1911 Parliament Act and the House of Lords

Baroness Hayman

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In a characteristically captivating phrase during the debate on the second reading of the Fixed-term Parliaments Bill yesterday in the House of Lords, Lord Hennessy of Nympsfield pointed out that the Bill created "an unusual stretch of legislative turf on which your Lordships can frisk". The reason, of course, was the exclusion from the terms of the 1911 Parliament Act's suspensory rather than absolute veto of an Act to prolong the life of a Parliament beyond five years, which is one possible effect of the Fixed-term Parliaments Bill. It was, he further pointed out, the first time since November 1944 that such a measure had come before the House of Lords. Those of a nervous constitutional disposition will be relieved to know that the Upper House did not choose to flex this one remaining muscular veto yesterday – though it might yet amend the Bill.

But the debate as a whole showed very clearly that the role of a check and balance and a backstop on constitutional issues, of which that provision in the 1911 Act was an explicit recognition, is alive and well in the House today and is a theme to which I will return later in this lecture. It also reminds us, however, that the 1911 Act still has potency today both in positive and negative directions. While it may still be, to borrow from Chou en Lai, "too early to tell" the precise nature of these effects, a hundred years on, it seems a good point to reflect on some of those influences.

So I am delighted to be here tonight to give the third lecture commemorating the 1911 Parliament Act's centenary, and am grateful to the Mile End Group and Mr Speaker for the opportunity to share some thoughts on the House of Lords a hundred years after that legislation. On the changes that have taken place in its powers and its composition. And on some of the challenges to come.

I would like also, this evening, to say a little about the state of play in the Lords a hundred days after the second reading debate on the Parliamentary Voting System and Constituencies Bill in November last year, and on some of the issues that the Coalition Government (which that legislation embodied in statutory form) has raised for our House.

The date for this lecture was fixed many months ago. The commitment in the Coalition Document to set up a committee to bring forward proposals for a wholly or mainly elected Second Chamber, and to come forward with a draft motion by "December 2010", was so specific that I naively believed a draft Bill on House of Lords reform would be well into the public arena and the

parliamentary process by the time I stood here tonight. How wrong I was. I should have remembered that in my ministerial days, I coined for myself the phrase “a Civil Service spring” – an infinitely flexible concept to deal with the serial tendency of government to fail to deliver commitments on time, and which basically covered the period between February and September. For the timetable on delivery of the draft Bill from Mr Clegg’s committee has indeed slipped.

The May commitment of “by December 2010” became in June subtly different, “by the end of the year” (Lord Strathclyde) and in July “by no later than the end of the year” (Mark Harper). By December, however, no Bill had appeared and on the 14th of that month the commitment metamorphosed into a Bill “early next year.” Next was a masterpiece of imprecision from the Deputy Prime Minister in January 2011 – the draft Bill would be published, he said, “in the coming period”. And yesterday, in the Commons, Mr Clegg retreated to the infinitely flexible formulation – the draft Bill would be published “soon”.

Answers on the difference between “soon” and “in the coming period” on one side of paper please…
So tonight there is no draft Bill for us to discuss. The only definite commitments in the Coalition Document were that the newly constituted second chamber would be “wholly or mainly elected”. And that elections would take place on the basis of proportional representation. There was the “likelihood”, the Document continued, ” of grandfathering rights” and “single long terms of office”.

But while we may not know the detail of these proposals, we have seen an awful lot of similar plans in the twelve years since the 1999 Act, which replaced almost completely – the constitutional reform of this country has a tendency for messiness – the hereditary membership of the Upper House. Numerous debates on the reports of the Royal Commission and joint committees, and White and Green Papers, have wrestled with these issues ever since, and have thrown up fundamental questions which have proved extremely difficult to command a consensus response – and constitutional reform without political consensus is, as many Governments have learned to their cost, a very time consuming and painful process.

For me, three main questions emerge from all these debates. One – can there be in an advanced democracy like our own a legitimate basis for legislative power of any degree other than by direct election? Secondly, if the House of Lords’ legitimacy is increased, can its powers continue to be constrained, especially when that constraint depends mainly on culture, convention and self restraint rather than on constitutional legislation? To put it more bluntly, with an elected House of Lords, how do you safeguard the primacy of the Commons? And thirdly, and I would argue most importantly, how can you ensure that a change in composition will mean that the House

performs its responsibilities and its duty of holding the executive to account more effectively than now and enhances the performance of Parliament as a whole?

