



Liaison Committee

Corrected oral evidence: Review of investigative and scrutiny committees

Wednesday 23 May 2018

10.40 am

[Listen to the meeting](#)

Members present: Lord McFall of Alcluith (Chairman); Earl of Courtown; Baroness Garden of Frognal; Baroness Hayter of Kentish Town; Lord Lang of Monkton; Lord Low of Dalston; Lord Smith of Hindhead; Lord Williams of Elvel.

Evidence Session No. 6

Heard in Public

Questions 48 - 54

Witnesses

I: Professor Lord Norton of Louth, Campaign for an Effective Second Chamber; Lord Cormack, Campaign for an Effective Second Chamber.

Examination of Witnesses

Professor Lord Norton of Louth and Lord Cormack.

Q48 The Chairman: Good morning, colleagues, and welcome. Thank you very much for your attendance, for your submissions and for the meeting yesterday, which I found very helpful. It was very good.

Lord Norton, your submission is quite detailed and it would be good if you could give us a pithy summary of the main points that you think we should address. You mentioned the difference in culture between the House of Lords and the House of Commons, but, as we mentioned yesterday, there are issues of complementarity in parliamentary scrutiny and gaps in legislative scrutiny, particularly post-legislative scrutiny, which is a very important part of your submission. At present, we have no overriding framework for committees, so we need something more strategic that maximises the role of the House of Lords as a scrutinising Chamber. Could you elaborate on that, please?

Professor Lord Norton of Louth: Yes. It may be helpful if I go a little wider, in the sense of, as you say, identifying where we may want to go. It is important to see where we are starting from as regards our strengths so that we do not lose them, because it strikes me, from the point of view of our committee, that particular strengths are the quality of the inquiries we undertake, by which I mean the choice of topic and the evidence taking, and the quality of the reports. It is not only what the committees do but their output. Those are particular strengths of the House because they derive from the quality of the membership, and the experience and expertise we are able to bring to bear. That plays to the strengths of the House, but there are two areas of weakness.

One area, which I focused on in the submission, is that we have gaps in coverage. As you are aware, some of those gaps are in relation to policy. Committees are quite sporadic in their coverage; we cover some areas. The only respect in which we could say it is comprehensive is through the EU sub-committees, but of course they are limited to the EU. Otherwise, we have committees covering particular areas, but there are notable gaps.

We have gaps in what I called process in my submission, by which I mean standards and output. It is checking for standards when Bills go through the legislative process. Then there are outputs: are Acts delivering on what is expected of them? It strikes me that those are particularly important areas in the quality of legislation and they are gaps that this House is distinctly placed to fill; I do not think the Commons would necessarily have the political will to undertake that particular exercise. If we do not do it, I do not think it will be done, and it needs to be done.

The other gap is in public engagement. Our committees are very much policy focused and government focused rather than outward focused or public focused. We do very good work, but we are not necessarily brilliant at publicising the work we do. We publish reports, and we now give

resources when they are launched to ensure that they get some press coverage, but we are not very good at regular engagement. How many Lords committees have Twitter accounts, for example? Of the Commons committees, quite a few do.

We need to keep people informed about what we are doing, through engagement and thinking more about how to link with outside groups other than in the purely formal sense of taking evidence from organised interests, which we do rather well. Committees are very good at dialogue and discourse with organised interests in their areas, but how do we go beyond that? That is a gap we need to focus on. We need to think about being more outward looking, not simply inward looking in relation to government and public policy.

The Chairman: This morning, staff gave us a report that I did not realise existed. It was a 2009 report, *Are the Lords Listening? Creating Connections between People and Parliament*, which is very good. I was re-reading it. Maybe before the end, we could develop that as our last question.

Lord Lang of Monkton: Lord Norton, I thought your paper was very lucid. It argued the case for what you are seeking very well, and I find it persuasive. For the sake of challenging it, the present system has evolved organically and therefore has gradually fitted the needs of the time. What you suggest by way of an overarching framework carries with it a danger of centralisation, and possibly loss of spontaneity and flexibility. Are you conscious of that and can you indicate how you might guard against it?

