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HOUSE OF LORDS REFORM?

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I am delighted to have the opportunity to give a lecture in this distinguished series. I am equally delighted to have been asked to address the issue of House of Lords reform. The House of Lords is variously discussed, at least in some circles, but little understood. One of my colleagues has described the House of Lords as one of this country's 'best kept secrets'. What debate that does take place tends to be more about its future than its present, in other words discussing what it should be rather than focusing on what it does. My purpose this evening is to address this debate, as well as go beyond it, and advance a particular view as to the future of the House.

SECOND CHAMBERS

Let me open with two general observations about second chambers. Not a great deal is written about the House of Lords, but that is not unusual for a second chamber. Relatively little is known or written about legislative second chambers. There is no clear definition of what they are and, consequently, it is difficult to say precisely how many exist. Some nations have unicameral parliaments according to their constitutions but create bodies that have the characteristics of second chambers. Some according to their constitutions are bicameral but have not got round to creating a second chamber. Botswana and Iran fall into the first

category and Cameroon the second. Within the European Union, there is a debate as to whether the EU itself is unicameral – the European Parliament constituting the legislature – or bicameral, with the Council of Ministers forming the second chamber.

Although we cannot be precise as to the exact number of second chambers, we do now have sufficient knowledge of national legislatures in order to say that roughly two-thirds of legislatures are unicameral and one-third bicameral. Though bicameralism is usual in federal and western nations, it is in international terms a minority feature. This therefore poses the question of why do we need a second chamber? If so many nations can survive without one, why do we need one?

The United Kingdom has a second chamber and one that is appointed. Again, we are unusual but not alone in that respect. There is no clear pattern in terms of composition. Contrary to what some people appear to believe, it is not the case that all or most other second chambers are wholly elected bodies. As Meg Russell's comparative research has shown, the picture is mixed: over a third of second chambers are elected, and the rest chosen by a mix of methods, including appointment.

We are thus not exceptional, but we are in a minority. This, then, poses a second question. If we do need a second chamber, why does it need to be appointed rather than elected?

As Meg Russell's research has also shown, it is not unusual for second chambers to be the subject of political debate. Of the west European second chambers she examined, only the German *Bundesrat* appeared to be generally accepted and not the subject of debate. So we

should not be surprised by the fact that we debate the second chamber. In doing that, we are by no means alone.

HOUSE OF LORDS

Let me, then, engage in the debate about our second chamber. The subject of reform is not unusual, not only in comparative but also in historical terms. This year is the centenary of the passage of the Parliament Act 1911. The Act followed decades of controversy about the role of the House of Lords – a chamber of hereditary, and (since the time of Pitt the Younger) predominantly Tory, peers, enjoying largely co-equal powers with the House of Commons. The Act reduced the powers of the House. Subsequent Acts, especially the Life Peerages Act 1958 and the House of Lords Act 1999, reformed the composition of the House, resulting in the House we have today. However, controversy continues. The issue of reform remains on the agenda.

The debate about House of Lords reform is notable for its breadth but not its depth.

There are plenty of people willing to express an opinion on Lords reform. In *The Constitution in Flux*, I quoted Janet Morgan who, in an article in *The Parliamentarian* in 1981, wrote:

‘On summer evenings and winter afternoons, when they have nothing better to do, people discuss how to reform the House of Lords. Schemes are taken out of cupboards and drawers and dusted off; speeches are composed, pamphlets written,

letters sent to the newspapers. From time to time, the whole country becomes excited'.

I am not so sure about the whole country becoming excited about Lords reform, but the rest rings true. I have noticed, since I quoted Janet Morgan, that it has been quite common for others to use the quote as well.

Clearly, speeches are written, letters get written to the press, and we have White Papers, Commission reports, Select Committee reports, and proposals from one body or another. There is no shortage of material on House of Lords reform.

The problem, however, is not quantity but quality. Much of it is confused, in large part because of failing to start from first principles or of only grasping rather hazily what the principles are that should determine the form of the second chamber. In many cases, we are offered principles – undefined principles – which are not necessarily compatible with one another.

