THE PARLIAMENT ACT OF 1911

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The Parliament Act of 1911 received the royal assent on August 18[1]. By the terms of its important preamble further legislation is promised, which will define both the composition and powers of a new second chamber" constituted on a popular instead of hereditary basis;" although "such substitution cannot be immediately brought into operation," the positive provisions of the measure restrict the "existing powers of the House of Lords." This law, therefore, is intentionally temporary, the first probably of several enactments embodying further constitutional changes.

In the mean time and briefly what does this law now provide? (1) A public bill passed by the House of Commons and certified by the Speaker of the House of Commons to be a "money bill" within the terms of the act shall, "unless the Commons direct to the contrary," "become an Act of Parliament on the Royal assent being signified, notwithstanding that the House of Lords have not consented to the Bill," within one month after it has been "sent up to that House."[2] (2) Any other public bills

[1] 9 *H. L. Deb. 5s. c. 1155*

[2] Section 1, subsections 1 and 2. The exact definition of a "money bill" in subsection 2 reads as follows: "A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions 'taxation,' 'public money,' and 'loan' respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes."

(except one to confirm a provisional order[3] or one "to extend the maximum duration of Parliament beyond five years") which "is passed by the House of Commons in three successive sessions (whether of the same Parliament or not)" and which, "having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions" shall, "unless the House of Commons direct to the contrary," become an Act of Parliament on the Royal assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill."[4] (3) At least "two years must have elapsed between the date of the second reading" of such a bill (that is its first real introduction) "in the first of those sessions" in the House of Commons and the date of the final passage of the bill "in the third of those sessions" in the House of Commons; all of these facts being further certified by the Speaker of the House of Commons.[5] (4) A bill is "rejected" by the House of Lords if it is not passed or if amendments are made to which the House of Commons does not agree or which the House of Commons does not "suggest" to the House of Lords on the second or third passage of the bill through the House of Commons; if these "suggestions" by the lower house are made part of the bill by the House of Lords the bill shall still be regarded as the "same bill" with amendments agreed to by the House of Commons; but a bill, in order to secure such special terms as the Parliament Act provides for its enactment without the consent of the House of Lords, must be the "same bill" which was passed by the House of Commons in preceding sessions; and, on the certificate of the Speaker of the House of Commons, such an "identical" bill may be regarded as the "same bill" if it "contains only such alterations as are necessary owing to the time which has elapsed since the date" when it was passed in a former session of the House of Commons.[6]

[3] Such a bill is for the purpose of confirming by statute the order of a government department acting under a statutory delegation of legislative powers.

[4] Section 2, subsection 1; and section 5.

[5] Section 2, subsections 1 and 2.

[6] Section 2, subsections 3 and 4.

(5) "Any certificate of the Speaker of the House of Commons given under this Act shall be conclusive for all purposes, and shall not be questioned in any court of law."[7] (6) A formula of enacting words is given for bills which under the machinery of this act may be presented for the royal assent notwithstanding that the House of Lords have "rejected" them.[8] (7) "Nothing in this Act shall diminish or qualify the existing rights and privileges of the House of Commons."[9] (8) No Parliament shall last longer than five years.[10] Further examination of these and other explanatory provisions of the act will follow later. Our first concern is with regard to its immediate ancestry.

On June 24, 1907, Sir Henry Campbell-Bannerman, after eighteen months of Liberal government, introduced in the House of Commons a resolution: "That, in order to give effect to the will of the people as expressed by 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."[11] This passed after a short and rather perfunctory debate, the government declining then or at other times to give any pledge as to the date at which a bill might be introduced. Again, as in the period directly after the general election of January, 1906, opposition in the House of Lords prevented the passage into law of important measures supported by the government, which was still in command of a large majority in the House of Commons. Finally in November, 1909, came the refusal of the Lords to pass the Budget. Then followed the general election of January, 1910, which raised in acute fashion the question of the power of the House of Lords over money bills and in general

[7] Section 3.

[8] Section 4.

[9] Section 6.

[10] Section 7.

[11] 176 *Hansard*, 4s. c. 909. In the course of the ensuing debate a scheme was outlined for conferences between the two houses in case of disagreement.

the relations of the two houses.[12] The continuance in office of the Liberal government, supported, at least for the time, by a coalition majority of Liberal, Labor and Irish Nationalist members of the House of Commons led shortly in the new Parliament to a determined attempt to restrict the powers of the existing House of Lords. The principle of the Campbell-Bannerman resolution was resurrected and substantially included in three resolutions which passed the House of Commons in early April, 1910.[13]

Thus came the Parliament Bill of 1910 based on resolutions which previously had fully embodied the essential operative provisions of the Bill. It was read for the first time on April 14.[14] But it was not read a second time in the House of Commons,[15] as the death of Edward VII on May 6 led to a political truce lasting till November, 1910. During this interval a conference of party leaders attempted without success to secure a solution of the constitutional question. On the reopening of Parliament in November proposals alternative to the Parliament Bill were formulated by the opposition. This was in anticipation of a second general election. An appeal to the

[12] The story of these months has been told in many places and only a bare recital of the chief stages is needed here. Cf. *inter alia* for preliminary comment on this whole matter *Impressions of British Party Politics, 1909–1911* in *Am. Pol. Sci. Rev.* V, pp. 509–534.

