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Institutions Ignored: A History of Select Committee Scrutiny in the House of Lords, 1968–2021

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Within the vast seam of scholarship on parliamentary history the evolution and role of select committees in the house of lords, particularly in relation to investigatory or policy-focused committees, has been almost completely overlooked. They have been ‘institutions ignored’. This gap in the existing research base is particularly stark when compared with the very large literature on the history of select committees in the house of commons. This article fills this gap by providing the first detailed historical account of the evolution of investigatory or policy-focused committees in the house of lords. This account reveals the evolution of a distinctive ‘scrutiny style’ moulded around the notion of complementarity, a highly specialised approach and an understanding of the merits of self-restraint. However, during 2018–21 a fundamental review of the investigatory committee system was undertaken within the house of lords which led to significant change in relation to both the structure and ambition of committees. The impact of this reform agenda is likely to ensure that select committees in the Lords are far more visible in the future, within and beyond the Palace of Westminster, than they were in the past.

Keywords: scrutiny; house of lords; bicameralism; institutionalism; committees; culture; Brexit; accountability; patronage; democracy

In the summer of 2019, the house of commons marked the 40th anniversary of departmental select committees with a major two-day conference that reflected on the evolution, successes and challenges faced by this scrutiny system. Lectures were given, debates held,

keynote speeches delivered and the Liaison Committee published the first major report on the effectiveness and influence of the select committee system since 2012.¹ These events sat at the apex of a significant seam of scholarship since 1979 that has explored the development of commons select committees in general and in particular the degree to which the reform has been successful in terms of 'shifting the balance' of power between the executive and legislature.² At almost exactly the same time, but without the fanfare, the house of lords was publishing the most comprehensive review of its own scrutiny and investigative committee system that had ever been undertaken.³ This revealed how investigatory and policy-focused scrutiny committees in the Lords had emerged in a largely *ad hoc* manner which dovetails with Lord Norton's 1998 comment that 'the generalist, or amateur, nature of the House of Lords has militated against specialism'.⁴ The Lords Liaison Committee's July 2019 report suggested that the time had come to adopt a more specialist, professional and thematic approach to scrutiny. Major reform had, to a large extent, become inevitable: the house of lords had to 'face up' to the institutional implications of Brexit.⁵ The Liaison Committee was clear that the exercise 'is driven in part by the need to adjust our committee structure to reflect the new relationship with the EU'.⁶ In December 2020 this review process concluded with the recommendation to establish six new sessional committees in order to close 'scrutiny gaps' and forge a new relationship with the public.⁷ These recommendations were subsequently accepted and what might be termed the 'new' committee system in the Lords became operational from April 2021 onwards.⁸

Understanding the background, rationale and implications of these reforms is hampered by the almost complete lack of existing scholarship on investigatory committees in the Lords. They have been institutions ignored. Only a handful of articles have been written on the work of specific Lords committees, and very often these have been written by peers who had themselves been a member of the committee in the hope of stimulating wider interest in the topic.⁹ Where research has attempted to gauge the influence and role of

¹Liaison Committee, *The Effectiveness and Influence of the Select Committee System* (HC, 2017–19, 1860), available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmliaison/1860/186002.htm> (accessed 01 Aug. 2022). The conference papers were published as a special issue of *Parliamentary Affairs*, lxxii (2019), 727–41, and available at <https://academic.oup.com/pa/issue/72/4>

²Matthew Flinders, 'Shifting the Balance? Parliament, the Executive and the British Constitution', *Political Studies*, 1 (2002), 23–42.

³Liaison Committee, *Sixth Report* (HL, 2017–19, 398), available at <https://publications.parliament.uk/pa/ld201719/ldselect/ldliaison/398/39802.htm> (accessed 01 Aug. 2022).

⁴Philip Norton, 'Nascent Institutionalisation: Committees in the British Parliament', *Journal of Legislative Studies*, iv (1998), 156.

⁵See, Peter Leyland, 'The House of Lords Faces up to Brexit' in *Constitutional Reform of National Parliaments*, ed. Richard Albert, Antonia Barraggia and Cristina Fasone (2019), 96–106.

⁶Liaison Committee, *Fifth Report* (HL, 2019–21, 193), para. 11, available at <https://committees.parliament.uk/publications/3974/documents/40047/default/> (accessed 01 Aug. 2022).

⁷(HL, 2019–21, 193).

⁸See Hansard, *Lords Debates*, 5th ser., dcccix, cols 740–6: 13 Jan. 2021.

⁹Roger Williams, 'R&D Statistics: The Work of the House of Lords', *Science and Public Policy*, xix (1992), 291–95; Lord Tordoff, 'A Watchful Eye', *European Business Journal*, viii (1996), 29–36; J.S. Caird, 'Parliamentary Constitutional Review: Ten Years of the House of Lords Select Committee on the Constitution', *Public Law* (2012), 4–11; Lord Lipsey, 'Select Committees in the UK House of Lords', *Journal of Legislative Studies*, xxiv (2018), 413–30. James Weinberg, 'Who's Listening to Whom? The UK House of Lords and Evidence-based Policy-making on Citizenship Education', *Journal of Education Policy*, xxxvi (2021), 576–99.

the Lords this has generally focused on the legislative process rather than the committee system; and although textbooks frequently mention that committees exist in the Lords the topic is rarely examined in any detail.¹⁰ The slight exception has been the work of the European Union Committee whose scrutiny has been the focus of various comparative analyses.¹¹ But even within this seam of scholarship the broader history and governance of the Lords committee system has not received extensive attention.¹² Looking across the existing literature on committee scrutiny at Westminster one could be forgiven for thinking that scrutiny committees had only ever existed in the Commons.¹³

It is in exactly this context that this article provides the first detailed historical account of investigatory and policy-focused select committees in the Lords and does so in the approximate historical period covering the development of the departmental select committees in the Commons.¹⁴ Four issues help demonstrate the relevance and significance of this account for both scholars and practitioners of parliamentary politics (and students of democratic change, more generally). The first issue relates to the notion of 'modified majoritarianism' and the manner in which the role and influence of Lords committees has not been included in debates concerning the relationship between executive and legislature, in general, or the parliamentary decline thesis, in particular.¹⁵ This flows into a second issue and the manner in which the dominant narrative attached to the Lords is one of stagnation, as epitomised in the subtitle of Chris Ballinger's *The House of Lords 1911–2011: A Century of Non-Reform*.¹⁶ The danger of such 'self-evident truths', as Elinor Ostrom suggested, is that they can veil the existence of subtle or internal reforms which may actually, at some level, contradict those dominant assumptions.¹⁷ Indeed, it is possible to suggest that although scholars have invested a great deal of time and effort in studying the politics of house of lords reform

¹⁰See, for example, Meg Russell, *The Contemporary House of Lords: Westminster Bicameralism Revived* (Oxford, 2013); Meg Russell and Daniel Gover, *Legislation at Westminster: Parliamentary Actors and Influence in the Making of British Law* (Oxford, 2017).

¹¹See, for example, Torbjörn Bergman, 'National Parliaments and EU Affairs Committees', *Journal of European Public Policy*, iv (1997), 373–87; Tapio Raunio, 'Holding Governments Accountable in European Affairs: Explaining Cross-national Variation', *Journal of Legislative Studies*, xi (2005) 319–42; Thomas Winzen, 'National Parliamentary Control of European Union Affairs: A Cross-national and Longitudinal Comparison', *West European Politics*, xxxv (2012), 657–72; Jan Karlas, 'Parliamentary Control of EU Affairs in Central and Eastern Europe: Explaining the Variation', *Journal of European Public Policy*, xviii (2011), 258–73; Dionyssis Dimitrakopoulos, 'Incrementalism and Path Dependence: European Integration and Institutional Change in National Parliaments', *Journal of Common Market Studies*, xxxix (2002), 405–22.

¹²The fact that the opportunity to design a 'new' select committee system stems, in part, from the abolition of the European Union Committee in the wake of the United Kingdom's departure raises at least some questions about the relevance of this comparative scholarship in the future.

¹³See, for example, Kaare Strøm, 'Parliamentary committees in European democracies', *Journal of Legislative Studies*, iv (1998), 21–59; Institute for Government, *Select Committees Under Scrutiny* (2004); Ian Marsh, 'The Commons Select Committee System in the 2015–20 Parliament', *Political Quarterly*, lxxxvii (2016), 96–103.

¹⁴Note: This article does not focus on: (i) Permanent joint committees or joint committees on draft bills; or (ii) statutory committees (including *ad hoc* post-legislative committees, special bill committees, public bill committees, select committees on public bills; or (iii) 'Other' committees in the house of lords (such as Scottish select committees).

¹⁵Matthew Flinders, 'Majoritarian Democracy in Britain: New Labour and the Constitution', *West European Politics*, xxviii (2005), 62–94; Matthew Flinders and Alexandra Kelso, 'Mind the Gap: Political Analysis, Public Expectations and the Parliamentary Decline Thesis', *British Journal of Politics and International Relations*, xiii (2011), 249–68.

¹⁶Chris Ballinger, *The House of Lords 1911–2011: A Century of Non-Reform* (2014).

¹⁷Elinor Ostrom, 'The Danger of Self-Evident Truths', *PS: Political Science & Politics*, xxxiii (2000), 33–44.

(i.e. its position and powers within the constitutional configuration) they have generally overlooked the nature and pace of reform *within* the Lords (i.e. what peers actually do on a day-to-day basis and why it matters).

