Vol. 728
No. 169

Wednesday
22 June 2011

PARLIAMENTARY DEBATES
(HANSARD)

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House of Lords

Wednesday, 22 June 2011.

11 am

Prayers—read by the Lord Bishop of Exeter.

House of Lords: Reform

Motion to Take Note (2nd Day)

11.05 am

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.

Lord Norton of Louth: My Lords, as my name is one of those being put forward to serve on the Joint Committee, I shall not address the detail of the Bill; instead, I shall address the wider context. The Joint Committee will look in detail at the specific contents, and the right reverend Prelate the Bishop of Leicester provided us yesterday with an excellent template for assessing the Bill.

It might be helpful for my noble friend to clarify a number of points relating primarily to the demand, purpose and consequences of the Government's proposals. I begin with demand. I detected yesterday a whiff of the cod liver oil approach; it is good for you whether you like it or not. I distinguish between demand and support. I also distinguish between support for a principle and support for the means to deliver on that principle.

I have a specific question: what clear empirical evidence is there of demand for the Bill? I hear the argument that we should not let the views of the public determine the issue, but if we are to do things in the interests of voters in this particular form, it would at least be appropriate to consider their views. The last in-depth survey I saw was the Ipsos MORI poll of 2007. Do the Government have more contemporary data?

Could my noble friend also tell us what the identifiable problem is that the Bill is intended to address? Various justifications are offered. One is clearly that the election of the second Chamber is the democratic option. That is advanced as if it is self-evidently true. My noble friend Lord Campbell of Alloway raised a fundamental question yesterday; democracy is a contested concept—a point that was developed by the right reverend Prelate the Bishop of Exeter. If we take the definition of representative democracy offered by Schmitter and Karl—that it is,

"a system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and co-operation of their representatives"—

the draft Bill before us is not the democratic option, because there is election but no accountability.

In any event, in a situation of asymmetrical bicameralism, in which the elected Chamber enjoys primacy, it does not follow that Members of the second Chamber necessarily have to be elected for the system to be judged to be democratic. Indeed, if the accountability of government is the basis of the definition, it is possible to argue that an elected second Chamber undermines the core accountability at the heart of our existing system. Of course there is a counterargument, but that merely serves to make my point: that we are dealing with a contested concept. We cannot proceed on the basis of an assumed agreement as to its meaning.

The same could be said about the concept of legitimacy. It would be helpful to know how the Government define the concept and then relate that to how they believe the legitimacy, once defined, of the elected 80 per cent will embrace the unelected 20 per cent—or will the 20 per cent be somehow illegitimate?

On definition, it would also be helpful to know how the Government define primacy in the context of the relationship between the two Houses. Despite the general saving clause, Clause 2, my noble friend Lord Strathclyde and the Deputy Prime Minister have both conceded that the relationship between the two Chambers will change over time. The noble Lord, Lord Ashdown, told us that one can have an elected second Chamber but maintain the primacy, if not the supremacy, of the Commons. He also told us that an elected second Chamber may have prevented an unwise war. I am not sure how one can reconcile those two statements. Where does primacy begin and end?

The noble Lord, Lord Ashdown, also introduced a comparative element. Only a minority of second Chambers are wholly elected. Elected second Chambers are to be found predominantly in federal nations. It is not clear what purpose would be served by an elected second Chamber in a unitary state, where electors would be voting for members of that Chamber in exactly the same capacity as they would be voting for members of the first. It injects an element of redundancy into the system. I thus invite my noble friend to tell us precisely what problem is being addressed by the Bill.

I turn from the perceived problem to the proposed solution. There is a profound difference between situations where a second Chamber is crafted as part of a new constitution and where a change is made within the context of an established polity. The right reverend Prelate the Bishop of Exeter raised this yesterday. Very few studies have been undertaken of second Chambers as second Chambers, let alone of changes to them in established democracies. In drawing together the findings of one study of changes to second Chambers in leading western nations, Meg Russell and Mark Sandford concluded, in an article in the *Journal of Legislative Studies*—I declare an interest as editor of the journal—

"These examples suggest that the design of second Chambers is very difficult to get right. They may be criticised for having too little power, or on the other hand of having too much; for being too democratic, or not democratic enough; for being sidelined and irrelevant or for being a carbon-copy of the lower house. When considering why upper house reform has not happened, one of the first answers has to be lack of clarity over the purpose of the upper house … As Mughan and Patterson have put it, second Chambers remain 'essentially contested institutions'".

In essence, it is very difficult to get right. This points to the crucial importance of ensuring that change is well grounded in an understanding not only of what is required—that is a clear and accepted

[Lord Norton of Louth]
goal—but also of a clear recognition of the means for achieving it. Could my noble friend therefore tell us what studies have been undertaken or utilised by government of practice elsewhere, in terms of moving from one second Chamber to another, in order to determine that this measure is the best means for achieving the Government's goals? In short, I think it would be of value to the House, and to the Joint Committee, to know what studies have been undertaken or commissioned by the Government as to the demand for, and consequences of, the Bill. That will provide a solid basis for the detailed work that is now to be undertaken, and to which I for one, will devote myself on behalf of the House.

Lord Peston: Could I ask the noble Lord why he did not include, in an excellent speech, one other question that we need to ask the government Front Bench—whether it has any intention of taking any notice of what the overwhelming majority of their Lordships are saying?

Lord Norton of Louth: I am grateful for that additional, very pertinent question. Given the time limit, I had to condense my speech from about 20 questions.

11.13 am

Lord Grenfell: My Lords, following the noble Lord, Lord Norton of Louth, I am tempted to utter a loud "hear, hear" and resume my seat.

A noble Lord: Hear, hear!

Lord Grenfell: I know that those who do not share my views would wish that that was so. I think I would have been similarly tempted if I had followed the noble Baroness, Lady Boothroyd, in the debate yesterday—she said it all. The noble Lord, Lord Goodhart, follows me and he might take a two-word speech as a sign of infirmity, or maybe even a lack of stamina, and encourage him in his view, expressed here in this Chamber just a couple of years ago, that,

"your Lordships' House is the best geriatric day care centre in the country".—[*Official Report*, 27/2/09; col. 451.]

Just a week short of year ago, on 29 June 1010, the Leader of the House, the noble Lord, Lord Strathclyde, initiated a debate on Lords reform. In that debate I expressed my irritation at being invited to take note of the case for reforming this House as though it was on the coalition's agenda. I pointed out that it was not. What was on the agenda, I said, was the abolition of the House and its replacement with something entirely different. I recall this not to claim that I was the first to articulate a growing awareness that the coalition was cloaking its intentions in the garb of a reform not even worthy of a referendum—I may well not have been the first—but because I find it significant that a year later on all sides of the House there is now wide recognition that abolition, not reform, is what lies at the heart of this miserable draft Bill.

General de Gaulle once remarked that since politicians rarely believe what they are saying, they are always surprised when other people believe them—a cynical observation maybe, but one that is not without a grain of truth. I wonder how many of the professed abolitionists in this House really believe in the claims that they are making in defence of their case. I would understand their surprise at finding many to share their beliefs; believers in these reforms appear to be in quite short supply in this debate. That is no surprise. How can anyone rationally claim that the purpose of this legislation is to reform the House, not abolish it, that the supremacy and authority of the other place will not be challenged by an elected second Chamber, and that senators elected by PR for a single 15-year term will not claim greater legitimacy than MPs and equal accountability to the electorate? Are the Bill's supporters telling us that these wholly irrational claims are in fact rational?

One is tempted to equate coalition policy on the future of this House with the doctrine of intentional irrationality that the Dadaists and Surrealists embraced in both art and literature as a means to reject logic and reason, which some insisted were the causes of many contemporary social problems. Perhaps the coalition sees this House as a contemporary social problem. I do not think that either the noble Lord, Lord Strathclyde, or the noble Lord, Lord McNally, cut particularly Surrealist figures—well, not always—but looking for reason and logic in their arguments in favour of abolition is as fruitless as searching for rationality in Salvador Dali's limp, melting watches.

Time permits me to take but one example: the charge that this House lacks democratic legitimacy. What do we mean by legitimacy? Recently, during Report on the European Union Bill, my noble friend Lord Liddle, who I am pleased to see is in his place, spoke wisely from our Front Bench when he said, in relation to the European Union, that,

"there are two ways of looking at legitimacy. One is to think about it in terms of how decisions are approved, but the other is to think about whether the institution is effective at doing the job that it is supposed to do".—[*Official Report*, 13/6/11; col. 583.]

He could have been speaking of this Chamber. This draft legislation reflects the monistic view held by its framers that you need to look only at the composition and decision-making methods of a political institution and no further to determine whether it has democratic legitimacy. I emphatically reject this. The nature of a political institution is a cardinal factor in assessing its legitimacy, but it is the quality of the outcomes that weighs heavier in the balance. If that quality is found wanting, if outcomes fall far short of what is agreed by the people to be for the common good, the claim to democratic legitimacy is of course undermined. To fail to deliver is, after all, to fail the people. It is wrong, however, to determine that as a matter of ideological principle a political institution cannot claim legitimacy, whether or not its outcomes approximate the perceived optimum, simply on the basis of its composition.

In last June's debate I spoke of my belief in the fundamentally important constitutional role played by your Lordships' House, the House that we are now invited to abolish. My belief in that role has only strengthened since then. We seek to meet the electorate's requirement that the legislation proposed by the party that wins office is fashioned to the highest possible standards, consistent with the will of the elected Chamber, whose primacy we unquestionably acknowledge. With few powers to exercise, and rightly so, we draw on our

experience and apply our expertise to help ensure that Parliament delivers to the people what they have the right to expect: high quality, implementable Acts of Parliament. Perversely, though, we are told that an appointed House is disqualified from performing that crucial democratic function and so must be pulled down. Where is the coalition Government's sense of proportion in all this?

I make this plea to the coalition: away with irrationality, embrace logic and reason, and invite all sides to work together on a programme of incremental reforms that will enhance this House's ability to perform its role as a revising Chamber that is already the envy of parliaments across the world. That is the path to pursue if we are to ensure the high quality legislation to which the people have a democratic right.

11.20 am

Lord Goodhart: My Lords, when she was speaking yesterday, the noble Baroness, Lady Royall of Blaisdon, said approximately 20 times that the draft Bill that we are considering today was a bad Bill. I believe it is a very good Bill.

This Bill proposes that a Committee of the House of Lords should, as now, appoint Cross-Benchers. I strongly support that and I am strongly opposed to the idea of having 100 per cent elected. The series of other important changes, however, is necessary. There are four matters in particular that need substantial change. All four will be improved by this Bill.

The first of these changes is that we should end the special rights of hereditary Peers. Existing elected hereditary Peers should be treated as ordinary appointed Peers and there should be no further elections of hereditary Peers. The rights of the 92 hereditary Peers were introduced by the House of Lords Act 1999 as a short-term compromise, pending a further stage in reform that was expected in the next Session. That, as we all know, did not happen. We are now a decade overdue for removing the special treatment of hereditary Peers.

The second change is that life membership of your Lordships' House for Members is wrong. There should be a time limit for both appointed and elected Members. Cross-Bench Members are generally appointed for their expertise. Expertise has a sell-by date. All Members should get a substantial but not lifelong period of membership. The period suggested in the Bill is a non-renewable membership for 15 years. I agree with this. Existing life Members should be entitled to remain until they have completed 15 years but not necessarily longer. My own 15 years, if anyone wants to know, will end in November next year.

The third change is that the number of Members in your Lordships' House, as everyone knows, is too large and needs to be reduced. This Bill proposes 300 Members as a target, although I think that is rather too few. A better target might be to have 300 elected Members, and 75 appointed Members—the Cross-Benchers.

The fourth change is the change to the present system of appointment for future political Members. It is by far the most controversial of these four changes. The present system is that the Prime Minister allocates numbers of new appointments to his own party and to other parties. The leaders of each of the parties to which the allocations have been made then appoint individuals up to the allocated number. That is what happened to me. In July 1997 Tony Blair told my noble friend Lord Ashdown that he could nominate 11 new Members and I was chosen as one of them. Something like that has happened to most of us in your Lordships' House.

The present system gives an immense power to the Prime Minister. That power can be abused. The noble Baroness, Lady Thatcher, was notorious for giving very few peerages to anyone other than Conservatives. This power has not been abused in recent years, but there are no rules as to how these allocations are calculated and the system could be abused again. If political Members of your Lordships' House are elected by PR, this problem disappears. Having an election would mean that the choice of the new party Members of your Lordships' House would be both simple and fair. Continuing to have allocations, a number of which are within the power of the Prime Minister, would be neither. If things are left as they are, there are real dangers to any political party that finds itself in opposition. I do not believe that that is acceptable. It is absolutely right that we should have elections not only for that reason but because I think they give people what they would prefer.

Those are the four main changes that are needed for your Lordships' House, and they are all within the scope of the draft Bill. I should add that only one feature of the Bill is, in my view, wrong—the retention in your Lordships' House of the Bishops. In an age when in the United Kingdom there are several different religions, many different faiths within those religions and many people, including me, with no religion, I can see no justification for retaining the right of Bishops, and only English Bishops, to speak and vote in your Lordships' House. Of course, there would be no objection to daily Prayers being conducted by Anglican clergy.

I understand why many Members of your Lordships' House feel strongly that membership should be permanent and should continue to be by appointment under the present system in all cases. However, that is not the answer. Changes are needed and it is no good saying, "If it ain't broke, don't fix it". It is broke and, if we do nothing, that will become all too obvious all too soon.

11.26 am

Lord Armstrong of Ilminster: My Lords, I was gratified and flattered to hear the noble Lord the Leader of the House, speaking on the radio recently, put first among the categories of experts whose contribution to the House he would like to retain the former Cabinet Secretaries. I am tempted to say to the noble Lord, "Flattery will get you nowhere, my Lord, but please go on trying".

We argue endlessly about the composition of the House and the way in which its Members are chosen, but we ought first to discuss the powers and functions of the House. How can we come to a good decision about who we should be and how we should be chosen without first deciding what we should be doing? As it is, we seem just generally to assume without much

[Lord Armstrong of Ilminster]
question or debate that the powers and functions of the House should remain just as they are. Perhaps that assumption flows from our tradition and our assumption of subordination to the House of Commons.

Then we are told that an assembly that makes laws for the governance of the people ought to be elected by the democratic suffrage of the people. In this country we have an assembly that makes laws for the governance of the people and which is elected by the democratic suffrage of the people. It is the House of Commons. The House of Lords can and does suggest revisions of draft legislation, but it cannot in the end enforce those revisions against the will of the House of Commons. We are a revising Chamber and a debating Chamber, and valuable in both functions, but we cannot prevail against the House of Commons if it wishes to insist. The House of Commons is sovereign in the matter of law-making. Therefore, we do not need to make the second Chamber electable by popular suffrage to give it representative legitimacy.

I shall not dwell, because many others have done so, on the dangers of elected Members of the second Chamber competing with Members of the House of Commons in their constituencies as well as at Westminster. I pass over, as Cicero might have said, the probability that an elected House of Lords would not for long be content to accept its subordination to the House of Commons. Under the Government's proposals, as far as I can see, the Government of the day would find getting their business through a good deal more difficult and tiresome. We have seen recently how trying Ministers find our well meant attempts to improve their legislative proposals. That would be like a vicarage tea party in comparison with the frustrations that the Government of the day would undergo if the House of Lords were to be reformed—perhaps "destroyed" is a better word—as Ministers are now proposing. I foresee serious breakdowns in the relationship between the Commons and the Lords, and the River Thames running under Westminster Bridge with much blood.

Where is the pretence of democratic legitimacy in a Chamber whose Members would have security of tenure for 15 years and no risk of being regularly called to account by their electorate? Does it make sense for both Houses of Parliament to spend endless days, weeks, months and perhaps even years discussing what has been stigmatised in this debate as a bad—and, as my noble friend Lord Grenfell said, miserable—Bill?

I suppose that no one starting with a blank sheet of paper would invent the House of Lords as it is today. It is as it has grown up to be as a result of successive piecemeal changes over the centuries. As it is, it functions reasonably well. If we are going to change it, we can afford to take the time needed to devise incremental or evolutionary changes that make sense and that provide constructive reform. We need a second Chamber that complements the House of Commons and enriches the work of Parliament, not something that competes with the House of Commons, in the constituencies as well as at Westminster, and that is a pale and ineffectual carbon copy of the House of Commons, unlikely to command respect in the country or to be attractive to the people of the quality and distinction whom we should want to have as Members.

Over the centuries, the role of the House of Lords has been to represent in Parliament the principal economic and social interests and activities of the country. As at present constituted, we have to admit that we do that rather haphazardly. In an earlier debate I suggested how we might create a House—or reform the House—to reflect and represent the economic, industrial, social and cultural interests and activities of the country in an up-to-date way, with Members chosen to represent the various strands of our contemporary society: industry, commerce, the trade unions, the health professions, the legal professions, the academic and educational professions, the cultural professions, the Church of England and other churches and faiths, and so on. Members to represent those interests could, where possible, be chosen by processes of indirect election. We need to have a system that ensures that the nations and regions of the United Kingdom and the political parties are represented in a balanced way. We could even gladden the heart of the noble Lord the Leader of the House by leaving room for the appointment of experts such as former Cabinet Secretaries and Chiefs of Staff of the Armed Forces. A House so constituted would have representative legitimacy, even without popular suffrage.

Having taken note this evening of the pipe dreams of the Deputy Prime Minister and his colleagues, let us give them a respectful and honourable quietus. Let us take a little time to work out a scheme of reform that will offer the prospect of a second Chamber that would represent the various strands that constitute the fabric of our society and complement rather than compete with the House of Commons, and whose contribution would enrich the work of Parliament and make a useful and significant contribution to the work of improving legislation and debating great issues.

We need to work up these ideas into specific and detailed recommendations. We need a body, not necessarily but possibly a royal commission, that should include, of course, representatives of the main political parties and people with a sense of history and an understanding of the strengths and subtleties of our constitutional system. With a good supporting staff, such a body would be able to produce within two years a blueprint for significant and constructive reform for an effective House of Lords that could command a wider extent of consensus than the proposals of which we are being invited to take note in this debate.

11.34 am

Lord Campbell of Alloway: My Lords, it is a privilege to speak after the noble Lords, Lord Armstrong of Ilminster, Lord Norton and Lord Grenfell. The analysis put forward this morning is really all that is required to support the argument for maintaining the appointed House. Like everyone who spoke yesterday in favour of an appointed Chamber, the noble Lords have far greater authority and experience than me. I therefore need expend no effort on repeating support for the principle.

However, I should like to say a word about yesterday's discussion on democracy. Democracy is almost undefinable but, if you want to use the term, you must try to define it and that was not done. This Bill was drafted without a constitutional Bill, without new

legislation and with deviant disregard for established conventional usage. That was so that it could be presented to Parliament by the right honourable gentleman the Deputy Prime Minister. That is a very strange conception of democracy because it has the taste of a ministerial diktat.

It is right that what happened should be said. A committee was set up by the right honourable gentleman the Deputy Prime Minister to report on implementation of an elected second Chamber. The report was served by way of an instruction to parliamentary counsel to draft the Bill. In those circumstances, the Deputy Prime Minister was enabled to do what he wished to do, which was to present the Bill. This was all very well but it was considered to be an abuse of due process, and not only by those noble Lords who took the point. Long before the Joint Committee was set up, a series of Oral Questions was taken and spoken to by Conservative, Labour and Cross-Bench Peers. This was to challenge this abuse of process, but it was in vain. The challenge was rejected out of hand on each occasion without discussion. Discussion and pre-legislative scrutiny were perhaps trashed by the twitter in the Rose Garden. There was to be no delay, and no delay there was.

The questions arise of whether it is in the interests of the people and Parliament for an unelected Government, without any consultation, to present a constitutional Bill, and whether the ethos and revised role of the appointed House could remain with an elected Chamber, as asserted by my noble friend Lord Strathclyde, who, I am afraid, is not in his place but who agreed that it should remain. I shall say no more about that. However, why should the challenge on the abuse of process have been made and why was it rejected? These are matters for consideration.

In conclusion, the Joint Committee will take note of this debate and of the questions on the Statement. In particular, it will take note of the truly remarkable, reasoned speech of the noble Baroness, Lady Royall of Blaisdon, which, in the interests of the people and Parliament, sought to safeguard the primacy of another place from elected authority in this House. Is it within the remit of the acknowledged function of your Lordships' House to delay this Bill to seek to safeguard the constitution for further consideration in another place? The Bill should be withdrawn until the next general election.

11.43 am

Lord Desai: My Lords, over the weekend I completed 20 years in your Lordships' House, so I am, by the Goodhart criterion, five years past redundancy and I shall await the chop falling on my head when the Bill is passed.

Over those 20 years I have never been persuaded of my own perfection as a legislator or of the perfection of your Lordships' House as a Chamber. We are, as the noble Lord, Lord Lawson, said, a weak second Chamber. As the noble Lord, Lord Ashdown, reminded us, if we were democratically more legitimate, we could provide a stronger check on the Executive than we do at present. The British Executive do not receive a sufficient check from the House of Commons alone; we need the House of Lords.

I recall how the reputation of your Lordships' House went up when, during the many years of Mrs Thatcher's prime ministership, petitioners for halting some of the changes had to come to the House of Lords. I particularly remember the abolition of the ILEA and arriving here in those days to lobby Bishops to do something about that. I think that the reputation of this House has grown in more recent times because the Executive have become more powerful as the Whips at the other end have become more powerful. Therefore, we should see our strength more as a reflection of the imperfection in the system rather than as an example of its perfection.

I have always supported reform of your Lordships' House. I believe in a 100 per cent-elected House. However, I quite agree with all the noble Lords who have said that this Bill is an abolition of the House of Lords as it is at present. I do not see why the Government or the Liberal Democrat party are being so shy about their radicalism. We are about to replace the House of Lords with a senate. If that is the programme, let us say so openly.

Such a replacement cannot be done piecemeal by saying, "We shall retain the primacy of the House of Commons". It is obvious that we shall not. During the debates on the Fixed-term Parliaments Bill we passed an amendment moved by the noble Lord, Lord Pannick, that said that since no Parliament can bind any future Parliament, each Parliament should reaffirm the fixed-term decision. Would we like each Parliament to reaffirm the primacy of the Commons in the future? That is what would be required once we had replaced the House of Lords. As a reformer, I do not want to soften the blow; doing so would get us not good reform but muddled reform. After all, we have been discussing this for 20 years, and I have been speaking about Lords reform for about 15 years non-stop. There is a great continuity of ideas in the royal commission's report. The draft Bill and White Paper have not come out of nowhere; they come from the royal commission under Jack Straw and should not have surprised anyone.

If we want to retain the primacy of the Commons, we should follow what the noble Lord, Lord Hennessy, said yesterday: there should be a statutory provision, in a separate Bill that is somehow in a form that future Parliaments cannot easily amend, affirming the primacy of the Commons, not just in Clause 2 of this Bill.

We are going to have elections but the various reports have been timid about the basis for them. I agree that if you make constituencies—whether large or small—the basis for electing a second Chamber, you are repeating what already exists in the Commons. Here is an opportunity to do something completely different and not rely on, for example, European Parliament constituencies. I would take up the idea that the noble Lord, Lord Armstrong, has suggested, but I would make electoral constituencies the basis. He has suggested—as I think did the noble Lord, Lord Low of Dalston, in a previous debate—that we should have constituencies other than territorial constituencies as the basis for electing people to this House. It could be the Royal Society, the British Academy, the CBI or the TUC.

[LORD DESAI]

Over the 12 years since we passed the previous House of Lords reform Bill, British politics has become much less unitary than used to be the case; we now have three devolved Assemblies. This trend towards quasi-federalism ought to be given a further push. We ought to make Northern Ireland, Scotland and Wales constituencies from which, senate-style, 20 Members can be elected to your Lordships' House—directly or indirectly; it does not matter. We now have many elected mayors in English cities. Perhaps every city with an elected mayor should be asked to send a representative—again, it would not matter if they were directly elected by PR or not. Why do we not use some imagination and fancy, and create a different type of representation? It has already been remarked—I think that my noble friend Lady Quin said this yesterday—that the Midlands and the north of England are underrepresented here. We should look at how we can achieve regional representation indirectly by means of representatives from local authorities or cities. We should aim to have a much richer mix of representatives here who will be elected but will not be able to challenge the House of Commons on the basis of territorial representation. Members of the House of Commons will remain accountable to constituents as defined on a territorial basis whereas the new senate that is to replace your Lordships' House could have another kind of representation based on regional, commercial, industrial or cultural factors. The Joint Committee, which will be chaired by my noble friend Lord Richard, will have plenty of time to think about these alternatives. There are ways of achieving an elected House of Lords which are not enshrined in stone in the draft Bill. We may yet be able to fashion a better bicameral system that is more accountable than the present one. I predict that that will not happen in this Parliament but it may happen in the next.

Lord Campbell of Alloway: I am very confused. I am not being wicked about this, but I did not understand what the noble Lord was saying. Is he suggesting that we should abolish this House?

Lord Desai: I am saying that any proposal to have an elected House involves abolishing this House and replacing it with a senate. Whether or not you call that reform does not really matter; it is de facto abolition and we should say so.

11.51 am

Lord Higgins: My Lords, one of the charms of this place is that one can never tell what is going to happen next. Having listened to one remarkable speech after another yesterday, I found it difficult—indeed, impossible—to believe that any elected Chamber would have produced a debate of this quality.

The debate has been helpful in focusing the arguments on both sides. What has emerged clearly is that there is a very large number of arguments against the Bill but fundamentally only two in favour of it, although I have waited with anticipation to hear another. The first argument is that an elected Chamber would be more democratic. I believe that that is fundamentally untrue. We already have a democratic constitutional system which is 100 per cent democratic. Transferring responsibility from the House of Commons to this Chamber would undermine the fundamental democratic responsibility of the other place. The second argument is that a democratically elected second Chamber would be more legitimate. Yesterday, Member after Member pointed out that legitimacy takes many forms, be it representation from doctors, lawyers or whoever it may be. The reality is that the expertise and experience in this place makes us more legitimate as a revising Chamber than would be the case with an elected Chamber that lacked those fundamental attributes.

I say in passing that we keep on talking about this Chamber as a revising Chamber. However, it has been a lot more than that since 1998 because successive Governments—I regret to say that it is still true of this one—have undermined the situation in the other place through the imposition of programming. My own experience on the Front Bench for eight or nine years has been that time and again it is this Chamber, in clause after clause in a Bill, that actually fulfils that primary responsibility. If we are to reform anything, it is that aspect of the House of Commons that is in desperate need of reform.

I will put the matter into some political context. It is well known that time and again in opposition Mr Cameron said that House of Lords reform would be a matter for the third term. None the less, a proposal for reform turned up in the last manifesto, not the manifesto for three Parliaments' time. It is very puzzling to know why that should be, because the idea that somehow putting that into a manifesto would give a real boost to the votes of the party putting it in—not least because all the parties put it in—is doubtful. None the less, that has been the position of the present leadership of the Conservative Party.

One of the features of the debate over the past 10 years has been the way in which the leadership of each party has become divorced from the views of the majority of the members. That was true for the so-called indicative vote, which Mr Straw introduced in the other place. We still have a difficulty in communicating our views to the leadership.

The other aspect of the debate relates to Mr Clegg. It seems quite clear that Mr Clegg sees his place in history as the great constitutional reformer. We started off with the referendum on the AV vote, and we all know where that got to. Moreover, the coalition agreement says:

> "Lords appointments will be made with the object of creating a second chamber reflective of the share of the votes secured by the political parties in the last election"—

another of Mr Clegg's enthusiasms, no doubt, but quite disastrous. I am not clear whether it was a conspiracy by him to undermine the position of this House, but in all events that has been the effect; we find our membership enormously increased, with all the problems that that has created.

The third of Mr Clegg's enthusiasms is of course the abolition of this House and its replacement by a totally different system. While, as I say, there are only two arguments for this, there are many arguments against, not least because of the defective aspect of the Bill, which was created after apparently seven closed sessions. We have not seen the minutes of what

was evolved, but we now have a Bill that in many respects—these have been pointed out time and again yesterday and today—is extremely defective.

We have here a Bill that is to be considered by committee. One aspect that the committee must consider was not raised at all yesterday; there is no mention of costs in the proposals. I think the House would be grateful to the noble Lord, Lord Lipsey, for having made calculations that show against a background of economic stringency that we are in danger of creating a Chamber that is vastly more expensive than the present arrangement. I very much hope that those in committee who will consider this will pay close attention to that.

Strangely enough, in almost all our affairs, the murky hand of the Treasury—I speak as one who has been involved in it—is pervasive. It seems to have been absolutely silent about the Bill, and I look forward to the noble Lord, Lord Sassoon—or, at any rate, my noble friend who is to wind up the debate—perhaps spelling out exactly what the costs of this expensive, unnecessary and dangerous exercise are likely to be.

It has been said by the noble Lord, Lord McNally, that the settled view of the Commons has been expressed. That is not so; the whole matter is open, and anyway the House of Commons is a vastly differently place from what it was in the last Parliament. I hope that, as the realisation of what is involved grows in the Commons, and as the dangers to its Members at both constituency level and in the House itself become more apparent, they will join Parliament as a whole in rejecting this Bill, which is dangerous, unnecessary and fails to build on the progress we have made over the last 100 years. Before the election and the increase in numbers, this House was working better than it has probably ever worked before. The important thing now is to preserve it and improve it on the lines set out by the noble Lord, Lord Steel, and others. To go the way this Bill proposes is fundamentally wrong.

Lord Ryder of Wensum: My noble friend spoke with great clarity about the disgraceful continuation of this Government in ensuring that every piece of legislation in the House of Commons is automatically guillotined. How does he square that fact with a comment made in your Lordships' House by my noble friend the Leader of the House, when he said that his main reason for wanting to reform the House of Lords was,

"a more assertive House with the authority of the people and an elected mandate"?—[*Official Report*, 17/5/11; col. 1279.]

They have an elected mandate at the other end; they have the authority but they are not assertive. Would it not be reasonable to expect my noble friend to persuade his colleagues in the Cabinet to end the ridiculous automatic guillotining of every piece of legislation that comes through this Parliament?

Lord Higgins: My Lords, I am conscious of time and I can only say I agree 1,000 per cent with what my noble friend has just said.

12.02 pm

Lord Haskel: My Lords, the noble Lord, Lord Higgins, has given us perhaps the only argument in favour of this Bill—that those who make the laws should be answerable to the public and, in the public's view, we do make laws in this House. That is why I have always spoken in favour of an elected House. I have also pointed out, however, that this is an ideal, an objective. It is an objective to be achieved not in one huge leap but by a series of steps. It is a series of steps because of the complex constitutional issues that have to be resolved and which we have been debating here.

In 1999, together with my noble friend Lord Stone, I wrote a submission along these lines to the royal commission of the noble Lord, Lord Wakeham. In our paper we spoke of stages of reform, of mixed composition with full and part-time Members, and of how the House would have to perform additional functions. The Labour Government took this route of incremental change. They removed 90 per cent of the hereditary Peers; they created the post of an elected Speaker; and they separated the judiciary and the House of Lords. I still think that we should continue in this careful way—dealing with the issues one at a time and, most importantly, carrying the public with us.

I agree with other noble Lords that the main issue is the primacy of the House of Commons. The Government say that this is secured because of its privilege over financial matters and because of the Parliament Act. The noble Lord, Lord Marks, sternly told us that this is the law. The reality is that the House of Commons has primacy because it is elected and we are not. We have conventions that respect this. If this House were to change, the conventions would change, and it is ridiculous to say otherwise.

I find the proposed method of election a big obstacle to reform because it presents a contradiction which other noble Lords have pointed out. The Government's argument for reform is legitimacy, but election also means accountability. A 15-year single term destroys any accountability and, as other noble Lords have said, it encourages the opposite. I think that it rather demeans the electorate.

In addition, the proposed system of election will not produce people with the knowledge, the experience, the talents and the will to scrutinise the work of the Government—tasks that the Government say should be the main function of this House. I agree with others that the election system proposed would just produce a political clone of the other place.

There are further dilemmas, and in its paper, *Eight Key Obstacles on the Road to Lords Reform*, the Constitution Unit of University College London, lists some of them. For instance, why are the Bishops here? Is it to add spirituality to our deliberations, as the right reverend Prelate suggested? The transition to 300 senators will be tricky, but is 300 the right number? Will they fill all the committee places and do all the other work on and off the Floor of the House, which the noble Baroness, Lady D'Souza, described as "outreach". Like her, I do not think so.

The Government's Bill does not come anywhere near to dealing with those issues; nor does it deal with the checks and balances necessary when there are two elected Chambers. This Bill is just another example of the coalition's unthinking and reckless "big bang" approach to constitutional legislation. As my noble friend Lady Royall said, it is a bad Bill and we deserve better.

[Lord Haskel]

The Motion of the noble Baroness, Lady Boothroyd, points the way forward. Indeed, for one moment I thought that the Government might withdraw their Bill after she effectively demolished it in eight minutes flat. As she said, part of this reform process is getting our own House in order. My noble friend Lord Grocott said that another part of the process is for the House of Commons to reform itself so that it, too, can work with an elected second Chamber. The Steel Bill deals with some of these issues, so the Government should accept the noble Lord's offer and take over his Bill.

We have sensible proposals to improve our working practices, so let us get on with those. There are proposals to allow for retirement. Let us strengthen them and make them a bit more imaginative, using them as a way of starting to deal with reducing the number of Peers. There is polling to find out what we think, but what do the public think? Probably not much, as the noble Lord, Lord Norton, suggested, but let us find out. Meanwhile, let us see whether the Joint Committee can produce a consensus on solving some of these dilemmas.

An elected House is an honourable and democratic objective. Let us work towards it issue by issue, but not by this bad and unworkable Bill.

12.07 pm

Lord Rodgers of Quarry Bank: My Lords, if I upset many of my noble friends on these Liberal Democrat Benches, I am sorry, but I remain opposed to a wholly or partially elected House. That was my view when I joined this House nearly 20 years ago and, since then, it has remained broadly the same. As a former leader of the Liberal Democrat Peers, and to avoid any misunderstanding, I told the Deputy Prime Minister last summer where I stood. The publication of the draft Bill and the appointment of yet another committee have strengthened my conviction.

Many noble Lords will remember, and will have experienced in the House of Commons, the 1968 Bill on reform of the Lords, which was abandoned. I fear that this Bill, as it stands, will also run into the sand. With a coalition heavy legislative programme for this Parliament, Lords reform will inescapably block or delay more important issues. There will be no consensus, which there ought to be on a very major change in the nation's constitution.

On the day when the Deputy Prime Minister made his Statement about the Bill on 17 May, I listened to the 10 o'clock BBC television news. The first item was the Queen in Ireland; the second, 4.5 per cent inflation; the third, a legal matter; the fourth, the Scottish First Minister wanting an early referendum; the fifth, the Greek economic crisis; the sixth, defence costs and international aid; and then, at 10.25 pm, reform of the Lords. That was the order of priority; Lords reform was at the bottom of the pile. On the best available evidence, that is the order of priority for the public at large. In the last election, I do not think we heard much about Lords reform on the doorsteps of Sheffield Hallam or the Forest of Dean, the constituency of Mark Harper, the Constitution Minister.

As the noble Lord, Lord Hennessy, has reminded us, the Deputy Prime Minister drew attention in his Statement to what he called the "roots" of the coalition's proposals. He referred to the preamble of the Parliament Act 1911, by which Herbert Asquith's Government intended to substitute the House of Lords for,

"a Second Chamber constituted on a popular instead of hereditary basis".

Nick Clegg continued:

"There has been progress in the intervening years … We should see ourselves as completing that work".—[*Official Report*, Commons, 17/5/11; col. 155.]

However, "completing that work" is not the right approach. If we are to have a better second Chamber, in whatever form, the starting point for legislation should be now—how things are—not 100 years ago, when the circumstances were very different.

In 1911, the choice was between a wholly hereditary House and an elected House. That was all. There was no suggestion of a peerage that could last only one generation. Today, and since 1958, we have very many life Peers.

Asquith never considered or imagined the option now available, and he would have been amazed by the range of professions and talents that we now have—the diversity, as the noble and learned Lord, Lord Howe, and others have put it—with a great deal of differing experience. We do not know what Asquith would think about reform in 2011, but we certainly cannot assume that he would have preferred an elected House.

As for a "popular" basis in 1911, "popular" meant only men. At that time, Asquith, was, in his own words,

"a strenuous opponent of the extension of the political franchise to women".

He was certainly not a model for women today.

The Parliament Act was not a carefully considered proposal, a long prepared democratic measure, but a by-product of the 1909 Budget and a constitutional crisis. The economic, social, moral, cultural and political climate of those times was very different. History is history; Asquith was Asquith. Reform of the Lords should be judged on merit in the year 2011, not in the spirit of the Liberal high noon in the Edwardian twilight.

For many years, despite the 1958 life peerages legislation, reformers assumed, in one breath, that getting rid of the unacceptable hereditary principle meant an elected House, but that was never the choice. My own preference then, and now, was for ending the hereditary principle and for necessary reform built on a life-Peer House.

In yesterday's debate, we were reminded of the events in 1999, when the House agreed to retain the hereditary principle through electing 90 "excepted" Peers. I shall not bother going further into the complications and course of the Weatherill amendment—there is a very good House of Lords Library Note on it—but it was nonsense from the start. The proceedings for by-election under Standing Order No. 10 have become a subject for ridicule. To repeal the Weatherill amendment and finally end the hereditary principle in the Lords should be the essence of reform.

It follows that I join in the widespread support in the House for my noble friend Lord Steel's Bill, and I

would much prefer action now rather than a long examination of this coalition's draft document and, I am afraid, fruitless conclusions.

The House of Commons and the House of Lords are joined together in a single Parliament. The balance of powers, including the powers of the Executive, works very well despite some rough edges. After scrutiny, debate and negotiation in Committee, including the ping-pong, the elected House of Commons and overall democratic legitimacy eventually wins, and so it should be.

12.15 pm

Lord Eames: My Lords, at this stage of any marathon, aching limbs are foremost. I regret to say at this stage of this marathon, my voice has given up. I apologise for the way in which I am speaking.

We have heard a great deal in this debate about what we as individuals believe to be the purpose of this assembly. When I look at the Bill and the White Paper before us, I find it very difficult, as the noble Lord, Lord Norton, reminded us a short time ago, to understand the precise reason for doing this. As the noble Baroness, Lady Boothroyd, reminded us yesterday, there is a sense that we are talking in a circle. Coming from the Cross-Bench position, I am confused as to the real purpose of this move by the Government. Anyone who heard the right reverend Prelate the Bishop of Leicester speak yesterday could not fail but be impressed by the tests that he put before us. Reflecting on what he said overnight, I find that it becomes plainer and plainer that there is vagueness and obscurity in the reason for being asked to look at this proposed Bill and White Paper. One cries out for clarity as to what the Government are asking us to do.

One of the privileges of being a Cross-Bencher is that you are part of a small community within a community, and the relationship of that smaller community to the rest of this House is, to say the least, enlightening. One is conscious of the need of the two main parties in this House to gain support from the Cross-Benchers when they debate and propose legislation. In that more apparent use of our position, it has become very clear to many of us that we possess something unique that is in danger of being lost in what is being proposed: that is, independence.

In an elected upper Chamber, I know that many of my colleagues on these Benches would never dream of seeking to be candidates in an election. We would simply feel that this goes totally against our reason for being here at present. If this is to be the way forward, I feel fairly certain in predicting that a lot of the present Cross-Benchers will not feature in any future upper House.

Secondly, there has been a great deal of talk in this debate about the relationship between two elected Houses. There was reference yesterday to the position in the United States between the House of Representatives and the Senate. Many years ago as an academic law lecturer, I took on the task of examining the relationship between the two Houses in the United States. Yes, on the surface, they had reached a formula that allowed democracy, in their terms, to be produced. Yes, they had found a relationship for working together. The more I delved into the situation, though, it became apparent to me that that was only part of the story. An enormous amount of time and energy was, and I believe continues to be, devoted by the representatives of both those Houses to achieve that end, and the time and energy expended on it far outweigh any purely party political discourse. At that stage, all those years ago, it struck me how much better it would be if that time could be allocated to the production of democracy, the preparation of legislation and preparation for debate, so it is not as easy as it seems for that great democracy to achieve what it does. My fear for two elected Houses in our Parliament would be that the tensions that soon surfaced between Members of the same political persuasion and in programming would be such that it would be a cause of regret if we went down that road.

I return to the position of the Cross-Benchers. As I say, I do not believe that many of us, if any, would wish to seek election to a new form of House. In the terms of the life of this smaller community within the larger community, we see that there is trust in each other's independence, each other's judgment and in what we hope we came here to achieve. My fear is that, in the wording of the proposed Bill and particularly the wording of the White Paper, that very uniqueness, that trust, could be lost. I would find that very regrettable, and I suggest that it would be detrimental to what this Parliament stands for in the eyes of the world.

It is a well known fact that if you are teaching in a theological college and you prepare a sermon, if the point that you wish to make to your congregation is not very plain, you raise your voice and surround that point with bland expressions. I am afraid that that is how I view much of what is before us at this moment. I commend the noble Baroness, Lady Boothroyd, and I hope that the Steel proposals will win the day.

12.23 pm

Lord MacGregor of Pulham Market: My Lords, I have two preliminary points. First, in eight minutes it is inevitable that one can touch only on certain issues, and after a long debate it is also inevitable that one will be repeating many of the comments made on the key issues. I make no apology for that because it indicates the strength of feeling on these issues. Secondly, when I was in the other place I consistently held and expressed the same views and support for an appointed House that I hold now—a House, of course, greatly enriched and changed by the reforms relating to life and hereditary Peers.

The noble Lord, Lord St John of Fawsley, said yesterday:

"What on earth is this House doing spending two precious days debating an issue that has no interest outside the Westminster village and for which there is no demand in this country at a time when we are facing a domestic crisis of major proportions?".—[*Official Report*, 21/6/11; col. 1208.]

I take issue with that. I think that he was wrong; these two days have been very well spent. I agree, though, about the reaction that there will be in the country when we spend two years and much parliamentary time dealing with this issue when the country is still having to face the inevitable and continuing economic and other pressures in dealing with the fiscal deficit

[Lord MacGregor of Pulham Market]
and many other things. This leads to a point that the noble Lord, Lord Ashdown, made, when he said, in justification of the Bill:

"The public have made it very clear that they do not trust our electoral system in its present form".—[*Official Report*, 21/6/11; col. 1189.]

I was in the other place for 27 years. I go along with many others who say the same as me: I never had a single letter on House of Lords reform during the time when I was there and I get very few representations even now. Such reaction as one does get to the House of Lords, when people know that one is in it, is largely favourable. The adverse public reaction concerns the House of Commons. I regret that because I have a deep respect and affection for the House of Commons, which has been unfairly denigrated in many ways in recent years. However, there is no doubt that the Commons expenses issue and the kind of yah-boo politics that is inevitably conveyed in prime-time television coverage has greatly diminished the public's respect for the House of Commons. Therefore, it is the House of Commons which gives cause for concern, not the House of Lords.

I am constantly told by many members of the public who talk to me about House of Lords reform that the last thing they want is a clone of the House of Commons. I say this as someone who, as I say, has deep respect for the House of Commons. I say to the noble Lord, Lord Ashdown, that if we had a referendum on reform of the House of Lords as proposed, I am fairly certain that the public would give the same response as they did in the AV referendum, and they would do so because so much of the media comment from serious newspapers and other commentators is against these proposals. Therefore, there would be heavy pressure against these proposals in any referendum.

There has been a subtle move in the language from democratic accountability to democratic legitimacy, and I can see why. Earlier proposals on House of Lords reform ran into considerable difficulties because they were based on regular elections to the House of Lords on the same basis as elections to the House of Commons. This caused great concern among Members of the House of Commons in relation to the challenge posed to their position in their respective constituencies and in the House, as this House would be elected on the same basis. There was also a concern that those who wanted to come to this place might well be those who had failed to get into the House of Commons and therefore might use this as a stepping point to getting into the House of Commons. Those two fears and criticisms were dealt with by proposing a 15-year term and no re-election. However, that immediately removed any question of democratic accountability. There is no democratic accountability if you are elected for a single term. I somewhat suspect that there is no democratic legitimacy either as many Members, knowing that they were here for 15 years with no possibility of re-election and no possibility of getting to the House of Commons, might not even attend very often because no one would demand that they did. That is very different from being a Member of the House of Commons and having to face re-election. I take very much the point that the noble Lord, Lord Armstrong, made on this. The democratic legitimacy versus democratic accountability argument has lost a lot of its credibility because of these proposals.

The key weakness of the Bill is Clause 2, which relates to functions and powers. This part of the Bill has already been holed in the water, and I think is already dead in the water. It is simply unsustainable. Inevitably, there will be clashes as the Lords asserts its democratic legitimacy. The noble Lord, Lord Ashdown, said yesterday in favour of House of Lords reform:

"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".—[*Official Report*, 21/6/11; col. 1190.]

They would certainly not have been challenged by this Chamber on the basis of the proposals in this Bill because it would have no power or rights to do so. They could have been challenged only—this is the giveaway—if the House of Lords asserted the powers to do that, which it has not got but which it will have if it is democratically elected. I am constantly surprised that Members of the House of Commons have not understood this point in the past, but I think that they do now. There is a growing understanding in that regard. It was very significant that in response to Mr Clegg's Statement in the House of Commons on 17 May, 16 of the 29 who were opposed to the proposals—rather more than those who simply asked questions or were in favour—referred to the clash between the two Houses and the challenge to the supremacy of the House of Commons. I suspect—this is also significant—that many Members here who are raising this issue have been Members of the House of Commons and understand the point. I say to the noble Lord, Lord Peston, that it may not be only in this House that a lot of challenges will arise to this part of the Bill.

I wish to make two other points in that regard. One concerns finance and supply. It seems to me inevitable that if this House were elected it would demand many more powers in relation to finance and supply. Already there are demands from outside Parliament that this House should play a much more substantial part in scrutinising Finance Bills. That would become inevitable if this House were elected.

A point that I do not think has been made already is about Ministers. I am a little perplexed by the paragraph on Ministers but it seems to me to be absolutely clear that there would be a need for a growing proportion of Ministers in this House if this House had democratic legitimacy. I pay great tribute to Members, on both sides, on the Front Bench for the roles that they play and have played as Ministers. They do a tremendous job under huge pressures but the job would become much bigger if this House was democratically elected. There would be a need for many more Ministers in this House from individual departments. We could not have one Minister responding for six departments. There would be many fewer Ministers in the other place and those who aspire to being Ministers in the other House should think about that point.

Lord Hunt of Kings Heath: My Lords, is that not an argument in favour of that?

Lord MacGregor of Pulham Market: It may be but not from the other House's point of view. I recognise what the Leader of the House said on 17 May:

"I fully expect the conventions and agreements between the Houses to change, to evolve and to adapt to different circumstances".—[*Official Report*, 17/5/11; col. 1279.]

He talked of a more assertive House here. I think that it would happen very quickly. I was much struck by the speech made by the noble Lord, Lord Wills, speaking in favour of an elected House but making clear that the absolutely wrong part of this Bill is the lack of powers. That seems the most indefensible part of the Bill and will need to be fully addressed by the Joint Committee, taking into account the report by the Joint Committee on Conventions carried out under the chairmanship of the noble Lord, Lord Cunningham.

In conclusion, I agree that change is needed. I very much support the Steel Bill. One of the most vulnerable parts of this House, as we enter the debate about House of Lords reform, is the size of it. We will have to address that in the debate next week. I welcome the decision of the Government to publish the Bill and to set up the Joint Committee. Publicising the Bill has clearly indicated the defects in the proposals. There is immense detail in it, and much to be challenged. I wish the Joint Committee well in this huge task. If more time is required, I hope that the committee will take it. It is too important for its work to be rushed.

12.31 pm

Lord Davies of Stamford: My Lords, it is a great pleasure to follow the noble Lord, Lord MacGregor, who is my old boss from many years ago and for whom I have always had the highest regard. It is impossible to address this subject without taking note of the extraordinarily contradictory behaviour of the Government in relation to the fundamental principles of this Bill over the past few months. One of its main purposes is to reduce our size from 800 to 300 Peers. But the Government have been making unprecedented increases in the numbers in this place over the past year. I recognise that I am one of them, of course, but that does not change the argument. In other words, the Government have massively contributed to a problem, which they now say needs to be urgently redressed. There is something slightly peculiar about that.

The Government have brought forward the EU Bill, in which some of us have been taking part. It provides for at least 56 referenda on different matters relating to our membership of the European Union and including such esoteric questions as whether or not we have qualified majority voting to decide the future of the public prosecutor's office in the EU. Is it not extraordinary that the Government, who say that they want up to 56 referenda on those sorts of subjects—although a lot of people do not take it very seriously—do not provide for referenda on major constitutional reforms of the kind now being proposed? The only logical explanation is that the Government think that the change that they propose in the House of Lords is less significant than the use of qualified majority voting on the public prosecutor's office in the European Union. That does not seem very convincing.

There are some difficult issues here. They might be the result just of confusion, hastiness or lack of thought, or of something more slightly more sinister. It has become a pervasive suspicion in the country as a whole, which is very regrettable in terms of people's confidence in our system, that the only reason for bringing forward this very important and momentous constitutional measure is to give Mr Clegg a boost to his amour propre after the humiliations of the past few months. I hope that that is not true. I believe that I will carry the whole House with me when I say that constitutional legislation above all legislation needs to be considered extremely carefully. It must not be brought forward hastily or wantonly, let alone cynically. It must be brought forward reflectively and with an eye for the long term.

Although I do not agree with all aspects of the Bill, as I shall explain, I am not against an elected House of Lords. I have always been in principle in favour of an elected second Chamber and I have become more in favour of such a Chamber since I have served here for nearly a year. The reason for that is simple. I am not sure whether election would increase the legitimacy of this House with the public as a whole. As far as I can see, there does not seem to be much wrong with the legitimacy of this House in the eyes of the public as a whole. But I am convinced that it would increase the legitimacy of this House in our own eyes. It would give us the courage of our convictions. I have been very struck by the extent to which we do not have the courage of our convictions. When it comes to ping-pong with the other House, after one or two sessions we throw in the sponge and we say, "Oh, we have to give way to the elected House". I do not quite know why we do that because we are observing conventions like the Salisbury convention, which were offered up at the end of the 19th century as a substitute for statutory parliamentary reform, or perhaps to head off statutory parliamentary reform.

When we had the reform, which the House of Commons wanted, imposing the rules that it decided—that is, the restrictions on financial discussions, the time limitation in which we could hold legislation and so on—we had a set of rules imposed on us with which the House of Commons was happy. There is no reason not to observe those rules, which we have to, and to give up the previous conventions. It is an anomaly that we observe those conventions as it is but I am convinced that that anomaly would disappear if we were an elected House.

When I asked why we were not being a bit tougher and a bit more robust about standing up to the Commons, I was told, "Oh, but it is an elected House. Therefore, we feel that we cannot". That is a very important reason and on that basis I am very happy to have an elected House of Lords. But I have some conditions for that. The first is that it would be a fully elected House. I cannot conceive of anything more absurd than legislating on the principle that you require election for legitimacy and then having 20 per cent of the House that, by definition in terms of that governing principle for the Bill, are illegitimate. That seems to me to be an extraordinary anomaly, which could not be justified for a moment. The House must be 100 per cent elected.

[Lord Davies of Stamford]

Secondly, the House should not be elected by PR, which is the worst possible form of election if you want to maintain the independence of the House of Lords. Of course, it is vital that we do so. Thirdly, for the same reason, I am opposed to the idea of allowing Members of the House of Lords to be Ministers. The offer of the potential of ministerial jobs is far and away the most constraining factor limiting the independence of Members of the House of Commons. I had experience of it myself. I knew when I voted against John Major over the Scott report that I was completely removing any possibility of my joining that Government. I was very upset about that and it was a very difficult issue. I was much less worried about deselection or being defeated at the next general election. I was confident that I would be able to explain what I was doing to my constituents and to carry them with me. If we want to have an independent House, we should exclude the Ministers. The idea of having temporary Ministers here, as the Bill proposes, is appalling. They really would be the placeman of the 18th century writ large.

There is a fundamental contradiction in the Government's mind about whether you can be elected and not have representational functions. Yesterday, I heard several statements from the Government which implied that they thought that it would be possible to have an election and then for the elected Members of the House of Lords not in any way to conflict with the House of Commons in their representational functions. That is unrealistic. Once you have been elected, you cannot possibly turn around to those who have elected you and say, "Thank you for electing me. I am now going to enjoy my salary for the next 15 years but I'm not interested in your problems at all because I am not standing again for re-election, so you can get lost". If there was a contribution that we could make to ensuring that we really undermined confidence in our democracy in this country, it would be exactly that. It would be to say, "Here is a class of politicians who have no responsibility to the people who sent them there and take no interest in their problems or their representations".

Of course, once you start taking an interest in people's problems and representations, you are obviously conflicting with the House of Commons. I am not offended by that but we should face that fact. Just as in the United States you can talk to your Congressman and if you do not get any help there you can talk to your Senator, exactly that situation would prevail in this country. I am happy with it but we have to face up to the fact and be honest with the House of Commons and say that there would obviously be a conflict. There is no mileage at all in trying to pretend schizophrenically to those who want election, "Yes, that's fine, we can provide you with election", and to those who are worried about a conflict with the House of Commons say, "Don't worry. There will be no conflict with the House of Commons". We have to be honest about this. Clearly, representation follows election. That has always been the case and it would be the case in the future.

12.40 pm

Lord Waddington: My Lords, I seem to have travelled a rather different road to the one travelled by many noble Lords, but at the end of the day I have arrived at precisely the same destination. We have had quite enough constitutional change in recent years. I agree entirely with my noble friend Lord MacGregor that, with the country facing so many pressing problems, it will look quite extraordinary if we spend days and days of parliamentary time on legislation on the lines of the draft Bill.

Then there is the matter of the Parliament Act, already mentioned a few times in this debate, particularly by the noble and learned Lord, Lord Morris of Aberavon. If this House were to reject this Bill, could the Parliament Act be used to force it through second time round? The question is simple: could an Act passed with the consent of both Houses to resolve disputes between an elected and an unelected House be used to change entirely the composition of the second Chamber so that it was no longer even based on the peerage whose wings the Parliament Act was passed to clip?