[13] Between March 29 and April 5 debates took place on the proposal to go into committee "to consider the relations between the two Houses of Parliament and the question of the duration of Parliament" (15 *H. C. Deb.* 5s. c. 1162). The debates on the three resolutions dealing with money bills, other public bills, and the duration of Parliament, which took place between April 6 and 14 were finally ended by the agreement of the House with committee shown by votes on the three resolutions of 340 to 241, 346 to 243, and 347 to 244 respectively. (16 *H. C. Deb.* 5s. cc. 1531–1547.)

[14] 16 *H. C. Deb.* 5s. c. 1547. This was a purely formal presentation of a "dummy" bill; the text not being given out till some days later.

[15] Contrary to the statement in that useful handbook—Ilbert: *Parliament*, p. 218; the omission there of all mention of the resolutions of 1910 is misleading. Later in the House of Lords, at the invitation of the opposition, Lord Crewe proposed the first reading of the Parliament Bill on November 16th (6 *H. L. Deb.* 5s. c. 706); but in those urgent days of what Lord Rosebery called "rather slippery work" (c. 697), with the closure of dissolution impending the debate on the second reading was adjourned by the opposition on November 21 (c. 809).

electorate chiefly on the House of Lords question in this election of December, 1910, gave the same net result as that of January.

The Parliament Bill of 1911 was therefore introduced in the new Parliament in the same form as in 1910. From the outset, as in 1910, charges were repeatedly made that the failure to provide for a new second chamber as proposed in the preamble was due to the intention of the government to secure the passage of an Irish Home Rule measure by use of the facilities provided by the bill before the matter of the composition of the upper house should be taken up. We must bear in mind this aspect of the question. Nevertheless the bill passed the House of Commons and finally on August 10 under threat of the creation of peers to secure a sufficient majority for the bill, a necessary number of Lords reluctantly voted with the supporters of the government to ensure the enactment of the bill still substantially the same measure which the House of Commons had originally accepted in March and April, 1910. Thus after legislative, political, and social vicissitudes which would crowd a volume this bill received the royal assent, and as 1 & 2 Geo. V. c. 13 became a document for recurrent citation by students of English history in centuries to follow.[16]

[16] The legislative history of the bill in the Parliament of 1911 may be summarized as follows: In the House of Commons on February 21 and 22 after presentation the first reading debate was voted 351 to 227 (21 *H. C. Deb.* 5s. cc. 2035–40). On February 27, 28, March 1 and 2 came the second reading debate and opposition amendment favoring reform of "the composition of the House of Lords, whilst maintaining its independence as a second chamber" and declining to proceed with a measure practically involving single chamber legislation, which may be "contrary to the will of the people" (22 *Ibid.*, 5s. c. 45), the amendment being defeated 365 to 244 (*Ibid.*, cc. 677–682). On April 3, 4, 5, 10, 11, 18, 20, 24, 25, 26, May 1, 2, and 3 the House was in committee, during which amendments were accepted (a) further defining money bills, (b) requiring the Speaker's certificate to a money bill on its presentation to the Lords instead of only on its presentation for the royal assent, (c) defining more clearly the lapse of two years required in section 2, subsection 1, of the act, (d) requiring for bills other than money bills a certificate from the Speaker on presentation to the Crown of a bill three times rejected by the Lords. Report stage was reached on May 9 and 10, when on government amendments some verbal changes were made and words in section 2, subsection 4, were added to enable the Commons

Obviously this law does not stand alone. To appreciate its significance we must consider the alternative to it as well as the law itself. By a study of the ancestry of both as well as of their content we can clear the road to appraisal of the constitutional meaning of conflicting proposals as to the composition, functions and position of the upper house of Parliament. Such a documentary and historical survey must further lead to a summary of

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more easily to accept late amendments by the Lords. On May 15 the bill passed the third reading, 362–241 (25 *Ibid.*, 5s. c. 1784).

In the House of Lords the first reading was on May 16 (8 *H. L. Deb.* 5s. c. 486). Debate followed on May 23, 24, 25, and 29 on the second reading which took place without division (*Ibid.*, c. 967). On June 28, 29, July 3, 4, 5 and 6 the House was in committee, when amendments were inserted as follows: (a) In place of the Speaker a joint committee was substituted to determine a money bill, whose purpose as well as content were to be tested; (b) a proposal to extend Parliament beyond five years was not to pass under the provisions of this act; (c) a reference to the electors was to be required on all bills affecting the existence of the Crown and the Protestant succession, establishing local parliaments within the United Kingdom, or raising new issues of great gravity in the opinion of the joint committee. On a test vote affecting these proposals the government was beaten 253–46 (9 *Ibid.*, 5s. cc. 277–80). On report made July 13 a further definition of money bills was inserted and enacting words for bills which did not pass the Lords were provided. The third reading was taken without division July 20 (*Ibid.*, c. 619) and the same day prior to the passage of the bill an amendment to define a public bill was agreed to. Again in the Commons on August 8, resuming the debate adjourned by the Speaker on July 24 under Standing order 21 because of "grave disorder" (28 *H. C. Deb.* 5s. cc. 1495–96), the House disagreed with the Lords' amendments except as to (a) exclusion from the scope of this act of a bill to extend the duration of Parliament beyond five years; (b) the insertion of enacting words for bills which become laws without the consent of the Lords; (c) a further technical definition of a public bill other than a money bill. The House also agreed to a new provision for a House of Commons committee of two with whom the Speaker might consult before giving his certificate on a money bill. On the test division as to disagreement with the Lords' amendments the vote was 321–215 in support of the government (29 *Ibid.*, 5s. cc. 1109–1114). Thus the bill as amended was returned to the Lords where on August 9 and 10 the question of consideration of the Commons' reasons for disagreement with the Lords' amendments was debated (9 *H. L. Deb.* 5s. cc. 1045–46); at last on the motion that the House "do not insist" on the amendment requiring a reference to the electors in the case of certain bills a vote of 131–114 insured the safety of the bill (*Ibid.* cc. 1073–77). In both houses debates on the address, on resolutions of censure directed against the government, questions, and discussion regarding the conduct of business had afforded additional opportunity for consideration of the constitutional and political questions connected with the act. In such a compact record amendments proposed and rejected in either house obviously cannot find place.

