House of Lords

Tuesday, 21 June 2011.

House of Lords: Reform

Motion to Take Note

3.06 pm

Moved By ***Lord Strathclyde***

> That this House takes note of the Government's proposals for reform of the House of Lords set out in Cm 8077.

The Chancellor of the Duchy of Lancaster (Lord Strathclyde): My Lords, I am sure that all will agree that this is a special occasion. The House and the Galleries are full and there is an air of expectation. While some noble Lords may feel that 100 speakers during the course of the next two days is too much for them, I know that by 10 o'clock tomorrow evening we will be as fresh and as inspired by the speeches that we have heard as we are now.

Over these past few days I have been gently teased by noble Lords and others, who have speculated as to how many speeches will be in support of the Government's position. However, as a veteran of these debates, I know that there will be a wide range of views explored and exposed. That is one reason why I am so grateful that my noble friend Lord McNally will be dealing with those views at the end of the debate tomorrow evening.

For over a century, successive Governments and Parliaments have debated reforming this House, but this Government set out their proposals-incidentally, the first Government ever-on 17 May in a draft Bill for a reformed House of Lords. As we made clear in that Statement, a debate would follow, and I very much welcome this opportunity to listen to the views of noble Lords on the draft Bill and the White Paper. I particularly welcome the contribution of my noble friend Lord Strasburger, who will speak for the first time in his maiden speech later today.

The background to the debate is consensus. Consistent with that approach, the Government have made clear their intention to listen and to be prepared to adapt as we navigate our way through this latest twist and turn in what has been one of the longest of long stories. We want to get these proposals right, but we are also committed to reforming the House to create a wholly or mainly elected second Chamber. Both the Liberal Democrat and Conservative Party manifestos, as well as the coalition programme for government and, indeed, the Labour Party manifesto, made that clear. Therefore our intention is to introduce a Bill next year and to hold the first elections to the reformed House in May 2015.

The long-standing role of this House as a revising and scrutinising Chamber is immensely valuable. This House frequently revises legislation for the better and holds the Government to account by effectively questioning and debating proposals. This is the traditional role of a second Chamber and is why many countries choose to have one-to provide that second view, from a different perspective. No one can doubt the commitment and sense of public service with which many noble Lords exercise these functions and no one can doubt the expertise in this place, which is used to great effect.

The Government therefore do not propose to change the role of this House. However, we believe that the composition of this House should be decided, either mainly or wholly, by the people of this country by direct election. This House, although it has many party-political Members, does not have democratic authority from the people it serves. Elections will establish a democratic legitimacy for our work to be carried out. Noble Lords will no doubt ask what democratic legitimacy will add. They will suggest that there are forms of democratic legitimacy other than election. To them, I say that elections will strengthen Parliament by making Members of the reformed House more representative of the people and able to act with their authority. Every five years, people-not party leaders-will decide who to send to do the work of this House; and they will be able to decide not only who but in what political proportions. Surely that is an incontestable right. We elect Members of the other place, we elect Members of the devolved legislatures and we elect local government-why should we not elect Members of this great House of Parliament?

Yet the Government recognise that the increased legitimacy that elections will bring gives rise to concerns that the primacy of the other place will be threatened. The primacy of the House of Commons is secured in statute by the Parliament Acts and on a day-to-day basis by the conventions between the two Houses. The draft Bill specifically provides that the reforms will not change the Parliament Acts, the conventions between the two Houses or the relationship between the two Houses. I am aware, from our previous exchanges on this issue, that many noble Lords do not entirely agree with that. Of course, over time, as indeed has been the lesson of the 20th century, these arrangements and conventions may-indeed will-develop and evolve. However, for now, we proceed recognising the present settlement between the two Houses to be adequate for the reforms being discussed. On top of that specific proposition, our proposals also contain important practical measures to reinforce the primacy of the House of Commons.

First, Members will serve long single terms, with no prospect of re-election. Noble Lords rightly esteem the independence of spirit that differentiates this House from the other place. Long single terms will uphold that independence, since elected Members will not be motivated to speak with a view to contesting the next election. They will prevent the reformed House of Lords challenging the primacy of the House of Commons because elected Members will not be accountable to voters in the same way that MPs are to their constituents and they will be less likely to compete with MPs at a local level.

Secondly, elections will be staggered. At each general election one-third of Members will be elected, which will ensure that Members of the reformed House, collectively, never have a more recent mandate than MPs. The House of Commons will determine who forms the Government. Our proposals will reinforce the distinctive character of each House by reducing the chances of one party gaining an overall majority in this House.

Thirdly, there is provision for a 20 per cent appointed element. If that is where we end up, it would mitigate the reformed House's ability to claim greater legitimacy and thereby challenge the primacy of the House of Commons. Appointed Members would be expected to bring a non-party-political perspective to the work of this Chamber as well as unique expertise.

Finally, a proportional electoral system will differentiate this House from the other place. Proportional representation systems are based on multi-member constituencies, which are larger than those used for the House of Commons. This will provide Members with a mandate that is distinct from, but complementary to, that of Members of the other place.

The coalition agreement set out our commitment to a system of proportional representation for elections to the second Chamber. The draft Bill sets out proposals for the single transferable vote proportional system. STV offers a clear link between voters and individual candidates, as candidates are selected solely on the basis of the votes that they themselves achieve. However, the Government also recognise and are open to the arguments for an open list electoral system, which would also allow voters to vote for a single individual candidate rather than for a party.

There are also further details outlined in the Bill-for example, on new powers to deal with misconduct. The draft Bill provides for disqualification for serious criminal convictions and certain insolvency-related matters, and the power to expel Members. It also provides an enhanced power of suspension. I am sure that noble Lords will welcome these proposals.

Some have concluded that we are, in effect, abolishing the House of Lords.

Noble Lords: Hear, hear!

Lord Strathclyde: My Lords, with the greatest respect to the growl of approval that I hear around the House, I think that is nonsense. We are not seeking to change the powers, role or functions of the House. Yes, we are going to introduce elected Members, but the House already has a majority of party-political Members. Many of our proposals have been recommended in the past, not least in the Royal Commission chaired by my noble friend Lord Wakeham in 2001 and, more recently, in Jack Straw's White Paper of 2008.

Another key element of the Government's proposals is an orderly process of transition. We value the experience, knowledge and expertise that this House has accumulated. We have set out three options for transition, all of which allow for a period when existing Peers would work alongside new Members to transmit knowledge and ensure that the House continues to operate effectively. The draft Bill provides for one of those options, whereby numbers of Members of the present House would be reduced in thirds corresponding to the arrival of new Members in thirds. The views of the House will be invaluable in determining the final proposals on this issue.

There are other elements that will continue unchanged. The White Paper sets out how the right reverend Prelates on the Bishops' Bench will continue to be an important part of this House, at least in the 80 per cent model. The House will continue to determine its own working practices, its Members will not have constituency responsibilities, and the focus of their activities will continue to be this Chamber and its committees. Members will continue to receive a Writ of Summons and appointed Members will still be appointed by Her Majesty. The second Chamber will continue to fulfil its ceremonial duties in our constitutional system.

The next stage is for pre-legislative scrutiny of the draft Bill and the White Paper on a cross-party basis by a Joint Committee of both Houses. On 7 June, this House agreed to the establishment of that committee. The Lords Members of that committee have been proposed by the Committee of Selection, whose report is available in the Printed Paper Office. I am very pleased that the usual channels have agreed that the noble Lord, Lord Richard, should take the chair. In chairing that committee, he will bring years of experience and knowledge at the highest level, not least as a former Leader of this House. Pre-legislative scrutiny will allow those inside and outside Parliament

to examine and contribute to the debate on the proposals. We welcome a wide variety of views and perspectives on those proposals.