It would be very strange indeed if the Parliament Act could be used and I would like to hear the Government's view on this. When the Deputy Leader of the House sums up, I hope that he does not just brush the matter aside and say that no one can know now whether or not a Bill will get through this House. It would be very difficult to find anyone in this place who thinks that the Bill would have much of a chance. If it really would not be possible to use the Parliament Act, should the Government not be considering whether they are justified in pressing ahead and wasting a lot of time on this matter?

Having said that, I am not in principle against an elected second Chamber. I can see the case for creating an elected House so that it can have powers that would not be proper to give to an unelected House. I am dead against creating an elected second Chamber and then requiring it to do no more than we can do perfectly well now. Let us look for one moment at the opportunity we are missing. Noble Lords have been very polite about the Commons in this debate—with the exception of my noble friend Lord Higgins. In truth, the other place, which is supposed to be a check on the Executive and whose primacy noble Lord after noble Lord has determinedly championed, has become pretty feeble in the role that it is supposed to perform.

Governments, particularly those with big majorities, are able to get almost any measure through the Commons. The Commons is often little more than a tool of the Executive—and things are getting worse, not better. It is not just a matter of the power of the Whips, and the power of patronage—which of course has grown much bigger as a result of the introduction of life peerages. Governments and Oppositions nowadays even busy themselves with trying to dictate who can stand for their respective parties, regardless of the wishes of local people. People have even been thrown out of Parliament for appearing to voice disagreement with party policy. That happened to my noble friend Lord Flight, when he was Howard Flight, back in 2005, and it was a disgraceful affair. Systems have recently been set up to prevent people who have fought good fights under the party banner from being able even to offer themselves for reselection. That has just happened to the person who fought, and fought well, in the constituency where I live. Of course, a more powerful second Chamber

would not stop that sort of abuse of power, but it does show how great the power of the Executive is over the Commons.

There is a case for an elected second Chamber but it is not the case being put forward by the Government. There is a case for a second House which would not be just a revising chamber, still less one dedicated to no more than making the legislative sausage machine run nice and smoothly. There is a case for a Government having to win not just the support of the Commons but of another body composed and elected in a way that would make it far more independent of government than the Commons has become. There is a case for an elected House having new powers with regard to legislation; but also perhaps specific powers for the House to exercise on its own, like some of the powers given to the US Senate.

However, none of this is on offer. Out of fear that any hint of an increase in powers would scupper the Bill, those who have brought it forward have bolted the door against worthwhile reform. As a result they are trying to win an unwinnable argument. They have set themselves the task of trying to convince the public that it is good in itself to create more elected politicians even if they are not allowed to do anything that is not done perfectly well now. They are on a hiding to nothing.

12.47 pm

Baroness Brinton: My Lords, yesterday my noble friend Lord Ashdown of Norton-sub-Hamdon made arguments for legitimacy through democratic elections. I believe his arguments are unanswerable and I wish to echo the sentiment. A noble Lord commented afterwards that all Liberal Democrat candidates would write down his speech and deliver it in hustings over the next few years. There have also been comments that nobody outside this House is interested in possible reform.

When the coalition document was published last year, I had not just telephone calls but an irate voter in Watford, where I had stood for Parliament, knocking on the door to say that the coalition document was not strong enough on reform of the House of Lords. I hasten to point out that this was not a Liberal Democrat member but a member of the public who had heard me espousing the reasons that this Chamber should become fully elected at various hustings; it also came up during questions at those hustings. For some people—more than we suspect, I think—reform is an important issue.

I wish to make clear that my personal view is that I support 100 per cent elected, and I agree with the sentiments expressed earlier by the noble Lord, Lord Davies of Stamford. However, I am more of a pragmatist than him and suspect that the draft Bill's proposal of 80 per cent will move us in the right direction while retaining the expertise of the Cross-Benchers. I will come back to that in a minute.

The noble Lord, Lord Davies of Stamford, also referred to the issue of constituencies. It is important to recognise that with any list system on a regional basis, the constituency work of MEPs is very different from the constituency work of MPs in the other place. It is simply the nature of the geography: if you a Member for a large region you will not have the close contact that you do with constituents in a smaller constituency.

Lord Davies of Stamford: Does the noble Baroness, Lady Brinton, agree that the difference is that MEPs are elected to handle issues falling under the jurisdiction of the EU? In the case of the Lords and the Commons—or in the future, elected Lords and the Commons—the jurisdiction will be the same, and the issues will be the same. Therefore, there would be the conflict which I drew attention to.

Baroness Brinton: The point I am trying to make is that it is not purely about jurisdiction, it is about the practical application of having a constituency of 5 million people as opposed to 75,000.

I turn now to issues of diversity in a future House that is either partially or wholly elected. In an elected House, we need to ensure that recommendations from the Speaker's Conference to improve the diversity of the other place are taken into account by the scrutiny committee over the next two years. In our present format we do not represent the country in all its diversity. Some of the appointments in recent years have attempted to deal with that, but, partly because there is no retirement, we still do not reflect the country that we represent.

There is also an issue about the geographical diversity that is needed. If we looked at where most Peers come from, I suspect that we would find a heavy southern bias. I was speaking with colleagues in the north-east the other day who feel that they do not have access to many Peers; they have some, but not the same as those who live among the large concentration in London and the south-east.

As for the conventions governing the relationship between the two Houses, we all agree that those are not absolute. I do not take the view that they will stand still, and my noble friend the Leader of the House must have been right yesterday when he said that the conventions will evolve and that the relationships between the two Houses may change. However, that is nothing new. Conventions have evolved over the years and the relationship between the Houses changes with time.

This House is much more muscular than it was a few decades ago. For example, in the decade up to 2000 the Government were defeated 155 times; in the decade up to 2010 the Government were defeated 422 times—nearly a threefold increase. Granted, cause and effect cannot be proved. It may be that the change in government in 1997 was influential and the reforms which saw the departure of the majority of the hereditary Peers should be noted.

However, we have not seen this House attempting to depart from any of the conventions since then. Furthermore, Clause 2(3) of the draft Bill makes it clear that the conventions governing the relationship between the two Houses are to remain unaffected, and there is no reason to suppose that that aim will not be achieved. However, if a future Parliament were of the view that the conventions needed to be explicitly codified to protect their efficacy, legislation could be brought forward to bring that about, as was proposed in the 2005 Labour manifesto.

[Baroness Brinton]

I am concerned that a House of 300 could deal adequately with the workload of the House, particularly if there were to remain some who are not full-time politicians. I suspect that many in this House, and the public at large, regard the presence of some who are not full-time as one of the strengths of this House. The pride that is rightly taken in the House's expertise derives largely from having here many who are active in other spheres, and I am not sure that it is intended that we should sit on many more days than we currently do.

Pride in the expertise of the Members of this House does not derive solely from the presence of Cross-Benchers, much as I respect their expertise. It is unfair to assert as a generality—and I have heard it said—that those who are unelected or without party affiliation hold a monopoly on expertise. A glance around this Chamber certainly proves that wrong.

As for the system of election, as a committed supporter of STV for parliamentary elections I nevertheless feel that—in the larger constituencies that will be appropriate for proportional elections to this House of, say, 80 to 120 new Members across the country at each election—an open list system has much to commend it. In particular, we would be far more likely to achieve a membership that is more diverse, as I mentioned earlier, and more representative of Britain as a whole with an open list system than we might with STV. That is why we should consider that system for elections. However, whatever the system of election, a democratically legitimate upper House, as part of a democratic Parliament of the United Kingdom, is a goal that we should pursue and achieve.

12.54 pm

Lord Lang of Monkton: My Lords, I did not participate in any of the earlier debates over the years on the reform of this House. I thought that I would wait until the traffic eased up a bit and the pressures died down, so that I would be able to dilate at leisure. Clearly I waited in vain. I am now being lapped by many noble Lords, in some cases for the third or fourth time. However, I at least have the comfort of knowing that, if I bore your Lordships on this subject, I shall be doing so for the first time.

My noble friend the Leader of the House proclaimed yesterday that this reform was promised in the Conservative manifesto at the last election. I say with the greatest respect to my noble friend, who is not in his place, that that does not necessarily make it right. Given what my right honourable friend the Prime Minister said before the last election, I find myself surprised to discover how quickly we seem to have reached our third term.

On reading the draft Bill, so many thoughts crowded in on me as to what was wrong with it that I remained baffled. What, for example, is the point of a Bill that seeks to bring increased democratic legitimacy to this House through election but would deny the elected the right to exercise that legitimacy? Surely that is unsustainable. What is the point in bringing into this House, hot from the hustings, elected and politically motivated Members, as they would be, who had probably tried and failed to be selected for and elected to the other place, and forcing them to confine their energies here to the detailed scrutiny and revision of legislation that is at present done so well by existing Members—and to do that all in the name of the holy grail of democratic legitimacy? I shall return to that issue shortly.

By common consent, this House has a diverse range of expertise and experience that the House of Commons lacks. Every Member of this House has been appointed because he or she has something to offer. The electorate will not benefit if we destroy that, and nor will democracy. Incidentally, 300 Members would not be enough. There may be only 300 to 400 Members, on average, active in the House at the present time, but they are not always the same ones. To change this would inevitably lead to frustration among the new, elected Members and then to challenge. It could destroy the invaluable equilibrium between the two Houses that is afforded by the present arrangements.

There seems to be an aggressive antagonism towards this place, implicit in the Deputy Prime Minister's proposals. Surely that is entirely the wrong way to go about reform, which should be gradual and consensual. Consideration of reform should not be only about this House or that House, conducted in isolation with no thought for the constitutional ripples between and beyond the two. We have a bicameral system of government. We are two Houses of the same Parliament that have evolved together over centuries. I do not think that enough has been said about that bicamerality. Of course there has been passing reference, but, in this House, in our system, it has a particular and special quality. Our two Chambers interact in a unique way. They are like the two ventricles of a human heart; they share the same heartbeat. Cut into one and the other will suffer as well; complementarity and equilibrium will have been destroyed.

The bigger the change in the make-up of this House, the greater will be the need to re-examine the balance of powers and the conventions that operate between the two Houses. Together, these two Houses represent a parliamentary democracy—asymmetrical, certainly, but highly functional. It is not a textbook democracy of abstract, theoretical perfection, but a living, practising one. To those who would suggest that only elections can bring legitimacy, it is worth pointing out the obvious: this House has never been elected and yet its democratic legitimacy has over the years been deemed fit for purpose.

We acknowledge that the elected House has primacy and in any dispute must ultimately prevail. I want us to retain an appointed upper House precisely because I respect the primacy of the other place. That way we can continue to differ from it but defer to it. Democratic legitimacy is not bestowed simply by ticking the directly elected box; it is achieved by time, by custom and practice, by function, by performance and by popular acceptance. I believe that this House has popular acceptance. If it did not, it would not have endured. Those noble Lords who have spoken in support of the draft Bill seem to be saying that this House should become an elected one in order to make us as popular as the House of Commons. I believe that we can do better than that.

Still less is legitimacy achieved by the added twist of proportional representation. After all, was it not Lloyd George who described proportional representation as a "device for defeating democracy"? As to the 80 per cent elected option, quite apart from the difficulties of a hybrid and two-tier House, if an elected House is the Deputy Prime Minister's guiding principle, then 80 per cent elected is four-fifths of a principle, which is rather like being four-fifths pregnant.

It is unprincipled to contemplate changing the membership of this House without first considering and agreeing what we want this House to do. If the powers and role are to remain the same, then so should the membership. If we change the membership, then the powers and role will assuredly change, irrevocably. I cannot believe that that is what the other place wants.

There is much need for reform within this House—reform of the way we are appointed, of our numbers, of some of our procedures and perhaps even of our length of tenure. One senses a clear consensus on that. We should press on with deciding on those and other reforms in our traditional, evolutionary way. This Bill, by abolishing the House as at present constituted and replacing it with something quite different, would enforce the unprovoked disruption of our constitution. It would cut into the very bone and marrow of our parliamentary democracy. I believe that it is an affront to our country's constitutional integrity and we should have nothing to do with it.

1.01 pm

Lord Elder: My Lords, I follow the noble Lord, Lord Lang, feeling suitably put in my place, because I have form in these debates. I will try to temper that by at least being brief. I have four points to make. First—and I always say this with some nervousness in this House—I was and remain a unicameralist. However, if that is not to be the outcome of the constitutional changes ahead of us, I do not wish to see anything other than an unelected House, which is unable to challenge the elected House in the Commons. A well informed but unelected revising Chamber, with the power to ask the elected Chamber to think again, should be maintained. I say that because I believe in the primacy of the House of Commons. I do not for a moment believe that it is possible to safeguard that primacy against the wishes of another elected House, unless of course we have a written constitution or, as the noble Lord, Lord Hennessy, said yesterday, some statutory limitation of the second Chamber's powers, neither of which is on the agenda. That will be an inevitable consequence of a second elected Chamber.

We are deluding ourselves if we think that an elected Lords will not challenge the elected Commons—a point made yesterday by my noble friend Lord Grocott with his usual powerful candour. I suspect that, should the proposals in this White Paper come to fruition, the Liberal Democrats would not be able to restrain themselves from pointing out that a Second Chamber elected by STV rather than first past the post was, in their view, more legitimate than the other place. You cannot believe in proportional systems for as long as they have and then keep quiet when a highly proportional House is sitting beside one elected by first past the post. It would be seen as a more proportional and a better system, by them at least. They would see the House elected by that system as more legitimate. That is a recipe for disaster.

I also question the idea that the proposed House, with Members elected for one 15-year term, would somehow be more accountable than this House. Accountability comes not from election but from re-election, which is expressly ruled out in these proposals. Indeed, I fear that a 15-year term with no possibility of re-election begins to look like a sort of parliamentary version of a big lottery win. When one thinks of what some of the people who were elected did in terms of claims and expenses down the other end of the building, one wonders what the consequences might be if there was no possibility of re-election.

Secondly, I would like to say a few things about timing. I know that the coalition is for five years. However, am I alone in thinking that, with AV lost, this other most cherished part of Liberal Democrat thinking looks to be on a timetable that happily keeps reform just over the horizon for most of the rest of this Parliament? If at the end of that time it fails, well, that is not for one of the partners in the coalition so great a disaster. This is a very attractive carrot for the larger coalition partner to dangle before its less numerous friends.

Thirdly, I believe that it is absolutely fundamental to our constitutional settlement that such a fundamental change to that settlement should be the subject of a referendum. I know that all three parties suggested reform in their manifestos, but giving the British people no choice, which is effectively what that meant, does not seem a satisfactory way forward in a democracy. The mere fact that the British electorate had no choice but to vote for a political party that believed in reform does not necessarily mean that they agree with that reform. I absolutely believe that we should have a referendum on so fundamental a change.

Fourthly, and finally, when the proposals made by the noble Lord, Lord Steel of Aikwood, were first put forward, I regarded them as a trifle thin. However, unusually for constitutional proposals, with the passing of time they have managed to look much more substantial, much more sensible and much more worth while. They can certainly be agreed and can be implemented quite quickly. I would wholeheartedly support that happening. They look increasingly good—and they will look better still when the current proposals, in due course, collapse under their own weight.

1.06 pm

Lord Elton: My Lords, it concerns me that this debate is being conducted, and indeed reported, as though it were a battle in which the protagonists are the House of Lords and the House of Commons. It is not. We are standing too close to the canvas. It is part of the war between Parliament and government. Consider the origin of Parliament. It was invented to control the Crown in the days of absolute monarchy. Until George I came to the throne, no Minister of the Crown was allowed into Westminster without permission or an invitation. Now, we have—if you count PPSs—150 members of the body that Parliament is supposed to be controlling inside the controlling body and their power there accumulates. As the main protagonist,

[LORD ELTON]
government is not just Ministers; it is the whole machine of government—thousands of people, all with their own views and programmes, tuned in a certain direction. As a Minister, I came across senior civil servants who regarded Parliament as a nuisance and a distraction. They of course are willing allies of government Ministers, who want to get programmes through against the will of the elected majority.

The first thing that the Government have to do in this war, which has continued since the 13th century, is to get rid of entrenched power. The opening line was of course the Parliament Act 1911 and the subsequent Parliament Act, which have definitively drawn the teeth of this House in the constitutional battle, although the question of the Parliament Acts remains open. The next thing was to control the elected power in the House of Commons. That has been done in a succession of ways. One that has been alluded to is the growing use of the guillotine—the Programme Motion, I think that it is called—in the House of Commons, which is now routine and which muzzles the elected representatives for a great deal of the time, with the result that we have to do their work.

Then again there has been the changing nature of the House of Commons. When I stood for Parliament 38 years ago, I was in a cohort of people all of whom had a profession, trade or something else in which they had been brought up and to which they could return. The rewards, when you got to Parliament—if you did, which I did not, twice—were insubstantial. Members were not paid any money at all until relatively recently. Therefore, if you were threatened with being thrown out, it did not matter; what mattered was that you were not going to get promotion. However, that has changed, because now Members of Parliament increasingly come in without a trade or profession, with nothing to go back to, and subsist on the substantial income that is given to them as Members, with increments when they take office or have special posts and with supplementary benefits, which have caused a good deal of public interest. To lose that in the middle of what should be a career, possibly with many young to pay for, is a disaster.

The result is that the Government, through the party system, have an enormous hold over the voting strength in the House of Commons. That was beautifully illustrated when Tony Blair got the 90-day clause through the House of Commons; he had a majority of, I think, 161 on paper, but he got the clause through by 14 votes. When the measure came to this House, we started discussing it on a Thursday at 3.05 and finished on the Friday at 7.31. We exerted the democratic force that the House of Commons was unable to do. We have to take a care with what we do about this House because what we do is part of the great campaign of the Government to try to swallow Parliament, while Parliament tries to remain at liberty to defend the British electorate.

The great threat of deselection is real. It attaches to any proposal to have a party system in this House in which Members could be deselected—hence the charm of the 15-year tenure of an elected Member of this House under the Bill. However, that immediately destroys its legitimacy. Other noble Lords have dealt extensively and successfully with the threat of the Bill to the procedure between the two Houses. I repeat that this discussion and its reporting have been represented as a battle, not a war. My appeal is not to all our colleagues in the Dining Room but to editors and producers around the country to wake up, to look at history, to see what is going on and to alert the country to it and to our role in preventing this ending in an anti-democratic calamity in which parties of all colours join. Every Government within 18 months become set on reducing the power of Parliament to interfere with their decisions. My noble friend Lord St John of Fawsley was swift to get to Margaret Thatcher and set up the departmental Select Committees, which were a step back on the ratchet of power going from Parliament to the Government. He got that through before she was tainted with the poison that overtakes all Governments, which I tasted briefly but which I survived.

1.12 pm

Lord Judd: My Lords, it is a challenge to follow that learned contribution by the noble Lord, Lord Elton.

The first question is whether there is a need for a second Chamber. If we believe that there is, the second task is to define clearly what that need is and what its purpose is. What is deplorable about this legislation is that it tackles neither of those fundamental questions. The answers to the questions can be found only in the additionality in terms of quality that a second Chamber brings to strengthening democracy. We then come to the issue of what composition is necessary to fulfil that purpose and what are the most effective arrangements for enabling it to work well. One thing has come out very clearly from this debate. There seems to be total agreement—and I find myself 100 per cent with those who argue this—that the supremacy must lie with the elected Commons. There can be no question about that. The House of Commons must be free to accept or reject whatever is put to it by a second Chamber.

How does a second Chamber prove its worth? That must be by the quality of the advice that is offered. This, of course, covers scrutiny. Many of us have watched with distress over recent years just how real that challenge has become. The amount of legislation that arrives in this place totally unscrutinised is a constitutional and democratic disgrace. If ever there were a case for a second Chamber, it lies there, and that job must be well done.

One of the things that I reflect on is that any honest look at the society in which we live demonstrates that it is not just chunks of people living together in particular places together with a representative. The reality of our living community in the United Kingdom is the interplay of different interests and experiences. That is true professionally, socially and ethnically. It is also true in terms of the different traditions of faith and indeed of humanist activity. I will digress for a moment to say that, in this sphere of my concern, I find the proposition before us astounding. I am an Anglican but I simply cannot understand how a Bill can come before us entrenching just one denomination of one faith with a guaranteed representation in the democratic process. It just does not reflect Britain as it is. Of course I understand the history and the anxieties about the establishment of the church. I am an Anglican

who comes from a Church of Scotland background and I should point out that the established church in Scotland has no direct representation in the parliamentary system of that country. There does not need to be this connection and, if there is, it must be more representative than just one denomination of one faith.

My point is that the job of the second Chamber is to be representative of that matrix in our society. I cannot see a better way than to have a genuinely independent statutory commission with the task of ensuring that there is a representative body of that kind in our deliberations. It is important to recognise that, if it is to be socially representative, it is right—and in this the draft Bill is correct—that it must be remunerated, because some people would simply not be able to contemplate participating in what would be demanded of them other than on a remunerated basis. It is also rather like the example of judges. The intention is to make sure that the members of that body will be free from the temptations that always go with political office, so that they can stand genuinely independently and be seen to be independent, with their integrity beyond question.

I now come to the issue of the title. I am disappointed at the mealy mouthed words in the proposed legislation. A great deal attaches to a title. "House of Lords" is part of our history. There has been too much confusion in public life about public service and the siren calls of social status. Surely any lasting, effective change should grapple with this. The satisfaction of us all should come from a sense of public service in the cause of a strong democracy. The status of the institution should lie not in the title but, as I have argued, in the quality of a job well done. Why not call it "Senate", or just "Second Chamber"? These issues have not been grappled with at all.

My last point is simply to say that our democracy is in crisis and we know it. There is a widespread sense of public alienation from the democratic system. What is this about? Of course, expenses and all the other things that have happened are part of it, but it is not just that. It is a feeling among the public that somehow politics has become a closed profession and that it is mainly staffed by people who have done nothing but politics—student politics, a bit of political research and perhaps time on a local council. They become a candidate and then a Member of Parliament. Where is their experience of life? When have they ever touched the realities of life lived by most people in society?

It is from that standpoint that a great opportunity has been missed in this rather pathetic piece of legislation that we have before us. It was a chance to regenerate the democratic principle and reassert the primacy of the directly elected body of the Commons—not to go on confusing the issue. When we talk to the world about the indispensability of democracy, let us for God's sake avoid the pitfall of tokenism. I see nothing more guilty of tokenism than the disastrous proposition that because a person has been elected they have a mandate for 15 years. That is nonsense. How on earth can you know, when you elect a person on day one, that they will be the right person 10 years hence, let alone 15 years hence? That is to demean the whole concept of democracy. I have been astounded again to hear Liberals whom I thought I respected coming forward and arguing that that is the case. If these elected people were not to get down to the job of really mixing with their constituency and representing it, in which of course they would be in direct conflict with Members of the other place, what on earth would the quality of this democracy be?

The greatest danger of what is before us is that it misses the whole nature of the crisis and the size of the challenge. It is just a bit of meddling, fixing and buying a little more time at God knows what future expense.

1.22 pm

Lord Williamson of Horton: My Lords, a large number of Members, perhaps even 100 or so, in this longest day of the year debate, have commented—or will comment directly—on the merits of an appointed or a largely elected House. But as we have on the table a draft Bill that would abolish this House of Lords and, over a period of 15 years, replace it with a differently composed House, I would like to target my short speech on three points only.

First, an essential point that has been thoroughly referred to but is essential in our discussion of this draft proposal is the question of the primacy of the other House, as it is normally described. It may be better described as the balance of power between the two Houses. Of course, the primacy of the other House based on the control of the finance and the Parliament Act will continue, but the balance of power is quite another thing. The balance of power is what happens in practice between the two Houses. There is no reference to any change in the balance of power in the 194 pages with which we were presented before this debate and which some of us have read. The draft Bill, on the contrary, states in Clause 2:

> "Nothing in the … Act … affects the powers, rights, privileges or jurisdiction of either House of Parliament, or the conventions governing the relationship between the two Houses".

In the summary of the proposals, the Government state specifically that there will be no change in the functions of the current House. But as others have said, and as I would like to emphasise, what is missing from these statements is a brief study of human nature.

It is inconceivable that Members elected to a new House of Lords on a longer and larger mandate from bigger constituencies than those of the House of Commons would refrain from seeking a higher profile role and responding strongly to the wishes of those who elected them. It would take time for the change in the balance of power between the two Houses to work through, but gradually the stage would be set for some interesting clashes between the two Houses. The House of Commons would have the greater power, but the new House of Lords would be more legitimate. The results of disagreements would probably depend more on which House received the greater backing of public opinion. In my view it is highly probable, if that ever happened, that it would be necessary to set up some more formal conciliation procedure between the two Houses. That is what would happen. Our references—oh so discrete references—to ping-pong would need to be changed to kung-fu, or all-in wrestling, or some other phrase that would better describe the relationship between the two Houses, at least on primary legislation.

[Lord Williamson of Horton]

I think that that would extend also to subsidiary, secondary legislation, which we hardly ever discuss. Perhaps we should do so, because there were 2,366 statutory instruments made in the last Session. Those are figures that I got from the Library. A small number, 94, directly implemented European Union law, but the remaining 2,272 were the usual avalanche of national legislation. What do we do? We pass Motions of regret, and I vote for them—but what do they have? They have the impact of a feather duster. If the new House of Lords were largely elected, some at least of those SIs would be challenged or, more probably, simply deleted.

Secondly, I have observed over the past 12 years that the most important people in the House are the ministerial Members. I have seen rather little comment on the provisions of the draft Bill about ministerial Members in any new House of Lords. Under the draft Bill, the number of elected, appointed, transitional and spiritual Members would be capped at each stage of the reduction in numbers and in the final House. The number of ministerial Members, however, is limitless. Clause 34 states:

"The Prime Minister may by order"—

here we come again with statutory instruments—

"make provision as to … the appointment of ministerial members",

and their number. The prospect of ministerial office is just what we need to encourage good men and women to seek election to a new House of Lords, and I would certainly argue that at least in the final stage, if a new House of Lords were created, the Minister should be appointed solely from among the Members of the government party or coalition in the House of Lords and not be bussed in by the Prime Minister.

Thirdly, it is not surprising that as a former Convenor of the independent Cross-Bench Peers I welcome the recognition by the Government in the draft Bill of an independent appointed element in their proposals on composition. This is emphatically not a selfish point because under the Government's proposal I and all the independent Cross-Bench Peers have been served with our redundancy notices, to be worked out over the transitional period. I note with satisfaction that Clause 24 states that the House of Lords Appointments Commission, which would be responsible for recommending new appointed Members,

"must take account of the principle that … the role of an appointed member is to make a contribution to the work of the House of Lords which is not a party political contribution".

If, as many suggest, there ends up a referendum on the question of the abolition of this House and the creation of a new one, we could have a second question in the referendum to ask the British public whether they thought it would be a good idea to have at least some element that was not a party-political element. I think that it would be a shoo-in for a yes vote on that point.

I content myself in this long debate with those three points only.

1.30 pm

Lord Forsyth of Drumlean: My Lords, it is a great pleasure to follow the noble Lord, Lord Williamson, in this debate and to pick up the point that he has just made on ministerial appointments. He is quite right that the proposals in the draft Bill provide for the Prime Minister to make an unlimited number of appointments to a largely elected House. Well, hang on a tick. If there is no legitimacy in being an appointed Member and you need to be elected, what is the logic of arguing that Ministers in this House can be appointed by the Prime Minister? This is to turn the constitution on its head. My understanding of the position of Ministers is that they remain Ministers so long as they command the confidence of Parliament. This is turning it the other way round so that in order to be a Minister you have to be a Member of Parliament, and while the Prime Minister can appoint you to be a Member of Parliament, you will cease to be a Member of Parliament as soon as the Prime Minister has lost confidence in you. This is a complete inversion of the constitutional principles and accountability that are the heart of our parliamentary system.

Lord Elton: Does that not exactly endorse my claim that this is part of a war of Government against Parliament? It is trying to seize control of this House.

Lord Forsyth of Drumlean: Indeed it is; I entirely agree with my noble friend, who I thought made an absolutely splendid speech. I see on the front page of the *Telegraph* today—if I can be a candid friend to my right honourable friend the Prime Minister—that he is quoted as saying,

"You do the fighting, I'll do the talking".

If I can give him a bit of advice, a bit of listening might be in order here, otherwise some of us will start doing a bit of fighting. My noble friend, whom I have never really regarded as a great rebel, is absolutely right to say that this is about Parliament and its role.

My noble friend Lord Steel of Aikwood, in his speech, described the draft Bill as a dog's breakfast. I know that he breeds Labradors, and that Labradors will eat absolutely anything. However, I suspect that his dogs would find this pretty hard to digest, because it is a complete shambles from start to finish.

If the politics of this are, as I read in the newspapers, that this has been put forward as a consolation prize to the Deputy Prime Minister after the debacle of the AV referendum, I would have to say that it is more of a poisoned chalice than a consolation prize. Listening to and reading the speeches made so far, I would have to say that there is no way in which this legislation will get through this House and on to the statute book.

My noble friend the Deputy Prime Minister would do very well to listen to the proposals that have been put forward by my noble friend Lord Steel of Aikwood. My noble friend's proposals are about reform; the Deputy Prime Minister's proposals are about the abolition of this Chamber and the creation of a new House of 300 paid and pensioned Members. This Government have a curious sense of timing. At the very moment when they are telling people in the public sector that we cannot afford their pensions and we are short of money, they are proposing to create 300 new politicians, all with index-linked pensions. It beggars belief how we are expected to explain that to a public who are already sceptical about our political process.

I have been thinking, "What would it be like to be one of these elected Members of this House? What would I do if I were an elected Member of this

House?". The first problem I thought of is, "Which manifesto would I be bound by—the one that I was elected on, which would last for 15 years, or would it be a manifesto which changes?". I shall give an example. My own party has had a series of positions on tuition fees: we have been for them and been against them, all within a 15-year period. If you were elected on a manifesto that said that you were in favour of tuition fees, what would you do if, at the next election, the party changed its policy? Which manifesto would prevail?

If there are going to be 300 Members of this House, presumably one of them will represent an area where there are three constituencies. A sacred part of our constitution is the ability of Members of Parliament to be elected for whatever party but to represent their whole constituency. You don't say, "Don't come to my surgery if you didn't vote Tory". We say that we represent them all. We have some experience in Scotland of what happens when you get that kind of effect. The list Members start playing politics in the constituency and try to undermine the Member of one party. That leads to a waste of public money, to officials getting letters from every corner of the geographical area and to utter cynicism on the part of the constituents.

I return to my question: how would I behave? I would think, "I am there for 15 years. The average tenure of a Member of Parliament is about eight years; perhaps it might be a little longer with fixed-term Parliaments. I am going to be the incumbent. I am going to be the person whom everybody knows. So what am I going to do? I am going to do everything I can to ensure that my party wins the constituencies in my areas—that is what I am going to do". The idea that we will be like Members of the European Parliament, as the noble Baroness suggested a moment ago, is ridiculous. And, in behaving like that, we would undermine the whole nature of this place.

The Deputy Prime Minister says that he is bringing forward these proposals in order to restore trust in Parliament. They are based, he says, on a principle that they will not alter the way in which Members of Parliament behave. But of course they will. If I am elected, I will have constituents; and they are going to come to me with problems, and I am going to do everything that I can to advance their cause. Even if that means making life difficult for those down the corridor, of course I am going to do it.

By the way, the most ignorant part of the statements made in support of this legislation has come from those who have said that the conventions and powers will remain the same. The powers of this House are unlimited. Do those in the other place who support these proposals understand just what we are capable of doing if we have democratic legitimacy? That is the message for the House of Commons, which was made so powerfully and effectively by that champion of Parliament, the noble Baroness, Lady Boothroyd, in her excellent speech yesterday.

No, we want no part of abolition. But we do want reform, and reform is there. I advise those members of the Joint Committee, who have been handed a hospital pass, that at their first meeting they should conclude that there is nothing to be done except to pass the Steel Bill. It would reform this House. It would let the hereditaries wither away by getting rid of the by-election system. It would allow retirement and remove on permanent leave of absence those who do not come here. It would provide for an independent Appointments Commission. That is a sensible piece of reform that we could pass tomorrow. It is ludicrous that Parliament should be treated as a kind of political football in a game which, at its roots, comes from the failure of the Liberal Party to retain the trust of the people because it did not keep the promises it made at a general election. There is no criticism of the work of this House. The implementation of a regular guillotine has undermined the work of the House of Commons and made it all the more important that we fulfil our constitutional duty.

1.38 pm

Lord Touhig: My Lords, it is always a great pleasure to follow the noble Lord. Whether one agrees with him or not, he always speaks with conviction, elegance and a great deal of humour. I must begin my remarks with a confession: when I was in the other House, I voted for a fully elected House of Lords. We had a series of debates and votes, and a number of us on the Labour Benches thought that it would be a good tactic if we all voted that way because that would kick it into the long grass—fools that we were. When my right honourable friend Jack Straw came to the next meeting of the Parliamentary Labour Party he entered like Caesar into Rome, triumphant and convinced that the power of the arguments had convinced so many of his colleagues to support an elected House. After a while, a number of us felt that we should not let him go on living in that illusion and started to tell him that we had only voted that way tactically. I remember telling him at the end, "Jack, you are more likely to witness the second coming than you are to get agreement on reform of the House of Lords".

Looking at the draft Bill, I can think of no other set of proposals that has come before your Lordships' House pretending to be one thing whereas, on examination, it is something completely different. This so-called House of Lords Reform draft Bill is definitely a case of mutton dressed as lamb. If we are honest, it is more about House of Lords abolition than House of Lords reform. We are told in the foreword written by the Prime Minister and the Deputy Prime Minister that replacing this House with an elected second Chamber is necessary because the present House lacks sufficient democratic authority. However, will these proposals make a real difference and correct this supposed lack of democratic authority? I do not believe that they will. This is why the document needs very careful reading.

I take us back a step or two—in fact, as far as 1832. The Deputy Prime Minister has been on record as saying that the Government's constitutional change agenda builds on the Great Reform Act 1832. We do not go in for great constitutional change all that often in this country. When we do, we tend to exaggerate what we have achieved at the end of the day. The Great Reform Act is a point in question. True, it did increase the franchise. The electorate rose to a massive 813,000, with 335,000 more voters. However, the population was 24 million. In fact, only four of every 100 men—

[Lord Touhig]
women were certainly not allowed to vote—had the vote. Despite the Act, the number of MPs in southern England was disproportionately high and 73 rotten boroughs remained in existence. There was no secret ballot, and MPs were still able to bribe the electorate. The right to vote—which we now take as a basic right—then depended on ownership of land. In truth, by today's standards, the Great Reform Act was not that great and only scratched the surface of reform.

I give it as an example because I see similarities with the claims that the Government now make for their proposed changes. The Prime Minister and Deputy Prime Minister say that this House as constituted lacks democratic authority. Their solution to this lack of democratic authority is a senate in which members will be elected for 15 years. For the life of me, I cannot see that a senator elected for 15 years and not able to seek re-election enhances our democracy. Once elected, these senators need take account of no opinion or view other than their own. How are they to be held to account? How does that give them democratic authority? A senate where members sit for 15 years without the electorate being able to hold them to account will have no greater democratic authority than this appointed House of Lords has now.

Then we have the proposal for a part-elected, part-appointed House. It is already clear that a 15-year term denies the elected senator democratic authority. On the Government's own definition, an appointed House of Lords also lacks democratic authority. Therefore, if the proposals in the draft Bill were to become law, both elements in the new House—the elected and appointed—would lack democratic authority. This begs the question: why are we making this change? If the House is partly elected and partly appointed, I am sure that the elected element will think that, as it has been sent to Parliament by the people, it has greater legitimacy than those who are appointed. Where will that lead us?

What if party A decides to elect as its leader a member of the senate? What if that leader leads the party to victory in a general election? The Prime Minister would sit in the senate and the Leader of the Official Opposition would sit in the Commons. This would put an end to the weekly gladiatorial combat between Prime Minister and Leader of the Official Opposition. Many would say that that is a good thing. However, we have been used to the Prime Minister of the day being held to account by the alternative Prime Minister of the day because we think that that is a good thing. All that would disappear.

I ask the Minister who has the unenviable task of replying to this debate: why not save us all a lot of time and go back to the drawing board? If the Government do that, I urge them to think of strengthening the present Chamber by introducing an element of indirectly elected members—a point made by the noble Lord, Lord Armstrong of Ilminster.

In a previous incarnation I served on Gwent County Council. In those days the health service was delivered by a board, which was made up of members of the county and borough councils, who were indirectly elected. It was complemented by appointed members—medical professionals and the like. This way we delivered a very effective health service. However, there was an element of indirect election to the way that the board was constituted. If we had an indirectly elected element in this House, the representatives could come from the nations and regions of the United Kingdom. At a time when there is much talk of an independent Scotland, and of English MPs—and possibly English Peers—alone being allowed to vote on matters affecting England—and we see the Welsh and the Northern Ireland assemblies vested with new powers, surely anything that strengthens our union is a good thing. A House that would have representatives from the nations and regions would benefit and strengthen the union.

The proposals before us are no great reform. They should be scrapped. With the best will in the world, the Government should think again and listen to us.

1.46 pm

Baroness O'Cathain: My Lords, yesterday's debate—plus all the debates that we have had since I joined the House—confirms my view that some things never change, and highlighted the old adage, "If it is not necessary to change, it is not necessary to change". As I am 63rd in the list and after some truly amazing speeches, it is difficult to say anything novel on this subject. It is particularly difficult if one goes back through the literature on previous attempts in the 20th century to reform the House of Lords. Not one of these attempts was put forward with the claim that it would in any way improve the House of Lords. Surely the purpose of reform—particularly political reform—is to improve something so as to benefit the community at large. Improvement must be well thought out and not just an exercise in change for change's sake.

Many of the speeches yesterday and today, together with many of the speeches in previous debates, dealt with—or purported to deal with—the demand for greater legitimacy and/or repairing the democratic deficit of the House of Lords. We have been told that there is a demand for change. Where is the demand coming from? Where is the evidence of a great swell of concern? What is negative in our operational efficiency now? If we accept that scrutiny is our most important task, is this affected by the lack of legitimacy or by the democratic deficit?

Last weekend I tried to distance myself from the rather frenetic and fetid mood in the House as I prepared for the debate this week. I decided to try to ascertain what the political atmosphere was in which the arguments and processes of the Parliament (No. 2) Bill in 1968-69 were undertaken.

There is a riveting description in the biography of Enoch Powell by Simon Heffer, *Like the Roman*. When the Bill was introduced, it was apparent that the Government had not made clear their detailed intentions because, according to the author, the Government "did not itself know". According to Simon Heffer, the Bill was so poorly drafted and such a provocation to the Back-Benchers that even after three days in Committee hardly any progress had been made; and the Government, embarrassed and angered by this, and not least by the guerrilla tactics operating from their own side, began to show the first signs of cracking.

That is a relevant warning from the past to the Government as the similarities between the two Bills, 43 years apart, are striking, although one is in draft. Both are of similar length. Both are very badly drafted; and both were produced on the back of cross-party parliamentary discussions that were discontinued. It did not work then; does the Minister think it will work now?

The end of the Parliament (No. 2) Bill was a devastating defeat for the Wilson Government. After 13 days in Committee, only five clauses had been dealt with. It was jamming up the legislative programme and was, finally, dumped. Not only was the other place disaffected, it was clear that there was neither demand nor desire from the public for House of Lords reform. I defy anyone to put up a good argument to defeat my assertion that there is no more public demand or desire now than there was then for House of Lords reform.

In the closing section of this contribution, I wish to move from an historical analysis to the issue of the experience and expertise available in this House, which is greatly appreciated by the selfsame public and, markedly so, by academics, EU member states and further afield. There is an office in this building—and I am sure it is not unique—which houses 10 noble Lords, 10 desks, each with a two-drawer integral filing cabinet and 15 stand-alone two-drawer filing cabinets. The office is a model of political correctness as it has an equal gender balance. Prior to entering the House of Lords, each of the 10 occupants had individual offices, secretaries, assistants et cetera. There has never been a complaint about our working conditions. Why is that? It is because each of us is so absorbed in the work of the House, particularly scrutiny, so busy in preparing for Committee sessions, so involved in attending various meetings and in working in the Chamber that we have no time to think about being caged up in a cramped office, 96 steps from the entrance with a dodgy lift. The lights are normally on at 8 o'clock in the morning—and they were on earlier this morning—and are never off before 10 pm. They went off at 11.15 pm last night. The occupants have never complained about the working hours. Why would they? They are honoured to have the opportunity to work very hard for this country in scrutinising legislation and ensuring that, using their experience and expertise, they can influence such legislation for the better.

In this case, the experience and expertise of the Peers is quite astonishing. Where would one get a group of 10 elected Members—call them what you will—who between them have: combined membership of the House of Commons totalling 85 years: held a position as a professor of government and acknowledged constitution expert and have well over 30 years of academic teaching: served as a Treasury Minister; served as a Health Minister; served as an Education Minister; served as Paymaster-General; served as a Deputy Speaker of the House of Commons; served as local government leaders, as two have done; operated in the charity sector as administrators and fundraising experts, as four have done; and hands-on business experience of agriculture, food, retailing, air transport, communications and utilities? I reassure the noble Baroness, Lady Brinton, who unfortunately is not in her place, that that experience and expertise resides in a Conservative office, not a Cross-Bench office, and I suspect there are plenty of offices like that in all parts of the House.

Do the Government think that if this draft Bill succeeds in its present form those 10 Peers could, or would, be replaced by others with such varied experience and expertise, all of which is used in the important work of this House? Would they work as hard? Would they achieve as much? Those who would stand for election to this House, almost certainly as their second option, having been defeated in attempts to be elected to the House of primacy, are hardly likely to possess such a range of skills, or does the Minister think they might, and how much does he think it might cost?

1.52 pm

Lord Gordon of Strathblane: My Lords, it was on 17 May that the Government published their White Paper and draft Bill and, by happy coincidence, that was also my 75th birthday. I have always regarded this document as some sort of unintended, but none the less welcome, birthday present. I genuinely congratulate the Government on at least producing this Bill which, as I am sure the noble Lord, Lord McNally, will say tonight, Labour signally failed to do. Mind you, when I see the Government's Bill, I am very glad that Labour did not produce one. I have no doubt that the Labour Bill would have been better than the Conservative one, but if it was based on the Jack Straw 2008 White Paper, I would certainly have voted against it because it would suffer from the same problem as the Government now suffer from. With smoke and mirrors and weasel words, you can pretend to be all things to all men in a White Paper. You can pretend that somehow you can devise a system of election that will be both accountable and yet in no way threaten the primacy of the House of Commons. Once you come down to legislation, you have to make a choice and spell out specifically what you are doing.

The Government have given themselves a life raft, if you like, by publishing, somewhat unusually, a White Paper alongside the Bill. You are meant to have made up your mind what is in a Bill before you publish it, but innovation is always a good thing. They have the life raft there because they recognise that once you go into detail, support for election, which is a wonderful slogan, disaggregates like snow off a dyke. The fact is that the Opposition and Cross Benches could take the day off, and this Bill, put to a secret ballot of the government Benches, would be defeated overwhelmingly in this House, and the Government know it. I am not asking for a secret ballot—that would be unreasonable—but it is at least reasonable to expect that the Government will give their membership a free vote. Let me say, and I mean no disrespect to our Whips, that if they do not give us a free vote, I am taking one, and I will be voting against the Bill. There have also been rumours that the Parliament Act might be used. Frankly, I think the Government would be well advised to dissociate themselves from that position very quickly. It smacks very much of an elective tyranny, and it would be wholly inappropriate for a constitutional Bill.

However, let us look at the Bill we have. After all, it has been in germination since 1832 and is the greatest

[Lord Gordon of Strathblane]
reform Act we have ever seen, so one accepts that the Government have given it their best shot. This is the best that they can do, so what have they come up with? First, let us be quite clear that, as the noble Baroness, Lady Boothroyd, said, they are abolishing the House of Lords, not reforming it. I refer them to page 10, paragraph 1 of the White Paper. Secondly, they have gone for single, 15-year terms with no re-election. Let us recognise that that gives us no accountability whatever, not a scintilla. The reason they did that, I presume, is to try to make the system of election so divorced from that for the Commons that MPs will not feel threatened. Otherwise, they know the Bill will be defeated in the Commons.

The noble Lord, Lord Thomas of Gresford, made the point yesterday evening that he wants to go further and have recall provisions. If I am elected for Scotland—because I gather that that is one big constituency nowadays for this Bill—I am going to make sure that I am not going to be recalled, so I am going to take steps, and I am going to demand powers to ensure that I am shown in a good light to my electorate. The *Daily Telegraph* and the *Sunday Times* will have the equivalent of bird-watching cameras trained on the door of the House to make sure that people elected turn up at least once in their 15 years and do not have their cheques sent to some bank account in Barbados.

The fact is that people will be wholly unaccountable. They will certainly be no more accountable than we are. Again, although the noble Lord, Lord McNally, visibly showed dissent about this, I remind the Government about the achievement of the Joint Committee on Conventions. If there is any doubt about it, at page 23, paragraph 61 of its report, it is spelled out, in terms, that this was an agreement based on the existing composition and if an elected element, let alone 80 per cent or 100 per cent, came in here, all bets were off, and it was a new deal. If we really want to clog up Parliament with the sort of nonsense that will go on, I suspect that the reputation of politics, which is already low, will plummet.

I follow the noble Lord, Lord Forsyth, who used to be my MP—

Lord Forsyth of Drumlean: I hope you voted for me.

Lord Gordon of Strathblane: I think I may have. I found the Labour Party quite difficult to support in the 1970s and 1980s, as, indeed, did most of the Labour Party.

Let us go back to this campaign. How am I going to fight an election? How am I going to differentiate myself from everybody else who is standing and appear the better candidate? Am I going to promise things? If so, how are people going to know whether I have delivered on the promises? How am I going to deal with the heckler who says, "You say you are going to do that, but do you have the power to do it?"? If I do not have the power, I am quickly going to find a way of getting that power. The fact is that it creates instability in the political system and will eventually create gridlock.

I shall make a quick jibe about the fact that Members are going to be salaried. For a start, it rather intrigues me. I thought salary went with a job and did not depend on the way that you were put into that job. The public might think, "Hold on, if the present House of Lords is not paid, and this new crowd are paid, are they doing more? Have they more powers?". The impression will certainly be that you have to justify that salary by making more noise than perhaps we currently do. Certainly the impression will be that you have to justify that salary by making more noise than perhaps we currently do.

Let us get rid of a couple of myths. First, there is the great mantra that it was in all three party manifestos. Please remind me which party manifesto was ringingly endorsed by the electorate at the last election? It seems to me that uniquely nobody really got a clean bill of health. I quite genuinely do not want to be unkind to the Liberal Democrats but they are the most associated with House of Lords reform. They have genuine pedigree on it. They did very badly at the election. The next party that did very badly was frankly the Labour Party. It had cottoned on to an elected House somewhat late in the day. Let us say that the view was sincerely held by many people. That party was rejected by the electorate. The only party that did tolerably well was the party that was most lukewarm about House of Lords reform, the Conservative Party. I would not pretend for a minute that the election swung on House of Lords reform but had it gone the other way, all three Front Benches would have been claiming that it was because of House of Lords reform that they were all elected and that they had a mandate. You cannot have it both ways.

Finally, I want to endorse what the noble Lord, Lord Touhig, said. The other myth is that this is the settled will of the House of Commons. That is absolute nonsense. In the 2007 vote a majority of Conservative MPs and a majority of Labour MPs voted against 80 per cent election. Indeed, in the 2003 vote the most popular option—all seven options were voted against, by the way, so much for a settled will of the Commons—or the one that was least unattractive was an all-appointed House.

I think we are looking for some political courage here. All three parties have had a go at this and all three have failed. You cannot square the circle. You cannot have an elected House of Lords without diminishing the power of the House of Commons. There might come a time when the electorate wants that but I do not think it is yet. I therefore do not want this kicked into the long grass. I want somebody to get the lawnmower out, clear a circle and give it a decent burial.

2.02 pm

Lord Cobbold: My Lords, I am one of the many speakers who believe that the draft Bill we are debating today is not about House of Lords reform; it is about House of Lords abolition and replacement by an 80 or 100 per cent elected Chamber or senate. It is unlikely that many Members of the present House would wish to stand for election and so the new senate would not have the benefit of the experience and expertise that this Chamber enjoys and given that the new senators would be salaried, the proposed senate would cost several times as much as the present House. There can

be little doubt that an elected senate would threaten the primacy of the House of Commons and, for this reason alone, I am surprised that any Member of the House of Commons supports the idea of an elected upper House.

To reject the proposals in the Bill is not to say that this House is not in need of some reform. Indeed, the Bill of the noble Lord, Lord Steel, lists a number of reforms, all of which would or should be welcomed. The most urgent and important of these is the creation of a statutory appointments commission which would be responsible for all appointments to a life peerage and a consequential membership of this House. The commission should choose candidates from a publicly recognised range of experience and expertise with an agreed annual maximum number of appointments. Under present arrangements, there is no control on numbers of new appointments and consequentially no limit on total numbers in the Chamber. Following the exceptionally large number of recent new appointments, the House is definitely too large and one hopes that the excessive number of new appointments is not a deliberate tactic of those advocating an elected senate to weaken the present House.

There is no doubt that the present House of nearly 800 is too large and the Steel Bill suggests a system of voluntary retirement. While welcome in principle, I do not think that such a scheme could achieve the long-term reduction in membership that is required. In a sense, there is already a system of voluntary retirement in that a member may simply stop attending. I believe that a long-term reduction in existing membership can be achieved only by a system of compulsory retirement. This could be based either on the age of the Member or on period of service. Personally, I do not think age is the right choice. People age at different rates and I believe that the only fair and workable system would be a compulsory period of service for all Members which, in my view, should be 20 years. Given a fixed period of service of 20 years it should be possible for a Member reaching 20 years and still performing a valuable role in the House to be given an extension of service of, say, one to five years on application, I suggest, to the Lord Speaker. Implementing such a 20-year period of service would need to be accompanied by agreement on an optimal total size of the House, which is probably around 300, and a phased programme of retirement for the 150 Members of the present House with a period of service in excess of 20 years.

A further reform in the Steel Bill is the ending of the electoral process for choosing replacements for the 92 hereditary Peers when they die. While I am lucky to be one of the 92, I do not think that heredity can any longer justifiably be on its own a qualification for membership of this House. These suggested reforms are readily implementable. The Bill which is the subject of this debate must be rejected. It is a waste of time and money to set up yet another commission to investigate its merits.

Finally, if the coalition decides to proceed with the Bill, it is a major constitutional issue and could not be introduced without a referendum. In last year's election, the manifestos of all three parties called for an elected upper Chamber so the public have not yet had the chance to express a view. A referendum could be the last way left to defeat the Bill. The Bill before us must be rejected: reform, yes; abolition, no.

2.07 pm

Lord Eden of Winton: My Lords, I am not at all surprised that this debate has been conducted with such restraint and moderation. This House is well known for its courtesy and politeness, and for the measured and deliberative conduct of proceedings. None the less, I hope that no one will be deceived by the fact that this has been reasonably and calmly conducted. There is an underlining strength of feeling which has permeated all the speeches, most of which have been against what is proposed in the Government's White Paper. The strength of feeling derives from the respect noble Lords have, and have acquired, for this place since they have been Members here. I am certainly no exception to that. I am saddened that the proposals have been brought forward by the present Government and appear to have been so little thought through. Frankly, the case for the fundamental changes contained in the White Paper has not been made out. It is simply not good enough to go on repeating the need for legitimacy, for a democratic mandate and for greater accountability without examining what those words could actually mean in practice.

Many noble Lords have referred to what might actually happen. Just how democratic would it be to have the list system, and on what basis would candidates put themselves forward for election? Would they bear a party ticket? Would they be answerable to any form of a mandate? How would they be selected—by the political parties or by whom? To whom would they be accountable? They would certainly not be accountable to the electorate that elected them, as has been made clear, because the electorate would have absolutely no sanction whatever, once a Member was elected. There would be enormously increased power, I suspect, for the political parties. There would be increased patronage for them.

I am therefore dismayed by what is proposed because it would do no good to this place and it would do little good for our democratic objectives. The Deputy Leader of this House has been very attentive throughout this debate and will be winding up tonight. I hope that he has taken careful note of what has been said so far. I hope that he has genuinely been listening and has not blocked his ears to what has been said, simply because he in favour of the proposals in the White Paper.

I trust the Joint Committee that has been established. I am sure that it will give a very thorough examination of what is proposed. However, when it considers these matters, it should have in mind that we are in a new world of communications. Here, we are concerned with ourselves, with our relationship with the other place and with our responsibilities in holding the Government to account, but we also need to have in our minds what is sometimes described as "the outside world"—the world beyond. It is not so much parliamentary speeches that influence attitudes outside, but the new means of electronic communication by the blogs, Twitter and whatever other means are available. That is what captivates people, and the media are fastening onto that, as they well know, because they

[Lord Eden of Winton]
are replicating it for their own purposes. We therefore need to reach out to them by other means, but it is not the purpose of this Chamber to do so. If this Chamber is to be a revising Chamber—which it is—let us focus on that and continue to do the work here.

I hope that the Government will not persist with the draft Bill as presented because it has no chance of getting through this place anyway. I hope that instead they will go for the incremental changes, some of which are contained in the draft Bill and others that are in the Steel Bill.

I could add a few more. If the Government are looking for advice, let me give a little advice of my own. In addition to the proposals in the Steel Bill, there should be no automatic linkage with membership of this House on elevation to the peerage. That can happen straight away. There should be an increased use of general debates on topical issues and on matters demanding urgent consideration, for which this House is very well suited. There could be much-extended use of the committee structure, so well exemplified by our European Union Committee. There should be more committee powers to summon Ministers. Sometimes, on major issues, Ministers could even be summoned to the Floor of this House. I have a suggestion that might appeal to my noble friends on the Liberal Democrat Benches. I suggest that the Deputy Prime Minister—given that Deputy Prime Ministers seem to be in vogue—should always be a Member of this House. He should then be subjected to regular parliamentary Oral Questions and have a long session of them once a week in this place. Perhaps my right honourable friend the Deputy Prime Minister might volunteer to come forward and try this out in this place.

In those ways, along with the incremental changes in the Steel Bill, and with other suggestions that could be put forward—all of which could happen fairly quickly—this House would be enormously strengthened. It is the strengthening, not the weakening, of this House that would effectively demonstrate, not for the first time, that it is this House that properly speaks for all the people.

