

Once again the Constitution seems vulnerable to piecemeal reform arising out of sectional party interest

democraticaudit.com/2015/10/29/once-again-the-constitution-seems-vulnerable-to-piecemeal-reform-arising-out-of-sectional-party-interest/

By Democratic Audit UK

2015-10-29

*On Monday the House of Lords voted against changes to tax credits. In doing so, Osborne and Cameron have argued they have broken a constitutional convention, raising “issues that need to be dealt with”. But **Sean Swan** questions these claims by highlighting that neither the Parliament Act nor the Salisbury Doctrine has been breached as the changes were secondary legislation and did not appear in the Conservative Manifesto.*



State Opening 2015. Credit: [UK House of Lords](#), parliamentary copyright

The House of Lords have stymied the Conservatives’ plans to end tax credits and now [George Osborne](#) has sounded the alarm in defence of the Constitution:

“Unelected Labour and Liberal Lords have defeated a financial matter passed by the elected House of Commons, and David Cameron and I are clear that this raises constitutional issues that need to be dealt with”.

A Downing Street spokesman added that “[t]he prime minister is determined we will address this constitutional issue. A convention exists and it has been broken”.

But what, exactly, is the basis for these claims? The first potential source of constitutional crisis would be that the Lords have acted against the Parliament Act (1911), which [states](#):

“(1)If a Money Bill, having been passed by the House of Commons [...] is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the Bill shall [...] be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified,

| *notwithstanding that the House of Lords have not consented to the Bill”.*

And tax credits would appear to be a financial matter, but the Act continues:

| *“(3) There shall be endorsed on every Money Bill when it is sent up to the House of Lords [...] the certificate of the Speaker of the House of Commons signed by him that it is a Money Bill”.*

The tax credit legislation was not so certified by the Speaker. It was, in fact, a piece of Secondary Legislation. Mr Speaker himself has [said](#) in relation to this that matter that “Nothing disorderly has occurred. There has been no procedural impropriety”. The Parliament Act has not been breached.

The second potential Constitutional issue is in relation to parliamentary convention and the [Salisbury Doctrine](#) which

| *“ensures that major Government Bills can get through the Lords when the Government of the day has no majority in the Lords. In practice, it means that the Lords does not try to vote down at second or third reading, a Government Bill mentioned in an election manifesto”.*

Very well, but the proposed changes to tax credits were not in the [Conservative Manifesto](#). The Manifesto contains only two mentions of ‘Tax Credits’. The first occurs on page 21 and relates to ‘research and development Tax Credits’, which are entirely different; the second reference is to be found on page 30 and relates only to migrants: “We will insist that EU migrants who want to claim Tax Credits and child benefit must live here and contribute to our country for a minimum of four years”. Nowhere in the 2015 Conservative manifesto is there any mention of the sort of changes to tax credits envisioned in the proposed legislation. In light of this, it is difficult to maintain that the convention of the Salisbury Doctrine has been broken. In any case, as Vernon Bogdanor pointed out in *The New British Constitution*, the Salisbury Doctrine arose in an era in which there was a permanent inbuilt Tory majority in the Upper House – a state of affairs which ended with the 1999 House of Lords Act and the reduction of the number of hereditary peers to 92. Whether or not the Salisbury Doctrine needs to apply in full now that no party has an automatic majority in the Lords has been question, and certainly the Lords have become more assertive since the 1999 reforms.

But there is still talk of a ‘constitutional crisis’ and the PM’s official spokeswoman on Tuesday [stated](#) that “To have measures go through that were voted on by elected MPs, and have been stopped, clearly the prime minister wants to look at how to address that”.

Mr Cameron finds himself in the new situation for a Conservative Prime Minister of not having a majority in the Lords – and he clearly does not like it. He would, no doubt, like to enjoy the full fruits of being PM in a centralised UK with the full sovereignty of parliament (meaning in this case the House of Commons) at his disposal, but is being thwarted. Mrs Thatcher had the Greater London Council to contend with, Mr Cameron has the Scottish Parliament and now the House of Lords. Political reality means he cannot touch the former (without risking a sort of Jacobite rebellion) but his talk of ‘constitutional crisis’ may signal the intent to deal with the latter. Once again the Constitution seems vulnerable to piecemeal reform arising out of sectional party interest.

The preamble to the 1911 Parliament Act stated the intent “to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis”. An elected Second Chamber endowed with democratic legitimacy and thus a clear rival and equal to the House of Commons is hardly where Mr Cameron wishes to go, but it is where the debate may yet lead if he persists in his claims of a ‘constitutional crisis’.

Note: this post represents the views of the author, and not those of Democratic Audit or the LSE. Please read our [comments policy](#) before posting.

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