It is easy to write to the papers with one's pet scheme for reform, developing an intricate method of election or a scheme of random selection or selection by different learned societies. But that is the simple, lazy approach. I get extremely irritated when people write to newspapers with these pet schemes. They completely fail to get to grips with the basic principles, the fundamentals, which should determine the form of our political system, not simply the form of the second chamber.

We thus have breadth, a wide range of contributions to debates on Lords reform, but not a great deal of depth. In order to encourage greater depth, I propose to explore a number of the claims made about Lords reform. In so far as particular concepts – such as democracy – are employed in the debate, they often go undefined. What, exactly, do we mean by the terms that are utilised?

The confusion about, or superficial usage of, terminology, has – I shall argue – allowed critics of the existing House to advance claims which have, in large measure, gone uncontested, not least claims about democracy, accountability and legitimacy. I propose to address these claims and, in effect, turn them on their head.

APPROACHES TO REFORM

Let me deal first with the different approaches to reform of the House of Lords in respect of composition. There are a lot of schemes on offer, but there are in essence four approaches to reform. I developed these in *The Constitution in Flux*, under the rubric of the four R's: retain, reform, replace, or remove altogether.

Retain. This entails retaining the existing chamber as an appointed chamber. The approach admits of some change to the structures, practices and powers of the House – it supports reform within the House, designed to strengthen it in fulfilling its present functions - but is opposed to election. The Campaign for an Effective Second Chamber, a cross-party group of MPs and peers, falls in this category. Indeed, so does the House itself. When in 2003 and 2007 both Houses voted on various options – wholly or partly elected or all-appointed – the

House of Lords voted, by approximately three-to-one, in favour of the all-appointed option and against all the other options.

Reform. This entails taking the existing House and making some modification to it, including an elected element while retaining an appointed element and hence the perceived strengths of the existing House. The report of the Royal Commission on the Reform of the House of Lords (the Wakeham Commission) and the 2001 Government White Paper, advocating a 20% elected element, come in this category. So does the 2007 White Paper from the then Leader of the House of Commons, Jack Straw, advocating a House that was 50% elected and 50% appointed.

Replace. This entails doing away with the existing chamber and replacing it, wholly or in large part, with a new chamber. The House of Lords would thus give way to an elected second chamber, possibly titled a Senate. When the House of Commons voted in 2003, MPs voted down *all* the options. However, in 2007, there were majorities supporting an 80% and a wholly elected chamber. Following that vote, the Labour Government decided to support the option of an elected House and that is the stance, with different emphases, of the three main parties. There is presently a working group of front-benchers, drawn from the three parties, working on a draft Bill.

Remove altogether. This entails doing away with the second chamber and not replacing it. In other words, it favours the introduction of a unicameral system. In 2007, over 100 MPs voted for this particular option, though some did so because they favoured an all-appointed House or no second chamber at all. It was their way of making clear their total opposition to an elected second chamber. Various Labour MPs took this line.

CHALLENGING THE PRINCIPLES

That clarifies the options as to composition, but what about the principles that are prayed in aid of pursuing these options, not least those entailing some element of election?

Advocates of change tend to argue the case for a chamber that is democratic, representative, accountable and consequently legitimate.

Supporters of the existing appointed House argue that it does an effective job; in Geoffrey Howe's words, 'if it isn't broke, don't fix it'.

Alex Kelso in an article in *Parliamentary Affairs* has argued argued that the two sides are arguing from different, essentially mutually exclusive, standpoints. Supporters of election are focusing on input legitimacy, that is, concerned with how it is formed, in essence the extent to which the public determine its nature and composition. Supporters of the existing House focus on output legitimacy, in essence its performance.

To some degree, these positions are taken as the preserve of their proponents. By that, I mean that the claim by those who support an elected House that they favour the 'democratic' option is largely allowed to go by default. Supporters of the existing arrangements fall back principally on the claim that the House does its job well.

I propose to contest this divide and, in effect, challenge the claims of supporters of election. I argue that the divide identified by Alex Kelso can be challenged and that the concepts

employed to justify an elected House can, in fact, be deployed in support of the existing arrangements.

