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## Reviewing the review: a three-dimensional approach to analysing the 2017–2020 review of the House of Lords investigative and scrutiny committees

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# Reviewing the review: a three-dimensional approach to analysing the 2017–2020 review of the House of Lords investigative and scrutiny committees

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## ABSTRACT

Between 2017 and 2020 a comprehensive review of the framework of investigatory scrutiny committees in the House of Lords was undertaken. This process led to a far-reaching set of recommendations and reforms. Although carefully couched in the language of evolutionary change, this article argues that these reforms possess a transformational dynamic that is difficult to deny. The challenge, however, is likely to emerge from the existence of a largely hidden disjuncture between the accountability ambitions embedded within this reform agenda and the institutional, constitutional and political matrixes within which the ‘new’ committee system in the Lords is expected to operate. A three-dimensional lens emphasising inter-, intra-, and extra-institutional dimensions is utilised to expose and dissect the existence of potential disjuncture and, through this, offers a ‘review of the review’ informed by broader literatures on legislative organisation and policy analysis that will be of interest to both practitioners and scholars.

**KEYWORDS** House of Lords; select committees; scrutiny; accountability; cross-cutting; thematic

## Introduction

Committees in the House of Lords have long been ‘institutions ignored’ (Connolly et al., 2022) by legislative scholars. Unlike their House of Commons’ counterparts, which have attracted sustained academic attention in the wake of their systematisation in recent decades (see for example Geddes, 2020; Maer, 2019), scholarly interest in the Lords’ investigatory committees has been limited. Certainly, standard texts on the House of Lords recognise that committee work in the Lords ‘is an important part of its contribution to the policy process’ (Russell, 2013, p. 210), with its

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investigative committees contributing reactively and proactively in questioning and challenging government and in recommending executive action (Norton, 2017, p. 9). Equally, broader texts on the UK parliament have noted the growth in recent times of the number of Lords committees and their prolificity (Norton, 2013, p. 135), and that ‘committee work has featured conspicuously in the renaissance of the House of Lords’ (Besly & Goldsmith, 2019, p. 356). These texts share a basic consensus that the importance of Lords’ investigative committees stems from their distinctive mode of operation and the nature of their membership. In these accounts their distinctiveness derives from their cross-cutting focus; their willingness to engage in inquiries into strategic, often technical and long-term issues; their ‘partisan-lite’ ethos; and the particular expertise of their members (Milner, 2018, pp. 199–200; Norton, 2017, pp. 9–10, pp. 32–33; Russell, 2013, pp. 209–211, pp. 223–225; Shell, 2007, pp. 80–82). Underscoring this distinctiveness is a recognition in these texts that within the Lords there is acceptance that, as a general principle, Lords select committees should seek to complement rather than duplicate the work of select committees in the Commons (Norton, 2013, p. 135; Russell, 2013, p. 209; Shell, 2007, pp. 125–126). Overall, therefore, the organisational characteristics of distinctiveness and complementarity have been identified as the hallmarks of investigatory committees in the Lords. More particularly, these characteristics have been deemed to be self-evidently providential and largely unproblematic in established texts.

Taking this academic consensus as its base, this article seeks to provide a broader, nuanced, and more probing analysis of investigatory committees in the Lords than has been hitherto undertaken. It does so by reviewing ‘the most comprehensive review’ ever undertaken of the Lords committee structure (HL 398, 2019, para. 6; HL 193, 2020, para. 1), by the Lords own Liaison Committee between 2017 and 2020,<sup>1</sup> and by examining what this review reveals about the traditional positioning of investigatory committees within the upper chamber and their ‘repositioning’ after the review. Although the Committee’s review and the underpinning logic of its main recommendations could be interpreted purely in terms of organisational and institutional realignment, the main argument of this paper is that, taken together, the proposals represent a more fundamental shift in the tectonic plates at Westminster. A constitutionally significant ‘repositioning’ is occurring and the aim of this article is to expose, explore and interrogate the multi-dimensional implications of this reform agenda. It achieves this through a three-dimensional heuristic framework which itself serves to locate and acknowledge how scrutiny committees in the Lords exist within a complex tapestry of relationships. The first relationship is *inter*-institutional and concerns the constitutionally conjoined but administratively and organisationally distinct institutions

of the executive and legislature. The second is *intra*-institutional and concerns the relationships within the singular overarching institutional frame of the UK parliament of its two constituent parts – the Commons and the Lords. The third relationship is *extra*-institutional in the sense that it relates to the role and position of the Lords in relation to the citizenry, organised civil society, and broader political constitutional configurations. What each of these three dimensions brings to the following analysis – both individually and collectively – is an analytical pivot with which to examine the assumptions, aspirations and potential achievements associated with a ‘repositioning’ of investigatory committees in the House of Lords.<sup>2</sup> This provides the analytical leverage to expose a cascade effect, wherein a process of internal institutional and organisational review prompts elemental questions for a wider political and constitutional review – of the organisation of government itself (and its capacity for joined-up, holistic working) and the institutional positioning of the Lords itself within the UK’s system of governance. Insights from legislative studies and policy analysis are deployed in this article to interrogate benign assumptions – associated with characteristics of distinctiveness and complementarity – about the working of investigatory committees in the Lords.

This article is divided into five inter-related sections. The first section focuses on building the theoretical and analytical foundations on which this analysis of Lords scrutiny committees rests. It, therefore, maps the topography of a three-dimensional approach which serves to underline the embedded nature or reform at Westminster. The second section then demonstrates the value of these three dimensions in terms of understanding previous internal reviews and reform recommendations vis-à-vis Lords investigatory committees prior to 2017. With these analytical and historical foundations in place the third section provides a largely descriptive review of the recommendations and outputs of the Liaison Committee’s review of 2017–2020, and the underpinning institutional and political determinants of the review process itself. The fourth section then analyses the proposed reform agenda through the three-dimensional framework. This framework is particularly apposite in a two-fold sense. First, in serving to reveal how a self-identified simple process of evolutionary, internal structural change (HL 398, 2019, para. 3) is concentric in nature: embedded in complex matrixes of executive-legislative, bicameral and linkage relations. Second, in helping to expose, explore and examine the potential positive institutional gains, along with the potential tensions and disjunctions of the reform agenda. In this manner both the basic ambition of this agenda and its potential unintended consequences in terms of (*inter alia*) executive defensiveness, expertise assumptions and public profile are identified. This flows into the fifth and final section’s

emphasis on how the recent major review of scrutiny committees in the Lords marks a potentially profound recalibration of institutional and political relationships.

### A three dimensional approach

The approach adopted in this article is rooted in new institutionalism, in the sense that it acknowledges that institutions are ‘contextually embedded’, that they are nested vertically within hierarchies of ‘rules and regimes and practices and procedures’, and horizontally linked with contiguous ‘neighbouring’ institutions (Lowndes, 2017, pp. 63–64). In this instance committees are treated as institutions, following the usage adopted by Longley and Davidson (1998, pp. 1–7); (see also Gaines et al., 2019, p. 437; Gamm & Shepsle, 1989, p. 60; Norton, 1998, pp. 149–151; Shaw, 1998, p. 225), rather than as organisations.<sup>3</sup> In this conceptualisation of committees as institutions, the notion of ‘contextual embeddedness’ can be deployed to analyse the dimensional positioning – the ‘nesting’ of committees – in broader institutional matrixes. In this article, three institutional dimensions are identified (see Table 1, below), each in turn, drawing upon distinct corpuses of academic literature.

#### (i) *Inter-institutional dimension*

The first dimension is *inter*-institutional and directs attention to the relationship between the executive and legislature. As King (1976) pointed out, nearly half a century ago, this relationship in the United Kingdom was neither simple nor one between two monolithic institutions. A ‘two-body conception’ (1976, p. 12) was both imprecise and largely misleading (1976, p. 32). For King the UK legislature, the Westminster parliament, was not a single, undifferentiated institutional entity, it was composed of a number of other institutions with their own “‘membership” so to speak’ and with a ‘number of distinct political relationships’ (1976, p. 32). By factoring in party institutions King was able to identify three modes – inter-party, non-party, and intra-party – which gave rise to different executive-legislative interactions. In revisiting King’s work, some forty years later, Russell and Cowley (2018) noted the extent to which changes in the party system, combined with procedural changes and organisational innovations, particularly the establishment of select committees in the House of Commons, had led to further complication and recalibration of the initial modes of executive-legislative interaction (2018, pp. 3–7). More notably, Russell and Cowley (2018, pp. 7–8) pointed out that inter-institutional interactions between legislature and executive in the UK needed to factor in the bicameral nature of the Westminster parliament, the dynamics of which remained unexamined

**Table 1.** A three dimensional approach to reviewing the review.

Dimension	Direction	Tension	Tradition
<i>Inter</i> -Institutional	Upper House <i>to</i> Executive	Unelected peers scrutinising elected members of government.	'Self-denying ordinance' – Lords committees would focus on fine detail and avoid courting controversy.
<i>Intra</i> -Institutional	Upper House <i>to</i> Lower House	Primary scrutiny structure provided via Commons select committees.	'Complementarity' – an emphasis on 'added value' and 'difference' (i.e. long-term, less-partisan, etc.)
<i>Extra</i> -Institutional	Upper House <i>to</i> Public	The legitimacy of appointees operating at the apex of a democracy	'Scrutiny by stealth' – select committees in the Lords did not court public or media attention.

in King's original article. As they emphasised: 'One of the key changes since King's original analysis is that any serious treatment must be based on "modes of *bicameral* executive-legislative relations"' (2018, p. 9, original emphasis). Yet, Russell and Cowley remained silent, as had King, about the polythetic nature of the UK executive, or for that matter the changing dynamic of multi-level interactions in contemporary executive-legislative relations. These bicameral modes and fragmentary multi-level inter-institutional relationships are of significance in the following analysis of the positioning and repositioning of Lords investigative committees.