Professor Lord Norton of Louth: Indeed, yes. I recognise that. That is why I put in the paper that we should not simply adopt a top-down approach, such that we are prescriptive in what we do. We must maintain the bottom-up element of the initiative of Members coming forward with ideas, particularly with regard to ad hoc committees, which have worked rather well since the 2012 innovation. In a way, you get the best of both worlds, which I know you are focusing on: a fairly coherent structure at the same time as preserving some degree of flexibility. With ad hoc committees, that works extraordinarily well. It would not necessarily be ruled out if we establish that there is a need for a new permanent committee. It is about getting the balance right.

At the moment, we are a bit imbalanced. It is bottom-up, so we end up with an array of committees that do a good job, but the important question is what is missing. By taking an overarching approach, we can address that without losing the flexibility. That is what I was concerned to address. I was also thinking about whether we have the resources to achieve both.

The Chairman: Both your evidence and that from Lord Stern and the British Academy mentioned that there was no strategic approach and no overarching framework. I think the two of you are focusing on that particular area, so, for the first time, we could have that.

Professor Lord Norton of Louth: Yes.

The Chairman: If you want to develop that later, fine. Lord Cormack.

Lord Cormack: Lord Norton and I are appearing representing the group that you attended yesterday, the Campaign for an Effective Second Chamber, which has in its membership over 200 Members of this House and Members of the other place as well. We were the two who formed it way back in 2001 because we believe in a more effective second Chamber but an unelected second House.

I totally associate myself with the points made by Lord Norton in his submission and his remarks just now, but one point came out yesterday that we perhaps do not focus on enough. That is the fundamental difference between the elected House, which changes its composition every five years or thereabouts, and the unelected undying House, as the Americans would call it, which continues and therefore has the opportunity of looking forward. I know that I speak to someone who has served on Select Committees in the other place and indeed been a distinguished chairman, and I chaired a Select Committee in the other place as well. One of the difficulties is that we were inevitably working within time constraints that the House of Lords does not particularly have to take into account. That is something that could and should be reflected, and I hope will be reflected, in your report when you and your colleagues come to make it.

Q49 **Lord Low of Dalston:** Lord Norton has already begun to address a question I was going to ask. To summarise what you have been saying, Lord Norton, would it be correct to say that you want to see the combination of a thematic structure of committees and a structure that has some flexibility to depart from that where appropriate? It would be a combination of the thematic and the flexible?

Professor Lord Norton of Louth: Yes, absolutely. We need the overarching approach that the House can bring to bear, so that it avoids gaps in public policy coverage, but it is essential, perhaps now more than ever, that we have the particular flexibility we get through ad hoc committees. We identify that there is a particular problem that deserves inquiry and we can move fairly quickly to set up a committee. The initiative for that comes from Members having identified the problem and making submissions to the committee, so that the committee can then make recommendations to the House for ad hoc committees.

Lord Low of Dalston: You get the thematic from the top-down proactive approach.

Professor Lord Norton of Louth: Correct.

Lord Low of Dalston: And you get the flexibility from the more bottom-up nomination of ad hoc committees.

Professor Lord Norton of Louth: Exactly. That does not preclude, of course, if necessary, this committee taking the initiative on some sort of

problem when it arises, so that you are not solely dependent on Members recognising that there is a problem. There is no reason why the committee itself could not identify a particular issue that would merit attention and put that before the House.

You are absolutely right about the balance between the thematic approach, which I have characterised as the top-down approach, and the flexible, bottom-up approach that allows Members to come forward with proposals. I think it is to the benefit of the House that it can address issues that are particular and thus merit a one-off inquiry, but are also topical. The committees we have had in the past year bear that out.

Lord Cormack: We have to be both reactive and proactive. It is very important that we are in a position to look forward and that we can react quickly to a crisis that perhaps deserves attention, in a committee that can be a committee of real experts; one thinks of foreign affairs and so on.

Lord Low of Dalston: This committee takes the initiative, but it usually operates consultatively by asking people for their suggestions.

Professor Lord Norton of Louth: Could I follow up on the point about flexibility? We are flexible, but we are flexible on a sessional or a year-long basis; we set up a committee, it lasts for a year and it reports. There are issues flowing from that. Sometimes you might need a bit longer, and there are issues of privilege, of course, once it has reported and ceased to exist. There may be merit in being able to appoint committees for a shorter or a longer period, depending on the topic.