With this more prosaic internal focus in mind, a third issue concerns the governance of scrutiny committees (i.e. questions of scope, resourcing, oversight, patronage and powers) and asks whether those frameworks for understanding change in the Commons are appropriate for understanding change in the Lords. Does Lord Norton's identification of 'windows of opportunity' or Tony Wright's emphasis on the 'cracks and wedges' theory of change, for example, carry across into the upper house?¹⁸ This flows into a fourth and final topic which relates to questions of institutional confidence and political legitimacy. The creation of the 'new' committee system in the Lords is, we suggest, significant in terms of recognising the significant and distinctive role which house of lords committees can and should play within the bicameral framework. As the historical account presented in this article demonstrates, as select committees in the Commons became increasingly strident over the last 40 years, select committees in the Lords proceeded far more cautiously and to some extent quietly. This reflected an acceptance that it was the primary responsibility of the departmentally related committees in the Commons to scrutinise the 'expenditure, administration and policy' of government departments. This resulted – as Michael Torrance has written – with the Lords adopting 'a self-denying ordinance with respect to its select committee activity' that was reflected in an emphasis on avoiding 'overlap' and focusing on broader aspects of thematic public policy.¹⁹ The degree to which the 'new' select committee system might reflect a shift in the interpretation of this 'self-denying ordinance' – possibly even its rejection – provides a critical contextual question for this article. The shift in emphasis *towards* cross-cutting scrutiny, public engagement and increased visibility could be a critical juncture in the history of investigative committees in the Lords. Although reforms in the Lords have tended to be subtle, the latest reforms could be seen as an example of the transformative results to be gained from long periods of incrementalism.²⁰

This is clearly a wide-ranging article and, like painting on a large canvas, this has required the use of a fairly broad brush, in analytical, historical and empirical terms. It is hoped that by highlighting the role of investigatory committees in the Lords this article will stimulate more scholarly interest in this topic, thereby filling in the detail and achieving a more fine-grained understanding. As Torrance and Tudor note, although 23 investigatory committees on public issues were established in the Lords from the turn of the 20th century these early experiments with scrutiny committees ended with the beginning of the Second World War and none were established between 1940 and 1970.²¹ As such the historical account

¹⁸Tony Wright, 'Prospects for Parliamentary Reform', *Parliamentary Affairs*, lviii (2004), 867–76; Philip Norton, 'Reforming Parliament in the United Kingdom: The Report of the Commission to Strengthen Parliament', *Journal of Legislative Studies*, vi (2000), 1–14.

¹⁹Michael Torrance, 'Select Committees in the House of Lords', in *The Table*, ed. Nicolas Besly (2013), 67.

²⁰See, for example, R.M. Dixon, *Research Briefing: Impact of the House of Lords* (House of Lords Library, 2009), available from <https://lordslibrary.parliament.uk/research-briefings/lln-2019-0100/> (accessed 01 Aug. 2022).

²¹Michael Torrance and Philippa Tudor, *Select Committees in the House of Lords* (House of Lords Library, 2019), available from <https://lordslibrary.parliament.uk/research-briefings/lln-2019-0125/> (accessed 01 Aug. 2022) and Appendix 1, available from <https://lordslibrary.parliament.uk/research-briefings/lln-2019-0125/> (accessed 01 Aug. 2022); See also Peter Bromhead, *The House of Lords and Contemporary Politics 1911–1957* (1958); R.L. Borthwick, 'An Early Experiment with Standing Committees in the House of Lords', *Parliamentary Affairs*, xxv (1971),

presented in this article covers three main phases: ‘Nascent Institutionalisation, 1968–2000’; ‘Developmental Institutionalisation, 2000–17’; and ‘Systematic Scrutiny, 2017–21’. These three phrases provide a chronological structure for this article and a final fourth section very briefly explores a set of connecting insights or themes.

1. *Nascent Institutionalisation, 1968–2000*

‘Organisational theory and work on legislative institutionalisation’ Lord Norton notes: ‘suggests that institutionalisation occurs at two levels. The first and most basic is in terms of specialisation *within the legislature*: that is, delegating tasks to particular bodies, usually committees. Legislatures may be arrayed on a spectrum, with chamber orientated legislatures which make little or no use of committees at one end and legislatures which are committee-orientated, to the extent of giving committees power to exact legislation, at the other. The second level is that of *institutionalisation within committees*.²² Committees may themselves be arrayed on a spectrum: those with highly developed procedures and norms, with continuity in membership and some degree of corporate ethos at one end and those with few developed procedures, practices and membership continuity at the other’.²³

With these levels (i.e. ‘specialisation’ and ‘institutionalisation’) in mind, it is important to acknowledge that from a historical standpoint the British parliament was until the late 20th century a chamber-orientated institution. It was as Nelson Polsby suggested an ‘arena’ legislature.²⁴ In the Commons it was not until the 1980s and 1990s with the gradual institutionalisation of the new post-1979 select committee system that the prominence of the chamber was to some extent counter-balanced by increasing activity on the committee corridor.

In the Lords the barriers and blockages *vis-à-vis* both specialisation and institutionalisation were arguably more significant for two reasons. The first was constitutional in nature and simply sought to acknowledge the primacy of the Commons when it came to both the design of legislation and the execution of policy. The Lords was a revising chamber without the democratic legitimacy accrued through election and should therefore tread lightly when it came to scrutinising the executive. The second reason reflected a cultural emphasis on the notion of equal rights for all peers which was enacted through the convention that all bills are scrutinised through a full committee on the floor of the Lords. Moves towards specialisation in the Lords through the use of ‘select’ committees (i.e. ‘select’ denoting a selection of members from the full house) during the first half of the 20th century had failed due to resentment among those who had not been ‘selected’, and concern that power was being taken away from the floor of the House.²⁵ During the two decades

²¹ (continued) 80–6. Lord Burnham proposed that they should be re-established in 1927, but his proposal was not accepted (see Hansard, *Lords Debates*, 5th ser., vol. lxvi, col. 261: 1 Mar. 1927).

²² The conceptualisation of ‘institutionalisation’ is problematic, for a critique of the broader literature see David Judge, ‘Legislative Institutionalization: A Bent Analytical Arrow?’, *Government and Opposition*, xxxviii (2003), 497–516. While deploying Norton’s specific usage of ‘institutionalisation’ to assist periodisation, the following discussion takes ‘institutionalisation within committees’ to connote organisational professionalisation and systematisation.

²³ Norton, ‘Nascent Institutionalisation’, 143.

²⁴ Nelson Polsby, ‘Legislatures’, in *Handbook of Political Science*, vol. v, ed. Fred Greenstein and Nelson Polsby (8 vols, Reading, MA, 1975).

²⁵ See, Bromhead, *The House of Lords and Contemporary Politics*, 114.

after the Second World War virtually all Lords business was undertaken on the floor of the House and the committees that existed were primarily concerned with internal organisational management. This situation began to change in the 1960s. The significant number of life peers who had joined the House since the Life Peerages Act 1958 brought a wide array of expertise and a more professional approach. It also injected a cohort of members who understandably thought they had been appointed to fulfil a role and were now keen to create opportunities to make a demonstrable contribution to the work of the second chamber.²⁶ In 1968 a white paper on reform of the house of lords was published, and although its main recommendations (largely related to composition and powers) were not implemented it did promote not only a more significant role for public bill committees but also the establishment of 'specialist' (or investigative) committees in a reformed House.²⁷ In the wake of the government's abandonment of their plans for wholesale reform, the lord privy seal, Earl Jellicoe, sought to develop this focus on the use of specialist committees in order to 'better tap the experience and expertise which exists in this rather remarkable place.'²⁸

With the approval of the Procedure Committee, a small group of peers – 'the Magnificent Four' – were tasked with exploring and coming forward with recommendations for 'the more effective deployment in the public interest of the time and talents of its Members.'²⁹ Earl Jellicoe noted:

In this general context I have given a lot of thought to the idea that a special Select Committee, or Committees, of this House might be set up, somewhat on the lines of the special Committees in another place but not necessarily exact replicas. This was a possible change forecast in the ill-fated 1968 White Paper on Lords Reform, and I believe this is a spar which we could well rescue from the wreckage of that particular ship. A lot of the success of any Select Committee which we might choose to establish would depend very much on the choice and enthusiasm of its Members, and on our ability to select one or two of the younger Members of the House. Subject to taking soundings through the usual channels, the area which I shall be proposing for our first Select Committee is that of sport and leisure.³⁰

The 'ad hoc' select committee on Sport and Leisure was established on 8 December 1971 with the power to appoint a subcommittee and specialists. This was the first select committee to consider matters of public policy since 1939.³¹ When Earl Jellicoe, as leader of the House, moved the motion to establish this select committee, he expressed his hope that it would be the first of many such select committees and in his winding-up speech concluded:

²⁶For a discussion see: A.H. Birch, *The British System of Government* (1998); Ferdinand Mount, *The British Constitution Now* (1992); Dawn Oliver, *Constitutional Reform in the UK* (Oxford, 2003).

²⁷Cabinet Office, *House of Lords Reform*, (London: Her Majesty's Stationery Office, 1968) (Cmnd. 3799), Appendix II.

²⁸Hansard, *Lords Debates*, 5th ser., cccxxv, col. 23: 2 Nov. 1971.

²⁹Hansard, *Lords Debates*, 5th ser., cccxxv, col. 23: 2 Nov. 1971. The 'gang of four' were Lord Aberdare, Lord Shepherd, Lord Byers and the noble earl, Lord Perth.

³⁰Hansard, *Lords Debates*, 5th ser., cccxxv, col. 23–4: 2 Nov. 1971.

³¹Once it has performed the task for which it is established — usually the publication of a report — an *ad hoc* committee ceases to exist.

I personally believe that in your Lordships' House there is a pool of experience and expertise which is not properly used for the nation's benefit. I also believe that the judicious employment of select committees is one of the ways by which that pool of experience and expertise can be more properly exploited for the benefit of the nation.³²

The next opportunity for 'judicious employment' of a select committee came in 1973 as a result of the United Kingdom's entry into European Economic Community. The Maybray-King committee was appointed to consider how the scrutiny of European legislation could most effectively be undertaken by the Lords and recommended the creation of a select committee on the European Communities for this purpose.³³ Envisaged with a membership large enough to facilitate the appointment of several subcommittees the scale of the Maybray-King committee's recommendations did raise concerns. 'This is rather more ambitious than what the parallel Commons committee proposed' the then lord privy seal, Lord Windlesham, warned the House 'and I believe it would be wise to think very carefully before taking on commitments on a scale that we might not be able to fulfil in practice.'³⁴ Nevertheless, the European Communities Committee was duly established in May 1974 and evolved to become the largest scrutiny committee in the Lords with a suite of six or seven subcommittees at any one time, alongside the creation of numerous *ad hoc* committees.³⁵ The establishment of the European Communities (later 'European Union') Committee marked a major shift in both 'specialisation' and 'institutionalisation' within the Lords scrutiny system. The chair of the European Union Committee was formally appointed by the House as principal deputy chairman of committees.³⁶ The main committee had up to 24 members meeting fortnightly, while the subcommittees allowed a further 70 peers to scrutinise specific sectors. Members were selected on the basis of expertise and rotation rules were introduced to cope with the demand for places (each member could serve for up to four years, and the chair of a subcommittee for three). Subcommittees could scrutinise specific documents, take evidence from witnesses including ministers, and although their reports had no formal role in decision-making processes they were regarded as authoritative and often highly influential.³⁷

Bolstered by the apparent success of the European Communities Committee, the creation of a new standing committee structure of up to seven or eight committees, each covering a broad area of policy, was recommended by the Practice and Procedure Committee in 1977 with the aim of reducing legislative congestion and improving

³²Hansard, *Lords Debates*, 5th ser., cccxxvi, col. 894: 9 Dec. 1971.