I turn to the Motion tabled by the noble Baroness, Lady Boothroyd, to which she will address herself later this afternoon, which calls on the Government to bring forward proposals for incremental reforms to the existing Bill. It will not have escaped your Lordships' notice that a Private Member's Bill in the name of my noble friend Lord Steel of Aikwood is before the House, and it includes incremental changes-the establishment of a statutory appointments commission, ending by-elections for hereditary Peers, introducing permanent leave of absence and dealing with those convicted of a serious criminal offence. I am delighted to say that all these issues are included in the Government's draft Bill. However, the proposals in my noble friend Lord Steel's Bill are in the context of a wholly appointed House, whereas the Government are committed to a wholly or mainly elected second Chamber, as set out in the draft Bill.

It is time for this great story of House of Lords reform to take its next step forward. This second Chamber has long held successive Governments to account. It has scrutinised and improved legislation. It has produced better laws and has made Governments think again. This need not change. However, the Government believe that in the 21st century it is right that this place should be underpinned in its work by a democratic mandate. Both Houses of Parliament should enjoy the confidence of the people.

We will listen and engage with all those with a variety of views. We will adapt and be flexible where possible. We will proceed with consensus if, as we very much hope, that is possible. However, the central principle of legitimacy through election should not be forsaken. This long story has taken many twists and turns, but now is the opportunity-perhaps the only opportunity we will have this generation-for a Government finally to act. I beg to move.

3.21 pm

Baroness Royall of Blaisdon: My Lords, this is an important occasion. It is far from the first time that this House has considered its own future, but it is the first time that it has considered a substantive piece of legislation on that subject-what used to be known as second-stage reform. What a pity that, as a substantive piece of legislation, the draft Bill in front of us is such a bad one.

Getting this House right is important, important to us all here as Members of your Lordships' House but important too to our legislative process, our Parliament, our politics and our constitution. At the same time we need to remember that reshaping our constitution, though undeniably important, does not rank high in the priorities of what the public want us as politicians to do. The public's concerns need to remain our concerns, such as jobs and the economy, health and education. Many of the Government's Bills that this House either is scrutinising now or will have before it soon concern these areas. Whatever else the outcome of the alternative vote referendum last month showed, it showed that the public have little interest in the kind of constitutional reform proposed. In our debate on these issues over the next two days and beyond, we would all do well to keep that important calibration in mind.

This House must not be obsessed with itself. The House of Lords needs to be about much more than House of Lords reform. This House is sometimes castigated as resistant to reform and its Members are characterised as roadblocks to reform, but I do not believe that that is true. This House has in fact seen real, repeated reform, in 1911 with the removal of the fiscal powers and the shifting of its right of veto to a right of delay; in 1949 with further changes to its delaying powers; in 1958 with the introduction of life peerages; in 1963 with changes to peerage succession; in 1999 with the

removal of the majority of hereditary Peers; and in 2004 with the separation of powers between the legislature and the judiciary, with the ending of the Lords as the final court of appeal and the establishment of the new Supreme Court-evolutionary change over a long period of time, but regular repeated reform.

For some, that rate of reform is too slow. They want further and faster reform. I understand that, but reform is difficult and takes time. My party has long been committed to reform. In our 1945 manifesto, for example, when a great reforming Labour Government were swept to power by a popular vote, we said,

> "we give clear notice that we will not tolerate obstruction of the people's will by the House of Lords".

In 1964, when we were again returned to power, our manifesto said,

> "we shall not permit effective action to be frustrated by the hereditary and non-elective Conservative majority in the House of Lords".

In 1997 our manifesto said:

"The House of Lords must be reformed",

and proposed both an initial self-contained reform to remove the right of hereditary Peers to sit and vote and a Joint Committee of both Houses of Parliament to propose further reform. In 2010, we proposed further democratic reform to create a fully elected second Chamber, to be achieved in stages with the promise to put such proposals to the people in a referendum. That was the case I argued as a member of the committee chaired by the Deputy Prime Minister which, following the outcome of the general election last year and the formation of the coalition Government, was charged with bringing forward legislation on further reform of your Lordships' House.

We believe that it was right to take part in that process, but I want to make it absolutely clear that what we have before us today-the latest attempt at reform in the shape of the Government's draft Bill and White Paper-is not a product of that process. The Leader of the House was right to issue a correction to his Statement in the Chamber recently that the Clegg committee met as many as nine times; it did not-in fact, it met seven times. Not only did the last meeting of the committee take place six months before the White Paper and Bill were finally produced, at no point did the Clegg committee ever see anything other than policy papers. It saw no White Paper, it approved no White Paper. It saw no draft Bill, it approved no draft Bill. The draft Bill and the White Paper are not a product of that committee. It is a stand-alone Bill-a coalition Bill. Indeed, given the lack of support for the Bill on the Conservative Benches in both Houses, it is a Liberal Democrat Bill.

We as a Labour Party are committed to reform of this House; that is a long-standing policy. However, following our general election defeat and the election of a new leader of our party, we are undertaking a fundamental review of all aspects of policy. Labour members and supporters are entirely able, if they so wish, to argue for a review of our party's support for an elected House. That is their right and their opportunity. Within the present policy position there are certainly differences of opinion on the Benches behind me. Many observers will expect my Benches to be divided on the issue, as are the two parts of the coalition on the Benches opposite. Indeed, many Labour Peers-almost certainly a clear majority-are opposed to direct elections of this House. I acknowledge and accept that. It is not my personal opinion, I am in favour of election and I have voted that way, but I recognise that many of my colleagues believe that further fundamental reform of your Lordships'

House, and especially the introduction of direct elections, would damage the House, politics and the constitution. These are genuinely, often passionately, held views. They are not my views, but like my party, I respect them and those who hold them.

We on these Benches have our differences but the main issue on which these Benches are completely united is in our belief and judgment that this is a bad Bill. That is the fundamental difference between these Benches and the Benches opposite, because the Benches opposite are fundamentally divided. The Leader of the House argues the Government's case for reform. He has done so in his speech today; he did so when publishing the Bill; and he has done so in media interviews given since its publication, though in some, such as last weekend, he seemed to give slightly different messages. However, the words "Conservative" and "Lords reform" do not sit easily in the same sentence. It is transparently clear that in setting out the case for reform the Leader of the House does not have the support of the overwhelming majority of Conservative Peers and Conservative MPs, or perhaps of Conservative Party members and Conservative supporters.

The only reason the Conservatives are able to pay lip service to the notion of reform is because essentially they do not believe that Lords reform and, indeed, the Bill before us today will actually happen, particularly in the light of the outcome of the AV referendum. The Conservative position is fundamentally divided from that of their coalition partner. The Liberal Democrats, and the Liberals before them, have long supported further fundamental reform of this House-indeed, a fully elected House. We all thought that we understood that. We all thought we knew that that was their position but now we find, following the survey by the *Times* newspaper, that that is not the case. Indeed, we find that, according to the survey, far from unanimously supporting a fully elected House-their party's policy-Liberal Democrat Peers are split right down the middle over whether this House should be elected at all. Further, we find that the Leader of the Liberal Democrat Party-the Deputy Prime Minister-is not supporting his own party's policy either. In putting forward this draft Bill, the Deputy Prime Minister is not arguing in favour of a 100 per cent elected House but an 80 per cent elected House, as set out in the draft Bill.

For those of us not in the Liberal Democrat Party, these are deep and murky waters-waters so impenetrably deep and murky that the rest of us may not, sadly, be equipped to comprehend them fully, or indeed at all. No doubt, if you happen to be a member of the Liberal Democrat Party, all is clear to you. The rest of us await elucidation with interest. I suspect that the debate-

Lord Phillips of Sudbury: I thank the noble Baroness for giving way, but I cannot resist asking her, what are the differences between the splits on her Benches and the splits on these Benches?

Baroness Royall of Blaisdon: My Lords, I have explained that I fully accept that there are splits behind me, and everyone knows that. We have been totally open about that, but we are united in our view that this is a bad Bill. That is where the difference between my Benches and the noble Lord's Benches comes.