There are of course a myriad of secondary questions.
- Timing of elections, length of appointment, constituencies, how "independent" members would be appointed if it is to be a partly elected House (and indeed if it is a matter of principle that only the elected should legislate, how can the existence of even 20% appointees be justified?).
- The bishops!
- How to manage the transition from the current 830 members who believe life means life, to create a Senate of probably half the size. The answer to Bruce Grocott's pithy question – "To ask HMG whether they intend that the life peers they have appointed should be peers for life" – scheduled for March 15th, should be illuminating, but I fear will not.
- Transition, its length and how you deal with the rights of great grandmothers and grandfathers, as I always think of us in the Lords.

Another commitment in the Coalition Document, that is to ensure, in the interim before major reform, a second chamber "that is reflective of the share of the vote secured by the political parties in the last general election" has added to the difficulties.

We have seen 117 peers created by the coalition, although I am relieved that, so far at least, they have stopped short of the 234 that would have been needed, on my calculations last May, to fulfil that commitment; and have ignored the fact, that taken literally, it would have needed to include, for example, seven Green peers, 21 UKIP and 14 British National Party. But even the 117 pose both huge difficulties, both practical (I go around like some demented hostess – "but where will they all sit? What will they all do?") and for managing the change to the smaller House we all agree is necessary. Shrinking the size of the House of Commons to 600 but expanding the House of Lords to be 30% larger than that cannot really be joined up thinking. And I do wish Government Ministers would recognise that the chamber of the House of Lords is not the Tardis.

But returning to the 1911 Act, let me start with a health warning. I am not a constitutionalist, an academic or a historian. I am a jobbing Parliamentarian and that is the perspective which colours my approach. I am, therefore, indebted to several people for their help, notably the staff of the House of Lords Library, and the tremendously helpful notes they issue on various constitutional matters. Also I have drawn on an extremely helpful article by Chris Ballinger in Parliamentary History, and I also thank Dr Rhodri Walters, the Reading Clerk of the House of Lords, and Chris Clarke and the rest of the staff of my office for their research and advice.

The 1907 King's Speech (Edward VII not Colin Firth!) gave notice that Lords reform would be considered in these terms: "Serious questions affecting the working of our Parliamentary system have arisen from unfortunate differences between the two Houses. My ministers have this important subject under consideration with a view to finding a solution to the difficulty." We may hear something very similar in May 2012.

That speech referred to the two Houses in conflict, but the 1911 Parliament Act was also fundamentally the product of party conflict – of the passionate divide between the Liberal and Tory parties of the late nineteenth and early twentieth century. Its immediate catalyst, as we know, was the Lords rejection of Lloyd-George's 1909 Finance Bill the People's Budget. In fact the Lords had seldom questioned Commons financial privileges and the rejection of a Supply Bill was most uncharacteristic. But trouble had long been brewing and the obstructionist behaviour of a Tory House of Lords whenever the Liberals were in power had not gone unnoticed – and had become acute after 1906 – for example in relation to the Education Bill of that year.

The passage of the Act represented something more than a party tiff. While the franchise was not yet universal, following the 1884 Reform Act, some 60% of men over 21 could vote. The middle classes, and house-holding working classes – including agricultural workers – had been brought into the political process. The House of Commons now had the more legitimate claim to be the forum of the nation and the seat of legislative supremacy.

The Act gave the Commons legislative supremacy in two ways:
- It restricted Lords powers to reject Commons Bills to a two year "suspensory veto". The Lords might delay but they could no longer frustrate.
- It also provided for a new and more specific class of financial Bill – a Money Bill, whose provisions related exclusively to taxation, public money, or loans. A Bill so certified by the Speaker of the Commons might be presented for Royal Assent without the agreement of the Lords, provided the Upper House had not passed it within one month after its receipt from the Commons.