³³Select Committee on Procedures for Scrutiny of Proposals for European Instruments, *Second Report* (HL, 1972–73, 194). See Hansard, *Lords Debates*, 5th ser., cccxlvii, col. 759–839: 6 Dec. 1973. See also Martin Kolinsky, 'Parliamentary Scrutiny of European Legislation', *Government and Opposition*, x (1975), 46–69.

³⁴Hansard, *Lords Debates*, 5th ser., cccxlvii, col. 759: 6 Dec. 1973.

³⁵Including on: Future Financing of the Community (session 1983–4); European Union (session 1984–5); Staffing of the Community Institutions (session 1985–6); Fraud Against the Community (session 1988–9); Economic, Monetary and Political Union (session 1989–90); and Intergovernmental Conferences (session 1996–7).

³⁶House of Lords House Committee, *Implementing the Recommendations of the Leader's Group on Governance*, (HL, 2016–17, 19). See Torrance and Tudor, 'Select Committees in the House of Lords', appendix 12.

³⁷For a discussion see Leyland, 'The House of Lords Faces up to Brexit', 96–106.

scrutiny.³⁸ These recommendations were supported on the floor of the House and generated a commitment from the Leader of the House to conduct an experiment with such a structure.³⁹ This recommendation was, however, never acted upon. As the 5 July 1977 debate on the recommendations illustrates, significant concern existed within the Lords about whether creating a set of committees with increased powers would be ‘an intrusion on the powers of the House of Commons’.⁴⁰ As Lord Byers noted, ‘[W]e risk antagonising another place. This is a very delicate field. I am very much in favour of the two Houses working very closely together, with the minimum of antagonism between them.’⁴¹ The fact that at the time the Commons was also considering the creation of a new departmentally related select committee system may have added to concern among peers about the need to tread lightly in creating new scrutiny demands. Added to this may also have been concern about the resource requirements of staffing and supporting a new committee system in the Lords, a concern that emerges as a constant theme throughout this history.⁴² One casualty of the new committee system in the Commons was the abolition of their pre-existing select committee on Science and Technology, which created a ‘scrutiny gap’ which the Lords were subsequently able to fill through the creation of a new committee of the same name in January 1980 as the second sessional select committee.⁴³ The specialist expertise based within the Lords was immediately observable in the work and approach of this committee. ‘[W]itnesses including ministers and civil servants’ Donald Shell wrote ‘who appear before the committee know that among its members are some who, on any reckoning, are authorities on the subject concerned’.⁴⁴ Of particular and early note was the manner in which the committee tended to conduct scrutiny of a slower, broader and arguably deeper kind than was generally undertaken in the Commons. As a result, its reports – although formally only advisory – could ‘carry some political clout’.⁴⁵

Due to concerns about the increasing pressures being placed on limited committee resources, the Jellicoe Committee was established in 1991 to conduct the first comprehensive review of the use of committees in the Lords.⁴⁶ Reporting in 1992, it put forward proposals for a ‘more balanced and structured committee system’. *Ad hoc* committees should become a regular part of the House’s work, the report recommended, and limited experiments should also be conducted with the use of public bill committees, special standing committees and a Delegated Powers scrutiny committee. Critically, the Jellicoe Committee set down the principle that select committees in the Lords should generally seek to *complement rather than duplicate* the work of those in the Commons and identified three broad categories as to the purposes of committees: (i) to make reports to the House; (ii) to exert an influence on Government; and (iii) to address some recommendations to a wider audience beyond

³⁸House of Lords Committee on Practice and Procedure, *First Report* (HL, 1976–77, 141).

³⁹Hansard, *Lords Debates*, 5th ser., ccclxxxv, col. 166: 5 July 1977.

⁴⁰Hansard, *Lords Debates*, 5th ser., ccclxxxv, col. 180: 5 July 1977.

⁴¹Hansard, *Lords Debates*, 5th ser., ccclxxxv, col. 182: 5 July 1977.

⁴²House of Lords Committee on the Committee Work of the House (HL, 1991–92 35), para. 128.

⁴³The house of commons re-established its select committee on Science and Technology in 1992.

⁴⁴Donald Shell, *The House of Lords* (Hassocks, 1992) 236.

⁴⁵Norton, ‘Nascent Institutionalisation’, 158; See also P.D.G. Hayter, ‘The Parliamentary Monitoring of Science and Technology in Britain’, *Government and Opposition*, xxvi (1991), 147–66.

⁴⁶This is a topic that had been considered by a group on the Working of the House (HL, 1987–88, 9).

the House and the government.⁴⁷ Although the Jellicoe Committee reconsidered the creation of a new suite of policy related scrutiny committees, as originally recommended by the Practice and Procedure Committee in 1977, it decided against such a comprehensive measure. It also rejected demands by peers for the creation of new permanent committees, instead recommending the greater use of *ad hoc* committees, with at least one being established in each session.⁴⁸

Although the Jellicoe Committee attempted to hold back an increasing demand for the Lords to engage in greater committee-based specialisation it did concede that forms of institutionalisation were necessary to oversee and manage the nascent committee system. It therefore agreed that a Steering Committee should be established to (*inter alia*) allocate resources between committees, review committee work, consider suggestions for new permanent or *ad hoc* committees, and to ensure the effective co-ordination of committee work with the Commons (so as to avoid duplication). This was duly established in November 1992 as the Liaison Committee, and is composed of the senior deputy speaker, all party leaders or their deputies, the convenor of the cross-bench peers and six back-benchers.

The changing composition of the Lords in the wake of the Life Peerages Act 1958 combined with a pragmatic acceptance that the 1968 white paper was not going to lead to fundamental reform had led active peers to focus their attention on the committee system. Baldwin captures this dynamic in the notion of ‘new wine in an old bottle’ with greater institutionalisation and specialisation characterising this process.⁴⁹ A second and arguably more significant shift in the demographic make-up of the Lords came with the passing of the House of Lords Act on the 11 November 1999. This major reform had the effect of reducing the total membership of the House from 1,330 in October 1999 – the highest figure ever recorded – to 669 in March 2000, the vast majority of which were now life peers.⁵⁰

2. Developmental Institutionalisation, 2000–17

Writing just before the millennium and reflecting on the evolution of committees in parliament Lord Norton suggested, ‘Parliament may – indeed, is likely to – move from a nascent to a developed institutionalism in the new century’.⁵¹ This section explores the degree to which this prediction proved pertinent in relation to Lords investigatory committees. The new century certainly began with a flurry of interest around reforming the Lords with the royal commission on the reform of the house of lords, chaired by Lord Wakeham. Its final report was published on 20 January 2000 and, with echoes of the 1968 white paper, although mainly focused on the powers and functions of the second chamber it also

⁴⁷ House of Lords Committee on the Committee Work of the House (HL, 1991–92, 35).

⁴⁸ As a result of another recommendation, a select committee on the Scrutiny of Delegated Powers was established later that year, See (HL, 1991–92, 35), para. 133.

⁴⁹ Nicholas Baldwin, ‘The House of Lords: Behavioural Changes’, in *Parliament in the 1980s*, ed. Philip Norton (Oxford, 1985).

⁵⁰ House of Lords, *Annual Report and Accounts, 1999–2000*, available at <https://publications.parliament.uk/pa/ld199900/ldbrie/10402.htm> (accessed 01 Aug. 2022).

⁵¹ Norton, ‘Nascent Institutionalisation’, 161.

highlighted the positive contribution of committees which ‘should continue to be an important function of the reformed chamber’.⁵² Specific recommendations followed, including that two new permanent select committees should be appointed to consider economic affairs and the constitution. It also suggested that further select committees could be established to scrutinise international treaties and devolution, and that a constitution committee should have a dedicated subcommittee to consider human rights issues. ‘As with the 1968 white paper, while most of the Wakeham Commission’s major recommendations on reform of the House were not implemented’ Michael Torrance and Philippa Tudor note ‘the recommendations on committees proved to be more durable.’⁵³ The Liaison Committee conducted a review of select committee activity in May and June 2000 and endorsed the Wakeham Commission’s recommendations for the creation of two new permanent committees – the house of lords Constitution committee and the house of lords Economic Affairs committee – in 2001. The Wakeham Committee’s focus on human rights led to the creation of a joint committee on Human Rights in early 2001, and devolution issues have generally been scrutinised under the auspices of the Constitution Committee.⁵⁴ The Liaison Committee considered creating a new committee on international treaties, but similar discussions were underway in the Commons at that time and so this specific recommendation was not taken forward.

The Liaison Committee conducted another review of select committee activity in 2006 and agreed that in future the beginning of every parliament would be marked by a review of the select committee system before their motions of reappointment were tabled.⁵⁵ It also reviewed the duration of committees and, with the intention of maximising future flexibility, it agreed that unless there was a compelling reason to the contrary no committees would be established on a permanent basis but would generally be appointed for the duration or remaining duration of the Parliament. Finally, and in a major step *vis-à-vis* institutionalisation, the Liaison Committee agreed a general set of criteria that would in future be used to determine: (i) whether or not a new committee should be established; and (ii) whether it should be established as an ‘*ad hoc*’ or ‘sessional’ basis (see Table 1).

The criteria set out in Table 1 were then used to assess several applications for new committees. Applications for an international organisations committee and a committee on climate change were rejected but an application for a new select committee on communications by Lord Fowler was accepted (see Table 2).⁵⁶ Following the review cycle highlighted in their 2006 report, the Liaison Committee conducted a further review of select

⁵²Royal Commission on the Reform of the House of Lords, *A House for the Future* (London: Her Majesty’s Stationery Office, 2000) (Cm. 4534).

⁵³See Torrance and Tudor, ‘Select Committees in the House of Lords’, 8.

⁵⁴The Economic Affairs Committee has also considered the economic consequences of Scottish independence.

⁵⁵Liaison Committee, *Third Report* (HL, 2005–6, 251), available at <https://publications.parliament.uk/pa/ld200506/ldselect/ldliaison/251/25103.htm> (accessed 01 Aug. 2022).