Lord Low of Dalston: Perhaps not being bound by the one-year cycle.

Professor Lord Norton of Louth: Correct. If you think about it, we have already changed the timeframe from sessional to one-year committees, to take account of the fact that we have a two-year Session. I am slightly prompted in this by the Leader's Group on Working Practices, the Goodlad report, in 2011. I am pursuing his recommendation for post-legislative scrutiny. His point was that committees could look at four Bills in the course of a year, so that it was not just one Bill per year. We could have a period looking at one Bill and then move on to another and so on. That may give some degree of flexibility in appointing committees, because some topics might not lend themselves to a particularly long inquiry. Some Select Committees do short inquiries and long inquiries. One might have that degree of flexibility with ad hoc committees.

The Chairman: I think the British Academy report yesterday aligned with your view, in that you can have both flexibility and the strategic element combined if the committee has a bigger footprint.

Professor Lord Norton of Louth: Absolutely, yes. There might be flexibility with Select Committees being able to appoint sub-committees to investigate a particular topic.

Lord Williams of Elvel: You talked about the ability of this House to look at the longer term rather than the shorter term. Is that not compromised slightly by Dissolution, when committees are dissolved? Would you recommend that we change that rule?

Professor Lord Norton of Louth: Yes.

Lord Cormack: I certainly would, because the fact that we are a continuing or undying House, and are not bound by electoral cycles in the same way, means that there is a great deal to be said for that difference being recognised. Because of continuity of service, we need to look at how long people are appointed for. We are too restricted in this House. In the other place, as the Lord Chairman knows, because he did two terms, I think I am right in saying, as Chairman of the Treasury Committee, they do not have that inhibition. We are too inhibited, given the fact that we are a complementary House, and that we are such a different House in composition.

Professor Lord Norton of Louth: I know this will be dear to Lord Cormack's heart. It is not just the cut-off of Dissolution; it is the fact that committees are appointed sessionally. The committees carry on, but the membership changes sessionally, even though there is normally rotation and you are reappointed, but it seems a bit archaic.

Lord Cormack: The operative word being "normally".

Professor Lord Norton of Louth: Indeed, but why not appoint members for a fixed period?

Lord Williams of Elvel: The problem with what you are suggesting is that at the moment, and possibly for ever, the Whips determine who will sit on committees.

Lord Cormack: I would like to come to that later, if I may.

Lord Williams of Elvel: Right. I will reserve that question.

Q50 **Lord Low of Dalston:** Lord Norton, a major thrust of your written evidence was your recommendation that there should be two sessional committees, one on legislative standards and one on post-legislative scrutiny. Can you expand a bit on the benefits that you think those committees would offer?

Professor Lord Norton of Louth: Certainly. On legislative standards, it would improve the quality of legislation that is brought forward, because at the moment we are dependent upon government applying its own standards. We are then the recipients of Bills coming forward in whatever form government has dictated they shall be crafted. There is merit in ensuring that we are in a position to check each Bill, not so much for the substance or the merits, as that is up to the House when the Bill is debated, but that it complies with certain criteria, certain standards.

In that regard, the 2011 Goodlad committee was rather good in identifying the sorts of standards that would apply. It did so on an indicative basis. It did not say what they would be, but it said: "The exact content of the legislative standards form would be for further discussion. However, we expect it to include: A clear and unambiguous statement of the policy intention or intentions of the legislation, and of the desired outcomes". That is extremely important and would tie it to post-legislative scrutiny, because you would get a statement of the purpose of the Bill and how you would know whether it has succeeded. That would then create the basis on which a post-legislative scrutiny committee could examine the Bill fairly objectively.

The Goodlad committee goes on: "An explanation of why legislation, rather than other means, was necessary to fulfil the policy intention, and why such legislation is being brought forward at this time ... A summary of the Government's response to pre-legislative scrutiny on the bill, and, in cases where a bill was not published in draft, an explanation of why it was not ... An outline of how the bill relates to existing Acts, and whether opportunities to consolidate such legislation have been considered ... An informal Keeling Schedule (not part of the bill) showing in greater detail the effect of amendments to earlier Acts ... A list of any new criminal offences created by the bill, and a summary of how they relate to existing offences ... A summary of any consultation undertaken in preparing the bill ... An estimate of the costs of preparing and implementing the policy set out in the bill (including a regulatory impact assessment) ... An indication, where appropriate, of targets and performance measures for implementation".

