather profligate in making nominations for peerages’, a clear allusion to the recently ended premiership of Boris Johnson. Moreover, a Prime Minister was not obliged to abide by any reservations expressed by HOLAC about his/her nomination; s/he could simply ignore them, because the commission was ultimately an advisory body. Lord Norton therefore aimed to place HOLAC on a statutory basis, while ensuring that clear and transparent criteria were met when new peers were appointed. In the last instance, HOLAC would be empowered to veto

<sup>21</sup>See, for example, P. Walker, *The Ascent of Britain*, London, Sidgwick & Jackson, 1977, p. 81; I. Gilmour, *Inside Right: A Study of Conservatism*, London, Quartet, 1978, p. 243; E. Heath, House of Commons Debates, *Hansard*, 5th series, vol. 914, cols 1427–28, 7 July 1976.

<sup>22</sup>House of Commons Debates, *Hansard*, 5th series, vol. 891, col 1674, 8 May 1975.

<sup>23</sup>See, for example, R. Pahl and J. Winkler, ‘The coming corporatism’, *New Society*, 10 October 1974, pp. 72–76.

<sup>24</sup>Lord Hailsham, ‘The Richard Dimbleby lecture’, BBC 1, 14 October 1976; Lord Hailsham, *The Dilemma of Democracy: Diagnosis and Prescription*, London, Collins, 1978, ch. 20.

<sup>25</sup>T. Brown, *House of Lords (Peerage Nomination) Bill [HL]*, HL Bill 19 of 2022–23, House of Lords Library Briefing, 2 August 2022 (updated 2 November 2022), pp. 1–2.

proposed new peerages which it judged inappropriate or unsuitable.<sup>26</sup> On this occasion, Lord Norton's bill was granted its second reading unopposed.

The need for HOLAC to be strengthened had been reiterated by the Committee on Standards in Public Life, chaired by the Crossbench peer, Lord Evans, which emphasised that: 'It is critical to the credibility of appointments to the House of Lords that the Commission's advice is followed', not solely to uphold constitutional and ethical standards, vitally important though this was, but *inter alia* to combat the: 'Public disquiet on the propriety of appointments to the House of Lords [which] remains a regular feature of our politics, as it has been for many decades.'<sup>27</sup> Such disquiet was likely to have been further exacerbated by the controversy which surrounded Boris Johnson's resignation honours list announced in June 2023; serious concerns were raised about the suitability or deservedness of some of those chosen for peerages (or knighthoods) by the departing Johnson. In this context, strengthening HOLAC could make a valuable contribution to renewing faith in Britain's political institutions, and more generally, restoring some public trust in politics.

While Lord Norton's bill was waiting to commence its committee stage (when legislation is subject to detailed, clause-by-clause scrutiny, and amendments are usually tabled to modify it, albeit without altering the underlying principle or purpose), the Conservative Prime Minister, Rishi Sunak, was reportedly conducting discussions with some Conservative peers, particularly former Cabinet ministers such as Lord Forsyth (the latter was also the chair of the Association of Conservative Peers), about how the party could reform the second chamber, in terms of size and composition. Among the options considered were transforming the remaining hereditary peers into life peers, so that they were not replaced when they passed away, and persuading all parties to secure the retirement of some of their peers, preferably those who rarely attended

and thus played little meaningful part in the work of the house. While it was recognised that such reforms would be wholly justified in their own right, it was also envisaged that they would neutralise or nullify Labour's proposed abolition of the House of Lords.<sup>28</sup> Not for the first time *vis-à-vis* the House of Lords, the Conservatives would be pursuing change in order to conserve.

There seemed to be considerable support among peers themselves for a reduction in their numbers, with an all-party inquiry (comprising two Conservative peers, two Labour, one Liberal Democrat and one Crossbencher) instigated by the Lord Speaker at the end of 2016 and receiving evidence from sixty-two peers, recommending that membership of the second chamber should be capped at 600 peers.<sup>29</sup> The reduction from the 800+ peers at that time would be achieved incrementally, with one new life peer being appointed only when two peers retired, resigned or departed for that great second chamber in the sky. This would ensure that the size of the House of Lords was reduced gradually and organically—in accordance with the traditional evolutionary and empirical character of British constitutional developments—and without needing formally to terminate the membership any of current peers.

This proposed reduction in the size of the House of Lords to 600 peers was subsequently endorsed by the (all-party) House of Commons Public Administration and Constitutional Affairs Committee, which conducted its own inquiry into the recommendations of the Lord Speaker's committee. Its report expressed support for 'the objective of reducing the size of the House of Lords and capping the Chamber's size at a maximum of 600', but did demur from the proposal that this be achieved gradually by the 'two out, one in' principle, and instead recommended

<sup>28</sup>C. Wheeler, H. Yorke and V. Menzies, 'Sunak's secret meetings about the Lords—and why he thinks it needs reform, *Sunday Times*, 5 March 2023.