### **(ii) *Intra-institutional dimension***

The second dimension is intra-institutional and concerns the two constituent parts of the UK Parliament, and their respective 'spheres of interest', 'operational codes', and 'institutional boundaries' within the overarching frame of Westminster. As Uhr (2008, p. 478) contends, 'bicameralism is a term of convenience covering a great variety of legislatures comprising two chambers' but at heart bicameralism 'is about *systemic relationships* between two legislative houses' (2008, p. 492 emphasis added). Variance in the institutional design and development of bicameralism is often accounted for in terms of the specificities of these systemic relationships – of the precise conjunctions of historical, constitutional and political factors – in different polities (see Romaniello, 2019, pp. 18–21; Russell, 2013, pp. 42–47; Uhr, 2008, pp. 478–482). In the case of the UK, this relationship has reflected distinctive and changing expectations of what the Lords should do and what it can do.

On the first count, of what the Lords should do, Norton (2007, pp. 6–8, 2017, pp. 4–12) identifies 'representation and reflection' as core purposes of the Lords (as well as of most other second chambers). Representation in the Lords is 'incongruent' (Lijphart, 2012, p. 194) to the extent that the composition of the Lords differs markedly from that of the Commons; with membership of the former based mainly upon appointment and of the latter based upon election. Reflection may be reactive or proactive in relation to the legislative proposals of the first chamber, or 'to the actions and policies of the executive ... [with] administrative oversight as a sub-set of its reflective role' (Norton, 2007, p. 7).

On the second count, of what the Lords can actually do, Norton (2007, pp. 8–10) observes that a second chamber also requires the capacity to do what it is expected to do. Capacity is calibrated by Norton (2007, p. 8) in terms of 'formal powers, composition and political will'. Notably, Norton observes that the 'reflective' dimensions of the Lords role were often impaired, prior to the removal of most hereditary peers in 1999, by a self-limiting ordinance of a non-elected chamber challenging the outputs of an

elected government and an elected chamber. Similarly, Russell (2019, p. xii), in noting the impact of the removal of hereditary peers, identified the subsequent compositional change as enhancing the perceived legitimacy of the second chamber with legitimacy gains secured by a 'membership, being politically balanced, and including many respected independent members and subject experts' (2019, p. xiv). The institutional legitimacy derived from incongruent membership also reflected a further symbiotic incongruence evident in the membership of its investigative committees – with the source of their legitimacy/authority linked to appointment of experts and policy specialists, less beholden to partisan influence, and not electorally responsible to constituents. But the legitimacy gains stemming from incongruent membership may also be linked with differentiation of institutional roles. In this regard, most attention has been focused upon notions of 'redundancy', and the capacity of second chambers to revisit the legislative proposals of first chambers (Uhr, 2008, pp. 482–484). 'Redundancy' is primarily conceived as duplication in the process of legislative oversight (Romaniello, 2019, p. 26; Russell, 2013, p. 45; Uhr, 2008, p. 482). For this reason, Norton (2007, p. 7) prefers the more expansive notion of 'reflection' which 'encompasses not only the proposals of the first chamber but also the actions and policies of the executive' and allows for divergence of cameral functional roles rather than duplication and overlap. Indeed, this more expansive notion is of especial significance in understanding the institutional design, the practical operation, and the legitimacy claims of investigative committees in the House of Lords.

### *(iii) Extra-institutional*

The third dimension is extra-institutional and directs attention to the linkage between legislatures and their publics. As representative institutions legislatures have systematised linkage, primarily through electoral institutions and processes, with aggregates of citizens. The basis of aggregation is mainly territorial: whether constituencies are organised at state, regional, provincial, municipal, or local levels; but other constituencies defined by class, function, or political party have also been used (see Rehfeld, 2005). In recent decades a key priority of legislative institutions has become reinforcement of this extra-institutional linkage through public engagement programmes (see IPU, 2021). The reasons why this has occurred are many and varied and encompass increased public scepticism and decreased public trust in legislative institutions; the rise of digital media; an expansion of education and information resources; and an increased public expectancy of inclusionary and participatory processes (for overviews see Leston-Bandeira, 2016; Leston-Bandeira & Walker, 2018, pp. 309–311). Similarly, definitions of what constitutes public engagement are many and varied. A concise definition,

however, is to be found in Walker et al.'s (2019, p. 968) stipulation that public engagement can be seen as disseminating information about parliamentary business, educating the public about parliament and policy making, consulting the public on policy and enabling public participation in the co-production of parliamentary decisions. And, as Walker et al. (2019, p. 968) proceed to note, this definition is 'of particular relevance to parliamentary committees'. Indeed, since 2012, one of the core tasks of select committees in the House of Commons has included public engagement; and, thereafter, this task has been pursued innovatively and expansively (see e.g. Leston-Bandeira & Walker, 2018; Serra-Silva, 2021; Walker et al., 2019).

Correspondingly, since 2006, the Lords has adopted a Public Engagement Strategy in rolling strategic plans; investigated how the Lords should 'engage with the public and enable members of the public to communicate with it' (HL 138-I, 2009, p. 5); and has supported the development of a bicameral outreach service. Nonetheless, there are notable potential inhibitors upon the extra-institutional dimension of linkage between the Lords and the public. First, the secondary institutional position, and contested democratic credentials, of the Lords predisposes stealth working in the shadows of the Commons (see Table 1, above). Second, an unelected membership, in contrast to the direct extra-institutional connection stemming from the electoral link of MPs with their constituents, may inhibit systemic linkage with the public. Yet, offsetting these general limitations is a specific mode of extra-institutional connection that, seemingly paradoxically, stems from the incongruent, unelected nature of the membership of the Lords. As a surrogate 'House of Experts' extra-institutional links may be forged with specialist organised publics and epistemic communities beyond Westminster; with Lords select committees of particular significance (see Bochel, 2021, pp. 6–7; on the Lords Science and Technology Committee see e.g. Dorey & Purvis, 2018, pp. 248–249; Pieczka & Escobar, 2013; on the Economic Affairs Committee see Lipsey, 2018).

### **'Dimensionality': reviews of investigatory committees 1991–2017**

The previous section outlined a three-dimensional framework for understanding the embedded nature of both the House of Lords, in general, and its scrutiny committees, in particular. Table 1 (above) provides a simple overview of these dimensions. The argument here is *not* that these dimensions capture the totality of relationships at Westminster, for as Russell and Cowley (2018) have already demonstrated in relation to King's (1976) seminal analysis, new dimensions could undoubtedly be added and sub-dimensions identified. Rather the argument is that in the case of understanding select committee scrutiny in the Lords these three dimensions are

sufficient for the aims and objectives of this study. The aim of this section is to demonstrate the value and validity of these dimensions through scanning successive internal reviews of Lords investigatory committees before the 2017–2020 review. In essence, the methodical framing of the scanning process was designed to enable the analysis of the Liaison Committee’s 2017–20 Review through a conceptualisation of the dimensionality of institutional interactions and through process tracing the changing emphases of this dimensionality across the period 1991–2020. The primary data sources used for the period 1991–2016 were the Reports of the Committee on the Committee Work of the House 1992; the Leader’s Group on Working Practices 2011; and the reviews of committee activity published by the Liaison Committee since 2010. For the period 2017–2020, the primary data sources were the Liaison Committee Reports of 2019 and 2020 which covered the overarching reviews into investigative and scrutiny committees in the House of Lords. In total, qualitative content analysis was undertaken for 613 pages of 17 Reports and for 674 pages of oral and written evidence accompanying the 2019 report.