2.16 pm

The Earl of Glasgow: My Lords, I am somewhat embarrassed. As a Liberal Democrat, I believed myself to be a member of the sensible party, and on nearly all issues I still believe that I am. However, in the case of House of Lords reform, my official party's proposals make no sense to me at all.

I have always believed—and I thought that this was a fairly general view—that the House of Lords justified its existence by being a very effective revising Chamber. Its primary purpose was to scrutinise and improve government legislation and not, like the House of Commons, be a party-political slanging shop. The House of Lords succeeds in being an effective revising Chamber largely due to the quality and variety of its inmates. It is composed of the wise and the good, experts in an infinite number of fields, and representatives of nearly every ethnic group and religion in the country. Why should we want to exchange this for a Chamber of second-rate politicians who will feel that they have the democratic authority to challenge the supremacy of the House of Commons, where most of the first-rate politicians can be found?

Yet, say the architects of the draft Bill, this new second Chamber is still to remain subservient to the lower House and retain its functions as a revising Chamber. Second-rate professional politicians will be revising the work of first-rate professional politicians. It does not make any sense. We are told that this all has to be done in the name of democracy, but some in my party have a narrow definition of democracy. They are trying to push through a Bill that should be entitled "Let's reform the House of Lords at any cost because it is not democratic and then see what happens after that". That is the Bill that they seem to want to put through.

However, as many noble Lords have pointed out, this is not a reform of the House of Lords—I wish that the leaders of my party would be honest about this—it is abolition of the House of Lords and its replacement by a senate. I cannot think of a better example in modern politics of attempting to throw the baby out with the bathwater.

Fortunately, not everyone in my party is bent on constitutional vandalism. My noble friend Lord Steel of Aikwood, has a Bill that is a serious attempt to reform the House of Lords—not to abolish it but to rid it of some of its anachronisms, indiscipline and absurdities while at the same time ensuring that it retains its primary function as an effective revising Chamber. My noble friend makes it clear that the only way to retain this carefully balanced House is by appointing Peers, not electing them.

Then, however, the delicate question in this case is: who does the appointing? Here, I disagree with my noble friend Lord Steel's role model for a statutory appointments commission. I am proposing that the members of the appointment commission—the people responsible for appointing new Peers—should be the ones who are elected. When I say "elected", I do not necessarily mean they should be elected by the people, I also mean indirectly elected, elected by their own association or group, or ex-officio appointments based on previous elections.

For instance, the Prime Minister or his representative would have to be on the commission. So, too, would the leaders of the other main parties. Members of the existing House of Lords might elect a Back-Bencher from each party to represent them; importantly, that would also apply to the Cross-Benchers. Under my proposal, that would be the extent of professional politicians' representation. Other members of the appointments commission might be selected through election from key professions or important interest groups—the CBI and the TUC being the most obvious examples—and from leaders of important ethnic and religious groups.

If one must keep the commission to fewer than 25 members, which would be more than enough, there would clearly be some argument and competition over places. I personally like the idea of having, say, two people's Peers, possibly elected directly through the media, and I will be rooting for one elected hereditary, literally elected from among the 1,000 or so Peers. His

presence would give the appointed Chamber some historical continuity and justify the House continuing to call itself the House of Lords. Whoever the members of the proposed commission turn out to be, I ask the committee set up to consider the House of Lords White Paper seriously to consider the possibility of an elected appointments commission. I hope that that will go some way to satisfy the leader of my party's diktat that anyone in any legislative position of power or influence and should be democratically chosen by and accountable to the people.

I believe that a second Chamber that, more or less, represents the best of British society as a whole in all its complexity is just as democratic and a good deal wiser than a second Chamber made up largely or entirely of elected politicians.

2.21 pm

Lord Marlesford: My Lords, the road to parliamentary hell is paved with good intentions translated into sloppily drafted, ill prepared, insensitive legislation. We have had a plethora of it over the past year. The White Paper and Bill do not even have the redeeming feature of good intentions. Perhaps the most scandalous revelation we have had in this debate was that by the Leader of the Opposition, when she told us how the members of the Joint Committee set up to produce the proposals were treated. They met only seven times—the last time six months before publication—and neither saw nor approved the draft White Paper or the Bill. I am amazed that they did not resign in indignation at that treatment.

I shall focus on just two points. The first is the practical constitutional one, which we have talked about, which is the balance of power between the Legislature and the Executive. Secondly, I shall suggest how to reduce the size of the House of Lords in a way that is voluntary, democratic, compassionate and cost-effective.

It was in his 1976 Dimbleby lecture that Lord Hailsham described Britain as an "elective dictatorship". "Parliament", he said,

"is now largely in the hands of the Government machine, so that the executive controls the legislature and not vice versa".

He went on:

"Owing to the operation of the guillotine and other regulations designed to curtail debate, much of the programme is often not discussed at all".

Although at that time the House of Lords had a massive built-in Tory majority, the constitutional conventions inhibited its use. In 1997, this situation took a serious turn for the worse. The Blair Government decided to use the guillotine routinely on all legislation so as to maximise the flow of legislation, with little regard to the consequences.

I was for 16 years in the Lobby. Indeed, I must confess that, apart from a few years as a party fonctionnaire, I cannot claim to be a proper politician at all. I was a mere observer of and commentator on the political scene, and I suppose that that is all I remain. However, I remember clearly that when there was an important Bill that was running into real difficulties, we used to speculate that the Government might be forced to introduce a guillotine. In those days, that had real political significance.

I had hoped, and indeed was confident, that one of the first things the coalition would do would be to end the automatic use of the guillotine on legislation. To my disappointment and to Mr Cameron's shame, there is no sign of that happening, so our people remain ever more reliant on the House of Lords to subject legislation to proper scrutiny untrammelled by timetables. Since the 1999 reform, this House has had growing confidence in doing so.

Who can doubt that if Mr Clegg's dreams were enacted it would not be long before that opportunity for scrutiny would be emasculated? All Governments are ruthless when they can be, and a regular guillotine would arrive with the senate. That, incidentally, is why the Opposition should never repeat the disgraceful filibuster tactics that they used here last year—although I admit that they had much provocation.

I come to the best way of keeping the size of the membership of the House within reasonable limits. I do not buy the idea that it is making the House harder to operate. An overcrowded Question Time is no bad thing. After the House of Commons was bombed, the new Chamber was designed precisely to achieve that. However, our membership is now more than 800, although the daily attendance is 450. I would set a limit of about 500. None of the alternatives in the Leader's Group report on the issue of Members leaving the House, which we will discuss in due course, seems to be acceptable. I believe the proposal for group elections put forward in the excellent speeches by my noble friends Lord Jopling and Lord Reay involve compulsion, would have undesirable consequences.

One reason that voluntary retirement on its own would not work is the new daily tax-free allowance of £300. I most warmly congratulate my noble friend Lord Strathclyde on his courage in introducing it, because it has ended once and for all the risk of further scandals on expenses—in this House, anyway.

My proposal is that on taking permanent retirement, any Peer should receive a tax-free single-sum gratuity for public service. Each Peer would receive the amount he or she asked for—provided, of course, that no one was prepared to accept a lower sum. One way of operating it would be for the Government to open it for, say, 50 retirements. Anyone could apply and the sums paid out to those who succeeded would of course be published; the unsuccessful bids would not. Bids would be accepted up to a limit of 50 seats or so or until the sum available had run out. The process could be repeated periodically until the number was down to the required total.

That may be an unusual suggestion, but I believe that once it had been thought through by the media and the public it would be seen as being transparent, truly voluntary and, most importantly, cost-effective.

Baroness Farrington of Ribbleton: My Lords, I would be grateful if between now and the report from the committee scrutinising the Bill, the noble Lord, Lord Marlesford, could write for me what he thinks the *Sunday Telegraph* and the *Mail* editorials would be on his proposal.

Lord Marlesford: I never attempt to write editorials for other papers.

[LORD MARLESFORD]

Meanwhile, I support the call for a moratorium on numbers made in April by the noble Baroness, Lady D'Souza, and others in the UCL *House Full* report.

Mr Cameron has a problem. In this package, he is offering Mr Clegg a sum of Danegeld that he cannot pay; his cheque will bounce. As has been made clear, there can be no question of whipping this Bill through this House. The simplest solution would be for the House of Commons, where there is, in any case, a growing number of Members opposed to Mr Clegg's best guess, to be offered a free vote at Second Reading, if ever it gets that far, and for the Conservative Whips to indicate that the Prime Minister would not be heartbroken if it were defeated. After all, it is the supremacy of the House of Commons that we are debating.

On the point about us not being representatives, many people in this House have been elected representatives for a long time, but now we are all servants of the people. That is no dishonourable title.

Baroness Anelay of St Johns: My Lords, it may be helpful to the House if I indicate that, after we have heard from the noble Baroness, Lady Howe of Idlicote, I propose to adjourn the debate for a short while so that we may convene for Questions. I shall make appropriate announcements at that stage.

2.30 pm

Viscount Bridgeman: My Lords, I regret that yesterday I was unable to be present for a number of contributions from your Lordships. Therefore, I ask for the indulgence of the House if I repeat points already made by noble Lords yesterday and today.

I wish to focus my contributions on one very simple and, to my mind, fundamental issue: that neither House is perfect and that any fundamental review of the parliamentary institutions of this country should involve both Houses. That review should be much deeper and more comprehensive in nature than that delivered in the hastily prepared and superficial measure which we are now considering, and which, as the noble Baroness, Lady Royall—I echo my noble friend Lord Marlesford—has informed us, apparently even by-passed members of the committee of the House. I respectfully remind my noble friend the Leader of the House that the Prime Minister stated, more than once, when Leader of the Opposition, that any reform of Parliament should start in the Commons. There is clearly no prospect of a review of this nature or depth taking place at present and, therefore, we are where we are: two Houses, neither of which is perfect either in composition or functioning.

Several of your Lordships have pointed out that government in this country can be said to be, in practice, almost unicameral. Your Lordships must, at least for the time being, continue to remain subordinate to the Commons and the object, in this Parliament, must surely be to endeavour to succeed in making this House the most effective, but junior, partner in the legislative function. I am personally of the view that in the 10 years since the passing of the House of Lords Act, this House has probably been working more effectively than at any time in the whole of its history, a view enunciated by my noble friend Lord Higgins, who is not in his place.

Quite a short time ago, if you were speaking in your Lordships' House after 5.30, it was customary to start by saying, "I will not detain your Lordships unduly". I also intend not to delay your Lordships unduly but for a different reason. I am speaker number 69 and 31 are still to speak. If this view is accepted, it is all the more regrettable that a Bill should be proposed to abolish this House—if anyone is in any doubt about that, the historic intervention by the noble Baroness, Lady Boothroyd, will live in all our memories—without, apparently, taking any significant steps to reform the other place. Rather we should be building on the undoubted efficiency of this House in servicing the Commons and most particularly in the process of scrutiny and in calling the Government to account. At the same time—this is fundamental—we should not pose a challenge to what is, in practice, the supreme legislative sovereignty of the Commons.

Assuming this Bill fails, breathing a sigh of relief and doing nothing is not an option. The way forward must surely be through measured evolvement and improvement. Perhaps it is fortuitous that, at present, we have three admirable initiatives which—dare I say?—show the intention of giving effect to that process. These are, as many noble Lords have pointed out, the Bill proposed by my noble friend Lord Steel, together with the two documents prepared under the chairmanships of my noble friends Lord Hunt and Lord Goodlad. If, as is possible, the proposed Bill does not leave the Commons, the shortcomings which it embraces will fall away, not least of which is the question of powers in the Bill which have been the subject of a delicate body swerve.

Perhaps I may briefly refer to the so-called democratic deficit, or lack of democratic accountability, raised by so many noble Lords. Very briefly, I suggest to your Lordships that such accountability is one thing that this House positively does not need and that the scrutiny of legislation and business in this House is much more effectively done without such accountability. That is a circular argument because, as several noble Lords have pointed out, democratic accountability goes out of the window with a 15-year election with no re-election at the end. I invite your Lordships to consider the feeling of freedom which an elected Member will feel on day one after election to such a reformed House.

One problem which will need to be addressed in any evolvement of your Lordships' House is the question of appointments. I shall not go into the detail, already mentioned by the noble Earl, Lord Glasgow, but there can surely be no doubt that a strong appointments commission with statutory powers is an essential component in any way forward. It must be pro-active in looking out for suitable independent Peers and reactive in vetting political appointees. That is not me speaking—it is far too clever—but my noble friend Lord Norton of Louth. The commission, in its present form, so admirably chaired by the noble Lord, Lord Jay of Ewelme, provides a fine example on which to build. I am very pleased to note that this is incorporated within the Bill of my noble friend Lord Steel.

This House is aware of its shortcomings and it weaknesses. They are being continually addressed in this House. This hastily and badly thought-through Bill—a theme running through this debate—will have the effect, not of reforming, but of abolishing this House. I suggest that is not the right way to go about it. If anyone, in support of the Bill, needs to give it further thought, I commend the research done by the noble Lord, Lord Lipsey, on the costs of this operation.

2.37 pm

Baroness Howe of Idlicote: My Lords, when I think of the sheer value and quality that your Lordships bring to our legislative process, I think of a tribute paid to my noble friend Lady Warnock by a new Cross-Bench Peer, the noble Baroness, Lady Grey-Thompson, in a debate on disability and SEN. Referring to the struggle that her parents had to get her into a secondary school of the quality able to develop her talents to the full, she said that it was the Warnock report that had been responsible for opening the right doors for her to develop her potential. Of course, we cannot all claim to have quite the same considerable record as the noble Baronesses, Lady Warnock and Lady Grey-Thompson. Indeed, one or two of us may have slipped in under the wire—an expression used last night—but that is the kind of quality that this country would lose from the Cross Benches if we passed this draft Bill.

I became aware of those qualities when I first entered the Chamber in 2001, as one of the first tranche of people's Peers, appointed to the Cross Benches by that newly created and still not statutory Appointments Commission. Even more significantly, I came to realise the diversity and range of expertise and experience that was on hand. One change that new group of 14 or so Cross-Benchers achieved was to pilot a somewhat wider role in your Lordships' House than those on the Cross Benches had taken previously. We were told that usually Cross-Benchers took part only in those Bills and debates on issues covered by their expertise and experience. However, a number of us in that new intake decided to play a slightly wider role, being prepared to listen to all the arguments and take a very full part in proceedings. That practice is much more prevalent than it was. I suppose that I should be thankful that 20 per cent of Cross-Benchers are to be retained in the Chamber, so there would still be a small degree of expertise and experience to draw on.

My second point is obvious and has been mentioned often; none of us can claim to be here because we have been chosen by the people through any form of election. In short, there is no way that we can claim to be specially chosen. Therefore, in the jargon, we are illegitimate. However, we should not be dismayed by that analysis, for, as many others have pointed out, both today and yesterday, legitimacy comes—as the noble Lord, Lord Higgins, said—in many forms. The second Chamber has always included groups of nominees, chosen for example by the monarch or by the Prime Minister, and today by the Appointments Commission.

The draft Bill can clearly be seen to have significantly damaging effects on the future shape, style and performance of the House—so much so that it has been described very accurately by many noble Lords as providing not for the reform of the House but for its abolition. I stress again the special, positive quality of the House and its huge range of specialist experience and expertise. Two hundred Cross-Benchers out of 750 would help to determine the quality of wisdom of the points that we lay before the other place—many of which, as we know, are rightly accepted. One thing is clear about the so-called reformed House; only one-fifth of Members will be nominated rather than elected. Therefore, the great bulk of those talents will disappear, and the volume and diversity of independent specialisms and expertise will shrink almost out of sight.

I come to my first question. Why on earth is this being done and what benefit is it going to achieve? How is it going to improve the results and performance of what we need a second Chamber to do—if we need one at all? That is the alternative question: why have a second Chamber if it is not going to perform the sort of role that we have now? Under the new regime, in the brand new House, 240 Members—five out of every six—will be able to say, "We are on exactly the same terms as those in the other place, so why should we continue to regard the Commons as superior to us?". Clearly, the risk of gridlock is very serious indeed.

I come to my third and final point. Why incur the lunatic extra costs—apparently £177 million in the first year alone—of paying the salaries and expenses of the new senators' staff? What on earth will we gain? I would rather go along with the auction that was suggested; at least that would be an amusing way to pass the time as we look toward our demise. As the noble Lord, Lord Norton, said, it is quite clear from opinion polls that this so-called reform has absolutely no interest for the public—and, surprisingly, precious little for the press—yet we are facing the important and potentially very damaging prospect of losing a uniquely valuable and quite irreplaceable institution.

Baroness Anelay of St Johns: This may be a convenient point to adjourn the debate until after Oral Questions and the First Reading of the Private Member's Bill in the name of the noble Baroness, Lady Campbell of Surbiton. I beg to move.

Motion agreed.

2.46 pm

Sitting suspended.

Pakistan: Religious Minorities

Question

3 pm

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what advocacy the Foreign Office is undertaking on behalf of persecuted religious minorities in Pakistan.

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): My Lords, we engage regularly with the authorities in Pakistan on issues of religious freedom. Most recently, the Parliamentary Under-Secretary of State, my honourable

[Lord Howell of Guildford]
friend Mr Burt, discussed religious freedom with the newly appointed Pakistan Prime Minister's Advisor on Interfaith Harmony and Minority Affairs. He also met religious leaders from across Pakistan as part of the Ministry's Interfaith Council. Ministers and our High Commission in Islamabad will continue to maintain regular contact.

Lord Alton of Liverpool: My Lords, I thank the Minister for that reply. However, what does the abject failure of the authorities in Pakistan to bring to justice those who were responsible for the brutal murder of Salman Taseer, the Governor of Punjab, and of Shahbaz Bhatti, the courageous Minister for Minorities, say about their commitment to uphold the rule of law and to protect minorities? Is not impunity for murder, forced conversion, rape, forced marriage, the denial of civil rights and the failure to protect Ahmadis, Sufis, Shias, Christians, Hindus and others directly linked to the rise of the Taliban in Pakistan? Does it not point to the crucial importance of returning to the original vision of Muhammad Ali Jinnah, the founder of Pakistan, who insisted on upholding the rights of minorities, saying that they should have a full place in Pakistan society?

Lord Howell of Guildford: My Lords, the noble Lord has set out a grim and very telling catalogue. The events he has described are appalling, particularly the recent murders and the apparent support by some members of the public in Pakistan for those who may even have carried out these atrocities. These are very worrying matters that we raise again and again with our friends and the authorities in Pakistan. We see Pakistan as a country to which we are bound by longstanding ties, but also a country where we must put forward our values in a strong and effective way. I have to say to the noble Lord that no one can be happy about this pattern of affairs, or with the advance in extremism around the country, no doubt encouraged by apparent aspects of impunity. All these matters are constantly in our minds and constantly in the way that we are developing our relationship with Pakistan, a great nation that needs certain help and support at this difficult time.

Lord Elton: My Lords, as the minority groups in Pakistan number some 14 million people, of whom around 3 million are Christian, this is a major problem. Can the Minister confirm that 1.2 million people living in this country are of Pakistani origin, and that this form of violence has now been exported here, particularly in relation to the Ahmadi population? Perhaps it is worth mentioning what the noble Lord, Lord Alton, did not say. In his speech, Jinnah said:

"Minorities … will be safeguarded. Their religion, faith or belief will be secure. There will be no interference of any kind with their freedom of worship".

Lord Howell of Guildford: My noble friend is right, as was the noble Lord, Lord Alton, to remind us of the original qualities and values which the founders of the state of Pakistan, and obviously Mr Jinnah himself, put forward. In the present situation we want to try to maintain, deepen and, in some cases, resurrect these things. As to our own direct links with Pakistan, I am told that there are 1 million British citizens in this country with family connections in Pakistan. Believe it or not, the number of visits and journeys undertaken between this country and Pakistan each year amounts to 1.4 million. So our ties are close, which puts us in a position where we have responsibility and, I hope, credibility and some authority in dealing with our Pakistani friends.

Lord Ahmed: My Lords, is the Minister aware that Articles 20, 21, 22, 26 and 27 of the Pakistan constitution guarantee rights for all minorities? Does he agree that the rights of all citizens, regardless of their religion or group, should be protected? Pakistan is at war with extremists and terrorists, and since expressing its support for Operation Enduring Freedom, has lost some 34,000 citizens. Is not the right approach that of supporting Pakistan's institutions and its democratic Government, as Her Majesty's Government are already doing? It is better to support friends when they are in difficulties rather than kicking them when they are down.

Lord Howell of Guildford: The noble Lord is correct. No one questions the fact that Pakistan is facing fearful challenges of all kinds, one of which is its contiguity to Afghanistan and the challenges of extremism. Taliban operations are just one example of many pressures on Pakistani society. Of course we must approach these matters in a supportive mood, but we must also uphold our values. The fact is that, for instance, the blasphemy legislation is part of the Pakistan penal code. We have raised the issue of that kind of legislation by pointing to some of the tensions and excitements it generates. We would like to see a pattern where that kind of regulation, along with the attitudes and terms it generates, is less prominent. That might lead to some reduction in the violence and the apparent readiness of some people to commit acts of terrible atrocity, particularly the two murders just mentioned by the noble Lord, Lord Alton.

Lord Avebury: My Lords, can my noble friend say whether the Prime Minister himself has made any representations to President Ali Zardari to provide adequate protection for Ahmadi Muslims, who have been subject to multiple assassinations and incessant persecution fuelled by the Khatme Nabuwat, who openly incite to murder in leaflets and public speeches? Will the Prime Minister take up with Zardari the denial of voting rights to Ahmadis by requiring them to make a sworn statement contradicting an article of their faith in order to be included on the electoral register?

Lord Howell of Guildford: My right honourable friend the Prime Minister was in Pakistan only a few months ago and certainly made representations on all aspects of human rights and religious persecution in Pakistan, and I think that his views were very well received. Specifically on the Ahmaddiyya, we meet regularly with representatives of the Ahmaddiyya community to listen to their concerns. Most recently Mr Burt, whom I have already mentioned, and my noble friend Lady Warsi met representatives of minority religious groups to discuss freedom in Pakistan. About

a month ago, my right honourable friend the Foreign Secretary publicly condemned the Lahore attacks on the Ahmaddiyya community. We are well aware of these pressures and we dislike them, as does my noble friend. We continue to raise these issues as vigorously as we can.

Turkey: EU Membership

Question

3.07 pm

Asked by ***Lord Sharkey***

To ask Her Majesty's Government what barriers they have identified in the negotiations for the accession of Turkey into the European Union and what steps they are taking to overcome them.

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): My Lords, Turkey's European Union membership has the full support of this Government, subject to the rigorous application of the accession criteria. We work closely with Turkey to support progress in its domestic reform programme to meet EU standards. The Cyprus problem is an immediate obstacle to progress in the accession process. We support all efforts towards a solution on Cyprus and encourage Turkey to implement the additional Ankara protocol.

Lord Sharkey: My Lords, I thank the Minister for his Answer. He will be aware that popular sentiment in Turkey is moving against EU membership just when Turkey's importance to the EU and to the region is increasing. In addition to the measures that he has outlined, will he consider devising with our EU partners a new, clear and dedicated initiative to speed up Turkey's accession?

Lord Howell of Guildford: I hear what my noble friend says, but the new Government of Mr Erdogan—his party has just been elected for an historic third time, which is a remarkable record—have made it clear through the words of Mr Davutoglu, the Foreign Minister in the last Government and I think in this one, that they wish to continue with their aim of achieving EU accession. Therefore, the policy remains. Of course it is debatable and of course parts of public opinion in Turkey take a different view about how the relationship with the European Union should be developed, but overall, as I understand it, the Government of Turkey remain committed and seek our support and alliance to achieve that aim. That is what we are working on. I have mentioned one obstacle, that of Cyprus, which is obviously very difficult. If we make progress on that and the Turks can admit Greek Cypriot ships to their ports under the protocol that I mentioned, we will definitely be moving in a positive direction, which I think would benefit both Turkey and the European Union.

Lord Pearson of Rannoch: My Lords, do Her Majesty's Government regard the opinion of the British people as a barrier to Turkish entry, not to mention the opinions of the people of Germany, France, Austria and elsewhere in Europe? Is it not also the case that the people of Turkey are beginning to see a very much better future for themselves outside the failing project of European integration?

Lord Howell of Guildford: I am not sure that the noble Lord is entirely right in his assessment of public opinion generally. Certainly it is true that in France and Germany there are strong sentiments against Turkey joining the European Union, but I have not heard the same sort of sentiment in the United Kingdom. It seems to me that we are a strong country in supporting the reform of the European Union to make it fit for purpose in the 21st century. Part of that pattern of reform may well involve the integration of this very powerful and dynamic nation that Turkey is emerging as, with its own foreign policy agenda, which so far includes a closer and constructive relationship with, and indeed involvement in, the European Union.

Lord Liddle: While many of us on this side of the House agree strongly that the EU should adopt a more welcoming approach to Turkish membership, does the noble Lord not agree that the accession of such a large country as Turkey would inevitably weaken Britain's voting strength in the European Union and have major implications for policy issues such as migration? Why is it that under the European Union Bill that we have been debating in this House, which requires referendums on 56 separate locks, the accession of Turkey would not be subject to a referendum? Does this not indicate the nonsense in the legislation that is before us?

Lord Howell of Guildford: I thought that the noble Lord might raise that matter in relation to accession. He is obviously exercised by it and has, indeed, made clear his concerns over aspects of the Bill, which we debated at enormous length. I think that the best thing I can do is to give a very brief reply and say, no, I do not agree.

Baroness Knight of Collingtree: My Lords, will my noble friend the Minister bear in mind constantly the fact that Greece's membership and Turkey's lack of it is very often a severe barrier to the settlement of the Cyprus problem, to which there is real urgency? I declare my interest as chairman of the all-party group for Northern Cyprus.

Lord Howell of Guildford: There is absolutely no doubt that the Cyprus problem is a barrier and a difficulty and it would be excellent if the parties concerned could see a way to solving their problems and this long-standing issue of the division of Cyprus. I totally agree with my noble friend on that matter. It requires changes: it requires full support for what the United Nations is seeking to do, it requires a positive tone on the part of both Northern Cyprus and the Republic of Cyprus and it requires a positive tone in Athens and Ankara as well. All these changes are required and we are working to support them as hard as we can.

Baroness Falkner of Margravine: Does my noble friend agree that, in the context of the Copenhagen criteria, there are concerns about increasing authoritarianism, particularly to do with press freedom? Is he aware that

[Baroness Falkner of Margravine]
Mr Erdogan has accused the *Economist* of being backed by Israel, simply because it chose to criticise his campaigning and presidential aspirations?

Lord Howell of Guildford: Of course, we raise questions of human rights, freedom of the press and other things with our Turkish friends at the right opportunities. Turkey is well aware of the outside pressures and the need to maintain high standards in the fields of human rights and good governance, but these are matters for the Turkish nation to pursue and we are confident that it is pursuing these matters on the right lines.

The Lord Bishop of Chichester: My Lords, I am sure that the Minister is aware that in the recent general election in Turkey the first Christian deputy was elected to the Turkish Parliament. Does he agree that this might provide an opportunity to put more pressure on the Turkish Government in respect of their treatment of religious minorities? I have in mind the Syriac Orthodox population in the south-east of the country, particularly in the Tur Abdin region.

Lord Howell of Guildford: The Government are, of course, very new. These are matters that we have certainly raised in the past with the Turkish Government and will continue to raise. They have to be seen in a broader context, which is simply that Turkey is becoming a pivotal nation in the Middle East/north Africa pattern of events, in economic terms, in its dealings with its neighbours in turmoil, such as Syria, and generally in playing a crucial part in the global pattern of achieving stability and peace. In this broad context, the point that the right reverend Prelate has raised is very important. We will continue to have that part of our dialogue, but there are many other issues that we certainly want to discuss with increasing frequency with Turkey.

Hallmarking
Question

3.16 pm

Asked by ***Lord Trefgarne***

To ask Her Majesty's Government what was the outcome of the consultation, which concluded on 5 May, concerning the abolition of the regulations relating to the hallmarking of items made from precious metals.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): My Lords, as I have already explained in my reply to the noble Lord's Question in this House on 4 May, there was no such consultation, nor was there a proposal to abolish hallmarking. The retail sector, of which hallmarking is a part, was the first sector to be considered as part of the red tape challenge review of some 21,000 individual regulations. The outcome of the retail sector review will be announced over the course of the summer.

Lord Trefgarne: My Lords, I am grateful to the Minister for that reply. Is she aware that, rightly or wrongly, there is a widely held view that the Government are indeed about to abolish hallmarking, egged on by the Europeans and encouraged by the Secretary of State, Dr Cable, with his well known Euro enthusiasms? Will she therefore now clearly state that that is not the Government's intention and set aside what she says are these unwarranted fears?

Baroness Wilcox: My noble friend has long experience of being a Minister standing at this Dispatch Box and he will know that I cannot do anything about anything to do with the retail survey which is going on at the moment. However, I can assure him that one of the oldest forms of consumer protection in this country, dating back some 700 years, is going to take some moving.

Baroness Crawley: My Lords, I declare an interest as a guardian of the Birmingham Assay Office.

Noble Lords: Hear, hear!

Baroness Crawley: Thank you. Is the Minister aware of the serious lack of confidence that the UK's assay offices have in this rather strange and opaque process that the Government have put in place to deal with this review? Will the noble Baroness guarantee that the essential hallmarking work of the assay offices is not damaged by this process?

Baroness Wilcox: I am very happy to reassure the noble Baroness that nothing we are going to do will worry or upset the assay offices and certainly not the Birmingham office, which, after all, is the biggest office in this country doing assay work. The noble Baroness is also president of the Trading Standards Institute, so she knows this subject very well. We are worrying unnecessarily and noble Lords need to look no further than the response to the red tape challenge. We have received more than 6,000 letters of endorsement for the assay office. There is nothing to worry about at this stage.

Lord Palmer of Childs Hill: My Lords, I welcome the assurances from my noble friend the Minister but it would be very good to have further assurances, as much as she is able. Does she agree that whatever decision is made on whatever red tape procedures that are going forward—whether that be on consultation or red tape—it will not lower the prestige and skills of silversmiths, goldsmiths and jewellers in this country, of whom we are most proud, and the values either now or in the future for our antiques industry? Will she confirm that it is beneficial in the eyes of the Government to know who made an object, and when and where it was made?

Baroness Wilcox: My Lords, I agree with absolutely everything that my noble friend has said. We will do everything that we can to uphold such a marvellous protection for consumers in this country. Nothing about that is likely to change.

Lord Brooke of Sutton Mandeville: My Lords, I declare an interest as president of the British Art Market Federation. Is my noble friend aware that Chinese entrepreneurs are making small balls out of apple wood, giving them a thin skin of silver, sending

them by air to the assay office at Heathrow, having them hallmarked as British and returning them to China? It is believed that, as a result, the value of the object is increased a hundredfold. Is my noble friend confident that the United Kingdom is securing an adequate return from the service that it is rendering?

Baroness Wilcox: I am sure that our assay offices know exactly what they are doing and they are well monitored by us. If my noble friend would like to send me a letter about these Chinese wooden objects coming into our airports, I am sure that I could respond. But I think he is worrying unnecessarily.

Lord Harrison: My Lords, while the Chester Assay Office had to close in the early 1950s, when the Minister is next in Chester will she take the opportunity to visit the wonderful display of silverwork with the Chester Assay mark in the Grosvenor Museum? In the mean time, will she recognise something that is very traditional and well loved by the British people? I hope that any precipitate move on behalf of the Government to abolish hallmarking will be resisted.

Baroness Wilcox: My Lords, if I get the opportunity, I certainly will make a visit. The assay office in Plymouth, where I come from, closed down many years ago, as have a lot of assay offices over time. The Government are looking at doing something positive in this area in order to compete with our European counterparts, particularly the Dutch. Under current UK law, UK assay officers can hallmark only in the United Kingdom. We are taking forward a legislative reform order, by April 2012 I hope, to allow UK assay offices to hallmark overseas so that we, too, can compete in Thailand and China.

Care Services: Older People

Question

3.22 pm

Asked by ***Baroness Neuberger***

To ask Her Majesty's Government, in the light of the Equality and Human Rights Commission's interim report on the care of older people in their own homes, what plans they have to ensure appropriate care that respects dignity.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): My Lords, dignity and respect are the cornerstones of good-quality care. The Government have made the Care Quality Commission responsible for assuring quality of care. It is the responsibility of local authorities to specify and commission care and providers to deliver it. The Government's planned reforms for health and social care, with an emphasis on better commissioning, should increase our ability to drive up standards in services and result in improvements in quality of care.

Baroness Neuberger: My Lords, I thank my noble friend the Minister for his reply. However, is he aware that a large proportion of the responses to the interim report from the Equality and Human Rights Commission have come from the care workers themselves who feel that in present circumstances they are simply unable to provide care that provides dignity to the older people in their care? Can he assure this House that in those reforms that are going forward, measures will be taken to make sure that local authorities must commission services that allow real dignity, which probably means rather longer passages of care for the people concerned?

Earl Howe: My noble friend makes some extremely important points and I agree with the thrust of them. As she said, these are interim findings. We all look forward to the finished report later in the year, which will no doubt contain deeper analysis than we have had access to so far. There can be no place for poor-quality care in care services. We should all welcome an inquiry of this kind because it clearly will expose poor practice and will point the way towards some clear messages that we must bear in mind in the context of the Health and Social Care Bill. In that context, we are seeking to achieve much more joined-up commissioning so that we have health and social care working together towards quality outcomes.

Baroness Greengross: My Lords, does the Minister agree that a reprioritising of funding towards the care of people in their own homes is essential? Would he also agree that in training both commissioners and care workers a human rights approach is a very useful tool when caring for vulnerable older and disabled people in their own homes? I declare an interest as a commissioner on the Equality and Human Rights Commission.

Earl Howe: I certainly agree with the noble Baroness that being looked after in one's own home is the preferred option for most elderly people. That is where we have to focus our attention and, over time, increasingly our resources to deliver good-quality care in that context. She makes a very good point about training. Regarding the essential qualities of a good care worker, you cannot train anyone in a kind and compassionate attitude, which is probably the foremost requirement for anyone in that field. I take her point about human rights. My department is already speaking to the Equality and Human Rights Commission and has entered into a voluntary agreement with it to help us embed equality right across health and social care and to enable the commission and stakeholders to evaluate the progress we have made.

Baroness Wheeler: My Lords, I, too, welcome the work being undertaken by the EHRC on this vital issue. We know that there are substantial problems with commissioning and standards of care delivery. For example, many local agency contracts do not provide staff with travelling time between visits, which greatly adds to the pressures on them. Stories of older people even being catheterised to avoid the costs of an extra visit are not unheard of. However, as a carer, I stress that in my own locality, care agency arrangements work very well, to a high standard and as part of an integrated care package. How will the Minister ensure that future commissioning makes this experience the norm, bearing in mind that 81 per cent of publicly funded home care today is provided by the independent sector?

Earl Howe: The noble Baroness again makes some extremely good points. At the moment we have an architecture that, first, should ensure that basic standards of quality are maintained. We have that through the Care Quality Commission, whose job it is to register domiciliary care agencies and to ensure that they have systems in place to quality-assure themselves. That must be the starting point: agencies must make sure that they are delivering the service for which they have been commissioned. Secondly, it is also a matter of ensuring that we have visibility where problems arise and that service users are encouraged to believe that they can speak up for themselves, that whistleblowing is possible, and that anyone else who observes poor-quality care should feel free to speak up and to know whom to tell when they see bad care happening.

Baroness Campbell of Surbiton: My Lords, over four-fifths of local authority-funded home care is delivered by the private and voluntary sectors. In light of this, will the Government use the opportunity of the current Health and Social Care Bill to clarify that private and voluntary sector agencies providing home care services on behalf of local authorities are performing public functions under the Human Rights Act?

Earl Howe: I am sure that the noble Baroness, with her experience, can tell me a lot of what I do not know about what is built into the contracts that local authorities take out with private, independent and voluntary sector organisations. I would be surprised if the human rights obligations she refers to are not built into those contracts. It is clear that everyone has a basic human right to be treated properly wherever that type of care is being delivered. The key here is to ensure that service users are aware of their rights. As I said earlier, my department is extremely keen to embed equalities and human rights in everything that it is responsible for.

Baroness Jolly: My Lords, will the Minister tell the House what proportion of domiciliary care providers are owned by private equity companies?

Earl Howe: I am afraid that I do not have that figure in my brief. I am not sure whether my department will either but if I can find it out I will let her know, gladly.

Social Care Portability Bill [HL]

First Reading

3.30 pm

A Bill to make provision for the portability of care packages to promote independent living for disabled persons.

The Bill was introduced by Baroness Campbell of Surbiton, read a first time and ordered to be printed.

Scotland Bill

First Reading

3.30 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

House of Lords: Reform

Motion to Take Note (2nd Day) (Continued)

3.31 pm

Lord Framlingham: My Lords, given the time limits on speeches, it is tempting to try to speak in a staccato shorthand manner, rather like Mr Jingle in *Pickwick Papers*. Sadly, I lack Charles Dickens's skill with words and so I will have to say what I want to say in my own way.

I am conscious that I am one of the newest Members of your Lordships' House, but I am quite a long-standing parliamentarian and spent my last 13 years in the Commons as a Deputy Speaker. I have seen ping-pong at close quarters and know only too well how an amendment to a Bill in this House can strike dread into hearts at the other end of the Palace. As a Deputy Speaker, I spent a long time not speaking but listening and, I hope, learning. I spent much time meeting Speakers and guests from other legislatures and being by turns proud and humbled by their reverence for our parliamentary system and traditions, including your Lordships' House and the way its procedures work so well.

Before any momentous decision is taken, the key question is not how but why. If there is no satisfactory answer to why, then you never go on to how. To do so is only to waste time, effort and money, which should be spent where it could do some good. I am currently reading Adam Nicolson's book about the making of the King James Bible. The Bible, a work of genius, was produced by a committee of 47, so committees can work. One sentence which guided them in their labours and which leapt out of its page at me in the context of this debate is:

> "What virtue was there in newness, when the old was so good?".

Indeed, what value is there in newness when the old is so good?

Abolition is self-evidently a bad idea. When weighing the issues, on one side of the scales are many good and treasured things; on the other side, the only thing is this increasingly debased currency of democracy. "Democracy" is a word like "community" and "stakeholder"; it had a meaning once but now it has become, sadly, debased. It has become a flag that has been pinned to too many masts; it has become tattered, bedraggled and, sadly, increasingly meaningless. Please let us call a spade a spade. This is not a reform; it is abolition.

The press renamed the allowances of Members of Parliament as expenses, to devastating effect. The community charge, whatever you think of it, became the poll tax and was killed immediately. This is abolition and the word "reform" must be corrected every time it is uttered. In all this, we must beware of relying on the media to tell a straight tale. They are no longer patriotic; they are no longer guardians of our constitution or cherishers of our traditions. We cannot rely on our newspapers or television even to be fair-minded. Their only concern nowadays is to fill their columns or their programmes with controversial or eye-catching headlines or photographs. If a serious argument goes by default to the detriment of our nation or its children and

grandchildren, they show no signs of caring. In my political lifetime, I have watched this happen with growing unease. That now borders on despair, combined with bafflement at their lack of concern for the protection and preservation of a wonderful country such as ours.

Others have dealt, in great detail, with the nuts and bolts of the Bill, but the truth is that it is rotten at the core. I finish by using words that Mr Jingle might use: "Elected Peers not in conflict with the Commons? Nonsense. A 15-year term? Far too long. Continuing appointments? Confirms their value. Modify? Yes. Sensible reform? Yes. Abolition and Americanisation of our House? Certainly not".

3.36 pm

Baroness Goudie: My Lords, I am a radical. I believe in parliamentary reform—of both Houses. Scrutiny of legislation is only one example of where improvement is required, but it is illogical to focus exclusively on this House. On the contrary, it is only in the context of both Houses that one can identify the functions of this House and it is only after defining the functions of this House that one can sensibly approach the question of its composition.

I am a democrat—I believe in a fully elected House of Commons and the primacy of that House. That, of course, is what we have. To that extent, I am in favour of the status quo. No case has been made out that any weaknesses of this House will be cured by the proposed change in composition. No confidence can be maintained that the strengths of this House may not be impaired—far from it. The one certainty is that there will be uncertainty and confusion about primacy and the relationship between the two Houses. There is the potential for paralysis. It is naive to suppose that if this House were elected its Members would not consider that this elected House had at least equal legitimacy to the other elected House.

To meet this point, it is proposed that there should be different electoral systems, but that is merely digging a deeper hole. It is bizarre to be considering an alternative voting system just after it has been rejected in a referendum. More seriously, those who believe that the single transferable vote or proportional representation, or whatever, is superior to first past the post will inevitably consider that this House enjoys the greater legitimacy of the two. It is nothing short of absurd to imagine that the conventions that govern the relationship between the two Houses would remain anything like the same. These proposals are ill thought out. The hybridity will not command support in the country.

At a time of acute constraints on public expenditure, expense will be incurred. We saw the figures yesterday, while yesterday's Gallup poll highlighted the problems of well-being for low-income families. Those are the issues that we should be discussing in this House and the other House.

These proposals will monopolise parliamentary time, not only over the issue of new creations but because they envisage removing those who were, unquestionably, appointed for life. They will therefore turn an appointed House into a disappointed House, which will need to scrutinise, at the least, the transitional arrangements. I welcome the establishment of the Joint Committee of both Houses to consider all these matters in detail. However, for most Members of this House, and certainly for the general public, there are greater priorities.

3.39 pm

Lord Butler of Brockwell: My Lords, when I read the Government's White Paper, I was struck by how extraordinarily unbalanced it was. Ninety per cent of the White Paper dealt with the method of election to an elected House, the difference to the Bill if there were not appointed Peers and the period of the transition. There were two sentences only on the role and functions of the House and on its relationship to the other place. These sentences said that the Government see no reason why an elected House should alter or have different functions from the present House, or why its role and relationship should alter. It is on these aspects that noble Lords in this debate have rightly, in my view, cast such scepticism. Indeed, if I may say this with great respect to the Leader of the House, he has not been consistent on this matter. Yesterday, defending himself against the charge that this proposed legislation amounted to abolition of the House of Lords, he concentrated on the fact that the role and relationship would not change; yet previously he had said that he expected that the role would evolve and the relationship would change. I hope that the noble Lord who is summing up the debate tonight will make it clear which of these aspects the Government really believe. When the noble Lord says that the House will evolve but is not being abolished, I remind him that that is what evolution is all about. Evolution does result in extinction. He is just bringing it about rather more quickly than has happened in the past.

When I struggled with these matters on the Wakeham commission, we started with the question: why should we have a second Chamber at all? Surely that is the question from which we ought to start. When we went around the country taking evidence from the public, those members of the public who were sufficiently interested to want to come and give evidence—I accept that that is rather a select sample—were clear about two things. First, a second Chamber is necessary to counterbalance the dominance that the Executive have exerted over the other place. Secondly, however, the elected Chamber must retain its supremacy. Surely those must be the two bases on which we consider the role of the second Chamber. The Bill and the Government's White Paper refuse to define the role and status of the second Chamber, saying that we should rely on the established conventions. However, the whole point about conventions is that they change. Surely, if the Government are launching this legislation without defining those functions and the relationship in the legislation, it is starting the British constitution on a voyage to a destination that is undefined. That seems to me not good enough. Will the Minister confirm that, despite what the Government said in the White Paper, the role of the second Chamber and its relationship to the other place will be within the purview of the Joint Committee?

I finish by making two other observations. First, the White Paper and the draft Bill talk about a normal term of 15 years, or three terms, non-renewable. However,

[Lord Butler of Brockwell]
if you look at the small print, that is not the limit of the term of Members of this House. It is the normal limit, but in abnormal times, if Parliament is dissolved within two years and there is a further election, there would be no further election to this House. Therefore, the maximum period of time for an elected Member of this House is 21 years, which seems to me far too long.

My second observation is on the size of the House. The White Paper and the Bill propose that the House should have 300 Members. In support of that, they say that this House, now amounting to more than 800 Members, has an average attendance of 388 and therefore 300 Members should be sufficient to carry out the normal roles of the House, particularly if they are full-time politicians. It seems to me highly implausible that a House of 300 would be sufficient to carry out the work of this House, particularly when terms are non-renewable so that Members do not have to account to their constituencies and there is no financial advantage in attending particular sessions. It seems very likely that people in that position, or at least some of them, will take their stipend and very rarely be seen here. So the size of the House seems much too small.

There is a very large number of issues which the White Paper and the Bill leave undetermined. There is a huge task for the Joint Committee to perform, and I wish it all possible success.

3.45 pm

Baroness Hooper: My Lords, having been a Member of your Lordships' House for 26 years, I have had almost equal experience of the House when it consisted of mixed hereditary and life Peers as of the current composition of appointed life Peers with a small and select band of elected hereditaries. As far as I am concerned, the post-1999 House of Lords is no better, no more democratic and no more able to defeat the Government or ask the House of Commons to think again and does not have a greater breadth of expertise. It is certainly less independent, more partisan and more expensive. I therefore again wish to put on record my regret that the historic and traditional element of our ancient Parliament, which was represented by hereditary Peers, should have been lost apart from the small group who remain and continue to do sterling work. The brilliant speech by my noble friend Lord Elton earlier is a witness to that.

I welcome the proposals before us to the extent that they at least show that the Government are prepared to follow through on the so-called reform Act of 1999. For those of us who were here in 1997 and 1998 when the then Government spoke of their mandate from the public and how urgent and important their proposals were, there was an assumption that the Bill was but the first stage of reform and the dawn of a new era. In fact, all it amounted to was a Bill to abolish the right of hereditary Peers to sit in the House of Lords or, as the then Leader put it, to get rid of hereditary Peers.

I am a natural conservative, in that I do not like change for the sake of change. If changes have to be made, it has to be shown that they are changes for the better. The 1999 reform Act did not achieve that; a wholly appointed House is not an improvement, although I can understand that those who have become Members since 1999 are able to persuade themselves that it is now a much improved place. If I had a magic wand, I would use it to return to the pre-1999 position, and I only wish that the noble Baroness, Lady Boothroyd, had been here in 1998, as I feel sure that she would have been a doughty champion of the status quo then as she is now. I join others in congratulating her—

Baroness Boothroyd: I am most grateful to the noble Baroness, but I am not in favour of the status quo. I am in favour of reform, but it must be incremental reform, as laid out in the Bill proposed by the noble Lord, Lord Steel. I want reform, but I want sound and good reform when it does come.

Baroness Hooper: I thank the noble Baroness for her intervention. I was about to congratulate her on the style and bravura of her speech yesterday. I must say that, if she supports the Steel Bill, in my opinion that is a long way in the direction of preserving the status quo. However, we are where we are—facing the current proposals.

There are so many ways in which the working of the House of Lords could be improved, and there have been many excellent and some very novel suggestions in the course of this debate. Like others, I have always believed that in considering further reforms we should be looking at the whole of Parliament—that is, at both Houses, also taking into account the powers and functions of the devolved Parliaments in Scotland, Wales and Northern Ireland, which considerably change the constitutional map.

I have also always believed that we should move towards a fully elected second Chamber, since I do not consider that the present wholly appointed House has democratic legitimacy. However, my idea of a fully elected second Chamber would be via the medium of indirect elections, based on a system of electoral colleges to ensure that the breadth of expertise, which most people agree already exists and must remain if the role of the second Chamber is to be mainly that of scrutinising and revising legislation, should be guaranteed. The electoral college system would allow doctors, lawyers, academics, the voluntary sector, the regions and other groups to be defined to elect their representatives for a period of time. It would be on much the same lines as the hereditary Peers do today so, far from wanting the hereditary Peers to wither away, as has been suggested would be the result of the Steel Bill, I want them to remain and to be reinforced because of the historic continuity that their presence gives to this House.

I cannot therefore find anything to recommend in the Government's proposals for direct elections or the system that they suggest. Perhaps the only thing I can agree with in these proposals is the decision not to change the name of the House of Lords, at least not in the short term. It would indeed be ridiculous to have a House of Commons without a House of Lords. It is perfectly feasible to have Members of the House of Lords without having to create them all as Peers of the realm, which has indeed become something of a charade. Yet the idea of a senate has no appeal at all.

I started out by trying to find something to welcome in these government proposals. The more that I have listened to the debate and its many brilliant and

constructive speeches, the more I recognise that they simply will not do. I hope that the Government will do the same and draw the same conclusion.

3.52 pm

Lord Howarth of Newport: My Lords, coming in to bat at number 75 it is tempting to have a bit of a slog but I shall be my usual restrained and cautious self. We can surely all agree that our democracy needs safeguarding and strengthening, that government—policy-making, legislation and administration—needs to be done better, that the performance of Parliament needs to be improved and that the House of Lords needs to be reformed. As we pursue political and constitutional reform, our lodestar should of course be democratic legitimacy—the principle that elections determine who should form the Government, that elected Members of Parliament and the Government themselves should be accountable to the people and that the people should, from time to time, have the opportunity to renew them or to replace them. But we have such democratic legitimacy through the ways in which the House of Commons works, as it is now constituted.

That the House of Lords is appointed does not invalidate or weaken our British democracy. So long as the primacy of the House of Commons is accepted, as it now is, the democratic imperative is satisfied. As we have it now, the House of Lords is no more than an advisory Chamber. Its role is revision and scrutiny, which is what the Government want it to be. Of course there are, from time to time, impassioned and prolonged debates between the two Houses. We in the Lords offer our amendments. Sometimes we reiterate that offer. Occasionally, rarely, we exercise our delaying power but ultimately the appointed House of Lords always defers to the democratic authority of the elected House of Commons. Although the textbooks may not quite put it like this, since the Parliament Acts we have, in effect, unicameral government: an elected House of Commons with an advisory House of Lords beside it. The noble Lord, Lord Norton, who always educates me in these matters, described our arrangements as asymmetrical bicameralism.

Mr Clegg's quest to introduce democratic legitimacy into the second Chamber is the pursuit of a red herring. The people who make the laws are already elected and are accountable to the people. The House of Lords advises the real legislators. If we were to have an elected second Chamber, the clear accountability of Parliament to the people would be muddied.

Elections are not the only source of legitimacy. Judges, academics and faith leaders have legitimacy. The legitimacy of the House of Lords derives from the quality of the advice that it offers through debates, amendments, the work of Select Committees and so forth. The quality of that advice derives from the expert knowledge and experience of the Members of the House—Cross-Benchers and Members of political parties alike. Good scrutiny makes for good government. That is the justification of what we should do.

Our democracy needs reform. The debate about the Bill is not a contest between those who are in favour of reform and those who are against it. The House of Commons needs to pursue the agenda offered by the Wright Committee to strengthen the Back Benches and improve their scrutiny of the Executive. The interaction of the Parliament at Westminster and the European Parliament needs to be improved. We need to attend very carefully to the arrangements for devolution because, since the recent elections to the Scottish Parliament, the union is in greater danger than it has ever been before. We need to reinvigorate elective local government through relaxing control from the centre. There is a large and legitimate agenda for reform and it certainly includes reform of this House. We should not be complacent. There is some risk that this two-day debate might be perceived by some—admittedly those who read it selectively—as a sustained indulgence in institutional narcissism. At any rate, we should not talk too much about our own wisdom. We need to reform the House to make it a more effective advisory House not to make it a new democratic hotspot.

If the House of Lords were to be abolished and replaced by an elected second Chamber, as the Government propose, how would relations between the two Houses be affected? There could be an attempt to nip this new element of democracy in the bud—to emasculate its democratic potency—restricting its powers to those conventionally exercised by the present mainly appointed House, which is what the White Paper proposes. Who of first rate ability or serious experience in the world would want to stand for election to a Chamber with such limited powers? In principle, an elected second Chamber could be embraced as a vigorous and spirited House of Parliament flexing its democratic muscles. However, in that case, the House of Commons would have to accept a rebalancing of the respective powers of the two Houses. Members of Parliament would have to accept that Members elected to the second Chamber would have the same rights to represent and relate to the citizens of this country as they do. When the United States federal Senate became directly elected, its Members serving longer terms—though not 15-years terms—than Members of the House of Representatives, the Senate became the senior House. The Unites States legislature is characterised by permanent conflict and impasse, with the Executive unable to secure their preferred legislation.

The compromise proposal of an 80 per cent elected and 20 per cent appointed House would not work; I cannot imagine how such a hybrid Chamber could be successful. Of course, the appointed Members would be 20 per cent of a much smaller House. The Government propose that they should be full-time Members. They would be no match for the Cross-Benchers, who at present make such an invaluable contribution to your Lordships' House. The decisive argument against the compromise proposal is that the unelected 20 per cent would again and again decide the outcome of votes in the mainly elected House, which would be unacceptable.

If we have abolition and replacement, it seems to me likely that the House of Commons would attempt to constrain the powers of the elected second Chamber; but the elected second Chamber would gradually and tenaciously aggrandise its powers, just as we have seen the Welsh Assembly, the Scottish Parliament, the London mayoralty and the European Parliament do. Do noble Lords remember the categorical assurances that we were given before the first direct elections to the European Parliament in 1979 that its powers would remain

[Lord Howarth of Newport]
unaltered? We would have continuous instability and conflict and meanwhile we would have lost the virtues of the appointed House: its expertise and its forbearance.

Either way, whether we have a weak or a powerful elected second Chamber, the key question to be asked is: how would it improve the performance of Parliament? Again and again, I have asked the proponents of elections that question and I have never had an answer. I hope that when he comes to wind up this evening, the noble Lord, Lord McNally, will be able to give us an answer, but I fear that the price for the extra democratic legitimacy that is not needed would be a less effective Parliament.

It would be much better to concentrate our energies on reform of the second Chamber where we can agree, and on improving what we have. The proposals set forth by the noble Lord, Lord Steel of Aikwood, in his Bill are more or less contained within the White Paper and the draft Bill: a reduction of our membership; arrangements for retirement; the phased departure of the remaining hereditary Peers; powers to expel Peers found guilty of grave offences; and a statutory Appointments Commission. The statutory Appointments Commission's task would be to ensure that the quality, expertise, range and representativeness, in the sense of the term used by the noble Lord, Lord Armstrong of Ilminster, were such as to provide an institution that would give the best of service to the country.

If the Government set aside, at least as their immediate purpose, elections, which are massively contentious inside Parliament, little debated or desired outside Parliament and irrelevant to the urgent needs of the country, it would not be difficult to achieve wide agreement on measures of incremental reform. Incrementalism is the British way of constitutional reform. Changes that often seem modest—for example, the introduction of life peerages—turn out over time to have profound, far-reaching and beneficial consequences. Mr Clegg, if he would moderate his ambition, could yet be a great parliamentary reformer.

