

# **Size and representativeness of legislatures in historical evolution; observations from the anglo-american context**

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# Summary

## 1. Introduction

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## Abstract

*In the light of proposals in several European countries to reduce the number of parliamentarians, this paper explores experiences of legislature shrinkage in the Anglo-American context, focusing particularly on the US, Canada, and the UK. After describing the historical evolution of the size of legislatures in the three countries, the paper goes on to explore the arguments for and against reducing the size of legislatures that have been made in these different national contexts. The paper concludes by discussing the possible risks of legislature shrinkage to the effective functioning of parliaments, specifically in their committee work.*

## Introduction

Proposals to reduce the number of parliamentarians are at various stages of development and discussion in several European countries including in France, Italy, and Spain (Núñez, 2013). Although this a relatively new trend in Europe, there is a long history of debate and action on legislature downsizing outside the European Union, most notably in the United States, Canada, and more recently, in the United Kingdom.

This short paper begins by reviewing the debate on legislature size in the United States, where the constitutional drafters carefully considered the issue, but more recent practice has largely ignored the advice of Washington and Madison. It then goes on to look at the Canadian example, where legislature size at the provincial level has been regularly adjusted both upwards, and downwards, but typically without the ideological overtones of debates in the United States. The paper then briefly examines the United Kingdom, a newcomer to the debate on reducing size of the House of Commons<sup>1</sup>, but where at least one subnational parliament is arguing to increase rather than reduce its own size. The paper then goes on to explore the issues and arguments in favour and against reducing legislature size that have been engaged in the debate in the US and Canada, along with a brief exploration of some international examples. Finally, some general conclusions are drawn from the examples studied and their implication for the contemporary discussion on legislature downsizing. In particular, the conclusions highlight risks to the internal functioning of parliaments if legislatures are downsized to the extent that parliamentary committees become less viable and effective, limiting parliament's capacity to carry out effective legislative scrutiny and government oversight.

This paper focuses primarily on legislature size of the lower houses of parliaments, which are mainly elected on the principle of representation by population (albeit with many specific exceptions). Upper houses of parliament in different countries are elected and/or nominated through a plethora of different mechanisms, and thus shrinkage or growth can depend on many different factors.

## The evolving legislature size debate in the United States

The contemporary movement to reduce the size of legislatures began in earnest in the 1970s and is associated with the rise of the small government movement that first embedded in the United States and then has expanded around the world.

The United States polity has from its inception emphasized the importance of limited government as a means to ensure respect for personal freedoms, and thus the idea of restricting the size of the legislature can be seen as logically consistent with the country's founding philosophy. However, thinking in the US has evolved considerably since the drafting of the country's constitution.

The debate as to the proper number of electors per legislator dates to the Constitutional Convention of 1787, where George Washington himself urged a ratio of one member to every 30,000 citizens, rather than the 1 to 40,000 that had been under consideration. Another founding father, James Madison, was famously tasked with establishing principles to guide setting the size of state legislatures; he argued that the number should be large enough so that diverse interests would be represented and the legislature could not be captured by an oligarchic clique, but not so large as to become an unwieldy and chaotic institution (Stigler, 1976)<sup>2</sup>.

In the early years of the United States, the House of Representatives was regularly enlarged to accommodate the country's growing population, but this has not occurred since 1913. The size of both chambers of the American Congress has remained remarkably stable over the past century. The Senate increased in size by four members since 1913 (to accommodate the two states of Alaska and Hawaii added to the Union) (Marland, 2019). By contrast, in the House of Representatives, even when Alaska and Hawaii were added to the Union, the Representatives' seats allocated to the new states were reallocated from the existing 435, rather than proportionately added as occurred with the Senate<sup>3</sup>.

The freeze in the size of the House of Representatives over the past 100 plus years has resulted in a dramatic increase in the number of electors per member as the population of the United States has expanded; from 30,000 in 1787 to over 600,000 today.

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<sup>2</sup>The constitutional provisions for the US House of Representative and for the Senate are found in Article 1, sections 2 and 3 of the US Constitution.

<sup>3</sup>As the Senate is comprised of 2 senators per State, incorporation of any state into the Union inevitably increases the size of the Senate. The formula for election of the Senate was the subject of great controversy during the Constitutional Convention of 1787, with the 'Great Compromise' resulting in equal representation of states in the Senate and representation by population in the House of Representatives.

Although the total number of seats in the House of Representatives has not declined, states do lose seats in the House when their populations grow more slowly than other states. There has been a gradual shift in the number of Representatives elected, away from North-eastern and Midwestern states, towards rapidly growing states in the South, Southwest, and West of the United States.