the essential social and political forces which have been at work. Their direction has usually been through parties, by whom constitutional history is largely made. Finally we come to the italics in this constitutional drama. For Mr. Asquith as Prime Minister threatened to use the latent power of the royal prerogative, to bend dusty weapons of almost revolutionary authority in order that if necessary the connection might be clear between the ballot and the King.

First of all this whole matter falls into two parts—the question of the composition and of the powers of the House of Lords. Historically whether in acrid agitation or in solemn, abortive debate they have usually been kept apart. Indeed on only one occasion have they been effectively treated in a single legislative document. That was in the energetic resolution of the House of Commons which temporarily abolished the House of Lords on March 19, 1649.[17] The Parliament act of 1911 keeps them apart; and though Lord Rosebery and Lord Lansdowne tried to connect the two branches of the subject more closely it will be more convenient for our purposes to follow the common historical precedent.

What then was the opposition or alternative program with regard to the composition of the second chamber? It is contained in three documents—the Rosebery resolutions of March and November, 1910, which were adopted by Lord Lansdowne, and which were defined and expanded in his House of Lords Reconstitution Bill of May, 1911. They are in contrast to the preamble of the Parliament Bill, which expresses only an intention at some future time to constitute a new second chamber on a "popular" basis. In March, 1910, when the principles to be embodied in the Parliament Bill had already become of interest to the peers, they agreed to the first series of Rosebery resolutions. The first of these declared for "a strong and efficient Second Chamber," as "an integral part of the British Constitution" and "as necessary to the well-being of the State and to the balance of Parliament." The second read: "that such a Chamber can best be obtained by the reform and reconstitution

[17] Scobell: *Collection of Acts and Ordinances* (London, 1658), II. p. 8.

of the House of Lords."[18] Both were agreed to without a division. The third resolution was forced to a vote by the opposition of Lord Halsbury but was carried 175 to 17.[19] It stated: "that a necessary preliminary of such a reform and reconstitution is the acceptance of the principal that the possession of a Peerage should no longer of itself give the right to sit and vote in the House of Lords."[20]

The halt in active political controversy which followed the death of Edward VII prevented any possible sequel to these resolutions until November, 1910. Then Lord Rosebery proposed a second series of resolutions. The first of these declared: "That in future the House of Lords shall consist of Lords of Parliament: A. Chosen by the whole body of hereditary Peers from amongst themselves and by nomination by the Crown. B. Sitting by virtue of offices and of qualifications held by them. C. Chosen from outside." It was carried without a division, while the second resolution was withdrawn, as it went "too far into details."[21] Thus, on November 17, in the space of about three hours, the principles and practice of centuries were apparently submerged by an "almost passionate desire" of the Lords for reform, "emerging almost like a subterranean torrent."[22] But in this connection we may recall that the December election was already imminent.

On this foundation Lord Lansdowne built a more elaborate structure in the Reconstitution Bill of 1911.[23] Briefly this

[18] 5 *H. L. Deb.* 5s. c. 140 (March 14).

[19] *Ibid.*, cc. 491–94 (March 22). However, at this time the Duke of Norfolk advised the supporters of these resolutions not to attach to them a "fictitious importance" (c. 483).

[20] *Ibid.*, c. 141. The reformative schedule suggested by Lord Wemyss on April 25, 1910 (5 *Ibid.*, 5s. c. 683), which Lord Morley called a "pill for an earthquake" can serve only to dissipate any notion that the House of Lords is lacking in originality or humor.

[21] 6 *H. L. Deb.* 5s. cc. 757–58. The second resolution read: "That the term of tenure for all Lords of Parliament shall be the same, except in the case of those who sit *ex-officio*, who would sit so long as they held the office for which they sit" (*Ibid.*, c. 714).

[22] *Ibid.*, c. 741 (Lord Newton).

[23] *H. L. Bills*, 1911, No. 75. Lord Rosebery objected to procedure by bill instead of resolution (8 *H. L. Deb.* 5s. cc. 527–28).

proposed that the upper house should be reduced in membership from over 600 to about 350. The Princes of the blood and the two archbishops remained secure; and sixteen Law Lords were guaranteed. Five Bishops with triennial retirement were to be chosen on the system of proportional representation by the other prelates. The rest of the House would consist of three classes of Lords of Parliament. The whole body of hereditary peers, including both Scotch and Irish peers, were to elect from among themselves under a system of minority representation one hundred Lords of Parliament, who were otherwise qualified by a record of public service in any one of a long list of public offices, at home or abroad. These peers were to serve twelve years, twenty-five retiring every three years, subject to re-election. A second class of 120 peers were to be chosen by electoral colleges composed of members of the House of Commons, who for this purpose were to be divided into local groups. Each electoral district was to be represented by not less than three or more than twelve peers as might be determined later. Election was to be by a system of proportional representation based on the single transferable vote; while tenure and retirement were as in the first class. This would also be true of the third class, consisting of 100 persons appointed, either from inside or outside the peerage, on nomination to the Crown by the Prime Minister. He was to select these with regard to the strength of parties in the House of Commons. In this fashion all groups or parties might secure representation in the upper house, and as the term was for twelve years nominated members might sit as Lords of Parliament even though the numerical strength of their party in the House of Commons might have endured serious loss in the interval. Peers not selected in any of these classes would then be eligible for election by a constituency to the House of Commons. Lastly except in the case of an "indispensable" elevation of a Cabinet or ex-Cabinet minister to hereditary peerage it would in the future be unlawful for the Crown to "confer the dignity of a hereditary peerage on more than five persons in any one year."