4.02 pm

Lord Lucas: My Lords, it is a complete pain to be speaking after the noble Lord, Lord Howarth. He said so much that I wanted to say that I shall have to prune my speech as I go along. I suppose I can summarise my attitude to this Bill by saying, "I agree with Nick, but not much". I agree much more with the noble Baroness, Lady Royall. I am a thoroughgoing supporter of an elected House of Lords, but rather in the mould of my noble friend Lord Waddington. I want to see a more balanced bicameral system. I want to see the Executive having less power. As the Executive have so much power in the Commons, a stronger, elected House of Lords would be a useful change to the British constitution, but that is not what we are talking about now.

What we are talking about now is a completely botched reform, concocted in dark rooms by a party that is meant to believe in openness, without even involving the Front Bench of the Labour Party or taking any account of all the expertise around this House about how it might have got further in achieving its aims. As my noble friend Lord Lang pointed out, leaving the powers and functions as they are but changing the composition of the House is a recipe for instability. The powers and functions will have to be rebalanced, and how that will happen is essentially unpredictable. I believe that, as others have said, we will go through a period where an elected House under this Bill will fight to improve its position, to get power and to make itself worth while. How could it do otherwise because the alternative is grim, dull and uninteresting?

We are offering people coming into this House 15 years with the wages of a moderately senior teacher, no prospects of promotion, no afterlife and no influence. How are people like that going to be respected by the House of Commons? It is the respect that the House of Commons has for the people here, for us, that makes the whole thing function. A lot of people here were senior Ministers, have played a part in Government and have the same qualities as the people in another place, except that they have been through it all and succeeded. Added to that, there is a collection of people who have succeeded in the courses that they have followed in life. Although we are a nuisance, get in the way of what the Government want to do and do not have to go through elections, none the less we are accorded respect, and that makes for the balance in the House.

We have a Bill and I do not see how, in the course of coalition politics and looking after the pride of the Liberal Party and its leader, we can get away from the fact that this is the Bill we will probably end up with. However, as many Peers have said, a lot in this Bill reproduces what is in the Bill of the noble Lord, Lord Steel. Therefore, we can actually build on many of the proposals in this Bill. If we cut away the bits that do not work and do not make sense we may end up with this Bill looking remarkably like the Steel Bill, perhaps with a few improvements. It is a task which I do not envy the noble Lord, Lord Richard, and his committee. I am delighted he has taken it on. I am sure he will chair it brilliantly. I have no wish at all to join him but I look forward very much to what he has to say in a year or two's time.

I have some suggestions for him. Now that we are going to have a fixed pattern of elections, it seems to me that even in an appointed House we could take a step towards election by making sure that at election times the parties expose to the public the list of those they intend to put forward for the House of Lords under the Steel Bill. If we are having the Steel Bill system with a 15-year term and a regular flow of new entrants, the major parties—Conservative and Labour—will have about 70 or 80 Peers to create in any five-year period. They can safely expose the top 30 or 40 names without any risk that anyone on that list will not get into the House of Lords. That would mean that when you were voting for a party you knew what they were going to do with the House of Lords and you knew the quality of people they were going to put in there. It would be something which was a matter at the general election. It would be an element of democratic accountability. You could even have a separate vote for the lists of Peers that parties were putting forward. This would have the advantage of dissociating the percentages in this House from the percentages that

had voted for the other House and would greatly weaken any claim to democratic legitimacy that this House might feel as a result of having had an element of election.

I would also suggest, in contrast to what my noble friend Lord Marlesford said, that when it comes to reducing this House, as needs to be done, we should not pay people, we should offer hereditary peerages. It is an attractive thing. My peerage, if I am cynical about it, is a reward for buggery and bribery but hallowed by several hundred years in between. Noble Lords have got here for entirely legitimate and honourable reasons, certainly by comparison, and they would be elegant additions to the hereditary peerage as it will then be, which is something entirely irrelevant. It will have been severed from its connection with this House and will be merely a decoration rather in the way that French titles are a decoration. It would be a pleasant badge for people in this House to be able to hand down to their successors and adequate compensation for many people who were looking for a good reason to retire. Giving money to people to retire is going back to sinecures and to bad old ways I would not like to see reproduced.

I want to see a House of Lords which is as strong as it is now and which is an attractive place for the many people who get here because of their own experience and skills. That is the right balance to try to maintain. I think we can do it while improving, in many ways, the House at the moment and I wish the noble Lord, Lord Richard, every success in that. I hope, too, that he will manage to remove IPSA from the Bill. I do not think we should wish that on ourselves.

4.10 pm

Lord Mackenzie of Framwellgate: As a former senior police officer, noble Lords will be pleased to hear that I do not intend to detain them for very long. I came into this House some 13 years ago, and one thing that I have learnt is to value the wise counsel of your Lordships. It has been said several times throughout the debate, "If it ain't broke, don't fix it". I do not think that it is broke, and the House performs extremely well. Clearly, there is room for reform, and I agree entirely with the wonderful speech of the noble Baroness, Lady Boothroyd. I support her Motion.

The changes that have taken place in this House since, I suppose, 1911—more than 100 years—have evolved slowly. We have heard noble Lords refer to this. It has been an evolution rather than a revolution. One thing that I should like to say is that if the House changes, it is important to look at the transitional period because noble Lords who have given selfless service should be allowed time to leave this place. I gave up a promising plan for retirement and moved down here at some economic cost. The House and certainly the committee of the noble Lord, Lord Richard, should consider—and the Bill is silent on it—the exit strategy for those who will be dispensed with if the Bill is passed. I hope that it will not be passed and that the House stays pretty much as it is. I read of grandfather rights, a term that seems appropriate to this House. They should be looked at as well. It may well be that we can ease the burden of those who may have to leave.

When I first came into the House, regular attendance was a badge of honour. I remember in the *House Magazine* being mentioned as one of the top 10 attendees. I was very proud of that. Because it attracts more expenses, regular attendance now seems to be a badge of dishonour. That is a tragedy because it discourages people from attending, and the press pick up on this as though somehow we are abusing the system, when we are simply performing an important public function.

I fully support the reforms of the Steel Bill. In a strange way, in my experience over 13 years, this House often represents public opinion more than the other place. That is a strange anomaly, even though that place is elected; but, of course, that place is controlled almost totally by the party system. This place has a healthy independence and long may that continue. It will become a party animal if we have elections.

As has been said many times, the Bill is a bad Bill. There are a lot of unanswered questions. As has also been said many times, I do not envy the Joint Committee, which has a difficult task ahead of it. If the House is elected by some more proportionate means, Mr Clegg seems to think that that clearly would be a more legitimate way of electing people than first past the post. This House would eventually argue that it was more legitimate and would challenge the other place. That is fairly obvious. I conclude simply by saying that the constitution of this country should not be the political plaything of a minor player in a coalition Government who were hatched together over a few days. This country of ours deserves better.

4.14 pm

Lord Phillips of Sudbury: My Lords, let me say at once that I acknowledge how complex a task it must have been to put this Bill together. Unlike some, I think that it was brave and constructive to produce it so that we can have something concrete to argue around.

I start with some clarifications. Nothing that I am about to say should be taken as a disparagement of Members in the other place. There has been an undertone of that in some of the contributions. The vast majority of them are decent, intelligent and conscientious Members of Parliament who are trying to do their best for the public realm.

Secondly, although I oppose elections to this House, I accept the need for reforms as many others have done. Many have mentioned the Steel Bill, as do I. Thirdly, we must accept that the onus is on those on my side of the argument—the non-elected side—to justify the non-elected status quo, which is almost unique in the democratic world and against the spirit of the times.

Further—I do not know whether this has been mentioned—we stand in particularly intense conflict of interest on the Bill, because the majority of us will be booted out if it goes through. We have to try extremely hard to be objective and see ourselves as others see us. At times, we can be apt to be a trifle too self-congratulatory.

I want to talk a little about a referendum. Some have mentioned it; I heard the noble Viscount, Lord Astor, praise it yesterday. Partly because of the conflict

[Lord Phillips of Sudbury]
in which we stand, I believe strongly that this should be put to the people of this country in a referendum, although I am very chary of referenda. Let us not forget that it was in the Labour manifesto that there should be a referendum. Some will say that a referendum is superfluous because all three parties had it in their manifestos at the election that this place should be elected. That is a spurious argument. It was far from being a mainstream issue. Only zealots plough through modern manifestos.

I also note that in the European Union Bill, which my Government are in the process of legislating, they propose referenda for 50-plus Community arrangements. One will require a referendum if there is any change to either the right of election or the right to stand in any European election. How can it conceivably be right for us to impose a referendum under those circumstances while denying a referendum under these much more direct and plangent circumstances?

I do not believe that this is our Parliament. It belongs to the public. We are not just changing this House in the course of the Bill; we are uprooting it. I cannot for the life of me see how my Government, who claim deficiency of democratic authority as the reason for the Bill, can then ignore that democratic requirement. It would surely be aping the deficiency that they level at us to push through reform without it.

I devote the remainder of my time to the potential impact on the quality and character of this House if elections go ahead. First, who will want to stand for elections to this House? Given that it will have seriously inferior powers, what ambitious man or woman wanting a full-time career in politics will make this their first choice? Furthermore, that second-rateness will be wantonly rubbed in their faces if paragraph 111 of the White Paper is followed into legislation. It states that,

"the level of salary for a member of the reformed House of Lords should be lower than that of a member of the House of Commons".

What on earth can that mean in terms of status or the authority of this place? We will be so inferior that we cannot even get the same rate as the people down the road.

The idea that someone might start here as a means of climbing to the elevated House of Commons is scotched, first, by the 15-year term and, secondly, by a ban on going straight from this place to the other place—there has to be a five-year break. It is not as if we will work less assiduously. The constituencies will consist of about 450,000 and does anyone suggest that that will not yield a massive amount of work? Of course it will. We will have less than half the number in the reformed House to deal with the plethora of legislation and policy than the other place will have. What sense is there in that? There will be less power, less pay, more work and no title. Who really believes that ambitious politicians will come to this place?

Lord Trefgarne: Will the noble Lord take a little care in denigrating the potential candidates for an elected Chamber? I am thinking of being one myself and I would have no plans to go on to the House of Commons.

Lord Phillips of Sudbury: I find it very easy to respond to the noble Lord's intervention because, in his case, he would certainly be the exception to my rule. I am trying to be sensible and point out some of the realities about the two places.

I end with a few comments on the 20 per cent appointed Members of this House, if that option goes forward. One of the statistics produced by the progenitors of the Bill to beat us with is that on average only 44 per cent of Cross-Benchers bother to turn up to vote. That is precisely because many of them attend debates and Bills which engage their expertise and experience; otherwise, they get on with outside jobs and perform the outside commitments which feed and furnish their virtues of experience and expertise. I do not disparage people who may come here—I am trying to be realistic—but I do not believe that a full-time, paid 20 per cent of Cross-Benchers could do what the present Cross-Benchers do, for the reasons to which I have briefly alluded.

Apart from all that, I suspect that the culture and tenor of this place will be very changed under the new aegis. Partisanship will, inevitably, be in full cry, not least because getting a candidacy under the new aegis will be via an even more narrowly partisan channel than that which applies to MPs now.

Lastly, despite the best intentions of the framers of this draft Bill, I cannot see that it will yield a Chamber as ready, let alone as qualified, to amend government legislation as we are. I have not been able to update the statistics to this moment in time, but when I wrote an article in 2002, I found that in the period since Labour gained office in 1997, there had been more than 1,000 whipped votes in the House of Commons and not a single one went against the Government. In the same period, there were roughly the same number of votes in this place and a quarter of those were lost by the Government. I do not believe that that fantastic independence of mind and voting will survive an elected House. I believe that our native genius is demonstrated in the evolution of our Parliament, in both Houses. Let us continue on that evolutionary path and eschew revolution.

4.23 pm

Lord Stewartby: My Lords, one of the problems of speaking fairly far down the batting list is that most of what needs to be said has already been said, several times. For the convenience of the House, I shall confine myself to do no more than identify a number of areas where I am more concerned now, as a result of listening to much of the debate, than I was before. I certainly do not favour abolition, even if it is creeping abolition over several years. On the other hand, it has become increasingly important to tackle the issue of reform. Like many others, I commend my noble friend Lord Steel for his work on that and hope that we can progress it, either on its own or in conjunction with part of the draft Bill in front of us.

What bothers me most is that it appears that those who drew up the Bill had certain preconceived notions of what would and would not work, and how they wanted it to happen. However, one must consider function in broad terms and identify its requirements if one is to give it authority through our parliamentary

system. I do not see that that happened. Instead, we have a proposed composition of a rather extraordinary kind, which contains a lot of elements that are individually very hard to justify.

We have heard a lot about the 15-year appointment period. I think that that is completely unworkable. If you are elected and for some reason do not do anything much in the parliamentary system, you can go on holiday for 15 years—which might appeal to some people.

Do we really need another elected body? We are always complaining that we have too many elections—to central government, to local government and to the devolved Administrations. Do we want to put in yet another tier?

I missed the point about Members of a reformed House being paid less than Members of Parliament. That is an extraordinary twist and I do not think that the Bill will get anywhere, even if its fundamental proposal of elected membership makes progress.

When dealing with an electoral system, it would be better to have one elected House than two so that responsibility remains clear-cut. There will undoubtedly be challenges from one House to the other—it will not always be the upper challenging the lower—and the Bill will change the relationship between the two. It will change the way in which they carry out their functions and it is a huge leap in the dark.

One can be sure that any upper House of the kind proposed would seek to extend its competence. One has only to look at the EU or Scottish Parliaments to see that the new body would desire immediately to widen its competence across the board and would demand more powers; that is so certain that one does not even have to justify it.

On a practical level, I worry that the process will effectively exclude any parliamentarians who continue to know what is going on in the outside world. For some years, the House of Commons has made it evident that outside jobs are frowned on. Here, all Peers are part-timers and get a lot of experience from what they do outside the House. If they are replaced by 300 professional politicians, how will that enable the new body to bring all the necessary experience and knowledge to bear on its parliamentary work?

The worst thing about the 15-year figure is that there will be no accountability for those involved. One will not get anything that could be described fairly as a democratic system in the full sense if there is no accountability once somebody has been elected in the first instance. That is such a gaping omission that it invalidates a lot of the concepts behind that part of the draft Bill.

The question of who would stand and what we would do about existing Peers with outside jobs and so forth are unresolved areas, but they will need a great deal more thought and attention if there is to be any prospect of them getting near legislation. I do not believe that legitimacy depends entirely on election. In our society there are many examples of people with considerable responsibilities but who are not elected to their posts. Judges are the obvious case, but they are not alone. Throughout the structure of public affairs we have people like the Comptroller and Auditor-General and the ombudsmen. A long list could be produced of those who are not elected but who exercise very substantial power. So the legitimacy argument is not quite as helpful to the Government's cause as it might seem at first sight.

I hope that this debate will focus attention on many of the most difficult and worrying areas of the process. I have said quite enough already, but I conclude by saying that those who are going to have to try to work this system deserve our thanks and admiration.

4.31 pm

Lord Neill of Bladen: My Lords, I am number 82 in the list of speakers in the debate and I agree with my predecessor who has just spoken that everything that has to be said has already been said. I should like to summarise my views by saying that I agree with what the noble Baroness, Lady Boothroyd, said yesterday and what the noble Lord, Lord Grenfell, said today. I also agree strongly with the statement made yesterday by the noble Baroness, Lady Royall of Blaisdon:

"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".—[*Official Report*, 21/6/11; cols. 1161-62.]

I am opposed to the destruction of the present House of Lords and I am opposed to the creation of a new Chamber as per the model in the White Paper and the draft Bill. I also object to the spurious urgency that is being heaped upon the committee which has been asked to look at the White Paper. It should have all the time that it could possibly want in order to carry out the job. However, it has really been given the wrong agenda because the Bill and the White Paper are, to put it rather mildly, not 100 per cent on course. What the committee should be thinking about are what incremental changes are needed and can be made without damaging the overall fabric.

I want to spend a little time on the principle that underlies the desire for having elected Members in this House. The benefit of being elected will be conferred upon 80 per cent of the Members, but there will be another 20 per cent who will not have it. Part of the scheme provides that some 20 per cent of the House will be illegitimate by the test of direct election. There are also the 12 bishops who, on the same test, would not have that benefit; and then the Ministers, however many there may be, would be specially nominated by the Prime Minister to serve in this House. So there will be a group of people who will not have been blessed by the touch of the people.

Where does this principle come from and where does one find an exposition of it that is applicable to our circumstances? We have a country in which the entire electorate has its own Member of Parliament in the form of some 60,000 people per constituency. They have a right to call upon their MP to look after their own interests or the interests of the constituency in the form of local interests, and indeed national matters if that is their concern. It is the duty of the MP to answer those concerns. The Chamber in which their MPs sit is accorded primacy under a system of conventions which have been set up, so their representatives sit in a Chamber which has the final call on what

[Lord Neill of Bladen]
legislation is enacted. Look at all that and then look at what the Prime Minister and the Deputy Prime Minister say in the foreward:

"In a modern democracy it is important that those who make the laws of the land should be elected by those to whom those laws apply".

That condition is fully met in the case of the House of Commons, but why, one asks, does it have to be met for a second time in relation to the House of Lords?

I do not know how well your Lordships remember the passage getting on a bit in the book where there is some discussion about the European Convention on Human Rights and the composition of the House of Lords. I shall read paragraph 428 on page 162 to your Lordships.

"The Government is not aware of any Strasbourg case-law on the composition of the second chamber of a member state of the Council of Europe. There is a variety of types of membership: in the Czech Republic all members of the Senate are directly elected; in Austria all members of the Bundesrat are indirectly elected; the Seanad in Ireland includes appointed members; the Senate in Italy includes a few appointed members and a few ex officio members; the Belgian Senate contains directly elected members, indirectly elected members, co-opted members and hereditary/ex officio members. In other words, while first chambers must be elected by the people in order to comply with the Convention, second chambers will frequently have a different form of composition, which may or may not involve direct election. If one looks beyond Council of Europe member states, all the members of the Canadian Senate are appointed".

So there is absolutely no widespread recognition of any general principle that applies to the appointment to a second Chamber and I call that in question.

I want to draw attention, as has been repeatedly referred to, to the extraordinary feature of the elected Members—that they get a 15-year term and they are never questioned or brought up for review at general elections as they come and go over those 15 years. The matter is taken even further by the provision in relation to payment, that their salary has to be set below that of the MPs because they,

"would not have constituency duties".

What an incredible phrase. One might expect there to be funds for an office to be set up for this huge constituency of pushing on for half a million. One might expect special funding for that, but there is not a word about that. It is not conceived. There is a completely dead hand; once the vote has been given in their favour they are in for 15 years. There is nothing to stop them setting up an office—true enough—but there is no concept of that; it has not be dreamt of or thought of by those who make these proposals and that is an extraordinary feature.

Those who propound the democratically-elected principle must believe in it. One is amazed then that they fall short of demanding a 100 per cent elected House. Why are these other 20 per cent deliberately selected as not having the benefit of this electoral process? They nevertheless get a 15-year term, unquestioned, however they perform their duties. One is surprised at the poverty of the demand. One would expect that, if they really believed in the importance of this principle, they would be going for 100 per cent.

4.38 pm

The Lord Bishop of Chichester: My Lords, by any criterion, in our bicameral system your Lordships' House is more representative than the other place. I am not ignoring the question about electoral mandate, but as we have heard so often, elections are both before and afterwards—the electorate has the freedom to choose an MP and to unchoose their MP next time around. That seems to be a fatal flaw against the 15-year fixed term. Certainly the ballot box is not the only way in which democratic legitimacy is acquired. There are many people who, for a variety of reasons, have no say in elections to the other place, while in this Chamber there are doughty champions of some otherwise relatively voiceless groups in our society.

Our experience of the Appointments Commission since its establishment in 2000 has been a good pilot for a wider application of that principle for getting to this place. This House is already fairly diverse but the nominations by the commission have increased that diversity. The chair of the commission, the noble Lord, Lord Jay, has pointed out that, of those nominated by the commission since 2000, 37 per cent have been women, 22 per cent from ethnic minorities and 8 per cent disabled.

While with my right reverend friends on these Benches I welcome the opportunity to consider the governance of our country in its totality, including reform of your Lordships' House, I would not want changes in any way to reduce the capacity of Parliament to speak for society as a whole. I am speaking about so-called "civil society", distinguished as it sometimes is from the formal mechanisms of the state and the commercial market. Obviously, the boundaries are somewhat fuzzy and there is considerable overlap but in a healthy and free society some distinction of that kind is necessary. In a way, I would be more comfortable with a definition of civil society that sees it as society conceived of as a whole and served by various political, commercial, military and other instruments, but which is and must remain ultimately the body from which these other instruments derive their legitimacy.

At least if their voting habits are anything to go by, large numbers of our fellow citizens are sceptical about our present electoral system and it would be profoundly unwise to replicate that scepticism in the upper House. For that reason, I simply cannot agree that a directly elected upper House, whatever the proportion, would be a reform—I would describe it as a deform. When I reflect on the point about the existing commission, I am tempted to say that you can have election or you can have diversity but you cannot have both.

I shall not comment on the inevitably greater challenge to the primacy of the House of Commons in the Government's proposals. Many noble Lords have made that point and I agree with it. However, I wonder how many places in the world have a bicameral system under which both Houses are elected and the upper House has not, in practice, acquired the upper hand. We have heard that sometimes this leads to deadlock but in countries where there is deadlock there is often a president or a political head of state to bring them together. Is that one of the unthought-through implications of what is being proposed?

I now turn to two other aspects of the proposals. The first concerns the overall size of the House. That question cannot properly be answered without a detailed reflection on the purpose of the House and its role. A smaller House could, if properly appointed, do the representative job asked of it. But 300 Members is almost certainly too small. Much thought would have to be given to the nature of the appointing body or bodies and the way in which they make their nominations. I very much warmed to what the noble Earl, Lord Glasgow, and the noble Baroness, Lady Hooper, said, particularly about electoral colleges and perhaps an indirect election by that means.

It would, however, be important to make sure that in a rightly much more professional House, those Members whose expertise relies precisely on their lives and expertise outside Parliament are able to keep their feet firmly on the ground outside the rarefied atmosphere of Westminster. A more professional House should not exclude the contribution of some noble Lords who cannot be here every day. That has some bearing on the numbers.

My other point is about the place of bishops. It is essential to separate as far as possible the role of the bishops of the established church from issues of representation of faith communities. That faith communities should be one of the estates or constituencies of civil society from whom Members of this House are chosen is so obvious as to be, in the inelegant modern phrase, a "no-brainer". I take it absolutely for granted that however difficult it is to work out the details, we must have appropriate representation of the different faith communities in our legislature, whether they can secure election or not.

The bishops, however, are not here for any such reason. We do not represent the Church of England, Christianity or the world of faith, even though many in all these areas say how much they appreciate our presence. The bishops of the Church of England have sat in this Parliament since its inception for no reason other than their responsibility for the areas covered by their dioceses and all the people who live in them. I happen to think that the link between bishops in the Lords, the establishment and the Crown is so close that the removal of one is likely to hasten the demise of the others. I do not think that most of those who would like to get rid of the bishops in a rather cavalier—although I really mean roundhead—way have thought through all the consequences of what they are proposing.

The concern of these Benches is not in itself about ourselves. After all, we are the one group in this House for whom there is a sunset clause already written in. I could quibble about the details of the proposals, but if we did end up with a House of 300-ish, 12 places for bishops of the established Church of England would be reasonable and manageable. However, in such circumstances it would not be wise to keep automatic places for the Bishops of Canterbury, York, London, Durham and Winchester, and I would prefer to see the church free to make its own selection. However, that is a detail and I hope that we do not get to that point.

In many minds, this question is obviously linked to that of religious representation as a whole. Of course, under the present proposals there would be no place for religious representation as such apart from the bishops of the established church. That is another reason why I would prefer an appointed House, which would give us the opportunity to think carefully through the role of faith communities in civil society and how their voices, often those of minorities, may continue to be heard.

If I wanted to be naughty, I would say that the only good thing about this Bill is that it would increase the proportion of Members of the House sitting on these Benches. However, bishops are not supposed to be naughty.

4.47 pm

The Marquess of Lothian: My Lords, with the greatest respect to my noble friend the Leader of the House, it could be said that the proposal on which we are asked to take note must rank among the most inappropriate political events since Nero fiddled while Rome burned. That is not to criticise the quality of this debate, which, at least until now, has been superb, although for all I know the melody played by Nero might also have been superb.

The simple fact is that this proposal is the wrong answer to the wrong question at the wrong time and, in my view, is being addressed in the wrong way. Its proponents seem to challenge the doubters, such as me, to show why it should not be adopted. That approach is perverse. Surely it is for the proponents to show why these proposals should be adopted—something that they have so far singularly failed to do. I was taught many years ago that constitutional propositions should be tested against basic criteria. I listened with great care to the right reverend Prelate the Bishop of Leicester yesterday as he set out certain tests. I wish to follow him in that direction.

First, are these proposals wanted? Like many others here, in over 40 years in active politics I have never met anyone outside the refined and elitist quarters of the political class who has ever even remotely raised the question of House of Lords reform with me. Anyway, it is not for us to show that it is wanted; it is for its proponents to show that it is wanted. So far they have failed to do so, because they cannot.

Secondly, will these proposals repair something that is not working? Even the paper that we are debating accepts that your Lordships' House is currently working well and it contains no apparent proposals for making it work better. Indeed, the only proposals for that are those advanced by the noble Lord, Lord Steel of Aikwood, in his Bill, which I strongly support.

Thirdly, will these proposals improve the governance of this country? Given that the role and powers of the second Chamber are to remain unchanged, even its most ardent proponents are not arguing that reform will improve the governance of this country; they are arguing only that it will be more democratically authoritative, whatever that is meant to mean in this context. I have yet to hear a remotely convincing explanation of that.

Fourthly, will this improve the scrutiny that is brought to bear on legislation? On the contrary, it will in time remove that vast well of specialist expertise that is the key to the effectiveness of this House and

[The Marquess of Lothian]
replace it with journeymen political hacks. That is a prediction that I confidently make if these proposals go through.

Fifthly, will it improve the lives or quality of life of the citizens of our country and, if so, how? I have yet to meet any member of the public who thinks that their lives will be improved by these proposals; indeed, I have not yet heard in this debate from the proponents of these proposals any suggestions as to how they will improve lives. Again, it is not for us to show that these proposals will not produce a benefit for people in this country; it is for the proponents to show that they will. Once again, they have not, because they cannot.

Sixthly, will the proposals, as claimed, strengthen the accountability of this House? What on earth is accountable about electing someone for 15 years, being unable to get rid of them during that period, however bad they are, and not being able to keep them after that period, however good they turn out to be? This is at a time when Parliament is looking to enable the recall of unsatisfactory MPs, who, anyway, are always changeable every five years at election time. That is a paradox of which Lewis Carroll would have been proud.

Seventhly, is reform really a legislative priority today? We are currently involved in two wars, in one of which many British lives have been lost; we are facing the gravest economic situation that this country has endured in my political lifetime; and we are trying to reform the welfare state, the National Health Service and our education service, all of which are creaking under the strain of overweening bureaucracy. The thought that we could spend months deliberating on this half-baked scheme simply beggars belief. It is not good enough to argue that the reason why we have to do this is that it has been on the constitutional agenda for 100 years. The longevity of a misguided concept does not make any less misguided.

Nor is it good enough to make great claims that such constitutional change will create greater acceptability. I warn your Lordships against taking too much notice of rhetorical claims on constitutional reforms. I still recall the confident and unqualified government claim in 1997 that Scottish devolution would kill nationalism stone dead. Tell that to Alex Salmond today.

A great deal has been said about the effect of these proposals on the balance of power between the two Chambers and there are still those who argue that an elected House of Lords would never dare to seek greater powers. There is in the west of Scotland a saying that if you give someone a Minch they will take an isle. It is even more in the nature of political institutions, particularly those that are elected, to seek constantly to extend their powers, so it is naive beyond credulity to believe that an elected second Chamber would not constantly seek to do so.

This dog's breakfast—and dog's lunch and dog's dinner—is not a serious proposition but the product of a belief by the Liberal Democrat leadership that after the failure of the AV referendum it needed another constitutional flagship within which to shelter its increasingly tattered credibility. This, then, is what these proposals are—unseaworthy, unwanted and unsafe. Many years ago, in a spirit of friendly generosity, from a conference platform I described the Liberal Democrat logo of the dismembered bird as a cloud cuckoo looking for somewhere to land. I cannot help feeling today that the homeland of that mythical bird would be an excellent place to lay these proposals finally to rest.

4.54 pm

Lord Foulkes of Cumnock: My Lords, it is a particular pleasure for me to follow the excellent speech of my friend—and he is my friend—the noble Marquess, Lord Lothian, who for many years was my pair in the other place when he was a mere Earl. That is one of the intricacies of the aristocracy that I still cannot understand, even after the intervention of the noble Lord, Lord Lucas, earlier today.

When we were in the other place, we used to listen to passionate speeches by Paddy Ashdown, as he was then—the noble Lord, Lord Ashdown—and we heard one yesterday. It was eloquent, powerful and passionate in favour of democracy and accountability. There was only one problem with it—the draft Bill does not deliver what he seeks. It was obvious when he intervened on the speech of my noble friend the Leader of the Opposition that he did not realise that there was a draft Bill in the White Paper. As my noble friend Lord Gordon said, where is the democracy and accountability in a list drawn up by the leadership of each party? It sounds like the list that is currently drawn up for membership of this House, just replicated in another way and going through the democratic process to give it some legitimacy.

The noble Lord also mentioned the 61 legislatures where he claimed—I think, wrongly—that there was no challenge from the second Chamber to the first Chamber. That needs to be checked. I am not suggesting that the noble Lord, Lord Richard, and his committee should visit all 61 parliaments, but one or two might help. If they went by boat, it would be even more appropriate.

One of the interesting things about this debate is that I do not think that anyone, perhaps with the exception of the noble Lord, Lord Marks, and the Leader of the House, has supported the Bill. It is astonishing. Where are we now? I am the 85th speaker, and only two speakers have been in support, although we thought that the Leader of the House had his tongue in his cheek. I should not say anything about his cheeks but sometimes you do not notice when he and I have our tongue in our cheek. It is astonishing that we are going ahead legislating on that basis.

Let us go back to first principles, as the noble Lord, Lord Butler, said. Do we need a second Chamber? Other countries, such as New Zealand and the Scandinavian countries, are good democracies and manage perfectly well without one. Until recently, I was in favour of abolition of the House of Lords. Some people said that when I came here I changed my views. My views have changed, not because of my membership—or not just because of that—but particularly because of seeing the unicameral Scottish Parliament in the last few weeks. It is totally controlled by one party—no, by one man. My honourable friend Ian Davidson described it in another place, in not the most felicitous phrase, as "neo-fascism". I would say, cautiously

and carefully, that it is becoming very totalitarian in Scotland now, with a unicameral Parliament controlled by one party, with every committee that was supposed to provide the checks and balances also controlled by that party and with the Presiding Officer also from that party. It is really worrying. For example, they are now about to rush through a Bill on sectarianism with very little thought, under pressure from the tabloids, before the football season starts. The unintended consequences of that could be very serious indeed. I have come to the view that a second Chamber is needed to provide those necessary checks and balances.

The next question is what kind of second Chamber. The White Paper and the Bill, as many others have said, put the cart before the horse—they talk about composition before the purpose, functions and role of the second Chamber. I can see arguments for a nominated second Chamber, if it has a revising function, as it does at the moment, but a second Chamber improved by the proposals included in the Bill drafted by the noble Lord, Lord Steel. I do not think that David realised that he was going to have so many people supporting his Bill—and rightly so—in the course of these two days. There is also a case for an elected second Chamber. However, if that is the way forward, we have to recognise, as a number of others have said, that it will challenge and question the primacy or the supremacy of the House of Commons. Other Members have argued that far more forcefully than I can. Conventions will need to be revised or a written constitution will be needed in relation to that.

Two points have not been covered in this debate. As I said, this Bill has very few friends here; indeed, it does not have many friends anywhere. When the Leader of the Opposition, the noble Baroness, Lady Royall, referred to the careful consideration that we undertook in relation to the Parliamentary Voting System and Constituencies Bill, I saw my noble friend Lord McNally—and he is an old friend of mine—make a note and look in my direction. If he was thinking what I think he was thinking, he is right.

Finally, problems have arisen because for some time now constitutional change has been piecemeal. Problems have arisen. One of the most urgent—more urgent, I think, than any reform of the House of Lords—is the democratic deficit in England. English people do not have the same say over a domestic matter that we in Scotland and others in Wales and Northern Ireland do. That ought to be dealt with rather more urgently than looking at the House of Lords. It would be better to tidy this matter up rather than to carry out another constitutional change. If we go ahead with it, I predict that it will have unintended consequences far greater than any of us can now imagine.

5 pm

Lord Lloyd of Berwick: My Lords, it is very difficult to follow a speech such as we have just heard. I say at once that I am against a wholly elected House. Apart from anything else, it would mean losing the Cross Benches, a point made very powerfully this morning by the noble and right reverend Lord, Lord Eames. I think most of us would agree that the Cross Benches are, in the immortal words of *1066 and All That,* "a good thing", not because we are in any way better than any other Members—of course not—but because we are independent not only of party but of each other, as we have seen very often during the last few weeks; indeed, we will see it shortly when the noble and learned Lord, Lord Scott, follows me. He and I share a room and I know that he strongly disagrees with everything that I am about to say.

I am not only against a wholly elected House; I am against a wholly appointed House, for two main reasons. First, it would give too much power to the seven members of the Appointments Commission just as the present system of appointing Peers gives much too much power to the Prime Minister.

Lord Elton: Is the noble and learned Lord aware of the fascinating fact that this House was more than 50 per cent appointed in the regime of Tony Blair, when the Government suffered the greatest reverse of any time in their history since the Second World War?

Lord Lloyd of Berwick: I am not sure that that answers the point that I am against appointment by the Prime Minister. I would also be against appointment by so small a body as the seven eminent men who are apparently proposed. To have seven people appoint the whole of one Chamber of a bicameral Parliament seems to me to be wrong in principle.

Secondly, it would mean that the voice of the people had not been heard in choosing any of the Members of this House. The noble Baroness, Lady D'Souza, argued yesterday that the voice of people is heard, and often heard, in this Chamber. That is true and I entirely agree with her. However, it is not heard in choosing the Members of this Chamber, which is a very different thing. That was the great point made yesterday by the noble Lord, Lord Ashdown. Perhaps even more relevant, it was the great point made by the royal commission under the chairmanship of the noble Lord, Lord Wakeham.

The noble Lord, Lord Armstrong, in his measured speech this morning, was not against reform but he said that we should take it slowly and even think of appointing a royal commission to take the matter forward. Surely he was forgetting that we have already had a royal commission. Its membership could hardly have been more distinguished—eight were Members of this House out of a total of 12, I believe. They took a mass of evidence, both expert and non-expert. May I say in passing that I am really surprised that so little has been said so far in any of the speeches that I have heard about the work that that royal commission undertook? I think that the noble Lord, Lord Wakeham, himself was the only person who has mentioned it, and he was far too modest about the merit of the proposals in that royal commission. It reached very clear conclusions, one of which was that a significant number of Members should be elected to represent the regions—the north-east, the north-west, Scotland, Wales and so on. There are 12 regions in all. That seems a very good idea. The commission went on to consider various models of how it might be achieved; under model B, there were to be 87 elected Members to represent the regions, or 15 per cent of the total, while under model C it was

[Lord Lloyd of Berwick]
somewhat more. A majority of the royal commission favoured model B, and so would I.

I am in favour of a partially elected House. There are two main arguments against having any elected Members at all. First, it might lead to friction between elected and non-elected Members; secondly, it might lead to friction between this House and the other place—and perhaps even call in question the conventions that we all know. The royal commission dealt with each of those objections at considerable length and rejected them both, and so would I. Of course, a wholly elected House would challenge the primacy of the other place. That almost goes without saying. That of course is what is proposed, but it is not what the royal commission proposed and not what I favour.

Since in a debate of this kind, one should always come down and say what one does actually want, perhaps I can say what I would like to see and to have considered by the hardworking committee that will consider all these matters. I would like to see a House of 400 Members—rather more than the 300 proposed in the Bill. There is more than enough work for 400 Members to do. Of those 400, 320 would be appointed by the new Appointments Commission, of whom 100 would be Cross-Benchers. The remaining 80 would be elected by proportional representation to represent the 12 regions, as recommended by the Wakeham commission. I am easy as to the form of proportional representation, as long as independent Members are not discouraged from standing. They would serve for two terms, renewable; they would not be eligible for election thereafter to the House of Commons, so the House would not become a stepping stone for ambitious politicians. All Members, whether appointed or elected, would be paid the same salary, which would be taxable.

I accept that of course what I am in favour of is a compromise between what is proposed in the Bill, which I do not like, and the wholly appointed House favoured by very many. But a compromise may yet become necessary if we are to reach a consensus with the views held in the other place, whatever they may turn out to be. I would not expect such a compromise to be popular in either place, but then compromises are never popular until they become inevitable, and often not then.

Lord Gilbert: Perhaps the noble and learned Lord could enlighten us as to how a Prime Minister should proceed when he finds that there is no material in the other place adequate to form a Government, which has been the effect on every Prime Minister for the last 50 years, and probably many before that.

Lord Lloyd of Berwick: I am not altogether clear as to the relevance of that point to what I was saying. I am not suggesting any alteration in the other place; I simply referred to what I would hope might be regarded as incremental reform of this place, to use the expression of the noble Baroness yesterday.

Lord Gilbert: If I might help the noble and learned Lord, I heard him say that he was against any appointments to this place by a Prime Minister. If a Prime Minister cannot have total freedom to choose his Government, what is he going to do under the noble and learned Lord's recommendations?

Lord Lloyd of Berwick: Of course the Prime Minister can choose the Government. There is an argument, which we have already had, as to whether he should be entitled to choose Ministers to sit here, but what I am against is the Prime Minister choosing, as he does, the vast majority of the Members currently present.

5.11 pm

Viscount Eccles: My Lords, in following the noble and learned Lord I regret to say that I have no solution to what should happen, although I admire his courage in going back and putting forward one that has been considered before. It certainly is true that we are faced with compromise. I suppose that is inevitable. As the noble and learned Lord said, there is always going to have to be compromise. The trouble with this compromise—the Bill—is that it is between a school of political theory and the empiricists. It is between those whose heritage is revolution and those who believe in evolution. Indeed, I suspect that the parliamentary draftsman got two completely different sets of instructions when he set out to draft the Bill.

To take the first school, where do the political theorists come from? It has been claimed that there are none and that for 100 years, in the footsteps of Asquith and Lloyd George, all that is being done is to complete pragmatically a process which was started then. I do not think that is right. The origins of where we are go back a lot further: to the Enlightenment and to 1776 with Tom Paine, sitting in Philadelphia and about to advise, very successfully, the founding fathers. He wanted to persuade the 13 colonies that they could break free from the King and the British Parliament, so he was making the strongest argument that he could and saying that the English system was broken, to use a more recent term.

In the pamphlet entitled *Common Sense*, he referred to:

"The remains of aristocratical tyranny in the persons of the peers",

who were to be got rid of under his scheme. He praised:

"The new republican materials, in the persons of the commons".

Tom Paine was committed to 100 per cent election and to written constitutions. Indeed, he wrote about the unelected that they were wholly independent from the nation, but he did not mean "independent" in the sense that it has been used in this debate. He also wrote:

"From the want of a constitution in England to restrain and regulate the wild impulse of power, many of the laws are irrational and tyrannical".

Were Tom Paine to be here today, would he think differently? I think that he would still be in favour of election and of a written constitution. Would he be able to distinguish between the remaining hereditary Peers and the life Peers in this House of Lords? I would hazard a guess that he would not be able to distinguish them and that if he did not it would make no difference to his opinion. He would think that because this House was not elected, it should be abolished.

However, many empiricists, who are evolutionary, think that many of the political theorists enjoyed Tom Paine when they were young. They liked the drama of the *Declaration of Independence* and the fall of the Bastille, which turned them on, but most people grow up. Some take longer than others and some never achieve it but most of the theorists who write essays when they are young turn into empiricists later. Unfortunately, some never do.

This Bill is hooked on democratic legitimacy and concepts, but has been drafted by somebody who has been told that they must take care of the effects. As the French Revolution showed quite clearly, theorists are not much bothered by effects. However, empiricists are. Much reference has been made to the speech of the noble Lord, Lord Ashdown, and you have to give him a point. If you had full-scale democratic legitimacy, as described in political theory, the second Chamber would be able to disagree with the first Chamber about going to war. If it did so, there would be a constitutional crisis. However, neither mandates nor manifestos make things happen; events do. Libya was not in anybody's manifesto. Therefore, there could be—and very likely might be—a standoff between one House and another based on a democratic theory of legitimacy that creates a crisis but the draft Bill is trying to solve this problem. The other instructions to the draft will have been to grant some form of political theoretical democratic legitimacy to it but to reduce it to a minimum. Hence, we will have a House of only 300, which is clearly too small. Hence, we will have 15-year terms. Hence, we will have all the other things about which Members have been speaking during the debates. I do not need to repeat them all.

There is a standoff within the Government between the Paineite theorists and the empiricists. The Bill both grants the democratic legitimacy that is looked for and does its best to take it back. This is why it will fall.

5.17 pm

Baroness Taylor of Bolton: Several people have said that it is very difficult at this stage in the debate to say something new. However, the right reverend prelate the Bishop of Chichester did exactly that. It was rather spine-chilling to follow his logic on the Bill and the possible subplot that might lead to a president in this country who would be the arbiter between the two Houses. It was particularly chilling because the picture that came to mind was President Clegg. If I was not already opposed to the Bill beforehand, I certainly was after listening to that particular possibility.

It is late. I do not normally speak on Lords reform but it is important that the Government and the Joint Committee get a sense of the strength of feeling that exists in the House on this draft Bill. They have certainly got that today and yesterday. However, it is also incumbent on us as individuals to use our personal experience to highlight some of the practical problems that will arise from these proposals.

Like everyone else, I am tempted to comment on everything, from the Steel Bill, which I support, to the use of the Parliament Act, which I oppose, and all the other issues. Instead, I base my words on my experience as Shadow Leader of the House of Commons—when the noble Lord, Lord Newton, was Leader—Leader of the House of Commons and government Chief Whip, which are very different roles as the noble Lord, Lord St John of Fawlsey, said yesterday. However, all these roles, in one way or another, brought me not only into the usual channels in the Commons but also into the discussions that have to take place from time to time between the business managers of both Houses. Both Houses have to interact; both Houses have to negotiate. That can be quite difficult. In particular, there can be an impasse between both Houses. We can, as we have seen on many occasions, get to a ping-pong situation. I have been there in the smoke-filled or darkened rooms, in the corners of corridors, and I have to admit to being party to negotiations and compromises and to a whole variety of done deals just to keep the show on the road. That has not always been easy, as anyone who has been involved will acknowledge.

However, when I was in the Commons, as Leader of the House or as Chief Whip, I always knew that in the Commons you had one great advantage that the Lords never had. It was the very basic, simple fact that the Commons was elected. That is not to say that this House had no influence. It is not to say that this House never got its way. It did have an influence and it did sometimes persuade the Commons to back down and accept what was being proposed, and it did, on occasion, delay legislation, but when the crunch came, the Commons was elected, and the Commons always had the edge. Therefore, I ask this House, and the other House, to think what would be the situation if this House was elected, be it 80 per cent—as someone said, four-fifths legitimate—or 100 per cent. Those discussions and negotiations would be completely different.

The Government cannot just say that the primacy of the House of Commons would be preserved because, in reality, that is just not possible. Ministers always say that the way things will be preserved is by conventions. That is always the answer when we talk about this but, as the Leader of the House said yesterday,

"these arrangements and conventions may—indeed will—develop and evolve".

You bet they will, and there is only one direction, there is only one way, in which they will change. The power of this Chamber will increase and the power of the Commons will diminish. No group of people, however much or little they are paid, who are worthy of election would sit back in this Chamber and not flex their muscles once they were elected, and I think that they would do it pretty quickly. My noble friend Lord Sewel said yesterday that institutions are dynamic. If we were to have an elected House of Lords, you would soon see how dynamic it could be. I think that that issue is now dawning on people in another place.

My second point is about accountability in the proposals in the draft Bill. Like others, I question what accountability there could be. I thought of it personally. If I were to stand in the senatorial elections under this system, first, I would be there for 15 years; secondly, as the Leader of the House said yesterday, I would,

"not be accountable to voters in the same way that MPs are to their constituents",

[Baroness Taylor of Bolton]
and, thirdly, I would be barred from seeking re-election. So there is one very basic question: to whom am I accountable? It is not the electorate, and it is not my party, because I will not be able to seek re-election. I reckon I would have carte blanche. As long as you do not break the rules, you are there for 15 years. As the Leader of the House said yesterday, long single terms will uphold the independence of Members. He spoke of the,

"spirit that differentiates this House".—[*Official Report*, 21/6/11; col. 1156.]

So if we have that valued independence that he praises now, as we do, why are we going through all this to elect independent but non-accountable senators? It seems a nonsense to me. Like many others here today, I was in the Commons for quite a long time. I was there for 27 years, and I fought, I think, eight elections. That is accountability, not what is proposed here. What is democracy worth if it does not include accountability? It is a very basic question and one to which we have not yet had an answer.

Finally, I accept that it is very difficult to mount a theoretical, academic defence of an unelected House, although some people have got quite close to doing quite well today. Like others, I do not think that the House of Lords is perfect. We could improve it, as many have said, and as the Bill of the noble Lord, Lord Steel, tries to do. My defence is the practical fact that this House works. No one could have designed it in the way that it is but it has evolved into a very useful Chamber. It is my very strong belief, with others, that it is absolutely impossible to elect the Lords without the most severe impact being felt on the Commons. If you are doing that, in addition to all the other changes that this Government have been proposing, you might be best to start with a blank piece of paper and write a whole new codified constitution from scratch. The alternative, and what we are seeing at the moment, is piecemeal tinkering with our constitution. There will be unintended consequences and this approach will probably create far more problems than it solves.

5.26 pm

Lord Scott of Foscote: My Lords, there is really very little to say that has not already been said very eloquently by those who have spoken before me. That feature of the debate that has taken place yesterday and today allows me, I hope, to be brief. I wish to associate myself particularly with the coruscating speech delivered yesterday by the noble Baroness, Lady Boothroyd, and with the speeches delivered today by the noble Lord, Lord Grenfell, and the noble and right reverend Lord, Lord Eames, and also with the many speeches delivered to your Lordships by those who have opposed the notion that election of Members of this House would be a desirable constitutional innovation.

This House has long been the subject of reforms to its membership. The reforms have always been pragmatic ones designed to make the House better able to discharge its constitutional functions. The reforms began—so far as I know; there may have been earlier ones—in 1878 when provision was made by statute for life peerages to be awarded to eminent judges or lawyers, and these became the first Law Lords. The reforms were designed to make the House better able to discharge its then constitutional role of being the final court of appeal for the kingdom. That was a wholly pragmatic response to the proposal by Prime Minister Gladstone to remove from the Lords its appellate jurisdiction. A general election brought in Disraeli as Prime Minister in place of Gladstone and the creation of Law Lords to sit on appeals to the House was the result.

The Parliament Act 1911 was a procedural reform introduced to prevent a Tory-dominated House of Lords from defeating legislation desired by the Lloyd George Liberal Government. That too was a pragmatic response to a need for the House to be in a satisfactory state. The 1958 Act extended to anybody the possibility of the grant of a life peerage and this too was a pragmatic response to the growing criticism of the hereditary character of the then membership of the House. The 1998 Act started the process of removing hereditary Peers from membership of the House but this Act, like the 1878 and 1958 Acts, owed little, if anything, to doctrine and everything to pragmatism—what would enable the House more efficiently to fulfil its constitutional role until a final decision about membership of the House could be reached. These reforms have since 1958 enabled a constitutional balance between the Commons and this House to evolve. I know of no criticism of that balance except that the Members of this House, bar the remaining hereditaries, owe their membership to appointment and not to election. Subject to that single criticism, the House has since 1958 discharged its constitutional functions without serious criticism of its membership.

Is that criticism justified? Your Lordships have heard over the past two days all sorts of criticisms of the proposed Bill and the details contained in it. Having listened carefully to those criticisms, I should have thought that the proposed Bill was a bad Bill, but that does not dispose of the underlying question of whether an elected House of Lords should be preferred to an appointed House, either wholly or in part.

A fully or mainly elected House would undermine the balance between the two Houses that has evolved since at least 1958—perhaps earlier. It would produce constitutional complications, disputes and deadlocks, the outcome of which would be difficult, perhaps impossible, to foretell. In the words of the noble Lord, Lord Butler, it would produce a "destination undefined".

In considering the proposed reform of the House and whether an elected or an appointed House is to be preferred, there are only three relevant questions. First, what is the constitutional function of the House? Secondly, what attributes of Members of the House are needed for the discharge of those functions? The third question is whether election of Members of the House by members of the public is a necessary attribute for the discharging by Members of the House of their functions.

At present, the roles of the House are threefold. First, its reviewing and advisory role in relation to the House of Commons is applicable mainly to primary legislation but also to secondary legislation, particularly under the procedural reforms proposed in the report of my noble friend Lord Goodlad. The scrutiny of legislation is to identify whether any unintended

consequences are to be discerned that might be thought to be undesirable, and whether the legislation as drafted will produce the consequences that were intended for it. Those scrutiny processes are highly desirable for the production of sound legislation and are performed by this House to a degree of satisfaction to everyone.

The second role of the House is to provide a venue for the introduction of politically non-controversial legislation. That role can be set aside for the purposes of the present argument, because an elected House would be able to discharge that role as well as would an appointed House.

However, the third role of the House is of critical importance. It is the function of holding the Government to account. That may arise in an almost infinite number of respects—some scientific, some technical, and some that are connected with the Armed Forces, legal matters, matters of medicine or other technologies. The "degree of expertise" is a phrase disliked by the noble Lord, Lord Strathclyde. I would accept "diversity of experience" as a better use of language. That diversity is of huge importance in enabling the holding to account of Ministers to be discharged to its optimum effect. The House as presently constituted contains that diversity of experience. It is by no means confined to the Cross Benches, and is to be found in all parts of the House. It must be very rare for an issue to arise that calls for discussion or debate in the House where no one in the House has experience—expertise, if one likes—of that subject. I can certainly remember no such case since I have been in the House. That informs our debate; it enables questioning of the Minister to be effective and searching.

The next question is whether elections would produce Members of the House as well able to discharge their important constitutional function of holding the Government to account as does the House as presently constituted. The expert knowledge and experience of Members is clearly of great importance, as I have said. The independence of Members is also important. Members of political parties, as well as Cross-Benchers, are independent in the sense that, once they are here, they stay here. They are not subject to discipline by government Whips if they choose to vote or speak against party policy. That independence is important and obtainable under the House as it is constituted at the moment.

I do not believe that an elected House could match the qualities I have just mentioned. The manner in which individuals are appointed is certainly open to criticism. I entirely support the introduction of a statutory Appointments Commission—

Baroness Garden of Frognal: I apologise for interrupting the noble Lord, but he has exceeded the guidance time.

Lord Scott of Foscote: I have exceeded my time by a minute and I apologise for that. I entirely support the introduction of a statutory Appointments Commission tasked to produce a balanced House. That is important, and consistent with an appointed House.

5.37 pm

Baroness Berridge: My Lords, I speak in this debate with considerable reluctance, because I, too, was concerned about this House spending a considerable amount of parliamentary time on the issue when so many people are facing such difficult circumstances. I recently gazed at the supermarket shelves reflecting that there was hardly a loaf of bread for under £1. However, the more that I considered the draft Bill, ironically, it highlighted one of the main roles of your Lordships' House: to keep a long-term view when short-term considerations press in on government.

I am in favour of reform, but the reforms in the draft Bill are deeply flawed and could lead to our finely balanced constitution, which operates like a beautiful clock, being tampered with one too many times and jamming altogether. In my brief time in your Lordships' House, I have come to view the relationship of this House to the other place rather like a boxer and his trainer. The other place throws a democratic punch, to be met by a mitt labelled delay, scrutiny or review. Perhaps another punch or two is thrown, but eventually, the boxer gets the prize. The trainer is there only to improve the boxer. By electing this Chamber, the trainer will become another boxer and the two will end up fighting or, worse still, they will be on the same team and there will be no fight at all, no scrutiny, review or delay.

A boxing match also needs a referee. Who will referee potential endless ping-pong between the two Chambers? Will it be a Joint Committee, a referendum, a YouGov survey or the judiciary? The draft Bill is silent. I agree with the noble Lord, Lord Williamson of Horton: the other place will lose its supremacy once public opinion and the media, in any dispute between the Chambers, are on the side of senators. The judiciary just battled Facebook and Twitter and did not do so well. I do not believe that Members of the other place will fare any better.

I have also tried to imagine the doorstep conversations in elections under the draft Bill. I would have to ask for a person's vote and explain, "No, I do not want your vote for me as your elected representative but as your elected reviewer, your elected scrutineer, your elected delayer". I think that the final comment will have been shouted through a door shut in my face, and quite rightly.

What would my election literature look like? My whole CV condensed onto an A5 flyer? I do not believe that that would improve public confidence in our politics one bit.

The two elected Chambers will also clash at grass-roots level. As the noble Lords, Lord Faulkner of Worcester and Lord Forsyth of Drumlean, said, senators will take on case work in part of their areas. I think that I can feel a cold draught coming from the other place as chills go down their spines at the thought of theyworkforyou.com having senator and MP competitive league tables. Of course, if this would deliver a better service for constituents then it would be worth considering. The very valuable work of an elected representative dealing with constituents inquiries is rather like customer service from a big retailer, but I cannot think of any retailer that advises you to phone up twice, to speak to two people, to get two customer reference numbers and to have two people contacting the suppliers, as the likelihood of conflicting answers would increase.

On a serious note, hundreds of civil servants are at the end of hotlines from offices in this Palace doing

[Baroness Berridge]
their best to deal with complex cases. I believe that such duplication will be a waste of public resource as well as immensely frustrating to the civil servants who will find it impossible to tell a senator that they cannot deal with an inquiry because the MP called two days ago.