⁵⁶The committee was established in 2007 and is responsible for considering the media and creative industries. It was set up in the wake of the *ad hoc* house of lords committee on BBC Charter Renewal. The committee was appointed on a fixed-term basis for the remainder of the 2005–10 parliament but was not a sessional committee. After the general election in 2010, the committee was re-established on a temporary basis for the duration of the 2010–12 session and again, on the same basis, for the 2012–13 session. From the 2013–14 session it became a permanent select committee.

Table 1: Criteria for setting up new committees: Lords Liaison Committee, 2005–6

	<i>Ad hoc</i>	Sessional/Parliament
Significance	X	X
No Commons overlap	X	X
No Lords duplication	X	X
Cross cutting	-	X
Cost	-	X
Staffing, accommodation	-	X
Peer resource	X	X
Long term value	-	X

committee activity after the 2010 general election.⁵⁷ No major changes or new committees were needed, the committee concluded, as the existing ones continued to ‘have a relevant and useful function’. What is interesting, however, given this article’s focus on the ‘self-denying ordinance’ of Lords committees is the manner in which the Liaison Committee acknowledged the existence of pressure to be slightly less restrained. The committee noted, ‘The principle that Lords committees should generally seek to complement rather than duplicate the areas of scrutiny of commons committees was originally enunciated by the Jellicoe Committee in 1992’; and went on to conclude ‘Although it has, from time to time, *attracted a certain amount of dissent*, we consider that it should remain a core principle underlying House of Lords select committee activity. We continue to endorse the principle that House of Lords committee work should be complementary to that of the Commons [emphasis added].’⁵⁸

It was in exactly this vein that the Liaison Committee rejected a call for a new sessional committee to be established on International Affairs and Security; the fourth time that a call from peers for a committee on this topic had been declined on the basis that such a committee would duplicate the work of the Commons.⁵⁹ The committee reaffirmed the principle that no more than one *ad hoc* committee should be established at any one time to complement the activities of the permanent select committees. They also stated that while proposals for new committees would always be welcome, decisions would be made on the strength of the case for their establishment in each instance and that the presumption that any *ad hoc* committee so appointed may be the forerunner of a more permanent committee should be avoided. The rationale for this was that specialisation and institutionalisation came at a cost. Between 2000 and 2010 the size of the committee office had doubled from 29 to 58 staff and in 2010–11 its budget was £4.2m. From being an almost exclusively chamber-focused institution somewhere between one-quarter and one-third of all peers now sat on at least one scrutiny committee. ‘Committee work imposes significant demands on resources’ the committee noted ‘we will continue to keep resource requirements under

⁵⁷Liaison Committee, *First Report* (HL, 2010–11, 6) available at <https://publications.parliament.uk/pa/ld201011/ldselect/ldliaisn/6/603.htm> (accessed 01 Aug. 2022).

⁵⁸(HL, 2010–11, 6), para. 6.

⁵⁹(HL, 2010–11, 6), para. 18.

Table 2: Comparing the pre- and post-2021 Scrutiny committee system

Pre-2021 Sessional Committees		Post-2021 Sessional Committees*	
<i>Committee (estb.)</i>	<i>Subcommittee(s)</i>	<i>Committee</i>	<i>Subcommittee(s)</i>
European Communities (later 'Union') Committee (1974)**	EU Financial Affairs EU Internal Market EU External Affairs EU Home Affairs EU Justice EU Energy and the Environment	European Affairs Committee	Protocol on Ireland/ Northern Ireland
Science and Technology (1980)		Science and Technology Committee	
Constitution Committee (2001)		Constitution Committee	
Economic Affairs Committee (2001)***		Economic Affairs Committee	
Communications Committee (2007, sessional since 2013)#	Finance Bill	Communications and Digital Committee	
International Relations Committee (2016)##		International Relations and Defence Committee Public Services Committee International Agreements Committee Industry and Regulators Committee Built Environment Committee Justice and Home Affairs Committee	

*Plus three *ad hoc* or 'special inquiry' committees running each session.

**House of Lords Procedures for Scrutiny of Proposals for European Instruments Committee, *Second Report* (HL, 1972–3, 194).

***It evolved from an *ad hoc* select committee established in 1998 to monitor the Bank of England's Monetary Policy Committee. While it mainly conducts inquiries into topical areas of economic policy, since 2003 the committee has also established a subcommittee most years to inquire into selected aspects of the draft Finance Bill.

#Liaison Committee, *First Report* (HL, 2012–13, 135), para. 12.

##Liaison Committee, *An International Relations Committee* (HL, 2015–16, 47).

review'.⁶⁰ The demand-side of committee work was in danger of overwhelming the supply-side in terms of available resources and the Science and Technology Committee was highlighted as a potential candidate for retrenchment should 'further demands' for committee work arise.

The combined impact of the Life Peerages Act 1958 and the House of Lords Act 1999 significantly altered the composition of the house of lords. As already noted, one consequence of this was the emergence of a more proactive culture whereby a larger proportion of peers were keen to undertake a meaningful role in the review of legislation and the scrutiny of policy. The gradual development of this select committee system had played a significant role in creating exactly these opportunities. In 2010, however, the very rapid appointment of over 100 new life peers increased concern about the physical and procedural capacity of the house of lords to cope with the additional pressures and expectations this growth would inevitably create. In order to help consider how to manage this challenge, and specifically to make better use of the 'range and depth of expertise' found within the Lords, a Leader's Group was appointed on 27 July 2010 under the chairmanship of Lord Goodlad. It was tasked with considering 'the working practices of the House and the operation of self-regulation, and to make recommendations' and reported on 26 April 2011.⁶¹

The context within which this review took place was significant as a number of important changes had recently been introduced to the governance of select committees in the house of commons under the auspices of the house of commons reform committee, chaired by the then MP for Cannock Chase, Tony Wright.⁶² This committee had been established in the wake of the MPs' expenses scandal with reforms including (from the start of the 2010 to 2012 session) the election of select committee chairs by a secret ballot of the whole House, the election of committee members by party groups and the appointment of a Backbench Business Committee to schedule back-bench debates and other decisions. The pace and nature of change in the Commons, especially in relation to reducing the role of the whips in influencing appointments, clearly influenced the Leader's Group and its final recommendations included a mixture of continuity and change: *continuity* in relation to an emphasis on regular and systemic review, the recommendation that a small number of new committees be established, and an emphasis on the efficient use of resources and a call for more time to be made available to debate reports; *change* in relation to the recommendation that select committees should be able to elect their own chairs, that the chair of committees (now referred to as the senior deputy speaker) and principal deputy chair of committees (as was the chair of the European Union Committee) should be elected by secret ballot of the whole House, and that a Backbench Business Committee should be established.⁶³ It also challenged, or at the very least sought to reinterpret, the long-standing principle that Lords

⁶⁰(HL, 2010–11, 6), para. 10.

⁶¹Leader's Group on Working Practices, *Report of the Leader's Group on Working Practices* (HL, 2010–12, 136) available at <https://publications.parliament.uk/pa/ld201012/ldselect/ldspeak/136/136.pdf> (accessed 01 Aug. 2022).

⁶²House of Commons Reform Committee, *Rebuilding the House*, (HC, 2008–09, 1117) available at <https://publications.parliament.uk/pa/cm200809/cmselect/cmrefhoc/1117/1117.pdf> (accessed 01 Aug. 2022).

⁶³However, it did not specify what the remit of the two new sessional committees should be, but instead listed the policy areas that had been suggested by members as being appropriate for Lords select committee work. These were: public services, national infrastructure, welfare, social policy, education and culture, health, regulators, security and foreign affairs.

select committees should not duplicate the work of commons select committees through a focus on complementarity:

We believe that it is now time, almost 20 years after the Jellicoe Committee, to reconsider these criteria. We accept that the availability of sufficient members to serve on a committee must be a fundamental criterion; however, this needs to be qualified by acknowledgement of the clear public interest in making best use of the expertise of the House's members. Moreover, the requirement that there should be "no major overlap" with the Commons does not stand up to examination. In many respects—not least in the scrutiny of legislation—there is extensive overlap between the two Houses. Such overlap is inevitable in any bicameral legislature. There is also marked overlap in committee work—not only do both Houses have European Committees, but there are also two Science and Technology Committees.

The essential point is not that the two Houses should not overlap, but that they should work in a complementary fashion, the elected chamber providing the primary means of holding the executive, particularly ministers and senior officials, to account, while the revising chamber brings to bear the expertise and experience of its members, its less partisan nature, and the time that its members, without constituencies to attend to or re-election to worry about, can devote to analysing government policy and action. Co-ordination is of course vital—the real danger of overlap is that if committees of the two Houses reach different conclusions on the same subjects, the Government has an opportunity to pick and choose, to play off one committee against another. In reality, however, this has rarely happened, even though the two Houses have for many years both had committees operating in the two areas mentioned above.⁶⁴

Almost 20 years before, the Jellicoe Committee had concluded that there were not enough active peers to resource any significant increase in select committee activity, but the Goodlad report now suggested that this was no longer a restraining factor due to the growth in life peers. If anything, the report suggested, a lack of select committee activity was the problem as large number of peers were now keen to take on some form of role and responsibility. The Goodlad report concluded that in order to enhance the House's ability to scrutinise the government a thorough review of committee work was needed, and that in future the following principles should be applied when considering the establishment of new committees: (i) 'Make best use of the expertise of members of the House'; (ii) 'Complement the work of Commons departmental select committees'; and (iii) 'Address areas of policy that cross-departmental boundaries'.

When the House debated the Goodlad report on 27 June 2011, the leader of the House underlined the importance that recommendations for new committees were, where possible, resource neutral.⁶⁵ But he did confirm that the specific recommendations in the Goodlad report would be taken forward by the Procedure and Liaison committees, with their requisite reports being considered by the House in due course. The Liaison Committee considered the Goodlad report's proposals by reviewing existing committee activity in the

⁶⁴(HL, 2010–12, 136) paras 226 and 227.