Opinion polling shows that American citizens are largely in favour of maintaining the current number of Representatives. Even when citizens are informed that the House of Representatives size freeze means that their own state will lose representation and voice, the majority supports the freeze (Frederick, 2008). Further, while there is a significant difference of opinion between liberals and conservatives, Democrats and Republicans on the benefits of increasing size of the House of Representatives (with the former comparatively more positive than the latter), still more than half of self-described liberals and of self-described Democrats favour maintaining the House at its 1913 size.

While reduction in the number of members of Congress per elector has occurred exclusively through population inflation, many *state* legislatures have changed the number of elected members, both to increase, and recently more frequently to decrease size. The National Council of State Legislatures (NCSL) (2016) notes that after a long period of relative stability in the first half of the 20<sup>th</sup> century, the 1960s and 1970s were marked by many changes to legislature size, primarily to reduce the number of members.

Pressure for downward revision in legislature size continues in several US states. It is instructive to look at recent debates. For the past decade, Pennsylvania has been discussing whether to reduce the size of its General Assembly (State of Pennsylvania, 2018). While these campaigns have yet to bear fruit, support for the proposal to reduce the size of the Assembly by 25% extends beyond any radically anti-government segment of the population (Kansas City Star, 2019). For example, the editorial board of Pennsylvania's biggest newspaper (Philadelphia Inquirer, 2017) has argued, "Let's make government smaller, starting with the state legislature". This has been countered by arguments, echoing Madison, that:

"legislatures are not supposed to be efficient. These bodies are intended to offer an opportunity for varied and competing interests to work through their issues and produce outcomes that consider the interests of a wide range of constituencies" (Yost and Schousen, 2018).

## Canada: a quieter approach to legislature shrinkage?

The case of Canada provides an interesting contrast to that of the United States. While Canadian politicians have regularly tinkered with the size of national and provincial parliaments, with few exceptions, these changes have been carried out as relatively low-profile exercises, with an emphasis on efficiency and rationalization rather than accompanied with a populist ‘anti-politician’ discourse that has often been present in the US.

Marland (2019) recently published a broad survey of efforts and rationales in reducing the size of legislatures, focusing particularly on the case of Canada. Contrary to the US, the Canadian House of Commons has undergone regular expansion in line with a growing population. Indeed, there is a process for revision every ten years, taking into account overall national population size increase, as well as variable growth rates in different parts of the country. Expansion of the chamber in line with population trends has become virtually automatic, although with certain minimum provincial representation defined in the Constitution Act. Thus, the size of the Canadian House of Commons increased in steps between 1975 and 2015 from 265 to 338.

In contrast, the sizes of provincial legislatures in Canada have varied considerably, and often downwards. Marland documents 18 cases of legislature size reduction since 1915, among Canada’s 10 provinces (9 until 1949). Interestingly he notes that in all but one case, the reduction did not derive from a major public debate within the province, but was rather driven by party elites. When proposed publicly, the argument in favour was primarily as a representation of careful husbandry of the public purse, and as leaders setting an example demonstrating the merits of fiscal restraint and government downsizing. Often the legislature size reductions were quite small, though reductions in size of the Ontario, Nova Scotia, and Saskatchewan legislatures during the early 1930s – at a time of economic crisis – were each in excess of 10%.

The exception to a relatively low-key legislative shrinkage was in Canada’s most populated Province of Ontario in 1999, when a newly elected Conservative government with a strong agenda for overall public sector cutbacks, campaigned on and implemented a substantial reduction in the number of seats of the legislature from 130 to 103, aligning this with the number and boundaries of the federal seats in Ontario. However, the growth in the population of Ontario subsequently has led to an increase of both federal and thus provincial seats to 124 by 2018.

## United Kingdom: legislative shrinkage stalled?

In the past century, since the independence of the Irish Free State in 1922, and the consequent reduction of the size of the UK House of Commons by 92 members, the size of the Commons has varied between 615 and 659, and is currently 650. The number and size of constituencies is determined by separate Boundary Commissions established in each of the four constituent nations of the United Kingdom: England, Scotland, Wales, and Northern Ireland, but applying rules laid down by the UK Parliament. The only significant changes to the number of seats since 1922 has been reductions by 15 in 1950 when university and multi-member constituencies were abolished, and by 13 in 2005, when Scotland's historical overrepresentation was removed following the creation of a devolved Scottish Parliament. Otherwise, until 2010 there had been several small increases in the number of seats as a result of the Boundary Commissions' reports<sup>4</sup>.