Much of what I now say regarding the Lords Spiritual applies to the current Chamber as well as to any reformed House. I would like to deal with the reality which is outlined in paragraph 91 of the White Paper, a paragraph with which I agree—that although historically they are here as independents, the reality is that they are seen as representatives of the Church of England.

I am impressed by the Lords Spiritual, who bring a sense of service to their community and a spiritual, moral and ethical perspective that enhances the independent nature of debate in your Lordships' House. I believe that the work of this House is improved by each of the Benches having a blend of part-time and full-time Peers. I am deliberately avoiding using the term "working Peers" as it implies that other Peers do not work, which is not true. I believe that there would be much merit in having a blend of bishops: some part-time with diocesan responsibilities and some full-time akin to working Peers. It would be most welcome to have bishops more fully involved in the life of this House

Unfortunately, under the draft Bill, none of the recommendations of the royal commission is developed. Surely the churches in the other home nations should be represented and the wisdom of the leader of the largest voluntary provider of social services in the country—namely the Salvation Army—would be extremely valuable. Perhaps canon law will still deny this House the insights and immense wisdom of the Archbishop of Westminster but there are very gifted laity in the Catholic Church. What of the black-led denominations whose story often includes having to found their own denominations as many of the established ones were not the most welcoming? To my knowledge there is not a single attendee now, let alone a leader, from within those denominations in your Lordships' House, and I think that the House is poorer for that.

There are no perfect proposals, but the division of the 12 places on the basis of church attendance within the UK would be a good starting point. On the latest British social attitude surveys that would give us 3.5 Anglicans, 3.5 Catholics and five others. I know that I am expecting a lot from a Bench that believes in miracles.

In looking into the history of this House, it was most encouraging to learn that the 14th century church was rather radical and that women owned land. So in 1306 a writ of summons was sent to abbesses to attend Parliament—but alas, there is no evidence that any of these women attended. Whether by laity or working bishops, there needs to be a clear timetable outlining and guaranteeing when the Benches of the Lords Spiritual will include a substantial number of women. Places in the nation's legislature are not on a men-only basis for any organisation.

The public want a House that functions. I would support a fully elected House, with proper recognition of the democratic power of the people and a means to resolve disputes between Chambers. However, I am not convinced that we will ever come up with such a solution. On the options presented to me, I would support a wholly appointed Chamber based on a statutory Appointments Commission, and I would submit myself to reselection if required.

I pray in aid of my conclusion the result of a vote in a House of Lords Chamber event in 2010, when a majority of the 16 to 18 year-olds who had the privilege of debating this issue voted for a fully appointed House. I concur with the comments of many of your Lordships about the loss of wisdom and expertise to this House under the reforms. I cannot express that point better than Ed Gerlach, from Western Sixth Form College, who took part in that Chamber event. He said:

> "I agree that we should have appointed Lords. They are from different fields and will know what they are on about from a variety of different backgrounds. People were saying that a lot of them are middle aged people, but they have been around longer and know better what they are on about. They are the people who we should trust. I agree that we should perhaps have a few younger people but you cannot use that as a criticism. They know what they are on about because they have been around the longest. I do not mean that in any disrespectful way".

And neither, my Lords, do I.

5.46 pm

Lord Davies of Oldham: My Lords, after 10 years spent chained to the ministerial Bench, I cannot remember ever uttering an original comment in this House, and I am therefore not likely to do so on this subject, particularly after almost 90 speeches which have covered every conceivable part of the document. It is a work of genius, I think, for the three main parties to be in favour of reform and for the Government to produce a document which seems to have attracted the wholehearted and complete support of fewer than five out of the 90 noble Lords who have spoken. Of course, we all await the Minister's ability to redress the balance, and we look forward to that contribution with great joy.

As reformers, we should rejoice in the fact that the Government are committed to this degree of reform. I would remind those in my own party who have reservations about reform that it took us 40 years, more than a generation, to improve on the 1911 Act with regard to the relationship between the two Houses and then almost 50 years before we moved on again with regard to hereditary Peers. It is not as if this country or even my party moves at breakneck speed when it comes to constitutional reform, so I hope that on all sides there will be some degree of constructive response to this initiative. But I am all too well aware of the fact that the criticisms that have been expressed of the Bill have been not just on the detail but on crucial aspects of principle.

Let me express an obvious point. I have enjoyed my period in this House and I have particularly enjoyed the quality of the contributions to our debates. It is very rare that we do not present words of great worth to the nation, however ill reported they may prove to be. But part of that limited reporting is the very fact of the matter: we can be disregarded because we are unrepresentative. We are not a debating society. We

are the second Chamber of one of the world's oldest democracies. Other countries which have come much later into the democratic field than us have tackled the problems of a second Chamber with success. It may be said that many of those countries have written constitutions. Well, let the Government address themselves to that fact.

Fundamental Acts of Parliament such as the Parliament Acts of 1911 and 1949 and the Act passed with regard to the hereditaries are part of our constitution. If the Government need, and I think they obviously do, to define clearly the relationships they see developing between two Houses if they are elected, it is for the Government to make that abundantly clear before either House is asked to make a judgment about the composition of the House of Lords. That is why the biggest weakness in the document is its complete failure to identify the issues of powers. I hate to say this to my noble friend Lord Richard, but it looks as if we will need to ask the committee to go back to the drawing board on these issues, such has been the force of criticism in the debate.

I am in favour of an elected House. I do not see that an elected House could be anything other than an enhancement of our democratic position. However, I cannot recognise the concept of an elected House in this document. Election is not only a question of winning the votes to arrive at a place, but also about the accountability of the exercise of power when one is in that place. Of course, this document proposes that Members of this House would get here through election and not be accountable at all; they would enjoy 15 years as legislators, but not as representatives. The Government certainly need to address themselves to that.

Whenever the Government, in this paper, have gone into any area of detail, they seem to have fallen very short of the quality of argument we would expect. The noble Lord, Lord Forsyth, identified a proposal in this document that a Minister of the Crown can be appointed, can become a Member of Parliament and can be dismissed from his post by the Prime Minister, but also dismissed from Parliament by virtue of the post having been lost. That is an absolute absurdity. Where has a conscious thought gone into this White Paper if such absurd positions as that are produced? Let us be clear, however, about what this document does tackle and what the fundamental principle is that we have to address.

I have heard a great deal about the weaknesses of the document and about the Government's position and I have made it fairly clear that I intend to support my Front Bench in a great deal of the criticism of the Bill because we hope that, when the Bill emerges, it will be very different from the one envisaged in this document. What is being tackled is the problem that we all share, each and every one of us. We are here as creatures of patronage. It is not an attractive word, not a word that has featured a great deal in this debate. Though we have been full of considerable congratulation on the work that we do, on the efforts that we put in on behalf of the community—and I appreciate all that work—it is still the fact that we are here because somebody in power thought that we should be. That is no basis for the second Chamber in a democracy. That is why, despite the bumbling efforts of the Government over this document, despite the ease with which we are able to subject it to criticism—unless my noble friend Lord Richard and his committee are able to produce very different perspectives indeed—we should respect that obvious point. We, a House of grandparents appointed through patronage by individuals, should recognise that we have limited legitimacy and one which has no place in the law making of a modern democracy.

5.52 pm

Lord True: My Lords, it is a great pleasure to follow the noble Lord, Lord Davies of Oldham, and I shall disappoint other noble Lords by agreeing with a number of things that he said. He will have noticed that the debate opened with a striking speech by the Leader of the Opposition, in which she tore up, on behalf of the new reforming leadership of the Labour Party, the commitments made after many years of discussion involving the noble Lord, Lord Hunt of Kings Heath, who is shaking his head, to an elected House. That was in the Labour Party's manifesto and Labour pushed for it after its manifesto. The shadow Cabinet has awarded itself, as I see it, the freedom to duck and weave on this issue, while, as many of us will have noticed in this debate, not ruling out returning to election in the future, when it suits it rather more politically. I find in that position, which I must put down to Mr Miliband, very little principle and quite a lot of opportunism.

I share many of the reservations expressed about aspects of the Bill, but I am afraid that I accept many of its core arguments. I ask the House to consider whether this Government have done what this House time and again has asked Governments to do on legislation. They have put forward a Bill, however imperfect, for pre-legislative scrutiny. It is easy, when someone puts his head above the parapet, to open fire and, indeed, we have heard absolute volleys of grapeshot over the past two days—the ample body of my noble friend Lord Strathclyde offers a larger target than most. However, I hope that, in shooting at the target of this Bill, we will not block, at this perhaps closing stage of the question of the House of Lords, serious scrutiny of the idea of election, which has been in the open, as others have pointed out, since it was endorsed by the royal commission. I certainly hope that we will not rule it out, however tempting it might be, pour épater Monsieur Clegg.

I could not support a 100 per cent elected House or the effective exclusion of Cross-Benchers. Nor could I support the removal of the right reverend Prelates, for what I thought were the rather old Tory principles set out in the words of the most reverend Primate the Archbishop of York that were quoted to us yesterday. I would dearly love to see the return of the Supreme Court and the Law Lords here. As the noble and learned Lord, Lord Scott, pointed out, that happened in 1876 after an earlier ham-fisted reform. It might well lessen the risks of future clashes between Parliament and the judiciary.

However, I cannot rule out election of at least some political Peers with the certainty that has informed so many speeches in this debate. The case for election is

[LORD TRUE]
not only democracy, although I do not disdain democracy. After all, Lord Chancellors apart, since Victorian times almost all the greatest statesmen who have led in these islands, save the odd exception such as my noble friend Lord Carrington, have first been elected. That includes even the great Marquess of Salisbury. The case for election is not only some greater legitimacy, as has been argued, although I do not disdain that either. There have been many attacks on the 15-year mandate, but they neglect to point out that the House, although never dissolved, would be renewed and refreshed by election by thirds, as is the US Senate.

The case for considering election is surely that from which so many people in this debate have recoiled: challenging the House of Commons to do its job better. It has generally been accepted that the Executive are too strong and that the other place is malfunctioning. I agree with all those who have said that Clause 2 of the draft Bill is nonsense. A House with a significant elected element would challenge the House of Commons and its primacy more and with more conviction. But why not? Then the other place might have to win a few more arguments rather than relying on the juggernaut of the Whip and the mantra of primacy that we keep hearing.

I do not want to reel back through the mists of time, but it is an odd fact that the last time this House brought down a Government was in 1783, which opened the way to one of the greatest of all our Prime Ministers, William Pitt. I do not fear the challenge that election would put into the system. Nor do I panic about the word "gridlock", which comes up time and again—sometimes from those who darkly hint that it would happen if they did not get their way on this matter. Do we not have too much ill thought-out legislation pumped out through our Parliament, including by the Government whom I support?

I am sorry but, if the need to avoid gridlock contributed to more forethought, more willingness to compromise and less haste to publish monster Bills, I would not lose too much sleep if election contributed to that. There are many ways to break deadlock and, in the good old days, Members of the House of Commons used to have to stand and take their hats off when Members of the House of Lords attended joint conferences.

Noble Lords: Hear, hear.

Lord True: I suspect that that might appeal to many here. As regards the criticisms that have been made about aspects of the draft Bill, I appeal to the House not to put itself in the position of being seen as ruling out any idea of election. Let us ask the Joint Committee to try to burnish a proposal and then—I agree with what my noble friend Lord Astor said yesterday—the proposal should be put to the people in a referendum.

To conclude, there should be at least one other option in such a referendum. When Lord Gardiner put his paper on reform to the Labour Cabinet in 1968 he said that there were four options—abolition, do nothing, election or appointment. Things have not changed much since then. The prevailing mood in the House is clear: noble Lords want an all-appointed House. Most see a seductive and stealthy route to that in the Bill put forward by my noble friend Lord Steel of Aikwood. I cannot support that Bill. We have an Appointments Commission already and I question the prevailing assumption—as did the noble and learned Lord, Lord Lloyd of Berwick—that a committee of seven or nine people, chosen from the ranks of the great and good, should be charged by statute for all time with controlling the peopling of a whole House of Parliament. I cannot accept as readily as some that it is axiomatically wrong that 40 million people should have a say in who might come to this House, while it is right that seven people should determine in secret who comes and why.

The core proposition of my noble friend Lord Steel's Bill is the ending of the replacement of our hereditary colleagues in order to leave an all-appointed House. I will pass over the point that that would disproportionately disadvantage this party, which had the largest popular vote at the recent general election, and ask why, if this is so desirable—as has been so eloquently argued—the creation of this all-appointed House should be done by stealth. Why should it creep through the shadows under the name of incremental change? Why can it not proclaim itself as the full and final reform that so many of your Lordships wish? However, this is something that no party has put before the British people recently. It is featured in no programme and has been subject to no scrutiny or public debate. We have heard eloquent arguments for an all-appointed House, but if we want to settle the House of Lords question and close off election, as many noble Lords wish, we will not do so by a hole-in-the-corner measure.

The proposition for an all-appointed House, put by so many noble Lords with such conviction, should be put squarely before the British people in a referendum, alongside whatever proposition on a politically elected element may emerge from the Joint Committee and the deliberations of another place. If the British people then vote to reject the idea that they should ever have a right to vote for any Member of this House, I might be able to accept my noble friend Lord Steel's Bill. Until then, I am sorry that I cannot.

6.02 pm

Lord Brooke of Alverthorpe: My Lords, I am in the minority in the House and on the speakers list, although I am much comforted by some of the speeches that I have just heard. It is both right and just that those who have power over the lives of others and who can make and amend laws—and we in this House do have powers—should be subject to the will of those people, the electorate. Therefore, in principle I seek a democratically elected and accountable second Chamber. In this I am in accord with my party and its traditions. Noble Lords may have heard statements to the contrary today, but the Labour Party stands for a democratically elected second Chamber and I do not believe that it will change its view in future years.

There has been a lot of talk also about MPs at the other end changing their views. I do not know from my contacts whether this is the case. However, I have spent some time looking at MPs who spoke in the debates at the other end, and it seems that many of them have been around for quite some time. A fair

number of them are coming to the end of their careers, and possibly a number might hope to come to the House of Lords. It is very difficult to get a measure of the strength of feeling among the new MPs—and there are a lot of them down there. My guess is that if push comes to shove, most of them will stand with their leadership. Secondly, they will look at the manifestoes on which they were elected. All the manifestoes, even if the parties did not get majorities, have statements to the effect that those parties want an elected second Chamber. The MPs will also look at allegations that have been made about their conduct, and about breaking their promises, particularly after what we have seen in the past 12 months. Again on this issue, if it comes to the push, I believe that they will not leave themselves open to the allegation that they have breached the promises given in their manifestoes.

I urge the House to look a bit wider than this debate has done so far—and I am very much a supporter of the House and in love with the House. We had rather a surprise three or four years ago when more people in the Commons voted for the change. People down this end did not believe that would happen. It is important that we do not misjudge the mood and the momentum. This topic is very much about momentum. It has been on the move since 1997 and there is a long way to go yet.

There is also a change of mood taking place among the public at large at a very fast pace that it ill behoves us to ignore, particularly in relation to the media, to communications, to the internet and so on. We can be caught out if we do not watch what is happening. If there was a referendum on whether the House should be 100 per cent elected, the public would throw it out completely, no matter what arguments were made.

There has been some movement in the Commons but I certainly cannot see it standing on its head and supporting the Steel Bill or 100 per cent appointments. I just do not see that happening, it is not the reality. They are not going to do that even if there was more opposition to election. We have to take note of some of those points. They will also be conscious that we are now a House of over 800 and that they are to be reduced in due course to 600. They will ask questions about the cost and sustainability of what we are doing. These are all topics that have not come up so far today but I think we should look at them.

Some people here are taking note of the need for change beyond just talking about tinkering around the edges. I listened with great interest to the noble Lord, Lord Armstrong of Ilminster, this morning. He is a greatly respected Peer and not a man who is about disturbing the normal state of affairs—he is a man for stability and a man who knows when there is a mood and change taking place and when there is a requirement to respond to it. It is interesting that he now advocates a move towards a form of election—not direct election, true, but indirect election—but this change is starting to take place in some areas in this House. The message for those of us who listen carefully to each other is to listen very carefully to what is going on around us.

If this Bill went through, I suppose that would be my manifesto for an election next time round and I would be out on the first list in 2015—one of the number to be ejected. The view has been put to me that if you are in favour of elections you will be the first to go out of the House if changes do come. Maybe I will respond to that.

Having said all that, I find the Bill a huge disappointment in certain respects, mainly in regard to omissions—it is what is not in there but which should be in there that I worry about. First, like the noble Lord, Lord Davies of Oldham, I am in favour of accountability and that means at least once going back to the electorate for election. In fairness, the Labour Party never had a policy which went down that road. We argued with Jack Straw and some of us hoped that we might be able to persuade the party that it should introduce some accountability because otherwise it makes a mockery of claiming that this is fully legitimate.

Secondly, I come to the infamous Clause 2 and failure of the Bill to address the issue of powers. I am an advocate of broadly maintaining the present relationship between the two Houses. Over time I have been asked about what work the Government were doing on codification of the powers and conventions between the two Houses. I am absolutely surprised that this has gone completely off the agenda and not been mentioned at all. I find this amazing. The last Government knew it had to be done and was starting to look at it but this Government have left it wide open. I hope that the Government will reflect on that carefully because there is no way you can keep the status quo. It was mentioned this morning that over 200 secondary legislation SIs came through the House last year. The noble Lord, Lord McNally, knows himself what you can with an SI in this House: you can have a fatal vote on an SI and you can change completely a government policy—as indeed Members in this House did on the Gambling Bill when they threw out the SI. When you have elected people in the Chamber, can you leave the freedom for them to do that? In no time you will be in trouble.

My next question is linked to the Parliament Act. Do the Government have in mind using the Parliament Act on a frequent basis? More particularly, do they have in mind the possibility that, as previously when the delaying power was reduced from two years down to one, one of the ways in which they could deal with a problem between the two Houses is to change the delaying power from one year down to nine months, six months or even three months? I would be grateful if the Minister would address that point because it is fairly fundamental. It would be very difficult to put through but, if it went through, it could create an entirely different relationship between the two Houses.

My time is running out. I regret that the Government have not spent any time looking at the issue raised by the noble and learned Lord, Lord Howe of Aberavon, and others—the quality, calibre and experience of this House. How do you get such expertise through a system which requires selection and election? Many alternatives could be used instead of the present arrangements, which rest with the existing parties, and I am sorry that the Government in being radical—as they are trying to be—have not spent some time looking at that issue to see how we can get nearer to a

[Lord Brooke of Alverthorpe]
system of finding people willing to stand for election who are similar to the ones we already have in the House. I hope the Government will look at that issue. I have raised it with the noble Lord, Lord Richard, and I hope that the Joint Committee will be prepared to look at it.

6.11 pm

Lord Paul: My Lords, this debate is both long overdue and very timely. In this day and age, it is abundantly clear that the structure of our constitution needs reform and revision. To depend on piecemeal legislation, convention, interpretations and other practices of the past will increasingly create ambiguities and imprecisions at a time when clarity and specificity are required to serve the needs of our ever more complex society. Effective reform is the best constitutional legacy we can bequeath to future generations.

As we engage in these efforts, we should broaden our approach. The structure of the constitution and issues such as the composition of this House have become our primary focus; however, I feel that it is as important to consider reform and revision of the processes, the procedures and the operating functions that underlie the constitutional structure and make it work. These are the nuts and bolts that give the structure its strength and assure its legitimacy.

In the penumbra of larger reform, we now have an excellent opportunity to make sure that these operating procedures and the ways in which this House regulates itself will conform to the highest standards of fairness and probity. In this context, four principles need to be incorporated in our working processes. Regretfully, they have not been fully adhered to in the past and this, as your Lordships are aware, has been the source of considerable controversy.

The first principle is equality in the way the rules of this House are applied. If there are any investigations or allegations regarding Members of this House, all those concerned must be treated equally; selective application of rules against some and exculpation of others is discriminatory. When it is known that many have done what only a few are castigated for, that can only be a gross transgression of British justice.

The second principle that needs to be clearly established is the undesirability of ex post facto application of rules. Rules and requirements that are in place at the time of alleged actions should be the rules that apply to any such situations. As far as I know, retrospective violations have no status and are not recognised in the courts of law. Why, then, should they be the basis of punishment for Members of this House? It may also be appropriate to consider how committees examining allegations against Members are composed—whether it is more appropriate to select committee chairpersons from among those who belonged to the House when the alleged events were supposed to have taken place.

The third principle is that of transparency. When this House or its committees conduct investigations or examine evidence, it is essential that all relevant documents be made available. Scrupulous care should be taken that nothing is omitted or withheld.

Finally, I believe it is essential that in any proceedings against a Member of this House, that Member should be allowed some legal representation, especially if he or she is to be subject to unrestrained cross-examination by legal luminaries. Simply summoning Members and denying them the right to legal representation is something that our justice system would not tolerate and nor should we.

Your Lordships will not be surprised at my interest in these matters. Experience, after all, is the parent of insight. However, my primary concern is that we govern ourselves with the same degree of propriety that we expect from the civil institutions of government. Reform will really be reform only when it reaches all levels. Widening the scope and application of reforms of this House allows us an opportunity to do this—an opportunity it would be unwise to neglect.

6.17 pm

Lord Lyell: My Lords, in my short career as a cricketer I learned one thing: if one is number 95 on the batting list, be quick, say your bit and perhaps get out—although I hope I shall not be declared out too early by the umpire. Two of my noble friends—one who is beside me and another who was, briefly, in his place—have between them 120 years' experience in your Lordships' House. In my case, I have learned that the day that I took my seat, on 22 February 1961, my noble friend the Leader of the House, who alas is not in his place, was 13 months old. I cover a good period then. In the 50 years since then—I am now in my 51st year here—I have been able to learn a very great deal, both in your Lordships' House and outside. What I have learnt so far in this debate—yesterday rather than necessarily today—comes from the marvellous remarks of my noble friend Lord Dobbs. If your Lordships have a look at col. 1235 of yesterday's *Official Report* you will see what he said about being a fresh member of your Lordships' House. I am that boy but it is 51 years on, so I have had some learning and experience that I hope will be of help in discussing reform of this unique institution.

One of the mottos that, as a youngster, was drummed into me above all is, "Leave the place as you wish to find it". That is my leitmotif and the main thought that I would share today. I believe that the evolution and development of your Lordships' House, this second Chamber, will happen in some way, but I am not entirely satisfied—indeed, I am not sure—that it should evolve in the way that the Bill and White Paper propose.

I am asked by young friends, and also by older ones, to try to explain, in what I call O-level terms, what I do as a parliamentarian. It is most useful that we are having this debate in the two weeks that the London suburb of Wimbledon is at its peak, because I try to describe what we do in your Lordships' House by saying that we are amateurs. Down in the other place, they are the professionals, but we play the same game. In this great game of politics, occasionally there is a break of serve and sometimes one of the top seeds gets knocked out. But I always tell my young friends that the name on the trophy is that of our friends in the other place.

I hope that our duties will remain as they are now, or that they will remain in a new institution however it evolves. I hope, first, that we will revise. Secondly, I hope that there will be no guillotine or chasing or methods of that sort. I hope that there will be no time limit, because that is one of the benefits of your Lordships' House. I also hope that the Select Committees can continue as they are.

As an individual, what have been my powers? What have I been able to do in my career in your Lordships' House? I have been able to do many things, both passively and actively. One extraordinary thing that will be of note to my noble friend sitting beside me and indeed to the Deputy Leader is that I have been able to do extraordinary jobs for an institution that is particularly well known—I think that it is beyond the Old Swan, as the Deputy Leader described it. This institution had a serious problem over recruitment and required considerable help. I said, "Did you not go to your Member of Parliament or to a Minister who is well known to be a supporter of this great institution?". They said, "We had no success at all". So it came to a Conservative Member of your Lordships' House to try to help this great institution in the city of Liverpool. I was humbled by the reception and help that I got. That is one tiny example of what we can do.

The pitfalls of what might come to be development of your Lordships' House were beautifully explained by my noble friend Lord Steel, in col. 1199 of yesterday's *Official Report*. He explained the three massive developments involving power going from your Lordships to the House of Commons. This is the first time when there may be a little difficulty regarding power going from the other place back to this place. His wise words are well worth reading.

Let us look at who might be the occupants of these Benches in a new and reformed House. As your Lordships know, I come from the boondocks, the rural areas of Scotland. I have found it particularly difficult explaining what one might call the democratic process, or politics, or this splendid place that in the vernacular in Scotland they call the Waste Munster—which is not necessarily anything to do with rubbish in that province of Ireland, but is the district where we work. It is an indication of the remoteness of what we are discussing in your Lordships' House in my neck of the woods. Should I survive long enough and wish to take part in any election to this new Second Chamber, I would find it rather difficult to explain exactly what one is supposed to be up to. We already have a Member of Parliament in another place; a Member of the Scottish Parliament, with different powers; and a Member of the European Parliament.

As for what any title of your Lordships' successors might be—noble Lord or senator—I do worry. As for the candidates who might take this up, I hope your Lordships will consider the wise remarks of my noble friend Lord Cormack yesterday. He asked why somebody of the age of perhaps 65 might commit himself to 15 years of his life in here. I, as an impudent lad, will also add the problems of finance. The thought of a salary for Members of your Lordships' House, or whatever it might be called, will provide, I think, succulent prey for this institution called IPSA. It has already caused great dramas in the other place. I imagine it swooping down on my noble friend as well as on my noble friend Lord Caithness and others coming from the boondocks. It will be particularly interesting to see what we will be allowed to charge as overnight allowances. I hope that we will not find headlines in a newspaper saying, "Canada geese attack tents in St James's Park". I would suggest that, to consider us perfectly clean and innocent, the IPSA might wish to see us camping in St James's Park. No government money will be spent. We will be as white as snow.

Should I or any Member of your Lordships' House from my neck of the woods succeed in being elected to the new Chamber, to whom would they report? Would they cover all the activities of a Member of Parliament, a Member of the Scottish Parliament—you can see the toes being trampled on—or a Member of the European Parliament? I look to see what my noble friend Lord Steel has to say in his Bill, which I hope will go on.

In my 51st year in your Lordships' House, there is one motto that has stood by me. I borrow two words from His Royal Highness the Prince of Wales: Eich Dyn—I serve. That goes for each and every one of us. How we do it, now or in a new Chamber, that will be something to consider. I hope that we will have constructive discussions and a constructive solution.

6.24 pm

Lord Gilbert: My Lords, I propose to address most of my remarks today to those Members of your Lordships' House who were previously Members of another place or have, in the course of their careers, suffered election to obtain their advancement. It is my view that the final decision on these matters will actually be taken down the other end of the corridor; in this respect, I am much more sanguine than my noble friend Lord Brooke, as I sense already a distinct change of tide at the other end of this corridor, which relates to the sorts of people who might arrive in your Lordships' House, were membership here to be by election. They are suddenly beginning to realise that at the other end.

Before I dilate on that, I would just like to say how much I enjoyed three speeches in particular that I was able to hear in the course of the last two days. First of all there was the speech of the noble Lord, Lord Low, who produced one of the most elegant speeches that I have heard since I came to your Lordships' House, about 14 years ago. Secondly, there was the ferocity of my noble friend Lady Boothroyd. I had the pleasure of having a constituency that abutted directly on hers for nearly 27 years. Thirdly, there was the speech of the noble Marquis. I think he is the only one we have who ever speaks, but I thought that he produced a most professional contribution.

Now that your Lordships have heard that, it will therefore come as no surprise to hear that I am a fervent supporter of the Bill proposed by the noble Lord, Lord Steel of Aikwood. I hope that he persists in his efforts. I hope very much, too, that my noble friend Lady Boothroyd will test the opinion of the House at the end of this evening's proceedings. She can be sure that I will be in the Lobby beside her if she chooses so to do.

[Lord Gilbert]

I challenge one of the idées reçues of this debate, which is that if we have elected Members, the power of the Whips will be considerably enhanced. I simply do not believe that. Whips derive their power from two things: the ability to bribe and the ability to threaten. Once you have your seat here for 15 years, I cannot see that any Whip can say to anyone, "Thou shalt have that", or, "Thou shalt not have something else". As far as I can see, the Whips will be absolutely powerless over Members, once they are here.

I derive a couple of conclusions from that. First, two types of people will arrive here. There will be those who come for the money and the title. It will vary from family to family who is keener on which, the husband or the wife, the money or the title. I make no judgment. Also there will be some ambitious people arriving here who would like to be Ministers. All these ridiculous restrictions, such as that you are here for 15 years and you cannot stand again down the other end for five years, and the idea that all the present arrangements between the two Houses will persist—it is all absolute nonsense. If anybody actually believes that, I have a bridge I can sell them somewhere. I will take bets on it. You do not have to worry about that—it is going to disappear. It is absolute nonsense. Anybody coming here for the first time, once he is here, if he is not the cash and title type of creep, will be the sort of oik that wants a job, and he is going to fight for it. He will be in a position to make it very uncomfortable for the Government of the day. He will have 15 years to go on making it uncomfortable. I know what I would do. The first thing that I would say is, "Hey, what about the Parliament Act—we've had enough of that, thank you very much", or, "Hey, what about supply—can we have that, please?". "Finally", he will say, "we are going to have our share of Cabinet Ministers". There would be no stumbling block to put in the way of any Parliament not to concede those things to Members of this House who were determined to have them.

As was said in the debate earlier, this House has huge powers. The trouble is that it has not used them; it has funked the fight. But the powers of this House to obstruct are absolutely enormous, and there will be enough people who will use them once they are elected here.

I said a moment ago—I do not think that this has been said in your Lordships' House in this debate—that there was a change of attitude appearing at the other end of the corridor, and the reason is that they are discovering something. They are just beginning to realise who will be getting into this place: it will be the people who Members of the House of Commons beat to get their own seats there, and they hate each other—you had better believe it. Whether they are men or women, and however long they have been there, the people who will be after the seats here will be the so-and-sos who tried to stab them in the back and prevent them getting selected in the first place. No love will be lost at all. So I am afraid that I disagree again with the noble Lord, Lord Brooke, on the likely attitude of Members down the other end of the corridor. Through all of this, that factor is changing very fast indeed.

There was this other nonsense about constituency work. Really, does anybody think that the public will not come to elected Members of this House saying, "The other fellow is no goddamned use. You sort the problem out for me; he has failed"? Anybody who has been down the other end knows that that is what will happen. Of course it is. You cannot stop it, and that will be another source of friction.

I am so glad to see the noble Lord come in. I have his name down here: the noble Lord, Lord Phillips of Sudbury. That was not meant to be sarcastic. I apologise to him, as he made my afternoon, and I congratulate him on what he had to say. Moreover, there were only two other Members from his party on the Benches around him when he got up to speak, but he managed to increase that number to four. That is a major achievement. One thing that I have noticed about today's debate is that although this is a coalition Bill, I have not heard many Conservative speakers get up to say how much they want it. Even more surprisingly, I have not heard any Liberal Democrat speakers get up to say that they want it. There is one following me, and I know that he will have a go. That is why I regard myself as a little unfortunate today, because I normally prefer to speak rather later than this in your Lordships' debates. We will see that that does not happen again. I am damned if I am going to have a Liberal Democrat replying to me in any future debate in your Lordships' House, particularly one with the abilities—I will not specify how I value them—of the noble Lord, Lord Tyler.

I have said all that I want to say. I seriously hope that my noble friend will press her Motion to a vote today. I support it very much, just as I support the Bill from the noble Lord, Lord Steel.

6.33 pm

Lord Tyler: My Lords, I promise most sincerely that I will not follow the noble Lord, Lord Gilbert, in any respect. The last two days of debates have been laced with the most delicious, rich irony, which is somehow so traditional in any debate in this place when we are talking to ourselves about ourselves. I counted the number of former Members of Parliament on the list of speakers. There are 68, two-thirds of the total. The first irony is that rather too many of them seem to think that appointed politicians are somehow more reputable and reliable than elected ones, which I think reflects on their previous experience.

Meanwhile, I believe that the noble Lord, Lord Richard, has set the scene best in his book on this subject, *Unfinished Business*. He wrote:

> "Executive control over the House of Commons is stronger in Britain than in any comparable country. Though it frequently masquerades as a defence of the rights of the Commons, in reality many of the arguments against comprehensive reform"—

that is, of this House—

> "are a defence of that executive power".

He hits the nail on the head. The endless defence of the supremacy of the other place amounts to an assertion that we really should have that "elective dictatorship" of which Lord Hailsham spoke in 1976. Indeed, some Members seem so anxious to avoid a House that will assert itself against the Executive,

strengthening Parliament as a whole, that they would prefer to have this House abolished altogether, and not be bicameral at all, rather than see it gain the legitimacy that it so richly needs but at present so woefully lacks.

Surely the White Paper and draft Bill, and the central intention to ensure that this place contains an elected element by 2015, should not come as a surprise to any Member of your Lordships' House. Of the 105 speakers in this debate, 65 have been appointed since 1997, when a Government came to power determined to introduce a democratically elected element to this House. All noble Lords who have come to this House after that date must be absolutely clear that our appointment was not for life but would be temporary. That, too, is an irony.

Much has been made, especially on the opposition Benches, of the need to clarify the future relationship between the Houses if and when these reforms are fully implemented. The best analysis that I have seen concluded:

"There is no reason why any further increase in the authority and effectiveness of the second chamber following elections should undermine the primacy of the House of Commons".

I am sure that the noble Lord, Lord Hunt of Kings Heath, will recognise that quotation because he wrote it. It is a direct quotation from the Jack Straw/Philip Hunt—the noble Lord, Lord Hunt of Kings Heath—White Paper of 2008. Members on the other side of the House should read their own White Paper before they come to the House and pretend that all these matters are completely new.

Lord Foulkes of Cumnock: Can the noble Lord answer the question which his colleague the noble Lord, Lord Ashdown, failed to answer yesterday as to why he thinks that a House elected by first past the post should have primacy over a House elected by single transferable vote?

Lord Tyler: If the noble Lord had read his own White Paper, let alone the Government's White Paper, he would know that three tranches of elections to this House—whether it is 80 per cent or 100 per cent—mean that at no time would the membership of this House have a more up-to-date mandate than that held by Members of the other House. That is absolutely clear—and Jack Straw and the noble Lord, Lord Hunt, were clear about it, too.

I am very respectful and appreciative of the wise heads in this House, but they cannot go on asserting the primacy of the other House and yet build up the impression in this House and beyond that they intend to threaten a veto on any reform Bill that the other House sends us. That is yet another irony.

Breaking a habit of a lifetime, I will concentrate for the few minutes that I have on the one area where I think there may well be a consensus in your Lordships' House. Several Members have questioned the suggestion that 300 is a sensible number for a reformed House. This matter requires very careful analysis by the Joint Committee. The commission headed by the noble Lord, Lord Wakeham—who was here just now—recommended 550; the 2001 government White Paper 600; the House of Commons Public Administration Select Committee 350; the Bill which was sponsored by Messrs Clarke, Wright, Cook, Young and Tyler, 413; and the Jack Straw/Philip Hunt White Paper 435. At no stage has anyone suggested that the workload of this House could be undertaken by 300. We all thought that it was preferable to have a second House of Parliament where it was not necessary to have full-time parliamentarians. I regret that the White Paper has gone on that route when it has never been recommended.

There are five reasons why 300 Members is too small a number. First, as I have hinted, Parliament as a whole benefits from having a proportion of Members who retain an active involvement in other walks of life, which would be very difficult to have with only 300. Secondly, given the relatively long but one-term limited service, it would be difficult to recruit candidates who were prepared to be full-time parliamentarians while they were not able to take part in other activities and go back to another career. Thirdly, your Lordships should note that 80 of the 800 Members of your Lordships' House are already involved in European scrutiny. It is already a very considerable commitment and I do not think that 300 could do the job.

Lord Higgins: In fact, the White Paper comes up with the very strange proposition that the figure should be around 300 or so because that is the average attendance in this House. However, this assumes that the average attendance covers all the same people, which is absolute rubbish. People come depending on their expertise in a particular debate. We need more than that number in order to get the coverage.

Lord Tyler: I am very grateful to my noble friend, but there is an additional reason. In fact the average is not 300; it is over 400. That figure is out of date. I accept entirely what my noble friend said and I hope that there will be support from other Members across the House when it comes to looking at this issue in the Joint Committee.

Finally, under whatever system of PR, if the number is so small it will be quite difficult to get diversity—indeed, even gender balance—in the membership of this House. If only 80 Members are elected in each tranche there will be relatively small multi-Member seats and it will be quite difficult to get the sort of diversity and gender balance that I know many Members of your Lordships' House wish to have. Many have already expressed concerns on this.

Lord Lucas: Does the noble Lord, Lord Tyler, accept that whatever way I vote today and whatever I think of his speech as a whole, I am in total agreement with that last section?

Lord Tyler: I am embarrassed by this support from all sides. It is an unaccustomed experience. I hope that this will be a very early discussion in the Joint Committee.

The Government's proposals are incremental and evolutionary and take advantage of the work of the royal commission led so ably by the noble Lord, Lord Wakeham. They take advantage of all the thinking that went into the work on the Jack Straw White Paper

[LORD TYLER]
and it is simply nonsense to suggest that this issue has suddenly burst upon us in this House and in the other House and among the public. People have been talking about these issues for a very long time and been studying precisely the concerns which have been expressed in your Lordships' House yesterday and today. These proposals maintain the best of this place and will give it the legitimacy and credibility that I believe it not only needs but deserves. The pace of change will still be slow, but its direction will be clear. For that, it is very much welcome.

6.42 pm

Baroness Valentine: This is a subject I tackle hesitantly, given the weight of discussion which precedes me, but I want to make a few brief points. First, on this emotive and political subject, it is important that Cross-Benchers do not feel constrained by being seen as turkeys with a view one way or the other about Christmas. The non-partisan views of those with broad experience are vital to ensuring that what emerges from the Joint Committee is better government for the UK and not, at worst, a political fudge.

The law attributed to Parkinson says that the time spent on any agenda item will be in inverse proportion to the budgetary consequences. Major reform of the House of Lords would not be my priority at this time. Europe's recovery is bumpy and uncertain, and on its border, the Middle East is in upheaval. By giving this issue valuable consideration and debating time, we are offering fodder to those who argue that legislators are out of touch with the concerns of real people.

On the other hand, the aspiration of shrinking the House seems both deliverable and desirable. A mechanism for removing permanently or temporarily those noble Lords who are not participating could be found, as well as a presumption in favour of, say, a 15-year tenure. My greatest worry about reform is that the Lords will drift towards becoming a replica and competitor of the other place, leading to politics within and between the two Houses. Politicised decision-making would replace more reflective consideration of the longer term needs of the country.

I understand the aspiration to have a more democratically accountable House of Lords, but democracy operates poorly where the electorate feel little connection with the institution or the individuals. I would put in this category MEPs and London Assembly Members, with apologies to those present. On the other hand, people identify strongly with the London mayor as an individual and often with their local MP, and they feel a connection to the role of their local council. Without such connection, voting risks defaulting to party lines, and for me, a highly party-politicised House of Lords would be a backwards step.

Today, this House provides a wealth of different experience, expertise and perspective with academics, business people and community leaders. The role of the Lords in non-partisan expert scrutiny risks being overwhelmed by Lords with party-political priorities and scores to settle. But if we are to see an elected House of Lords, I am with many other noble Lords: we must then review the primacy of the other place. Further, by recognising and accepting prescribed ways in which primacy no longer held, the Commons would be in a stronger position to resist the gradual erosion of its power.

What might we hope to fix through reform? I have one simple proposition—a longer-term approach. The current constitution does not encourage adherence to lasting principles and the necessary steps towards them. Is it the British character to be better at make-do and mend than grands projets and grand visions? Or might our horizons lengthen; might we be more bound actually to tackling climate change rather than just signing up to long-grass targets? Might we be ready to act for higher literacy standards for the next generation of children? Must we always wait until road, rail, air or energy capacity is at breaking point before reluctantly committing to remedial investment? It is always easier to duck, turn, ignore and avoid, leaving the tough decisions to tomorrow and the next man.

My aspiration, if we are to have an elected House of Lords, is for it to be a coherent conscience of the country. In this capacity, should the Lords then challenge the primacy of the other place? In the case of long-term policy commitments I would say yes. There should be a mechanism for securing a measure of political consensus across both Houses and success would be policies capable surviving several changes of government before and during their implementation.

Perhaps I may finish with a quote from General de Gaulle:

"Politics is too serious to be left to the politicians".

6.46 pm

The Earl of Caithness: My Lords, the past two days of debate have been rather different from our previous debates as we have had a draft White Paper to consider and that has made a substantial difference to the tone of the debate. However, it still saddens me that we have not been discussing what the role of a second Chamber should be before we decide on the composition. We are once again starting with the cart before we actually look at the horse.

Looking at the House now I see a Chamber orientated towards the south-east of the UK. I do not think that is healthy and it has been exacerbated by the change in the expenses system making it much more difficult for those of us who live in the south-west or the north to come and attend at the times we would like to.

When one looks at the size of the House, it is going to take about 450 Peers to fill the committees that we have now. The average attendance for 50 per cent of our sittings is 424 so the size is not far wrong for managing our current workload. However, the current workload has increased as the number of active Peers has increased. Are all the committees we have at the moment relevant? Are they the right ones? On Monday, in a debate on working practices, more committees will be recommended for us.

Indeed, the draft Bill itself requires more work for this House. According to paragraph 125 of the White Paper we will now be able to tackle financial matters again. That is probably a very good thing because if we had been able to do that we would probably have saved some of the ghastly mess we have

seen over the past five years as there is more expertise in finance matters in this House than there is in the other place.

The noble Lord, Lord Tyler, says that 300 Members is not workable—of course it is workable. It is only a question of what we do or what we give those people to do. A House of 300 used to be a very big vote in this House. I remember that if we got 300 it was quite something. The House then was working extremely well and extremely efficiently but we were covering fewer areas. It is a question only of what we have to cover.

When one looks at attendance, it is quite interesting—75 per cent of the elected Peers attend 50 per cent or more of the sittings but only 55 per cent of the life Peers attend those same sittings. Are we missing out on the expertise of the 300-odd life Peers who are not attending 50 per cent or more of the sittings? Is their expertise being utilised properly? Surely there is another way we could utilise that expertise and tap it without them having to be Members of your Lordships' House?

I have always said that the Achilles' heel of this House has been our working practices. There is no doubt that in the recent past those working practices have been increasingly abused. Some noble Lords will not learn, or even cannot be bothered to learn, our rules and conventions and some deliberately flout them. We have seen that already in this debate on both days. For the first time that I can remember, the Government have been unable to get some of their legislation through in a reasonable time. That was the result of a deliberate decision by some Members of this House. That worries me because once that has been done, it will be done again. I put it to your Lordships that there is a new fault line in this House that cannot be papered over. It is a matter that will have to be addressed as part of the reforms.

In the past two days, it has also been interesting to listen to the damascene-like conversion that some of your Lordships have gone through. I spent 10 years of my life explaining to right honourable and honourable friends in the other place how this House worked, that we were very sorry that yet again the Government had been defeated, and that the Secretary of State would have to change his legislation and make some concessions in order to get a Bill through. Some of those former right honourable and honourable friends are with us today, and it is nice that they now support a totally appointed House. It is, however, a little galling to find that some of them want an exit strategy for life Peers, given that, not so long ago, there was not a life Peer who was prepared to provide an exit strategy for an hereditary who had given up a lot of his life to serve in your Lordships' House.

What really concerns me is how Parliament functions. The other place, as we know, does not scrutinise legislation as it used to. Increasingly, we are under the heavy hand of an elective dictatorship. My belief is that the other place will not change. The Executive will not allow the other place to control it and, as the Executive have increasingly taken power in the other place, the role of this Chamber has become more important. We have been able to scrutinise legislation, to suggest alterations and make amendments. There is nothing new in that. We did that when most Members of this House were hereditary Peers. It happened to me when I was a Minister. I was for ever making concessions and getting defeated. I do not think that the House is any better now than it was pre-1999.

However, I remain convinced that this House needs major reform because it is only by having an elected House that can challenge the Executive that one will get a better balance in the parliamentary system of this country. The other place will never be allowed to do that. I want a second Chamber to hold the Executive to account and the only way that we will do that is by having an elected House. It is also right and fundamental that the peerage should be separated from the right to sit in Parliament. If someone in the other place has done extremely well, they can be offered either a right to come here, if we have an appointed House, or they can be given a peerage and they do not come here. The two should not go together.

I have a final point on the electoral system proposed in the draft Bill. We had a referendum on the alternative vote system. It would be ludicrous if we did not have a referendum on the STV system. Whatever the outcome of any legislation to alter the constitution of this country, it certainly should be put to the public to decide whether they want it.

6.54 pm

Baroness Dean of Thornton-le-Fylde: My Lords, the sad issue of the debate over the past two days has been that, rather than having a constructive debate that takes us forward, we have seen a joining together of Members—whether they are in favour of reform, an elected House or a non-elected House—against the proposals. The responsibility for that has to fall at the coalition's feet. The Bill is not a draft Bill for reform of the House of Lords. It spends much time talking about and providing for an elected House—whether 80 per cent or 100 per cent—and totally ignores the peripheral issues that are as important in that reform.

A number of Peers referred to the Royal Commission on the Reform of the House of Lords—the Wakeham report. I am pleased that the noble Lord, Lord Wakeham, is in his place. He was a very able chairman of that commission. In his closing remarks, the noble Lord, Lord Tyler, said that the Bill builds on the Wakeham report. In many ways, the Bill does not build on that commission, of which I was a member. The noble Lord, Lord Lucas, talked about the Bill being drawn up by a group of people in a committee that contained no one from the Opposition or the Cross Benches. That is absolutely true. The Wakeham commission met for 10 months. It received more than 1,700 submissions. It held 21 public meetings in addition to visits to various parts of the country—Northern Ireland, Scotland and Wales—to meet parliamentarians in those areas. There was not a majority in those meetings or from the evidence that we took in favour of a directly elected House. Yesterday, the noble Lord, Lord Ashdown, said:

> "This is not about what the public want, it is about us putting our House in order".—[*Official Report*, 21/6/11; col. 1189.]

A major constitutional change is proposed but the public are not at the centre of it. I find that unacceptable.

[Baroness Dean of Thornton-le-Fylde]

The debate today has centred on the issue of election, because that is what the draft Bill concentrates on. That is not good enough for our constitution. Many Members who have taken part in the debate, including me, have been put in the position of having to reject the proposals in the Bill because, frankly, it is an Elastoplast. It does not provide for stability of parliamentary rule in a democracy and it does not cover the essential issues. We have little coverage in the Bill of the roles and responsibilities of the new House of Lords and how they would impact on the House of Commons—and, indeed, whether the role of the House of Commons also needs to change. The noble Lord, Lord Butler, referred to that, and how right he is.

Until I came to this House, I had been elected to every position that I had held in my working life. I had no doubt where my responsibility lay: it lay with the people who elected me. If you have a House of Commons that is elected and this House becomes overnight—not by evolution or incremental steps but by a full-blown decision—an 80 cent or 100 per cent elected House, I know where elected Members of this House will think that their accountability lies. Any idea that constituents will not go to you when they have voted for you to ask you to deal with issues is cloud-cuckoo-land. That will present a challenge in a short time.

I support the content of the Wakeham commission report, which dealt with an element of elected membership. This is a missed opportunity. It could have been so different. Perhaps there is some truth in the reports that we have had that these proposals were a consolation prize for the lost political ambition of the AV voting system being introduced. If there is, that is not a service to the population of this country.

The Government have said that they will listen. What proposals will they bring forward for public consultation on their initiatives, even after the Joint Committee report? Will the Government hold a referendum on the outcome of any discussions? Will the Government use the Parliament Act if this House is a barrier to the changes that they seek? Those are not frivolous questions; they are questions that have a right to be answered.

The prelude to this debate will be the Joint Committee. I wish my noble friend Lord Richard and his colleagues the best of luck in their work. I cannot think of anyone better to chair the committee. He really has a difficult task in front of him. Try as I might, I have great difficulty in seeing it being able to deliver to the Government, to this House and, most importantly, to the House of Commons a revised Bill that will satisfy what we need in this country. That said, I wish it well and I am sure that the quality of what it produces will be much better than the draft Bill that we have before us, because I cannot think that it could be any worse.

7 pm

Lord Kakkar: My Lords, first do no harm. That is the guiding principle in my professional life as a surgeon. The noble Lord, Lord Ribeiro, also a surgeon, will recognise the importance of that principle in undertaking any major surgical intervention. The proposed Bill, which, effectively, abolishes your Lordships' House and replaces it with an elected second Chamber, represents in many ways major constitutional surgery. I would like to look at it in that frame, through the eyes of a practising surgeon.

The first question that we have to ask ourselves in any major intervention is: what is the indication for the intervention? Here, it is not entirely clear. The introduction to the Bill and the White Paper makes it clear that the House of Lords does its job well and that, in the future, as a replaced elected Chamber, it is to retain the same functions with the same powers, yet it appears that the purpose is to overcome some democratic deficit. That will be achieved through creating instability through having a democratically elected second Chamber, but with appointed Bishops and with the continuing ability of a Prime Minister of the day to appoint Members to the House. So we will end up in a situation where we have a kind of half-pregnancy, which is not possible; we will have a half-democratic legitimacy. That is a potential source of instability in the future.

Another potential indication for change could be to focus on the proposals that have been discussed on many occasions in the past two days and put forward in the Bill of the noble Lord, Lord Steel of Aikwood. That is a good stepwise direction of change in terms of achieving reform of your Lordships' House that is urgently necessary.

The second important consideration is always to try to avoid complications and unintended consequences of a particular intervention. Sometimes complications can be fatal and, if they can be predicted, one should take mitigating action to try to avoid them. Over the past two days, we have heard of a number of potential unintended consequences and complications that may attend this Bill if it becomes law. The first relates to the primacy of the other place. There appears to be a consistent and consensus view that one thing that must be maintained is the primacy of the other place. I certainly agree with that. How will that be achieved? It is irresponsible to assume that the primacy will be maintained just because it is the wish of the Government and because a particular Bill says that it will happen.

We have heard that there are 61 parliaments around the world that are bicameral and have an elected second Chamber, but I wonder how many of those bicameral parliaments with an elected second Chamber have no written constitution. How many of them depend merely on convention, which, as we have heard, is a fragile constitutional settlement to ensure a relationship between the two Chambers? That is an important question that the Joint Committee might wish to consider further. Such consideration may help us to understand whether we need to move forward with some form of written constitution, codifying the responsibilities and powers of two elected Chambers, if that is the direction of travel.

Another issue that has been raised, and which I think represents a potentially serious future complication, is the voting methods used to elect Members to the other place and to a future elected senate or second Chamber. We recently had a referendum on methods of voting for the other place and the people of our country decided that first past the post was their preferred method for sending their elected representatives there. The Joint Committee might consider the

implications of that vote in determining whether it needs in a future Bill to enshrine the fact that the people have spoken and have declared that the most democratically legitimate method of election is first past the post and that any other method used to elect a second Chamber would be less democratically legitimate than that used to elect the House of Commons.

Another area of considerable concern for unintended consequences is the potential impact on the constitutional monarchy. In our Parliament we have three elements: the House of Commons, the House of Lords and the constitutional monarchy. The Lord Great Chamberlain sits as a Member of your Lordships' House and one of the important responsibilities of that great office is to serve as a channel of communication between the monarch and the House of Lords. Noble Lords have alluded in this debate to the risk, if there are two elected Chambers at loggerheads, that the position of the constitutional monarch may become complicated and that they may be drawn into political controversy. I suggest that we need an absolute assurance that an unintended consequence of this legislation will not be that in some way the constitutional monarchy is undermined in future.

A third issue of considerable importance is the role of the Parliament Act, which has been considered principally in terms of its use to drive forward potential legislation to abolish your Lordships' House and to replace it with an elected second Chamber. The Parliament Act also contains a very important reserved responsibility for your Lordships' House, which is to ensure that the life of a Parliament is not extended beyond five years. We should be concerned about how that responsibility will be maintained in future to ensure that a tyrannical Government cannot extend the life of a Parliament because they control two elected Chambers.

Finally, it is important that we have some form of informed consent. In this regard, it is important at the outset of the process of considering the Bill that the Government commit themselves to a free vote both in your Lordships' House and in the other place. We need to be absolutely certain that any proposals that are finally considered will enjoy genuine confidence.

We have heard over the past two days that Members of your Lordships' House lack democratic legitimacy. However, every Member of the House today has important obligations and responsibilities to the people of our country, who expect us to use the opportunities and privileges of membership of your Lordships' House to serve their interests and to ensure that the laws to which they are subjected are the best possible laws. We must not take for granted the fact that we live in a wonderful country where, over the past 100 years, we have enjoyed democracy, prosperity, the development of universal health care and education, common decency and the assimilation of a variety of different cultures into our society. None of this would have been possible without a stable parliamentary system. In this regard, the relationship between the House of Lords and the House of Commons—the understanding and respect between them—has been absolutely critical. We must think carefully about the consequences of any future Bill and its implications and impact on denying the people of our country the rights, opportunities, obligations and pleasures of being citizens of the United Kingdom.

7.10 pm

Lord Selsdon: My Lords, I think I should explain why I am speaking from this Bench. It is partly because I have a hereditary duty to do so. Also this is the Barons' Bench. When I first arrived in your Lordships' House I knew no one, but the book said that this was the Barons' Bench, and being a Baron, I sat here. I did not know that when the Government changed, you moved from the Barons' Bench to the other side, so I remained here for quite a long period of time until someone asked me which party I was in. I said that I was an independent unionist Peer.

This may seem complicated, but for other reasons it is not appropriate for me to speak on the same side as the Liberal Democrats. It is only for today, and I would rather not speak behind my noble friends while looking at their bald pates or flowing locks. I would rather look them in the whites of their eyes. I want to make the speech of my grandfather, although I am not sure whether you make a speech, you give a speech or you deliver a speech, but at the beginning it goes something like this. I am going back over 100 years to 1907 when a Motion was debated in the Commons:

"That, in order to give effect to the will of the people as expressed by their elected representatives, it is necessary that the power of the other House to alter or reject Bills passed by this House should be so restricted by law as to secure that within the limits of a single Parliament the final decision of the Commons shall prevail".—[*Official Report*, Commons, 24/6/1907; col. 909.]