The debate will also demonstrate that the clear and united view on these Benches is, as I have said, that this is a bad Bill accompanied by an inadequate White Paper. Even for a Government who are making it their specialist subject to bring .forward bad Bills, this is a very bad Bill. It is a bad Bill because it is badly done and because it is not up to the task that it is addressing. The Government can, for example, assert to their hearts' content, as they do in Clause 2, that nothing in the Bill,

> "affects the primacy of the House of Commons",

as the Leader of the House explained earlier. Ministers can, if they wish, assert that the moon is made of green cheese. They can even put such an assertion in the Bill, should they so choose, but however eloquent such an assertion is, and however well drafted such a provision is, it makes not a jot of difference in fact, because the changes to the House as it is currently constituted, and its replacement by an elected senate, will automatically affect the primacy of the House of Commons. The fact that needs to be faced is that further reform of your Lordships' House is not so much about the House of Lords but the House of Commons. The real impact of Lords reform is not in this place, but in the other place. With the publication of the draft Bill and the White Paper, this Government have put the primacy of the House of Commons into play.

There will be many other areas on which to focus. Difficult issues have not been addressed to date. They have not been considered or resolved. This is a bad Bill because it does not answer the key questions on the issue. What is the role of the House of Lords? What should be the role of the second Chamber? What powers should a reformed House of Lords have? What powers do the Government want a reformed House of Lords to have? What will be the conventions that govern relations between the two Chambers? What happens to the current conventions that govern the relationship between the two Chambers? Should that relationship be codified? These and others are big questions that will have to be properly addressed, properly considered and properly resolved before any Bill to reform fundamentally your Lordships' House is enacted by Parliament. These are questions with which constitutional reformers have grappled for years. They are questions that successive Governments have considered for years. They are questions that were considered in depth by the Joint Committee on Conventions, chaired by my noble friend Lord Cunningham of Felling-the conclusions of which included that the conventions would need to be considered again if substantive proposals on composition were brought forward, as they have been in this draft Bill, and approved by all parties in both Houses.

However, the Bill ducks those questions because, to Liberal Democrats, such questions and those who raise them are roadblocks to reform. They believe that those who pose such questions are just anti-reformers slipping into constitutionalist disguise. However, we on these Benches do not accept that. These are real questions and genuine constitutional problems. We certainly wrestled with them when we were in Government and wanted to proceed with Lords reform. Other Administrations have done the same. What is simply not adequate or sufficient is to do what this Bill tries to do-just to put the questions aside as though they do not matter. They do matter and they-

Lord Ashdown of Norton-sub-Hamdon: I have listened very carefully to the noble Baroness, but, with great respect to her, it seems to me that her entire speech is predicated on the fact that she has been presented with a Bill. She is not being presented with a Bill. She is being presented with a White Paper.

Noble Lords: Oh!

Lord Ashdown of Norton-sub-Hamdon: I am sure that the noble Baroness understands the difference between the two.

Baroness Royall of Blaisdon: My Lords, if the noble Lord were to read the White Paper again and reconsider it, he would find that within it there is a draft Bill. It is the draft Bill about which I am addressing my remarks.

We on my Benches give the House warning that when the draft Bill has been finalised, if it ever comes before this House, it will be properly scrutinised. Some Members of the House were disquieted by the way that we, as an Opposition, scrutinised the Parliamentary Voting System and

Constituencies Bill earlier this year. We may not necessarily scrutinise the Bill in the same way, but the Government need to know that if it comes before the House, we will scrutinise it with the same focus and intensity. However, we are a long way from there. First, we have the Joint Committee of both Houses. Joint Committees of both Houses of Parliament are excellent instruments. The Joint Committee is the proper committee to address all the difficult issues that require to be debated about further reform of your Lordships' House.

The Joint Committee, whose establishment we welcome, will, I am sure, do a first-rate job, and we thank all those who have volunteered to serve on it. We on these Benches thank in particular our Members from this House on the committee: the noble Lord, Lord Richard, a former Leader of the House, who is taking on the particularly onerous role of chairing the committee, two former Ministers and Deputy Leaders of the House, the noble Baroness, Lady Symons of Vernham Dean, and the noble Lord, Lord Rooker, and a former Minister, the noble Baroness, Lady Andrews. All are widely respected not just on these Benches but throughout the House.

Their task is a challenging, even a daunting one, as is the task before all members of the committee from both Houses. The scale of that task has been made clear by the responses to the publication of the draft Bill and White Paper: almost all of them sceptical or negative. I cite only two responses. The House of Lords specialist, Donald Shell, the University of Bristol politics academic whose book, *The House of Lords*, is the acknowledged primary guide to the House, argues that some hard thinking needs to take place. He asks a key question of the Bill: do MPs really want a Lords that can challenge the Commons? A key question indeed, although one that the Bill seems wholly to shrink. I might quote Martin Kettle; on the other hand, I might cite Peter Oborne in the *Telegraph*, who described the Bill as.

> "a recipe for chaos, one that will see British government come to resemble the annual shambles of the Lib Dem conference".

Mr Oborne concludes that,

> "exactly 100 years ago, Lords reform helped wreck HH Asquith's Liberal ascendancy. History may be about to repeat itself".

Those are grim warnings for the coalition and for Parliament. It will take all the skill of those serving on the Joint Committee to navigate their way through those rocks and shoals.

It may be that if, as we on these Benches expect, the Joint Committee addresses itself properly to the complexities and difficulties which abound around the issue of further reform of your Lordships' House, its work may take time. The Leader of the House has already acknowledged in this Chamber that if the Joint Committee needs more time to conclude its work than by the end of next February, more time it will get. We welcome that commitment.

It may well also be that if the complexities and difficulties with which the Joint Committee will be wrestling prove as intractable as they have been for the past 100 years, the part-Liberal Democrat coalition Government may find greater attraction in the proposals put forward by the noble Lord, Lord Steel of Aikwood, a distinguished former leader of the Liberal Democrats, in the Bill he has before the House. Members of the House will recall that we on these Benches had included the bulk of the Steel Bill recommendations in our Constitutional Reform and Governance Bill before the election, but they were struck out in the wash-up by one of the parties now on the government Benches.

When the Bill eventually appears in the House, there will be a clear position from these Benches. As I said, we have many different opinions on these Benches about Lords reform. Many of my Members are strongly opposed to a directly elected second Chamber, but we are united in seeing the Bill-and it is a draft Bill-as a bad Bill. That is not a unity in papering over the cracks, as the coalition parties on the Benches opposite will no doubt seek to do, but a unity of resolve to ensure that the issues involved in further reform of this place are properly considered. It is a resolve to ensure that any Bill that comes to this House is properly scrutinised and a resolve to ensure that, if this House is to be reformed, it will be reformed by good and proper legislation, not by a Bill as bad as the one before us today.

This House, this Parliament, our politics and our constitution merit more than that. Reform should mean proper reform. That in turn means a better Bill, a good Bill. We, as an Opposition, will work to ensure that this House, our politics and our constitution get the legislation that they deserve.

3.39 pm

Baroness D'Souza: My Lords, this is a document that we should take seriously. It is, after all, signed by the Prime Minister and the Deputy Prime Minister. That said, a number of contradictions and gaps in the text of both the White Paper and the draft Bill will need attention. No doubt, that forensic scrutiny will begin today. I should like to focus on just one aspect: the premise that elections are necessary because of a democratic deficit in this House.

It is widely accepted within this House that its major function is to revise and scrutinise legislation. Therefore, the issue has to be: what can be done to enhance this important function and make it more effective? The answer that this White Paper and draft Bill appear to offer is elections. I have no doubt that there will be 80, or perhaps 100 or more, contributions today and tomorrow that refute this, but the question of a democratic element is very important.