As such this section is not intended to provide a detailed account of the historical development and practical workings of investigatory committees in the upper house (for historical accounts see Connolly et al., 2022; Torrance, 2013; Torrance & Tudor, 2019), rather it outlines how the internal reviews were ‘contextually embedded’ and infused with inter-, intra-, and extra-institutional sensitivities capable of delimiting and determining their recommendations. What this section reveals is how a number of operational codes, accepted institutional boundaries and implicit conventions – what we capture as ‘traditions’ (Table 1, above) – emerged around each dimension as a way of explaining and reconciling the existence of potential tensions. This matters as the core argument of this article is that the ‘new’ (i.e. post-April 2021) select committee system in the Lords explicitly challenges many of the traditions that have in the past served to defuse potential tensions at Westminster.

The first comprehensive review of the use of committees in the Lords committees was conducted by the Lords Committee on the Committee Work of the House, chaired by Lord Jellicoe, and known thereafter as the Jellicoe Committee. The committee was established in 1991 and reported in 1992. Its primary objective was to promote a ‘more balanced and structured committee system’ (HL 35, 1992, para. 12) to counter the unsystematic and *ad hoc* expansion of committees that had occurred in the preceding two decades. At the heart of the Jellicoe review was a specification of the guiding principles by which Lords committees should operate. In turn these principles reflected the dimensionality of the institutional positioning of these committees. The *intra-institutional dimension* found reflection in the acceptance, stated explicitly for the first time, that ‘select committees

in the Lords should generally seek to *complement rather than duplicate* the work of those in the Commons' (Torrance & Tudor, 2019, p. 5 emphasis added). Complementarity was to be achieved through the principle of differentiation. A distinction was thus to be drawn between the Commons' departmentally focused and related select committees and the Lords' select committees. This distinction characterised the work of the two permanent committees in existence at the time – the European Union Committee and the Science and Technology Committee – both of which had broad-ranging remits to examine public policies cutting across departmental boundaries; as well as the work of *ad hoc* investigatory committees, which were convened temporarily for specific inquiries into topical issues of public policy. After the Jellicoe Committee, these thematic and cross-cutting committee practices were linked, enduringly, to the principle of complementarity (Besly & Goldsmith, 2019, p. 351). The *inter-institutional dimension*, and recognition of the pragmatics of bicameral modes of executive-legislative relations, was articulated in the Jellicoe Report's statement that 'Lords' committees *do not seek to hold Ministers to account* or scrutinise the work of Government departments in any comprehensive way' (HL 35, 1992, para. 26, emphasis added). The purpose of Lords committees, therefore, was restricted to exerting influence on government rather than exerting accountability (HL 35, 1992, para. 26). The third institutional dimension, *extra-institutional linkage*, received little attention in the Jellicoe report, and the conception of such interaction appeared truncated and monodirectional – with committees merely confined 'to address[ing] some recommendations to a wider audience beyond the House and the Government' (HL 35, 1992, para. 27).

Beyond the specific recommendations for the creation of a limited number of committees (see Connolly et al., 2022; Torrance & Tudor, 2019, pp. 5–6) the Jellicoe Committee also recommended that a Steering Committee should be established for purposes of oversight of committee working practices, organisation, and resource allocation, alongside review of committee activity. Just such a committee, the Liaison Committee, was established in 1992; and thereafter conducted a series of periodic reviews, regularised into annual reviews from 2010, into the activity of existing committees and the creation of new committees (for an overview see Torrance & Tudor, 2019, pp. 6–17). Following from these reviews, new permanent/sessional committees were created: Constitution (2001), Economic Affairs (2001), Secondary Legislation (2004), Communications (established 2007 and made permanent in 2013), and International Relations (2016). Permanent joint committees, of members of the Lords and the Commons, were also established in this period on Human Rights (2001) and National Security Strategy (2010).

Alongside the creation of the new sessional committees the centrality of *ad hoc* investigatory committees was acknowledged in the Liaison

Committee's reviews. Appointing investigatory *ad hoc* committees 'on a time-limited basis, to conduct a specific inquiry with a membership tailored to that task' continued to be seen as 'the best way of ensuring that committees reflect the changing priorities of the House and engage the full range of its membership' (HL 279, 2012, para. 9; HL 5, 2015, para. 67; HL 127, 2015, para. 21). And by the time of the comprehensive 2017–2020 review it had become the norm for four *ad hoc* committees to be appointed each year. Nevertheless, the criteria used in their creation remained that their inquiries should 'cut across departmental boundaries' and should not directly replicate the work of other committees in either House (HL 279, 2012 para. 7; HL 136, 2011, para. 232; HL 127, 2015, para. 20; HL 113, 2016, para. 5; HL 144, 2017, para. 3). Similarly, *ad hoc* select committees appointed in the Lords for the purposes of pre-legislative and post-legislative scrutiny<sup>4</sup> sought to avoid inquiries thought likely to be undertaken by the Commons, 'As such, the work of the two Houses can be viewed as complementary, rather than competing with, or duplicating, the work of the other' (Norton, 2019, p. 348).

These reviews also intermittently assessed the criteria to be used in deciding whether new committees should be established. While the Jellicoe's principle of complementarity was continuously reaffirmed (see e.g. HL 113, 2016, p. 12, p. 40; HL 279, 2012, p. 7, p. 23; HL 144, 2017, p. 3, p. 15, p. 17, p. 24) the requirement that there should be 'no duplication' (HL 35, 1992, para. 120) in committee work between the Lords and the Commons began to be openly questioned. In the wake of the 2010 general election, with an influx of more than 100 new peers, and the systematisation of select committees in the House of Commons following from the Wright Report, a broader review of the working practices of the Lords chaired by Lord Goodlad (HL 136, 2011) made significant recommendations in relation to investigatory committees in the Lords. In particular, the Goodlad Report called for a reconsideration of the 'no duplication' criterion (HL 136, 2011, paras. 227–32). The existence of parallel European, and Science and Technology, committees in both Houses, revealed the practical infringement of this criterion, and at the same time showed the capacity of these committees to work in 'a complementary fashion'. Overlap in practice, therefore, was not the major issue. Instead, the 'essential point', as the Goodlad Report noted, was that the principle of avoiding overlap with the Commons was very often a convention honoured in the breach without major repercussions or tensions. At the same time, however, the commitment to avoiding 'overlap' had created obvious 'scrutiny gaps' whereby 'major areas of Government activity [were] not considered at all by Lords committees' (HL 136, 2011, para. 229).

What was required, therefore, was not that committees in the two Houses 'should not overlap, but that they should work in a complementary fashion' (HL 136, 2011, para. 227). The Lords committees should, therefore 'build on existing strengths ... and produce reports that are expert, evidence-based,

and consensual, ... and wherever possible choose subjects of inquiry that cross departmental boundaries, identifying gaps and promoting “joined up” thinking’ (HL 136, 2011, para 231). The difficulty remained, however, that while the mantra of complementarity provided a consistent organising principle for each individual select committee, nonetheless, as the overall number of committees and the scope of their inquiries expanded incrementally after both the Jellicoe and Goodlad Reports, it did not provide a paradigm for a comprehensive or systematised structuring of Lords committees. There remained a ‘lack of a guiding logic’ to the committee structure which had resulted ‘in significant gaps arising in scrutiny’ (HL 398, 2019, para. 45). It was this deficiency that the Liaison Committee sought to address in its 2019 report.

### **‘Delivering a new committee structure’: the Liaison Committee review 2017–2020**

The previous section outlined a process of gradual institutional accretion and sedimentation whereby the role and number of select committees in the Lords not only increased during the second half of the twentieth century but also became enmeshed within a set of conventions, assumptions and understandings which essentially attempted to explain and legitimate their role. This involved, as indicated in [Table 1](#), (i) a ‘self-denying ordinance’ whereby Lords committees focused on legislative detail and eschewed adopting highly partisan positions, (ii) an emphasis on ‘complementarity’ in terms of seeking to add-value to the scrutiny function fulfilled by committees in the Commons, and (iii) what has been termed a ‘scrutiny by stealth’ approach that did not court public or media attention. By 2017, however, a number of factors had combined to focus attention on the need to review and reform the select committee system in the Lords. A significant number of peers were eager for a more visible and meaningful scrutiny role, and the UK’s impending departure from the European Union made far-reaching reform to some extent inevitable. However, the stated intention behind the 2017–2020 review was not to remodel the overall structure of Lords committees, but ‘to build upon and augment’, rather than reinvent, this structure. Although acknowledging that the existing structure was ‘already to a large extent’ thematic, the Liaison Committee found, nonetheless, the ‘case for moving towards a *new* thematic structure compelling’ (HL 398, 2019, para. 49, emphasis added). To facilitate such a move the Liaison Committee sought to redefine the purpose of committees and re-scope the key principles shaping their work.

#### ***Purposes and principles***

In the light of the changed political and social contexts within which committees operated, the Liaison Committee proposed a recalibration of the

three main purposes of House of Lords committees identified initially the Jellicoe Report. Five key purposes were to inform the work of committees in the future (HL 398, 2019, paras. 27-8): (i) holding the executive to account and scrutinising government policies; (ii) influencing policy; (iii) informing, shaping and contributing to public policy debates; (iv) engaging with the public; and (v) undertaking detailed investigations.