The report suggests we could depart from that as appropriate, but it strikes me that those are very good criteria that a committee could utilise, and I think the rigour that that would impose on government would be good in itself. There is a strong case for a legislative standards committee, and of course that case has been made by a number of committees, including the Lords Constitution Committee.

A committee on post-legislative scrutiny derives, as I mention in my submission, from the Constitution Committee report of 2004. We recommended pursuing a post-legislative scrutiny committee, ideally a Joint Committee, but if necessary a committee of the Lords. I think that would shift things quite fundamentally in how we view legislative success. Traditionally, Ministers and some Members have treated success as Royal Assent: "Oh, we have got the Bill through. It has Assent. That is success". No. You should assess it on whether it has had the impact it was intended to have. That is success.

The Government accepted that three to five years after enactment a measure should be subject to review, so we have departmental reviews of Acts, and the reviews are published and sent to departmental Select Committees in the Commons, but, of course, they do not have the time to chase up and do their own reviews. That is something that needs to be done. It plays to the strengths of the Lords. We can do it because it is

objective; it is not questioning the merits of the measure and it is not political, but whether it has delivered on what it was intended to achieve.

The two proposals link and we come full circle, because we look at what was identified when the Bill was introduced as to its purpose and the criteria by which you determine success. Then we have post-legislative scrutiny; the committee will determine whether the measure has delivered on what it was intended to achieve and could then engage in dialogue with government as to whether change is needed.

Lord Cormack: Of course, there are whole chunks of Acts that are never properly enacted.

Professor Lord Norton of Louth: Yes. That was something we looked at in 2004: do you look at the period after enactment or the period after commencement, because some Acts are never brought into being? I highlight the fact, of course, that it would play to our strengths, because we already now have, each year, an ad hoc committee engaging in post-legislative scrutiny. What we have seen today shows the value of the exercise, with committees on adoption, on mental health and so on, all doing very good work.

Baroness Hayter of Kentish Town: What you read out from Goodlad is exactly what I think every Act should do. What I cannot get my mind around is how a committee would do that. It seems to me that that is a policy decision we somehow need the Government to sign up to, because, if a Bill started in the Commons, it has already gone through taking public evidence and so on, before it comes here. In a sense, it is what we have been doing on the Floor of the House with the withdrawal Bill, looking at the criminal offences and so on. I do not quite understand how you would put that into a Bill that had already come from the Commons on a regular basis. It sounds to me as if it is slightly replacing our committee thing, and what seems more important is to try to get them to adopt the recommendation that every Bill should say what its purpose is.

Professor Lord Norton of Louth: Yes.

The Chairman: Lord Lang, is your question on the same point?

Lord Lang of Monkton: It is slightly different, I think. I will be very brief. I cannot remember whether you were still chairman of the committee when that recommendation came out, Lord Norton. I think I was on the committee, so I will not be very critical of the suggestion. I am concerned that the creation of these committees, on top of what is there already, could create a danger of overlap and possible intervention. For example, the Constitution Committee is always very careful, as you and I both know, not to intrude into the territory of the Delegated Powers Committee.

Professor Lord Norton of Louth: Indeed.

Lord Lang of Monkton: I fear there would be some overlap and some problem of treading on toes.

Professor Lord Norton of Louth: I do not think that problem would arise in respect to both questions because the committee would not be putting anything into the Bill. It would merely check the standards on the way the Bill was brought forward. Goodlad recommended that it would be when Bills came to the Lords, so they would report in the normal way. It would check whether the standards had been met. It is not the substance of the Bill; it is a statement of what the Bill is intended to achieve and whether we have that, and whether there has been consultation. It would be making sure there is rigour, checking whether there has been rigour, and informing the House what has taken place. Has there been legislative scrutiny?