Perhaps I may briefly recap. We have our main function, which is scrutiny, and we have what should be the main purpose of the proposed Bill, which is enhanced effectiveness. We are now adding to the mix the democratic element. The next question is: are elections the only way in which to achieve a democratic element to address what the Government apparently see as a democratic deficit? My response to both those questions is that I do not believe that there is a democratic deficit or that elections are the only form of democracy. That of course needs justifying. How do the Lords reflect the wishes, needs or rights of the wider public and how can they do it better, and how do the public influence the work that this Chamber undertakes?

Paragraph 216 of the *Report of the Leader's Group on Working Practices* is worth paraphrasing here. It says that,

> "the diversity and range of interests of Members of the House of Lords, as well as their active involvement in the world beyond Parliament, mean that for many outside organisations and groups it is easier to establish relationships with Members of this House than with MPs".

It continues that such relationships complement those between MPs and constituents. This, I feel, accurately reflects the huge outreach that this House has on a daily basis with hundreds of special interest groups. Furthermore, much of the wisdom that is brought to bear on legislation in this House is minutely informed by these specialist groups. It could, I think, be fairly argued that there is already a democratic procedure whereby the wider public can, and do, lobby Members of this

House and succeed in changing and improving legislation to meet the needs of that public on an almost daily basis. That is not to be sniffed at.

Of course, MPs bring their constituents' concerns to Parliament, but I would guess that there is greater opportunity to change legislation according to the expertise of specialist groups in this House because it is less political, because it is less fiercely whipped, because it does not have to deal with the concerns of individual constituents each and every day and because it is not elected.

This House is-one can never tire of repeating this mantra-different from the other place in almost every respect, but this difference stems from its function. You cannot make it similar to the other place and continue to believe or hope that its functions will somehow be improved. They will not; they will be undermined, and so severely that the growing belief that this Bill is about abolishing the House of Lords gains more credence every day.

In the past few months, reforms to many of the institutions in this country that the public hold dear, including voting mechanisms, public bodies, education and the NHS, have come before this House, which has in many cases upheld the concerns, even the wishes, of the public. What come to mind are Clause 11 of and Schedule 7 to the Public Bodies Bill, which sought to abolish, among other organisations, the Forestry Commission, the chief coroner and associated offices. It was the House of Lords that took on board the public concern and acted on it, and it still does so. I do not think that you can argue that this House is undemocratic when it so clearly acts in the public interest.

Other mechanisms whereby the public voice is heard in the Lords Chamber include the introduction of private legislation supported by community organisations that cover significant sectors, such as the disabled, refugees, victims of forced marriages and indeed of slavery, the unfairly defamed or dangerous dogs. I have said little about genuine reforms that most of your Lordships agree would make for a more effective House. Many of these are set out in the Leader's report on working practices, which will be debated in this Chamber next week. I just wish to make it abundantly clear here and now that there is ample room for reform on matters such as retirement, appointment procedures, increasing pre-legislative and post-legislative scrutiny, and cross-cutting Select Committees, but elections are the one thing that this House really does not need.

3.46 pm

Lord Marks of Henley-on-Thames: My Lords, the draft Bill soon to be considered by the Joint Committee starts from the proposition that, in a parliamentary democracy, the Parliament is elected by the people. Whatever the status of this House relative to the other place, your Lordships' House is an integral and fully functional part of our Parliament. We may be the subordinate Chamber in a bicameral legislature and our role may primarily comprise scrutiny and revision, but no one can argue that we are not a fully functioning Chamber of Parliament. To use Bagehot's classification, we are, now at least, fundamentally an efficient rather than a dignified component of our constitution.

That being the case, fundamental democratic principle demands that this should be an elected House, whose composition is determined by the people. Yet while we argue and even fight for the principles of democracy internationally, our own out-of-date and largely haphazard composition derives from a historical mixture of political patronage, merit-based appointment, birth and office in the established church. If "democratic deficit" is the phrase for a failure to live up to the principles of democracy, our composition is paradigmatic of democratic deficit.

The weightiest argument that is said to outweigh democratic principle in this field-a matter alluded to by the noble Baroness, Lady Royall, who personally supports an elected House-is that an elected House would undermine the primacy of the House of Commons. That is the principal argument that I will seek to address, but before I do so it is worth reminding ourselves that this argument is about the primacy of the House of Commons, not about its supremacy.

The whole point of this House is to act as a legitimate check on the powers of the other place. The argument about primacy starts from the proposition that an elected House of Lords would have greater democratic legitimacy than the present House and it is said to follow that a reformed House would feel unrestrained by the conventions that limit the exercise of its powers. It goes without saying that this argument starts from the important concession that the composition of the present House indeed lacks democratic legitimacy. However, the argument about primacy does not take sufficiently into account the law governing the powers of the House of Lords, which is to remain unchanged, nor does it take into account the substantial difference in composition-

Lord Cormack: I am extremely grateful to the noble Lord for giving way. Does he agree with the president of the Liberal Democrats that a second Chamber elected by proportional representation would in fact be more legitimate than the present House of Commons?

Lord Marks of Henley-on-Thames: I propose to address that argument during this speech, but I do not agree with it. I will set out my reasons for that in detail.

The primacy of the House of Commons, I suggest, is not affected by the proposals in the draft Bill for a number of reasons. The second of those reasons is that the substantial differences in composition that are proposed between the two Houses, along with the effect that those differences will have on their relative roles and importance, support the primacy of the House of Commons. Nor does the argument take into account the conventions governing the relationship between the two Houses, which, while they may develop, will set the ground rules for how the new arrangements operate if and when the draft Bill is enacted in whatever form.

As to the law, the effect of the Parliament Acts is that this House has no more than a delaying power of one year and no power at all over money Bills. As Members of this House have said many times, the Parliament Acts were all about the powers of the House of Lords in the context of a less developed democracy, where the composition of this House was not in question. However, one should not forget the political importance of the power to appoint Peers, even in that context. The 1911 Act was passed only because of the agreement of George V to create up to 400 new Liberal Peers-not a threat, I note, that the present Government have been prepared to replicate.

Yet the Parliament Acts set conclusive limits to the powers of this House. It follows that the primacy of the House of Commons is founded on the rock of statute and not, as is sometimes implied, on the shifting sands of parliamentary conventions. After all, parliamentary conventions could not and did not prevent this House from defeating the House of Commons on the Hunting Bill and then standing firm. This House maintained its determination not to pass the Bill. The House of Commons then asserted its will, and therefore its statutory primacy, by relying on the Parliament Acts.

Lord Sewel: Does the noble Lord accept that the whole justification and rationale for the Parliament Acts was conflict between an elected House and a non-elected House and the reluctance of the elected House to have its will frustrated by a non-elected House? That was the whole argument behind the Parliament Acts.

Lord Marks of Henley-on-Thames: Certainly I accept that, but I do not accept that it follows that the Parliament Acts will somehow be changed without further statute because of the passing of this draft Bill, or something like it, concerning the composition of this House. The powers of this House are determined and limited by the provisions of the Parliament Act passed, as the noble Lord suggests, in 1911 for the purpose that he sets out.

Lord Forsyth of Drumlean: I wonder whether the noble Lord might reflect on a more recent example, because his argument is that the powers as defined by statute will determine behaviour. I refer him to the Scotland Act, which makes it perfectly clear that the Scottish Parliament will not have the power to call a referendum on independence. Yet the Liberal Secretary of State for Scotland is telling us that we must acknowledge the reality that the SNP has won a majority in that Parliament and therefore that we ought to let it get on with it and not determine the position. Is that not an example of how political reality and lines set in statute come into conflict and that, in the end, the political reality wins?

Lord Marks of Henley-on-Thames: My Lords, what happens about any referendum in Scotland is a matter for the future. I have no doubt that the noble Lord will be taking a great part in the argument in relation to Scotland. However, the Parliament Acts are statutes passed by Parliament and they set a clear limit to the power of this House. It is within that framework that this draft Bill will need to be considered.