This marked not only an expansion of ambitions but also a potentially more radical redefinition of committee purpose. Far from the ‘stealth scrutiny’ envisaged in the Jellicoe Review – of operating below the political radar of the executive in the avoidance of direct, critical and visible scrutiny of its actions, and below the institutional radar of the Commons in the avoidance of direct overlap of committee focus and remit – the Liaison Committee, chaired by Lord McFall, was intent upon asserting ‘an important role’, and hence a more visible inter-institutional role, in holding the executive to account and monitoring its performance. Similarly, far from the limited ambition of simply addressing ‘some recommendations to a wider audience’ envisaged by the Jellicoe Committee, the Liaison Committee’s Review proposed an enhanced extra-institutional role of ‘active engagement’ and ‘two-way communication’ with the public (para. 128). As a result, the Lords committees were to become more visible. The ‘self-denying ordinance’, identified by Torrance (2013, p. 67), inhered in existing intra-institutional relations – with the profile of committees in the Upper Chamber kept deliberately low out of recognition of the Lords secondary institutional position and precarious democratic credentials – was to be directly challenged in new purposeful engagement with the public. Having redefined the main purposes of committees in this manner, the Liaison Committee then sought to reformulate the underpinning principles to guide the development and enhancement of committee activity. In the future, committees should be ‘cross-cutting, comprehensive, flexible, open and outward-looking, and effective’ (para. 29).

The *cross-cutting* principle aggregated the existing diverse, but interconnected, principles of complementarity, differentiation, and ‘joined-up’ scrutiny (para. 34). The *comprehensive* principle was articulated as a response to the *ad hoc* development of the existing structure of committees in the Lords. Social affairs and public services (including health and education) were identified as major areas of scrutiny deficiency (para. 45). In future, such scrutiny gaps were to be filled by ensuring comprehensive coverage of policy fields by Lords committees and across parliament more generally (para. 36). The principle of *flexibility* recognised the discretion afforded to Lords committees (which were not departmentally focused or related) to be agile, to horizon-scan, to identify emerging themes, and to respond to constant social and technological changes (para. 41). The Lords had already demonstrated a capacity to make such a response, shown in the

historical adeptness of its committees to work ‘on a cross-party basis, with benefit of considerable, political, academic, business and professional expertise [that had enabled them] to take a longer view on a lot of important things ... giving a longer-term perspective’ (Lord Hollick, quoted para. 40). The proposition that committees should be *open and outward-looking* was framed primarily in terms of communication and engagement. That committees should do ‘more to communicate committee work both internally and externally’ was taken by the Liaison Committee almost as axiomatic yet confronted it with ‘one of the biggest issues’ in how to match practice with principle (para. 108). Finally, the principle of *effectiveness* was construed essentially as a synonym for evaluation (i.e. understanding, monitoring, and measuring the impact of committees and ensuring systematic follow-up of recommendations (paras. 43-4)).

## Recommendations

### *New sessional committees*

In making its, many, recommendations the Liaison Committee was insistent that its 2019 report marked the ‘start of a significant change in the positioning of [Lords] committees to begin to put in place a thematic approach designed to ensure more effective scrutiny of all major areas of public policy’ (HL 193, 2020, para. 2). It was, therefore, to be seen as merely a ‘staging post’ in making an expanded thematic structure a reality (HL 398, 2019, para. 51). The Liaison Committee was never in any doubt, however, that once started significant benefits would accrue from the expansion of the thematic approach:

It broadens the choice of subjects for committees, thereby minimising the potential for scrutiny gaps. It avoids the chance of duplicating the select committee work of the Commons, which is essentially departmental. It thereby encourages the potential for complementarity between the two Houses. (HL 193, 2020, para. 3).

The rapidity with which the thematic structure was embraced can be gauged from recommendations made in the Liaison Committee’s initial report in December 2019 and in its successor report in December 2020. The latter report was focused upon establishing new committees with comprehensive cross-cutting remits, plugging emerging scrutiny gaps occasioned in part by the impending demise of the EU Committee and its sub-committees in March 2021, and ensuring ongoing scrutiny of matters relating to European affairs thereafter.<sup>5</sup>

The choice of thematic areas to be covered in the new structure reflected the opportunity both to expand the orders of reference of existing sessional committees to broaden their scope, and to create new sessional committees

in cross-cutting areas. In the first instance, a cautious broadening of the thematic foci of existing committees in their standing orders, and indicatively in the expansion of titles was recommended (with Communications becoming Communications and Digital, and International Relations becoming International Relations and Defence). In addition, a new sessional Public Services Committee was also proposed, and was duly appointed in February 2020 to consider issues of health, education and public service provision more broadly.

In the second instance, the 2020 report sought to identify continuing scrutiny gaps and how these might be addressed from 2021 onwards. While the need for the future prioritisation of the scrutiny of health, education, defence and digital matters had been more explicitly acknowledged in the 2019 report, other public policy fields of fundamental importance still had no dedicated coverage in the thematic structure. One immediate priority was the need for ongoing scrutiny of European issues after the ratification of the Withdrawal Agreement in January 2020. Having ‘ring-fenced’ the existing EU Committee<sup>6</sup> and its sub-committees in its 2019 report, in the face of the uncertainties associated with Brexit and how the dedicated scrutiny of EU matters would be impacted, the Liaison Committee recommended a new, successor, European Affairs Committee (EAC). The creation of a temporary stand-alone sub-committee of the EAC was also recommended to scrutinise the Northern Ireland Protocol. The operation of the sub-committee would be reviewed before November 2022 in the light of the practical impact of the Protocol (HL 193, 2020, para. 27). A further consequence of Brexit was the need for scrutiny of the UK’s future trading and international relationships. Following upon the creation, in January 2020, of a temporary International Agreements Sub-Committee of the EU Committee, a permanent/sessional International Agreements Committee (IAC) was rapidly established in January 2021 (for the importance of this committee see Horne, 2021). In recommending the creation of a new EAC, and its sub-committee, and a new IAC, the Liaison Committee was eager to distinguish the ‘distinctive cross-cutting’ nature of Lords scrutiny in these areas from that conducted in the Commons (HL 193, 2020, paras. 24-5, para. 35).

Similarly, the perceived exigent requirement to have Lords investigatory committees which were distinctive and differentiated from departmentally focused select committees in the Commons underpinned each substantive case made by the Liaison Committee for the creation of four new sessional committees: Built Environment, Environment and Climate Change, Industry and Regulators, and Justice and Home Affairs.<sup>7</sup> The respective cases for each new committee were three-dimensional in institutional design and positioning (HL 193, 2020, paras. 41-72). On the inter-institutional dimension, securing adequate government accountability would be a key objective of each new sessional committee. On the intra-institutional dimension, each

committee would adopt a broader, long-term, cross-departmental focus in distinction to the ‘sectoral approach’ of committees in the lower House. Each would play to the acknowledged strengths’ and ‘deep experience’ of peers in the policy area under scrutiny and promote ‘cross-party, collaborative scrutiny’. On the extra-institutional dimension, each committee would also endeavour to ensure that their work would ‘resonate strongly beyond the Westminster bubble and demonstrate the value and relevance of the House to citizens’. [Table 2](#), below, provides an overview of the pre and post 2021 scrutiny committee systems in the Lords.

**Table 2.** Comparing the pre and post 2021 scrutiny committee system.

Pre-2021 Sessional Committees		Post-2021 Sessional Committees*	
<i>Committee (estb.)</i>	<i>Sub-Committee(s)</i>	<i>Committee</i>	<i>Sub-Committee(s)</i>
European Communities (later ‘Union’) Committee (1974) <sup>i</sup>	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) <sup>ii</sup>	Finance Bill	Economic Affairs Committee	
Communications Committee (2007, sessional since 2013) <sup>iii</sup>		Communications and Digital Committee	
International Relations Committee (2016) <sup>iv</sup>		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.

<sup>i</sup>House of Lords Procedures for Scrutiny of Proposals for European Instruments Committee (HL 194, 1973).

<sup>ii</sup>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 sub-committee most years to inquire into selected aspects of the draft Finance Bill.

<sup>iii</sup>Liaison Committee (HL 135, 2013, para. 12).

<sup>iv</sup>Liaison Committee (HL 47, 2015).