⁶⁵Hansard, *Lords Debates*, 5th ser., dccxxviii, col. 1551: 27 June 2011.

light of its principles and publishing a report in March 2012 recommending the creation of new committees (contingent on the reduction of existing committee activity elsewhere) plus one additional unit of committee activity.⁶⁶ Although agreeing that new committees should make the best use of the knowledge and experience of peers, the Liaison Committee rejected the Goodlad report's recommendation of creating two new sessional committees and (once again) emphasised a preference for the use of *ad hoc* committees. The dispensation was that *ad hoc* committees would have the option of bidding for reappointment at the end of their term. The Liaison Committee had, however, departed from the previous principle that no more than one *ad hoc* committee should be established at any one time and immediately recommended that the appointment of three new committees (two to consider matters of public policy and another to conduct post-legislative scrutiny). The Liaison Committee also invited the Procedure Committee to consider the reduction of the rotation rule relating to length of service on such committees from four to three years, with the intention that more regular turnover of membership would provide a wider range of peers with the opportunity to participate in the committee functions of the House.⁶⁷

The House debated the report and approved its recommendations on 26 March 2012.⁶⁸ The Goodlad report's recommendation concerning the election of select committee chairs was not considered by the Procedure Committee (discussed below). Although the more radical proposals in the Goodlad report had not been taken forward this did not stop the continuing evolution of the scrutiny system in the Lords. The reforms that had been introduced at the beginning of the 2012 to 2013 session, especially the expansion of *ad hoc* committees, were reviewed by the Liaison Committee in March 2013. The consensus within the review was that the use of *ad hoc* committees was working well and that an additional unit of committee activity should be established.⁶⁹ More specifically, the Liaison Committee recommended the appointment of four *ad hoc* committees – two to consider matters of public policy (one considering two separate matters in succession – otherwise known as 'short *ad hoc* committees') and two to conduct post-legislative scrutiny. It also recommended the appointment of the Communications Committee as a permanent, sessional, committee from the beginning of the 2013 to 2014 session; and that the Science and Technology Committee should be reappointed at the beginning of the 2013 to 2014 session with the resources of a single select committee. These recommendations were debated and approved by the House on 21 March 2013.⁷⁰

In a further sign of gradual institutionalisation, a pattern of annual review of committee activity now emerged with the March 2014 review by the Liaison Committee making a set of subtle yet significant recommendations which sought to address a scrutiny gap

⁶⁶Liaison Committee, *Review of Select Committee Activity and Proposals for New Committee Activity* (HL, 2010–12, 279) available at <https://publications.parliament.uk/pa/ld201012/ldselect/ldliaison/279/27903.htm> (accessed 01 Aug. 2022).

⁶⁷This suggestion was not taken forward.

⁶⁸Hansard, *Lords Debates*, 5th ser., dccxxxvi, col. 1158: 26 Mar. 2012.

⁶⁹Liaison Committee, *Review of Select Committee Activity and Proposals for New Committee Activity*, (HL, 2012–13, 135) available at <https://publications.parliament.uk/pa/ld201213/ldselect/ldliaison/135/13502.htm> (accessed 01 Aug. 2022).

⁷⁰Hansard, *Lords Debates*, 5th ser., dccxlv, col. 673: 21 Mar. 2013.

and increase efficiency.⁷¹ The ‘gap’ related to the absence of a mechanism to follow-up on the recommendations and government response to the scrutiny of *ad hoc* committees. In an attempt to close this gap, the report stated that future *ad hoc* committees should be invited ‘to identify clearly the issues which they wish to be followed-up by the Liaison Committee roughly a year after they have reported.’ In order to increase efficiency, it was recommended that ‘in future it would be desirable to identify the chairmen, and so far as possible the members, of *ad hoc* committees at the end of the previous session so as to enable the Committee Office to make better use of the recess period to scope the new inquiries and thus enable the new committees to start their work earlier.’ The extension in the use of *ad hoc* committees also continued with the committee recommending the appointment of four committees for the following session (three to consider matters of public policy and one to conduct post-legislative scrutiny).⁷² The House debated the report and approved its recommendations on 27 March 2014.⁷³

At the end of this session, in July 2014, the Liaison Committee, for the first time, published a report on the activity of the House’s investigative select committees during the previous session.⁷⁴ This was a significant development which mirrored the evolution of select committees in the Commons which had since 2002 moved, as part of their own attempt to secure ‘systematic scrutiny’, towards an audit and internal accountability framework whereby all select committees would in future publish an annual report, the Commons Liaison Committee would then publish a sessional review, and at the end of each parliament a comprehensive account of the effectiveness and influence of select committees would be published by the Liaison Committee as a legacy document to the next parliament.⁷⁵ In the Lords this new pattern of annual review continued in 2015 but evolved again when in June 2015 the Liaison Committee published a report on the activity of the House’s investigative select committees during the 2010 to 2015 parliament.⁷⁶ The 2016 to 2017 session continued this process of annual light-touch review followed by a subsequent review of activity but also demonstrated the ability of the Lords investigatory committees to reshape their scrutiny processes.⁷⁷ Following the House’s agreement in November 2015 to a Liaison Committee recommendation, a new International Relations Committee was established in

⁷¹Liaison Committee, *Review of Select Committee Activity and Proposals for New Committee Activity*, (HL, 2013–14, 145) available at <https://publications.parliament.uk/pa/ld201314/ldselect/ldliaison/145/14502.htm> (accessed 01 Aug. 2022).

⁷²This article does not focus on *ad hoc* post-legislative committees (see note 14). It is worth noting in passing, however, that by 2019 nine post-legislative scrutiny committees had been active, and their activities had received broad support – see (HL, 2017–19, 398), paras 40–2. Nonetheless, their effectiveness remained open to question with Lord Norton – in ‘Post-legislative Scrutiny in the UK Parliament: Adding Value’, *Journal of Legislative Studies*, xxv (2019), 346 – concluding that at best post-legislative scrutiny in the Lords ‘is limited, but consistent’.

⁷³Hansard, *Lords Debates*, 5th ser., dccli, col. 593; 27 Mar. 2014.

⁷⁴Liaison Committee, *Investigative Select Committee Activity in Session 2013–14* (HL, 2014–15, 25) available at <https://publications.parliament.uk/pa/ld201415/ldselect/ldliaison/25/25.pdf> (accessed 01 Aug. 2022).

⁷⁵See, for example, Liaison Committee, *Fourth Report*, (HC, 2017–19, 1860) available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmliaison/1860/1860.pdf> (accessed 01 Aug. 2022).

⁷⁶Liaison Committee, *Review of Select Committee Activity and Proposals for New Committee Activity*, HL, 2014–15, 127) available at <https://publications.parliament.uk/pa/ld201415/ldselect/ldliaison/127/12702.htm>; Liaison Committee, *Investigative Select Committees in the 2010–15 Parliament*, (HL, 2015–16, 5) available at <https://publications.parliament.uk/pa/ld201516/ldselect/ldliaison/5/502.htm> (accessed 01 Aug. 2022).

⁷⁷Liaison Committee, *New Investigative Committee Activity* (HL, 2015–16, 113) available at <https://publications.parliament.uk/pa/ld201516/ldselect/ldliaison/113/113.pdf> (accessed 01 Aug. 2022); House of Lords Liaison

May 2016 (with the proviso that a full review of the House's committee work would take place during the 2017 to 2019 session). In an interesting example of the flexibility of Lords scrutiny the Liaison Committee established an Informal Brexit Liaison Group in November 2015. This innovation followed discussions between its chair and the chairs of other Lords select committees and was designed to help to co-ordinate and oversee committee activity in the House relating to Brexit, as well as liaising with Brexit scrutiny conducted by commons committees.⁷⁸ The Informal Brexit Liaison Group did not have any formal decision-making powers but it met frequently and reported to the Liaison Committee after each meeting. A short note about the core business of each meeting was also published on the parliamentary website.⁷⁹

The period from 2000 to 2018 represents a significant developmental phase in which both the institutionalisation and specialisation of Lords committees increased and became embedded within increasingly formalised frameworks.⁸⁰ And yet at a deeper and more basic level there was also a building of pressure within the Lords to challenge established assumptions about fulfilling a subservient constitutional role and an appetite for utilising investigatory and policy-focused committees in a more expansive and thematic manner. As Flinders has written, parliamentary politics often works through an almost volcanic process in the sense that pressures can build around certain topics and concerns but will usually be channelled or vented through incremental internal reforms that can be hard to identify from outside the institution.⁸¹ This explains Wright's 'cracks and wedges' theory about parliamentary reform (i.e. minor reforms or changes in procedure ('cracks') are approved by the 'usual channels' in order to defuse dissent and which then become 'wedges' through which pressure is exerted to expand or strengthen that initial concession).⁸² Although there have been no eruptions, what this section has shown is the gradual growth of pressure within

⁷⁷ (continued) Committee, *Investigative Select Committee Activity in Session 2015–16*, (HL, 2016–17, 26) available at <https://publications.parliament.uk/pa/ld201617/ldselect/ldliaison/26/2602.htm> (accessed 01 Aug. 2022).

⁷⁸ An inter-parliamentary forum on Brexit was also established at around the same time, which brought together the relevant chairs/committee members from both houses of parliament and some of the devolved legislatures. See, for example, <https://archive2021.parliament.scot/parliamentarybusiness/currentcommittees/106398.aspx> (accessed 01 Aug. 2022).

⁷⁹ See for example, Thirteenth Informal Brexit Liaison Group meeting held 20 July 2018, available at <https://committees.parliament.uk/committee/187/liaison-committee-lords/news/94304/thirteenth-informal-brexit-liaison-group-meeting-held/> (accessed 01 Aug. 2022).

⁸⁰ During 2017–19 the Liaison Committee continued to publish its annual review and subsequent 'highlights' reports. Liaison Committee, *New Investigative Committee Activity*, (HL, 2016–17, 144) available at <https://publications.parliament.uk/pa/ld201617/ldselect/ldliaison/144/14402.htm> (accessed 01 Aug. 2022); Liaison Committee, *New Ad Hoc Committees in 2018–19*, (HL, 2017–19, 103) available at <https://publications.parliament.uk/pa/ld201719/ldselect/ldliaison/103/103.pdf> (accessed 01 Aug. 2022). Liaison Committee, *New Special Inquiry Committees 2019–20*, (HL, 2017–19, 309) available at <https://publications.parliament.uk/pa/ld201719/ldselect/ldliaison/309/309.pdf> (accessed 01 Aug. 2022); Liaison Committee, *Review of Investigative Select Committee Activity in Session 2016–17*, (HL, 2017–19, 13), available at <https://publications.parliament.uk/pa/ld201719/ldselect/ldliaison/13/13.pdf> (accessed 01 Aug. 2022); Liaison Committee, *Review of Investigative Select Committee Activity in 2017–18* (HL, 2017–19, 166), available at <https://publications.parliament.uk/pa/ld201719/ldselect/ldliaison/166/166.pdf> (accessed 01 Aug. 2022); Liaison Committee, *Summary of House of Lords Investigative and Scrutiny Committee Activity in 2018–19* (HL, 2017–19, 369), available at <https://publications.parliament.uk/pa/ld201719/ldselect/ldliaison/369/36902.htm>. (accessed 01 Aug. 2022).