It is not only statute that would continue to guarantee the primacy of the House of Commons. The structure of the two Houses envisaged in the Bill will do much to reinforce that guarantee. First, the new House would be elected-or elected and appointed-in thirds, which would ensure that only the House of Commons represented the will of the people most recently expressed in a general election. That is because only one-third of the House, or slightly less, would be subject to election or appointment at the time of each general election.

Secondly, following a general election, the new Government would take office on the basis of results of elections to the House of Commons. It follows that Ministers in the Commons and in the Lords would be appointed on the strength of those results. The House of Commons will therefore control the composition of the Executive. Furthermore, the legislative programme will be the Government's legislative programme and, therefore, dependent on the elections to the House of Commons.

Thirdly-this is particularly the case on the basis of the continuing presence of the Cross-Benchers, if we were to go for an 80 per cent elected House-it is most unlikely, although not impossible, that any Government would have an overall majority in the House of Lords. The likelihood of such a majority is further reduced by a proportional system for the election of Members. A number of noble Lords, often those strongly opposed to proportional representation-the question asked by my noble friend Lord Cormack is perhaps apposite to this point-have argued that election by proportional representation will give this House a democratic legitimacy that the House of Commons lacks. However, as a democrat, I accept the people's verdict. It appears that the AV referendum result-

Lord Campbell of Alloway: My Lords, perhaps the noble Lord will forgive me, but this is the 20th time that he has referred to his concept of democracy. Quite frankly, does he not realise that the people do not understand the Lib Dem concept of democracy?

Lord Marks of Henley-on-Thames: My Lords, if I believed that the people did not understand the Liberal Democrat concept of democracy, or our national concept of democracy, I would not be here

or arguing here at all. I believe that democracy is about elections and the expression of the popular will; it is about determining the composition of Parliament in a representative democracy on the basis of the popular will. It is as simple as that.

I accept the people's verdict on the AV referendum, which has ensured that first past the post elections to the House of Commons will be a feature of our democracy for a while yet. I also accept that the electorate regard that as a legitimate system for electing MPs. It is therefore likely that we will have two different systems for election to the two Houses. Of itself, that will not undermine the primacy of the Commons; rather, it is likely to safeguard it. It is also significant, I suggest, that the link between individual Members of Parliament and their constituencies, which lies so much at the heart of our unique representative system, is a factor that will tend to sustain that primacy, because the link between elected Members of this House and their multi-Member constituencies, will, inevitably, be that much weaker.

The final point in this area is that MPs will be able to point to the fact that they are accountable to their personal electorates in having to face re-election. Elected Members of this House, elected for a 15-year single term, will have no such direct, personal accountability. They will still have, as the Leader of the House pointed out, the independence inherent in that system; it is not the same independence that they enjoy on appointment for life, but it is substantial independence none the less. I suggest that that independence is a good thing for the job that this House does.

Lord Elton: I know that the noble Lord has taken some injury time for interruptions, but he is now 50 per cent beyond the recommended time. I wonder whether he could draw his remarks to a conclusion so that others can have a fair crack at the whip.

Lord Marks of Henley-on-Thames: My Lords, I am terribly sorry, but I have taken a number of interruptions and I have had to answer them. I propose to go on, although I will attempt to draw my remarks to a close when I think that a close is called for.

Lord Selsdon: The noble Lord has only recently joined the House-

Lord Shutt of Greetland: My Lords, I suggest to my noble friend that the feeling of the House is that he should conclude. I have every sympathy with him in view of the interruptions that he has had to take, but I feel that it is now time for him to conclude, because he has had 13 minutes.

Lord Marks of Henley-on-Thames: So be it. Perhaps I may make one more point concerning the conventions of the House. If a future Parliament were of the view that the conventions needed explicitly codifying in order to protect their efficacy, legislation could be brought forward to bring that about, as was proposed in the 2005 Labour manifesto. I suggest that the primacy of the House of Commons is not threatened.

4 pm

The Lord Bishop of Leicester: My Lords, the longest day may be an apt moment to embark on this new stage of what the Leader of the House has called the longest of long stories in the reform of this House. Whatever the deficiencies of your Lordships' House that the Bill seeks to address, a lack of opportunity to discuss and debate reform is certainly not one of them.

I shall not detain your Lordships by rehearsing all of the consistent position held by those on this Bench over many years on reform. A summary of the Church of England's response to the Bill was

published three weeks ago in my name. The mixed reaction that it received put me in mind of Mrs Cadwallader in *Middlemarch*. She was a vicar's wife who despaired of her husband, and said:

"He will even speak well of the bishop, though I tell him it is unnatural in a beneficed clergyman; what can one do with a husband who attends so little to the decencies? I hide it as well as I can by abusing everybody myself".

The essence of that church's response was that we welcome an opportunity to reform this House, and to improve, develop and adapt its working in ways that are advantageous to the functioning of Parliament as a whole and to the service of the nation. Where evidence of improved functioning is clear and well established, we on this Bench will be ready to consider changes and to play a part in bringing them about. However, where such evidence is lacking-and we believe that it is lacking in much of the Bill-and where the test of parliamentary functioning and service to the nation is seriously in doubt, this House and Parliament as a whole should expect challenge and questioning from those on the Lords Spiritual Bench.

I anticipate that those of us speaking from this Bench in the next two days will demonstrate a concern that is wider and deeper than the narrow question of whether Bishops should be retained in a reformed House, and if so, how many. We accept that in the institutions that we represent, we have been entrusted with the spiritual well-being of the people of this country-a trust that we share with many others. Therefore, we cannot see our role in these debates as being simply to defend privilege or to maintain the present arrangements at all costs. Rather, we recognise that we have a duty to press into the debate some fundamental issues of principle, because we do not accept that the government of the country should be left exclusively to politicians, and religion to the churches and other faiths.

We shall give careful attention to four tests of what is proposed in the White Paper. The first is whether the proposals flow from a clear enough definition of the role of the second Chamber, and whether a change in the present role is implied although not clarified by what is proposed.

The second test will relate to the independence of the upper House and its ability to require Governments to think again about specific legislative proposals. If we on these Benches discern a drift towards greater party-political control, through which any governing party or coalition can rely on a majority in the second Chamber, we shall find ourselves questioning the proposals.

Thirdly, we shall apply a test related to the question of the primacy of the House of Commons, and we shall be keen to determine whether the two Houses of Parliament will find themselves increasingly in conflict with each another. We note that the Wakeham commission expressed strong opposition to,

> "a situation in which the two Houses of Parliament had equivalent electoral legitimacy. It would represent a substantial change in the present constitutional settlement in the United Kingdom and would almost certainly be a recipe for damaging conflict".

Fourthly, we shall apply a test to claims of democratic legitimacy. Of course we recognise that all three major parties are committed by manifesto to some degree of constitutional change. The key question is whether the amount of change in these proposals is proportionate to the perceived problem that it is designed to address. On all four tests at the present moment we remain unpersuaded.

Let me draw your Lordships' attention to the specific proposals on the place of Bishops in a reformed Chamber. We are pleased and indeed grateful that the draft Bill proposes retaining 12 places for episcopal members in the event of a reform to an 80 per cent elected House. We are glad also to see the Government propose,

> "that in a fully reformed second chamber which had an appointed element there should continue to be a role for the established Church".

That role was clearly spelt out by the most reverend Primate the Archbishop of York, speaking in your Lordships' House four years ago. He said,

> "the Queen in Parliament is sovereign, but is also Queen in law, in council, and in the Executive. That is the constitutional arrangement. Are we going to preserve it? The Lords Spiritual remind Parliament of the Queen's coronation oath and of that occasion when the divine law was acknowledged as the source of all law. We see ourselves not as representatives, but as connectors with the people and parishes of England. Ours is a sacred trust-to remind your Lordships' House of the common law of this nation, in which true religion, virtue, morals and law are always intermingled; they have never been separated."-[*Official Report*, 13/3/07; col. 580.]