Baroness Hayter of Kentish Town: That would have to happen within a week or two. It would come out from the Commons on Third Reading. We would go into First Reading on that day, presumably, and then two weeks later we would have Second Reading. That piece of work would have to happen in that period.

Professor Lord Norton of Louth: You can do some prior research, but of course a lot of it would come in a memorandum from the Government, pretty much as you get with European proposals. The explanatory memoranda from the Government go through the legal base for the proposal, and things such as that. It would be imposing rigour on government and we would be checking that they had complied with it because they would be saying what they had done. You would look to government to come forward with an explanatory memorandum, pretty similar to what Governments provide in the context of the EU.

On Lord Lang's point, one would avoid overlap. In the Constitution Committee, we are not so much looking at the process of the preparation of the Bill; it is more the constitutional standards that are engaged, which is separate from procedural standards.

Lord Lang of Monkton: Yes, I agree, but one merit of the Constitution Committee is that it has a fairly broad, free-ranging capacity.

Professor Lord Norton of Louth: Yes.

Lord Lang of Monkton: Except where it treads on the toes of the secondary committees. Would some sort of protocol be needed to define the distinction of powers between the two?

Professor Lord Norton of Louth: One would probably get that through the terms of reference, and then one relies on communication between the clerks, as one does with delegated powers and so on, just to ensure that there is no overlap, or, for that matter, duplication because there is no point in one committee doing it if the other is doing it already.

Lord Lang of Monkton: Quite.

Professor Lord Norton of Louth: I do not think it would be a significant issue because the Constitution Committee is concerned with what is actually in the Bill and the constitutional implications, whereas this would

be more to do with process, consultation and clarity. I do not think there would be significant overlap.

The Chairman: I am mindful of additional questions. If you feel an additional submission is in the air, do not hesitate to send it to us.

Lord Williams of Elvel: Would you include Finance Bills in legislative standards?

Professor Lord Norton of Louth: I do not see why not. This has come up in different contexts, including pre-legislative scrutiny. The general view is no, you must not include Finance Bills, and then people who are expert in finance say: why not? There is no reason why not.

The Chairman: If you could give us that in writing, it would be very good, because it is a very sensitive subject. We will make it late-night reading, with a whisky.

Professor Lord Norton of Louth: As I said, it is to do with process, not substance.

Q51 **Baroness Garden of Frognal:** This is principally for Lord Cormack, but obviously Lord Norton may have views, too. Your evidence suggests that House of Lords committee chairs and members should be elected in a similar way to the House of Commons. What benefits do you think that would bring, and are there other ways in which committees might be more transparent?

Lord Cormack: As a prefatory comment, I believe that the House of Lords has neither point nor purpose unless it is able, within the constraints in which we operate, to challenge government. There is not only the right but the duty, without fear or favour, to ask the House of Commons to think again.

Baroness Garden of Frognal: The *Daily Mail* does not think so, I am afraid.

Lord Cormack: The *Daily Mail* and I do not always agree. I believe that the House of Lords is fulfilling its duties if it exercises those powers, always recognising that at the end of the day, which must not be too protracted, the elected House must prevail.

By the same token, I believe that every Select Committee in both Houses should be as unfettered as possible. When I chaired the Northern Ireland Affairs Committee—not an easy committee to chair—in the other place, all our reports were unanimous. Only one member of my own party was on the committee. The Northern Ireland parties that took their seats in the Commons were all represented and there were seven members from the government party, then the Labour Party. We addressed issues without fear or favour. This House, even more than the other place, should not have party discipline imposed upon it or threatened.

I made my submission because of the way in which a number of us were treated last year. There were some eight or 10 people who in the Article 50 Bill voted for two amendments. We were all removed from our Select Committees, or in my case a sub-committee of the European Union Committee. Although I say it myself, my attendance record had been impeccable. I had taken a proper part in the discussions, examination of witnesses and all the rest of it, and I know that the others—I can name two, Lord Inglewood and the Duke of Wellington—approached it in the same way. We were all removed.

Baroness Garden of Frognal: That was a party decision presumably. I am not aware that the Liberal Democrats or Labour have done that.