Ironically, given the tremendous turmoil of the five years before the Act, the provisions of the Bill have been seldom used in anger. The Money Bill provisions have never been used, though many such Bills have been certified – a reflection of the fact that the Commons financial privileges over supply had long been recognised by the Lords. 1909 was an aberration, not the norm.

The override on veto, originally limited to two years but reduced to one in 1949, was invoked in respect of the Government of Ireland Bill and the Established Church (Wales) Bill in 1912 and 1913 but not again until the next Parliament Bill in 1949. It has been used a further four times since 1991, and

these issues, whilst important: war crimes; European Parliament elections; sexual offences; hunting; were not what could be described as high politics. So the actual application of the provisions of the Act has been very limited. For the Parliament of the late twentieth century, despite the 1949 reduction in the time available for delay, the Parliament Acts were in many ways no longer fit for purpose.

The Acts' focus on veto and its duration, either by out and out rejection, or by unacceptable amendment, made their application impractical in respect of most categories of Bills, which in modern times are usually required on a faster timescale than can be provided for by the Parliament Acts.

The Parliamentary Voting System and Constituencies Bill is a perfect example. Time was of the essence and the Parliament Act irrelevant as an instrument of conflict resolution, and never I think, in the many hours I spent in the Chamber, ever even mentioned. The greater preoccupation was the possibility of abandoning of the deep-rooted and deeply prized convention that there is no timetabling in the House of Lords. This was the nuclear option, threatened by a government itself threatened in turn by obstruction of its legislation by the length of debate.

But that is not to say that the 1911 Act has been without influence. Far from it. It set the ground rules for the relationship between the two Houses which still exists today and determined that our bicameral system should be an asymmetrical one. Once and for all, it established the legislative supremacy of the Commons by asserting – in its effect – that its legitimacy in terms of composition justified its precedence in terms of powers.

There was to be no argument as to where confidence, or supply, or the last word on legislation lay. In one of the few amendments that was made to the Bill in the Lords, the retention of the absolute rather than the suspensory veto in relation to a Bill prolonging the life of a Parliament, can, however, be seen as sowing the seeds of the constitutional backstop role that the House now sees as its special territory. I recommend the Hansard of yesterday's debate on the Fixed-term Parliaments Bill as a good example of the role the House has, in the 21st century, carved out – to steal a phrase – of speaking truth unto power.

The 1911 Act made the political weather for a century and in doing so, to mix metaphors, it knocked the stuffing completely out of the House of Lords for nearly fifty years. It is arguable that it was only after the effects of the 1958 Life Peerages Act really started to bite some two decades on, and the 1999 House of Lords Act rationalised the basis of membership by expelling almost all the hereditary peers, that a more self-confident, more assertive – and more effective – second chamber emerged. And all the reforms that have followed have essentially been built on the 1911 Act's foundations, both in regard to power and to composition.

On powers, we have seen the reduction of the period of delay in the 1949 Parliament Act – and the Salisbury-Addison Convention of 1945.

That convention was, it could be argued, an example of the "constitutional genius of the House of Lords" to which Mr Speaker referred in his first lecture in this series. Without resort to legislation, it ensured that an elected government could enact its programme in an even more extreme situation than the Liberal Government had faced in its landslide victory in 1906 (when there were 88 Liberals out of a membership of 602 in the House of Lords). There were a mere sixteen Labour peers out of 769 members in the House of Lords in 1945, which equalled 2% of the membership of the House. (The majority in the House of Commons was 146). Yet the legislative programme of the 1945 Labour Government was both radical and comprehensive – and was delivered, without obstruction in the House of Lords, by Parliament.

That convention also elevated the importance of the manifesto and the commitments included or foreshadowed within it. In doing so, it put the final nail in the coffin of the claims of a century before, that the House of Lords had in some mystical way a direct line to the population, a right to represent the nation, which by-passed the imperfections of the electoral system which produced the Commons.

I will come later to the challenges of the Salisbury Convention posed by the current political ecology, but perhaps there is a pause for thought as to whether that argumentation as to the representative role of the Lords could resurface in a programme in which we had a Lower House elected on first past the post or AV, and an Upper House on proportional representation.