At the time my grandfather was the MP for north-west Lanark, then for Maryhill, North Down, and lastly Croydon, and of course I had an uncle called Stafford Cripps. Here is an extract from my grandfather's speech:

"What is the real charge that is laid at the door of the Second Chamber? It is that it oppresses the people because it resists their will as expressed by their elected representatives when these representatives happen to be Liberals. In other words it is resisting what the Liberal Party believes to be the will of the people … In short this reform of the Constitution is being proposed not for the safety of the people but confessedly nakedly, unashamedly, in order to strengthen the position of the Liberal Party".—[*Official Report,* Commons, 25/6/1907; cols. 1206-7.]

As I listened to the right honourable Gentleman yesterday raising his voice in lamentation over his innocents that had been slaughtered by the Lords, I expected him to conclude by paraphrasing that finest of all funeral orations, the one delivered at Gettysburg, and saying, "Let us all highly resolve that these dead will not have died in vain and that the government of the Liberals by the Liberals for the Liberals shall not perish from the earth". I have therefore decided to deliver his speech, and in the secret pigeonholes to the left of the entrance, each noble Lord will find a copy of it, as well as the links to Balfour and others. It was a fascinating debate, but it shows that even after 100 years, things still go on.

I need to look to the future, but that is more difficult. I want first to describe and define the House of Lords as I see it. It has 830 Members, some 32 of whom seem to be classified as either absent or not available. That is quite a lot of people. More than that, it has 450 members of the Administration, including some of the greatest minds of all. If you add the other people to that figure, it comes to 500. We have a responsibility not only to Members of the House of Lords but also to the Administration who have served

[LORD SELSDON]
us faithfully and well for generations, and I would not want to see something that evoked dramatic change without being aware of it.

I have a problem. I did something terrible this morning. I took that piece of paper and by mistake put it into the red bag that you give to the council. It has been crushed by an 18-pound weight. However, I did think it was one of the worst documents I had ever read. Some noble Lords know that one of my earliest jobs was writing reports on the House of Lords for the Labour Party. I probably submitted more wasted paper to the noble Lord, Lord Wakeham, and his committee than anyone else. But I actually love this place and love knowing about it. I know also that among my colleagues there are some really great minds. I also have the advantage that I was brought up to sit and listen to everything, so I have been drip-fed by geriatrics over years. Indeed, I will admit that probably 80 per cent of my knowledge has come from your Lordships' House.

Now we come to the simple matter of the future. I want to make a suggestion. If you are in Parliament, you should represent something or somebody other than yourself. I looked around and decided that the Bishops represent some 31 million people, 10,000 churches and 8,000 or more parishes. We should represent someone. I thought we might introduce some legislation called the representation of the peoples Act. I would like to represent every one of the local councillors in the land, some 80,000 of them, and possibly involving over 120,000 people. We may be able to decide who we represent.

Many things could happen. I have a great affection for the noble Baroness, Lady Dean, not only because she was on the Wakeham commission, but also because she was the chairman of the war Lords. If we are to go to war, I would rather have her on my side.

I do not approve of the legislation and will certainly not vote for it. I may not vote against it, and I look forward to the response of the Government.

7.15 pm

Lord Hunt of Kings Heath: My Lords, the noble Lord said that we should all represent something. I suppose that I represent the long list of Lords Ministers who have dabbled in Lords reform, but without, alas, much success. We come to the end of this long but invigorating debate. I start by congratulating the noble Lord, Lord Strasburger, on his excellent maiden speech—it seems a long time ago. He said that in the few short weeks he had been in your Lordships' House he has moved from a position of supporting a wholly elected House to endorsing a mostly elected House. I wonder where the noble Lord's voyage of discovery will end. We await his next contribution to a debate on Lords reform with eager anticipation—he will have further opportunities.

There have been many reports on Lords reform, none better than the royal commission report chaired by the noble Lord, Lord Wakeham, who spoke so eloquently yesterday. The noble Lord, Lord Armstrong, and other noble Lords argued at some point for indirect elections. This is, of course, not a new idea. Viscount Bryce chaired a conference of Peers and MPs appointed by the Prime Minister in 1917 on the reform of the second Chamber, which made proposals for the indirect election of Members of the second Chamber by MPs in regional groupings. Alas, it went the way of many such proposals. I have much greater hopes for my noble friend Lord Richard.

Of course, this debate is rather more significant than many in recent years. We have a draft Bill, far-reaching proposals, pre-legislative scrutiny to come and a pathway towards the first elected Members setting foot in the second Chamber in 2015. How determined the Government are to meet that date is, perhaps, open to question. The noble Lord, Lord Strathclyde, the Leader of the House, yesterday reaffirmed the 2015 goal, yet in his highly entertaining interview in the *Financial Times* this weekend he seemed to have lost a little of his reforming zeal. Perhaps he was looking for St Augustine for inspiration. "Oh, Lord", the Leader seemed to be saying, "deliver me an elected second Chamber, but not quite yet". We will all be interested to hear whether the noble Lord, Lord McNally, takes a similar view. Indeed, does he think he can take his Members of Parliament with him, to say nothing of the noble Lords behind him?

The caution that the noble Lord, Lord Strathclyde, expressed over the weekend is, I think, entirely understandable. He must know that the Government are being disingenuous in presenting these proposals as a stand-alone measure with little consequence for our overall constitutional arrangements. He must know that, if enacted, the Bill would have a profound impact on Parliament and our democracy. I regret that, because the Government's failure to admit this risks the whole reform process. I am a reformer, I support an elected House, I have always voted for it, but I want that reform to enhance our democracy. I do not want changes which threaten a fight between this House and the other place. I do not want changes that detract from the Lords' role as a revising Chamber. Time and again it has been this House that has improved legislation, held Ministers properly to account and saved Governments from themselves—my own included. Would that the other place could say the same.

It is noticeable how many noble Lords in the past two days have commented on the performance of the Commons and their concern to strengthen Parliament as a whole. The noble Lord, Lord Elton, made a telling point about the overweening power of the Executive and of his fear that the Bill would extend that. Nowhere is that more to be seen than in paragraph 68 of the White Paper where a Prime Minister can at a whim throw a Member of the new second Chamber out of Parliament. That is the rub of it. As my noble friend Lord Whitty has said, the Government have simply not put the groundwork into the draft Bill. Yet they had plenty of time. The draft Bill was published on 17 May but the cross-party committee, chaired by Mr Clegg, has not met since 24 November. Almost six months has been wasted.

It is pretty arrogant on the part of the Deputy Prime Minister to think that he can waltz this reform through Parliament, as the noble Baroness, Lady Boothroyd, reminded us, on the whim of a hunch or a best guess and to do so without so much as a genuflection

to the complexities with which governments and parliamentarians have wrestled for these past 100 years. Why that should be so has become clear during our debate. The Government seek to strive for a second Chamber that replicates most of what the House of Lords does now but with electoral legitimacy. We are told that the reformed House of Lords would have the same functions as the current House and that no change is envisaged in the fundamental relationship with the House of Commons, which would remain the primary House.

In Clause 2 of the draft Bill, we are pointed to the relationship between the two Houses. It is worth restating. It says that nothing in the Bill,

"affects the status of the House of Lords … the primacy of the House of Commons, or … the conventions governing the relationship between the two Houses".

My noble friend described that as nonsense and I think that he was being kind. That is my response to the noble Lord, Lord True, who also criticised Clause 2. But does he not recognise that Clause 2 goes to the heart of the Bill? Nowhere is that more illustrated than in the conventions which govern the relationship of this House with the Commons.

The Cunningham committee was clear that, in a formal sense, the Lords has equal status with the Commons as a House of Parliament in initiating and passing Bills, subject to Commons financial privilege and the Parliament Acts, and equal status in approving delegated legislation. In reality, as Cunningham said, the formal position has come to be moderated by conventions reflecting the primacy of the Commons. The moment that elected Members walk into this Chamber, those conventions will evaporate.

Lord Tyler: My Lords, I do not know whether the noble Lord would like to comment on how precisely that clause differs from his recommendation in his own White Paper, which I quoted to your Lordships' House earlier. It said:

"There is no reason why any further increase in the authority and effectiveness of the second chamber following elections should undermine the primacy of the House of Commons".

Lord Hunt of Kings Heath: My Lords, I am always grateful to the noble Lord, Lord Tyler, for reminding the House of my heroic efforts on the cross-party group chaired by my right honourable friend Jack Straw, and very enjoyable it was too. I say two things to the noble Lord. First, we produced a White Paper for consultation. We did not produce a draft Bill. Secondly, I am not arguing about primacy. I am arguing about the issue of an elected House of Lords using the powers that it formally has within the context of primacy. I believe that even within the context of primacy, the clash between two elected Houses will bring profound constitutional changes.

Noble Lords could argue that we should not worry about that, which is a perfectly legitimate point to put across. But the one thing that I have learnt from my three years of dabbling in this subject is that unless a Government are explicit about the powers of an elected second Chamber, any attempt at reform will always be doomed to failure. I speak as someone who has always supported legitimate reform of your Lordships' House. When elected Members enter this House, the conventions will evaporate because they are voluntary constraints on an unelected House in their relationship to the elected House. Once you have an elected House, what is the need for restraint?

The noble Lord, Lord Thomas of Gresford, was eloquent yesterday in favouring a strong second Chamber to stand up to the Executive. His noble friend Lord Ashdown reminded us that there are many examples around the world of bicameral systems with two elected bodies which manage to sort out their relationships. As the noble Lord, Lord Kakkar, remarked, that is because the relationship between those houses is set out in some form of written constitution that will usually provide for dispute resolution between the two houses. I acknowledge that the implications of a written constitution in the UK are profound. However, as my noble friend Lord Elder suggested, they have to be considered when introducing major constitutional change.

Lord Ashdown of Norton-sub-Hamdon: My Lords, I am listening carefully to the noble Lord. Since his own party proposed a fully elected Chamber in its manifesto, do we take it from his remarks that that can be done only in the context of a written constitution?

Lord Hunt of Kings Heath: I believe it to be inevitable that if we are to have two elected Chambers there has to be a codification of the respective powers of both Chambers and there has to be a way of resolving disputes. One cannot simply rely on the Parliament Acts as legislated for.

Noble Lords have raised a number of issues. I will not go into all of them, but I will just talk about the Bishops. I acknowledge the contribution of the right reverend Prelates to your Lordships' House. I particularly welcome the speeches of the right reverend Prelates the Bishops of Leicester and Chichester. If we are to have a 20 per cent appointed House, I am sympathetic to spiritual leaders having a place, although I understand where my noble friend Lord Judd is coming from. We should not underestimate the role of the established church in the life of our nation. The noble Lord, Lord Goodhart, took a rather different view. I am sure that right reverend Prelates will take some comfort from him that once expelled they will none the less be invited back to say daily prayers.

I turn now to the transitional arrangements. We are offered three options, but what has happened to grandfathering? My clear understanding of the term, which comes from the world of professional regulation, particularly in the health service, is that experienced professionals in an unregulated profession go forward to a new professional register on the basis of experience. The term grandfathering is in the coalition agreement, which on my reckoning would rule out both options one and three. I would be grateful for the noble Lord's response to that.

I would also like to ask the noble Lord, Lord McNally, about the Parliament Acts. My noble friend Lady Dean asked whether the Parliament Acts would be used to force legislation on Lords reform through your Lordships' House. I would caution the Government on that. In a profound speech yesterday, my noble and learned friend Lord Morris of Aberavon put some very important questions to the noble Lord on the

[LORD HUNT OF KINGS HEATH]
implications of the foxhunting case of Jackson v Attorney-General in 2006. We look forward to an answer on that.

In the end we come back to the question of powers and to the relationship between the two Houses. Unless some Peers think this is a smokescreen for refuseniks, let me pray in aid the words of my noble friends Lords Wills, Whitty, Hoyle, Desai, Davies of Stamford, Davies of Oldham, Brooke of Alverthorpe and Lady Quin—all passionate proponents of an elected House, but all saying that this Bill will not do and all bemused as to why the White Paper and draft Bill are so lacking in understanding and coherence on the central point of concern to your Lordships. In his opening remarks, the noble Lord, Lord Strathclyde, said that the present settlement will suffice for an elected House and that if in due course that turned out not to be the case, Parliament would be able to address it at that time. The noble Lord, Lord Marks, argued yesterday that primacy of the Commons would be unaffected because of the Parliament Acts and the fact that Governments stand or fall on maintaining the confidence of the Commons. I understand that argument. But for me it is not so much about primacy. Both noble Lords underestimate the assertiveness the House will show when unfettered by conventions and with legitimacy.

The noble Lord, Lord Forsyth, put it well when, based on the Scottish experience post the Scotland Act, he said that he doubted that statutes determined behaviour. He pointed to the example of how political reality and lines set in statute come into conflict and said that in the end political reality wins. We saw that in an extraordinary intervention from the noble Lord, Lord Ashdown. He suggested that an elected second Chamber could have prevented this country from going into an unwise war. I, too, am wary of such military interventions, but I am very wary indeed of giving what would be an effective veto to a second Chamber on matters of war and military engagement. The noble Lord, Lord Ashdown, has illustrated the likely ambition of an elected second Chamber, particularly if it claims greater legitimacy under a proportional system of election.

As for the reliance of the noble Lord, Lord Marks, on the Parliament Acts, I return to the intervention of the noble Lord, Lord Hennessy, who reminded us of the preamble to the Parliament Act 1911. It is well known that it promised a second Chamber constituted on a popular base. What is much less remarked upon is that the preamble makes it clear that the Parliament Act was designed solely to govern relationships between an elected Chamber and an unelected Chamber. It also spelled out the need for an elected House to have its powers limited and defined. So, 100 years ago, the architects of the Parliament Act understood that the powers of an elected Chamber would have to be set out in statute.

I am convinced that that is the case today. That is why the Bill is ill conceived.

7.32 pm

The Minister of State, Ministry of Justice (Lord McNally): My Lords, I had a boyhood dream that one day I would stand at a Dispatch Box as a government Minister facing Members of a hostile House and, an hour later, purely on the basis of my oratory and eloquence, I would have turned them round on to my side. I heard a voice say. "Dream on". However, I shall have a go and, as your Lordships have been so disciplined, I see that I do not have only an hour but two-and-a-half hours to convince you. I can get my speaking notes out now. Some of us have dinner appointments so I will not use all of that time.

I congratulate my noble friend Lord Strasburger on his travels. He should not worry about the teasing of the noble Lord, Lord Hunt, that, since he entered the House, he has travelled a short distance in his opinions about its reform. Some noble Lords on that side have travelled miles and miles and miles.

The noble Lord, Lord Foulkes, now claims to know what I am thinking about him even without my saying a word. I hope he will be really insulted by that thought. However, even he confessed that he had once been in favour of reform, that he had come into the House and now was no longer in favour of reform. I think the technical term for that is "the foreman's job at last" syndrome.

One thought about "Apocalypse Now" prompted me to share with you a short quote from a book that was given to me by the noble Lord, Lord Willoughby de Broke, who I do not think is in his seat. His grandfather was the leader of the "last-ditchers", who tried to stop the 1911 Act. There are two quotes that are worth reading:

> "And what was the final decision of the Constitutional High Court of Appeal, or rather of that proportion of its members who dared to deliver the verdict? The numbers were read out, but those who knew Willoughby and saw him as he entered the Chamber had no need to lengthen their suspense. All was settled and over. By seventeen votes the Parliament Bill had been accepted, and was now the law of the land".

It was his thoughts about that that were more interesting:

> "From the night of the 10th August 1911, when a great principle was sacrificed to expediency; when the right course was departed from for fear of the consequences, the Conservative Party received a shock from which it has never really recovered".

I am merely pointing out that those speeches we have heard today that predict only the most terrible consequences for radical reform can be very, very wrong indeed. As historians such as the noble Lord, Lord Hennessy, continue to point out, the following century for the Conservative Party was one mainly spent in government. I also find it extraordinary to hear suggestions from the noble Lord, Lord Hunt, and others that the Deputy Prime Minister has been somehow high-handed in his approach to this legislation. No senior politician has given Parliament more chance to consider these measures, has shown more flexibility or offered more opportunity for genuine reflection.

I am not sure which parts of his own White Paper the noble Lord, Lord Hunt, tore up during that extraordinary speech. However, he says with pride that they never produced a draft Bill. So you never did—shame on you that you did not.

Lord Hunt of Kings Heath: My Lords, I am grateful for him raising this issue again. The purpose of producing a White Paper is to allow for debate and discussion

and that is what we did. The Government would have done better to have had a widespread public consultation and debate before producing a draft Bill.

Lord McNally: This again from a Minister who produced a White Paper that produced no such debate. They sat on reform for a decade. When we talk about consistency, I was on the Cook-Maclennan committee prior to the 1997 election, where my party and the Labour Party both committed themselves to a raft of constitutional reform, including reform of the House of Lords. My party has been consistent for the last 14 years on our proposals. The Labour Party has performed somersault after somersault after somersault and there is no way they can get out of it—that is the record.

Baroness Farrington of Ribbleton: I remember well the noble Lord, Lord McNally, standing as leader of his party in your Lordships' House and stating categorically that an elected second Chamber would never threaten the primacy of the House of Commons. At that point he was leader of the Liberal Democrats. How does he tie that in with the speech made by his noble friend Lord Ashdown, who said that this Chamber—if reformed in the way that the noble Lord, Lord McNally, is advocating—would and should be able to challenge the Commons on issues such as going to war and finance?

Lord McNally: Is the noble Lord, Lord Cunningham, in his place? No, he is not. When I was on the Cunningham committee, there was great bemusement because I said, as I still believe, that the House of Lords has the right to say no. That is an essential part of the relationship between the two Houses. I honestly wish to God that this House had voted on the Iraq war and that Ministers had read this House's debate on the matter, but we will not go down that road, not because I do not believe it but because, even among the red herrings that the noble Lord, Lord Grocott, usually streaks across this debate, I am not going to pursue that one.

Noble Lords: Oh!

Lord McNally: You will get your full two hours if you carry on like this. *[Laughter.]*

Lord Grocott: I knew that in the first five minutes of his speech the Minister would be Mr Nice. He has now turned inevitably to the Mr Nasty phase. He needs to explain to the House that if the new, elected second Chamber were to have essentially the same powers and functions as the present one, as his own White Paper and draft Bill say, how on earth could this Chamber veto absolutely crucial matters that would be determined by the primary House?

Lord McNally: I never said that this Chamber should have a right of veto; I said it had a right to say no. There is a difference. Usually in this House somebody is allowed to develop an argument, and I will cover the whole question that was raised. I am not trying to be nasty to the noble Lord, Lord Grocott. I am very affectionate towards him. There were a number of thoughts that passed through during the speeches. I liked the phrase used by the noble Lord, Lord Davies, of a House of grandparents appointed through patronage. I think that is one to reflect on. I liked another one by the noble Lord, Lord Hennessy, who said,

"we must avoid what de Tocqueville called a 'perpetual utterance of self-applause'".—[*Official Report*, 21/6/11; col. 1194.]

We did not entirely manage that over the last two days.

Lord Forsyth of Drumlean: While my noble friend is very entertaining, does he plan to answer some of the serious questions that have been put in this debate?

Lord McNally: You have to be patient. You are behaving as you used to do in the House of Commons. That is why wind-up speeches in the House of Commons take so long. This has been a long debate. I am not going to answer every question in 100 speeches, partly because, as I have already pointed out, this is the start of a process of consideration. I think many of the questions that were raised quite rightly should be addressed by the committee to be chaired by the noble Lord, Lord Richard, and I will make further points on that. However, I must remind this House—this unelected House—that all three parties fought the last election advocating direct elections as part of their plan for reform of the House of Lords. Those policies presumably went through a decision-making process in all three parties. I wonder how many of the speeches made from the Labour Benches would go down at a Labour Party conference, or how some of the speeches made from my own Benches would go down at a Liberal Democrat conference.

My party leader and my party took a great deal of criticism when they appeared to go back on a manifesto commitment concerning tuition fees. The noble Lord, Lord Forsyth, made great hay of that during his contribution. However, this is a threefold commitment that the government proposals reflect. As far as I am aware, no one has put proposals to continue with an unelected House before a party conference or put them into an election manifesto. As the noble Lord, Lord True, suggested—

Lord Cormack: I am most grateful to my noble friend, but what does he say to the statement made earlier today that no party won the general election and that the one that came closest to doing so—the Conservatives—had the most lukewarm sentence in its manifesto?

Lord McNally: All three parties had it in. I have to say that that is a kind of car salesman's excuse. Let me make it clear that I am not anticipating changing many minds during this speech. However, I am also very well aware—more than this House seems to be aware—that this is not a perfect reflection of opinion in the country. That should be the warning to this House.

Lord Grocott: My Lords—

Lord McNally: No, not again, Brucie.

Lord Davies of Coity: My Lords—

Lord McNally: No, I am not taking any more interventions.

[LORD MCNALLY]

Much has been made in this debate of the recommendation in paragraph 61 of the Cunningham committee report, which says:

"Our conclusions apply only to present circumstances. If the Lords acquired an electoral mandate, then in our view their role as the revising chamber, and their relationship with the Commons, would inevitably be called in to question, codified or not. Given the weight of evidence on this point, should any firm proposals come forward to change the composition of the House of Lords, the conventions between the Houses would have to be examined again. What would, could or should be done about this is outside our remit".

As a member of the Cunningham committee, I was happy to sign that paragraph. The conventions between the two Houses were examined on a regular basis throughout the 20th century and to say that they will be re-examined is no more than a statement of the obvious. What is equally obvious is that how they should be examined and with what outcome was outside the remit of the Cunningham committee. The idea that the Cunningham committee is somehow holy writ and that the conventions and relations between the two Houses would fall like a portcullis at the time of the passing of the Bill is simply absurd.

What is clear is that the relationship between the two Houses has always evolved and will continue to evolve in the future, particularly over the transitional period. The fact remains that the relationship between the Houses is underpinned by the Parliament Acts and the conventions. The House of Commons remains the primary Chamber; nothing in this draft Bill changes that. Nor are we suggesting any short, sharp shock in these proposals; rather, there is what old Fabians will recognise as "the inevitability of gradualness".

I am interested in the points made by the noble Lords, Lord Wills, Lord Davies, Lord Brooke, Lord Kakkar, and others, about whether codification is necessary. I hope that the committee chaired by the noble Lord, Lord Richard, will look at that issue and take evidence. But there will be a lengthy transitional period of two Parliaments, which will allow transfer of knowledge. Noble Lords would not be prevented from standing for election or being considered for appointment to the reformed House.

Lord Wills: As the noble Lord mentioned my name, I would be grateful if I could intervene. I want to be clear on this point on codification. Am I right in thinking that the Government are not ruling out such codification?

Lord McNally: We are sending the matter to a committee that will take wide evidence. I hear my noble friend saying that we are ruling it out, which is not an entirely helpful intervention at this stage of the evening, but I do not think that you can set up a commission under a chairman of the independence and distinction of the noble Lord, Lord Richard—and I am delighted that he was willing to take this chairmanship—and then tell him in advance what he can look at. I will go no further. I am sorry. I see the noble Lord, Lord Sewel, who always tries to give a spurious kind of veneer of intellectual credibility to—

Noble Lords: Oh!

Lord McNally: Is there anybody I have not insulted yet? Please form an orderly queue. In among the insults, there are some facts. One fact is that it was at times a bit like sitting in the North Korean Parliament. I have often wondered what that was like. Speaker after speaker even had to make the kind of praise that Kim Il-sung had every so often—in this case, it was of the noble Baroness, Lady Boothroyd.

Baroness Boothroyd: I wonder whether the Deputy Leader would allow me to bring some semblance of order into this very interesting debate. Perhaps he would answer a serious question which I put yesterday. I am still waiting for an answer and I am sure that we would all be interested in it. 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 sure that if we came back to answering questions which were being put in the debate, we would all be much happier.

Lord McNally: Of course we would. First, there are no proposals to abolish this House. Secondly, the difference between what I am putting before the House for debate and consideration is that this has gone before the electorate in manifestos, while what my noble friend Lord Steel is proposing is an escape hatch. It would mean that we would go to the electorate next time and say, "By the way, that elected House that we promised you is not going to be delivered. We have fixed it so that we are now going to have a wholly appointed House for as long as anybody can see". I do not think that is a particularly democratic way and that is the difference between what you are proposing and what I am proposing.

Baroness Boothroyd: This Government have done so many U-turns, they could do another one.

Lord McNally: A most unusual intervention from a Cross-Bencher—you are lucky that we do not have a Speaker. I did at one stage support the Steel Bill. I wanted it because it was the best on offer after the Straw-Hunt proposals were put on ice. The noble Baroness, Lady Royall, knows full well that she could have had the Steel Bill in its entirety in the previous Parliament and that we constantly promised her our votes for it. Yet again, we are dealing with things where the Labour Party, with 13 years to do something about them, did precisely nothing.

Baroness Royall of Blaisdon: My Lords, I will skip to my own defence because ultimately, while I agree that it was too late and regret that we did not take it earlier, we did take up most elements of the Steel Bill in the CRaG Bill. In the wash-up, however, those were taken out by the Conservative Opposition of the time.

Lord McNally: More mea culpas. The fact is, as well, that one of the benefits for those who like some aspects of the Steel Bill is that the proposals of that Bill are all now in the draft Bill before the House: a statutory Appointments Commission; ending by-elections for hereditary Peers; permanent leave of absence and dealing with those convicted of serious criminal offences.

In addition, noble Lords will be considering next Monday the recommendations of the Procedure Committee to provide for permanent voluntary retirement.

However, the proposals in the Bill of my noble friend Lord Steel 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 unrealistic to believe that any proposal for incremental reform of this House, such as the provisions in my noble friend's Bill, could be sped through this House without controversy, even with the support of the Government. Moreover, it would be completely unnecessary to do this when the Government have published detailed, comprehensive proposals for full reform.

I turn to the Joint Committee. As I have said before, I have tremendous respect for its chairman. I hope that he will keep an open agenda in terms of the evidence that he takes. The committee that the Deputy Prime Minister chaired tried to bring forward proposals and had a certain degree of consensus. I hope that the noble Baroness, Lady Royall, will agree that we worked on and looked at the case for reform based on our manifesto commitments and that the case for reform should be by election. We are setting up the Joint Committee with 13 Members from this House, including a Bishop and a Cross-Bencher. The House agreed a Motion on 7 June that the Joint Committee should report by the end of February 2012.

Giving a target date to a Joint Committee is normal practice. If the committee needs more time, Motions can be put to both Houses to extend the date; but it should not be seen—as some Members, with nods and winks, have suggested—that the committee will have a licence to promote open-ended delay. Reform of this House is an issue that will be debated long and hard both inside and outside the Joint Committee over the coming months. The Government look forward to those discussions. We will listen to the arguments and adapt our proposals. However, we intend to introduce a Bill so that the first elections to this House can take place in 2015.

I end on a personal note. I have given way to no one in my affection and respect for this House—what it does and what it stands for. I greatly regret not grasping the opportunity for reform offered by the Wakeham committee, on which point the noble and learned Lord, Lord Lloyd, was absolutely right. If we had, we would be further down the road to a lasting reform than we are today. If we miss the opportunity presented by this Bill and procedure, a House that has won much respect—not least in its willingness to defend civil liberties and human rights and to stand up to the over-mighty power of the Executive—will lose respect as it looks increasingly out of kilter with the spirit of the age.

The proposals that we have made give this House and the other place the opportunity to carry through a reform as significant as the one passed by the Liberal Government a century ago. This is no time for noble Lords to join the last ditchers. There are those who say that, at a time of economic crisis—the worst in 80 years—this is not a time to divert our attention from the central challenges of our day. I would rather invoke the spirit of the last great coalition Government, which launched the Beveridge plan, the Butler Education Act and won a world war. Government is not a one-trick pony. The battle to right the economy is no reason to delay a much needed and long-overdue reform of this House.

On accountability, I am interested in the suggestion that it might be two terms of perhaps seven years. I do not know. Again, I invite the noble Lord, Lord Richard, to look at that. The 15-year term has some weaknesses in democratic accountability that have been pointed out. However, it takes the breath away when speaker after speaker, all of whom have been sent here for life, start lecturing us about the dangers of somebody being sent here for a limited 15-year term. As the Prime Minister made clear in the other place, the Government's actions to date in producing this draft Bill have been based on trying to work for consensus. The Government are ready to listen; we are prepared to adapt; but we are also determined to act. The Bill, when introduced, like any other piece of government legislation, will be scrutinised, carried through, debated, discussed and passed in the same way.

I have been asked about the Parliament Act. I do not think that you start a piece of legislation by brandishing the Parliament Act, but, especially after some of the passionate debates in favour of the supremacy—the primacy—of the other place, I ask Members of this House, "If the clear and settled view of the other place is for reform, are you going to veto it?". I think that we should be told.

Other noble Lords raised a number of detailed questions. The Government have set out their views on these issues in the draft Bill and the White Paper. I am sure that the Joint Committee will consider all these issues in very careful detail. My suggestion is that *Hansard* for the two days of this debate, the Wakeham report, the Cunningham report, the Jack Straw White Paper and the White Paper accompanying this Bill be the Joint Committee's summer reading. We should now all wish it well and let it get on with that work.

Motion agreed.

Motion

Tabled by ***Baroness Boothroyd***

That, notwithstanding the Government's proposals for the House of Lords set out in Cm 8077, which amount to the abolition of the House of Lords, this House calls on Her Majesty's Government to bring forward proposals for incremental urgent reforms that would improve the functioning of the existing House of Lords.

Motion not moved.

House adjourned at 8.01 pm.

Grand Committee

Wednesday, 22 June 2011.

EU: Justice and Home Affairs

Considered in Grand Committee

3.45 pm

Moved by ***Baroness Browning***

That the Grand Committee do consider the report to Parliament on the application of Protocols 19 and 21 to the Treaty on European Union and the Treaty on the Functioning of the European Union in relation to EU justice and home affairs matters (Cm 8000).

The Minister of State, Home Office (Baroness Browning): My Lords, you will be aware that the previous Administration made a commitment to this House to table an annual report on the application of the protocols to the treaties relating to EU justice and home affairs matters. This Government have maintained that pledge and duly presented the first such report to Parliament in January 2011, covering the period from 1 December 2009, when the Lisbon treaty came into force, to 30 November 2010. The Committee will be aware that the report covers some opt-in decisions undertaken by the previous Administration as well as those taken by the coalition. I propose to focus on the latter.

Under the current Government, 13 decisions were taken during the period of the report. Two of these were Schengen-building measures subject to the Schengen protocol. This means that we had the right to opt out rather than opt in. Of the 11 remaining measures subject to the opt-in protocol, this Government opted in to six and chose not to opt in to five. The Government have since that period requested a post-adoption opt-in to the directive on trafficking in human beings.

Since coming to office, this Government have considered all opt-in decisions concerning justice and home affairs measures on a case-by-case basis. When making an opt-in decision, we consider factors such as the impact of the measure on our internal security, civil liberties, preserving the integrity of our criminal justice and common law systems and the security of our borders. At the heart of it all is a commitment to keep the national interest at the forefront of our thinking. We will opt in only where we believe it is in the UK's interests to do so. For this reason we have decided not to participate in legal migration measures on seasonal workers and intra-corporate transferees, which would have impacted on our right to decide who enters the country from outside the EU.

As I mentioned, this report forms part of the package of measures to scrutinise the JHA opt-in brought in by the previous Administration. This Government are committed to those measures and to finding ways to enhance them. On 20 January, the Minister for Europe made a Written Statement to Parliament setting out how we intend to do this. The noble Lord, Lord Howell, made the same Statement to your Lordships' House on 21 January. Under these new arrangements the Government have committed to set aside government time for a debate on opt-in decisions where there is a strong parliamentary interest. There will be a vote in both Houses on a government Motion on such issues.

The Government must also now report each opt-in decision that we make by a Written, or where appropriate Oral, Ministerial Statement. As with any new process, the key is in finding practical ways to make these arrangements work. The Government have been consulting business managers and EU committees to discuss the detail of these new arrangements. We hope that they will be embedded in a code of practice in the coming months. As I said, these arrangements build on and strengthen the rigorous procedures already in place known as the Ashton commitments.

This and future annual reports are an important part of how we engage with Parliament. The Government are aware that there are debates to be had not just about individual opt-in measures but about the applicability of the opt-in more generally. Accordingly, the report considers some of these issues. I do not plan to dwell on the opt-in decisions taken after this report was tabled as we will present an end-of-year report for December 2010 to November 2011 early next year, but I wish to note briefly that since 1 December 2010 the Government have opted in to a further five measures and chosen not to opt in to two measures.

I commend the report to the Committee and look forward to engaging in a debate on its content.

3.50 pm

Lord Rowlands: My Lords, I welcome this first report of the application of the protocols. In doing so, it might be helpful to remind ourselves how these procedures and processes came about in the first place.

I had the good fortune to be a member of the Constitution Committee that considered and scrutinised the last European Union Bill in which the Government proposed these protocols. We heard a great deal from the Government about the strength of these protocols, how cast-iron these opt-outs were, and that they represented—as many Members will remember—the famous red lines that had been drawn around them. The committee kept asking one simple question: what if future Governments, of any side or character, decide to accept the opt-ins and therefore remove some of the red lines that have been drawn around the protocols? We asked what the procedure would be if the Government made this decision, what the form of scrutiny would be, and what sort of approval would be required. The Government of the day had rested their case on the strength of these protocols, which was partly why they claimed there was no any need for a referendum at the time.

The Constitution Committee, of which I was a proud member, felt so strongly about these matters that it took the rather unusual step of producing almost a committee amendment to the European Union Bill to try to establish processes for the approval and scrutiny of opt-ins. I recall that debate very well, because it raised considerable interest in a number of areas of the House and led to negotiations and discussions

[Lord Rowlands]
with the European Union Committee, the Constitution Committee and the noble Baroness, Lady Ashton, and to the procedures we are now partly using.

In fairness, I remember the noble Baroness telling us that we would be surprised by the sheer number of opt-in proposals. Many of us thought that there would be just a handful dealing with fundamental issues. She frequently reminded us that there would be more than we thought and that they would be diverse and often of a technical nature. As a member now of Sub-Committee E, my experience—and I am sure the experience of other members of that committee—shows that her case was valid. We have had something like 20 opt-ins in the last 12 months and are faced with another large collection in the next 12 months. I have found it rather difficult, and I do not know whether other members of those committees also feel this, because of the diversity and sometimes technical nature of the opt-in proposals and directives to establish some common criteria to decide whether or not there should be an opt-in. As the Minister has said, one ends up taking a case-by-case approach, applying common sense and asking whether co-operating, by opting-in, would help to enforce the better administration of certain aspects of justice.

I have come to the conclusion at various times in the last 12 months that it was right to opt in on issues such as human trafficking, combating sexual abuse, the exploitation of children and child pornography, because there is an advantage to having a European approach here. I have been less keen on the road safety directive, which has not proved its cost-benefit potential. I have certainly found in the case of succession that the idea of a succession certificate goes far too far. Our whole notion of succession is very different from that of most of the rest of the continent. There is a gulf larger than the Channel in respect of succession, and I suspect that that gulf will also arise in issues of matrimonial property. Therefore, like everyone else, one takes this case-by-case approach. We are going to be faced in sub-committee with at least another dozen within the next 12 months.

That raises a more general point, which the Minister herself touched on: when one uses a case-by-case approach, one tries to apply the simple common-sense test to the decision or directive that has been proposed, but one should be vigilant and mindful of the cumulative effect of opting in. If we opt in on an increasing number of cases, where will those red lines be that the previous Government drew such attention to? We might see, without necessarily recognising it, an erasing of those red lines. The House and its committees should seriously consider the cumulative effect over a period of the opt-in issues that arise.

I have also been increasingly concerned that many of these opt-in issues raise problems of centralising data on a much wider basis. As someone who, when on the constitutional committees, helped to write a report on the surveillance society, I think that one should be conscious and vigilant that many of these opt-in proposals are associated with the collection of data in increasingly centralised circumstances. I therefore hope that on these issues our House and committees will remain vigilant on the vital issue of opt-ins.

3.56 pm

Baroness Falkner of Margravine: My Lords, I welcome the opportunity to debate the report. I note that it was published in January 2011 and wonder why it has taken so long, since it covers the period until November 2010, for it to be considered in Grand Committee. Some six months have elapsed.

I noticed that there were significant opt-ins that did not attract the parliamentary scrutiny that might have been desirable. I refer to two that are mentioned in the report: the EU/US terrorism finance tracking programme and the draft proposal for the European investigation order. I am also aware of the Attorney-General's concern, which I think he articulated in a speech to the Institute of European and International Affairs on 13 June. He is concerned about the brevity of the three-month period in which we sometimes need to take these decisions and the operation of the Recess, particularly the long Summer Recess, should these decisions need to be taken around periods in which parliamentary scrutiny becomes more difficult. Apropos the operation of Article 19 of the protocol to the Treaty on the Functioning of the European Union, have we sought to opt out but failed to do so due to the timing of these proposals?

The report is clearly designed for a deeply expert audience. As someone who is not quite as well initiated as other noble Lords, as well as keeping in mind the interests of transparency and to improve scrutiny I suggest keeping in mind the criteria that the Minister herself has touched upon today but that were also articulated clearly in the Attorney-General's speech of only a few days ago when he said that the Government believe that their justice and home affairs policy is,

"pragmatic, measured and proportionate, having proper regard to Britain's wider interests. We want to ensure that we participate in measures that are in the best interest of our businesses and citizens and that our decisions are informed by the views of Parliament and on rigorous assessments of each measure against a set of criteria. These criteria include: potential impact on the integrity of the UK's justice systems; national security; effects on civil liberties and rights; and the potential regulatory impact of the measure and wider impacts".

Keeping in mind those four criteria identified by the Attorney-General, as well as page 5 of the report, on which we discuss forthcoming dossiers over the next 12 months, and the report on proposals looking back, perhaps we can consider whether in future reports we might have a narrative explanation alongside each decision that was taken, set against the criteria so that we can see how, given the Government's declared criteria, those decisions were taken. A narrative explaining what the decisions encompassed would obviously need to be considered if that rather expanded narrative form were taken on board.

Finally, the noble Baroness mentioned the code of practice, and I understand that various government departments are working on this code, which will improve the effective scrutiny of opt-in decisions. I wonder whether she could tell the Grand Committee when she expects this code to be approved and to be ready for implementation.

4 pm

Lord Hannay of Chiswick: My Lords, I should preface my remarks by saying that I will concentrate mainly on the matters relevant to the Home Affairs Sub-Committee, which I chair. The noble Lord, Lord Bowness, will be covering the Justice and Institutions Sub-Committee, because we are in a kind of Siamese-twin situation where opt-in issues sometimes fall on his side and sometimes on mine. We do not have any disagreements about which side they fall on, but it sometimes leads to confusion in the audience as to why we have two sub-committees dealing with rather similar material.

I am most grateful to the Home Office for providing the report we are debating today and to the Minister for having introduced the report and the Motion so clearly and comprehensively at a very early date after her assumption of ministerial responsibilities. Both the report and this debate are firsts in the new post-Lisbon process of strengthening transparency and accountability of the Executive to Parliament in a complex area of EU policy-making. As such, they are welcome and will need to be repeated on an annual basis if we are to make a useful reality of these strengthened scrutiny procedures.

As is so often the case with the European Union, it is only too easy to be repelled by the complicated lexicon of acronyms and cross-references to treaty provisions. To assume that this is all about process and not about substance would be a mistake. Many of the measures covered by the report have an important impact on the daily lives and on the security of ordinary citizens. It really does matter, therefore, that the Government get their opt-in and opt-out decisions right and that both Houses of Parliament actively participate in the shaping of those decisions. We must try not to lose sight of the wood as we take a closer look at the individual trees of which it is composed.

We are debating a report which covers the period between 1 December 2009, when the Lisbon treaty entered into force, and 30 November 2010; that is to say that we are already six months out of date, a point made by the noble Baroness, Lady Falkner. I hope that next year we will hold this debate sooner after the tabling of the Home Office's annual report, ideally within two months of its publication. It will be useful too—perhaps the Minister could say something about this—if the report's annexe, not the report itself, could be issued in an up-to-date form every six months. That would help the committees to follow the process and to see the wood rather than the trees, if that were possible. I do not think it would put an unreasonable burden on the department; I hope not.

As to the categorisation of the views of this House in the present report, this does leave something to be desired. It said that the House of Lords agreed with the IT management agency opt-in, No. 13. That is only part of the story. We agreed with the decision but not with the way it was done—by relying on an existing opt-in to a different proposal under a different treaty in 2009. I would not ask the Minister to respond to this point; it has been the subject of an enormous amount of correspondence between my sub-committee and the Home Office, at which point we rather decided to accept that we were not going to agree about it. However, we have a serious point which is not reflected in the report. Perhaps a little more care could be taken on that.

As to decision No. 22—on intra-corporate transfers, to which the Minister referred—the note in the report states: "HoL: N/A". I am not sure what that is intended to signify. In fact, my sub-committee registered our disagreement with the Government's decision not to opt in to the proposal—I shall not go into all the reasons for it because they are set out in correspondence—and we remain unconvinced by the justifications for opting out provided by the Minister's colleague responsible for immigration. We believe that the Government should have opted in, but the rather narrower point that I am making here is that the Minister did slightly less than justice to the heroic struggle between us when the report was written. Perhaps in future something slightly more transparent might emerge.

On the process of debating opt-in or opt-out decisions, we are grateful that time was made by the Government in this House to debate the asylum directive in January 2010 and the PNR directive in March 2011, and we welcome the Government's decision to opt in to the latter. We trust that the Government will maintain that unblemished record for timely debates in the future. We are glad that the Minister for Europe has confirmed to the Commons European Scrutiny Committee that where the Government are considering a post-adoption opt-in—to which the Minister referred—under Article 4 of the protocol, this will be subject to enhanced scrutiny arrangements. Perhaps she will confirm that our committee will be given the time it needs to give its views and, if necessary, to hold a debate on this category of opt-in given that no three-month time limit applies in the case of these decisions—that is to say, they can happen just like that. If the Home Office were to provide a little time for the committees to look at these decisions and if necessary to call for a debate, which is likely to be very seldom, it would be a great help.

As to the draft code of practice, which has been referred to and which is designed to govern the parliamentary and executive handling of these matters, can the Minister confirm that the Council's secretariat in Brussels has now agreed to a single invariable system for dating the beginning of the three-month opt-in period; namely, that this runs from the date on which the last language translation is published by the Council's secretariat? Does the Minister agree that there are now no outstanding code-of-practice issues between this House and departments? Therefore the code could surely now be formally agreed between us. The sooner that is the case, the better, because everyone will then know—both the Government and the House—what rules govern this rather complex area.

I have two additional points relating to agreements with third countries. How can it be consistent with the need for legal certainty for the Government to assert, as they do, that the relevant measure does not apply to the UK, when there is nothing in it to suggest that it does not apply equally to all 27 member states? Issues relating to this are, we understand, still being considered with the Commons scrutiny committee. I hope that the Minister will have another look at this. It seems potentially a little unsatisfactory and fragile.

[Lord Hannay of Chiswick]

The second point is on the Government's decision not to participate in the negotiation of a readmission agreement with Belarus. In view of the unsatisfactory state of politics in that country, and of the economic pressure on its citizens to migrate, it was a mistake by us not to participate in the negotiations. We expressed that view in correspondence, and we still hope that a late-stage opt-in will be considered seriously when the agreement is being negotiated—without our influencing it in any way, unfortunately. That does not mean, as was the case with the human trafficking directive, that it would not necessarily be in our national interest to opt in.

I apologise for speaking at some length and in such detail, but the strengthened scrutiny process in which we are participating has no sense or usefulness if it is not taken seriously. I am struck by how closely we now work with our EU partners in this field despite being outside Schengen, and by how many measures we decide to opt into. The figures already given in this debate demonstrate that. The coalition Government are to be congratulated on their pragmatism and open-mindedness. It is surely clearer than ever that, in this highly sensitive area, considerations of interdependence and shared vulnerability are drawing all member states closer together.

4.10 pm

Lord Bowness: My Lords, like the noble Lord, Lord Hannay, I welcome the publication of this first annual report. I am pleased that the Government have maintained the commitment of their predecessor to continue the practice of publishing such a report.

An interesting aspect of the annual report is in a paragraph on page 2, which bears reading out:

"This Government recognises that cooperation on Justice and Home Affairs can deliver key benefits, helping us to tackle cross border crime and to make it easier for British citizens to do business across borders. Such cooperation can also help enhance the UK's security".

I read that out because it is as well that we remind ourselves of that fact, particularly having sat through a number of hours of debate on the European Union Bill when you would have thought, from listening to some contributions, that nothing was further from the truth than that paragraph.

I am pleased to say that Sub-Committee E on Justice and Institutions has agreed on the whole with the Government's approach to many of the proposals that have come before us; as the noble Lord, Lord Rowlands, has indicated, we see a great number. With regard to the investigation order, I say to the noble Baroness, Lady Falkner, that while that decision was taken to opt in, as reported, it is still a live item of scrutiny before my sub-committee.

On balance, we consider the Government's and the indeed the Commission's case-by-case approach in the field of criminal justice to be the right one. We have seen the road map, the list of measures set out in that document to safeguard the rights of suspects and defendants involved in criminal proceedings. If those are all enacted, there will undoubtedly be common standards throughout the European Union, which will benefit any British citizen unfortunate enough to be caught up in criminal proceedings elsewhere.

It is worth noting that the approach on criminal justice has been quite different from the approach on civil justice. While the sub-committee has welcomed the vast majority of proposals in connection with criminal justice, we have had severe reservations about the proposals in the area of civil justice. Proposals to try to bring common approaches to matters such as succession and the division of matrimonial properties after divorce and the contract law proposals currently being discussed raise huge issues, which, as the noble Lord, Lord Rowlands, has indicated, bring us into conflict not with our partners, the principles or the objectives—many of the objectives are indisputable and worth while—but with different systems and principles of law, particularly in connection with property. Therefore, we have not been able to be as positive about the proposals that have come forward.

I am pleased to say that the sub-committee has generally found itself in agreement with the coalition Government's approach. I think that there was only one major item of disagreement, where in the first instance the Government did not wish to opt in to the new legislation on human trafficking. We found that logic very difficult to follow. It is at odds with lots of other decisions to opt in that the Government took quickly. However, I suppose that one must always rejoice in those who repenteth, because eventually the decision to opt in was indeed taken.

Perhaps I may raise two other issues, as they are relevant to this report. I am extremely concerned about the provisions in the EU Bill. One matter is stated in this report, so I consider myself to be in order in mentioning it. I refer to the statement that in no circumstances will the Government consider an opt-in to any proposal for a European prosecutor's office. I believe that that is a mistake because we do not know what the circumstances will be should the need for a European prosecutor's office arise. I have no doubt that, were we to find that there had been huge fraud in respect of European Union funds and that some member states were unwilling—whatever the reason—or unable to take action, there would be great demands from the public to know why something was not being done. This is all hypothetical but if it were ruled out altogether and then, in the Bill, made subject not only to an Act of Parliament but to a referendum, that referendum would, I am the first to admit, be almost impossible to win because of the climate of public opinion. It is a pity to have such a statement because, as I said, we do not know where we will be in the future.

Lastly, perhaps I may ask the Minister about the decision that has to be taken by May 2014 in respect of the pre-Lisbon treaty police and criminal justice instruments. At the moment they remain unamended and, unless we opt out, they will become subject to the Commission's infringement proceedings and the jurisdiction of the European Court of Justice. I am advised that that will be not an item-by-item decision but an all-or-nothing decision. In two Written Questions I have asked how many such instruments there are. In the last Answer I was told that there are somewhere between 80 and 90. The estimate is not mine, because I cannot remember; it is the Government's estimate given in the reply. The whole thing is subject to consultation with the Commission. I say to the Minister

that it is very odd that we as a Government of the United Kingdom cannot say how many instruments are applicable and form part of the law of this land on a given day. I accept that if they are amended between now and the relevant date the number will change, but I think that, first, we should know and produce as quickly as possible a list of the instruments that are effective and in force on a given date so that those who are going to have to consider the ramifications of the decision—it has to be made by May, whatever it may be—know precisely what the topics are. I think that some of them will be of considerable importance.

4.19 pm

Lord Pearson of Rannoch: My Lords, the Minister referred to the Written Statement in the other place by the Minister, Mr Lidington, on 20 January, which was repeated by the noble Lord, Lord Howell. I should like to press the Minister on what Mr Lidington, said in debate on 26 January, which comes somewhat later and is very precise. He said:

"The decision on whether to exercise the bloc opt-out is important and sensitive for the United Kingdom".

He agreed with Mr Jenkin on that point. He went on:

"Its implications for the whole range of complex, technical and often interrelated measures concerned will need to be carefully considered, and they ought to be carefully considered by Government and Parliament".

He then said—and this is the point that I want the Minister to clarify:

"I agree completely that Parliament should give its view on … a formal decision on whether we wish to opt in or out".—[*Official Report*, Commons, 26/1/11; col. 399.]

That is not just a debate that follows any lifting of the scrutiny reserve—as your Lordships know I regard that as pretty well completely useless because it has been overridden hundreds of times in the past few years and Brussels never takes any notice of it anyway—or this commitment from the Government; as the Minister and other noble Lords have mentioned, we have been opting in to some of this stuff along the road. I understand that if we agree to an amendment of it, it becomes cast in European law. The question for the Minister is: what is to be the enduring value of Protocols 19 and 21? Upon what will both Houses of Parliament be able to vote when the time comes? I put this in an Oral Question to the Government six weeks or so ago. The noble Lord, Lord McNally, answering for the Government, said that the subject was really too delicate to discuss in public and that he would give it some thought and come back to us. Have the Government given it that thought and what is the answer?

Where do this Government stand on this matter with their EU Bill? Do they envisage any of the JHA opt-ins being subject to a referendum of the British people? Where do we stand on a vote, not just a debate, in both Houses of Parliament, which was promised on 26 January? Where do we stand on the EU Bill, assuming that the Government have the sense to put back into it all the parts that were foolishly excluded by your Lordships' House?

4.23 pm

Lord Rosser: My Lords, the Minister has set out the background to the report that we are considering. As she said, Protocols 19 and 21 to the Treaty on European Union and the Treaty on the Functioning of the European Union govern our participation in European Union measures on justice and home affairs. Under Protocol 21, we can, within a laid down three-month period of a proposal or initiative being presented, decide whether we wish to be covered by such measures on justice and home affairs. If we do, we cannot then opt out at a later date. Under Protocol 19, we can also request to take part in some or all provisions of the Schengen acquis.

As the Minister has said, the report that we are considering today follows a commitment given by the then Government in 2008 to make an annual report to Parliament on the application of the opt-in protocol over the period covered by the report and on the Government's approach over the coming period to EU justice and home affairs policy, including the application or otherwise of the opt-in.

The report before us covers the 12-month period since the Lisbon treaty came into effect at the beginning of December 2009. As other noble Lords have done, we welcome the report and the fact that the Government have decided to adhere to the commitment to produce such a report, which was given by the then Leader of your Lordships' House, my noble friend Lady Ashton of Upholland. The commitments made by the then Leader of the House also included arrangements to ensure that the European Scrutiny Committee of this House and the European Scrutiny Committee in the other place have sufficient time to undertake their valued and valuable role of expressing a view to the Government on whether the United Kingdom should opt in to a proposal or not.

A commitment was also given, as has been said, by my noble friend Lady Ashton to produce a code of practice on the scrutiny of opt-in decisions. Will the Minister indicate, as the noble Baroness, Lady Falkner, did, when the code of practice is likely to be finalised?

I believe an undertaking was also given that, in order to ensure that the enhanced security measures were working effectively, there would be a review of the arrangements three years after the entry into force of the Lisbon treaty. It would be helpful if the Minister could say whether it is the Government's intention to undertake that review at the appropriate time.

The report we are discussing sets out the 23 justice and home affairs decisions taken under the JHA opt-in protocol and the Schengen opt-out protocol during the 12-month period covered by the report. Inevitably, the report does not give an up-to-date picture, since we are discussing a report that was presented to Parliament last January and the situation has changed in respect of at least some of the matters mentioned, for example on human trafficking. I join other noble Lords in expressing the hope that it may prove possible to have this debate rather nearer the date of publication of the report in future years. Perhaps the Minister could comment on whether this can be achieved.

I do not wish to repeat the thrust of debates that have already taken place on individual measures and proposals referred to in the report. However, there is a section in the report on legislative proposals that it is expected will be brought forward in 2011 but which are likely to require a decision on UK participation

[LORD ROSSER]
under the JHA opt-in protocol. Bearing in mind that the report is dated January 2011, is the Minister able to say whether the list in the report of expected legislative proposals for this year is still accurate?

In the paragraphs on their approach to European justice and home affairs, the Government state that they recognise that co-operation on justice and home affairs can deliver key benefits, helping us to tackle cross-border crime and to enhance the UK's security, as the noble Lord, Lord Bowness, pointed out. The paragraphs also refer to the Government's belief in the importance of practical co-operation on asylum policy within the EU.

As I understand it—I may be wrong and if I am I am sure I will be corrected—in around three or four years' time the Government can decide to accept European Court jurisdiction over justice and home affairs. If we did, it would mean that we kept the opt-in on matters such as the European arrest warrant and returning asylum seekers back to the country from which they came. Alternatively, the Government can refuse European Court jurisdiction over justice and home affairs, which would mean that we would have to opt out of the kinds of matters, such as the European arrest warrant, that have helped lead to the arrest of people involved in bombings, and we would also have to opt out of the provisions on returning asylum seekers to the country from which they came.

Will the Minister say whether the Government are now considering this issue and what the decision should be, and whether, if we did refuse European Court jurisdiction on justice and home affairs, or indeed if we accepted European Court jurisdiction, the Government would deem that either one or both of those alternatives was a change in the treaty necessitating a referendum?

4.29 pm

Baroness Browning: My Lords, this has been a constructive debate and I am grateful as this is the first time I have taken these measures in front of your Lordships' House and this Committee. The Government have committed to increasing our engagement with Parliament on European issues and on the opt-in in particular. This and subsequent annual reports, as well as this debate, are certainly going to help to inform the way in which they are structured in the future. I have been very interested to hear many views across the Chamber today, which will be very helpful in informing and shaping the way in which we continue to report to Parliament.

The noble Lord, Lord Rowlands, mentioned the very important factor of the accumulative effect. He also raised the question of how the red lines might be affected in light of that. It is an important issue that I will take back to the department to look at the implications for accumulation and whether that affects the way in which red lines have been established. I hope he will accept that I think it is a very good point that we should consider. He also raised the question of the vigilance of committees. I quite accept that, and I will come later to other points that have been made about the work of committees, in which noble Lords in this Room play a significant and important part.