Lord Cormack: It was a party decision. We were informed that we were not to be reappointed to our committees, even though we could have been reappointed, in my case for at least another two years. That highlights the fact that if you are to have independent, respected Select Committees, the powers of the Whips should be severely restricted; indeed, I would say they should not be there.

I would favour one of two courses: either the election, as they now have in the other place, of the chairmen of Select Committees, and indeed the members of Select Committees; or the alternative Lord Norton and I were discussing yesterday, when we were considering this session with you, that there should be a respected committee, chaired perhaps by the Lord Speaker or by the Senior Deputy Speaker and it should be the body that would select the members of Select Committees and the Select Committees themselves should then elect their chairmen.

Either of those would be acceptable and would underline the fundamental impartiality, because, of all parliamentary bodies, a Select Committee must be able to look at an issue on its merits, take evidence from witnesses, come to its conclusions and then make its recommendations to the House. What the House does with them is up to it. What the Government respond is up to the Government, but I believe that is fundamental to a vigorous free Parliament, and I believe that what happened last year was deeply unsatisfactory.

Baroness Garden of Frognal: Who would actually do the electing?

Lord Cormack: The House.

Professor Lord Norton of Louth: On the latter point, about chairs, the Goodlad committee in 2011 recommended that each committee should elect its own chairman.

Lord Cormack: Yes. In other words, if we were a committee, the first action would be to decide who should take the chair.

Professor Lord Norton of Louth: You might want to follow Commons practice by giving a steer as to which party should have the chair—something of that nature—to ensure a balance across the House.

Lord Cormack: Yes.

Lord Lang of Monkton: Lord Cormack, you and I sit at slightly different positions on the long line of loyalty to party. I spent five years as a Whip in the other place.

Lord Cormack: Indeed you did.

Lord Lang of Monkton: The iron entered my soul, and most of the time I am on my knees before the Whips' Office. You are free-ranging and that is highly commendable. I do not think either of us need apologise for the position we take, because this House depends on a broad range of limited or total commitment to party as well as to the overall interests of the House. I do not think that is the issue before us. What you suggest, far from maintaining impartiality and the broad-ranging setting aside of party affiliations, would have the reverse effect. If people have to stand for election, the whole tone of the committee structure would change. I would not have become chairman of a committee if I had not been asked to do it. I would not have stood for election, and I suggest a lot of Members of the House would not have dreamt of standing for election; it implies that you have a manifesto, a particular posture and that, therefore, the committee would become steered.

In the present structure, there is a rotation between the representatives of different parties, with the smaller parties usually represented in smaller numbers, which is fair but obviously one can understand that they might feel aggrieved. It works well because everybody sets aside their partisan approach as they go in. I find it very easy to completely set aside, and indeed I made myself the considerable enemy of the Whips' Office on a certain number of issues, and was extremely rude about the Government on occasions. By standing for election, you would affect the agenda of the committees and the tone of the committees, and change the nature of the House, because the committees are an important artery of the work of the House.

Lord Cormack: That is a fair point. When I was on the Front Bench in the other place, I completely accepted the doctrine of collective responsibility and never once transgressed, because that was a particular role one had, and one's arguments took place behind the scenes. But to give the impression that there is political punishment for those who seek to do their duty on Select Committees is deeply regrettable. When I was answering an earlier question, I said that Lord Norton and I were discussing this yesterday, and I believe that the alternative is to have a Committee of Selection, presided over by either the Lord Speaker or the Senior Deputy Lord Speaker, and that would remove the power and influence of the Whips. Those are two alternatives that I place before the committee.

Professor Lord Norton of Louth: That point has been touched on. I think you can move away from the power of the Whips without going to the election of members, for the reasons you mentioned; it becomes, to some extent, a popularity contest rather than members being selected on

the basis of skills. There is merit in having a council of elders, a senior committee, which itself may possibly be elected, whereby senior figures can undertake a skills audit, identify what the committee needs and then decide who is best placed to fulfil that need. We have the rotation rule, and you may want to move away from sessional appointment and appoint a member for, say, a three or four-year term to get some degree of continuity. I take the point that the appointment should be based on the merits of the particular member relative to what we expect of the needs of the committee.