And the climate set by the 1911 Act also had its influence in respect of the changes in membership of the Lords in the last hundred years. Those changes have amounted to a revolution. The 1958, 63 and 99 Acts and the creation of the House of Lords Appointments Commission have drastically and, in my view, positively changed the membership of the House, quite literally widening our gene pool. But they have never crossed the Rubicon of giving peers an electoral mandate.

The end result of all these piecemeal changes (for all-singing, all-dancing reform proposals, have had a history of foundering on the rocks, most notably in the 1960s), has been to create what is now regarded as an extremely effective second chamber. One which basically knows its place in relation to the primacy of the Commons, but fulfils a hugely important role in line by line scrutiny of legislation, in holding government to account, in expert inquiry and in bringing diverse talents into Parliament. And the recent proposals for reform of the House have basically dealt with composition in isolation, assuming no change in function. In the words of the then Leader of the House, Jack Straw, announcing the Government's response to the Joint Committee on Conventions in December 2006, "The Government believe

that further reform should not alter the current role of the House of Lords as a revising and scrutinising Chamber, or its relationship with the Commons." That of course is a highly contentious view but it has become a consistent one.

But the 1911 Act is still significant, still potent a hundred years on, for different reasons. Not for the provisions it enacted, but for the words of its preamble inserted at the insistence of Edward Grey but never fulfilled, that the aspiration should be for a House "constituted on a popular basis". The only example, as David Steel put it, of a political pledge qualifying for a congratulatory telegram from The Queen.

And that, of course, returns us to the issue I raised at the beginning of this lecture; whether legitimacy can only be endowed by electoral mandate in a liberal democracy, and whether, despite Jack Straw's words, if legitimacy is increased by election, it is possible to maintain the balance of powers between the two Houses as it currently stands, or whether the clarity of the primacy of the Commons would be brought into doubt.

This is dangerous territory for a Speaker, but could I just end this section by commenting on the widespread view that there has to be at least a possibility that these Government proposals for an elected House eventually run onto the rocks, as others have before them – wrecked on the difficulty of gaining consensus on how an elected Lords could avoid the Scylla and Charybdis of becoming either a replica of or a rival to the Commons. If that stalemate were to occur, there would still be an obligation to look at ways to reform the Lords, to improve its performance and its legitimacy as an institution. It's worth remembering that before the 1911 Act there were many different alternative solutions put forward to the problem of symmetrical powers, not just Grey's change of membership but complicated arrangements for resolving disputes between the two Houses through joint committees and including a major role for referenda.

It can be argued that the conflation of the word "reformed" with "elected" has, in the decade since the 1999 Act, been regarded as a block to progress of any sort. But in fact, other proposals for reform have been put forward with the aim of increasing legitimacy, by reducing the size and rationalising the make-up of the House:

- fixed-term appointments,
- a cap on overall numbers,
- retirement,
- a more transparent and structured appointments process delivered by a statutory appointments commission with specific terms of reference, and with greater powers over political appointments.
- an ending of the link between the honours system and membership of the Upper House.

I don't underestimate the difficulties of delivering on this alternative House of Lords reform agenda, just as on other reform proposals. There might, however, just be greater consensus, since it would allow the settlement as to powers and primacy initiated by the 1911 Act to be sustained, and the membership to be legitimised without challenge as to where democratic accountability lies between the two Houses – one of the major points of contention in proposals for election.

These are debates for the draft Bill when it finally emerges from the bowels of the Cabinet Office. Perhaps I can turn now to some of the more immediate issues for the House of Lords in the wake of the Coalition Government formed in May last year.

I have always thought of the House of Lords as a place of coalitions, where alliances were formed to ensure changes were made to legislation, where the executive had, in Geoffrey Howe's phrase, "to convince the jury", rather than rely on the Whips to deliver the vote in the lobbies. So it is rather ironic that the current coalition government has, I sense in some ways, produced more fundamental problems for the House of Lords than the House of Commons. And whilst we may not be in the "serious constitutional crisis" that Willy Goodhart asserted a couple of weeks ago, there are undoubtedly major questions to be addressed.