Your Lordships will need no reminding of the physical expression of establishment: the outworking of the church's wider vocation to the service of the nation. Without doubt there is no better placed organisation, religious or otherwise, able to cite a presence in all communities, and have good understandings of and relationships with all denominations and faiths. In his submission on Lords reform, the noble Lord the Chief Rabbi wrote,

> "disestablishment would be a significant retreat from the notion that we share any values and beliefs at all. And that would be a path to more, not fewer, tensions".

Establishment secures a place for spirituality in the public square. This benefits all faiths and not just Christianity.

The draft Bill proposes that the House should contain 12 episcopal members comprising the five named senior sees and seven ordinary members. This proposal will confront the Church of England with some challenging decisions about how those 12 particular episcopal offices are identified so that Bishops can continue to make a distinctive, competent and influential contribution to a reformed Upper House. Your Lordships should be in no doubt that the Church of England stands ready to make those decisions in the event of this reform being enacted.

In short, your Lordships will find that we on this Bench will be active in furthering proposals for reform that render this House more effective in exercising its scrutinising and revising role. Without a clear definition of some new role that determines the composition of an effectively new House, we on this Bench will press the questions that we have consistently asked.

I speak from a Bench of those whose presence in the House is an expression of their service to their communities rather than any privileged influence and whose track record is of a concern for the common good. What constitutes the common good in any situation is what politics is or ought to be about. For the Christian, the common good arises partly from the imperative to love God with all one's heart and to love one's neighbour as oneself. From a Christian perspective, if God's purpose for humanity is a common purpose, we have a duty to ask how the organising of society and of

Parliament makes this purpose harder or easier, more or less attainable. It is in that spirit and on those principles that we look forward to playing our part in this debate in the months ahead.

4.09 pm

Baroness Boothroyd: My Lords, the draft Bill before us confirms my worst fears. Never in my experience has an institution at the heart of the British constitution been marked down for destruction on such spurious grounds. Never in all my years in public life has the bicameral role of our Parliament been so want only put at risk by such disregard of the nation's best interests.

In one of his interviews last week, the noble Lord, Lord Strathclyde, talked about reaching a milestone in history-if only that were true. Instead of a milestone, I foresee a millstone around the necks of future generations if this House is mangled in this way. In their joint foreword to the draft Bill, the Prime Minister and Deputy Prime Minister repeat the fallacies on which their coalition agreement on this issue is based. There can be no misunderstanding of what is at stake. This is not reform of the House of Lords, as they would have us believe. They are set on abolishing this House. If this draft Bill becomes law in any shape or form, it will wreck this place as a deliberative assembly and tear up the roots that make it the most effective revising Chamber in the world. Worse still, the balance between our two Houses, which has already been touched on by many of your Lordships, on which our democracy and the rule of law depends, will be lost for ever.

Why is this? Is it because the Government's muddled thinking stems from the argument that both Chambers must be elected in order to be legitimate? That is the only reason offered. No other reason is on offer. It is certainly not the inability of Members of this House to do their job to the highest standards. The foreword admits as much, when it says:

"The House of Lords and its existing members have served the country with distinction". Mr Clegg, the chief advocate of the demise of this House, acknowledged our "wisdom and expertise" when the Commons debated the draft Bill last month. I tell noble Lords that if this House was judged on its record in a court of law, our acquittal would be sure and swift.

So what is the problem? I refer again to the foreword, which claims that we lack "sufficient democratic authority" -nothing more. According to Mr Clegg, our fatal flaw is that we are not directly accountable to the British people. That is absolutely true, but nor are the monarchy, the judiciary, the chiefs of the armed services, the Prime Minister, his deputy Mr Clegg or-let us face it-the Cabinet directly accountable. We in this House must be resolute in our determination and ready to resist, come what may from that government Front Bench.

The Government already hint at using their powers of duress to get their way, but I warn them that they will not overcome the growing scepticism on all sides in both Houses and outside by cajoling Back-Benchers or rattling the Parliament Act in front of our noses. Legitimacy works both ways. Legitimate questions were asked for which Members had no convincing answers during the many debates in this House on the House of Lords Reform Bill proposed by the noble Lord, Lord Steel. I again ask in the simplest and most mundane terms that I can command: in what way would the nation benefit and parliamentary proceedings be enhanced by the abolition of this House of experts and experience, and its replacement by a senate of paid politicians? I am an optimist. I live in hope of an answer from the Government before the end of this two-day debate-thank you.

The phrase "If it ain't broke, don't mend it" is still true. That is why we celebrate great national events adorned with pageantry and why the State Opening of Parliament takes place in this Chamber. I note that there is no move to scrap that. Why? It is because they do not dare to abolish

that. Their sole aim is to preserve the coalition for five years, create 300 jobs for the boys and girls on the party lists, and send us as quietly as possible salami-style to the knackers' yard.

The draft Bill's proposals for electing the new breed of Peers-or perhaps I should say the new breed of senators-are the most disjointed and disconnected possible. Under the terms of the draft Bill, elected Peers and MPs will be accountable to the electorate but some will be more accountable than others. Does that not smack of George Orwell's *Animal Farm*? The Labour Front Bench in the Commons dismissed the whole process as a huge anti-climax and the Back-Benchers called it a tatty roadshow, a constitutional version of fantasy football and a bag of fudge. The Tories were also restless.

No wonder the Leader of the House, the noble Lord, Lord Strathclyde, doubts the chances of the Bill getting through by 2015, as he stated in his interview last Saturday with the *Financial Times*. Mr Clegg, too, dismissed the public's indifference in a way he may regret. He said:

"The fact that an issue is not raised with us by our constituents does not mean that it is not worthy of debate".- [*Official Report*, Commons, 17/5/11; col. 161.] But the Government are losing the debate. The Government's Bill is so loosely drafted, so full of non sequiturs and internal contradictions that the Deputy Prime Minister himself admitted in the Commons debate that it represents no more than the Government's,

> "best guess of what would work legislatively".-[*Official Report*, Commons, 17/5/11; col. 172.]

My Lords, that takes my breath away. What an extraordinary comment to make on an issue of major constitutional importance. The governance of this country cannot depend on best guesses and burnt-out obsessions that have no relevance or public resonance.

I have no doubt that the Joint Committee will do its best, and I wish it well, but any attempt to cajole it will only further expose the weaknesses of the Government's position. I have tabled my Motion because I believe that the Government should withdraw their destructive proposals and build on the Steel Bill on reform of this House and the relevant Select Committee reports. That would improve the way this House works within the existing legislation and conventions. Surely we cannot gamble with the constitution and Parliament's future on the basis of the coalition's best guesses.

5.07 pm

Lord Wakeham: My Lords, like many noble Lords in this House, I have had my say on Lords reform many times in the past. It is 10 years since my royal commission reported, and I still think it was probably the best way forward. At the time, the then Government referred to it with approbation in their election manifesto, and slightly embarrassed me by actually using my name in their election manifesto. I think the Conservative Party would have accepted it, but I accept that the Liberal party did not think it was a sensible way forward.

Our difficulty was that what we proposed then was a compromise, and nobody wanted to make any efforts at all at compromising. We proposed a partly appointed, partly elected House with the appointed part considerably larger than the elected. It was essentially a compromise, and nobody was prepared to make that sort of compromise. That is one of the lessons that the all-party committee ought to bear in mind when it considers this.