⁸¹ Matthew Flinders, 'Volcanic Politics: Executive-Legislative Relations in Britain, 1997–2005', *Australian Journal of Political Science* (2006), 385–407.

⁸² Wright, 'Prospects for Parliamentary Reform', 2004.

the Lords for a stronger and less restrained committee system. Viewed from this perspective the role of the Liaison Committee has been to control that growing pressure through the gradual expansion of ‘cracks and wedges’ in the form of a small number of new sessional committees and a greater use of *ad hoc* committees (see Table 2). The Goodlad report represented the clearest, but not the only, example of the existence of frustration and an appetite for challenging, or at the very least reinterpreting, existing conventions. Added to this internal pressure was the external dynamic for change emanating from the prospect of Brexit. The accumulation of these internal and external pressures had been acknowledged by the Liaison Committee as early as October 2015 when the decision to create a new International Relations Committee was made subject to ‘a full review of the Committee work of the House, to take place during the 2017–18 session, with a view to rationalising Committee activity.’⁸³ This review provides the focus of the next section.

3. Systematic Scrutiny, 2018–21

The previous section outlined a historical shift in relation to Lords investigatory committees from an approach to scrutiny that was undeveloped and rather amateurish to a more developed and institutionalised framework. Institutionalised, that is, not only of committees but also *within* committees and when seen from a historical perspective the pace of change has been relatively swift. ‘During the last 25 years, House of Lords committees have developed significantly’ the Liaison Committee acknowledged in 2019. ‘We have added new sessional committees... [and] In the present decade the Lords has expanded greatly its use of ad hoc (special inquiry) committees’.⁸⁴ At the same time there had been ‘significant change in society, in the constitution, in communications, and in the House itself’ and the 2016 Brexit referendum was also likely to lead to the need for change. A committee structure developed primarily from ‘piecemeal changes’ and ‘incremental’ reform was now in need of the first fundamental review since the Jellicoe report 25 years earlier.⁸⁵ The aim of the review was to ‘ensure House of Lords committees continue to work as well as they can and to consider how they should adapt for the future’.⁸⁶ More specifically, the review targeted the existence of perceived ‘scrutiny gaps’ in order to establish a new thematic scrutiny structure that acknowledged the UK’s changing relationship with the EU.⁸⁷ The findings of

⁸³Liaison Committee, *An International Relations Committee* (HL, 2015–16, 47) paras 7 and 13.

⁸⁴(HL, 2017–19, 398), para. 4.

⁸⁵(HL, 2017–19, 398), para. 3.

⁸⁶(HL, 2017–19, 398), para. 5.

⁸⁷In addition to the new thematic scrutiny the review also sought to close the gap surrounding the use of *ad hoc* committees and how to follow-up on their recommendations. The Liaison Committee’s July 2019 report recommended that at an appropriate time after the publication of a report the chair of a former select committee could make the case for the Liaison Committee to co-opt some of the members of the former Committee to hold a small number of oral evidence sessions to follow-up the recommendations. During the 2019–2021 session the Liaison Committee published three ‘follow-up’ reports. See Liaison Committee, *AI in the UK: No Room for Complacency*, (HL, 2019–21, 196), available at <https://publications.parliament.uk/pa/ld5801/ldselect/ldliaison/196/196.pdf> (accessed 01 Aug. 2022); Liaison Committee, *The Politics of Polling – An Update*, (HL, 2019–21, 197) available at <https://publications.parliament.uk/pa/ld5801/ldselect/ldliaison/197/197.pdf> (accessed 01 Aug. 2022); and Liaison Committee, *Tackling Financial Exclusion: A Country that Works for Everyone? Follow-up Report* (HL, 2019–21, 267) available at <https://committees.parliament.uk/publications/5614/documents/55502/default/> (accessed 01 Aug. 2022).

the review and a set of recommendations was published in July 2019 with a further report on the appointment of new committees following in December 2020. These two reports provide the main documentary reference points for this section, and Table 2 provides an overview of the pre- and post-review scrutiny committee landscape.

Possibly the most fundamental element of the 2019 to 2020 reforms concerns a cultural rather than institutional shift. The July 2019 report begins by returning to the Jellicoe report's view that the fundamental purpose of Lords committees was 'unlike the Commons' departmentally-related committees' and that 'Lords' select committees do not seek to hold Ministers to account or scrutinise the work of Government departments in any comprehensive way'.⁸⁸ The Liaison Committee noted a strong 'shift in opinion' among witnesses drawn from both within and beyond the House as to whether this assumption remained correct.⁸⁹ The view that Lords committees *do now have a role in holding government and ministers to account* was dominant and led the Liaison Committee to expand the Jellicoe report's original list of three key roles for Lords committees to five, 'which we believe should be reflected in the future work of House of Lords committees':

1. *Scrutiny of government*: Committees play an important role in holding the executive to account, providing scrutiny of government policy, actions and legislation. They do this both by their own scrutiny activity and by aiding the scrutiny work of the House and parliament.
2. *Influencing policy*: Committees can help to inform the development of policy, and provide a forum for external organisations and wider society to advocate proposals and influence policy development.
3. *Informing debate in the House and beyond*: Committees play an important role in shaping and contributing to public policy debates.
4. *Engaging the public in the work of the House*: Members of the house of lords do not have the constituency links and engagements of their counterparts in the Commons. Our committee work, however, offers the opportunity to engage with the public in the work of the House and allows issues that are of concern in wider society to be addressed to members of the House.
5. *Detailed investigation*: Lords committees often undertake inquiries that have a great deal of depth, and produce reports that are well researched and evidenced, with resulting credibility.⁹⁰

Although clearly resonating with the Jellicoe report's original focus on 'making reports to the House', 'exerting an influence on government' and 'addressing some recommendations to a wider audience beyond the House and the Government', the 'new' roles underlying the purpose and role of committees in the Lords were clearly intended to signal the existence of a stronger and less restrained scrutiny approach. Alongside the identification of these roles was an attempt to clarify exactly what sort of scrutiny the Lords should in future undertake

⁸⁸ (HL, 2017–19, 398), para. 24; Original reference from House of Lords Committee on the Committee Work of the House (HL, 1991–92, 35), para. 128.

⁸⁹ (HL, 2017–19, 398), para. 25.

⁹⁰ (HL, 2017–19, 398), para. 27.

and, more importantly, how it complemented the work of committees in the Commons. In this regard, five principles were identified.

The first was ‘cross-cutting’ and emphasised the manner in which Lords committees scrutinise policy issues and themes that span departments and therefore complement rather than duplicate the generally departmentally focused remit of commons committees. ‘We recommend that House of Lords committees should continue to be cross-cutting in nature’ the Liaison Committee noted, ‘working across a number of Government departments and with the ability to consider major policy issues with the requisite degree of breadth and depth.’⁹¹ This flowed into a second principled emphasis on the ‘comprehensive’ nature of Lords scrutiny. The role of Lords committees was not therefore simply to complement those in the Commons but to identify real ‘scrutiny gaps’ and weaknesses in the parliamentary scrutiny system as a whole. ‘While some areas of public policy— such as the European Union—are well-covered and well-resourced, in other major policy areas there are significant scrutiny gaps’ the committee concluded ‘Our approach to building upon our current committee structure aims to fill these scrutiny gaps and ensure that there is comprehensive scrutiny of major policy both in the House of Lords, and across Parliament more widely.’⁹² While avoiding ‘scrutiny gaps’ was a major concern, so too was the need to ensure the existence of institutional responsiveness to sudden or changing demands. The third principle was therefore ‘flexibility’ and the discretion created by committees not being tied to a departmental framework. Whereas several witnesses criticised the short-term (‘ambulance-chasing’) focus of much commons committee scrutiny, committees in the Lords were viewed as being able to adopt a longer-term perspective that (again) provided a different form of complementarity that should not be lost. ‘Our approach to committee work should be responsive and agile enough to allow committees to horizon scan, deal with emerging themes and respond to constant societal and technological changes.’⁹³

This emphasis on flexibility flows through into a fourth focus on the principle of being ‘open and outward looking’ which although the Liaison Committee claimed was part of an ‘evolutionary’ approach is arguably slightly more revolutionary. One of the reasons that Lords committees have evolved as ‘institutions ignored’ is because this was a self-selected form of discretion on their behalf (i.e. the ‘self-denying ordinance’ that Torrance highlighted, discussed above). Lacking a democratic mandate and constitutionally subservient to the Commons, there was traditionally little appetite for attempting to forge a direct relationship with the public or media engagement more broadly. ‘[M]ost of the outstanding work of committees’ Sir Anton Muscatelli suggested in evidence ‘goes under the radar so far as the general public is concerned’.⁹⁴ The July 2019 Liaison Committee report set out to address this situation and made a number of recommendations concerning (*inter alia*) the need for formal communications strategies, stakeholder mapping, innovative engagement techniques, and a more active approach to the use of social media.⁹⁵

In a development that could be interpreted as representing a new form of organisational professionalism, public engagement is viewed very much as a key element of demonstrating

⁹¹ (HL, 2017–19, 398), para. 34.

⁹² (HL, 2017–19, 398), para. 36.

⁹³ (HL, 2017–19, 398), para. 41.

⁹⁴ (HL, 2017–19, 398), para. 119.