The Earl of Courtown: You talked about the fundamental differences between the two Houses that mean that one cannot actually put in place what happens in the other House in this House. When was voting for committee chairmen and membership of committees started in the Commons? Was it while you were the Northern Ireland chairman?

Lord Cormack: No. I was appointed in the same way as Lord Lang was appointed.

The Earl of Courtown: The impression I got from what you were saying was that, in the way the committee was formed, you all worked together and you left your party affiliations behind. Was that an appointed committee or an elected committee?

Lord Cormack: It was an appointed committee, and it worked extremely well. It worked very well indeed, and I have no complaints about that. The other place then brought in an election system, and I flew that kite because I was so concerned about what had happened in our House. As I said, and have repeated, I am entirely happy with the sort of alternative suggestion we have touched on.

Q52 **The Earl of Courtown:** Earlier, you repeated the fundamental differences between the two Houses. Lord Norton talked about flexibility and how our committees, comparing both Houses, are distinctly placed to cover gaps. How important do you think it is to avoid overlap between committees in both Houses, or do you think it is an interesting concept that we get overlap to promote other ideas and look at things in a different way?

Professor Lord Norton of Louth: There is an obvious need to avoid overlap in inquiries but not necessarily a need to avoid overlap in remit, because we already get that to some extent. We have it with Science and Technology, and we have it with the Constitution Committee in the Lords and the Public Administration and Constitutional Affairs Committee in the Commons. I do not see a particular problem as long as there is communication between the committees to avoid duplicating what they are inquiring into. The sorts of areas covered by the remits are so large, and there is so much that can be explored, that one committee will not make a fantastic difference on its own. There may actually be merit in committees in the two Houses looking at different aspects of a particular sector.

Lord Cormack: There is another point. How do I put this without sounding unkind? There is significant lack of understanding of what this House does in the other place, and that is not helpful to the functioning of Parliament. At the meeting the Lord Chairman attended yesterday, we discussed Joint Committees. I have served on Joint Committees and I think they can have a very important role, but, as Lord Norton and others pointed out yesterday, often there is a very good turnout from one House and not from the other. It even happened in the Joint Committee looking at the so-called Clegg Bill a few years ago.

I have come up with an idea that I think is worth reflecting on. There would be some merit in having a couple of Members from this House on certain committees in the Commons and vice versa. Those people would make a commitment to attend, and would attend, and it would create a degree of liaison and mutual understanding that does not exist at the moment. It is important that we understand the complementarity of the two Houses better than we do. The problem is not so much in this House, because a significant number of us served in the other place—some of us for a very long time; I was there 40 years—at the other end of the Corridor. I was attending a dinner last night with Members from both Houses, and there is not sufficient understanding of exactly what are our rights and what are our limitations, particularly our limitations.

I would have found it very helpful, for instance, on the Northern Ireland Affairs Committee, if I had had a couple of Members from the House of Lords able to attend and contribute from their knowledge and understanding, not necessarily with voting rights, because that is a different matter; we did not actually have votes on our committee, but occasionally there might be a need for one. I think that is worth reflecting on.

The Chairman: I think I mentioned at the meeting yesterday the evidence of Sarah Wollaston at the Liaison Committee meeting and an informal chat I had with Frank Field on that very point, so we are pursuing that issue. I think it is very good.

Lord Cormack: Yes. I think that is very good. Excellent.

Q53 **Lord Smith of Hindhead:** My Lords, I very much hope that I am still in the House in 10 years' time and indeed, God willing, in 20 years' time.

Lord Cormack: Good. Excellent.

Lord Smith of Hindhead: I am asking you both to get out your tea leaves, and look into the future and let us know where you think House of Lords committees should be in 10 or 20 years' time. It is not a trick question.

Lord Cormack: I believe that there is a continuing role for a complementary, non-competitive second Chamber. The Campaign for an Effective Second Chamber has had two fundamental principles from the moment we began. That was one. The other was the supremacy of the elected House. Those remain absolute, as far as we are concerned.

I hope that in 10 or 20 years' time there still will be a slimmed-down second Chamber. I am strongly in favour of a smaller second Chamber. I absolutely subscribe to the Burns committee report. Indeed, there may be a case for taking it even further. I hope there will be and I hope you will be in it. In 10 years' time, I will be nearly 90 and in 20 years' time I will be 100 and I do not think I will be in it, but I very much hope that you will be.