In 2010, the Conservatives included in their manifesto, a call for a reduction in the number of seats in the Commons, from 650 to 585. They did not win a majority and entered a coalition government with the Liberals from 2010 to 2015. Although the Liberals had themselves called for a reduction in the size of the Commons to 500, eventually legislation was passed in 2011<sup>5</sup> with a goal of reduction to 600. Nevertheless, as relations between the coalition partners became rocky, the Liberals refused to support implementation of the reduction, which has been repeatedly delayed.

The 2015 to 2019 Conservative governments were overwhelmed with the Brexit debate and made no progress on the issue. Despite having received a detailed boundary review report detailing the boundaries of the proposed 600 constituencies as mandated by the 2011 legislation, the government took no action (Johnston et al., 2019). The majority Conservative government elected in 2019 has thus far downplayed the issue; it has been argued this is because the changed make-up of the Conservative majority would provide less of an advantage to the Conservatives through the proposed reduction and reapportionment than would have been the case in previous Houses.

In contrast to the debate regarding shrinking the size of the Westminster Parliament, the Welsh Assembly, one of the country's three devolved parliaments along with Scotland and

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<sup>4</sup> The size of the unelected Upper House, the House of Lords, has declined significantly from over 1200 to around 700 since passage of the House of Lords Act 1999, which restricted the number of hereditary lords entitled to sit in the House of Lords to 92. A further reduction took place through the Constitutional Reform Act 2005 which replaced the former 12 Law Lords – the highest court in UK, with a Supreme Court whose members do not sit in the House of Lords until after their retirement, a reform intended to confirm the separation of powers between the legislature and the judiciary. (Lord Speaker, 2017)

<sup>5</sup> Parliamentary Voting System and Constituencies Act 2011.



Northern Ireland, produced a report in November 2017 calling for an increase in the number of members from 60 to between 80 and 90 members (Welsh Assembly, 2017), justified in part by the growing powers held by the Assembly. Subsequently, the Assembly established a Committee on Electoral Reform, charged with studying the report and proposing legislative action. A similar case for enlargement has been made for the Scottish Parliament (Sanderson, 2017).

## Logic and impact of reducing legislature size

In the second part of the paper, I will briefly consider evidence gathered internationally on the impact of reducing or increasing the size of the legislature on public policy.

As already noted, Madison defined an appropriate number of legislators as being large enough to avoid the domination of the representative assembly by small cabals, and small enough as to avoid the “confusion of a multitude”. Madison’s formulation addresses the conditions for effective and representative debate and decision-making, but does not deal with a more recent preoccupation with the ‘cost’ of running legislative assemblies, which has become a much more prevalent concern than the earlier discussion regarding the optimal functioning size of a legislature. The question then tends to focus on ‘what democracy is worth’, with an inbuilt suggestion that the answer is ‘not much’.

Typically, the contemporary concern regarding legislative cost is focused on the direct cost of running a legislature; the salaries of MPs and staff, travel and operational costs, etc. Another pertinent cost-related question, is whether legislature size has an impact on the *overall cost of government*, in other words whether there is a relationship between the number of legislators and overall public expenditures. As we will note below, several academic studies have addressed this question, with different answers<sup>6</sup>.

Perhaps unfortunately, much of the literature on impacts of changing legislature size is based on a rational choice approach (Chen and Malhotra, 2007; Godefroy and Klein, 2018, etc.), in other words assuming that politicians as well as citizens / electors are primarily motivated by self-interest. If this assumption turns out to be an oversimplification of human behaviour, the models constructed using the assumption will themselves be flawed, but it is not possible to assess the impact of motivations that are excluded from the model.

Another feature of the discussion of governance outcome of legislature size is that the largest part of the literature considers only the relationship of parliament size to the size and cost of government. The focus on government size and cost rather than government effectiveness (which is of course much harder to measure) again skews the debate in the direction of smaller governments and smaller legislatures.