### *Ad hoc/special enquiry committees*

Special inquiry committees, formerly known as *ad hoc* committees, as noted above, had long been recognised for their importance in enabling the House to examine topical and cross-cutting policy issues. Yet, the process for their appointment mitigated coordinated or systematic scrutiny of these areas. Although consideration was given to ‘whether and how to integrate special inquiries into the wider thematic structure’, no practical proposals for such integration featured in the 2019 report. Instead, the Liaison Committee concentrated its attention upon two major weaknesses identified during the review: first, insufficient transparency of, and member involvement in, the process of topic selection; and, second, the limited opportunities to follow-up special inquiries. The first weakness was addressed in the recommendation that the practice of shortlisting up to 10 potential special inquiry topics per session should continue, but that the proposer of each topic should be invited to provide a supporting case before the Liaison Committee. The Liaison Committee would then, guided by these representations, decide which four topics per year would be chosen for special inquiry. The hope was that the new process would ‘reassure Members that their case had been heard, loud and clear’ (HL 398, 2019, para. 65). The second weakness, which arose from the immediate dissolution of committees upon the conclusion of their inquiries, was to be rectified in the recommendation that a review process – at ‘an appropriate period of time’ after the publication of the initial report – would lead to the production of a short follow-up report to which a government would be expected to respond (para. 68).

### *Communications and public engagement*

Recognition of the heightened importance afforded to the extra-institutional dimension found reflection in recommendations to improve the processes of interactive communication between committees, their members and civil society. Indeed, one of the ‘biggest issues’ identified by the Liaison Committee was that the ‘high standard of work’ produced by Lords committees was not matched by high standards in communicating committee work inside or outside the House (HL 398, 2019, para. 108). To address this issue the Committee, aided by a cross-party working group on communications, recommended that internal communication should be improved by the circulation of a weekly report summarising the activities of committees; highlighting important committee work on the floor of the House; and regularising the expeditious debate of reports within three sitting months of publication. In addition, external communication should be improved by the production of agreed formal communications strategies at the start of all major inquiries; ‘stakeholder mapping’ to identify individuals and organisations both with an interest, and as potential participants, in committee inquiries; broadening of committees’ audiences and impact through

increasing the number of seminars and events at key stages of major inquiries; targeting technical and regional press outlets as well as securing TV and radio coverage; enhancing the use of social and digital platforms and interactive engagement across committees; producing reports in a variety of accessible formats; and ensuring that there were no procedural or technical restrictions on accepting evidence in alternative formats alongside written or oral presentation.

The Liaison Committee was also concerned to enhance the practice of engagement. There was acknowledgement that the input ‘of several hundred witnesses each session’ (para. 195) was crucial to sustaining evidence-based scrutiny. In which case ‘expanding the variety of voices that a committee hears from is important to ensure that committees are undertaking their role most effectively’ (para. 200). Diversity was to be valued: in the choice of witnesses, in what constitutes evidence, in modes of evidence collection (in terms of location and format), and in terms of the terminology and language used in committee proceedings. To this end, the Committee supported ongoing initiatives and innovations for the promotion of such diversity (para. 210). Yet, offsetting the potential positive gains of strategic enhancement of communications and engagement were the risks and resource implications associated with such a strategy. The risks identified by the Liaison Committee included: possible witness fatigue resulting from repeated requests to participate in inquiries; expectation management of the likely outcomes of public engagement in committee inquiries; response overload as multiple individuals and organisations seek to participate in committee activities; and increased staff workload and associated technical and administrative costs associated with heightened communication and engagement activities. Nonetheless, despite these risks, the Liaison Committee concluded that ‘the need for, and benefits of engagement that witnesses presented, alongside the solutions recommended, significantly outweigh the possible risks that accompany increased engagement’ (para. 136).

### *Working methods and working with others*

Total committee-related costs in the Lords, at the time of the Liaison Committee’s review, accounted for around £5 million, out of a total resource expenditure of around £160 million of the House of Lords as a whole (para. 86). Despite the increased activity of investigative and scrutiny committees in the preceding decade overall funding had changed little since 2009/10 (para. 80). Staff costs accounted for approximately 88 per cent of the annual committee budget, yet staff resource was limited to three persons for most committees, with no dedicated social media staff, and limited press, media and marketing staff resources (paras. 137-9). While the Liaison Committee judiciously avoided calling explicitly for additional resources, nonetheless, at a Liaison Committee seminar held in December

2020 – to enable members of the Lords to ‘feed into the decision-making process surrounding the re-structure [of committees]’ – ‘strong views were expressed that additional staffing resources were needed’ (HL 193, 2020, Appendix 3).

Despite acknowledging the importance of the contribution of committee staff, the Liaison Committee had no hesitation in identifying the work of members and committee chairs as the ‘heart of all parliamentary select committees’ (HL 398, 2019, para. 168). And the House of Lords was both fortunate, and in many ways unique, in being able to draw on a wealth of expertise amongst its members (para. 168). Moreover, the process for the selection of chairs, and committee members more generally, was deemed to ensure political balance and took into account gender diversity issues; and, therefore, the Committee proposed no change in the method of selection.<sup>8</sup> This meant that committee chairs would continue to be proposed in most instances by the Committee of Selection (composed of party leaders, whips and the convenor of crossbench peers). After appointment, however, the Liaison Committee recognised the need for greater professional support for committee chairs, both through continual professional development programmes, and for the creation of an informal Chairs Forum wherein chairs could collectively reflect on their work and share best practice (para. 186), as well as managing possible overlaps, promoting joined-up communication strategies and generally facilitating greater cohesion across the breadth of committee activities.

The organisational value of cohesion and collective working was further emphasised in the Liaison Committee’s recognition that a holistic approach – ‘a more comprehensive approach to parliamentary scrutiny’ (para. 151) – would help to improve the intra-institutional relationship between committees in the upper and lower Houses. To this end, the Committee recommended a pilot for informal meetings of members of the two Houses’ Liaison Committees (para. 156). There was also recognition that, beyond Westminster, collaborative inter-institutional working between committees in the UK parliament and those in the devolved legislatures should be encouraged. Using the template of the Interparliamentary Forum on Brexit (IFB) – which, in the Liaison Committee’s judgement, had revealed ‘the importance, and demonstrable success, of interparliamentary dialogue between committees’ (para. 164) – a recommendation was made that there should be further encouragement of the format of the IFB, and its associated informal patterns of dialogue and joint working.

Underpinning the broad encouragement of cohesive and collective working patterns, however, was the specific proviso that ‘it is not envisaged that this new system will broadly change the way in which committees currently work nor the way they are appointed’ (para. 56). A clear discordance is observable, therefore, between the seemingly conservative restraint of this

qualification and the more radical aspirations of the structural changes proposed by the Liaison Committee. This prompts a consideration in the next section of this disjuncture, and others, between assumptions, aspirations and proposed outcomes evident in the Liaison Committee's review.

## Disjunctures, assumptions, aspirations and achievement

In outlining the main findings and recommendations of the Liaison Committee in the previous sections, the ways in which the *inter-*, *intra-*, and *extra-*institutional dimensions of the Lords' working environment intruded into the Liaison Committee's observations and conclusions were also exposed. The recalibration of the purposes and principles of committees was seen to align along and across these dimensions: engaging more directly in holding government to account and scrutinising its policies was an alignment along the executive-legislative (inter-institutional) dimension; the complementarity, cross-cutting principle attested to the continuing sensitivity of the respective constitutional positioning of the Lords and Commons (intra-institutional dimension); and the renewed emphasis upon enhanced engagement with the public, and intensified contribution to public policy debates confirmed the salience of the extra-institutional dimension. Taking each of these dimensions in turn, this section reveals how key assumptions underpinning the 2017–2020 Review – about the positioning of Lords committees within the institutional matrix noted above (Table 1) – point to *disjunctures* between aspirations and the potential achievement of stated objectives (see Table 3, below).

### *Inter-Institutional dimension*

#### *Distinctiveness and differentiation: thematic structure*

The unambiguous conclusion of the Liaison Committee's review was that 'the case for moving towards a new thematic structure was compelling' (HL 398, 2019, para. 49). This case was based, as noted above, upon the principles of cross-cutting scrutiny, comprehensiveness, flexibility, openness, and effectiveness; and had the added purpose of holding government to account and scrutinising its policies. Yet, although the principled cases for the new thematic structure and for the new purpose of exacting government accountability were treated essentially as unproblematic, both came with potential practical uncertainties and inter-institutional risks. The following discussion seeks therefore to analyse these risks and uncertainties by drawing attention to the polythetic nature of the UK's executive. Whereas analyses of executive-legislative relations, from the perspective of parliament (following King (1976) and Russell and Cowley (2018)), recognise the multiplicity and complexity of modes of legislative organisation, little attention from the same

**Table 3.** Reviewing the review: three dimensions, three disjunctures.

Dimension	Direction	Tradition	Disjuncture
<i>Inter-</i> Institutional	Upper House to Executive	'Self-denying ordinance' – Lords committees would focus on fine detail and avoid courting controversy.	Although not necessarily courting controversy, at the heart of the reform agenda is a desire to shift towards a more systematic and stronger scrutiny system in the House of Lords which is unlikely to be welcomed by any executive.
<i>Intra-</i> Institutional	Upper House to Lower House	'Complementarity' – an emphasis on 'added value' and 'difference' (i.e. long-term, less-partisan, etc.)	How the Lords can develop a cross-governmental focus in light of a highly fragmented and siloed governmental structure with numerous barriers and blockages remains unclear.
<i>Extra-</i> Institutional	Upper House to Public	'Scrutiny by stealth' – select committees in the Lords did not court public or media attention.	The ambition in relation to public engagement is arguably the most novel and striking element of the reform programme but how this will be resourced or how questions of democratic legitimacy will be managed remain imprecise.

perspective has been paid to the compound and differentiated nature of the executive.