⁹⁵ (HL, 2017–19, 398), para. 108–31.

the ‘effectiveness’ (the fifth principle) of the committee system. The lack of resources for committees to conduct systematic follow-up of earlier inquiries was raised as a key issue limiting effectiveness, as was the particular challenge faced by *ad hoc* committees in securing any follow-up scrutiny. With these objectives and principles in place, providing a ‘guiding logic’, the Liaison Committee was then able to focus on the existence of ‘scrutiny gaps’ and the design of a more comprehensive thematic structure:

House of Lords committees have developed piecemeal over the past five decades, and there has been no previous attempt to consider the overall committee structure. The lack of a guiding logic to committee structure has resulted in significant gaps arising in scrutiny. On occasion, the work of the special inquiry committees (formerly known as *ad hoc* committees) has filled scrutiny gaps, but not in a systematic fashion. The principal policy areas that have suffered from a lack of detailed scrutiny are social affairs and public services, including health and education, though there are inevitably other omissions, not least because the current sessional committees cannot be expected to examine all areas of policy exhaustively.⁹⁶

With the ‘guiding logic’ now in place in the form of five roles and five principles the Liaison Committee was able to reflect on the existence of ‘scrutiny gaps’ that needed to be filled. However, before examining the committee’s core recommendations in terms of delivering a new scrutiny structure it is necessary to highlight two topics – patronage and control – where the Liaison Committee resisted or only partially accepted internal pressure for change.

The first topic focused on patronage and the role of the Liaison Committee in selecting committee chairs.⁹⁷ With concerns about the amount of turnover on committees Baroness Fookes, for example, suggested one possible way to avoid this loss of expertise, whilst maintaining rotation, would be by ‘appointing a new chairman from a member of the Committee rather than ‘parachuting’ in someone unfamiliar with the work of the particular committee.’⁹⁸ Witnesses also highlighted concerns regarding the involvement of the party

⁹⁶ (HL, 2017–19, 398), para. 45.

⁹⁷ Recommendations for the appointment of new committees are normally made by the Liaison Committee. Committees are formally appointed by the House on a motion from either the senior deputy speaker (for sessional committees) or the leader of the House (for *ad hoc* committees), which will set out the new committee’s orders of reference, including its remit, powers and the names of its members (including the chairman). Any committee may meet during a recess, but not during prorogation or dissolution. Apart from permanent committees and their subcommittees, other committees cease to exist at prorogation; and all committees cease to exist on the dissolution of parliament. The membership of a committee is cross-party and is agreed by the House on the basis of a report from the Committee of Selection (which invariably acts on the advice of the ‘usual channels’ or party whips). There is no formal rule concerning the political balance of committee membership. In order to ensure a regular turnover, a ‘rotation rule’ operates in relation to the membership of most committees, and in the majority of cases after a peer has served on a committee for three sessions they may not be reappointed during the following session although they will become eligible for reappointment after the lapse of two sessions. Until the end of the 2014–15 session, the number of sessions in relation to the rotation rule was four – see House of Lords Procedure Committee, *Fifth Report* (HL, 2013–14, 167), available at <https://publications.parliament.uk/pa/ld201314/ldselect/ldproced/167/167.pdf> (accessed 01 Aug. 2022). The senior deputy speaker may also propose peers to fill casual vacancies in committees with the approval of the House but without needing to consult the Committee of Selection. The chair of the European Union Committee is exempt from this rule. (From Feb. 2021 the rotation rule operates on the basis of calendar years rather than sessions.)

⁹⁸ (HL, 2017–19, 398), written evidence from Baroness Fookes (RIS0031).

whips in deciding committee membership. It was suggested that the current system could be unfair to unaffiliated members of the House.⁹⁹ Some witnesses suggested that the house of lords should move to be more closely aligned with the house of commons by electing committee chairs and members.¹⁰⁰ Similar arguments had been made by the Goodlad report of 2011 (discussed above) but eight years later there was now a stronger evidence base that supported the degree to which the election of committee chairs had indeed had a positive impact in strengthening the role, and raising the profile of departmental select committees in the Commons.¹⁰¹ A significant number of witnesses asked why similar reforms might not have a similarly positive effect on the new system of thematic committees in the Lords.

Lord Soley, for example, suggested ‘we consider electing the chairs of select committees as they do in the Commons’ to offer greater ‘status and independence.’¹⁰² Other witnesses agreed with this idea, including Lord Balfe¹⁰³ and Baroness Tyler, who argued elected committee chairs would create ‘greater legitimacy and clout, and help ensure that they had strong cross-party support.’¹⁰⁴ The Law Society of Scotland also highlighted that ‘elected chairmen are considered a success because of the experience of the House of Commons, the Dáil Éireann and the National Assembly for Wales.’¹⁰⁵ Despite the success of elected chairs in other parliaments not everyone favoured the adoption of a similar approach in the Lords. Lord Blencathra, for example, argued that the current system is satisfactory and ‘in accordance with our self-regulating ethos’ and introducing elected committee chairs ‘would bring in unnecessary politics.’¹⁰⁶ Lord Forsyth of Drumlean supported this, as he believed elected chairs could lead to ‘a certain amount of game-playing.’¹⁰⁷ The Hansard Society also highlighted that not having elections also allowed Lords committees to be established several months earlier than their commons counterparts, therefore avoiding a different form of ‘scrutiny gap’.¹⁰⁸ After reviewing the competing viewpoints, the Liaison Committee concluded ‘On balance, we do not recommend the election of Chairs of House of Lords committees’ and based this decision on the fact that the Committee of Selection, which nominates the members of all select committees and normally also proposes the chair, includes the party leaders, whips and the convenor of the cross-bench peers. ‘It is thus well-placed’ the Liaison Committee concluded ‘to ensure political balance, and also to take into account considerations such as gender diversity and representations from members across the House.’¹⁰⁹ The activity of the Committee of Selection, which like the Liaison Committee is chaired by the senior deputy speaker, is little documented. A change

⁹⁹See, for example, (HL, 2017–19, 398), supplementary written evidence from Lord Inglewood (RIS0068).

¹⁰⁰See, for example, (HL, 2017–19, 398), written evidence from Lord Cormack (RIS0054).

¹⁰¹See Liaison Committee, *Select committee effectiveness, resources and powers* (HC, 2012–13, 697), available at <https://publications.parliament.uk/pa/cm201213/cmselect/cmliaisn/697/69702.htm> (accessed 01 Aug. 2022).

¹⁰²(HL, 2017–19, 398), written evidence from Lord Soley (RIS0006).

¹⁰³(HL, 2017–19, 398), written evidence from Lord Balfe (RIS0052).

¹⁰⁴(HL, 2017–19, 398), written evidence from Baroness Tyler of Enfield (RIS0044).

¹⁰⁵(HL, 2017–19, 398), written evidence from the Law Society of Scotland (RIS0032).

¹⁰⁶(HL, 2017–19, 398), written evidence from Lord Blencathra (RIS0009).

¹⁰⁷(HL, 2017–19, 398), Q 79 (Lord Forsyth of Drumlean).

¹⁰⁸(HL, 2017–19, 398), Q 37 (Dr Ruth Fox).

¹⁰⁹(HL, 2017–19, 398), para. 178.

following the report of the Liaison Committee review has, however, been the production of annual reports on the gender diversity of committee membership.

If concerns regarding patronage and appointments formed the first unresolved pressure point, the second focused on control and co-ordination. The Liaison Committee in the Lords is a very different body to its namesake in the Commons where its members include the chairs of all the select committees and therefore acts as a powerful convening body for scrutiny-related matters. Although the chairs of the European Union Committee and its subcommittees met together from time to time, as well as in the formal setting of meetings of the European Union Committee itself, until March 2020 there was no established forum bringing together all the chairs of house of lords committees. As already noted in this article, in November 2016 the Liaison Committee agreed to set up the Informal Brexit Liaison Group, which brought together the chairs of all the sessional select committees, under the chairmanship of the senior deputy speaker, to discuss matters of common interest relating to Brexit. This group developed well. Between November 2016 and November 2018 it met 14 times, usually with a high-profile speaker. The meetings took place in private to encourage a full and frank exchange of views among its members, and a brief note of the group's discussion was posted on the internet. Although it was never formally disbanded, having been informal from the outset, its work came to a natural end. The meetings and role of the Brexit Liaison Group highlighted the fact that there was no natural forum where committee chairs could meet together in the Lords to reflect on their work and to share best practice, as well as possible areas for improvement. The Liaison Committee therefore 'agreed that the Senior Deputy Speaker should [in future] convene a Committee Chairs' Forum'.¹¹⁰ Meeting around three times a year, its membership would be all the chairs of investigative scrutiny committees and it would provide 'an important opportunity for chairs to manage any possible overlap of work that may arise in the early stages of any new committee structure and would provide a mechanism, across the House, to ensure that effective scrutiny of all major public policy areas was taking place'. The Committee Chairs' Forum met for the first time on 5 February 2020. In part because of the need for committees suddenly to adjust to virtual working in the light of the COVID-19 pandemic, including the first ever virtual committee meetings from April 2020, the forum quickly became an important gathering of committee chairs, who wanted to meet more frequently than had been envisaged. By the end of March 2021 seven meetings had taken place, twice as many as the Liaison Committee had envisaged.

With this focus on pace and evolution in mind it is possible to return to the 2018–21 review and to the publication of the Liaison Committee's second report of December 2020. Due to uncertainties about the UK's future relationship with the EU, the Liaison Committee's July 2019 report had 'ring-fenced' the EU Committee and its six subcommittees on the basis that further work would be required once the outcome of the Brexit process was known.¹¹¹ The first phase of this restructuring, following a report by the Procedure Committee which was agreed to by the House, took place in March 2020 and had two main elements: First, the EU Committee's remit was updated, to reflect the reality both of

¹¹⁰(HL, 2017–19, 398), para. 192.

¹¹¹(HL, 2017–19, 398), appendix 3 'Call for Evidence', p.81.

the UK's withdrawal from the EU on 31 January, and of the continuing negotiations on the UK–EU relationship; and secondly, the number of EU subcommittees was reduced from six to four, while a new subcommittee on International Agreements was added.¹¹² This left five 'units' of EU committee activity (the EU Committee itself and its four subcommittees), together with the subcommittee on International Agreements. 'Whilst not proposing an increase in the total number of committees, this [July 2019] report makes recommendations to strengthen further the thematic structure of House of Lords committees by recommending the appointment of new thematic committees when the current EU Committee and its subcommittees cease to exist at the end of March 2021. Our recommendations are intended to ensure that the new committees complement the work of House of Commons departmental select committees.'¹¹³

Even though it would be 18 months before the exact focus of these new committees would be clarified, the gradual process of institutional change and evolution continued. A new Public Services Committee was appointed in February 2020¹¹⁴ and a small number of changes were made to the titles and remits of some other sessional committees.¹¹⁵ Although not officially related to the 2018 to 2021 review but highly relevant in relation to demonstrating the flexibility and responsiveness of the Lords committee system, a new cross-cutting COVID-19 Committee was established in June 2020 and a Brexit-related Common Frameworks Scrutiny Committee from October 2020.¹¹⁶ The Liaison Committee's December 2020 report recommended that the European Union Committee – since 1974 the centrepiece of the Lords committee system – would be replaced by a new European Affairs Committee, with effect from April 2021. As Table 2 suggests, this new committee would be able to appoint one (temporary) subcommittee on the Ireland/Northern Ireland Protocol.¹¹⁷ In a related move, the Liaison Committee recommended that the International Agreements subcommittee of the European Union Committee be upgraded to a full sessional committee.