History was making too fast to permit this bill to pass beyond

a second reading. Already vigorous opposition to its proposals by members of the old guard within the peerage had shown that "men in fear of death" were not as yet "ready to commit suicide." And the country at large scarcely understood this last endeavor of the leader, who had supported the rejection of the Budget in 1909, now to preserve the continuity and tradition of a strong legislative council of wise men in a day of hurried democracy. Its complicated schedules did not stir men; while to the baser sort the connection of prelates and proportional representation offered too great a temptation. Nevertheless since it was novel for any detailed constructive measure to appear from the opposition, and since it was the last word of the official Conservatism of 1911 on an old question the ancestry of these Rosebery-Lansdowne proposals must influence any judgment on them.

As recently as March 29, 1910, Mr. Balfour had exclaimed "Have we proposed changes in the Constitution? Everybody knows that is no part of our [Tory] party creed, no part of our function; that is not the way social development and evolution are to be effected."[24] From this point of view the peers also had regarded earlier proposals for alteration in the composition of the House of Lords. Thus until 1910–11 nothing had resulted from the report of the Select Committee of 1908 on the House of Lords, of which Lord Rosebery had been chairman.[25] Many points involved in the Reconstitution Bill of 1911 had been seriously considered or recommended by this committee, which, however, had sharply divided on several important questions. This committee of 1908 had originally been authorized by the House when in May 1907,[26] Lord Newton withdrew his House

[24] 15 *H. C. Deb.* 5s. c. 1187.

[25] *H. L. Rep.* 1908, No. 234. In the appendix to this report there is a useful summary of previous bills and resolutions, though no references are given. Cf. Pike: *Constitutional History of the House of Lords*, (London. 1894) ch. XV.

[26] 174 *Hansard*, 4s. c. 42; and 175 *Ibid.*, 4s. c. 1556. On Lord Cawdor's motion for the select committee on May 7 Lord Crewe had unsuccessfully moved an amendment that "it is not expedient to proceed with the discussion of various proposals for reforming the constitution of this House until provision has been made for an effective method of settling differences which may arise between this House and the other House of Parliament." (174 *Ibid.*, 4s. cc. 43–44.)

of Lords (Reform) Bill.[27] That bill had rested on the principle "that the possession of a peerage by descent shall not, of itself, give any right to a seat in the House." Writs of summons to Parliament were to be issued only to peers possessed of certain special qualifications, elected by their fellows or appointed as life peers by the Crown.[28] In this fashion the older idea of additional life peerages was hitched to a scheme for the reduction of the hereditary element; and with shifting emphasis we shall see these ideas in other projects.

But until 1907 the whole matter had rested quietly in the Lords for eighteen years. In the interval the rejection of the second Irish Home Rule Bill in 1893 and the ten years of Unionist government, 1895–1905, had left earlier proposals in their pigeonholes. Prior to this, in March, 1889, Lord Carnarvon's bill[29] had failed of a second reading, as it attempted to revive Lord Salisbury's bill of 1888[30] for the discontinuance of writs of summons to undesirable members of the peerage. That bill, also popularly known as a "black sheep" bill, had vanished from sight[31] in the previous session. At the same time Lord Salisbury's bill[32] for the possible addition annually of five qualified life peers with a possible maximum total of fifty was also withdrawn.[33] These bills had been moderate compared with Lord Dunraven's bill[34] of the same year (1888), which had contained some ideas later revived by Lord Newton. In addition Lord Dunraven had contemplated special representation in the Lords of the "Colonies, Roman Catholics, Protestant Dis-

[27] *H. L. Bills*, 1907, No. 4.

[28] *Ibid.*, clauses 1–5.

[29] *H. L. Bills*, 1889, No. 18; introduced March 11 (333 *Hansard*, 3s. c. 1345); second reading, March 19 (334 *Ibid.*, 3s. c. 333); beaten 73 to 14 (c. 364).

[30] *H. L. Bills*, 1888, No. 162; introduced June 18; withdrawn without debate July 10 (328 *Hansard* 3s. c. 871).

[31] 333 *Ibid* 3s. c. 552.

[32] *H. L. Bills*, 1888, No. 161; introduced June 18 (327 *Hansard*, 3s. c. 387).

[33] 328 *Ibid.*, 3s. c. 871; cf. for Mr. Gladstone's real attitude toward the bill at this time, c. 911.