This polytheticity is of direct relevance as the recent history of UK governmental cross-cutting initiatives to address wicked problems reveals something akin to ‘an institutional deficit’, ‘a failure of the machinery of government’ (Matthews, 2012, p. 186, p. 184) to deal with these problems. The organisational impediments faced by UK governments in addressing cross-cutting issues and ‘wicked’ problems have been readily identifiable (see Connolly, 2015; Connolly & Pyper, 2020; den Uyl & Russel, 2018; Exworthy & Hunter, 2011; Ross, 2005). The prospect that the costs and challenges experienced by UK executives would be refracted – almost ‘mirror image’ like – in a new thematic approach designed to scrutinise these cross-cutting issues did not appear, however, to trouble the Liaison Committee.

Simply stated, while the premise of a thematic and cross-cutting approach to scrutiny is straightforward, the practical adoption of such an approach is fraught with complexity. In the UK, an historic organisational structuring of Whitehall around departments, silo-based working patterns, norms, cultures, and resource allocation has been reinforced by conventions of responsibility which confine the accountabilities of ministers and their officials to departmental silos and has inhibited the delivery of cross-cutting commitments (Guerin et al., 2018; HC, 1803, 2019; Ling, 2002; Matthews, 2012; Pyper, 2021; Sasse et al., 2020). If the ‘systems architecture’ for joined-up working in government has been, and continues to be, deficient; then a scrutiny system designed to ‘take the systems architecture view’ (HL 193, 2020, para. 52) would be constrained by the very departmental modes and norms that thematic scrutiny is designed to address (see e.g. HL 85, 2020, paras. 546-52; HL 183, 2021, paras. 368-80). This disjuncture has the potential, therefore, to become more pronounced in a committee system which has as one of its key one purposes ‘holding the executive to account and ‘providing scrutiny of government policy, actions and legislation’ (HL 398, 2019, para. 27).

Acknowledging problems associated with a comprehensive adoption of cross-cutting scrutiny, should not, however, obscure a potential positive outcome. Such scrutiny has the potential to impact upon departmental working practices and bureaucratic behaviour. Indeed, evidence of just such a positive impact has already been provided by the experience of the House of Commons Environmental Audit Committee (EAC). Established in 1997, as the world’s first cross-cutting parliamentary committee for environmental policy and sustainable development, the EAC has had a ‘galvanising effect on departments’ in prompting improved departmental processes for reporting, appraising and presentation of their contributions towards meeting government commitments on the environment and

sustainable development (Russel et al., 2013, p. 627). This effect has taken the form of providing ‘additional analysis’ and ‘acting as a kind of consultancy resource’ for civil servants; while also enabling departments to use committee reports ‘to air some of their concerns to other departments’ or ‘to build a case for further research in particular areas’ (Turnpenney et al., 2013, p. 594). The very process of interacting with the EAC, in preparing documentation, providing oral evidence and writing responses, has ‘nudged’ departmental officials to consider the cross-cutting implications of broad environmental commitments for specific departmental policies and programmes (Ross, 2005, p. 38). Extrapolating from this experience, a systematisation of cross-cutting committee scrutiny in the Lords holds the potential, therefore, to foster reactive changes across Whitehall and induce more sustained implementation of cross-departmental initiatives and the practices of joined-up governance.

### *Purposive scrutiny, challenging government and holding the executive to account*

The explicit adoption of a new purpose of committee scrutiny – of holding ministers and their departments responsible for their action – raises questions as to which ministers and departments are targeted, how cross-cutting scrutiny will overcome siloed departmental antipathy to such examination, and the likelihood of segmented executive responses. One answer is that thematic scrutiny might produce the beneficial galvanising effect in Whitehall, noted above. An alternative answer, however, is that the ‘enduring centrality of the convention of individual ministerial responsibility’ (see Flinders, 2000), rooted in departmental structures and segmented hierarchies of responsibilities, might serve to impede effective enforcement of cross-cutting accountabilities. A stark example of this came in July 2021 when the COVID-19 Committee recorded that it was ‘extremely disappointed’ (HL 51, 2021, para. 3) with the government’s response to its report *Beyond Digital for a Hybrid World* (HL 263, 2021). As the Committee’s remit was to investigate public policy and to hold the government to account, it concluded that ‘when the Government then fails to engage adequately with this process, we (and the House) cannot fully discharge our functions’ (HL 51, 2021, paras. 4–5). In particular, the COVID-19 Committee suspected that ‘part of the problem with this particular response was that our report cut across the remits of a number of Governments departments’ and led to the further suspicion that attribution of responsibility for the cross-cutting issue of ‘digital’ to a single department, the Department for Digital, Culture, Media and Sport, meant that ‘responsibility for how to respond to challenges and opportunities’ of digital had not been met when ‘siloed in DCMS’ (HL 51, 2021, para. 5).

Relatedly, more explicit committee engagement in the scrutiny of executive actions increases the scope for political (in the specific sense of partisan) embroilment with the executive. An historic and continuing aversion to scrutiny has been displayed by executives to committee scrutiny in the lower chamber, alongside ministerial stratagems to minimise their exposure to such scrutiny (see Judge, 2021). The danger for Lords committees, acting on the Liaison Committee's newly prescribed key purpose of holding the executive to account (HL 398, 2019, para. 27), is that the same executive equivocations and evasions apparent in the Commons might be replicated in the upper house. Moreover, the objective of raising the public profile of committees – through more professional communication and digital marketing strategies – would serve not only to attract citizens' interest and engagement; but also attract heightened attention, and the deployment of associated mitigation strategies, by the executive itself. Indeed, cabinet ministers have already shown reticence in engaging enthusiastically with committees in the provision of oral evidence.<sup>9</sup> The Public Service Committee (HL 167, 2020, para. 13), for instance, in its very first report had cause to record its disappointment with the failure of members of the Cabinet Office – its Minister (Michael Gove), the Cabinet Secretary, and the Permanent Secretary – to provide oral evidence. This simply underscored some of the frustration expressed in oral evidence to the Liaison Committee at an 'inability to get ministers in front of us', and of discovering that when ministers were invited to appear before committees 'they never found that their diaries permitted it' (HL 398, 2019, QQ142-143).

### *Intra-institutional dimension*

#### *Differentiation and distinctiveness: complementarity of Lords and Commons committees*

A seemingly straightforward premise underpinned the principles used by the Liaison Committee to distinguish Lords' scrutiny committees from their Commons' counterparts: select committees in the lower House were essentially held to be engaged in 'siloe'd scrutiny' of departmental policies and activities (HL 398, 2019, para. 32). In this manner, thematic, cross-cutting committees in the Lords would not duplicate the departmental approach of select committees in the Commons. Yet, this premise was open to challenge should Commons committees adopt a cross-cutting approach to their own inquiries. Indeed, just such a challenge began to be mounted in the responses of committees in the lower chamber to the COVID-19 and climate change crises. In April 2020 the chair of the Health and Social Care Committee (HSC) invited the chairs of four other select committees to participate in his committee's questioning of the secretary of state for HSC (HC 36, 2020). In late-2020 the HSC Committee and the Science and

Technology Committee embarked upon a joint inquiry into the lessons to be learnt from the response to the coronavirus pandemic (UK Parliament, 2020). In March 2021, and more dramatically, nine Commons select committees initiated a programme of cross-cutting scrutiny of the UK's preparations for the COP26 climate summit (UK Parliament, 2021).