Even here, the evidence is mixed. Studies have come to diverse conclusions. Gilligan and Matsusaka (1995), looking at the US, found that increasing the number of legislators increased costs. Chen and Malhotra (2007) found that the relationship varied according to whether

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<sup>6</sup> An important qualification is that many of the studies cited are based on subnational legislature and council data; it’s not evident that such data will necessarily be valid for the national level; the problem with measuring national level parliamentary data is that  $n = 1$ , and countries are not easily comparable with each other.

systems were bicameral, but that the positive relationship between chamber size and public expenditure was only clear for upper houses of parliament. Pettersson-Lidbom (2012), looking at Finland and Sweden, found that increasing the size of legislatures reduced public expenditure. He argues that this is because bureaucrats are generally in favour of larger government, whereas politicians, driven by citizen preference for lower taxes and smaller government, are motivated to keep government small. He hypothesizes, therefore, that more legislators enable more effective oversight of the bureaucracy and thus keep down the size of government.

Less scholarship has attempted to understand the impact on governance *quality*. Lewis (2019) studied legislature size, public expenditure and quality of public services in Indonesia, and found that the larger the number of legislators, the lower public expenditure, and the poorer the quality of public services. Conversely, Mignozzetti and Cepaluni (2019) found that increasing legislature size by one legislator in Brazilian subnational assemblies reduces infant mortality by 1.99 per one thousand infants born<sup>7</sup>, and also has a positive impact on kindergarten enrolment.

One area rarely addressed is the differential effect of reducing legislature size on different parts of the population. Schraufnagel and Bingle (2015) looked at the relationship between legislature size and both non-elite representation in US legislatures and overall non-elite social outcomes. They found, perhaps unsurprisingly, that smaller legislatures tend to be somewhat less representative of social diversity. More ambitiously, they also attempted to correlate legislature size with educational outcomes, access to public health care, and incarceration rates. They found that there is a statistically significant correlation between number of legislators and school graduation, and between legislature size and proportion of citizens covered by public health care. There is a negative correlation between legislature size and incarceration rates; in other words, the fewer the legislators, the larger the prison population. The authors cite two case studies of policy outcomes in changing legislature size. When both Houses of the Rhode Island legislature were shrunk in 2002, the prison population per capita rose in the six years following the shrinkage compared with the 6 years previously. When the New Jersey legislature by contrast expanded during the 1960s and 1970s, the proportion of the population covered by state medical care coverage increased substantially; in both cases, the authors identify specific legislative measures that led to these changes. Some caution about these findings may be warranted; legislature expansion and reduction are likely to be associated with wider trends on attitudes to government expenditure that may also drive public sector shrinkage and expansion.

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<sup>7</sup> Such a large impact should be carefully validated.

## Discussion and Conclusion

The United States, Canadian, and UK cases discussed in the first section suggest that shrinkage of legislature size is largely, although not entirely, driven by a motivation to reduce government costs, with legislatures serving as an exemplar that can ‘lead the way’ in overall government downsizing. In this sense legislatures faced with proposal to reduce their size are in the eye of a perfect storm. Legislators from majority parties that have pronounced in favour of reducing government size are obliged to ‘set an example’ and show party discipline, while opposition legislators find it difficult to argue that ‘their jobs’ should be protected while opposition supporters in the general public are losing theirs. Further, opinion surveying shows that citizens in general, across the political spectrum, are often supportive of shrinking legislatures, often from an anti-elite sentiment rather than consideration of the actual roles and functions of parliaments.

Exploring the debates on the pros and cons of legislative shrinkage reveals that some pertinent issues are rarely, if ever, considered in the debate. Discussions on the size of state legislatures in the US do often consider Madison’s strictures about the need for parliaments to be large enough to reflect the diversity of the population, and also the risks of very large constituencies resulting in the oligarchization of politics because of both the prohibitively high cost of campaigning, and the ‘value’ of each legislator to powerful economic interests.

However, the debate rarely considers the practicality of parliamentary functioning. In particular, much if not most parliamentary work is carried out by parliamentary committees; it is in committees that legislative scrutiny is carried out, and government oversight performed. Most citizens perceive parliament as a form of political theatre, from observing plenary sessions. While this is an important manifestation of public debate and representation, it is true that most plenary debates would not be impacted by a 25% reduction in the number of backbenchers shouting support or opposition to the speeches of their faction leaders.

This is not the case for parliamentary committees. The complexity of modern governance is such that it is not possible for effective parliamentary oversight or legislative scrutiny to be carried out by a handful of underpopulated committees. If we reduce a parliament size by 25%, we need either to reduce the size or number of committees by 25%, or increase the number of committees per member by 33%, or some combination of all the above. The result of legislature shrinkage can therefore be to weaken legislative scrutiny and government oversight. Given that parliaments are in almost every country dramatically under-resourced in comparison with government, the net effect of parliamentary shrinkage is, in the absence of

some compensating democratic enhancement, an inevitable weakening of the foundations of representative democracy.

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