[34] *H. L. Bills*, 1888, No. 51; first reading March 23; second reading debate, April 26 (325 *Hansard*, 3s. cc. 518 *et seq.*); withdrawn (c. 562).

senters, Science, Letters and Sound Learning." In other respects also the bill was catholic; but it was withdrawn. Earlier in this prolific year Lord Rosebery's resolutions looking to similar ends had been beaten.[35] Four years before the House had likewise rejected his more modest proposals for the appointment of a committee "to consider the best means of promoting the efficiency of this House,"[36] though as he then said it was "little more than a request for a coat of new paint." In the interval, 1880–1888, the agitation in connection with the passage of the Franchise and Redistribution Acts and the rejection by the Lords of measures supported by Mr. Gladstone's government in 1881–1883, had produced a vigorous and radical but unproductive criticism of the upper house from the outside. This controversy, however, was destined to serve as an arsenal for the future.[37] In 1874 even on the smaller questions of the status of Scotch and Irish representative peers plans of Lord Rosebery[38] and Lord Inchiquin,[39] and in 1869 of Earl Grey[40] had come to nothing. In the same year Earl Russell's bill[41]

[35] Introduced March 19 (323 *Ibid.*, 3s. c. 1548); defeated 97 to 50 (c. 1605); in the course of this debate reference was made (c. 1561) to Lord Salisbury's famous speech at Oxford on Nov. 23, 1887, in which he called on the Lords to reject "objectionable bills" from a "bad sort of House of Commons." Cf. the situation at this time in the Commons as shown in the debate on Mr. Labouchere's motion of March 9 against "right of birth" as a qualification for legislators (c. 763).

[36] June 20 (289 *Ibid.*, 3s. c. 937); defeated 77–39 (c. 974).

[37] Reid: *Forster*, pp. 454, 593; Jeyes: *Chamberlain*, pp. 177–203; Churchill: *Lord Randolph Churchill*, I. p. 360; Morley: *Gladstone*, II. p. 248, III. pp. 49, 126–139, 173, 225, 409; Selborne: *Memorials, Personal*, II. pp. 117–27, 358; Lee: *Queen Victoria*, p. 470.

[38] 219 *Hansard*, 3s. c. 1489; this was buried in the committee (220 *Ibid.*, 3s. c. 141)

[39] 219 *Ibid.*, 3s. cc. 1476 *et seq.* (June 12); withdrawn (c. 1488).

[40] *H. L. Bills*, 1869, No. 50; 195 *Hansard*, 3s. cc. 473, 1679; sent to a committee (c. 1693).

[41] *H. L. Bills*, 1869, No. 49; second reading debate, April 27 (195 *Hansard*, 3s. cc. 1648 *et seq.*); beaten (197 *Ibid.*, 3s. c. 1401). Cf. Malmesbury: *Memoirs of an Ex-Minister*, II. pp. 393, 400, 402; Martin: *Sherbrooke*, II. p. 353; Morley: *Gladstone*, II. pp. 428–29; Hamilton: *Gladstone*, p. 97; Walpole: *Russell*, II. p. 438.

for a gradual infiltration of life peers had been beaten on the third reading by 106 to 76.[42]

Meanwhile four Law Lords had been added as life peers by acts of 1876[43] and 1887;[44] and bankrupts had been barred by legislation in 1871[45] and 1883.[46] An additional limitation in 1868 had compelled Lords wishing to vote to attend the House for that purpose, as proxies were "discontinued" by standing order.[47] Lastly in 1856, on political as well as constitutional grounds after an obstinate fight and much brilliant debate the Lords had prevented the creation of a life peerage merely by royal prerogative.[48] In this fashion both "black" and white sheep still counted; the hereditary peerage remained untainted; and the conservative if not entirely somnolent attitude of the Lords was spread upon the records for more than half a century.[49] Prior to that one serious if futile effort touching the membership of the upper house had been made. That also had disputed the power of the royal prerogative; for in 1719 the Whig peers had tried to set a final limit to the possible size of their oligarchical corporation. But that plan to restrain future royal creations had been wrecked by party dissensions.[50]

The rowers had got the boat into "great waters" and the hereditary peerage went overboard in an apparent endeavor to lighten ship. Of course the question is still open as to

[42] This year saw the exclusion of four Irish Spiritual Lords on the disestablishment of the Irish Church, 32 and 33 Vict. c. 42, sec. 13.

[43] 39 and 40 Vict. c. 59.

[44] 50 and 51 Vict. c. 70.

[45] 34 and 35 Vict. c. 50, sec. 8.

[46] 46 and 47 Vict. c. 52.

[47] Standing Order XXXIIa; 191 *Hansard*, 3s. c. 571.

[48] Martin: *Lyndhurst*, p. 462; Malmesbury: *Memoirs*, II. pp. 41, 43; *Peerages for Life*, in *Blackwoods*, LXXIX, pp. 362–69 and *Wensleydale Creation* in *same* pp. 369–78 (March, 1856). The debates cover many pages in 140 *Hansard*, 3s.

[49] Cf. on the Epicurean aspects of conservatism, Churchill: *Lord Randolph Churchill*, I. p. 81.

[50] *Parl. Hist.* VII.cc. 589–594, 606 *et seq.* Coxe: *Walpole*, I. pp. 201–217. Aitken: *Steele*, II. pp. 210–220. *Hist. Mss. Comm. Rep. Portland Mss.* V. pp. 578 *et seq.* The changes made by the Scotch and Irish Unions do not require mention here.

how serious this plan was, as to how much of Lord Lansdowne's plan would have survived the amending batteries. But what evidence we have as to the strength of the cathartic stimulus which finally produced the Lansdowne Reconstitution Bill in 1911!