### *Differentiation and distinctiveness: expertise, assumed and actual*

A further distinctive and, arguably, unique feature of the House of Lords is the reputed collective expertise of its members (see Bochel & Defty, 2010; Dorey & Purvis, 2018, pp. 246–248; Norton, 2017, pp. 32–33; Russell, 2013, p. 74; Russell & Benton, 2009; Shell, 2007, pp. 165–167). More fundamentally, this reputation also serves as a *redeeming* feature, which according to Russell (2013, p. 90) ‘helps to counterbalance concerns about its unelected nature’; or, as expressed more forcefully by Lord Cameron in oral evidence to the Liaison Committee, ‘if we are not a House of experts, our whole *raison d’être* within the constitution is irrelevant’ (HL 398, 2019, QQ142-3). Certainly, a starting proposition of the Liaison Committee was that the vitality of the Lords, and especially its committees, owed much to the ‘extensive and wide-ranging expertise of members’ (HL 398, 2019, para. 1). Yet, exactly what constituted expertise; how it differed, if at all, from the ‘knowledge and experience’ held by members; the extent to which expertise has an expiry or ‘best before’ date; and exactly how extensive was the scope and depth of members’ expertise across policy fields was not considered by the Liaison Committee. Such concerns, however, had long been a preoccupation of many outside observers, especially those who provided data on the highly skewed professional backgrounds of the membership of the Lords (Electoral Reform Society, 2020), or who raised the issue of whether the preponderance of retired, elderly Peers (with an average age of 70 in 2020) meant that the House was filled with ‘ex-experts’ (Russell, 2013, p. 78; Tyler, 2008); or those who provided evidence to show that whilst there are many experts in the Lords, nonetheless, in some key policy fields there are relatively few members with deep and specific expertise of those fields (see Russell & Benton, 2009, pp. 41–53; in the specific case of welfare policy see Bochel & Defty, 2010).<sup>10</sup> Such external assessments raise fundamental questions as to the extent to which expertise in the Lords is ‘often assumed rather than demonstrated and measured’ (Bochel & Defty, 2010, p. 82; HL 398, 2019, RIS00020). Even if the collective expertise of the Lords is treated as a relative, rather than as an absolute matter, the contention that the Lords is ‘more expert’ (HL 398, 2019, QQ1-9; Russell, 2013, p. 76) may still be subject to the qualification that in some key areas ‘the House of Lords is not a more expert House than the Commons’ (Bochel & Defty, 2010, p. 81).

A more specific concern is the efficacy of the selection process in ensuring that members with appropriate expertise are appointed to apposite

committees. That ‘Members are enthusiastic about using their expertise to serve on committees’ (HL 398, 2019, para. 168) is not in doubt. What is less certain, and an issue raised by several witnesses, is the extent to which expertise is the main criterion for appointing members to investigative committees. In the main political parties, partisan considerations may trump expertise in securing appointment to specific committees, with Lord Puttnam (HL 398, 2019, Q58) estimating that expertise was ranked ‘about fourth’ in the order of whips’ priorities in appointing committee members. Even on the crossbenches there was some uncertainty as to the criteria used for the selection of members for specific enquiries (Baroness Kidron, HL 398, 2019, Q58; Baroness Brown HL 398, 2019, RIS0025; and non-affiliated Lord Inglewood HL 398, 2019, RIS0026). The potential danger is that the desire to maximise general opportunities for members to participate in committee investigations may lead to the downgrading of the specific premium placed upon expertise in the appointment process.

Similarly, the rotation rule, whereby membership of permanent committees is restricted to three successive calendar years (HL 140, 2020, paras. 12-13), runs the risk ‘of losing expertise in select committee work and wastes experience’ (HL 398, 2019, para. 171). Tellingly, in the debate on the Liaison Committee’s report, Lord Winston, a high-profile and eminent scientist, drew attention to a significant flaw in the appointment procedure and the rotation rule. Using the example of the Science and Technology Committee he observed that it was ‘constantly starved of scientists’. He maintained, therefore, that it was essential in appointing committee memberships in the future to ‘make certain we get the best expertise for the particular committee concerned and people are not appointed just because they have been a good Member on the Back Benches’ (HL Debates, 3 October 2019, cols. 1802-3). Indeed, the Liaison Committee, in recognising this risk, acknowledged the ‘difficult balance’ to be struck between facilitating continuity of membership and retaining expertise on committees while providing new appointment opportunities for other members. As a result, the Committee recommended that the Procedure Committee should re-examine these time-limitations (HL 398, 2019, para. 173).

Another dimension of expertise is the availability of expert advice and support available to committees and their members. As individual members of the Lords do not have institutional resources to employ specialist staff, they are dependent upon the comparatively limited core staff apportioned to each committee (routinely a clerk, committee assistant, policy analyst and one or more external policy advisers) (HL 398, 2019, RIS0061).<sup>11</sup> Certainly, they are assisted by the broader impartial, authoritative, and timely research provided to members by the Lords Library service along with its specific in-depth briefings. The Parliamentary Office of Science and Technology (POST) also provides institutional support for committees

conducting inquiries on public policy issues related to science and technology (HL 398, 2019, RIS0015). Nonetheless, in comparative terms, there are few in-house expert resources available to investigative committees. In this respect the Lords is in an analogous position to that of the Australian Senate, 'In truth, the expertise committees require to perform their roles effectively comes from submitters and witnesses' (HL 398, 2019, RIS0059).

Certainly, the Liaison Committee was aware of the centrality of the input of 'witnesses and evidence' to committee inquiries, and without which 'most of our committees would grind to a halt' (HL 398, 2019, para. 195). On the one hand, as considered below, the main focus of attention was upon securing witness diversity and wider perspectives on public policy beyond the 'usual suspects'. The emphasis was, commendably, upon ensuring that committee inquiries were informed by more expansive forms of expertise – of lived experiences and first-hand knowledge of the outcomes of public policy. Yet, on the other, there was little consideration of the extent to which committees made 'the best use of the expertise in [the UK's] research intensive universities'; or of the willingness to formulate a 'radical ... forward looking agenda' to link committee activities with the research expertise and knowledge exchange activities of universities and research institutes (Muscatelli, HL 398, 2019, RIS0046).

### *Extra-institutional dimension*

'One of the biggest issues' identified in the Liaison Committee's review, as noted above, was how to improve internal and external communication of the significance of committee work and how to engage the public more systematically in the work of committees. Overall, however, communication appeared to be afforded greater priority than engagement (HL 398, 2019, paras. 108-48). As a result, a detailed consideration of the need for improved communication techniques and resources, overwhelmed a more limited, and specific, acknowledgement of how public engagement was impeded by certain deficient committee working practices. Yet, despite this specific acknowledgment of deficiency, the Liaison Committee signalled a broader intent, not to change the way in which committees worked (HL 398, 2019, para. 56).

Indeed, a potential discordance between the extra-institutional aspirations of interactive communication and engagement and the actual working practices of committees was inherited in the Liaison Committee's report. On the one side, the formality of the language and terminology used in committee deliberations and proceedings was flagged as a matter of concern; with the recommendation that this matter should be reviewed in the immediate future (para. 199). The spatial environment of the rooms used for committee meetings at Westminster, and the formality and inquisitorial mode of

committee proceedings, were acknowledged as off-putting and indeed intimidatory for many witnesses. In response the Liaison Committee proposed an extension of formats, some already piloted, for the collection of evidence, including round-table events, ‘pyramid style’ events, and visits to local communities (HL 398, 2019, paras. 204-9). On the other side, however, the opportunities for virtual proceedings and evidential interchanges did not feature in the Liaison Committee’s report.<sup>12</sup> Baroness Kidron’s (HL 398, 2019, Q56) plea to ‘respond to the opportunities of the virtual’, to bring about a metaphorical ‘breaking of walls’ through virtual meetings, and so to ‘change the feeling of things’ for witnesses went un-noted in the final report. Similarly, alternative modes for the conduct of inquiries and for the production of reports, for example through the use of rapporteurs, although raised obliquely in oral and written evidence (see respectively HL 398, 2019, Q18; RIS0050) received no reflection in the final report. Furthermore, suggestions that more innovative modes for the selection of topics, extending beyond the ‘internalised pool’ of members themselves, were raised and discounted. Certainly, the wider potential for public involvement in topic selection was raised in evidence (HL 398, 2019, Q21; RIS0005), but the involvement of UK research councils, each with their own extensive thematic priorities and initiatives, received no attention.

### **A three-dimensional repositioning?**

The Liaison Committee was clear that its review and the recommendations that followed were just the start of significant change and the beginning of a process of ensuring ‘more effective scrutiny of all the major areas of public policy’ (HL 193, 2020, para. 2). It was equally clear that in future there should be enhanced evaluation of the effectiveness of investigatory committees through sessional highlight reports and end of parliament legacy reports (HL 398, 2019, paras. 229-31). The primary focus of these reports was, not surprisingly, to be upon gauging the quality and success of committee ‘outputs’, and their impact. The Liaison Committee did, however, recognise the scope for greater monitoring of ‘inputs’ – especially witness diversity in committee investigations (HL 398, 2019, para. 203). But the monitoring of committee memberships, beyond gender diversity, in terms, for example, of auditing relevant expertise, specialist experience or professional skills remained unconsidered. Similarly, the scope for monitoring committee interactions with departmental ministers and officials, which would assume greater significance in the light of the new commitment to hold government to account, was left unexamined. If the issue of committee inputs is deemed to be largely unproblematic then such input monitoring might be deemed unnecessary. Yet, such a conclusion would be based upon assumptions that clearly need testing and verification.