The noble Baroness, Lady Falkner of Margravine, and the noble Lord, Lord Rosser, mentioned the time taken to bring this report. We would like to have had this debate much earlier, but debates are in the hands of the business managers and this was the first time this slot was available. I will report to business managers noble Lords' concern that the lead time between the report being published and holding the debate needs to be narrowed if the debate is to have more meaning and relevance. Noble Lords have made that point well and I apologise that there has been a long lead time in debating this first report.

The noble Baroness, Lady Falkner of Margravine, and the noble Lord, Lord Rosser, talked about the code of practice. A draft code of practice is at an advanced stage, but we want the code to take account of the new scrutiny arrangements announced by the Minister for Europe. Settling the detail of this has meant it has taken longer than we hoped but we expect to finalise it in the early autumn. It is on its way—it is not here yet—but the work is well progressed.

The noble Baroness also said that we failed to opt out under Protocol 19 due to the timing of these proposals. Protocol 19 gives us three months to opt out of measures to build on the part of Schengen in which we participate. During the time of the report, there have been two such measures by which we consciously decided to remain bound. We have therefore not failed to opt out but, in line with the coalition position, we have taken each decision on a case-by-case basis.

The noble Baroness and others—the noble Lord, Lord Hannay, touched on this—also raised the need for more narrative and explanation in future reports and the need to explain each decision more. Those are very well made points, and in the interests of transparency I see no reason why future reports should not take account of those views. It would certainly be very helpful, particularly for accuracy, if those narratives were put in place, so I am very happy to put that forward. We set out our reasons for each opt-in decision when we report them to Parliament by Written Ministerial or Oral Statement. I apologise to the noble Lord, Lord Hannay, that I had not spotted that it said "House of Lords N/A". That is extremely discourteous and I apologise to him unreservedly. I will ensure that there is a proper explanation and that no comment such as that, which is quite derisory, will appear in future reports and I am grateful to him for drawing it to my attention.

Perhaps I may move on to some of the other points raised by the noble Lord, Lord Hannay. He mentioned the agreement with Belarus. We decided not to opt in, because we did not believe that the agreement would deliver clear benefits for the UK. The number of illegal immigrants removed or deported to Belarus is very low, and the UK Border Agency already has good co-operation with the Belarus authorities. The decision was taken for that reason. Also raised was the question of dates—when the last language version is finalised. The noble Lord, Lord Hannay, made a good point about that. We have agreed that that is the appropriate approach, and will ensure that it is reflected in the code of practice when it comes.

The question of Committee time for debate, when there is no three-month period, is a difficulty. However, we will always seek to accommodate a request for a debate on an EU measure. Given that we have only the three months to take opt-in decisions at the start, we need to work closely with the business managers. In the same way that we will discuss with them the lead time for the debate to come forward, we will ensure that they are fully aware of the three-month timeframe required. There is an opportunity for more flexibility in this. For a post-adoption opt-in, of course we have a little more time. Particularly for parliamentary time, three months is very narrow, but we will ensure that the business managers are aware of the need for proper and timely scrutiny.

The noble Lord, Lord Hannay, also suggested that the annexe issued could be kept up to date for everyone in the form of a six-monthly submission. It should be possible to send that to both committees. It is a good suggestion. We will write, setting out our analysis of the priorities for the next six months, and then hope to make that a routine part of the way in which we keep committees informed, particularly of the upcoming business.

The noble Lord, Lord Bowness, raised the subject of the European public prosecutor. I was rather uplifted by his initial remark that there was only one thing on which his committee had disagreed; I shall now disappoint him tremendously. The Government have made clear that we will not opt in to a European public prosecutor. We understand that the Commission proposes to create such an office in the next two to three years, but the UK does not support it and will not participate. Having said that, I am sure that the noble Lord will want to engage in further debate with us about it, which we would welcome; but that has been the Government's position and it still stands.

The noble Lord and others also referred to the right to opt out of all existing police and criminal justice measures from 1 December 2014. That is when the European Court of Justice jurisdiction will take effect. We have to make the decision no later than May 2014, of course. I do not wish to dodge the question. I say that particularly to my old friend the noble Lord, Lord Pearson, because I understand from his remarks that he has had some unsatisfactory answers to it. The fact is that the Government will use the intervening time—we have that time—to consider carefully the many different factors and implications of the decision, including proper analysis of its cost and particularly the legal implications. We have no intention of making a premature decision on the matter, which I know will disappoint the noble Lord, Lord Bowness, but I hope will give some crumb of comfort to the noble Lord, Lord Pearson of Rannoch.

Lord Pearson of Rannoch: I am most grateful to my erstwhile noble friend, but could she be precise as to whether the Government intend to fulfil the commitment given by Mr Lidington that,

"the Government have committed publicly to having a vote in both Houses before making a formal decision on whether we wish to opt in or out"?—[*Official Report*, Commons, 26/1/11; col. 399.]

That was really my main question. Everything since then refers to Parliament being kept informed and to debates and scrutiny, none of which is worth anything compared with a vote in both Houses.

While I am on my feet, I may as well repeat my two questions. What will be the enduring value of Protocols 19 and 21, and upon what are both Houses going to be able to vote? Those matters are central to this debate and, if the noble Baroness does not know now, perhaps we should come back to them fairly soon.

Baroness Browning: I am very grateful. I was about to move on to that. I reassure the noble Lord that, as my right honourable friend David Lidington said, we will have a vote in both Houses if the Government decide to opt in under Protocol 21 or opt out under Protocol 19. That commitment was made by the Minister in the other place. It still very much holds good and is the Government's declared policy. I hope that that reassures him on that point.

I think that the noble Lord also raised the question of a referendum—

Lord Hannay of Chiswick: I am sorry to interrupt the noble Baroness and am grateful to her for giving way. As the noble Lord, Lord Pearson, has repeated his view several times in an attempt to get the Minister to state positions prematurely, I want to record that my committee thinks that the Government should take the fullest amount of time necessary to weigh up what will be an extremely important set of decisions. We do not think that the noble Baroness should be rushed into making premature statements of what that decision will be. These are very complex matters that will not be easy to decide, and I do not think that my committee would in any way wish the Minister to be moved towards premature clarification.

Lord Bowness: I do not wish to make a habit of interrupting the Minister but perhaps I may repeat the question that I asked earlier. I understand that it takes time for this consideration, but is there any reason why we cannot have a definitive list of the instruments that are in force? I appreciate that the number may vary if they are amended between now and then, but can we have the definitive list of measures? It seems very strange that we are unable to give a positive answer to a Parliamentary Question.

Baroness Browning: That is not an unreasonable request and I assure the noble Lord, Lord Bowness, that I shall write to him with the definitive list as soon as I am able to do so.

I want to finish with the points made by the noble Lords, Lord Pearson and Lord Hannay. We are going to consider this matter very carefully, so there will be no rushed decision. However, the commitment to a vote in both Houses remains very firm.

Lord Pearson of Rannoch: On what would that vote be likely to be?

Baroness Browning: My Lords, I think that the noble Lord is trying to seduce me into setting out the wording of a decision that has yet to be made, and I

[Baroness Browning]
am not in a position to do that. Therefore, I am sorry to disappoint him but, as I understood it, his initial concern was about whether the important commitment to both Houses remains good. It certainly does.

The noble Lord, Lord Rosser, asked about forthcoming decisions. I am going to read out a very short list and I assure the Committee that I shall not take up too much time in doing so. Forthcoming decisions—ones that are about to be published and will require an opt-in decision—include: the directive on the rights and support of victims of crime; the European protection order civil measure; the recast asylum procedures directive; the recast asylum qualification directive; the EU/Australia PNR arrangements; the EU/US PNR arrangements; the EU/Canada PNR arrangements; the proposed regulation on the freezing of bank accounts in the European Union; and the proposal for a directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest. I hope that he will also find helpful the commitment I have given to the noble Lord, Lord Hannay, on the six-monthly updates. That information will be extremely helpful to the Scrutiny Committee and across the wider House. The noble Lord asked about the 2014 opt-out decision. I hope he feels that I have given a comprehensive answer to that point, which was raised by several other noble Lords.

Lord Rosser: I suspect that I may not get an answer to that, but I asked whether it was felt that either alternative would constitute a change in the treaty and would require a referendum: that is, whether the decision either to opt in or not to opt in to ECJ jurisdiction would be regarded as a change in the treaty and would require a referendum.

Baroness Browning: My Lords, I will need to write to the noble Lord on that important point. Our refusal or acceptance of ECJ jurisdiction does not constitute a change that requires a referendum. However, I will write to him explaining why that is the case. The noble Lord also asked about the need to renew the provision after three years following the entry into force of the security measures in the Lisbon treaty. I will also need to write to him on that matter.

I am most grateful to everyone who has taken part in this debate. In closing, I would like to take a quick look to the future. We cannot say with complete certainty exactly what proposals over the next year will require an opt-in decision. In the report, we have indicated what we expect to happen, based on work programmes and discussions with our European partners. We will try to update that with a six-monthly paper.

The Government have been very clear that they will take these decisions on a case-by-case basis, so I hope noble Lords will understand that it would not be appropriate for me to comment at this point on whether we will opt in to any particular new proposal that might be brought forward in the next few months. However, I can reiterate our commitment, as set out by the noble Lord, Lord Howell, in his Written Ministerial Statement of 21 January, to give Parliament as much opportunity as possible to comment on and influence future opt-in decisions. The Government take very seriously the commitments contained in that Statement to give Parliament more say in opt-in decisions. It is very important that we make these new arrangements work. I am grateful for the suggestions made in today's debate, which we will take forward.

Between now and the Summer Recess we have decisions to make on recast proposals on asylum reception conditions and asylum procedures, on a directive on access to a lawyer and on a proposal regarding the rights of victims in criminal proceedings. Those issues are included in the list that I recited to the noble Lord, Lord Rosser. We await the views of the European Union Committee on those proposals and will report our decisions to both Houses. The next annual report, covering the period 1 December 2010 to 30 November 2011, will be laid before the House in due course. I will use every endeavour to ensure that there is not such a long gap between that report being laid and the opportunity for the House to debate it.

Motion agreed.

EUC Report: EU Afghan Police Mission

Considered in Grand Committee

4.48 pm

Moved by ***Lord Teverson***

That the Grand Committee do consider the report of the European Union Committee, *The EU's Afghan Police Mission* (8th Report, HL Paper 87).

Lord Teverson: My Lords, it gives me great pleasure to introduce this very important report, which concerns lessons that have been learnt and lessons that need to be learnt by civil missions of the European Union, including EUPOL in Afghanistan. It is an appropriate day for us to discuss the report, given today's announcement by the United States of significant withdrawals of its troops from Afghanistan. That marks the start of the winding down of the involvement of the United States and NATO in Afghanistan, which no doubt will continue for many years. In fact EUPOL was set up only in 2007, some six years after the invasion of Afghanistan by the United States, NATO and the allies at that time following the Twin Towers incident in 2001, the American involvement in the chasing of al-Qaeda and the consequent defeat of the Taliban in Afghanistan. So the mission was indeed very late in trying to set up its task and put a civil infrastructure into that country.

Throughout our deliberations we understood how difficult conditions were on the ground in Afghanistan. Setting up a civilian police force in that part of the world is not the same as doing it somewhere even like the western Balkans, let alone a European member state. The conditions are utterly different; at the time we still had extreme violence there, the writ of government did not extend across the whole of Afghanistan and there were many other issues that noble Lords will be well aware of. EUPOL's mission was quite simple in concept, although maybe complicated in delivery; it was to try to produce what we would understand as a civilian police force in Afghanistan, one to which Afghan citizens could report crimes that would then

be investigated and prosecuted—something that we in Europe would expect and find quite normal. Indeed, there was such a tradition back in Afghan history in the 20th century, but not since the number of wars that have afflicted that country.

That is a difficult task, but it is only one of a number of objectives of the Afghan national police force itself. It is perhaps important to recognise that the vast majority of the ANP deals primarily with security. Many of the 96,000 members of the ANP are involved in simple guarding as part of the security structure—they are more like a gendarmerie or a paramilitary than what we would understand as civilian police—and there is a local auxiliary element that we felt was probably strongly influenced by local barons and strongmen rather than by the rule of law. There is a whole mix within what we are trying to achieve.

The fundamental fact was that to produce a social infrastructure that would work and create stability for Afghanistan into the longer-term future, a civilian policing force that had the confidence of the citizens of Afghanistan and eventually had a writ across the whole country would be essential for stability in that nation and for Afghanistan to be a successful state in the future.

The issues and challenges that we came across generally for the Afghan national police force were quite astounding, and the barriers and difficulties were very great. There is the fundamental matter of literacy. There were short training programmes—I will come on to these later—that did not address literacy particularly effectively. We had figures quoted to us of something like 70 per cent of recruits to the ANP being unable to read or write. That might be quite sufficient for guarding; it might even be sufficient, though less likely so, for a number of paramilitary activities. However, collecting evidence, talking to victims of crime and taking an evidence-based system through to prosecution are clearly impossible if those officers are unable to read and write.

One of the other problem areas is the attrition of the ANP. We are assured that this has improved, but we were told with great authority that at one point the fallout rate of recruits was some 70 per cent. This level of wasted investment has a number of effects. It shows that morale is low and it means that you never reach the target that you need to in order for the police force to be effective to the degree that it is meant to be. Indeed, the police force stood at 96,000 when we did this report; it was expected to be somewhere around 110,000, but was unable to meet that.

The other, even more serious area is that of mortality, which is, sadly, one of the reasons for that attrition rate. It is probably not realised that the levels of mortality in the national police force are significantly higher than in the Afghan armed forces. Understandably, that acts as another reason why Afghan citizens are not necessarily keen to join the ANP or remain within it. We also found that because pay was distributed down a supply chain to those ANP officers who were out in the provinces, with 10 per cent or whatever being taken at various levels, staff themselves were often not paid.

An area that was also of great concern was that of numbers. I will come back to the question of numbers in specific issues around the EUPOL mission. On the requirement by NATO and Europe to reach sufficient numbers for the police force, though, we felt strongly that there was too much of a production-line numbers-driven objective that meant that the quality was not high enough. Although the numbers were there, that meant that the quality of their work was not high and that the police force could not fulfil the functions that it was meant to.

Not surprisingly, the other area was corruption. While corruption eats at all societies, it is particularly corrosive when it comes to police forces and becomes impossible when it comes to the EUPOL mission that is attempting to join up policing with successful trials and convictions through the prosecution service. Even if you manage to bring a proper case through the police system, it is of no use whatever if the prosecuting authorities are subject to corruption that results in the case never reaching court—or, if it reaches court after all, you cannot be sure that the judgment will be made in line with justice or law as citizens understand that.

If that were not enough, we came across specific issues about EUPOL itself. The first was one that we had some disagreement with the Government about the liaison between EUPOL, the European Union and NATO. NATO was clearly the major force within Afghanistan; even in the area of police and armed forces training, in fact, it had some 5,000 people in comparison with EUPOL's 300. It was not that we found little co-operation between NATO and the EU but, because this is not a Berlin Plus operation, co-operation was not formal and did not always work the way it should. There were instances where that was prejudicial to the safety of EUPOL staff and officers. We heard that from Brussels, we felt that it was true and there was strong evidence behind it. We still feel that that needs to be pursued, not just in Afghanistan but in other operations as well. We know all the reasons why that is difficult because of the Turkey/Cyprus situation but, when we have people on the front line, it is of the greatest importance that we make that work.

We have dedicated staff in Brussels as much as in Afghanistan, but the mission itself was slow to get going because it went through a hugely bureaucratic procurement process for equipment. I think members of the committee all imagined what would have happened if during the Falklands crisis in 1982 we had put out for competitive tender operations with potential European purchasing rules and the threat of judicial review. Perhaps only now would we be sending our task force, I do not know. There was a similar situation there, which was partly resolved by the United States stepping in and providing this force with equipment so that it could start on time.

We also felt that EUPOL staff and decision-makers in Afghanistan were not given sufficient delegated authority for the very quick-changing circumstances on the ground; everything had to be referred back to Brussels. Political decisions had to be made at that level, a procedure that we understand for major decisions, but tactically that situation tied the hands of commanders on the ground and locally. Again, we understand that this has improved, but it should not happen again.

[LORD TEVERSON]

Although the EUPOL mission itself originally grew out of a German mission and was therefore meant to be a combined European force, we found to our amazement that other European bilateral and multilateral forces were still operating in police training in Afghanistan. We felt strongly that if Europe was to maintain its reputation for effectiveness on these missions, it should concentrate its work on one area—in this case, in EUPOL itself—and make that successful, rather than having a wide range of unsuccessful missions.

A major issue for EUPOL itself is that although its intended number of 400 staff in Afghanistan was already minute for the size of the problem, it has never even managed to meet that number. The number out there on the whole has been around the 200s and more recently has moved towards 300. That means that for a major initiative and a civilian mission, the European Union has not even been able to deliver the resources that it said it would, despite the mission's small size in comparison with NATO efforts. We believe that that severely damages the reputation of the EU and its mission.

Timescale is the other area of concern. We have a major challenge; the current mandate goes to 2013 but there is no chance that the mission will have fulfilled its objectives by that time, yet NATO will start to withdraw its military resources significantly in 2014-15. There is a major mismatch there, making it hard to take decisions.

I conclude this introduction to the debate by saying that we felt that there was a major reputational risk to the European Union through its failure to deliver this project, with all its difficulties, sufficiently on the ground and to meet its promises. There are some successes; the city policing initiative was successful, and there is a European initiative for a women's police training centre in Bamyan that we believe is necessary and will be successful. We welcome the fact that non-EU states—New Zealand, Canada and Norway—have contributed to EUPOL. We were slightly concerned that the United Kingdom had offered only 14 staff when we looked at this, although we recognise that in the military area in Afghanistan the UK has more than played its role in comparison with other European countries in that area.

There are dedicated people in Afghanistan as part of the EUPOL operation. They literally put their lives on the line and work in a very difficult position. We feel that this mission was important because civil policing is the glue and the infrastructure for a successful Afghan state for the future. We are very disappointed in the way in which this operation has been delivered, and we feel that there is a great risk that it will not meet its objectives by 2013 and may be classed as a failure. We sincerely hope that this is not the case. I beg to move.

5.05 pm

Lord Selkirk of Douglas: My Lords, I support everything that the noble Lord, Lord Teverson, has said, and a great deal of evidence was presented to us to support his conclusions. The EU's Afghan police mission report highlights a number of pressing problems which I hope Ministers and their European allies are now urgently addressing. Otherwise, as has been said and the report makes clear, the mission runs a real risk of failure. Everyone knows that military withdrawals can lead to heavy casualties being inflicted. We are in the business of effecting an orderly transition, but it is quite clear from the extensive evidence given to the committee that the job of training the Afghan police will stretch well beyond the deadline set for our troops to leave the country in 2014-15. If we want our troops to leave with a job really well done, we have to have a clear appreciation of the transitional arrangements required. I need hardly remind the Grand Committee that when the British withdrew from India at the time of independence, there were more than 1 million casualties as individuals tried to move from one country to another.

Obviously we want to make certain that we ensure a successful handover. We therefore need to have a very clear appreciation of the challenges confronting the EUPOL mission which the noble Lord, Lord Teverson, has so ably presented. The first of these is that members of the Afghan police are a top target for the Taliban. In answer to my question in committee, chief superintendent Nigel Thomas, former interim head of the EU's Afghan police mission, referred to casualties. He said that there might, in extreme cases, be 15 a day. He asserted that seven a day might be killed and numerous police personnel injured to quite a significant extent—and, importantly, at a much higher rate than the Afghan army casualty rate.

The second challenge is that at the same time as being very much in the front line the situation is exacerbated by a lack of close co-operation between the Afghan national army and the Afghan national police. We heard from Fatima Ayub of the Open Society Foundation that the rationale behind building up the police was not to improve the rule of law but was—

"as the US forces put it, about putting boots on the ground, such that you have someone in the line of fire against the insurgents".

Chief Superintendent Thomas stated bluntly:

"The ANA need to take on a more proactive role and relieve the ANP from some of the more militaristic duties that they are performing".

At the same time there is a need for much more emphasis to be put on the quality of training, and the mere six weeks given at present is insufficient for a police service that ultimately should have a civilian role. I note that last month NATO agreed to extend the length of its training course by two extra weeks, and perhaps when he replies the Minister can tell us whether EUPOL is doing the same.

The third challenge which the noble Lord, Lord Teverson, has touched upon is the fact that so many police are illiterate. At least half are, according to Fatima Ayub, and our sub-committee concluded that there was currently no coherent strategy for dealing with this problem. She said in response to a question from me:

"You can train policemen in Afghanistan … but the question is whether you are first going to invest time in teaching them to read and then actually to do the work of policing rather than acting as cannon fodder for the insurgency".

Fourthly, there is, as has been mentioned, the widespread issue of corruption, bribery and drug dealing within police ranks. Chief Superintendent Thomas gave me examples, which I could cite, of police chiefs who have links to local criminality because that is the way they are able to keep the peace in that particular location. That will undoubtedly have to change over time, but for the communities there that sort of relationship works for them and the police chief would not intervene against certain individuals because they know what the consequences are going to be. Those things will simply have to change, he stressed—and undoubtedly they will—but, again, it is going to be a slow and in certain cases painful process.

All this has a knock-on effect on the Afghan judicial system, and the corruption within it must be attacked. If this is not done, Chief Superintendent Thomas said, EUPOL cannot effectively train Afghan police officers to carry out relevant and important investigations that will lead to successful prosecution, as they could be blocked as the result of corrupt practices.

There are other challenges, including infiltration and desertion, but I will restrict myself to mentioning only one more: whether there have been cases involving the use of torture. Chief Superintendent Thomas was clear in his response. There are pockets of things that happen around the country, and interrogation techniques are used that would be abhorrent anywhere else. These sorts of things are part of the ongoing cultural and organisational change that is required, but it takes time.

Despite the challenges facing the EUPOL training mission, which are formidable to the Afghan police, they are not insurmountable. In his evidence, the Chief Superintendent told my noble friend Lord Jopling that it was not mission impossible. In his view, what was required was a defined role for the military and the police, with an understanding of those timescales and agreement at the top strategic level. He believed that the people on the ground had a real desire to deliver and, given support, they would do so.

Anyone who has read the history of Afghanistan knows that the British have not always found campaigns there to be straightforward. Rudyard Kipling wrote in *Barrack-Room Ballads*, published in 1892, in the last verse of his poem entitled "The Young British Soldier", these words:

"When you're wounded and left on Afghanistan's plains,
And the women come out to cut up what remains,
Jest roll to your rifle and blow out your brains
An' go to your Gawd like a soldier".

I am glad to say that we have come a very long way since then, and at least we have the presence of mind to know when a great deal more has to be done. The EUPOL mission is currently extended to May 2013, but the evidence submitted to us indicates that, to achieve the required success, the task will take at least five or 10 years longer. The mission, with an allocation of only 400 staff, is clearly too small for such a formidable task, and the fact that it has never come close to the numbers specified for it has weakened its stature. This issue now needs to be addressed with urgency and given a much higher priority by Governments of the European Union, including our own.

There have been mass jail breakouts on many occasions. In 2003, in southern Afghanistan, 45 Taliban escaped from a tunnel. In 2008, suicide bombers attacked the prison gates in Kandahar and 900 prisoners escaped. On 23 April this year, 541 prisoners escaped down an ingenious tunnel. With such a resourceful enemy, it is essential that the police are given the best training possible.

Having been to Helmand province in Afghanistan, with among others the noble Lord, Lord Lamont, and the noble and gallant Lord, Lord Inge, I believe we have a strong obligation to support our service men and women to the hilt and to see this matter through to a successful conclusion. Our report is frank, direct and relevant, and I hope and believe that the British and European Union Governments will give it the support that it so justly deserves. Most importantly of all, I trust that the Minister will be able to reassure us today that the British and EU Governments are already acting swiftly on its conclusions.

5.14 pm

Lord Radice: I congratulate the noble Lords, Lord Selkirk of Douglas and Lord Teverson, on their very able speeches. We are debating a good, although by any standards extremely depressing, report. It is probably one of the most depressing reports with which I have been associated in a long career as a Select Committee member in both the House of Commons and the House of Lords. That is a tribute to the chairman, and it is a tribute to the staff for their back-up. It is a tribute to my colleagues for their extremely sharp questioning and the fact that they have always been well briefed, and it is a tribute to the people who gave evidence before us. I particularly remember Chief Superintendent Nigel Thomas, who was the former interim head of the EU's Afghan police mission.

I do not want to go into the detail of the report. The noble Lord, Lord Teverson, has given us a very good summary of it. However, we are really talking about a mission that was,

"too late, too slow to get off the ground once the decision was made, and too small to achieve its aim; or perhaps, worst, too small to receive respect from other actors".

Therefore, it had a very bad start and those involved are having to work under very difficult conditions.

The conflicting timescales clearly make the background almost impossible. By any standards, it is going to take at least five to 10 years to create a decent police force; yet, as we know and as has been confirmed today, the deadlines for military withdrawal are growing ever closer. Therefore, those two things are in direct conflict. You have only to look at the map at the back of our report to see the weakness of the police force. In large parts of southern and eastern Afghanistan the police force has no presence at all. Even in the areas where there is a relatively strong police effort, we hear that there are considerable problems with security issues and so on. The fact is that the impact of the insurgency and the civil war between the north and south in Afghanistan is making the job extremely difficult.

We completed our report in February and I think that it is legitimate to add to it. Last night, I read the book written by Sherard Cowper-Coles, the former

[LORD RADICE]

ambassador and special envoy for Afghanistan and Pakistan. He recently retired and produced the most devastating account of the background effort. It is not that he did not support the mission strongly or that he does not pay tremendous tribute to all those who have taken part—particularly our Armed Forces—but there is one question and it underlines our report: how long will any policing effort last once western forces have left, and what will happen in the many areas where there is no western presence at all and will not be one? He quotes, rather devastatingly, David Miliband, one of whose visits to Afghanistan occurred in 2009. He reports two Afghan Ministers coming to the residence for dinner:

"David Miliband asked our guests, innocently enough, how long they expected the Afghan central government authorities, civilian and military, to stay on in Lashkar Gah"—

which of course is in Helmand—"after Western forces left". Cowper-Coles continues:

"I don't know precisely what response David was expecting, but I imagine it was somewhere between decades and infinity. So the answer we did get, delivered with an insouciant grin, was all the more shocking. 'Twenty-four hours', came the reply. In three words, the whole object and purpose of our presence in Helmand were being called into question".

We can say that about our whole effort in Afghanistan. It was a devastating book.

In a review of the book in last Sunday's *Observer,* William Dalrymple points out that,

"the Taliban controls more than 75% of the country and Karzai's government holds just 29 out of 121 key strategic districts".

That is a fairly depressing background against which the effort to set up an effective police force has to operate.

If there is a withdrawal, what is likely to happen? I have given the Committee the quote from Cowper-Coles's book. Dalrymple says that it is,

"anyone's guess. Karzai could hold on after western withdrawal, like Najibullah after the Russian retreat. The Taliban could roll over the country as the Vietcong did in Vietnam. There may be a return to the civil war that destroyed Afghanistan prior to the rise of the Taliban".

The only chance of creating an effective police force is some kind of political settlement, but how does one get that if one is at the same time withdrawing one's forces? That is a question for Britain and, particularly, the United States, which is running the operation.

I asked Nigel Thomas:

"Is it possible to carry out significant improvements in building up the police force without some kind of peace settlement in Afghanistan?".

He said:

"Of course, the overriding security situation is going to be instrumental in whether a civilian policing system could operate out there. If everything fell apart in terms of the security, then you are not going to be able to have that traditional police force, so the development of a civilian policing structure out there is absolutely reliant on a certain level of permissiveness to operate within the country".

That is absolutely basic.

If there was a negotiated settlement, there might be a chance of creating an effective police force on the lines of the EU's Afghan mission. However, we need to realise that we would have to go on paying for it pretty well ad infinitum. Afghanistan has basically been a kept state for nearly 100 years. Money has come in from Britain, Russia and the United States, but we need to realise that we would have to go on doing it.

My own conclusion is that the prospects for the EU's Afghan police mission, and indeed for our whole effort in Afghanistan, at the moment look extremely problematic.

5.23 pm

Baroness Bonham-Carter of Yarnbury: My Lords, I am afraid that there will inevitably be a certain amount of repetition in this debate, which demonstrates how ably the noble Lord, Lord Teverson, has chaired our committee. I, too, extend my thanks to the staff.

A few years ago, I went on a trip to Afghanistan—not with any member of the Committee here—and was generally impressed by what our Army was attempting to do. It was at the time of that incredible, hugely successful derring-do involving the transport of the second turbine to the Kajaki dam in Helmand through Taliban controlled-country.

What was less impressive was our introduction to a ragtag group of very sad-looking men who were the local Afghan police force. Three years later, taking evidence for this report, their sorry state has kept flashing in front of me, and nothing that I have heard has made me feel that they would be looking any the less sorry.

Afghanistan, as we know, is a conservative country and a complex one. Despite being the centre of an imperialist tussle during the 19th century between Tsarist Russia and Victorian Britain, famously called the Great Game, Afghanistan and its people beat them both at that game. As someone else mentioned earlier on, the Soviet Union had another try between 1979 and 1989, propping up a puppet Government with the help of an estimated 100,000 troops, and now we are back there, discovering yet again how difficult it is to control, to help and to help govern.

The country is hugely lacking in infrastructure. It is unused to centralised government. These difficulties are compounded by the topography of the country, with corruption, illiteracy and drug abuse, the tradition of tribal hostilities and self-governance and, of course, the Taliban. All these problems have had a direct impact on successfully achieving a civilian police force, which did not exist when the West invaded the country in 2001—indeed, it is one of the reasons for the rise in popularity of the Taliban and for its ascendancy after the departure of the Soviets. While the Taliban's form of justice is harsh, it did not involve bribery and corruption. My noble friend Lord Lamont had a conversation only recently with an Afghan taxi driver who was saying the same thing about today.

As we say in our report, it is not the fault of the EU that its police training mission was so late in being set up, but it seems from the evidence we have taken that the mission itself has not been well planned or thought through. The things that have struck me during this inquiry are the ignoring of the blindingly obvious—the size of the EU mission for one, as noble Lords have mentioned. Why, when it was meant to consist of

400 people, has this target never been met? It was an unambitious level of staffing in the first place. Not to have achieved it has had a negative effect on the mission itself—meaning among other things that it has had to reduce its presence from 17 to 13 locations—and on the perception of the mission as a whole. In particular, it appears to have harmed the relationship between EUPOL and the NATO training mission in Afghanistan, only adding to the problems caused by the lack of formal agreement between NATO and the EU, as mentioned earlier by my noble friend Lord Teverson. Indeed, the head of the EU civil missions, Mr Klompenhouwer, told us that the lack of a security agreement with NATO creates some risks for the people on the ground, yet the work being undertaken by these people on the ground for EUPOL is so important for the future of a viable Afghanistan.

Then there is the length of the police training course, which was, in the words of Chief Superintendent Nigel Thomas,

"shrunk from eight weeks to six weeks, and basically the eight weeks was deemed to be too long because it was taking too long to get people out on the ground. There is this big drive to get numbers and feet out on the ground".

In other words, it was quantity over quality.

I am normally a glass-half-full person, but the chances of a functioning Afghan police force surviving a departure of troops in 2014-15 seem to be as likely as rats dancing on the moon. As the noble Lord, Lord Selkirk, has already mentioned, some recent stories include 450 prisoners tunnelling out of the main jail in Kandahar city on 24 April, in something reminiscent of the Great Escape. On 12 May, the *New York Times* reported that Taliban commander turned police officer, Ghulam Hazrat, was raising funds by imposing an Islamic tax on the people in his district, typically demanding around 10 per cent of their income. On 20 May, inquests into the killing of five British soldiers by a rogue Afghan police officer showed that the officer had been a habitual drug user. Although drug users are not allowed to join the police, random drug tests have shown that around 10 per cent of Afghan police officers use cannabis or opium. On 13 June, the NATO International Security Assistance Force reported that not a single police unit is able to maintain order without the assistance of coalition forces. Moreover, there is a shortfall of around 740 police trainers, posing a significant barrier to growth of the police force. Only last week, a new police training centre in Wardak was mortared during its opening ceremony. The new police training centre has the capacity to train 3,000 new recruits at a time, but currently it has only 720 recruits.

Against this, our most recent briefing, a week ago, was full of optimism about how various fundamental problems like attrition rates, training, forms of payment, the recruitment process and so on had seen,

"a rate of change that is phenomenal",

in the past six months. However, when I suggested that this was perhaps a bit late in the day, the response was yes, of course it was. So I ask the Minister: why, when the mission is so important both to Afghanistan and, I suggest, to the standing and the reputation of the EU, was best practice not introduced at the beginning rather than bringing it in at the tail-end?

5.30 pm

The Earl of Sandwich: My Lords, I start by expressing my regrets at the tragic loss of more British soldiers last week. It will soon be a decade since 9/11, a reminder that no one expected our commitment to Afghanistan to last this long, let alone to cause so many casualties among the Marines as well as the Army. I would also like to mention, as the noble Lord, Lord Teverson, has on this occasion, the much higher number of fatalities among the Afghan police—up to seven a day, as we have heard, including those in Kabul during the past week. It is rare that the sacrifice of Afghans themselves is recognised outside that country. We all look forward to a time when the fighting will end, but even if it ends for NATO in three years or so it will continue for much longer for men and women in uniform in Afghanistan.

I sincerely congratulate Sub-Committee C on its report. It is exactly the kind of subject that that committee should tackle—a specific and topical aspect of foreign affairs that might otherwise be ignored by Parliament. The Sudan report, published today, is another good and timely example that I hope we will be debating soon because of South Sudan's independence in two and a half weeks. That is another country divided in two. This does not detract from my view that we should one day have a committee in this House with a much wider remit on foreign affairs, a view shared by many colleagues but not by the Liaison Committee, which still believes that we would be poaching on another place. Nevertheless, I notice that another place has decided to investigate piracy off Somalia, so soon after Sub-Committee C had done its own excellent report. If that is not poaching or duplicating, it seems at the very least to be a waste of resources.

The report, among other things, demonstrates failure by the EU, including this country and other members of ISAF, to bring western standards of policing into a country with its own traditions and methods of security. We should not be surprised that "policing" in Afghanistan means something quite different from policing here at home, yet we expect someone of the calibre of Chief Superintendent Nigel Thomas to make a lasting impact on the operations of the police in Kabul and many other places, and to do so at the double before we leave the country altogether at the end of three years.

Noble Lords can see that I am sceptical, perhaps too sceptical, of the value of what amounts to imposing our own standards on another country and culture. I recognise that there are universal rights and values and I supported our early intervention in Afghanistan, but implementing those rights across the board in central Asia is much more than a challenge, as the euphemism goes—it is an impossibility unless the mission is very narrowly defined. I am certain from what he said in evidence that the chief super and his colleagues personally did a lot of good and certainly had some influence on planning and behaviour. Some valuable training, even in only a six-week crash course, may have rubbed off on the Afghan police. However, when you know the scale of the problem, the poverty and illiteracy in the country, the relatively small numbers of European police officers involved and the degree of insecurity, you soon realise that we are not going to

[The Earl of Sandwich]
make a lot of difference. The noble Lord, Lord Teverson, rightly referred to the loss of quality, which can be even more important. Surprisingly, the Government respond in a similar vein. They state:

"The Government recognises that, whilst EUPOL has had some successes, it is not yet delivering to its full potential. Its capabilities have been stretched by the challenges of operating in such a complex conflict environment. … The reality is that many parts of Afghanistan are not yet ready for civilian policing, so EUPOL's ability to demonstrate impact is limited".

In that case, why are we doing it, especially when NATO is already carrying out the lead training role for both the army and the police? Does the Minister agree that one explanation for this is that, not for the first time, there is a muddle between NATO and the EU about their respective roles?

In line with the devastating written evidence from Dr Ronja Kempin in appendix 3, the committee concludes that the lack of a formal agreement between the EU and NATO is quite "unacceptable" and, as the noble Lord, Lord Teverson, has said, puts British lives among others in danger. Her Majesty's Government in their response go so far as to deny this and mention hospital access via ISAF, but I am unconvinced by that.

There are numerous incidents of the less trained elements of the Afghan police doing or being forced to do the work of soldiers in less secure areas and either getting shot or shooting at the wrong side, or turning out to be Taliban in disguise. The noble Lord, Lord Selkirk, referred to this very convincingly. Civilian police training is not going to improve that situation, but NATO training of police alongside soldiers will, because during conflict it is sometimes impossible to distinguish between the two. The issue of attrition is related to this because any police, especially local police, required to leave their home area are bound to have their first loyalty to that area, from what has become a purely defence point of view, and they see training as being directly related to conflict.

Having said all that, I acknowledge what Karen Pierce, our special representative, said in her evidence in question 106 on page 29—that EUPOL has an enabling and not an executive role. It could hardly have anything else. It may well be true that it has had some success in Kabul using the "ring of steel" technique borrowed from the Met but it is also true, as I know from several recent visitors to Kabul, that the city is a much less safe place than it was when I was last there only three or four years ago. Because of the unique character of Kabul and the substantial foreign presence there, other centres are unlikely to respond to the same concentration of external training and influence, yet for the same reason Kabul may attract more suicide attacks on the police, as occurred only last week.

Karen Pierce also mentioned the much bigger issue that Afghanistan,

"does not have very effective rule of law institutions".

I remember that in Mazar-i-Sharif on my last visit a young boy ran under our 4x4 and bounced off on the pavement, stunned but unharmed. About 50 people gathered quickly and surrounded us. There was no sign of the police or indeed any question of justice. If we had not gone with the family to the hospital and given them money, our driver would certainly have gone to prison for quite a time. Bribery is too grand a word for what in a developing country is simply payment and is often the only way to escape punishment or pass through a road block. It is petty corruption, not a culture which will be cured in a few years by the expertise of foreign police.

Of course, there are many activities which over time will help to change the culture of bribery and corruption, and whatever the outcome of this war I hope that, one way or another, we will continue to encourage good governance and the rule of law. Making people more aware of their rights is also a necessary task, already carried out in south Asia and all over the world by our own DfID and many non-governmental organisations.

Finally, what is the United Kingdom doing now to encourage neighbouring countries to take over this work in the future? The noble Lord, Lord Radice, has helpfully quoted the new book by Sherard Cowper-Coles, and I notice that India has just announced another half a billion dollars in aid to Afghanistan. Surely that country, with all its resources and experience, is the natural partner through which EUPOL, or perhaps another institution, can further this work in the years to come. This report, apart from highlighting that valuable work, also makes us more aware of our own limitations in the West.

5.41 pm

Lord Sewel: My Lords, I start by thanking the noble Earl, Lord Sandwich, for his contribution, not only in terms of the content but for the fact that he acquits us of the charge of incest by his very presence, otherwise it would have been a matter of the committee talking to itself.

It is refreshing to agree with everything that the noble Lord, Lord Teverson, has said, because I have spent the past two days sitting in the Chamber disagreeing with everything that his Front Bench has said on House of Lords reform. There is also the fact that we have reached the stage in the debate when everything that I had wanted to say has been said and I should therefore sit down. However, that is not in the tradition of our great House, so I shall continue.

The task of the EU Afghan police training mission is, I believe, absolutely vital for the future of Afghanistan. The existence of a fully trained and effective civilian police force, capable of enjoying the confidence of the Afghan people, is a fundamental requirement in underpinning the rule of law and stabilising Afghan society. We should recognise that. We should explain that that is why the mission is there and why it is a high priority. In terms of the type of society that Afghanistan is likely to become, the work of the EU police training mission is absolutely fundamental and of the highest priority.

On the other hand, the challenges that the mission faces are formidable. As other members of the committee have mentioned, we were told that up to 70 per cent of the recruits to the Afghan police force were illiterate. An inability to read and write at a very basic level severely limits the operational effectiveness of the police force. Reports cannot be written; number plates cannot be read. That is almost the level of the operation.

In addition, we were told that at times there is an attrition rate of up to 75 per cent, which means having to run desperately fast to keep still. With an attrition rate at that level, progress will inevitably be very slow. Let us have a look at that attrition rate. It is undoubtedly accounted for to some extent by the enormous pressure that recruits are suffering from members of the insurgency.

There are also things that are within the control of either the Afghan Government or the EU. One is the lack of welfare support to those recruits, and the policy of sometimes moving recruits to serve in distant areas, outwith their home environment. I do not think that we understand the importance of that factor, because Afghanistan is an enormously localised country and society. Perhaps most important is the fact that money allocated for police pay has a habit of getting "lost" on its way from disbursement to supposedly arriving into the pockets and wallets of the police. The build-up of those various pressures must undermine the commitments of police recruits to the task that they are asked to perform.

Good policing is a vital part of the rule of law but little can be achieved if corruption exists in the judiciary, and I am afraid that there is significant evidence of that. The reform of the two—the Afghan police force and the Afghan judiciary—must go hand in hand, because otherwise there will ultimately be failure.

As has been mentioned, an underlying challenge to the success of the mission is the apparent mismatch between the length of time that it is anticipated will be needed to complete the mission and the timetable for military withdrawal. Our witnesses told us that the task would not be completed until somewhere between 2018 and 2023, yet the deadline for military withdrawal is 2015. That raises a problem. Of course, policy falls back on the hope—it must be only a hope—that by then the Afghan army will be capable of providing a stable security environment in which the training mission can continue to operate. Quite honestly, that must be something of a tall order.

A further challenge lies in the continuing lack of a proper relationship between NATO and the EU; that has already been mentioned. We were told that the lack of a formal agreement between NATO and the EU was putting lives at risk. It is totally unacceptable that a European political dispute has such potentially dangerous implications for those serving on the front line. That needs to be sorted out, and quickly.

How can we judge the EU's response? Frankly, all the evidence that we received pointed to the conclusion that the planned size of the mission, at 400 people, was always inadequate to the task. Worse, although signing up to 400, member states have failed to deliver, with actual numbers tending to run in the high 200s. How can you really expect to train the civilian police force of an entire country on the basis of 200 or so trainers? We had a sad and worrying example of the EU signing up for an objective and the member states failing to deliver the necessary resource. That is the underlying cause for concern of the whole mission. If you are sitting in Brussels, it is relatively easy to say, "Oh yes, this is a good thing. Let's get on with it", and sign up for it but, at the end of the day, all member states have some reason or excuse why they cannot provide the specific numbers required. That is a total failure of planning and approach. In itself, it runs the risk of calling into question the effectiveness of the mission and its ultimate success. It undermines confidence, which is a great mistake.

I go back to the specifics of the evidence to deal with the relationship between Brussels and the people who are doing the job on the ground. I asked Chief Superintendent Nigel Thomas—he was, quite honestly, an outstanding witness, and I think that other people have borne testimony to that today—if he had the opportunity to make three recommendations to the EU to improve the effectiveness of EUPOL, what they would be. He said: allow the head of mission the freedom and the autonomy to deliver on the ground. It is vital that the head of mission is not stifled by the bureaucracy of the system. That has been problematic and I believe that it still is. Those of us who know anything about the way that Brussels operates know that that has the ring of authenticity. It is barely tolerable in the normal decision-making and management responsibilities that the EU gets involved in; it is totally unacceptable when that sort of bureaucracy and reluctance to trust the people on the ground exposes our people to greater unnecessary risk.

The EU mission is not alone; there are a number of bilateral European missions in Afghanistan. It would be better to have a single, integrated, well resourced and managed mission rather than the lack of co-ordination and coherence that you get with a range of bilateral and multilateral missions.

Let us face it, the view of the report and the contributions has been more than somewhat critical of the mission. However, I am sure that all members of the committee would want to say that that does not reflect at all upon the commitment, skills and courage of those who are doing the work on the ground. Indeed, what shone through in the evidence that we took was the highest level of commitment of those involved in doing the job itself. Lurking in the back of my mind, though, although I try to suppress it, is a question: are we kidding ourselves?

5.53 pm

Lord Liddle: My Lords, this wonderful report shows once again the extremely valuable work of your Lordships' Select Committee on the European Union. To be quite honest, I found it gripping bedtime reading.

Lord Sewel: How very sad.

Lord Liddle: It really is. As the noble Lord, Lord Selkirk, said, the report is frank, direct and relevant. It has real punch. My only regret is that it was published on 16 February and we are debating it on 22 June. If we want the hard work of the staff of our Select Committee and of its Members who have contributed to this discussion to be effective, somehow or other the usual channels in this House have to find a way of bringing these committee reports to debate in a more timely way.

Since the members of the committee drafted this report, there have been fundamental changes in the situation in Afghanistan and we have to look forward.

[LORD LIDDLE]
I would like to address this question of the future and the future lessons as a whole from this Afghanistan experience.

The noble Lord, Lord Teverson, spoke extraordinarily well about the background to this mission and all the problems that it had encountered. My noble friend Lord Sewel talked again about the structural problems of corruption and lack of literacy and all those difficulties that lie in its way. My noble friend Lord Radice talked about the incompatibility between what is inevitably a long-term objective for this mission and others' political timetables, which are often determined by electoral politics in the United States.

It is a very difficult situation and, since the committee published its report, we now know that the timetable for troop withdrawals has been firmed up. We also know that informal talks have started with elements of the Taliban and we have had that extraordinarily frank memoir from Sherard Cowper-Coles, a former ambassador, which I am looking forward to reading on my holidays.

Lord Radice: My noble friend should read it before his holidays. If he is really interested in gripping bedtime reading—no, I'm not his agent—I suggest Cowper-Coles.

Lord Liddle: That is a very high recommendation and I will follow it. What will be the role of this mission in this new situation? Has this been considered by the Government and by the European Union? Is it envisaged that the mission might play some role in trying to integrate those elements of the Taliban that want to come into a relationship with the Kabul regime? Is it envisaged that this police mission could play a role there? What is being done about the fact that we have not achieved the 400 target on numbers? Are we still trying to achieve it or are we accepting that this mission will not achieve its original goals? What do we think its function is in the changed situation and how are we going to ensure the safety of our people, to the extent that we can ensure the safety of our people in what is going to be an increasingly fragile situation? For instance, one could well envisage in the years ahead a split among the insurgents; between those who want to do a deal and those who are rejectionists. This has happened in similar situations before.

It will be interesting to hear from the Government what kind of deliberations are now taking place, taking into account the lessons of this wonderful report and how these are being put in the context of the new situation facing us in Afghanistan. Whatever the outcome of this particular mission, there are general policy lessons for us in this and for the European Union.

The noble Baroness, Lady Bonham-Carter, spoke about problems in the way that the mission had originally been set up. Page 31 of the report refers to problems of bureaucracy and procurement. This is a really sorry tale of high EU aspirations not being met in a timely and satisfactory manner.

I agree totally with my noble friend Lord Sewel that it is quite intolerable that bureaucratic disputes between NATO and the EU should put people on the ground at risk in a very difficult situation such as we have in Afghanistan. This fundamental point has to be resolved; Afghanistan, I am sure, is not the only failing state in which we will have to try to build up institutions in the coming years. I am a strong believer in the role of the EU in peacekeeping and peace enforcement in the Petersberg tasks. Those tasks are challenging, but just because we are western—perhaps I am distorting what the noble Earl, Lord Sandwich, thinks—it does not mean that we cannot succeed in these environments. We will face similar problems in many other parts of the world and we must become more effective at tasks where a mix of civilian and military capabilities is needed. That is the basis of the little experience of these matters that I had when I was an adviser in No. 10 Downing Street. The Chiefs of Staff always used to say that the big problem in the places with which we were then dealing, such as Bosnia, was not the effectiveness of the military but the fact that we had not been able to marshal the necessary civilian resources in a timely way, because one could not expect troops to do these things on their own.

That means that we as a country have to look at how we better organise joint civilian and military capabilities and whether we support the idea—as I do—of a joint command centre for them. It is clear from the evidence of this report that there is great deficiency in the planning of these types of operations and their command and control arrangements. These need to be sorted.

I would be interested to know what view the Government take of these issues. I thought that they were rather muted on the big, long-term conclusions in their response to Recommendation 12 of the report. There was talk of working to progress relations between the EU and NATO at operational level, encouraging further information-sharing and increasing co-ordination on the ground. Of course, we want all those things, and anyone with any sense would, but are there wider, bigger lessons that the Government will draw from this excellent case study in the problems of civilian and military co-operation? Will the Government use this excellent report to formulate a new and bolder policy? We have here an excellent opportunity for British leadership in the European Union and NATO in future.

6.04 pm

Lord Wallace of Saltaire: I thank all those who have contributed to this valuable debate. I particularly thank the noble Lord, Lord Liddle, for his very constructive speech.

I welcome this valuable and critical report. We all recognise that it contains a number of lessons to be taken on board by the British Government and all those other Governments within the European Union. As the noble Lord, Lord Liddle, has rightly said, the report raises questions in case after case with which we will have to grapple in the coming years. After all, this is one of several civilian missions taking place under CSDP. It is the second largest after Kosovo but there are a number of other missions dealing with conflict prevention, state reconstruction and the promotion of law and order—and there will be more. There will have

to be bilateral and multinational efforts for the foreseeable future. Her Majesty's Government are working on a new building security overseas strategy that will expand the conflict pool funds, and will do their best to provide the resources and experience to be able to play a wider role in this effort of rebuilding good governance and the rule of law in weak and failed states. We all understand that that will constitute a lot of what British, European and other foreign policies are going to have to be about.

One of my colleagues said to me yesterday that the one thing he did not accept in Robert Gates's speech criticising the Europeans in NATO was its assumption that in future what we need most of all is greater military capacity. Actually what we need, as the noble Lord, Liddle, remarked, is an increased mixture of civilian and military capacities. Moving from the military to the civilian, which is what we are trying to do in Afghanistan, is part of how one begins to rebuild state capacity and, even more importantly, civilian confidence in state capacity and in the fairness and equity of the state. However, a number of contributors to this debate have recognised that this is a very long-term process and that timescales of state building and building the whole concept of civilian police—that took a long time to develop in this country—do not fit very easily with timescales of military withdrawal after an intervention. We hope that we have done enough to build the basic framework for a civilian police force and to establish links with a half-decent judicial system—that also takes a great deal of time to build—as the military withdrawal takes place. We will be able to provide continuing support for those institutions over the coming years. I am very grateful for the critical comment. I accept that the report points to a number of things that are wrong in the way in which Europeans have reacted to this set of enormous problems. However, lessons have been learnt and there are more lessons to learn.

One of the things that are not indicated in the report, which I should at least admit since I cover the Home Office as well as the Foreign Office, is that Britain has particular difficulties in seconding people to foreign countries on this sort of service because we do not have our own gendarmerie. We have a local structure of police and police expect to serve in Britain within their county, region or community. They do not move very much. Looking at the figures, the French, for example—

Lord Sewel: That is a very interesting point, but would that provision not be facilitated if that sort of service outwith the UK acted as a plus mark, as it were, in the promotion of police in this country?

Lord Wallace of Saltaire: Indeed. I should remark, incidentally, that when we first engaged in this provision in the western Balkans, a very high proportion of the UK police who were seconded were from the Royal Ulster Constabulary, which was a different sort of force used to serving in a slightly different capacity. Certainly it is a question that we have to continue to work with, but again I remark that it would be easier for the French or Italians to second larger numbers of personnel to the NATO police training mission, which is much more concerned with training a gendarmerie, so to speak, than it has been for all of us to find local civilian police, who come from a different culture and background. The emphasis has been much more difficult—that of building the concept of a local and civilian police force.

A number of criticisms have been made of the enterprise so far, and I shall try to answer a few of them. As the noble Lord, Lord Selkirk, and others have pointed out, we know that we have real problems in striking a balance between quantity and quality. The aim is to build an Afghan national police force of 130,000. We are not there yet, and the question of how much time you spend on training and how much on providing basic literacy skills is very much part of the trade-off. As noble Lords will know from the report, the NATO mission has done much more for basic literacy and training of that sort, while EUPOL has become much more specialised in providing leadership training for senior police officers and the intermediate ranks. Part of the improving informal relationship between NATO operations in Afghanistan and EUPOL has been a recognition that there are useful differences between the functions of each mission.

That also answers some of the questions that the noble Lord, Lord Teverson, asked about whether the police are actually playing a paramilitary role. The answer unavoidably has to be that to some extent the gendarmerie forces are playing such a role, but EUPOL is trying to provide the local police who will work with the local judiciary, as we also helped to develop that. That will provide the community policing which it has taken us a long time to develop in this country and which, I remember from the many stories that my father told me, was not entirely free of local corruption and patronage even 50 years ago. It will of course take a long time to build up to what we here regard as modern standards, and it will take a great deal of time to build a literate police force. As I read the report, I wondered how high a proportion of the Pakistani police force was literate. There are some severe problems that are not just especial to Afghanistan.

On the question of attrition, noble Lords know that matters have improved a great deal. They were appalling but they are now better. I note this honest comment in the government response to the committee:

> "The reality is that many parts of Afghanistan are not yet ready for civilian policing".

We have to do our best to help to make it ready for civilian policing, but there is always this problem.

Lord Radice: What is that sentence actually saying? Is it a euphemism for Afghanistan being so ignorant and barbaric that it is not ready for civilian policing, or is it saying that these areas are actually under Taliban control?

Lord Wallace of Saltaire: It is partly saying that these areas are still extremely insecure and are so much in the hands of what one has to call tribal or clan societies that patronage systems get in the way of what we regard as modern policing. There are parts of southern Italy where this is also not entirely absent, as the noble Lord, Lord Radice, will know.

Lord Radice: My family has not been in Italy for 150 years.

Lord Wallace of Saltaire: Like me, the noble Lord goes on holiday there. My wife and I spent a week in the heel of southern Italy some time ago, and it was quite interesting to read about some of the local ways in which policing is provided and order is maintained. We all understand that there is a continuum between our idea of perfect civilian policing and perfect law and order, which we have not quite achieved in this country but have gone a long way towards. The Afghan situation is starting very much at the other end; indeed, noble Lords remarked that the situation there has gone backwards over the past 30 or 40 years. With our different contributions—our bilateral mission in Helmand and our contribution to EUPOL—we are helping to rebuild the beginnings of a civilian police and judicial structure, recognising that what we are putting in is only beginning to build and cannot reach what we would regard as modern standards in a short period.

Lord Selkirk of Douglas: Is the Minister aware that NATO has lengthened its training period for the police from six weeks to eight? Will that happen with EUPOL, has it happened or is it currently under consideration? It would be a great help if he could give some indication.