To do this, I start from first principles, namely the type of constitution I wish to see for the United Kingdom. One can identify different views as to the type of constitution that should exist in a particular polity. *Negative constitutionalism* sees a constitution as a constraining mechanism, as privileging particular values and putting them beyond the reach of a transient majority. The popular will must be subservient to certain pre-political values. *Positive constitutionalism* sees a constitution as a means for enabling the general will to be given effect. The majority will is paramount.

These two approaches can be seen as the two ends of a spectrum. There are now different approaches to constitutional reform in the United Kingdom, and each can be located on this spectrum. The liberal approach falls very much towards the end of negative constitutionalism. The traditional, or Westminster, approach is more towards the end of positive constitutionalism, though falling short of the very end of the spectrum. It does not embrace unbridled majority will, but rather stipulates a system where the general will is expressed *through* Parliament and tempered *by* Parliament. At the heart of this approach, as I shall argue, is accountability: a system in which there is clear accountability for public policy in the United Kingdom.

The traditional approach is my starting point and it necessarily dictates my stance on Lords reform. We have to see the second chamber within the context of the type of political system we wish for the United Kingdom and not simply as a chamber that operates in a constitutional vacuum.

Let me turn to the arguments deployed by those who support election. They equate democracy with election and solely with election. Election is seen as essential for the purpose of being democratic. The House of Lords must be elected in order to be democratic.

My argument is that election of one chamber is necessary but that for the purposes of ensuring a democratic *political system*, it is important that there is only one elected chamber.

Democracy is generally defined as the rule of the people. That is a fairly blunt definition but it suffices as a starting point. Given the population of the United Kingdom, we cannot have a system of direct democracy. We therefore have to rely on representative democracy. At the heart of representative democracy is the concept of accountability. Indeed, this is at the heart of how Schmitter and Karl (1991) define democracy: ‘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’.

Those who shall govern in between elections are elected on the basis of a particular programme of public policy, they carry out that policy to the best of their ability – parties in this country having a good track record of implementing manifesto promises – and can then be held accountable for their actions at the next general election.

We thus have the accountability of *government*. There is one body – chosen through elections to the House of Commons– that is responsible for public policy. Electors therefore know who to hold to account at the next election. Election day, in Karl Popper’s words, is

judgement day. There can be no blaming of others; the government takes the credit or the blame for what has happened on its watch.

There is thus what I have termed *core* accountability. Once one has two elected chambers, one creates an element of *divided* accountability. An elected second chamber at Westminster may not claim the same powers as the first – few elected chambers are co-equal with the first – but it is likely to claim *more* powers than the existing second chamber. It may demand more statutory powers. As the political philosopher, Raymond Plant – Lord Plant of Highfield – a supporter of election, conceded in the debate on Lords’ reform in 2007, it would be difficult to resist such claims. It is certainly the case that an elected chamber could simply repudiate existing conventions governing the relationship between the two chambers.

An elected second chamber would be in a position to challenge and to barter with the first, on a scale not witnessed under existing arrangements. Election may not necessarily result in gridlock; what it is more likely to produce is the negotiation of deals between the two Houses in order to achieve an outcome, or rather an output. Experience elsewhere, most notably the United States, suggests that deals done between chambers tend to favour parties or those who are persuasive lobbyists. Special interests rather than the public are the principal beneficiaries. In such a situation, who do the electors call to account? There is no one body that electors can hold directly and exclusively accountable for public policy. Election of both chambers may produce accountability at the level of the individual parliamentarian but destroy it at the aggregate level of government.

One thus has the apparently paradoxical situation that an appointed second chamber helps maintain the core accountability of the political system. Under existing arrangements, electors know exactly who to hold to account for public policy.

REPRESENTATION

I turn now to the concept of *representation*. It is a contested concept. As Hannah Pitkin has shown, it has at least four separate usages:

1. It denotes speaking for and acting in defence of the interests of a particular group;
2. It denotes being freely elected;
3. It denotes a body that is socially typical;
4. It constitutes a symbolic manifestation of a greater entity, for example, a flag or a ceremonial head of state.

The House of Commons is representative in the first two usages of the term, but not the third.

The Commons is not socially typical. Despite recent changes, it remains predominantly a chamber of white, middle-class men.