Indeed, in reviewing the Liaison Committee's review, a number of key disconnections have been identified between the assumptions made, and the aspirations held by the Committee. While these disjunctions appear to relate simply to matters of institutional organisation, and, so, to be of little interest beyond the Lords itself and a few legislative scholars, in fact they circle back to the elemental question of 'what is the point of the House of Lords?'. If the answer to that question is conceived in terms of an upper House 'fulfil[ing] tasks which it sees as adding value to the political process', with its role being 'not to conflict with but, rather to complement the work of the House of Commons' (Norton, 2017, p. 2), then the Liaison Committee's review and the underpinning logic of its main recommendations may be analysed simply as matters of institutional function, organisation and form. Certainly, from the outset, the Committee was adamant that its approach was evolutionary and did not necessitate significant change in the ways in which committees currently worked. Nonetheless, simultaneously, the Committee also proposed 'significant change in the positioning of our committees' (HL 193, 2020, para. 2).

In fact, a repositioning of committees across three dimensions was envisaged. The first (inter-institutional) was the recommendation that a key purpose for future Lords committees should be 'scrutiny of government' (in a more overt acknowledgment of the accountability relationship between executive and legislature). The second (intra-institutional) was the quest to ensure 'comprehensive scrutiny of major policy both in the House of Lords, and *across* Parliament more widely' (HL 398, 2019, para. 36 emphasis added). The third (extra-institutional) was in relation to the citizenry, in the Liaison Committee's recommendations for increased engagement, interaction and communication with the public in all aspects of committee work.

In each dimension this repositioning moved beyond simple organisational realignment and marked a more profound recalibration of institutional and political relationships. On the first (inter-institutional) dimension, holding government to account has implications for the relationship between Lords investigatory committees and the ministers and departmental officials they were scrutinising. As noted above, tensions, antagonisms and strategies of executive mitigation would potentially become more pronounced in this relationship as committees sought to fulfil their explicitly expanded purpose of 'holding the executive to account' (HL 398, 2019, para. 26). On the second (intra-institutional) dimension, a more holistic approach to scrutiny across parliament, rooted in the distinctiveness of Lords investigatory committees from their Commons counterparts – and distinguished by the principles of expertise, differentiation, and complementarity – might result, paradoxically, in the very inviolability of those principles being questioned in practice. On the third

(extra-institutional) dimension, a significantly raised public profile would attract the attention not only of the general public and the specific publics of organised interests, but also the (not necessarily benign) attention of government. More ‘visible’ committees might well, therefore, trigger partisan incentives for governments to adopt more uncompromising and negative stances towards their scrutineers.

As the most comprehensive review of the activities and institutional positionings of Lords committees undertaken to date, the Liaison Committee’s Review is thus of profound significance both in understanding the principles and purposes underpinning committee development and in seeking to ‘future-proof’ committee efficacy by a reformulation and repurposing of the very activities of committees. In seeking to effect significant change in the positioning of committees, a wider repositioning of those committees within the institutional and political matrixes within which they operate will come under review. As argued above, with their raised profile resulting from the implementation of the Liaison Committee’s recommendations, Lords committees will no longer be ‘institutions ignored’. Almost certainly, they will attract further review, in the sense of assessment, judgement and evaluation of their operations, not only within the Lords but also by the wider audiences – of the government and the public. A broad dynamic of ‘review’ has thus been inbuilt in the Liaison Committee’s 2017–20 Review. Yet, importantly, also inhered in that Review is a cascade effect, wherein a process of internal institutional and organisational review is likely to precipitate wider political and constitutional appraisal – of the organisation of government itself (and its capacity for joined-up, holistic working) and the institutional positioning of the Lords itself within the UK’s system of governance.

## Notes

1. The main review was conducted between 2017 and 2019 and resulted in the publication in July 2019 of the Liaison Committee’s report (HL 398, 2019). In December 2020 a further report was published by the Liaison Committee (HL 193, 2020) which concluded its 2017–2019 review by identifying emerging scrutiny gaps, arising primarily from the loss of scrutiny coverage of major areas of public policy resulting from the post-Brexit demise of the EU Committee and its subcommittees. In this sense, the 2020 report’s recommendations built upon and completed the recommendations of the 2019 report, and hence it is appropriate to treat both reports as a whole.
2. The primary focus of this paper is upon the thematic investigatory committees of the House of Lords rather than those focused upon specific aspects of legislative scrutiny referred to by the Liaison Committee as ‘forensic scrutiny’ of legislation (HL 398, 2019, para. 4d), most notably the Secondary Legislation Scrutiny Committee, the Delegated Powers and Regulatory Reform Committee and the various temporary pre-legislative and post-legislative committees.

3. On the distinction between institutions and organisations (see North, 1990; Peters, 2016, pp. 57–58). Peters concludes that although the two may be considered separately differentiation may be difficult in practice.
4. The appointment of *ad hoc* committees for pre-legislative scrutiny and post-legislative scrutiny became of increased significance in the decades after 1997 (when the parliamentary processes for pre-legislative scrutiny were formalised). Although the practice of pre-legislative scrutiny has not lived up to the aspirations of its supporters, both in terms of the limited volume of bills submitted, and the limited time and resources available to conduct scrutiny, nonetheless, the value of such scrutiny has continued to be endorsed within the Lords. Since 2012 *ad hoc* committees have also been appointed to conduct post-legislative scrutiny. Within five years of the appointment of the first committee, post-legislative scrutiny was declared to be ‘an established role for *ad hoc* committees in the House of Lords’ (HL 144, 2017 para. 17); and by 2019 nine post-legislative scrutiny committees had been active. However, the verdict on the effectiveness of these committees remains open. Norton (2019, p. 346) captures well the ambiguities of assessment in his conclusion that post-legislative scrutiny in the Lords ‘is limited, but consistent’.
5. In many respects the Brexit process – both pre-referendum and post-referendum result – constituted a ‘critical juncture’ (for an overview of the concept of critical juncture see Capocchia, 2016). In some variants of historical institutionalism, moments of institutional indeterminacy and fluidity, occurring in relatively short periods of time, may constitute ‘punctuated equilibria’ and provide opportunities for institutional innovation (see Lowndes, 2017, p. 67). In this vein, Connolly et al. (2022) note, that in the context of the political uncertainties associated with Brexit, a major reform of the Lords’ committee system was to a large extent ‘inevitable’ as the House of Lords had to “face up” to the institutional implications of Brexit’. Indeed, the Liaison Committee acknowledged directly that ‘the Brexit vote has profoundly changed the political context’ (HL 398, p. 81), and that the review exercise had been ‘driven, in part, by the need to adjust our committee structure to reflect the new relationship with the EU’ (HL 193, 2020, para. 11).
6. Essentially, the European Union Committee and its six subcommittees had evolved into something resembling a scrutiny ecosystem. This ecosystem provided a capacity to examine many domestic policy areas within the broader frame of EU competencies (such as agriculture, fisheries, food, energy, emissions trading, the environment, as well as policing, migration, asylum policy, trade and regulation, criminal frameworks and judicial co-operation). A newly created European Affairs Committee, operating in a post-Brexit context, would have a far more restricted remit and would leave scrutiny gaps in policy areas previously covered in the EU committee ecosystem. This provided both a challenge to fill these gaps and an opportunity to systematise further thematic scrutiny in the creation of new cross-cutting committees.
7. Motions to appoint the memberships of the new sessional committees were moved and recorded in the Minutes of House of Lords Business on 14 April 2021.
8. Although no change to the method of selection for committee chairs and members was proposed in the Report, some disquiet was evident about the continuing role of party whips in the selection process in oral evidence (HL

398, 2019, Q. 51; Q. 58), written evidence (HL 398, 2019, RIS0006; RIS 0044; RIS0052) and in debate (HL Debates, 13 January 2021, col. 744). Lord McFall did acknowledge in the debate on the Liaison Committee's Report that the issue of the election of chairs was 'still on the agenda' (HL Debates, 13 January 2021, col. 745).

9. Of the 61 committee inquiries conducted in the 2017–19 parliament, cabinet ministers provided oral evidence on only three occasions (Jeremy Hunt twice, in two different roles as Health Secretary and Foreign Secretary, and Matt Hancock as Health and Social Care Secretary). 47 other ministers, either ministers of state or under-secretaries, provided oral evidence.
10. Russell and Benton (2009, p. 15) use the term 'specialism' but take this to mean 'the more precise expertise that the peer has'. They are surprised to find (2009, p. 42) that 'there are so few peers with specialisms in engineering ... There are also very few with specialisms in energy, and in conservation and the environment generally, which is clearly now a policy field of enormous importance. For example, we found nobody whose specialism was waste management, recycling, water, flooding, forestry, etc, and bigger areas such as climate change might be considered underrepresented. There are also few peers with specialisms in transport (particularly road transport, including buses). As already noted there are also relatively few peers with main specialisms in heritage matters, and leisure industries, and relatively few peers have main specialisms in school education, and none evidently in early years or adult education'.
11. The legislative scrutiny committees are supported by staff from the Legislation Office.
12. The Liaison Committee did, however, later acknowledge the importance of virtual committee proceedings in sustaining inquiries during the COVID-19 crisis (HL 103, 2020, paras. 5-7).

## Disclosure statement

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