Lord Wallace of Saltaire: I do not have the information on that; I will write to the noble Lord.

I turn to the problem of decisions in Brussels. The report was rightly critical of the Brussels bureaucracy. I happen to have former students working in this area in what was the Council Secretariat and is now becoming the EU External Action Service, and I am struck by how much they have all had to learn in creating a new structure and in developing this new concept of civilian operations jointly. I think we all recognise that doing anything like this in the context of an international organisation is not entirely easy; the levels of trust are not too high so the levels of accountability, as with the initial problems over procurement, are low. I have the impression—this is certainly what I have been briefed—that lessons have been learnt, and questions of how future and continuing missions and relations between the Brussels institutions and mission leaders in the field will be managed in future are now improving.

I do not have the figures to show where secondees are coming from, how easily different groups work together or whether one should point a particular finger at some member states for not pulling their weight as much as others. That is an area that the committee or others might like to look at in future. I was impressed by the written memorandum from the researcher from Stiftung Wissenschaft und Politik who is clearly doing some very valuable work on this. We all know that we have a great deal to learn, but we also know that the Americans are envious of the EU's ability to apply this mix of civilian and military resources and feel that that is not something that the US is yet able to do—it tends to put the military first and not provide the full mix that we would like to have.

Many other points were raised in this debate, and I shall deal with one or two. The noble Earl, Lord Sandwich, remarked on regional co-operation. We all understand that we cannot resolve the problem of Afghanistan on its own. I remind him, though, that although India is very active there and in many ways is a natural partner, the reaction in Pakistan to India playing a larger and more visible role, particularly with Afghanistan's security forces of all sorts, would be such as to make that an extremely delicate area. It is almost like saying, "We recognise that Iran has legitimate interests in Afghanistan"—which of course it does. These are very difficult areas. Pulling in Afghanistan's neighbours to help them is not entirely easy, given the delicacy and difficulty of the region as a whole.

The EU mission is on an upswing at present. It has a first-class Finnish leader and it has more people on the ground than previously. The figure is not yet up to 400, but it is well into the 300s. The sense in Brussels and London is that the situation has improved and is continuing to improve. That is not to say that things are going very well. As those who have read Sherard Cowper-Coles' book are extremely well aware, Afghanistan presents a very difficult situation. Giving ordinary people in the provinces outside Kabul confidence in the state and in its governance is extraordinarily difficult. EUPOL has therefore begun with city policing and is working in particular in Kabul and a number of other areas to try to build civilian city policing as a constructive way forward.

We recognise that what we are doing in training leaders of the police force is a long-term investment, but we hope that it is improving and providing the leadership for the much larger number of police recruits who are being trained through the NATO mission. We also feel that EU/NATO co-operation has improved and is continuing to improve on an informal basis without us stubbing our toes on the underlying problems of formal EU/NATO relations. However, that is something of which the Government are acutely aware.

To come back to where I started, it is an active concern of the British Government, as it was of our predecessors, to continue to improve our capabilities in this very large area, in which weak and failed states need to make the transition to stronger governance, a more effective rule of law and, as far as possible, the building of civil society and democratic institutions. That is what the conflict pool has been about. It is the area on which we continue to work, and it is something that the Government are talking about with civilian police providers and others, as well as with our partners in Brussels.

I thank the committee very much for this report. I look forward to continuing reports on this area, and I hope that other Governments, as well as many people in Brussels, have read it as well.

6.22 pm

Lord Teverson: My Lords, I genuinely thank all those who have contributed today. The debate has been quite clear about the challenges and issues facing the mission and Afghanistan more broadly. I thank the committee members and also the noble Earl, Lord Sandwich.

I want to comment on one thing that the noble Earl mentioned which touched a nerve to a degree. I refer to how much we try to impose western standards or

means of working on those on other continents with different cultural backgrounds, although there are certain universal values. I know that that is not exactly what the noble Earl said but I specifically asked one of our witnesses whether Afghanistan had a tradition of policing before the civil war and the Russian invasion, and the answer was as follows:

"Yes, there were what are effectively today being called the civil order police, in the tradition of a gendarme. There was a tradition of having that. Again, mostly that began in the mid-20th century. So there was not a historical tradition of policing, but certainly people understood police; what they did and what their purpose was".

I know that this is not what the noble Earl is saying but we are also capable of thinking that traditional societies such as that in Afghanistan do not understand things such as policing. However, they understand law, justice and all those concepts just as we do and as we demand for our stable and fair society.

I thank the Minister for his responses. I agree with the noble Lord, Lord Liddle, that the report's lesson for the future is that if missions are going to be put into the field under the European defence and security policy—whether those missions are military or civilian—the policy needs to deliver what it says it is going to deliver. If it does not, it will lose the respect of the international community, and those missions will inevitably put people's lives on the line without being able to be effective in what they are trying to do.

That leads on to the bigger question about Afghanistan. If the outstanding improvements are not made and this mission is not made to be effective, the committee would, I think, question strongly our right to put on the line the security of European citizens who are committed and volunteer for something that we are saying cannot necessarily succeed.

I thank very much the committee's staff, Kathryn Colvin, Oliver Fox and Bina Sudra, for their work in delivering this report. I commend the report to the Committee.

Motion agreed.

Committee adjourned at 6.26 pm.

Written Statements

Wednesday 22 June 2011

Afghanistan

Statement

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): My right honourable friend the Secretary of State for Foreign and Commonwealth Affairs (William Hague) has made the following Written Ministerial Statement.

I wish to inform the House that the Foreign and Commonwealth Office, together with the Ministry of Defence and the Department for International Development, is today publishing the seventh progress report on developments in Afghanistan.

The report focuses on key developments during the month of May.

Al-Qaeda founder and leader, Usama Bin Laden, was killed by US forces in Pakistan on 2 May. His death, while significant, does not change our strategy in Afghanistan and we remain committed to our military, diplomatic and development work.

On 17 May the Prime Minister confirmed to the House of Commons Liaison Committee that, by February 2012, approximately 400 UK military personnel will have withdrawn from Afghanistan, following the conclusion of specific planned tasks. Over 200 of these troops have already been withdrawn. He emphasised that the UK remains the second largest troop contributor, operating in the hardest part of the country.

Good progress in Afghan uniformed police training and development continued to be made. Nevertheless, leadership training is challenging, owing to inconsistent support from Afghan district level leadership. The increasing number of Afghans wishing to serve in the Afghan National Police, as officers, has enabled the Ministry of Interior to apply higher selection standards.

The Taliban's fighting season resumed in May. As expected, the number of violent incidents increased, as the insurgency attempted to regain lost momentum. Overall, levels of violence, although higher than those seen in April, are broadly in line with what we would expect for this time of year.

I am placing the report in the Library of the House. It will also be published on the Foreign and Commonwealth Office website (www.fco.gov.uk) and the HMG UK and Afghanistan website (http://afghanistan.hmg.gov.uk/).

BBC: World Service

Statement

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): My right honourable friend the Secretary of State for Foreign and Commonwealth Affairs (William Hague) has made the following Written Ministerial Statement.

In line with the Government's response to events in the Middle East and North Africa and following the debate on 19 May, the FCO will provide some additional funding for the BBC World Service beyond that provided for in the 2010 spending review (SR10).

The context for the spending review was the fiscal legacy left by the previous Administration. This meant that the Foreign and Commonwealth Office, in line with other government departments, had to make difficult decisions. I therefore agreed total funding levels for BBC World Service of £253 million/£242 million/£238 million over the first three years of the SR10 period. After this time funding of BBC World Service will be transferred to the licence fee.

The original settlement was both fair and proportionate. A 16 per cent real cut in funding over the period, while challenging, is consistent with the settlements provided to other publicly funded bodies. It kept the BBC World Service's share of the FCO family's overall budget at or above its 2007-08 level: in 2007-08 the proportion was 13 per cent, and by the time the funding for the World Service transfers to the licence fee it would have been slightly under 14.4 per cent. The World Service settlement was also proportionate to the savings the BBC will make as a whole under the licence fee settlement.

The settlement did present difficult challenges for the BBC World Service. It meant that the World Service has faced some hard choices and decisions, as have the FCO and the British Council. The Government have been looking carefully at what we can do to help. In March 2011 I announced a one-off contribution of £3 million towards World Service restructuring costs.

The BBC itself has also underlined its long-term commitment to the future of the BBC World Service through contributing significant funds, totalling £20 million over three years, towards World Service restructuring costs. I also welcome the BBC's recent agreement that the World Service will be able to reinvest the reduction in its planned contribution to the overall BBC pension deficit to mitigate the impact on services of the reduction in budget. I understand from the BBC that this should release an extra £9 million over three years for investment in services. One area it has identified as a priority for such funding is the continuation of the Hindi shortwave service. I was pleased that the BBC World Service had itself identified savings earlier in the year to enable a reduced Hindi shortwave service to continue, and I strongly welcome this additional support.

In line with the Government's response to events in the Middle East and North Africa and following the debate in the House of Commons on 19 May, I asked the FCO to look again at whether there were other options open to us to provide support. We recognise that the world has changed since the settlement was announced in October last year—indeed since the World Service announced the subsequent changes to services, including some closures, on 26 January. In the debate on 19 May, a number of Members of Parliament highlighted the impact of the reduction in World Service funding on the BBC Arabic Service. It is right that we should look at ways in which we can assist the BBC Arabic Service to continue its valuable work in

the region. So I have agreed that we will provide additional funding of £2.2 million per annum to enable the World Service to maintain the current level of investment in the BBC Arabic Service. This will increase the World Service's funding as a proportion of the FCO's budget to just over 14.5 per cent.

In addition the FCO is discussing providing funding from the Arab Partnership Initiative for specific projects proposed by the BBC Arabic Service or World Service Trust. Discussions are continuing about a number of projects which are designed to support the development of the media and wider civic society in the Middle East and North Africa region which taken together may mean an additional investment of up to £1.65 million over the next two years.

My right honourable friend the Secretary of State for International Development has recently stated that his department is discussing placing its relationship with the BBC World Service Trust on a longer term and more strategic footing. Any support to the World Service Trust provided by the Department for International Development (DfID) will be classed as official development assistance (ODA) in line with the internationally agreed standard laid down by the Development Assistance Committee of the Organisation for Economic Co-Operation and Development (OECD). I believe that a proportion of the activities carried out by the World Service itself may also be eligible to be classified as ODA. The FCO is working with DfID to agree that any future ODA spend reported by the World Service is fully consistent with the OECD definition.

I have discussed this overall approach with the chairman of the BBC Trust and we have agreed that we will continue to work together to ensure that the World Service retains its global influence and reach in a rapidly changing world.

Finance: Equity Markets

Statement

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): My right honourable friend the Secretary of State for Business, Innovation & Skills, and President of the Board of Trade (Vince Cable) has today made the following Statement.

My department published a call for evidence in October 2010 entitled *A Long-term Focus for Corporate Britain*. The call for evidence responded to concerns that capital markets may be increasingly focused on the short-term to the detriment of long-term sustainable growth in the UK. The response to the call for evidence made it clear that, while the UK has strong equity markets, there is scope for improvement.

I have therefore invited Professor John Kay to carry out an independent review, which will examine investment in UK equity markets and its impact on the long-term performance and governance of UK quoted companies. This includes the actions of boards, shareholders and their agents; the impact of rules and practices; and the level of transparency and engagement in the investment chain. The review will also consider the impact of increasing fragmentation and internationalisation of UK share ownership. Professor Kay will be supported by an expert panel of investor and corporate practitioners.

I have placed copies of the terms of reference for the review in the Libraries of the House.

Iraq: British Hostages

Statement

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): My right honourable friend the Secretary of State for Foreign and Commonwealth Affairs (William Hague) has made the following Written Ministerial Statement.

I would like to update the House in the case of the five British hostages who were kidnapped from the Ministry of Finance in Baghdad in May 2007. The House will recall that one of the hostages, Peter Moore, was released alive in December 2009.

The bodies of Jason Creswell and Jason Swindlehurst were returned in June 2009 and that of Alec Maclachlan in September 2009. More tragically, the last remaining hostage, Alan McMenemy, who we believe to be dead, has yet to be returned, though we continue our efforts to bring him home.

The House will note that HM Coroner for Wiltshire and Swindon, who is responsible for determining the cause of death, has now completed his inquest into the deaths of Mr Creswell, Mr Swindlehurst and Mr Maclachlan. HM Coroner has recorded a verdict of unlawful killing. The evidence placed before the inquest shows quite clearly that these men were deliberately and brutally murdered by their captors.

I am aware that for the family of Alan McMenemy their suffering goes on. Let me reassure Alan's family, and the House, that we will continue our efforts to bring Alan home.

We understand that the Iraqis are investigating the circumstances of the kidnapping, which we hope will lead to justice for these men. I call upon those holding Alan to show compassion to his wife and children and to return him immediately.

I am sure the House joins me in extending our deepest condolences to the families and friends of these men, and our hope that Alan McMenemy will be returned soon.

Maritime Training

Statement

Earl Attlee: My honourable friend the Parliamentary Under-Secretary of State for Transport (Mike Penning) has made the following Ministerial Statement.

The Government's principal objective in supporting Merchant Navy training is to facilitate an adequate supply of UK maritime expertise to meet the nation's economic and strategic requirements, by assisting organisations providing Merchant Navy training. In this difficult economic period, the Government have decided that it is right to review the continuing requirement

for government support for training and skills development in this sector and how best to spend any continuing government funding.

In my Written Ministerial Statement of 8 December 2010 (*Official Report*, cols. 24-26 WS) I announced my intention to commission a review and I can confirm that today I have launched an invitation to tender. The successful bidder will present its findings to an independent panel, which will report to me by the end of the year and make practical recommendations on how the economic requirement for trained seafarers in the UK can be best met, having regard to current financial constraints.

The terms of reference for the review are as follows:

to review the UK requirement for trained seafarers at sea over the next decade;

to review the UK requirement for trained seafarers ashore over the next decade;

to examine the extent to which the above requirements have to be met by UK seafarers;

to review the effectiveness and efficiency of the existing funding arrangements and the future need for government intervention to ensure the supply of trained seafarers;

to identify options for supporting the training of seafarers and make recommendations which address the issue of value for money and are reflective of future UK requirements for trained seafarers; and

to examine whether previous training targets are reflective of future needs.

Regional Development Agencies

Statement

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): My honourable friend the Minister for Business and Enterprise (Mark Prisk) has made the following Statement.

I am pleased to announce that I have decided to extend terms of appointment for 24 existing RDA board members listed below up until RDA closure.

RDA	*Board member*
Advantage West Midlands	John Crabtree OBE, Cllr Ken Taylor, Dr David Brown, Cllr Mike Whitby
East of England Development Agency	Shona Johnstone, Madeleine Russell, Robert Swann
Northwest Regional Development Agency	Vanda Murray, Dr John Stageman, Lord Smith of Leigh, Mrs Anne Selby
One Northeast	Kate Welch, Lord Shipley, Peter Jackson
South East England Development Agency	Pamela Charlwood, Leslie Dawson, Keith Mitchell
South West Regional Development Agency	Kelvyn Derrick, Ian Ducat
Yorkshire Forward	Barry Dodd OBE, Cllr Kath Pinnock, Mr Bill Adams, Mr Ajaz Ahmed, Mr John Vincent

I have agreed to these appointment extensions, 23 starting on the 14 December 2011 and one starting on 5 March 2012 for a period of no more than one year in order that the RDA boards can remain quorate up until the expected closure of RDAs in March 2012.

I have placed further details of these appointment extensions, including biographies, in the Libraries of both Houses. I can confirm that the appointments were made in accordance with the Commissioner for Public Appointments Code of Practice.

Roads: Truckstop Facilities

Statement

Earl Attlee: My honourable friend the Parliamentary Under-Secretary of State for Transport (Mike Penning) has made the following Ministerial Statement.

This Statement is to inform the House that following closure of the roadside facilities policy consultation on 2 July last year, I have reviewed the responses and am introducing a change to the policy to permit the development of truckstops on the motorway network.

The consultation identified strong support from the haulage industry for the development of truckstops. Proposals for dedicated truckstop facilities will now be considered in the context of existing and/or proposed rest facilities on the strategic road network, and will be determined on their individual merit. This will include truckstop facilities that can be accessed direct from motorways—motorway truckstops—which are a type of facility not permitted until now. Where there is evidence to demonstrate that demand for lorry parking exceeds supply, the development of truckstop facilities at existing service areas would be viewed favourably. Proposals for motorway truckstops are unlikely to be supported if they would prevent a potential motorway service area (MSA) being built.

Detailed advice on the mandatory and permitted features of all categories of truckstop is set out in the table that is attached at appendix 1 to the written copy of my Statement.

These changes supplement DfT Circular 01/2008 (April 2008). Aspects of policy not touched on in this Statement will continue to apply.

I am currently considering ways to reduce regulation, increase competition and improve still further the quality of motorway service areas. To this end, I have instructed officials in my department to identify those elements of the policy that might instead be better determined at a local level through the current planning system.

I have also instructed my officials to work with the Department for Communities and Local Government to consider how best to take these issues forward in the context of the National Planning Policy Framework. Separately, we will produce an associated DfT technical note, setting out requirements in respect of road safety and operational issues.

This approach accords with the Government's twin aims of decentralisation and localism, reducing the burden of bureaucracy and strengthening local accountability. It will encourage competition and, through this, improve service for users.

Appendix 1

Truckstops serving the Strategic Road Network—features and levels of provision

Features and levels of provision	*Truckstops on Motorways*	*Truckstops signed from Motorways*	*Truckstops on All- Purpose Trunk Roads*
Opening times	24 hours a day, 365 days a year.	24 hours a day, 365 days a year.	Minimum 12 hours per day, every day except Christmas Day, Boxing Day and New Year's Day.
Provision of fuel.	Permitted	Permitted	Permitted
Provision of facilities to enable electric powered vehicle transfer (i.e. on-route exchange of un-charged vehicles for charged vehicles) or the exchange of used and charged battery cells.	Permitted for HGVs	Permitted for HGVs	Permitted for HGVs
Parking bays may be designated with recharging facilities for use by electric powered vehicles, for which a payment may be levied.			
Parking and provision at the levels laid down in Policy Annex B of DfT Circular 01/2008:			
—HGVs (3,500kg or above) (including self-propelled horse boxes)	Mandatory	Mandatory	Mandatory
—Abnormal loads	Mandatory	Mandatory	Permitted
Free parking for up to two hours. Subsequent payment for parking must be possible as an on-site cash transaction.	Mandatory	Mandatory	Mandatory
Provision of high security parking for which an additional charge can be levied after an initial two hour period.	Permitted	Permitted	Permitted
Free toilets and hand-washing facilities for all roadside facility users (at the levels laid down in DfT Circular 01/2008) with no obligation to make a purchase.	Mandatory	Mandatory	Mandatory
Shower and washing facilities for HGV drivers, including secure lockers in the shower/washing area. To be located near to HGV parking, at the levels laid down in DfT Circular 01/2008.	Mandatory	Mandatory	Mandatory
Maximum retail floor space (net internal area for both online and junction sites). Additional areas may be used for retail storage, but there shall be no public access and sales shall not be permitted from these areas. The allowance for retail space excludes restaurant facilities preparing food & drink for consumption on the premises.	Permitted maximum 500m^2	Permitted maximum 500m^2	Permitted maximum 500m^2
Trading on bridges connecting two sites across motorway.	Prohibited	Prohibited	Prohibited
Traffic information points to help the public make informed travel decisions and plan their onward journeys.	Permitted	Permitted	Permitted
Games and/or exercise area floor space (games, gaming machines, or exercise machines) for use by Lorry drivers only. Uses that specifically generate traffic will not be permitted.	Permitted maximum 100m^2	Permitted maximum 100m^2	Permitted maximum 100m^2
Facilities for waste recycling in the amenity building and picnic areas.	Permitted	Permitted	Permitted

Truckstops serving the Strategic Road Network—features and levels of provision

Features and levels of provision	*Truckstops on Motorways*	*Truckstops signed from Motorways*	*Truckstops on All- Purpose Trunk Roads*
Access to a cash-operated telephone (card phones alone will not suffice).	Mandatory	Mandatory	Mandatory
Advertisements situated within roadside facilities that are visible from the strategic road network (including advertisements mounted internally or externally on footbridges or connecting road bridges).	Prohibited	Prohibited	Prohibited
Sale or consumption of alcohol on the premises.	Prohibited	Subject to licensing procedures	Subject to licensing procedures
Hot substantial food, snacks and hot drinks available between 05:00-10:00 and 17:00-22:00.	Mandatory	Mandatory	Mandatory
Access for up to two hours for those carrying out emergency repairs to broken-down vehicles.	Mandatory	Mandatory	Mandatory
Access for parties carrying out duties for and on behalf of the Secretary of State for Transport.	Mandatory	Mandatory	Mandatory
Site must also comply with all applicable equality legislation.	Mandatory	Mandatory	Mandatory
Bridge or underpass connecting facilities on opposite sides of a motorway.	Prohibited	Prohibited	Prohibited
Use as an "operating centre" for the purposes of the Goods Vehicles (Licensing of Operators) Act 1995 or the Public Passenger Vehicles Act 1981.	Prohibited	Prohibited	Subject to impact assessment.
Hotels offering overnight accommodation for lorry drivers without generating additional new journeys, additional traffic or a net increase in vehicle mileage.	Permitted	Permitted	Permitted
All other development.	Prohibited	Prohibited	Subject to impact assessment

Written Answers

Wednesday 22 June 2011

Abortion

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government how many abortions were notified as being carried out in England in each year since 2000 on women whose normal place of residence was India, broken down by (a) age of the woman, (b) gestation of the pregnancy and (c) grounds for the abortion. [HL9980]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): Information on abortions notified as being carried out in England in each year since 2000 on women whose normal place of residence was India can be found in the following table. Numbers less than five have been suppressed in line with Office for National Statistics guidance on disclosure. This also means that the data cannot be broken down by age, grounds and gestation.

Abortions in England and Wales to women resident in India 2000-10

Year	*Number*
2000	6
2001	..
2002	..
2003	..
2004	6
2005	8
2006	..
2007	..
2008	..
2009	..
2010	..

Notes:
.. suppressed value less than 5 (between 0 and 4)

Armed Forces: Aircraft

Questions

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government how many RAF Tornado GR4 aircraft are fully configured for operations in (a) Afghanistan, and (b) Libya. [HL10020]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): From the current Tornado GR4 fleet, 82 meet the theatre entry standard for operations over Libya and, of these, 32 meet the higher theatre entry standard for Afghanistan.

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government how much additional funding has been provided for the RAF Tornado GR4 force since United Nations Security Council Resolution 1973. [HL10021]

Lord Astor of Hever: As the Chancellor of the Exchequer has made clear, the additional costs of operations in Libya will be fully met from the reserve. This will include the additional operational costs of the Tornado GR4 force. These costs are still being collated and no request for funds from the reserve has been made to date.

Aviation: Air Quality

Question

Asked by ***The Countess of Mar***

To ask Her Majesty's Government whether they have given consideration to requiring United Kingdom carriers to fit the existing fleet of commercial aircraft with filtered bleed air or to use atmospheric air instead of bleed air; and, if not, why not. [HL10004]

Earl Attlee: Consideration of such matters is the responsibility of the European Aviation Safety Agency rather than the UK Civil Aviation Authority.

Care Services: Inspection

Question

Asked by ***Lord Campbell-Savours***

To ask Her Majesty's Government how many persons employed and carried out investigations of care facilities on behalf of (a) the National Care Standards Commission, (b) the Commission for Social Care Inspection, and (c) the Care Quality Commission, in each year since 2002. [HL9752]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Care Quality Commission (CQC) has provided the following information.

The CQC has advised that it does not hold any data relating to employee numbers at the National Care Standards Commission, which was abolished on 31 March 2004. The CQC has also advised that it does not hold any data on employee numbers at the Commission for Social Care Inspection (CSCI) from 1 April 2004 and 30 March 2007 because the CQC introduced new HR systems in April 2009 and is unable to provide a break down of resources from the predecessor bodies prior to 2007.

CQC and CSCI filled frontline posts [1]

Organisation	*Date*	*Number of filled frontline posts*
CSCI	31-Mar-07	1,150[2]
CSCI	01-Apr-07	871
CSCI	31-Mar-09	858
CQC	01-Apr-09	858[3]
CQC	01-Apr-10	878[4]
CQC	01-Apr-11	807

While there was a wider recruitment freeze in the public sector, it was agreed that the CQC inspectors play a business critical role investigating first hand the care received by people across the country. The department, therefore, approved the recruitment of 75 inspectors in October 2010. Furthermore, since

February, the department has relaxed the recruitment controls for the CQC, and the hiring of inspectors is now the direct responsibility of the CQC. The CQC is currently in the process of recruiting additional inspectors.

Notes:

[1] Data available from 31 March 2007 only.

[2] As at 1 April 2007 279 frontline staff moved to OFSTED with the transfer of responsibility for the inspection of children's services.

[3] For the 1st year of operation of CQC, only those frontline staff transferred from CSCI were engaged in adult social care inspection. This figure is therefore only staff engaged in adult social care inspection. It is made up of 750 inspectors and 108 local area managers who were engaged in some inspection activity.

[4] In April 2010, frontline staff moved to mixed portfolio of inspection. This figure includes inspectors working across health and adult social care. It does not include local area managers and therefore data are not directly comparable.

Data from 31 March 2007 to 1 April 2010 inclusive includes people working on annual performance assessment.

Asked by ***Lord Campbell-Savours***

To ask Her Majesty's Government whether the submission of annual quality assurance assessments by Castlebeck care and hospital facilities have breached guidance issued by the inspection authorities. [HL9813]

Earl Howe: Castlebeck is a provider of both care homes and independent hospitals. Before the new registration system under the Health and Social Care Act 2008 was implemented on 1 October 2010, these providers were subject to different regulations and requirements. Annual quality assurance assessments (AQAAs) were a requirement of care homes under the Care Standards Act 2000.

The Care Quality Commission (CQC) has advised that Castlebeck returned an AQAA a day late in October 2009. This was the only occasion the CQC is aware of where Castlebeck breached the guidance on producing an AQAA. The CQC decided that taking action against the provider would be disproportionate in this instance.

Castlebeck hospital facilities were not required to submit AQAAs. Independent hospitals were required to complete an annual self-assessment. A search to establish whether Castlebeck breached guidance on submitting annual self-assessments for its hospital facilities would incur disproportionate cost.

Asked by ***Lord Campbell-Savours***

To ask Her Majesty's Government whether all Southern Cross and Castlebeck care and hospital facilities have been subject to the minimum of two unannounced inspections per year set out in Inspecting for better lives. [HL9871]

Earl Howe: Inspecting for Better Lives was a Commission for Social Care Inspection (CSCI) methodology, which was used to carry out its regulatory work.

The requirement to undertake a minimum of two inspections per year stopped on 1 April 2006, when new regulations under the Care Standards Act 2000 came into force. These regulations required:

a care home, a domiciliary care agency, a nurses' agency or an adult placement scheme to be inspected a minimum of once in every three year period; and

an independent hospital to be inspected a minimum of once in every five-year period.

Whilst minimum inspection frequencies were set in regulations until the new registration system under the Health and Social Care Act 2008 was brought in, the Care Quality Commission (and its predecessors CSCI and the Healthcare Commission) took a risk-based approach, carrying out more frequent inspections of poor services or where concerns identified possible risks.

Care Services: Winterbourne View

Questions

Asked by ***Lord Campbell-Savours***

To ask Her Majesty's Government what proportion of visits to Winterbourne Hospital for the purpose of inspection were unannounced visits. [HL9870]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Care Quality Commission (CQC) has provided the following information.

Winterbourne View was registered on 14 December 2006. Three inspections were carried out between registration and May 2011. These took place on 1 December 2008, 24 March 2009 and 15 December 2009. Reports of these inspections are available on the CQC website. The first two of these inspections were unannounced; the inspection on 15 December 2009 was announced.

Since the CQC was alerted to the abuse uncovered by "Panorama", it has acted quickly to safeguard the patients at Winterbourne View. The CQC has undertaken a responsive review into the service, including an unannounced visit to Winterbourne View. The CQC has worked with the provider, commissioners and other agencies involved to ensure the safety of residents. The CQC will be publishing a report on its findings in due course and taking appropriate action in relation to the service. In addition, the CQC is undertaking a review of all other Castlebeck facilities in England. Reports on these will also be published in due course.

Asked by ***Lord Campbell-Savours***

To ask Her Majesty's Government on how many occasions and on what dates concerns over the treatment of elderly persons at Winterbourne Hospital were reported to (a) the Commission for Social Care Inspection, (b) the Care Quality Commission and (c) the Local Government Ombudsman. [HL9889]

Earl Howe: The Care Quality Commission (CQC) has provided the following information.

Winterbourne View is registered as an assessment and treatment centre for people mainly with learning difficulties and mental health problems between the ages of 18-65. It has never been registered to provide services to elderly persons and the CQC is not aware that any elderly patients have ever been residents there.

The CQC is currently undertaking a review of all services run by this provider which includes all notifications and complaints received in relation to Winterbourne View since 2006. This will include its registration with the predecessor body the Healthcare Commission. It was not previously regulated by the Commission for Social Care Inspection.

Cornwall: Stannary Law

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what is the role of the county courts in Cornwall in administering stannary law. [HL9990]

The Minister of State, Ministry of Justice (Lord McNally): The Jurisdiction of the Stannary Courts was transferred to the county courts of Cornwall in consequence of the Stannaries Court (Abolition) Act 1896. If an issue of stannary law was raised in a claim or other application in one of those courts it would be for that court to determine the issue.

Embryology

Question

Asked by ***Lord Winston***

To ask Her Majesty's Government how many NHS cycles of in vitro fertilisation were commissioned in private hospitals in 2009 and 2010; and what was the average cost per cycle. [HL10161]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Human Fertilisation and Embryology Authority (HFEA) has advised that it requests that clinics reporting in vitro fertilisation (IVF) treatments into the HFEA Register indicate whether the treatment is funded by the National Health Service. However, the HFEA Register does not contain information about the ownership or organisational set up (NHS or private) of the clinic itself.

The following numbers are based on the number of cycles reported in the years 2009 and 2010 in clinics that described themselves as either Private or NHS/Private Partnership in their latest licence application. Clinics only have to apply for a licence at intervals of up to four years, so in some cases, this information might not be up to date. The analysis was run on 20 June 2011 and numbers can change subsequently when centres submit delayed treatment forms.

Clinic status as described in licence application form	*IVF cycles in 2009 where NHS funding was reported*	*IVF cycles in 2010 where NHS funding was reported*
NHS/Private Partnership	5,167	6,347
Private	3,044	2,911
Total	8,211	9,258

The HFEA has no statutory powers to regulate or collect information on the cost of fertility treatments; therefore, this information is not available.

Ethiopia

Question

Asked by ***Lord Chidgey***

To ask Her Majesty's Government what work they are undertaking in Ethiopia to assist the Government in providing democratic oversight and modernisation of Ethiopia's Armed Forces; what is the cost of this work; how it is being delivered; and what plans there are for future work in this area. [HL9938]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): The Ministry of Defence's engagement with the Ethiopian Armed Forces is principally through the defence attaché in Addis Ababa. Assistance is provided to projects for security sector reform and in support of capabilities to conduct peace support operations, at a cost of about £1 million in the last financial year. The Department for International Development also supports an MSc in Security Sector Management for senior Ethiopian officials and others from the region, delivered in Addis Ababa by Cranfield University.

Exports

Questions

Asked by ***Lord Hunt of Chesterton***

To ask Her Majesty's Government how the Cabinet Office intends to develop exports with competitive technological and commercial capabilities.[HL10196]

To ask Her Majesty's Government how the Department for Business, Innovation and Skills intends to develop exports with competitive technological and commercial capabilities.[HL10197]

To ask Her Majesty's Government how the Department for Culture, Media and Sport intends to develop exports with competitive technological and commercial capabilities. [HL10198]

To ask Her Majesty's Government how the Ministry of Defence intends to develop exports with competitive technological and commercial capabilities.[HL10199]

To ask Her Majesty's Government how the Department of Energy and Climate Change intends to develop exports with competitive technological and commercial capabilities. [HL10200]

To ask Her Majesty's Government how the Department for Environment, Food and Rural Affairs intends to develop exports with competitive technological and commercial capabilities.[HL10201]

To ask Her Majesty's Government how the Department for Work and Pensions intends to develop exports with competitive technological and commercial capabilities. [HL10292]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): The information requested covers a large number of government departments and is being collated. I will write to the noble Lord as soon as possible and will place a copy of the letter in the Library of the House.

Asked by ***Lord Hunt of Chesterton***

To ask Her Majesty's Government how the Northern Ireland Office intends to develop exports with competitive technological and commercial capabilities. [HL10218]

Lord Shutt of Greetland: These are matters for the Northern Ireland Department of Enterprise, Trade and Investment, and the Department of Business, Innovation and Skills, but my right honourable friends the Secretary of State for Northern Ireland and the Minister of State stand ready to offer what assistance they can to ministerial colleagues in both administrations.

Gaza

Question

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what assessment they have made of reported deaths in the Gaza strip detention centre run by the Internal Security Agency; and what representations they will make to the government of national unity. regarding the human rights of detainees in Gaza. [HL9589]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): We are aware of the case of a 52 year-old man who died while in Hamas' custody on 19 April 2011. We are also aware of another case of a man who is in a critical condition in hospital after being interrogated.

As we have done consistently in the past, we will continue to raise human rights concerns with the Palestinian Authority.

Government Departments: Research and Data

Question

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what research and data collection the Department for Communities and Local Government has (a) initiated, (b) terminated, and (c) amended since 12 May 2010. [HL9946]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): I refer the noble Lord to the Answer I gave to the honourable Member for Vale of Clwyd (Chris Ruane) on 10 June (*Official Report*, col. 532-33W).

Government Departments: Scientific Advisers

Questions

Asked by ***Lord Willis of Knaresborough***

To ask Her Majesty's Government who is the Departmental Chief Scientific Adviser for the Department for Culture, Media and Sport; and (a) when they were appointed and for how long, (b) what is their academic or experience background, (c) what is their civil service rank, (d) whether their post is full-time or part-time, and what other work commitments they have, and (e) on how many occasions during the past year they have had meetings with the Secretary of State or the Minister to whom they have direct responsibility. [HL9969]

Baroness Rawlings: The Department for Culture, Media and Sport currently does not have a Chief Scientific Advisor (CSA) in post and is considering options to fill this role.

Asked by ***Lord Willis of Knaresborough***

To ask Her Majesty's Government who is the Departmental Chief Scientific Adviser for the Department for Education; and (a) when they were appointed and for how long, (b) what is their academic or experience background, (c) what is their civil service rank, (d) whether their post is full-time or part-time, and what other work commitments they have, and (e) on how many occasions during the past year they have had meetings with the Secretary of State for Education or the Minister to whom they have direct responsibility. [HL10005]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): Carole Willis is the Chief Scientific Adviser for the Department for Education.

(a) She was appointed in August 2008 on a permanent contract.

(b) Carole's background is in economics, and she has experience in other government departments, including DWP, as well as from the private sector.

(c) Carole's Civil Service grade is SCS2.

(d) Her post is a full-time post as Director of Research and Analysis, which includes the role of Chief Scientific Adviser.

(e) Carole has met with the Secretary of State for Education, and other Ministers for the Department for Education, on 16 occasions in the past year.

Asked by ***Lord Willis of Knaresborough***

To ask Her Majesty's Government who is the Departmental Chief Scientific Adviser for the Department of Health; and (a) when they were appointed and for how long, (b) what is their academic or experience background, (c) what is their civil service rank, (d) whether their post is full-time or part-time, and what other work commitments they have, and (e) on how many occasions during the past year they have had meetings with the Secretary of State for Health or the Minister to whom they have direct responsibility. [HL10009]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Chief Scientific Adviser for the Department of Health is Professor Dame Sally C Davies.

Dame Sally was appointed to the post of Director General for Research and Development and Chief Scientific Adviser in 2004. The Chief Scientific Adviser role is not a fixed term appointment.

Dame Sally was appointed Chief Medical Officer for England and Chief Medical Adviser to the UK

Government on 1 March 2011 and remains Chief Scientific Adviser and responsible for Research and Development.

Dame Sally's qualifications (with year of achievement) are listed below:

1972 MB, ChB (Manchester)

1978 MRCP (UK)

1981 MSc (London) (Immunology, with distinction) 1982 MRCPath

1983 JCHMT Accreditation in Haematology 1992 FRCP

1997 FRCPath

1997 FRCPCh

1999 FFPH

2002 FMedSci

Dame Sally is a full time civil servant and has the Civil Service rank of Permanent Secretary (as Chief Medical Officer for England and Chief Medical Adviser to the UK Government).

Dame Sally meets with Ministers and the Secretary of State on a weekly, if not daily, basis.

Health and Social Care Bill

Question

Asked by ***Lord Touhig***

To ask Her Majesty's Government why the Prime Minister announced changes to the Health and Social Care Bill in a speech before the National Health Service Future Forum report was presented either to Parliament or to the Cabinet. [HL9933]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Prime Minister's speech of 7 June drew from both his own experiences listening to staff patients and stakeholders, and the public statements made by future forum leads during the listening exercise.

Health: HIV

Question

Asked by ***Lord Colwyn***

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 24 May (*WA 410*), in the light of the number of clinicians currently prevented from working, when they will publish the timetable for consideration and implementation of the recommendations of the Tripartite Working Group report on the management of HIV-infected healthcare workers, received on 20 April. [HL10001]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): We will consider the next steps in handling the recommendations of the Tripartite Group on the management of HIV-infected healthcare workers once we have received advice from officials and considered the report in detail. We anticipate receiving that advice during the summer.

Health: Liver Disease

Question

Asked by ***Baroness Randerson***

To ask Her Majesty's Government what steps they will take to ensure that standardised national and local prevalence and incidence data on Hepatitis C are collected and published each year once the Health Protection Agency is disbanded. [HL10172]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The White Paper Healthy Lives, Healthy People, set out that Public Health England will be responsible for information and intelligence for public health, taking on the existing functions of public health observatories, specialist observatories and cancer registries, alongside relevant current functions of the Health Protection Agency (HPA), (subject to agreement by Parliament).

In *Healthy Lives, Healthy People, Consultation on the Funding and Commissioning Routes for Public Health*, we set out that the prevention and control of infectious disease, including surveillance, would be one of the key functions of Public Health England, which is currently exercised by the HPA.

Health: Nutrition

Question

Asked by ***The Countess of Mar***

To ask Her Majesty's Government, following the publication of the new quality standards in the NHS Operating Framework 2011–12 published on 20 December 2010, what is the timetable for the development of standards for (a) nutrition in hospital, including for young people, (b) intravenous fluid therapy in hospitalised adult patients, and (c) pressure ulcers. [HL10133]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The National Institute for Health and Clinical Excellence (NICE) has been commissioned to prepare quality standards for nutrition in hospital, including young people; intravenous fluid therapy in hospitalised adult patients; and pressure ulcers, during the period 2011-12.

NICE provides progress updates on its quality standard programme on its website: www.nice.org.uk/aboutnice/qualitystandards/qualitystandards.jsp.

Health: Prescriptions

Questions

Asked by ***Baroness McDonagh***

To ask Her Majesty's Government what incentives they are exploring to ensure that healthcare workers, pharmacists and front-line staff in chemists actively promote pre-payment certificates to increase uptake and the number of people benefiting from the scheme. [HL10052]

To ask Her Majesty's Government how many people have applied to the prescription pre-payment certificate scheme in each of the past three years; and how many people the Government expect to join this scheme as a result of their plans to promote pre-payment certificates. [HL10053]

To ask Her Majesty's Government how much the prescription pre-payment scheme costs to administer and promote. [HL10055]

To ask Her Majesty's Government whether they are exploring how technology could be utilised to ensure that people who need to buy multiple prescriptions do not pay more than they would under the prescription pre-payment scheme. [HL10056]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The department produces free leaflets and posters providing information about all the help with healthcare costs including prescription pre-payment certificates (PPCs) for display in surgeries, pharmacies and hospitals. These can be ordered by phoning 0845 610 1112. We are aware that technological solutions may have some attractions but there are affordability and feasibility issues.

The administering of PPCs, medical exemption certificates and maternity exemption certificates is a single process carried out by the NHS Business Services Authority. It is not, therefore, possible to provide a separate cost for administering and promoting PPCs.

The following table shows how many applications for a PPC have been received in each of the past six years. A person may submit more than one application in a year. We have made no forecast of the number of applications expected to be received in future years.

PPCs issued or purchased (England)

	Duration of certificates			
Financial Year	*3-month*	*4-month*	*12-month*	*Total*
2005-06		638,413	524,232	1,162,645
2006-07		650,782	520,449	1,171,231
2007-08[1]	474,570	176,503	593,507	1,244,580
2008-09	730,592		652,870	1,383,462
2009-10	714,594		662,588	1,377,182
2010-11	689,434		701,164	1,390,598

Source: NHS Help with Health Costs (HwHC) PPC database

[1] 3 Month PPCs and Direct Debit payments were introduced in July 2007.

Homelessness: Statistics

Question

Asked by ***Lord German***

To ask Her Majesty's Government, further to the Written Answer by Baroness Hanham on 23 May (*WA 382*), what action they are taking to ensure that homelessness statistics take full account of homeless people who migrate between friends and family, staying only for short periods of time in one place. [HL9619]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): The department has no plans to collect further information on homeless people staying with friends and family.

DCLG measures homelessness primarily through local authority statistics on the numbers of households who seek housing assistance and have their circumstances considered under the homelessness legislation, and secondly, through counts and estimates of rough sleeping. Details were provided in the Written Answer on 23 May, (*Official Report*, col. *WA 382-83*). These are the most robust and consistent measures of the problem, and of changes over time. The department also collects information on local authorities' actions to prevent and relieve homelessness and conducts regular surveys to measure other indicators of housing need. For example, the annual Survey of English Housing measures overcrowding, concealed and sharing households.

The department does not feel that collecting statistics that take full account of people who move between friends and family, staying only for short periods of time in one place would be feasible, given the difficulty of tracking this transient group. Attempts to collect such data would be costly and may not yield robust figures which add value to the statistics that the department already collects.

Local Authorities: Governance

Question

Asked by ***Lord Rooker***

To ask Her Majesty's Government what guidance they offer to local authorities about good governance arrangements, in particular about the distribution of scrutiny committee chairs between the political parties; and what evidence they have that their guidance is adhered to. [HL9953]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): The statutory guidance, *New Council Constitutions for English Authorities* published under the Local Government Act 2000 in 2007 states:

"Where there is a majority group, local authorities might consider it appropriate to have all or some of their overview and scrutiny committees chaired by members outside the majority group or by church or parent governor representatives".

The guidance does not require local authorities to allocate scrutiny chairs to members outside the majority group and DCLG does not collect data on those that choose to do so.

Mexico

Question

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what representations have they made to the Government of Mexico regarding the cases of Valentina Rosendo Cantu and Ines Fernandez Ortega. [HL9795]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): We have regular discussions with the Mexican authorities about threats against human rights defenders. We are monitoring progress of both these cases. Officials from our embassy in Mexico City and the Foreign and Commonwealth Office in London have met with Valentina Rosendo Cantá and we have discussed the case of Inés Fernández Ortega with representatives from human rights groups. We will continue to raise human rights issues with the Government of Mexico.

NHS Blood and Transplant

Question

Asked by ***Baroness Randerson***

To ask Her Majesty's Government what financial contribution each of the devolved Administrations has made towards the total funding of the National Health Service Blood and Transplant Authority in each of the past three financial years. [HL10045]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The information is shown in the following table.

NHS Blood and Transplant (NHSBT)—Funding received from Devolved Administrations for each of the last three financial years

Devolved Administrations	*2010-11*	*2009-10*	*2008-09*
Scottish Government	£2,680,000	£2,674,764	£991,500
Welsh Assembly Government	£2,064,650	£593,280	£577,400
Northern Ireland Executive	£726,612	£715,872	£293,800
Total	£5,471,262	£3,983,916	£1,862,700

Note: contributions are in support of organ donation and transplantation services provided by NHSBT across the United Kingdom.

Source: NHS Blood and Transplant

NHS: Competition

Questions

Asked by ***Lord Touhig***

To ask Her Majesty's Government following the Prime Minister's speech of 7 June, what role they now envisage competition will play in the reforms of the National Health Service. [HL9930]

To ask Her Majesty's Government what criteria they will apply when determining whether or not the introduction of competition will improve patient care. [HL9931]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): We have set out our position in the response to the report of the NHS Future Forum, which we published on 14 June. In line with the forum's recommendations, our response makes clear that the role of competition in the National Health Service must be as a means to improving services for patients, never an end in itself.

We will maintain our commitments to giving patients more choice and control over their care, again as the forum has recommended.

The department will publish advice to the NHS on extending patient choice, based on what we have heard through our engagement with patients, clinical experts and NHS commissioners.

However, as now, it would be for commissioners—not Government—to decide when and how to use competition in improving services. We will retain the existing framework of Principles and Rules for Co-operation and Competition to ensure that these decisions are transparent, non-discriminatory and in the interests of patients.

A copy of Government Changes in Response to the NHS Future Forum has already been placed in the Library.

NHS: Pre-registration Training

Question

Asked by ***Baroness Emerton***

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 5 May (*WA 169–70*), whether they can now provide the outturn commissioning figures for 2010–11 and detailed plan commissioning figures for 2011–12, due to be available by the end of May 2011. [HL10034]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The outturn commissions reported by strategic health authorities (SHAs), for pre-registration courses in 2010-11, are shown in the following table:

		2010-11 actual commissions										
		NHS North East	*NHS North West*	*NHS Yorkshire and the Humber*	*NHS East Midlands*	*NHS West Midlands*	*NHS East of England*	*NHS London*	*NHS South East Coast*	*NHS South Central*	*NHS South West*	*England*
Nursing												
	degree	320	1,835	815	277	694	560	937	392	283	644	6,757
	diploma	727	1,595	1,335	1,308	1,827	1,170	2,751	911	859	852	13,335
	subtotal	1,047	3,430	2,150	1,585	2,521	1,730	3,688	1,303	1,142	1,496	20,092

		2010-11 actual commissions										
		NHS North East	NHS North West	NHS Yorkshire and the Humber	NHS East Midlands	NHS West Midlands	NHS East of England	NHS London	NHS South East Coast	NHS South Central	NHS South West	England
Midwifery												
	degree	65	221	224	146	241	253	388	165	174	157	2,034
	18 month diploma	25	12	31	24	54	31	187	54	24	12	454
	subtotal	90	233	255	170	295	284	575	219	198	169	2,488
Nursing and midwifery total (including 18 month diploma)		1,137	3,663	2,405	1,755	2,816	2,014	4,263	1,522	1,340	1,665	22,580

Source: SHA MPET FIMS returns

The 2011-12 planned commission figures are based on SHA plans which they reassess throughout the year. The indicative commissioning figures for pre-registration courses in 2011-12, are shown in the following table:

		2011-12 planned commissions										
		NHS North East	NHS North West	NHS. Yorkshire and the Humber	NHS East Midlands	NHS West Midlands	NHS East of England	NHS London	NHS South East Coast	NHS South Central	NHS South West	England
Nursing												
	degree	601	2,649	1,269	363	2,102	1,268	3,115	871	639	1,099	13,976
	diploma	399	433	579	1,099	0	268	286	298	469	262	4,093
	subtotal	1,000	3,082	1,848	1,462	2,102	1,536	3,401	1,169	1,108	1,361	18,069
Midwifery												
	degree	64	206	237	132	294	238	433	165	183	158	2,110
	18 month diploma	26	42	22	33	0	36	155	57	26	0	397
	subtotal	90	248	259	165	294	274	588	222	209	158	2,507
Nursing and midwifery total (including 18 month diploma)		1,090	3,330	2,107	1,627	2,396	1,810	3,989	1,391	1,317	1,519	20,576
Physiotherapy		116	216	168	146	203	124	261	78	77	135	1,524
Radiography (diagnostic)		47	171	116	62	118	84	189	83	83	118	1,071
Radiography (therapeutic)		0	43	41	28	32	42	91	22	41	42	382
Dietetics		0	38	56	34	41	30	80	38	0	35	352
Speech and language therapy		50	92	66	69	70	65	206	26	38	38	720
Occupational therapy		112	243	151	205	167	157	239	156	90	135	1,655
Operating department practice		50	106	114	74	97	92	44	64	46	88	775
Prosthetics and orthotics		0	30	0	0	0	0	0	0	0	0	30

Source: SHA MPET FIMS returns

NHS: Volunteers

Question

Asked by ***The Earl of Sandwich***

To ask Her Majesty's Government whether they will promote the good practice of volunteers, in and outside the National Health Service, who care for victims of prescribed drug addiction nationwide, and advertise their services. [HL9843]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The department's strategic vision for volunteering in health and social care, due to be published shortly, will highlight the value and huge contribution volunteers bring to services, particularly in providing peer and culturally appropriate care and support. The forthcoming vision will seek to create an environment that promotes and encourages volunteering and social action in all aspects of health and care, both in the National Health Service and in the wide range of community and care services.

The Vision for Volunteering will build on the measures announced in the recent giving White Paper, that will make giving, including giving time and resources, both easier and more attractive to a wider section of society. It will seek to influence commissioners of health and care services in adopting a holistic approach to volunteers, and will encourage greater use of partnerships to build community capacity.

An important outcome from the Vision will be greater opportunities for shared learning and promoting good practice in supporting volunteering. We are working with volunteer involving organisations, both in the voluntary and public sectors, and the sector skills councils, to determine practical ways in which this can be taken forward.

Individual agencies will determine how they advertise and promote volunteering opportunities. We are seeking to make this easier for both the volunteer and the organisation by improving the infrastructure and increasing the use of social media through organisations such as Do-It.

Northern Ireland: Recognition Payments

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what is their policy on the taxation and liability to national insurance contributions of recognition payments to former part-time Royal Irish Regiment soldiers and former full-time officers in the Royal Ulster Constabulary, and why they are considering different tax exemption arrangements in relation to former part-time RUC reserve officers' recognition payments. [HL9910]

The Commercial Secretary to the Treasury (Lord Sassoon): Under current legislation, the recognition payments being made to former part-time Royal Ulster Constabulary (RUC) reserve officers are liable to income tax and, in some circumstances, to national insurance contributions, as earnings derived from employment. They will be subject to the operation of Pay As You Earn in the normal way.

Payments to RUC officers under the Patten reforms were paid for different reasons and were consequently of a different taxable nature.

Patrick Finucane

Question

Asked by ***Lord Empey***

To ask Her Majesty's Government when they will announce their decision on the future of the Pat Finucane case. [HL10183]

Lord Shutt of Greetland: The Government will announce their decision soon.

Philip Machemedze

Question

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government what steps they have taken to refer Zimbabwean Central Intelligence Organisation operative Philip Machemedze, who has admitted kidnapping and torture, and is now resident in Wales, to the International Criminal Court for his crimes against humanity. [HL9859]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): Zimbabwe is not a party to the Rome Statute so the International Criminal Court (ICC) has no jurisdiction over events which have taken place in that country. For the ICC's Prosecutor to initiate an investigation in these circumstances would require either a referral by the United Nations Security Council, or the acceptance of ICC jurisdiction by the Government of Zimbabwe.

Planning: Green Belt

Question

Asked by ***Lord Burnett***

To ask Her Majesty's Government whether they propose to review the boundaries of the green belts; and, if so, when. [HL9828]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): I refer the noble Lord to the Answer given by the Parliamentary under Secretary of State for Communities and Local Government to Mr Zac Goldsmith MP on 17 January 2011 (*Official Report*, col. 500-501W).

Public Expenditure

Questions

Asked by ***Lord Pearson of Rannoch***

To ask Her Majesty's Government what are their proposed cuts in public expenditure in the current and subsequent four years. [HL9802]

To ask Her Majesty's Government whether the cuts they intend to make to public expenditure will be structured as a reduction in its growth; and, if so, what reductions they foresee over the next five years. [HL9803]

The Commercial Secretary to the Treasury (Lord Sassoon): Table 1.1 of the 2011 Budget (HC 836) shows the total reductions in spending over the next five years. The spending plans reflect cuts in annually managed expenditure, as shown in table 2.1 of the Budget, and plans for Departmental Expenditure Limits, shown in table 2.4 of the Budget.

Schools: CCTV

Question

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government what consideration they gave to requiring parental consent to the use of CCTV in schools to be provided for in the Protection of Freedoms Bill. [HL9909]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): Schools and colleges must adhere to the requirements in the Data Protection Act 1998 when using CCTV on their premises. The Government trusts head teachers to consult parents on this issue where it is appropriate to do so but does not consider that it is necessary to require parental consent for its use in a school or college.

The Protection of Freedoms Bill makes provision for a Code of Practice containing guidance about the use of CCTV and other surveillance camera systems. The police, police and crime commissioners, and local authorities will be under a duty to have regard to the code and there is an order-making power which will enable this duty to be extended to other operators if required. Where operators of CCTV systems, such as schools, are not bound by the duty to have regard to the Code, we expect them to do so on a voluntary basis.

The Government are currently considering responses to a public consultation over the development of the code.

Telephone Hacking

Question

Asked by ***Lord Pearson of Rannoch***

To ask Her Majesty's Government what assessment they have made of phone hacking and other illegal intrusion into privacy which may have been carried out by media organisations other than the *News of the World* newspaper. [HL9896]

Baroness Rawlings: There are a number of investigations looking at the issue of phone hacking, and we will be looking closely at the results. In the mean time, any further government action at the moment risks impeding those inquiries.

Terrorism

Question

Asked by ***Baroness Kinnock of Holyhead***

To ask Her Majesty's Government whether they will review their financial and technical assistance for anti-terrorism activities by Governments in East Africa, to assess whether these activities exacerbate the grievances of Muslim communities. [HL9793]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): There are currently no new plans to review financial and technical assistance for anti-terrorism activities by Governments in East Africa. However, all UK Government financial and technical assistance for anti-terrorism activity is subject to scrutiny by a cross Whitehall board with inputs from policy leads and research analysts as appropriate and are subject to monitoring and evaluation. Financial and technical assistance are regularly monitored and evaluated, potential risks are highlighted and ways we can mitigate them identified, these include whether they could exacerbate grievances.

We work to ensure all projects are tightly focused and provide value for money, in reducing the threat to the UK and its interests but the UK Government also seek to ensure that we do not fund anti-terrorism activities that might exacerbate the grievances of Muslim communities.

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