<sup>29</sup>One of the Conservative members was Lord Wakeham, who had chaired the Royal Commission on House of Lords reform established by Tony Blair back in 1999; Lord Speaker's Committee (chaired by Lord Burns), *Report of the Lord Speaker's Committee on the size of the House*, 31 October 2017, pp. 11–12, paras. 14–16 & 18.

<sup>26</sup>House of Lords Debates, *Hansard*, vol. 825, cols 1092–93, 18 November 2022.

<sup>27</sup>The Committee on Standards in Life, *Upholding Standards in Public Life: Final Report of the Standards Matter 2 review*, November 2021, p. 27, para. 1.25.



‘a faster rate of retirements’ among current life peers.<sup>30</sup>

## Residual problems—and a possible remedy

While the proposed reforms discussed above are either superficially attractive or partly commendable, they remain problematic. As already noted, Labour’s proposal for an elected second chamber would almost certainly result in a grievous loss of expertise and lived experience, as the current life peers would effectively be replaced by members elected according to party label. Moreover, if these were elected at the mid-point between elections to the House of Commons, when the incumbent government was unpopular, there would almost inevitably be claims that the second chamber now reflected public opinion more accurately than the lower house, thereby making clashes between the two chambers much more likely and frequent, regardless of any stipulation about the constitutional and legislative supremacy of the House of Commons. Labour acknowledges that the method and timing of elections to a second chamber require further consultation, which clearly indicates that these potential problems have not yet been addressed, or even acknowledged.

Yet, if the option of an elected second chamber is rejected (along with that of unicameralism), the questions to be answered are how the upper house is to be appointed, and by whom? Lord Norton’s proposed strengthening of the HOLAC, and placing it on a statutory basis, is to be warmly welcomed and certainly constitutes a step in the right direction. However, although HOLAC would retain its right to appoint politically independent or Cross-bench peers, most of the remaining appointees would still be formally nominated by the Prime Minister, albeit often at the behest of other party leaders. While Lord Norton’s bill would limit this mode of prime ministerial patronage by empowering HOLAC to reject ‘unsuitable’ nominations, it would still mean that the

opposition leaders and the Prime Minister were the prime sources of almost 80 per cent of nominations (that is, beyond the Crossbenchers), which in turn would leave an appointed second chamber still overwhelmingly comprising party political appointees, albeit with no single party enjoying an overall majority.

I would therefore propose that HOLAC be strengthened much further, such that it became solely responsible for selecting 80 per cent of members of the second chamber, albeit on the basis of clear and transparent criteria pertaining to professional expertise, public achievement, or relevant real-world or lived experience, as well as ensuring a demographic balance in terms of ethnicity, gender and sexual orientation. HOLAC could simultaneously receive extra-parliamentary nominations which met these criteria, while also making its own selection of suitable appointees, although these would not be obliged to accept any such invitation if they could not combine House of Lords membership and work with their employment or/and family commitments.

Why limit HOLAC’s nominations to 80 per cent rather than 100 per cent of all appointments to the House of Lords? Ideally, I would have preferred to propose that HOLAC became solely responsible for *all* future appointments, but this would have created a practical problem in terms of party leaders and the Prime Minister submitting nominations, ostensibly on the basis of expertise or public achievement, but ultimately to secure party representation by stealth in the second chamber. Recognising this practical difficulty, I would reluctantly permit 20 per cent of seats in the second chamber to be filled by appointees nominated by political leaders, albeit subject to HOLAC’s approval in accordance with the specified criteria. This would still leave HOLAC solely responsible for nominating or appointing 80 per cent of peers on non-political grounds.

The House of Lords—although the name might be changed—would continue to fulfil its current role and functions, namely debates, scrutiny of policies and topical issues via select committee inquiries, and tabling amendments to government legislation, but with the House of Commons retaining its constitutional pre-eminence. Moreover, while the House of Commons would rightly retain the legitimacy it enjoys by being directly elected, the second chamber would enjoy greater prestige and

<sup>30</sup>House of Commons Public Administration and Constitutional Affairs Committee, *A Smaller House of Lords: The Report of the Lord Speaker’s Committee on the Size of the House*, Thirteenth Report of Session 2017–19, HC 662, 19 November 2018, p. 22, para. 3.

public respect both by virtue of the breadth and depth of real-world experience and knowledge it enshrines—thereupon continuing to complement the work of the lower house—and because 80 per cent of its members would be appointed by HOLAC in accordance with clear and transparent criteria, instead of being party political appointees or products of prime

ministerial patronage. This, in turn, would hopefully restore some respect and trust that Parliament has sadly lost in recent years, owing in large part to the reprehensible conduct of some MPs and Prime Ministers.

*Peter Dorey* is Professor of British Politics in the School of Law & Politics at Cardiff University.