The House of Lords is not socially typical – no chamber ever truly can be – but an appointment process can produce a more diverse membership than can the blunt mechanism of popular election. The Lords has a membership that is increasingly diverse and through appointment one can speed up that process as well as widen the diversity of the membership. My understanding is that since the House of Lords Appointments Commission was created, about 40% to 50% of those nominated for peerages have been women. The House already

has a far greater proportion of members than the House of Commons drawn from ethnic minority backgrounds. It also has a greater proportion that is wheelchair-bound, the most recent example being the Paralympian and gold medallist Tanni Grey-Thompson. The House has members drawn from a wide range of religions – not just the mainstream Christian churches but also members who are Jewish, Muslim, Hindu, Bhuddist and, in one case, Parsi Zoroastrian – as well as members of none: there is a Humanist Group in the House.

Appointment can not only ensure a more diverse membership within the House, it can concomitantly deliver a membership that is different to that of the House of Commons. It can thus produce a membership that complements, rather than duplicates, that of the elected House. This is arguably of increasing benefit as the House of Commons becomes, as the work of Peter Riddell has shown, a chamber predominantly of career politicians, that is, people who, in Max Weber's terms, 'live for politics'.

The election of a second chamber would not, as I have said, deliver core accountability and, indeed, it is not clear what *representative* role – in the first sense of the term – it would play in the unitary state.

Bicameral legislatures, with elected second chambers, are notable in federal nations. Citizens vote as citizens of the nation for members of the first chamber and as citizens of a state for the members of the second chamber. In short, they vote twice but in different capacities. In a unitary nation, citizens would be voting as citizens of the nation for members of the first chamber *and* of the second chamber. To vote in the same capacity for both injects an element of redundancy into the system.

The arguments of democracy, accountability and representativeness are thus not as one-sided as proponents of election appear to believe. Indeed, as I have argued, an appointed second chamber bolsters the core accountability of the political system. To inject an element of individual accountability is to destroy the collective accountability at the heart of the system.

THE CASE FOR THE LORDS

To counter the arguments of those making the case for election of the second chamber addresses the input side of the equation. However, I do not wish to ignore the output side.

To make the case against election is not the same as making a positive case for the House of Lords. I have explained what is wrong with election, not necessarily what is right with the House of Lords. If there is to be a second chamber, my argument is that it should be appointed and not elected, but what is the case for having a second chamber? This brings me back to my first question.

What is the case for the House of Lords? The House, I argue, adds value to the political process by virtue of the fact that it complements the House of Commons, fulfilling functions that the Commons does not have the time, the political will or sometimes the resources to undertake. Because it is not elected, it does not seek to compete with the House of Commons. It accepts that the elected House by virtue of that election – the body through which the people choose the Government – is entitled to get its way. The entitlement ultimately to get its way is enshrined in the Parliament Acts of 1911 and 1949, but convention and practice ensure that recourse to the provisions of the Parliament Act is rare. It has been employed on only four occasions since the 1949 Act. Conflict between the two Houses is the exception and not the rule.

Let me detail briefly the functions of the House of Lords as I see them. These are not necessarily formally designated tasks. I am defining functions as consequences, in effect the tasks undertaken that have significance for the political process of the United Kingdom.

First and foremost, the House of Lords is a chamber of *legislative scrutiny*. It accepts that the House of Commons is entitled to determine the ends of legislation. Under the Salisbury convention, the Lords does not vote on the Second Reading – in effect, the vote on principle – of any Bill promised in the governing party’s manifesto and in practice, as an extension of this, any Bill included in the Government’s programme. It debates the principle but does not vote on it. Instead, the House focuses on the means and not the ends. It devotes itself to the detail. This is what occupies most time in the House; most of the time in the chamber – 50% to 60% of the time – is given over to legislation.

It is extensive and it is productive work. Each session, anything between one-thousand to four-thousand amendments to Government Bills are secured in the House of Lords. In one session, that of 1999-2000, it was a record 4,761. Many amendments are brought forward by Government ministers in response to amendments moved earlier by private members. The process is one of dialogue, ministers meeting peers who have moved amendments in committee stage to discuss with them what can be done at the next stage, report stage, to meet their concerns or the suggestions that they have made.