Lord Smith of Hindhead: Excellent.

Professor Lord Norton of Louth: Focusing on committees, I hope this is where we will be in 20 years' time, but certainly from a prescriptive point of view, a normative point of view, where we ought to be would be having committees that achieved three things, and that would be the criteria by which one assessed their success. The first thing would be making a difference to the content and quality of legislation; the second would be informing and shaping debate, which is especially important when new issues come on to the political agenda; and the third would be being recognised by the public, the media and organised interests for making a difference and for being valuable. They would, therefore, be a target for public and organised interests to make representations; they would be a success in both a policy-focused approach and an outward-looking approach. That would be building on our strengths but in a more systematic, comprehensive way.

Lord Smith of Hindhead: But that is the difficult point for the House of Lords, is it not? We are not here to engage with the public to that extent. We are here to advise government and to provide scrutiny and all those things. There is a slight difference. You mentioned Twitter accounts at the start of this discussion. Is that really what we are about?

Professor Lord Norton of Louth: It ought to be, because you cannot divorce the two. We cannot advise government on legislation, I think, without engaging with people outside who can give us some input to help inform us in the process. We cannot operate in isolation, nor should we. We benefit from that engagement. One of the fundamental roles of Select Committees in both Houses is to engage in a dialogue with interests outside. We need their input, but of course our output shapes how they see things as well.

Lord Cormack: That is terribly important because Parliament is answerable to the people, the Commons in a very different way from this House, but we are part of Parliament and that is very important. In 10 or 20 years' time, I hope every Act will have had pre-legislative scrutiny and post-legislative scrutiny, and that where it has not been enacted or it has been proved to be ineffective it is expunged from the statute book automatically after a five-year period. That is the way we should move forward.

The Chairman: We have five minutes left, so we will take two questions, from Baroness Hayter and Lord Lang.

Baroness Hayter of Kentish Town: I was going to ask about the purpose of committees, but I will ask you to send us a note on it. Lord Norton, you said it was making a difference to the content of legislation, shaping debate and being recognised outside for making a difference. That could be a definition of the House of Lords rather than of House of Lords committees. We may not have time now, but if you were able to finesse what you say you want Acts of Parliament to do, which is to say what is your purpose, and to send in what you think is the purpose of committees as opposed to the purpose of the House of Lords, I for one would find that really useful.

Professor Lord Norton of Louth: Yes.

Lord Cormack: I think we might even have a session in our campaign on that very subject.

The Chairman: That would be good for public engagement.

Q54 **Lord Lang of Monkton:** My question is very short, and I will express it as a "Today" programme quiz question of the day. You are both arguing in favour of expanding the number of committees and reducing the size of the House of Lords. What is the optimal size of the House of Lords in that context? You must have considered it.

Lord Cormack: Yes, very much. Burns probably got it about right. I do not think we could perform all our duties with a membership of less than 550. Burns is probably about right, and I hope we can get there rather more quickly than present indications suggest.

Professor Lord Norton of Louth: I agree with that in principle. You do not want too small a membership, because you want a reasonably large pool from which to draw, to fulfil the very tasks that we have being identifying. In a way, you need the large pool as well, because you need people who are still doing things outside.

Lord Lang of Monkton: Yes.

Professor Lord Norton of Louth: In effect, we are a full-time part-time body, and we can draw on that expertise. That is extremely important and should guide our thinking on these points.

Lord Lang of Monkton: I am glad to hear that. Thank you.

The Chairman: Good. Lord Norton, if I could sum up, you said at the beginning that you would provide an additional paper for us on post-legislative scrutiny, elaborating on the three points you mentioned: content and quality, public understanding and engagement. We look forward to that. I am very sorry to give you additional homework, but we look forward to it, and we will mark it very studiously.

Professor Lord Norton of Louth: I hope I get a high mark for it.

The Chairman: Thank you very much, and thank you for your evidence.

Lord Cormack: I hope this will be the beginning of engagement with our group and yours.

The Chairman: This is Member engagement. The report is very important and we will keep that dialogue going. Thank you.