The first, and perhaps the most fundamental, relates to the Salisbury-Addison Convention, underpinning the right of a government with a majority in the House of Commons not to have its legislative programme thwarted in the House of Lords. As I said earlier, that convention used as its central point the manifesto commitments of the elected government, and those manifesto commitments became the holy writ which the House of Lords had no right to subvert. As the Cunningham Committee on Conventions recognised, there has been over the years a degree of mission creep, or re-interpretation of the convention to make it fit for other situations not just a Labour majority in the Commons and a Conservative majority in the Lords. And particularly in the later years of a Parliament, the convention was interpreted by simply meaning that any Government Bills which attracted a majority in the Commons should not be wrecked in the Lords.

Others took a more militant view: that since the rationale of the Convention had been superseded, so should its existence. When he was Leader of an opposition party in the Lords, rather than the Deputy Leader as he is today, Tom McNally made it clear he didn't consider the convention binding in relation to either primary or secondary legislation, since it was irrelevant to current conditions. And if it was irrelevant then, it is certainly so in a situation where we have no manifesto at all, where we have, on occasions, entered looking- glass land, when Government ministers at the despatch box defend legislation based on policy commitments from the Coalition Document, like fixed term Parliaments, as Lord Wallace of Tankerness did in the debate

yesterday, on the basis that while it may not have been in the Conservative Party manifesto, it was certainly in that of the opposition.

The Coalition Document has at no point been anointed by the popular vote, and I believe we need at the very least to explore whether Jack Straw's view which he expressed to the Joint Committee on Conventions in 2006, "if any coalition or arrangement as in 1977 gains the support of the democratically elected House and is endorsed by a motion of confidence, then the programme for which they gain that endorsement should be respected by this House", is in fact correct, and if so, to make that proposition explicit. There is another problem with the Coalition Document not being a manifesto – a more practical one. The speed with which it was drawn up means that potential mistakes were made, and the lack of time for consideration has been compounded by the speed of implementation, particularly on constitutional change. And that presents a challenge for a second House whose duty is second thoughts.

Add to these problems the overturning of another, admittedly recent, convention: that the Government should not have a political majority over the opposition parties in the Lords, and you begin to have real problems. It is ironic that if the Conservatives had won the election outright, their political position in the Lords would have been far more vulnerable than the effect of the coalition, where we now have a combined force of 313 Conservatives and Liberal Democrats against 242 Labour peers.

There is of course the argument that if you add the Crossbenchers, the Government can be defeated, and indeed that has happened on several occasions. But far less frequently than the last Labour Government was, a reflection of the fact that the Crossbenchers neither usually vote as a group (they registered 625 votes for the Government and 689 against, in the 35 divisions we had on the Parliamentary Voting System and Constituencies Bill); and that their participation rates in the divisions is far lower than the political peers. This disparity has engendered a sense of impotence on the opposition benches which was one of the main causes, in my view, of why we had such problems with the passage of the Parliamentary Voting System and Constituencies Bill, and why time became the weapon of choice for both sides.

The House has now had a restful break from the dramas of that Bill, which in the end received its Royal Assent in time for the 5 May referendum. And tellingly this week the Government announced major concessions on the Public Bodies Bill, which has given a sense of normal service being resumed in the House. But there is much controversial legislation to come, and I do believe we need to look at some of the issues exposed over the last nine months, and draw up if not new conventions, at least an agreed framework in which the Lords can operate for the next four years.

Do we need to look, as Peter Hennessy suggested, at a Strathclyde/ McNally/Royall convention to replace Salisbury Addison and steer us through the next four years?

Would a Business Committee help, both to avoid the anathema of guillotines and give some transparency and influence to Crossbenchers and backbenchers in the scheduling of business?

Do we need to look (very gently because it's dangerous territory) if there are implications from the House of Lords' Constitution Committee's report on money bills and financial privilege?

And what about consider whether reviving the idea recommended in the 1968 White Paper on House of Lords reform, and also proposed in a report by backbench Labour peers back in 2004, that the Lords should normally consider a Bill in a period of sixty parliamentary days would be sensible?

And we have the work already in progress, in Alastair Goodlad's Leaders Group on working practices, on the essential task of improving our performance as a revising chamber and of strengthening the joint performance of both Houses in holding the executive to account.

In fact there is so much unfinished business from 1911 as well as from the 2010 General Election that I suspect our successors may be here in a century's time still watching the story unfold.