Given this process, it is not surprising that the House voting on amendments is the exception and not the rule. The overwhelmingly majority of amendments – over 97% – are secured by agreement – and because they are acceptable to Government they are then accepted by the

House of Commons. The House will on occasion vote and defeat the Government. The Government may invite the Commons to reject the amendments carried by the House, but – as the research of Meg Russell has shown – the Government accepts about 40% of these amendments; and, somewhat counter-intuitively, it has tended to be the defeats on the more important issues that it has accepted. On occasion, the Lords will persist with an amendment – producing what elsewhere is known as the navette, but what we call ‘ping pong’ – but will normally only do so when there is some disquiet in the Government’s ranks in the Commons and, if the Commons persists, will normally give way.

The importance of this work should not be underestimated. It involves detailed changes to often complex legislation. It is not politically sexy activity and so receives little media coverage, but it is vitally important in terms of the quality of the statute book in this country. The laws of the UK may not be perfect, but without the work of the House of Lords they would be in a far worse shape than they are.

Secondly, the House is a chamber for the *scrutiny of public policy*. I say public policy rather than UK public policy because scrutiny extends to the European Union. The House of Commons fulfils a similar role, but the Lords operates in a different way in order to complement and not duplicate the work of the Commons. Thus, for example, the House of Commons has departmental select committees to cover the various government departments. The House of Lords has cross-cutting committees, covering issues that are not confined to a particular department, such as the constitution and economic affairs. It also has committees that focus on the legislative process, especially in relation to secondary legislation, notably the Delegated Powers and Regulatory Reform Committee and the Merits of Statutory Instruments Committee. The Commons has no equivalent committees. In EU affairs, the

Commons committee – the European Scrutiny Committee goes for breadth, examining every document deposited, and the Lords committee, the European Union Committee, goes for depth, looking in detail at documents that raise significant political and legal issues. The EU Committee operates through seven sub-committees, each drawing on ten or more peers; as a result, more than seventy peers are usually engaged each week on the detailed scrutiny of EU proposals. The scrutiny undertaken by the committees is extensive.

The third function is that of *debate*. Clearly, as I have explained, the House debates legislation, but what I have in mind here is debating issues outside legislation and, indeed, outside the normal debate that takes place between political parties. For reasons I shall explain, the House is well placed to discuss issues of concern to different groups in society, groups that may have a case that merits consideration but a case that falls outside the normal party conflict that characterises political debate.

The debate function encompasses an agenda-setting role. Peers may and do exploit opportunities to raise issues that the Commons has not had the time or inclination to consider or which the Government may prefer not to be debated. One or more peers may raise an issue, get it debated and thus on the agenda of debate. When debated in the House, there has to be a response from a minister. The debate can attract attention, not necessarily from the mainstream media, but from a range of individuals and groups who are keenly interested. We can be inundated with letters and briefings when such an issue comes before the House. The House may also therefore fulfil a safety-valve function, enabling people to get their views expressed through writing to or e-mailing peers.

I give one recent example of agenda-setting. Lord Joffe introduced a Private Member's Bill on assisted dying. This certainly attracted a great deal of attention, with extensive lobbying on both sides. I recall receiving in one morning 99 individually written letters in opposition to the Bill; admittedly, they all came in one envelope. The Bill served the purpose of engaging both sides of the argument, of getting the issue on to the political agenda. The issue is now firmly on the agenda.

I have identified, very briefly, the three principal tasks fulfilled by the House. The list is not exhaustive. I have sought to indicate that they are important tasks, tasks that complement the work of the House of Commons, and tasks that on the whole are well fulfilled by the House. There is always scope for improvement – I am an advocate of change within the House – but what it does I believe it does well.

Why, then, is it able to fulfil these tasks and to do so in an effective manner? The explanation is to be found in the composition and the procedures of the House.