It is true that the Bill was opposed by Lord Morley for the government, and that Lord Lansdowne refused categorically to trade his plan of composition for the preamble of the Parliament Bill, to which he declared his continued opposition.[51] Nevertheless I know there were sound men who, in the spring of 1911 were privately prepared to compromise on the acceptance of the essentials of both Reconstitution Bill and Parliament Bill. Since this compromise did not take place there remains in any case the question of the constitutional meaning of the Rosebery-Lansdowne scheme as an indication of the limit of possible concession on the part of those opposed to the Asquith government and as a suggestion regarding the lines of future legislation should the Unionists return to power intent to proceed with further constitutional legislation. Varying estimates weremade in May, 1911, as to the probable strength of parties in a House of Lords constituted under Lord Lansdowne's plan. The fact of the overwhelming strength of the Conservative party in the existing House has usually been cited as a cause of complaint by Liberals; and under any estimate which can be regarded as probable the Liberals could not command a majority in Lord Lansdowne's reconstituted second chamber. That fact, however, is subordinate to the consideration that whatever powers the new House might enjoy its real authority would be vastly greater.

By a reform in composition with no alteration in the powers of the upper house the whole British political system would endure a profound change. By an alteration in powers which would still give to a reconstituted House of Lords time and opportunity to assert its control over the executive on anything like equal terms with the House of Commons the real authority of such an upper house would after all be the major element in determination of public policy. In other words under the guise of a reorganization of the House of Lords

[51] 8 *H. L. Deb.* 5s. c. 371–72.

on a more popular basis the way was open to the restoration in more modern yet subtle fashion of influence by that House such as it had not enjoyed since the days of Whig domination in the eighteenth century. Only one thing could prevent such a result. That would be an abandonment in large part of the claims and policy of the House of Lords as they had appeared during the past fifty years and more. Unless that was also part of the Conservative alternative program the inevitable conclusion is that instead of a modification of the claims of the historical governing class so largely represented in the Lords, instead of a more genuine responsibility to the democracy, real power was to lie farther away from the electorate and more effectively in the hands of the managing directors of the reconstituted upper House. For a House numbering 350 would still require party management and control. The notion of an impartial advisory, revising council was as remote as ever. So after all this turns us to the question of the powers of the second chamber.

Here we must distinguish between the functions of the House of Lords with regard to "money bills," and with regard to other public bills. The practice and precedents with regard to money bills must be considered also with a view to the increasing complications and implications which surround the control of the purse. In 1860 a defender of the House of Lords commenting on their rejection of the repeal of the paper duties wrote: "A Budget in our day is a very different thing from a granting of subsidies. . . . To exclude the Lords from this field would be to shut them out from three-fourths of the public business. It would be a gigantic expansion of the power of the House of Commons; and by compelling the Lords to stand still within a technical limit would overthrow the proportions of the constitution and extinguish the House of Lords for all useful purposes." [52] In other words the Lords would cease to be the "fly wheel of the Constitution."[53]

Undoubtedly the tendency and subject matter of financial

[52] *What is the House of Lords?* in *National Rev.* XI, p. 123.
[53] *Ibid.*, p. 118.

legislation has gone far beyond the grounds on which were built the historical precedents for the customary powers of the House of Commons with regard to money bills. The lumping of various financial proposals of the government for the year in one bill—the Budget—has also at times tended seriously to limit even criticism of particular proposals in both Houses. But this practice has made for the rapid growth in modern times of the claim of the House of Commons to determine the time and cause of a dissolution of Parliament. In November, 1909, the House of Lords on the issue of finance boldly challenged the control of the Commons over the executive. From this question of finance, therefore, there depends the whole theory of representative and cabinet government as it has developed in modern British constitutional history. In view at least of these facts the proposals with regard to money bills occupy a central place.

The Parliament Act asserts the exclusive power of the House of Commons. The ancestry of this assertion would carry us far back to pregnant periods of constitutional growth. Even the immediate and more notable generations of this matter can receive only bare mention. First is the indignant protest of the House of Commons on December 2, 1909, against the action of the Lords in reserving the finance bill for a vote by the people in a general election, as "a breach of the Constitution."[54] In this, passing by the important admissions of Lord Balfour of Burleigh in 1909,[55] of Mr. Balfour in 1908,[56] 1907,[57] and 1906,[58]

[54] 13 *H. C. Deb.* 5s. c. 546.

[55] 4 *H. L. Deb.* 5s. c. 1039 (Nov. 25). By "a reference to the people in matters of finance" the House of Lords "would spoil and destroy the control of the other House of Parliament over the Government."

[56] Speech at Dumfries: *Times*, Oct. 7. "It is the House of Commons, not the House of Lords which settles uncontrolled our financial policy."

[57] The House of Lords "cannot touch those money Bills which if it could deal with, no doubt, it could bring the whole executive machinery of the country to a standstill." 176 *Hansard*, 4s. cc. 929–930 (June 24).

[58] Speech at Manchester: *Manchester Guardian*, Oct. 23. "The House of Lords, as you all know, does not interfere with the general financial policy of the country."

and of Lord Salisbury in 1895,[59] the House of Commons followed the precedent of their own resolutions of July 6, 1860. Then they had voted that their control over taxation and supply was exclusive as to "matter, manner, measure, and time."[60] Earlier in 1678[61] and 1671[62] the Commons had passed the well-known resolutions against the power of the House of Lords to alter aids and supplies which "are the sole gift of the Commons." The preamble of a supply bill had been fixed in 1628 stating the intention of the "*Commons*" to "give and grant" the "duties" provided by the bill.[63]