One curious fact about the royal commission was that I did not ask any of the leaders of the parties to give evidence, but I waited upon them all and asked them what they thought. I will not recount what they thought. I could not get Ted Heath the slightest bit interested in the subject, but I had a very interesting talk with Roy Jenkins before the royal commission report, and he said he was very happy with the way the House of Lords was working and did not favour any great reform. I pressed him. I said that that was what the royal commission was there to propose and that he must give me some idea. Hard pressed, he did say that he would like there to be a senate; I hope Nick Clegg can take some comfort from that view. Roy Jenkins believed that it should be of 120 Members, but I am afraid that I came away from the meeting convinced that he had put forward that proposal because he thought it was the least likely that Parliament would ever accept.

A number of important things in this draft Bill find an echo in what we said 10 years ago. First, it separates the peerage from membership of the upper House. That is what we said then and I still think that it is probably the only way that we will ever get proper reform of this House. Secondly, it recommends 15-year terms with no re- election, as we recommended. However, we made the quite important point that the House should have the power to reappoint someone who had been elected if it thought that they would be valuable for a further term in the House. If you think of some of the expertise, that ought to be considered.

There was also, on the face of it, no great dispute about the powers of a reformed House and the supremacy of the Commons. The most worrying feature about the Bill, as has already been said eloquently by a number of noble Lords, is the question of whether that will survive in the sort of reform that this draft Bill implies. The fundamental question is-

Lord Ashdown of Norton-sub-Hamdon: I am listening to the noble Lord very carefully indeed. May I ask him to consider this thought? There are, in all, 77 bicameral systems in the world, so the House of Lords Library informs me, of which 61 are elected. Apart from Canada, by the way, we are the only major democracy that does this by appointment. Within those 61, in not one case is the primacy of the lower Chamber challenged. If it is not the case in those 61 elected Chambers, why should it be a danger for us?

Lord Wakeham: I would say two things to the noble Lord. First, I am not absolutely sure that he is completely right about that. If I recall rightly, for example, in Australia there have been moments of considerable difficulty between the two Houses. Secondly, at the time of the royal commission, if I remember rightly we looked into a number of different systems in different parts of the world and concluded that most of them had much more to do with the traditions and history of their own countries than they did with some more academic system. I do not therefore accept the view that this House should be fully elected although, as the House will remember, our royal commission recommended an element of elected Members. We were not absolutely certain. It was partly elected-a much lower part than the Government's proposal-but partly appointed.

The real worry is that if we have a substantially or wholly elected House, we will have politicians coming here with a view to undermining the position of Members in the House of Commons. I tried to say in the royal commission that anybody who ever served in this House could never serve subsequently in the House of Commons. I was told by the lawyers that that would now be ruled to be a breach of their human rights, so would not happen. We did not think that it was a very good idea to have too many elected Members. Frankly, the sort of House that I envisage is a revising Chamber with, in the final analysis, an advisory role and with the House of Commons always having to be supreme in the end. The most important part of that advisory role is that we have people here capable of giving advice of value.

The House of Lords has of course been reformed many times in the past 100 years and will continue to be reformed if it sets about it in the right way. In my view, one of the most constructive tasks that the all-party committee ought to consider is the way that parliamentary procedure should operate in order to reform this House. We have the example of the Bill of the noble Lord, Lord Steel, which is a perfectly good and acceptable measure, but no business manager-I have spent a lot of my life being a business manager-would ever dream of bringing it in because of the chaos it would cause to the parliamentary timetable in view of all the amendments that would be added to it. If one accepts that this measure will probably not be achieved because it is a wholesale reform, we should continue with gradual, piecemeal reform. We should look at how to set about doing that because I do not believe that the present parliamentary procedures are adequate for the task of dealing with incremental changes to this House, which in the past we were able to negotiate and agree. I think it would be very difficult at present.

Lord Ashdown of Norton-sub-Hamdon: My Lords-

5.16 pm

Lord Morris of Aberavon: My Lords, although I have never spoken before in a debate on the reform of this House-I nearly refrained from doing so now-I do not intend to make any general remarks, save to say that, like many others, my approach is twofold: first, a fundamental respect for the need to ensure that the primacy of the elected House is not undermined; and, secondly, to express the view that, whatever changes may take place in this House, the way it exercises its powers will change considerably.

I wish to speak on one issue alone: the possibility of the Parliament Acts 1911 and 1949 being used to ensure the passing of the draft Bill. As I understand it, the attitude of the coalition Government is to point a pistol at our heads by threatening the use of the Parliament Acts. The coalition approach may sound strange to the Conservative part of the coalition, which knows the historical Conservative stance towards the Parliament Acts. Duress has never been the best way of achieving constitutional changes.

If the proposed Bill is to be rammed through regardless, this House and, in particular, the Joint Committee must have the best legal advice on the problems of applying the Parliament Acts. What, if any, are the limitations on their use? I recommend the study of the judgments in both the Court of Appeal and the Appellate Committee of this House in the, by now, famous fox hunting case of Jackson v Attorney-General 2006. I shall refer briefly to the learned judgments in that unusual constitutional case of considerable importance to our present deliberations. The 14 judges in the three courts who considered the issues had differences of view. More than one judge expressed reservations about whether there were limits to the supremacy of Parliament-in this context, the supremacy of the House of Commons.

Last week, I placed a Motion on the Order Paper, inviting the House to instruct the Clerk of the Parliaments to seek the advice of the Attorney-General on whether a Bill which provided for the change in the composition of this House, where the provisions of the Parliament Acts had been complied with, is capable of having legal effect. I invite the Joint Committee to take the same course.

There are sound precedents for seeking, from time to time, the Attorney-General's and others' advice, as I know from my own experience. Only a believer in a flat earth would opine that this matter could, and probably would, not to go before the courts. I trust that the Government will build this into their timetable. Is such an issue justiciable? That clearly was the view of the Appellate

Committee in the case of Jackson and, in the words of the late and learned Lord Bingham, such consideration,

> "involves no breach of constitutional propriety".

The reform proposals go to the heart of membership of this House as we know it. It is arguable that they are tantamount to abolishing it, at least in its present form-with or without changes in name and title. I invite the Joint Committee to consider at its earliest opportunity the Bill's title, "House of Lords Reform Bill", which should reflect its contents. Would it not be better and more appropriate to call it something like "Abolition of the House of Lords in its Present Form Bill"?

The possible limitations on the use of the Parliament Act were considered in the Jackson case. Reservations were expressed by a number of judges. The noble and learned Lord, Lord Hope, put it succinctly when he said that it was sufficient to note,

> "that a conclusion that there are no legal limits to what can be done under section 2(1)",

of the Act,

> "does not mean that the power to legislate which it contains is without any limits whatever".

The noble and learned Lord, Lord Steyn, went further when he said that he was deeply troubled by,

> "an exorbitant assertion of government power in our bi-cameral system".

Having conceded that the Attorney-General might be right in his arguments, he went on to say:

"It may be that such an issue would test the relative merits of strict legalism and constitutional legal principle in the courts at the most fundamental level".

The noble and learned Lord, Lord Hope, and other Law Lords instanced some fundamental subjects that might not be amenable to change under the Act, such as the Act of Union with Scotland-which the noble and learned Lord, Lord Hope, mentioned-judicial review and access to the courts by citizens. The noble and learned Lords, Lord Rodger of Earlsferry, Lord Carswell and Lord Brown of Eaton-under-Heywood, all expressed their concerns in different words. The noble and learned Lord, Lord Carswell, said that he was inclined "very tentatively" to the view that the instinct of the Court of Appeal might be right and that,

> "there may be a limit somewhere to the powers contained in section 2(1) ... though the boundaries appear extremely difficult to define".

The weight of opinion, despite the expressed reservations and concerns, may well lead towards recognising a considerable supremacy for Parliament. The supremacy of Parliament, as the noble and learned Lord, Lord Steyn, said, is a construct of the common law. The issue may be whether there are exceptional circumstances that are so fundamental that even a sovereign Parliament cannot act. The noble and learned Lord, Lord Hope, added that,

> "the courts have a part to play in defining the limits of Parliament's legislative sovereignty".