There are two aspects to *composition*, the political and the individual. The political composition is distinctive for two main reasons. The first is that no one party enjoys an overall majority in the House. The government cannot therefore take the House for granted. Unlike in the Commons, ministers cannot rely on the members sat behind them to see a measure through. The second feature is the presence of cross-bench peers, that is, peers who are not affiliated to any political party. There are almost two-hundred cross-bench peers, and – if expressed as peers who sit on the cross-benches – a little over two-hundred; some members of minor parties, such as UKIP peers and Unionist peers from Northern Ireland, sit also on the cross-benches. Although the combined strength of coalition Conservative and

Liberal Democrat peers in the present House outnumber the Labour opposition – though with Labour remaining the largest single party – the balance of power is held by the cross-bench peers. If cross-bench peers turn up in numbers and vote disproportionately against the Government, aided on occasion by some abstentions on the coalition benches, the Government goes down to defeat. That has happened already on a number of occasions. Up to the Christmas recess, there were 31 votes in the House. The Government lost nine of them. Ministers therefore are keen to avoid defeat and as a result are usually willing to engage in a dialogue with members of the House, in the way that I have indicated. There is a real discourse, sometimes at quite a high level, which brings me on to my second point.

The individual membership is a key feature to understanding the House of Lords. It can be characterised as a House of experience and expertise. People are elevated to the peerage because of their experience – they may have held public office, led the armed forces, headed a trade union, led a major company or corporation, or being at the forefront of the arts – or because they are experts in particular fields. We have a good many academics and others who are the experts in their field. If we are discussing particular animal diseases, we have someone who has been professor of parasitology at an Ivy League university. If we are discussing medical ethics, we have the leading philosophers in the field as well as some of the leading doctors in the country.

With those who are experts, their expertise may be current – in other words, they may still be practising in their field. Given that, the House may also be characterised as a full-time House of part-time members. Having a large House – though, admittedly, we are now getting too large – enables us to retain experts who can come in to contribute their knowledge while also still having the freedom to pursue their careers.

The experience and expertise of members distinguishes the Lords from the Commons. As I have indicated, the House of Commons is dominated more and more by career politicians. That is an observation and not a criticism; it reflects the political imperatives of our political system. It does, though, reinforce the case for the existing House of Lords, able to draw on a membership – in a way that an elected House could not – that is notably different to that of the Commons and therefore able to look at issues from a different perspective. The nature of the membership adds value to the political process.

The experience and the expertise of members have a leavening effect on party commitment. Peers tend to vote in line with their party but they also listen to the acknowledged experts in the House. If your party advocates policy A and the world authority on the subject stands up and says policy A will not work for the following reasons, it then becomes difficult for the party to plough on advocating party A.

The experience and expertise of members have an effect on how ministers treat the House. Ministers when coming to the dispatch box to answer questions or promote a Bill have to assume that the experts in the field will be present. They therefore need to be thoroughly briefed; they have to know their stuff in order to carry the House. I heard one peer the other day saying how difficult it must be for the junior ministers dealing with defence. They have to face peers who have headed the armed forces, led troops in battle, or who have served as Secretary of State for Defence, not to mention those who have served as heads of the diplomatic service, members of MI6, and Foreign Secretaries. If you have four or five former Chiefs of the Defence Staff lined up against you, you are in trouble. And woe betide any

junior minister in the Justice Ministry taking on the combined weight of the lawyers in the House.

The composition also suits the House in terms of engaging in detailed scrutiny. The members have the experience and expertise. A consequence of that is they also have nothing to prove. They don't need to achieve a media profile or engage in activities that will get them noticed by their front bench or local parties. They can undertake the sort of work that MPs are reluctant to engage in because there is no perceived political, or electoral, benefit.

I would argue that not only is it important who is in the House but also how long they are there for. Life membership creates problems, not least in terms of the size of the House, but there are two benefits. Life membership is a guarantor of a peer's independence. Once you are a member, even if you sit as a member of the party, you are free to do as you wish. The likelihood is that you will vote with your party, but the parties lack any notable carrots or sticks to ensure members follow the party line. If your supporters don't support you, there is nothing you can do. They may vote against or, more likely, simply stay away.

The whips have no sanctions and no incentives they can utilise to get peers to stick to the party line. If the force of argument outweighs the pull of party loyalty, then you are stuck. I have variously voted against my party – in one session I was the leading Tory rebel – but none of the whips, or anyone else, has said, or for that matter done anything, in consequence. There would be little point.

The other aspect is that it retains for the benefit of the House the experience of those who otherwise would have left the public platform and not made their advice available when a

measure is being considered. Some experience is particular to individual members – they are the only ones to have held office in comparable circumstances to those being faced – and they contribute in a way that informs the House in a way that is not otherwise possible. That has been invaluable at times in discussing issues of foreign and security policy.