It is true that the House of Lords had never given up the merely legal power to amend or reject a finance bill. It is true that by their standing order of 1702 they had protested against "tacking" that is "annexing" to a finance bill matter "which is foreign to and different from the matter of the said Bills of Aid or Supply" as "unparliamentary," and tending "to the destruction of the constitution."[64] And it is true that with regard to many separate bills involving directly or indirectly a financial charge there is prior to 1860 a long record of amendment, delay or rejection on the part of the House of Lords, in spite of the general principle already laid down by the House of Commons.[65] But analysis of the character of these actions by

[59] The House of Lords, "by custom, takes no share whatever in the votes by which governments are displaced or inaugurated and it takes no share whatever in that which is the most important part of the annual, constant business of every legislative body"—finance. 35 *Hansard*, 4s. c. 263 (July 6)

[60] 159 *Hansard* 3s. cc. 1384, 1602, 1604, 1606. These resolutions had been presented after a valuable report as to precedents had been made by the Select Committee on Tax Bills. (*H. C. Rep.* 1860, No. 414.) For an interesting account by an auditor of the famous debate of July 5, 1860, cf. *A field night in the House of Commons* in *Atlantic Monthly*, VIII. pp. 663–78. On some of the personal and political aspects of the question cf. Morley: *Gladstone*, II. pp. 25, 31–40, 238–39, 636; Martin: *Lyndhurst*, p. 494; Dasent: *Delane*, II. p. 21; Martin: *Prince Consort*, V. pp. 99–100, 132–33; *Letters of Queen Victoria*, III. pp. 512–514; Laughton: *Reeve*, II. p. 45.

[61] *Commons Journals*, IX, p. 509 (July 3, 1678).

[62] *Commons Journals*, IX, p. 235 (April 13, 1671).

[63] *Ibid.*, I. pp. 910, 914, 919. Cf. *Lords Journals*, III. pp. 858, 860, 879.

[64] Order No. XXV; *Lords Journals*, XVII, p. 185 (Dec. 9, 1702).

[65] Cf. Appendix to *H. C. Rep.* 1860, No. 414.

the Lords, appreciation of the political as well as of the constitutional circumstances involved, and lastly the realization that for the bulk of those precedents men must turn to a period when the executive was not exclusively or even primarily depended on or responsible to the House of Commons—all of these considerations do not materially or constitutionally weaken the strength of the convention which has decreed to the Commons the control over finance.[66] The Parliament Act in this respect provides in statutory form for restoration of the Constitution to a position beyond the reach of a hostile majority in the House of Lords. What was the alternative to this?

It is to be found in somewhat scattered form in the resolutions proposed by Lord Lansdowne on the eve of the election of December, 1910, and in the Cromer amendment to the Parliament Bill in June, 1911. Both involve primarily the definition of a money bill in order to prevent tacking. As such they have their basis in the House of Lords standing order of 1702. That order, however, had not been consistently adhered to during the past two centuries;[67] and the Lansdowne-Cromer program looked to a statutory definition and extension of that order. With this in view, according to Lord Lansdowne the Lords were to "forego their constitutional right to reject or amend Money Bills which are purely financial in character," if "effectual provision is made against tacking." In case of dispute on these points reference was to be to a joint committee of both houses, "with the Speaker of the House of Commons as chairman who shall have a casting vote only."[68] That was in November, 1910.

On June 28, 1911, Lord Cromer moved an amendment to the Parliament Bill substituting a joint committee for the Speaker as the authority to distinguish a "money bill" from other public bills.[69] He then explained that he was thinking of a committee of seven from each House with the Speaker as chairman to give

[66] For a clear analysis and classification of these precedents cf. speech by Mr. Collier on July 5, 1860, 159 *Hansard*, 3s. cc. 1386–1418

[67] *H. C. Rep.* 1860, No. 414, p. xi.

[68] 6 *H. L. Deb.* 5s. c. 838 (Nov. 23).

[69] 8 *Ibid.*, c. 1047.

a casting vote.[70] This was carried in committee as the result of a test vote of 183 to 44.[71] The functions of this tribunal as to money bills were first defined by Lord Cromer's second amendment of June 29, which was then carried 192 to 48.[72] The joint committee was to deny to a House of Commons bill the character of a money bill and thus deprive it of its special privilege of speedy enactment unmolested by the Lords if in the opinion of the joint committee "the governing purpose of a Bill, is such as to bring the Bill, within the category of general legislation."[73] As general legislation it would then be subject to other arrangements provided by the Parliament Bill. But on this point as we shall see the opposition was to amend the methods then provided by that Bill for the passage of certain classes of legislation. This Cromer amendment embodied a phrase from a speech by Mr. Asquith on April 11, that "the test whether a bill is a financial bill or not is whether that is its main governing purpose."[74] The debate on this amendment is most enlightening but we can better review it after we have noted the third and final alteration proposed by Lord Cromer on July 13, when he offered a substitute for his own second amendment on June 29.[75] The accepted version of the functions of the joint committee as to money bills was to be as before if the "*main* governing purpose of a Bill *imposing taxation*, or of any portion of a Bill *imposing taxation*, is *not purely financial in character*."[76] This last amendment aimed to preserve as money bills projects such as naval loans, etc., whose governing purpose was obviously not financial though finance was the actual content of the bill. Lord Cromer returned therefore to Lord Lansdowne's language of November—"purely financial in character."

[70] *8 H. L. Deb.* 1049.

[71] *Ibid.*, c. 1090.

[72] *Ibid.*, c. 1164.

[73] *Ibid.*, c. 1135.

[74] 24 *H. C. Deb.* 5s. c. 259.

[75] 9 *H. L. Deb.* 5s. c. 458.

[76] The italics are my own, indicating the important changes from the amendment of June 29.