Whether Parliament would wish to have such an issue before the courts is questionable. Unless the Government withdraw that threat, it is a possibility that we cannot ignore.

5.23 pm

Lord Ashdown of Norton-sub-Hamdon: My Lords, I apologise to the noble and learned Lord; in my enthusiasm to get at the arguments, I attempted to barge in ahead of him. That was not my intention and I hope that he will accept my apology.

I think it was Oscar Wilde who said that in a democracy the minority is always right. That thought has given me much comfort over the years as a Liberal, and it appears that it will have to give me comfort in this debate as well. I spent an engaging hour and a half yesterday in the House of Lords Library, looking through opposition speeches made in December 1831 to the Great Reform Act 1832 and to the Reform Act 1867. Five arguments were put forward. The first was: there is no public call for such reform beyond those mad radicals of Manchester. The second was: we should not be wasting our time and money on these matters; there are more important things to discuss such as the Schleswig-Holstein problem, the repeal of the corn laws or the crisis in the City that caused Anthony Trollope to write his wonderful novel.

A noble Lord: Not in 1832.

Lord Ashdown of Norton-sub-Hamdon: No, but in 1867.

The third argument, which was put so powerfully-indeed, in bloodcurdling terms-by the noble Baroness, Lady Boothroyd, was that if we were to embark on this constitutional terra incognita, the delicate balance of the constitution would collapse around us; mere anarchy would rule upon the world.

The fourth argument put forward in those debates was, "No, no, let us not disturb the quiet groves of wisdom within which we decide the future of the nation by letting in the rude representatives of an even ruder republic. God knows what damage we shall do if such a thing should happen". The last and fifth argument was the argument actually used by the noble Baroness, Lady Boothroyd, just a moment ago: "if it ain't broke, don't mend it".

Those are the arguments that were put forward against the 1832 Act, the 1867 Act, the 1911 Act-every single reform that we have ever had-and they are the arguments that are being put forward now. They were wrong then and they are wrong now. Perhaps I might explain before I come to the substance of the argument.

The first argument is that there is no public interest in this matter. Of course there is not; it is our business, not the public's. The public have made it very clear that they do not trust our electoral system in its present form. Is there anyone in this Chamber who does not realise that the dangerous and growing gap between government and governed that is undermining the confidence in our democracy must be bridged? It must be bridged by the reform and modernisation of our democratic institutions, and we have a part to play in that too. This is not about what the public want, it is about us putting our House in order.

The second issue is that there are more important things to discuss. I do not think so. Frankly, we have been very fortunate to have lived through the period of the politics of contentment. The fragility of our democratic system has not been challenged because the business of government and democracy has been to redistribute increasing wealth. If we now come to the point at which we must redistribute retrenchment, difficult decisions, hard choices, I suspect it will come to something rather different, as we see on the streets of Greece today and as we saw on the streets of London not very long ago. This is very important.

The third is that we are embarking on a constitutional journey into terra incognita. Of course we are. We do not have a written constitution in this country. I wish we did, but we are told that the genius of our constitution is that it is unwritten, that it responds to events, that it develops, that it takes its challenges and moves forward. Oliver Cromwell did not have to say, "We will delay the Civil War until we have worked out the proper constitutional relationship between Parliament and the King". In 1832 they did not say, "Let us hold this up until we have decided what proper constitutional balances would be achieved". If you believe in the miracle of the unwritten constitution, you must believe that our constitution will adapt. You cannot argue that that is a good thing and then say that we cannot move forward unless we know precisely and in exact detail what will happen next. Of course this will change the balance between us and the other Chamber. It will not challenge the primacy of the other Chamber, but it will challenge the absolute supremacy of the other Chamber-that is called check and balance.

The fourth argument is that this will disturb the gentle climate of wisdom in this place. I have no doubt that there is unique wisdom here, although I have to say that I do not believe it is necessarily evenly distributed-maybe in some places it is, but not everywhere. However, I am not persuaded that there is less wisdom in the 61 second chambers that are elected, that there is less wisdom in the Senate of the United States, or the Sénat in France or the Bundesrat in Germany. I do not believe that the business of election will produce less wisdom than we have here now-rather the contrary. It is not wisdom that we lack; it is legitimacy. My old friend, Lord Conrad Russell-much missed-used to say, "I would happily exchange wisdom for legitimacy", and I will tell your Lordships why.

This is where we come to the final point-the point made by the noble Baroness, Lady Boothroyd: "If it ain't broke, let's not fix it". It is broke; it is broke in two fashions. First, our democracy now and our institutions of democracy in this country do not enjoy the confidence of our people in the way they did. That confidence is declining. We have to be part of the reform that reconnects politics with people in this country. If we do not, our democratic institutions will fall into atrophy and may suffer further in the decline of the confidence of the people of this country. If noble Lords do not realise that, they do not realise just how difficult the current situation is in Britain.

We in this Chamber cannot leave this to others to do. We must be part of that reform, modernisation, reconnection and democracy. It is said that this House does its job as a revising Chamber well. So it does. It is allowed to revise, change, amend legislation, but is it allowed to deal with the really big things? It does the small things well, but is it constructed in a way that would prevent a Government with an overwhelming majority in the other place taking this country to an unwise and, as we now know, probably illegal war? No, it would not because it did not. I cannot imagine that the decision to introduce the poll tax and the decision to take this country to war would have got through a Chamber elected on a different mandate and in a different period, or if there had been a different set of political weights in this Chamber from the one down the other end.

The truth of the matter is that we perform the function of a revising Chamber well, but that is not our only function. We are also part of the checks and balances in this country. The fact that we do not have democratic legitimacy undermines our capacity to act as a check and balance on the excessive power of the Executive backed by an excessive majority in the House of Commons. That is where we are deficient and what must be mended.

The case is very simple to argue. In a democracy, power should derive from the ballot box and nowhere else. Our democracy is diminished because this place does not derive its power from democracy and the ballot box but from political patronage-the patronage of the powerful. Is it acceptable in a democracy that the membership of this place depends on the patronage of the powerful at the time? We are diminished in two ways. We are diminished because we do not

perform the function that we need to perform of acting as a check and a balance on the Government, and we do not do so because we are a creature of the Government's patronage. I cannot believe that noble Lords find that acceptable in this Chamber .

A noble Lord: Time.

Lord Ashdown of Norton-sub-Hamdon: Perhaps noble Lords will forgive me, I will finish now. I have already strained my time but I ask for patience. The Leader of the House is right. We have spent 100 years addressing reform in this House. It is time to understand why that is necessary-both to make our place in modern democracy and to fulfil our proper function to provide a check and balance on an Executive who may get too powerful. We turned our hand to this 100 years ago; it is time to finish it now.

5.33 pm

Viscount Astor: My Lords, the noble Lord, Lord Ashdown, has just given a speech that I am sure will be used by every Liberal Democrat candidate who wishes to stand at an election to this House in the future. It was a virtuoso performance. I am afraid that my contribution will be somewhat more modest. I believe that the question we should be asking ourselves is how we get both Front Benches off the hooks on which they have each impaled themselves with their pride and their principles intact-I refer to my own Benches and those of noble Lords opposite.

In a Statement a few weeks ago, my noble friend Lord Strathclyde needed to be brave because he had little support from this side of the House. What perhaps was even more extraordinary was the response from the noble Baroness the Leader of the Opposition. Her speech could almost have been written by any Back-Bencher on this side of the House who was against reform. Listening to her today, I was still no clearer on Labour Party policy.

While I am having a swipe at Front Benches, I was also disappointed to hear the speech of the right reverend Prelate. Neither today nor at the time of the Statement did any right reverend Prelate make any mention of the other faiths which surely deserve a place in this House. Despite the fact that we have an established church, other churches and faiths should be represented here.