So, composition is all important in explaining the strength of the current House and in distinguishing it from the Commons. However, it is distinguishable from the Commons also in terms of its procedures. The House of Lords is a self-regulating chamber and there are various procedures that give the House an advantage relative to the other place. The Government is not in control to the same extent as in the Commons.

In the Commons, the Government traditionally has been able to utilise guillotine motions to limit debate and more recently programme motion. After the Second Reading of a Bill, a programme motion can be moved time-tabling the remaining stages of the Bill. The timetable has on occasion been extremely tight. In the House of Lords, there is no guillotine and no time-table motion. One cannot foreclose debate. We debate for as long as there is something to be said. It imposes the need for us to be responsible and not misuse the opportunity to filibuster, but on the whole the House is responsible. The Government will normally get its business, but only being subject to thorough discussion by the House.

A second and related advantage is that in the Lords there is no selection of amendments. In the Commons, the chair has the power to select which amendments shall be debated by the House. In the Lords, there is no selection. All amendments that are tabled by peers are debated. Some, if they are on the same point, may be grouped together, but even then a peer

can insist that their particular amendment is not grouped in this way. Tabling an amendment is a way of ensuring that it is considered and that it receives a response from the minister.

These two procedural advantages mean that no part of a Bill is precluded from examination, and amendment, by the House. We receive some Bills from the Commons which have substantial parts not examined at all, a consequence of the operation a time-table motion, placing particular onus on to ensure that all parts are examined. Our procedures enable us to do so.

The third advantage is that in the Lords it is possible to consider amendments on the Third Reading of the Bill. This is not possible in the Commons. We thus have an additional stage, beyond committee and report, to make changes to a Bill. Normally, agreement on an amendment is reached by Report stage, but if it is not we have the fall-back of Third Reading, and it is not unusual for several amendments, sometimes a considerable number, to be taken in order to resolve issues that were not resolved at Report stage.

These may sound to some to be technical points. In terms of improving legislation, there are of considerable importance. They enable the House to fulfil the functions adumbrated earlier. The combination of the composition and the procedures of the House enable the House to subject measures to scrutiny in a way that MPs do not have the time, political will or procedures to undertake.

The result, I contend, is that the House of Lords adds value to the political process and does so in a way that an elected chamber would not and indeed could not. Election would change the terms of trade between the parties; the House would become more partisan. Election would produce members selected on a party basis, indeed probably exclusively on a party

basis. In other words, the independent element would be squeezed out. Selection by parties, especially by local parties, would militate against maintaining the diversity of the membership. Election would squeeze out the independent element as well as those of experience – probably deemed too old – and expertise, because membership of the House would likely be deemed a full-time, and paid, job. If one party got control of an overall majority, I would not expect the procedural advantages I outlined to survive for very long. We would be moving to a House that, if not a duplicate of the Commons, would not be notably distinguishable from it. The present House, I argue, adds value. An elected House would, I contend, likely by value detracting.

CONCLUSION

As things stand, we have a system that combines core accountability with the benefits of a complementary second chamber. It is a valuable, and distinctive, combination that few other countries can emulate. The second chamber adds value by fulfilling functions that the first chamber may not have the time, political will or resources to fulfil while conceding the supremacy, by virtue of its core accountability, of the elected chamber.

Others, coming from a different approach to constitutional change, can argue the case for an elected second chamber. The liberal approach does not believe in core accountability. It seeks a fragmentation of political power. However, what I have sought to demonstrate is that there is a principled case for an appointed second chamber, one that goes beyond output legitimacy and incorporates input legitimacy, thus denying supporters of election an exclusive claim for democracy and accountability in support of their case.

In future, it will not be sufficient simply to assert that the ‘democratic’ option is an elected second chamber. Those claiming that must now in engage in a more sustained intellectual debate.

Coming full circle, then, do we need a second chamber? Certainly. The House of Commons alone could not cope with the volume of public business. Should that second chamber be an appointed chamber? Absolutely, for the reasons I have given. It adds value. I invite you, ladies and gentlemen, to rally to the banner.