The ensuing debate when connected with that of June 28 and 29 barely touched the elaborate definition of a money bill which after amendment in the House of Commons was now in its final form before the Lords. The question was as between the Cromer amendment as it was to be interpreted by the joint committee and the word "only" as the controlling word in the long House of Commons definition to be interpreted by the Speaker.[77] The Lords feared that the Speaker might become a dangerous partisan; they were desirous to limit the danger of "tacking," and in that connection to extend the standing order of 1702 so as to exclude "moral" as well as "extraneous tacking." Here is the gist of the matter. They had less to fear from open "tacking," since the Bill and their own orders already limited it. What was "moral tacking?" Lord Cromer called it "the endeavor to accomplish by a side wind in a Money Bill some important political or social change which ought to come in the category of general legislation."[78] Lord Lansdowne unconsciously followed the thought in the anonymous article in the *National Review* of 1860 by saying that without the Cromer amendment the House of Lords "would find itself at once warned off the whole vast field of legislation into which the financial elements enter" and if so they would be "excluded from by far the greater part of the whole field of legislation."[79]

It at once occurs to the student that, under the Cromer amendment as explained by Lord Lansdowne, a tariff budget providing for colonial preference and protection for home industries and agriculture in order to end or check unemployment might be denied the "exceptional machinery" proposed by the Parliament Bill for "money bills." Whether that be so or not if the Cromer amend-

[77] Cf. footnote 2 of this article. At this stage of the bill the Speaker alone was the supreme authority on this point. Later in the House of Commons on August 8 the government supported an amendment which directed the Speaker "to consult, if practicable, two members to be appointed from the Chairman's Panel at the beginning of each Session by the Committee of Selection" of the House of Commons. This was finally part of the bill. (29 *H. C. Deb.* 5s. cc. 1055, 1090, 1091.)

[78] 9 *H. L. Deb.* 5s. c. 459.

[79] *Ibid.*, c. 468.

ment became part of the Bill the functions of the House of Lords might, unless otherwise checked, extend to a considerable part of the "whole field of legislation," with power of both amendment and rejection, even though finance were involved. The distinction goes deeper. For back even of party programs came the question of property. The Lords were fighting to protect the interests which they peculiarly represent as well as for their own power to control policy. The Parliament Bill proposed to consider the support of the electorate as authority for the imposition of taxation by the Commons in ways and terms which would probably have as part of their justification the alleged benefit and welfare of the electorate and the nation. Which could the taxpayer more safely trust and which could he more readily check or direct?

Lord Lansdowne called the Cromer Amendment "vital";[80] and he was right. For it represented the endeavor of the Lords to define by statute the exclusive powers of the Commons on lines which had existed when finance included little more that the "granting of subsidies" or other well known grants and aids. In 1911 the Lords and the Unionist party proposed to ignore the history of the evolution of the Budget; and to fall back on practice and precedent with regard to financial and constitutional questions which dated from the seventeenth and eighteenth centuries, while facing social and economic problems and conditions of the twentieth century.[81] The last Cromer amendment was carried without division, only to be rejected by the Commons. Under the Act as it now stands there is novel recourse to the judgment of the Speaker. Draftsmen must be more careful; and the undoubted danger of tacking will continue to be the subject of discussion. In conclusion, we have the decision of the Speaker in December, 1911, that the

[80] 9 *H. L. Deb.* 5s. c. 468.

[81] Cf. 8 *Ibid.*, c. 1139 (Lord Haldane) and c. 1152 (Lord Loreburn); 9. *Ibid.* c. 462 (Lord Morley).

first Budget since the passage of the Parliament Act is not a "money bill" within the terms of that Act.[82]

[82] The decision of the Speaker is noticed in the *Times*, Dec. 15, 1911; and Lord Morley in the House of Lords, though he naturally had not inquired as to the speaker's reasons, indicated certain clauses dealing with the Post Office as the probable source of difficulty (*Times*, Dec. 16). In this connection cf. the interesting rulings of the Speaker as to the privileges of the Commons in connection with amendments by the Lords to the Old Age Pensions Bill, July 31, 1908 (193 *Hansard*, 4s. cc. 1970, 1974, 1980, 1995).

(To be continued.)

THE NEW ROLE OF THE GOVERNOR.

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About twenty years ago, Mr. Bryce, with microscopic vision, observed that the state governor was "not yet a nonentity."[1] On the other hand the state legislature was "so much the strongest force in the several states that we may almost call it the Government and ignore all other authorities."[2] The strangeness of sound with which these statements strike our ears at the present day is indicative of the length of the road which we have since traveled and of the change which has taken place within recent years in the relative positions of the governor and the legislature in our state governments. The unmistakable tendency which now prevails in many quarters towards an enlargement of the power of the governor directs attention anew to the administrative and political position which that officer occupies and to the manner in which his influence and prestige have been, and may be still further, increased.

The administrative position of the governor has been unsatisfactory since the original organization of the state governments. The first state constitutions were largely adaptations of the colonial charters to new conditions and were framed in the light of colonial experience. The conflicts that had taken place between the colonial governors, appointed by the crown, and the colonial legislatures, composed of representatives of the people, had embittered the colonists against the exercise of executive authority. Hence, in the new state constitutions, the predominant legal position was assigned to the legislature, which was made the controlling and regulating force in the state governments, while the executive was rendered weak and inefficient both in organization and function. As Madison

[1] *American Commonwealth*, 3rd ed., vol. I, p. 532. [2] *Ibid.*, p. 534.