To some extent the breadth of the European Union Committee and the manner in which many domestic policy areas sat within EU competencies had allowed the committee – or, more precisely, its subcommittees – to range fairly widely over policy areas (such as the environment, agriculture, fisheries, food, energy, emissions trading, policing, migration, asylum policy, trade and regulation, criminal frameworks and judicial co-operation, etc.) in a way that would no longer be possible in a post-Brexit context. It was this shift that had created a series of 'scrutiny gaps' that now needed to be closed. With the new Public Services Committee already established, the abolition of the previous suite of EU subcommittees had effectively created the capacity to form four new scrutiny 'units' within the existing resource framework. The key question was how best and most efficiently to target the

¹¹²Procedure Committee, *First Report* (HL, 2019–21, 29), available at <https://publications.parliament.uk/pa/ld5801/ldselect/ldproced/29/2902.htm> (accessed 01 Aug. 2022).

¹¹³(HL, 2019–21, 193), para. 15.

¹¹⁴Hansard, *Lords Debates*, 5th ser., dccc, cols 2348–9; 13 Feb. 2020.

¹¹⁵Hansard, *Lords Debates*, 5th ser., dccc, cols 492–5; 22 Oct. 2019; and Hansard, *Lords Debates*, 5th ser., dccc, cols 872–83; 29 Oct. 2019.

¹¹⁶Liaison Committee, *A COVID-19 Committee* (HL, 2019–21, 56); Liaison Committee, *A Common Frameworks Scrutiny Committee* (HL, 2019–21, 115).

¹¹⁷(HL, 2019–21, 193), paras 24–7.

thematic focus of those new committees. The Liaison Committee approached this task through a combination of consultation and the analysis of where the annual applications for *ad hoc* (now ‘special inquiry’) committees had identified high demand. This flowed into the recommendation that from April 2021 four new sessional committees should be established: a Built Environment Committee, an Environment and Climate Change Committee, an Industry and Regulators Committee and a Justice and Home Affairs Committee. These recommendations were debated and approved on 13 January 2021 with the new structure operating from 1 April that year.¹¹⁸ The July 2019 report had been a ‘staging post’ but as the Liaison Committee acknowledged the December 2020 report ‘concludes the review of committees which we started in January 2018’.¹¹⁹ With the most fundamental review and reform of the Lords investigatory committees completed it is possible to reflect on the evolution and implications of this process.

4. Evolution and Implications

Despite the existence of a huge amount of scholarship on the history of parliament, investigatory or policy-related scrutiny committees in the house of lords have remained almost ‘invisible institutions’. In order to remedy this situation this article has provided a contemporary historical account of the evolution of the investigatory committee system in the Lords. This reveals a process of gradually maturing institutionalisation involving not just increasing committee-based specialisation *within* the Lords, but also increasing institutionalisation *within* committees as they seek to achieve a more thorough, joined-up and systematic style of scrutiny (‘we have succeeded in constructing a built-in continuous review process’ the senior deputy speaker and Liaison Committee chair Lord McFall of Alcluith told the House in January 2021).¹²⁰ The main steps in this process and the gradual accumulation of investigatory committees is summarised in Table 3 but in order to fully understand the evolution and implications of this historical process it is necessary to acknowledge the manner in which select committees in the Lords have adopted a very specific *scrutiny style*. A style, that is, which was aware of the existence of implicit constitutional boundaries and the need *not to be seen* to be challenging the primacy of the Commons. This ‘style’ is captured in Torrance’s comment about Lords committees operating within a ‘self-denying ordinance’ that eschewed public visibility and party politics in favour of a detailed and expert-led examination of policy. Lacking a democratic mandate but determined to make a contribution to public life – to put the same point slightly differently – peers have utilised and developed the select committee system while at the same time being wary not to antagonise the Commons, in general, or the executive, in particular.

Arguably the most explicit discussion of this topic occurred in July 1977 during a debate on the Lords Practice and Procedure Committee’s recommendation that a new suite of scrutiny committees be established. In response to those members who wanted the Lords to adopt a more direct and robust style of scrutiny Lord Shepherd responded, ‘It is that there should be some seven or eight Sessional Committees of about 12 members, each

¹¹⁸See Hansard, *Lords Debates*, 5th ser., dcccix, cols 740–6: 13 Jan. 2021.

¹¹⁹(HL, 2019–21, 193), para. 16.

¹²⁰Hansard, *Lords Debates*, 5th ser., dcccix, col. 742: 13 Jan. 2021.

Table 3: *Gradual growth: Investigatory committee development in the Lords, 1974–2021*

Units of Investigatory Committee Activity *1	18								
	17								
	16								
	15								
	14								
	13								
	12								
	11								
	10								
	9								
	8								
	7								
	6								
	5								
	4								
	3								
	2								
	1								
		1974	1980	1992	2001	2007	2010	2016	2021
		European Communities Committee (and subcommittees)	Science & Technology Committee	Regularised use of a single ad hoc committee *2	Constitution Committee and Economic Affairs	Communications Committee (sessional since 2013)	Expansion of ad hoc committees to four *3	International Relations Committee	'New' Thematic Structure *4

*1 A 'unit' of scrutiny relates to the resources required to operate either a scrutiny committee or subcommittee.

*2 As recommended by the Jellicoe report of 1992.

*3 As recommended by the Liaison Committee report of 2013.

*4 As recommended by the Liaison Committee reports of 2019 and 2020.

covering a policy area. Why a policy area and not a Department? My noble friend Lady Llewelyn-Davies, when giving evidence, referred to a watch-dog. The last thing we want of these Committees is to be watch-dogs of Departments.¹²¹ This is a critical point. A commitment to some level of 'institutional invisibility', 'flying under the radar', or 'keeping your head down' was therefore a carefully calibrated and certainly not accidental *survival strategy*.¹²² A scrutiny style that was generally focused on a constructive and detailed examination of policy and proposals – what Weber would term the 'strong and slow boring of

¹²¹Hansard, *Lords Debates*, 5th ser., ccclxxxv, col. 174: 5 July 1977.

¹²²It is worth noting that the Shepherd Committee's recommendations were roundly rejected by the House, despite having such senior level sponsorship (Lord Shepherd had only just stepped down from being leader of the House).

hard boards' – undertaken by subject specialists with little interest in party politics or public visibility was likely to be tolerated by the executive.¹²³ (The work of the Delegated Powers and Regulatory Reform Committee and the Secondary Legislation Scrutiny Committee has also been crucial in this regard.)¹²⁴

As this historical account has illustrated, demands from reform-minded peers which sought a shift in style, particularly through comparison with developments in the Commons, were therefore generally rejected by the Liaison Committee in the Lords on the basis of a need to maintain complementarity (i.e. a distinctive and different scrutiny style). Three points flow out of this observation. First, the lack of scholarship on Lords investigatory committees may, to some extent, be indicative of this broader institutional desire. Secondly, in this context the role and development of the European Union Committee was significant due to the manner in which it allowed peers to undertake a vast amount of detailed and important scrutiny, much of it indirectly related to domestic policy, but with little prominence in terms of public or media interest. And thirdly, the process of gradual but constant institutionalisation that has been set out in this article has significant resource implications which could at some point create an expectations gap between the level and style of scrutiny that is envisaged and that which can realistically be delivered within the existing financial framework. As a point of comparison, the committee office in the house of commons has grown during the last decade from about 180 staff in 2010 to 300 in 2019. The committee office in the Lords, by contrast, employs around 70 staff and operates within a budget which, at just over 4,000,000 pounds, has remained relatively flat since 2010, despite the marked increase in committee activity.¹²⁵

The bigger challenge, however, and a core focus of this concluding section, is that Brexit and the post-2021 reforms it necessitated could, if not carefully managed, lead the Lords towards a very different scrutiny style. An unelected chamber in a democratic system shifting towards a more visible and publicly prominent scrutiny style risks not only fuelling questions concerning the legitimacy on which it fulfils that role but also – and potentially more seriously – risks encouraging the executive to reconsider its relationship with the Lords, and potentially seek greater control.¹²⁶ The Liaison Committee's July 2019 report certainly adopts a very different and far more ambitious tone regarding public engagement and visibility. In future, for example, committees are to develop formal public communication strategies at the beginning of each inquiry, 'stakeholder mapping' should be a standard process in order to increase the diversity of witnesses and the dissemination of reports, a more sophisticated grasp of utilising innovative public engagement methods and social

¹²³See the essay published by Max Weber in 1918, 'Politics as a Vocation', in *From Max Weber: Essays in Sociology*, ed. H.H. Gerth and C. Wright Mills (Oxford, 1946), 77–128.

¹²⁴See Philippa Tudor, 'Secondary Legislation: Second Class or Crucial?', *Statute Law Review*, xxi (2000), 149–62.

¹²⁵Three other pieces of information illustrate the rapid growth in activity. Firstly, during 2020–21 over 1,000 witnesses gave evidence to virtual committee meetings in the Lords. Secondly, the number of sessional committees has more than doubled in the past decade (there were six in 2012, and 14 in 2021). Finally, the Liaison Committee published no less than ten reports between May and Apr. 2021 (a decade ago it published just one report a year and did not hear oral evidence).

¹²⁶See John Connolly, Matthew Flinders and David Judge, 'Reviewing the Review: A Three-dimensional Approach to Analysing the 2017–2020 Review of the House of Lords Investigative and Scrutiny Committees', *The Journal of Legislative Studies* (2021) <https://doi.org/10.1080/13572334.2021.1978762> (accessed 01 Aug. 2022).

media tools is recommended, as is greater variation in the production of committee outputs, including interactive presentations and infographics.¹²⁷ The traditional ‘self-denying ordinance’ that to some extent shielded investigatory committees in the Lords from attracting the attention of the executive appears to be in a state of flux. They may not be ‘institutions ignored’ for much longer.

¹²⁷(HL, 2017–19, 398), pp.45–53.